LEGISLATIVE COUNCIL

Wednesday 21 June 2006

The PRESIDENT (Hon. R.K. Sneath) took the chair at 2.17 p.m. and read prayers.

PAPERS TABLED

The following papers were laid on the table:

By the President—

Naracoorte Lucindale Council—Effluent Disposal—Waste Control System—Plan Amendment Report

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

Reports, 2004-2005—
Commissioners of Charitable Funds
Medical Board of South Australia
Creating the Future Together—ACT Partnership Report to the Premier—June 2006.

LEGISLATIVE REVIEW COMMITTEE

The Hon. J. GAZZOLA: I bring up the 6th report of the committee for 2006.

Report received.

The Hon. J. GAZZOLA: I bring up the 7th report of the committee.

Report received and ordered to be read.

UNIVERSITY CITY

The Hon. P. HOLLOWAY (Minister for Police): I table a ministerial statement made today by the Premier on the subject of university city.

QUESTION TIME

DRUG DRIVING

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the Minister for Road Safety a question about the drug driving legislation.

Leave granted.

The Hon. R.I. LUCAS: Yesterday, the opposition highlighted the fact that the Victorian Labor government had included drivers detected with all forms of ecstasy in their saliva as being covered by its drug driving legislation. I point out to the minister that on 24 May this year in the Western Australian parliament the Labor government police minister, John Kobelke, said:

> A proposal for random roadside drug testing using oral fluids—that is, saliva—has been approved by cabinet and is being drafted. The saliva testing will focus on drugs known to impair driving and which are amenable to screening by oral fluid at the roadside.

That is, MDMA, or ecstasy, methamphetamine or speed and THC—that is, active cannabis.

The Hon. P. Holloway: May 2006, was it?

The Hon. R.I. LUCAS: I remind the Leader of the Government, who is interjecting out of order, that the Labor government—

Members interjecting:

The Hon. R.I. LUCAS: Most undisciplined, Mr President, I might note, and unknown behaviour in this chamber! I remind the minister that the Labor police minister has referred specifically to MDMA, or ecstasy, in addition to methamphetamine or speed. I also point out to the minister that in Tasmania, under drug-driving legislation which has been operational since last year (they are already sampling drug drivers in Tasmania, I think contrary to the minister's claim that South Australia was the second state), it does include a combination of saliva tests and blood tests—and therefore it is slightly different to the proposed laws in South Australia—and that MDMA, or ecstasy, according to the treasurer of that state in the *Hansard* of last year, is also one of the prescribed drugs included under their drug-driving legislative regime.

I also point out to the minister that yesterday the minister made a number of claims (and I will not go through all of them) along the lines that the government introduced legislation last year and there was no amendment to it by the opposition, or no suggested amendments last year, and then also went on to say that the government will look at possible legislative change at the end of the 12-month trial period. For example, the minister said yesterday,'We may well need to change our legislation after the first 12 months.' My questions are:

1. Does the minister understand that no change to the drug-driving legislation, by way of legislative amendment, is required because the government is issuing a regulation which only prescribes the drugs to be covered under the drug-driving legislation, and therefore all the government or the minister has to do is to issue, as a government, a new or amended regulation which prescribes MDMA, or ecstasy, as a prescribed drug? Therefore, does the minister accept that no legislative change is required, contrary to the claims that have been made by the minister and supported by the Leader of the Government?

2. Does the minister now accept the fact that in Victoria and Tasmania, and soon to be introduced in Western Australia, under Labor governments' respective drug driving legislative regimes, MDMA or ecstasy will be a prescribed drug, and does the minister accept now that she and her government are out of step; and will she accept that changes must be made by this government, issuing a new regulation that includes MDMA or ecstasy as a prescribed drug under the drug-driving legislation?

The Hon. CARMEL ZOLLO (Minister for Road Safety): Clearly, I will have to speak very slowly for the honourable member opposite. He either has a short memory or he did not understand. This is our trial legislation commencing on 1 July this year. This is South Australia's trial legislation, which was introduced last year in the other place. It was passed with bipartisan support.

The Hon. R.I. Lucas: And it doesn't list the drugs.

The Hon. CARMEL ZOLLO: I have found the quote. Robert Brokenshire, on 18 October 2005—

The Hon. R.I. Lucas: We supported the legislation.

The Hon. CARMEL ZOLLO: You must listen—I didn't interject on you. Mr Brokenshire stated:

> If there are hiccups and teething problems when it comes in here, so be it. I will still support police and this bill because it is better to get the message out there as early as you can that you may have a reasonable chance of getting caught for using illicit drugs and run the risk of someone challenging that than procrastination, procrastination, procrastination.

That is exactly what the Leader of the Opposition is doing now. This is our trial. Yes, I am aware that the Victorian trial resulted in them including MDMA.

The Hon. R.I. Lucas: Only when we told you.

The Hon. CARMEL ZOLLO: You are just a nonsense. I will speak slowly for the honourable member. Random roadside drug testing will contribute to the road safety target in South Australia's strategic plan to reduce road fatalities by 40 per cent by 2010. It is a challenging target and we are very much hoping this legislation will assist. The Road Traffic Act drug driving legislation allows police to conduct random roadside saliva tests to detect the presence of two illegal drugs—THC (the active component in cannabis) and methylamphetamine. It is also known as speed, ice or crystal meth. Under the new legislation drivers, including those supervising learners, will be directed to a driver testing station and, in the first instance, tested for alcohol in the normal manner. We had some information earlier that police would not be drug testing those under .08. I am glad we were able to dispel that.

The legislation also gives police the power to require a person to submit to a drug screen test following an alco test or breath analysis. Again, these two drugs were chosen because all the research in our state tells us they are the two common illegal drugs used. The test involves placing a saliva test strip on a driver's tongue to test for the presence of THC or methylamphetamine. The roadside drug screening test will also detect the presence—

The Hon. R.I. Lucas interjecting:

The Hon. CARMEL ZOLLO: Well, I told you yesterday and you can't remember. That is not my problem. I told you yesterday and you can't remember. It will also detect the presence of street grade ecstasy which contains methylamphetamine. The test will not detect other drugs such as morphine, methadone, cocaine and prescription drugs. The two prescribed drugs are those that I have mentioned—THC and methylamphetamine. We are told that the incidence of pure MDMA—all the research and statistics tell us—is rare. If the test strip result is positive, the driver will be escorted to a drug bus or police station to provide an oral fluid sample for further analysis. If the oral fluid analysis result is positive, the sample will be sent to a laboratory for testing. Drivers will be allowed to leave but will not be permitted to drive their vehicle.

An honourable member interjecting:

The Hon. CARMEL ZOLLO: Well, as I said, it is sad that you cannot remember from one day to the next, because you have just asked the same questions all over again.

The Hon. Caroline Schaefer: You haven't answered it.

The Hon. CARMEL ZOLLO: Well, I have answered it. MDMA is not a prescribed drug in this trial. All the best evidence and research in this state last year told us that it was rare. I will continue because they cannot remember yesterday.

Members interjecting:

The PRESIDENT: Order! The minister will not respond to interjections because they are out of order.

The Hon. CARMEL ZOLLO: Thank you for your kind protection, Mr President. The initial drug screening test will take approximately five minutes, and the analysis and the drug bus may take up to 30 minutes. Drivers will be informed within a few weeks whether the laboratory analysis confirms the presence of THC or methylamphetamine, and they are to be prosecuted for driving with a prohibited drug in their system. Unlike drink-driving laws, the new drug-driving legislation is based on zero tolerance. Any amount of THC or methylamphetamine detected will constitute an offence.

As I also told the Hon. Sandra Kanck yesterday, cannabis can be detected for several hours after use, and methylamphetamine may be detected for up to 24 hours after use. The existing driving under the influence (DUI) law will continue to apply where police have reasonable suspicion that a person is driving while impaired by alcohol and drugs. The drug-driving legislation also includes a requirement for a review and report after the first year's operation. I put that on the record yesterday and I put it on the record again today. This is our trial legislation, which will commence on 1 July. The review into the effectiveness of the drug-driving legislation will consider feedback from police, statistics collected by the department and the views of the community. Yesterday, we were advised by the police that any driver blowing over 0.079 blood alcohol content would have a drug test also. I read the letter from the Police Commissioner to the council. This is South Australia's trial. This is, I would have thought, something—

The Hon. R.I. Lucas interjecting:

The Hon. CARMEL ZOLLO: Of course I am aware that we do not have to have that in this council; it is by subordinate legislation. I chaired the Legislative Review Committee; of course it is subordinate legislation. I am aware of that. Stop being a drongo.

The Hon. J.M.A. Lensink interjecting:

The Hon. CARMEL ZOLLO: I don't know; he called me a liar yesterday and he did not take it back. That was definitely unparliamentary. You do not want to be too clever by half; that is your problem.

The Hon. R.I. Lucas interjecting:

The Hon. CARMEL ZOLLO: No; I will check *Hansard*.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: The Leader of the Opposition will come to order.

The Hon. CARMEL ZOLLO: I think that it is also worth while placing on record other supporting comments by Ivan Venning, the member for Schubert in the other place. He states:

> I give the government some credit for the bill after all the humdrum—

and after eight years of his own people being in government—

> I thought that the government would have put up some soft bill, but it has not. This bill is stronger than I thought it would be.

This is from the member for Schubert in the other place. He continues:

> What really annoys me is that it is almost exactly the same as my bill.

I am very disappointed with the Leader of the Opposition in this place because he has taken up this cause for no reason other than political opportunism—absolutely no other reason. Instead of welcoming this legislation—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: The Leader of the Opposition will come to order.

The Hon. CARMEL ZOLLO: He should welcome this legislation after all the years of doing nothing in this place. We are one of the first jurisdictions in the world to introduce this type of legislation. I am aware that since this legislation was introduced in the other place Tasmania has also taken up—

The Hon. R.I. Lucas interjecting:

The Hon. CARMEL ZOLLO: You held it up! You did nothing for eight years. Here we have the trial; we have South Australia's trial from 1 July this year with the capacity for review and a report to be tabled in both chambers of this

parliament. All we are hearing is nonsense from the opposition. Members opposite should be ashamed of themselves.

The Hon. R.I. LUCAS: I have a supplementary question. Does the minister accept that in the saliva tests to which she referred in her response the police using that equipment will detect and record the pure form of ecstasy (MDMA) and take no action under the provisions of the legislation?

The Hon. CARMEL ZOLLO: The police cannot detect pure MDMA at the first saliva test, which is undertaken in a car. My advice is that it can be detected at the laboratory level, but this legislation (as we have said a thousand times) is for two prescribed drugs—the two most common drugs that research in this state has shown are used by people who are driving. It is not a prescribed drug. Nonetheless, it will be recorded. That information will feed into our review in this state. I cannot put it in plainer English. Why the honourable member cannot understand that is beyond me. The honourable member sits there, having supported this legislation—and obviously, he must have been asleep when it was being debated both in this place and in the other place—and creates this nonsense rather than welcoming the legislation. This is one of the few jurisdictions intent on trying to reduce the alarming road toll. This is a road safety initiative.

Members interjecting:

The PRESIDENT: Order!

The Hon. A.M. BRESSINGTON: I have a supplementary question. Will the minister explain exactly what obstacles are in the government's way of changing the regulations to this road safety legislation before it comes into play on 1 July? What are the obstacles to changing it so that it includes ecstasy or MDMA?

The Hon. CARMEL ZOLLO: What we told the South Australian constituency when this legislation was passed was that these were the two prescribed drugs for which we would test. We would be carefully monitoring the information we received from the police, the Department of Transport statistics and community input. The trial starts on 1 July. We will be carefully monitoring that information and then we will be in a position to make those changes, and a report will come to the floor of this chamber and the other place. I can assure members that, if recommendations are made to me as one of the ministers around the cabinet table, particularly as the Minister for Road Safety, I will take action.

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Road Safety a question about drug testing of drivers.

Leave granted.

The Hon. T.J. STEPHENS: Yesterday the Police Commissioner provided advice that was read by the minister in this place and the Deputy Premier in the other place regarding drug-driving tests. It states:

> Advice is provided regarding comments made on ABC Radio by the state opposition in relation to the process of dealing with drivers who test positive to alcohol with a reading of 0.08 or more and the decision not to drug test these drivers.

I am happy to say that it was I on the radio highlighting this matter. It continues:

> The South Australia Police (SAPOL) policy regarding this practice has been reviewed and as a result all drivers subject to testing procedures conducted by the Driver Drug Testing Group will be screened for cannabis and methamphetamine. This includes persons who test positive to alcohol with a reading of 0.08 or more.

So, it was reviewed and, as a result, they will now do it for those over .08. The minister continues:

> The normal investigation, adjudication and prosecution process will be applied in all cases where a positive result for alcohol, cannabis or methamphetamine is recorded.

I must add that it was interesting to note that both the road safety minister and the Police Commissioner indicated that a decision was made only yesterday to change the policy while, in the other place, the Treasurer said that it was the opposition that was wrong all along. The backflip is welcomed by the opposition but, to further clarify the situation as it now stands, my questions are:

1. Does the minister believe drunk, drugged drivers should face the cumulative penalties for being both drugged and over the limit, and being behind the wheel?

2. Does the minister believe that harsher penalties, in fact, should apply for being both over the prescribed alcohol limit and drugged?

3. Has the Treasurer made a false and misleading statement saying that the opposition had it wrong all along when, in fact, we were right?

The Hon. CARMEL ZOLLO (Minister for Road Safety): I read out the minute received by the Police Commissioner yesterday because I was on my feet answering that question. The police clearly had it within their discretion to make those changes. Indeed—

The Hon. T.J. Stephens: So they did make changes?

The Hon. CARMEL ZOLLO: They did.

The Hon. T.J. Stephens: So we did not have it wrong.

The Hon. CARMEL ZOLLO: They did make changes. Indeed, I welcome them. I absolutely welcome the changes they made. The reason, I guess, they had gone down another path is very obvious because, if you are over .08, it was immediate loss of licence.

The Hon. T.J. Stephens: Are you, in fact, not more dangerous when you have drugs in your system as well?

The Hon. CARMEL ZOLLO: Well, you are taken off the road immediately. I cannot remember exactly what it was, but I am pretty sure it is six months. So you are off the road. That was the harsher penalty. That is the decision they made, and they made that obviously for a good reason, okay? At .08, if you are picked up, you are off the road. That is the harsher penalty. That is why they had gone with what obviously they thought was a sensible decision. That is a harsher penalty—you are off the road. But they have now come back—and I welcome it—and said that they will also test for drugs.

The Hon. T.J. STEPHENS: I have a supplementary question. I asked the minister: has the Treasurer made a false and misleading statement by saying that the opposition had it wrong all along when, in fact, we were right?

The Hon. CARMEL ZOLLO: You and the whole opposition have spent your time in the past few days muddying the waters rather than welcoming this new initiative in this state. That is all you have done. I have no idea what happened in the other place yesterday but, as I said, I welcome the Commissioner's decision to include drug testing for those blowing over .08.

SEX OFFENDER TREATMENT PROGRAM

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about sex offender programs.

Leave granted.

The Hon. J.M.A. LENSINK: In 2003, the government made the announcement, in relation to a new program for sex offenders, of $800 000 over four years. My office has been contacted by a constituent whose husband is serving time in Mount Gambier as a sex offender and wishes to take part in the program but has been declined. His wife has said that other people in that gaol who do not wish to do the program have been transferred to Yatala (where it is being run) to participate in the program. My questions to the minister are:

1. How many people have participated in the program?
2. What are the criteria for admittance into the program?
3. How long does it take?
4. Given that the former minister stated that some 14 specialists in the area would need to be employed, how many have been employed in that program?

The Hon. CARMEL ZOLLO (Minister for Correctional Services): I thank the honourable member for her question, and I am sure that she welcomes the fact that this government has introduced a sex offender treatment program. I remember asking the then attorney-general Trevor Griffin in this place when the then government would introduce such a program and, of course, it never did. Obviously this has happened in the state in the past 12 months. There are two programs. The health department also runs a program. My understanding is that that can happen at Mount Gambier prison. The honourable member has asked me about this person. It is very difficult for me to make a comment. I do not know his circumstances. If the honourable member wishes to approach me afterwards or write to me, I can obviously go to the department and find out why—

The Hon. J.M.A. Lensink: What is the criteria?

The Hon. CARMEL ZOLLO: Obviously the criteria is in relation to the offence for which they are sentenced. I do not know this person. I do not know what they have done. If the honourable member knows, tell me. I will get advice from the department and we will find out why he cannot undertake the program. It is certainly our intention that anyone who is sentenced for a sexual offence undertakes a program. I cannot answer the honourable member's specific question because I do not know what the facts are and, until she gives them to me, I am not able to comment. The honourable member is welcome to approach me and give me his details, and I will find out why.

The Hon. J.M.A. LENSINK: I have a supplementary question. First, is it the minister's understanding that all sex offenders are to participate in this program; and, secondly, can she answer the question regarding how many specialists are employed through the program and how many people have completed it? You must have a general briefing there somewhere.

The Hon. CARMEL ZOLLO: It is not a question of having a general briefing. We have introduced this program. We are doing it and we are doing it very well. I have to say to the honourable member that, when I visited Yatala prison, it was being run on that occasion and those who were visiting with me were very impressed with the manner in which it was being run. It was being observed. Indeed, it is deemed to be one of the best in the world. It is based on the Canadian model. Again, if the honourable member wishes to give me the offender's name, I will try—

The Hon. J.M.A. Lensink interjecting:

The PRESIDENT: Order!

The Hon. CARMEL ZOLLO: I am telling the honourable member what the information is.

Members interjecting:

The Hon. CARMEL ZOLLO: I ask the honourable member to tell me the offender's name and I will bring back the answer.

DRUGS

The Hon. R.P. WORTLEY: I seek leave to make a brief explanation before asking the Minister for Police a question about South Australia Police initiatives to reduce the quantity and impact of drugs in our community.

Leave granted.

The Hon. R.P. WORTLEY: With law enforcement agencies across Australia having a critical and increasingly diverse role to play in reducing the quantity and impact of drugs in our community, will the Minister for Police please advise what South Australia Police are doing to reduce the quantity and impact of drugs in our community?

The Hon. P. HOLLOWAY (Minister for Police): I thank the honourable member for his question and for his constructive interest in this matter. Some of the interest in drug issues in this parliament has not always been constructive, as we saw earlier—it has more to do with politics. South Australia Police continue to operate under the broad framework of its illicit drug strategy—Preventing drug use and reducing crime. This strategy focuses on prevention and early intervention, intelligence analysis, investigation and detection, incident management, work force development and research and evaluation. The primary tools used by SAPOL to implement this policy are a series of balanced responses which are aimed at: first, reducing the supply of drugs; secondly, reducing the demand for drugs; thirdly, reducing the harm from drugs; and, fourthly, responding to emerging trends.

In its attempt to reduce the supply of drugs to the community, SAPOL aims to improve community understanding of the drug market and the nature of supply reduction activity; to target intervention at multiple levels of the drug market, including enhanced surveillance; analysis of the drug market; disruption of street level offending and focus on minimising the influence of high level dealers and traffickers; to investigate, target and disrupt the criminal activity of individuals and groups who are involved in the manufacture and supply of illicit drugs; and to collaborate with other state, territory and federal agencies to disrupt the manufacture and distribution of illicit drugs. By way of example, SAPOL has conducted a number of activities over the past two years to reduce the supply of drugs, including Operation Convoy, which was a joint operation with New South Wales Police targeting people in South Australia and New South Wales who were involved in the manufacture and distribution of large quantities of methamphetamine, cannabis, chemicals and precursors used in the manufacture and production of drugs.

As a result of this operation, four people were extradited from South Australia to New South Wales, where they faced a variety of charges. Operation Confer was conducted with the aim of disrupting a heroin distribution ring. As part of this operation, four people were arrested and stolen property to the value of $200 000 was seized. Operation Atlantic 2 was aimed at identifying, investigating and disrupting suspected hydroponic cannabis cultivation within South Australia. In support of this operation, a BankSA Crimestoppers hydroponic cannabis phone-in day was held. The phone-in day was aimed at encouraging members of the public to provide police

with information about hydroponic cannabis cultivation and supply within their community. The phone-in and subsequent media coverage reinforced the fact that all forms of cannabis growing are illegal and highlighted the links between hydroponic cannabis cultivation and organised crime. During the phone-in, more than 750 calls were received, resulting in the seizure of more than 400 plants and 20 kilograms of dried cannabis.

I am advised that Operation Cover was conducted by the Avatar motorcycle gang section and specifically focused on the investigation of the importation of pseudoephedrine. The operation resulted in 24 arrests and the location and dismantling of nine clandestine laboratories. Operation Cough is an ongoing investigation into the trafficking of cannabis between South Australia and New South Wales. So far, the operation has resulted in seven arrests in South Australia and three arrests in New South Wales, as well as the seizure of 35 kilograms of cannabis, valued at approximately $168 000, and 453 grams of amphetamine, valued at approximately $55 000. Operation Cumulus was aimed at disrupting the distribution and selling of ecstasy. This operation netted a total of nine arrests, along with the seizure of 17 000 ecstasy tablets valued at approximately $500 000.

Another SAPOL initiative is the chemical diversion desk, which works in partnership with state and federal governments and industry representatives to identify the movement of raw materials and glassware that can be used in clandestine drug laboratories. As a result of this initiative, during the 2004-05 financial year a total of 23 clandestine laboratories were identified and dismantled. In the current financial year, a total of 41 clandestine laboratories have been identified and dismantled to date. The second focus point for SAPOL is to reduce the demand for drugs. In its efforts to do this, SAPOL aims to:

- improve the community's understanding of drug-related harms at individual and community level;
- deter the uptake and use of illicit drugs through a range of police enforcement strategies;
- provide timely intervention points to divert users and direct drug dependent offenders into effective treatment and intervention programs; and
- expand local community responses to specific alcohol and other drug issues through collaboration between state government agencies and local government, non-government and community organisations.

To reduce the demand for drugs, SAPOL has a number of operations and initiatives in place, including Operation Mantle. This is a SAPOL initiative that encourages habitual illicit drug users to seek assessment and treatment. This is achieved by identifying and targeting street-level drug traffickers with a focus on supply reduction and demand reduction strategies. The major groups of drugs targeted by the operation include cannabis, heroin, amphetamines and other designer drugs.

Another initiative introduced by SAPOL is drug action teams that operate in each of the 14 local service areas. Their aim is to identify and address local alcohol and drug issues. Government, non-government and community groups also participate in this initiative. Another important program in SAPOL's efforts to reduce the demand for drugs is the police drug diversion initiative, which is an Australia-wide program funded by the federal government. In South Australia, the initiative involves mandatory police diversion for any person, adult or juvenile detected for simple possession of an illicit substance. The exception is cannabis possession for adults, for which an expiation notice still applies. A total of 6 735 diversion notices, covering 5 511 individuals, have been issued by police since the inception of the initiative in South Australia in September 2001.

The third major goal for SAPOL in its efforts to reduce the quantity and impact of drugs in our community is reducing the harm from drugs. SAPOL aims to enhance the safety of the whole community by seeking to prevent the harms that arise from drug use by: reducing alcohol and other drug-related crime (including assault, domestic violence and property crime); deterring drink and drug driving by implementing education campaigns and police screening and detection operations; and encouraging the use of ambulance services in the event of overdose or other drug-related emergencies.

An example of the activities undertaken by SAPOL to reduce the harm from drugs includes the City Watch-house Community Nursing Service Initiative. This is a joint initiative between SAPOL and Drug and Alcohol Services South Australia, whereby DASSA nurses work alongside police officers in the city watch-house to provide nursing care to people apprehended by police who are affected by alcohol and other drugs and who may also present with a range of other health or social functioning issues.

The fourth major area covers emerging drug trends. SAPOL recognises the importance of ensuring that timely information on the relationship between drugs, violent crime and property crime is readily available. This type of information is used by SAPOL to form policy and operational responses to these issues. An example of this is the Drug Use Monitoring in Australia Program. Working in conjunction with the South Australian Attorney-General's Department and the Australian Institute of Criminology, the program is a key data collection system utilised by SAPOL which measures drug use among those people who have been recently apprehended by police. In South Australia, the program data is collected at the Adelaide city watch-house and the Elizabeth Police Station cells.

An SA DUMA bulletin published in 2005 provides an overview of amphetamine use among police detainees. The bulletin concluded that the South Australian program data showed that more than one-third of police detainees in the South Australian sites use methamphetamines and that there is a positive relationship between amphetamine use and offending, driving, police pursuits, violence in the home and psychological distress.

There has been progress over the years in reducing the supply and demand of drugs. Drug seizures and criminal convictions have increased, and significant advances have been made to minimise the harm caused by drug abuse. These are valuable steps forward, but important challenges remain. We are only too well aware that our collective efforts have to be increased if we are to control supply, reduce demand and minimise the harm to our societies caused by illicit drugs.

The Rann government is prepared to roll up its sleeves and address these issues seriously. We will continue to work with SAPOL and all relevant parties in an attempt to reduce the supply and demand of drugs and the harm they cause. Obviously, we aim to completely eliminate illicit drugs from our community. Unfortunately, the reality is that an unknown quantity of illicit drugs will continue to reach those who are prepared to risk their health and often their lives using drugs.

The Hon. J.M.A. LENSINK: I ask a supplementary question arising from the minister's comments about NGOs.

Will the minister undertake to bring back to the council a list of all the NGOs who are involved in the programs he has mentioned and how much funding they receive?

The Hon. P. HOLLOWAY: That is not really the responsibility of the Minister for Police. Obviously, there could be a range of commonwealth and state agencies involved. I will see what information I can provide for the honourable member and bring back a reply.

The Hon. A.M. BRESSINGTON: Will the minister provide a breakdown of the sentences incurred from the arrests that he mentioned in his answer and include in that information a breakdown of the suspended sentences that were received in respect of those arrests?

The Hon. P. HOLLOWAY: I will endeavour to get that information for the honourable member.

GAMBLING, TXT2BET

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Police questions about the txt2bet wagering system.

Leave granted.

The Hon. NICK XENOPHON: On 2 February 2006 I made complaints in writing to the Office of the Liquor and Gambling Commissioner and the Commissioner of Police regarding a new betting scheme called txt2bet, which allows people to bet on the TAB 24 hours a day, seven days a week by simply using their mobile phone. Advertising for the scheme on the txt2bet web site indicated that those who sign up have an opportunity to place bets '24 hours a day, 7 days a week' and encourages impulse betting. I quote from the web site:

> Had enough of getting that hot tip just before a race or sports event only to have nowhere to place the bet? What about getting that hot tip when you're at work or at a family gathering? What then?

The scheme is run by a South Australian company. It allows people to set up an online account and place bets by SMS with two online bookmakers, and it charges a fee per transaction.

The concern has been expressed by problem gambling experts such as Dr Paul Delfabbro (from the Adelaide University psychology department) that this type of betting could increase the chance of problem gambling, particularly amongst young people. Section 58 of the Lottery and Gaming Act 1936 provides:

> No person shall for fee, commission, reward, share or interest of any kind whatever, or upon any understanding or agreement, either expressed or implied, for such fee, commission, reward or interest, receive. . .

It goes on to say that money cannot be received for the purpose of a person investing in any totalisator. A letter from the then police minister, the Hon. Kevin Foley, dated 7 March 2006, states in part:

> The Liquor and Gambling Commissioner has not approved this betting scheme in South Australia, and this form of betting may be unlawful within the state. An investigation has commenced to determine if breaches of the Lottery and Gaming Act 1936 are being committed (unlawful betting).

The letter goes on to provide me with the name of a senior police officer if I wanted any further information. However, when my office contacted SAPOL yesterday we were told that no information would be forthcoming and we would have to direct our inquiries to the Minister for Police. Imagine my surprise when the *City Messenger* of 8 June 2006 ran an article on the scheme and its managing director, Mr Keith Borholm, indicating that the business is up and running and recruiting more customers on a week-by-week basis. My questions to the minister are:

1. What is the status of the investigation into the legality of the txt2bet scheme since my complaint of 2 February 2006 and what steps have been taken with respect to the investigation?

2. Does the minister consider that the wording of section 58 of the Lottery and Gaming Act is sufficiently clear, such that it would prohibit this scheme and, if not, why not?

3. Will the minister confirm that the government is committed to clamping down on schemes such as this, which have the very clear potential to increase the level of gambling addiction in the community, especially amongst young people?

The Hon. P. HOLLOWAY (Minister for Police): In relation to the latter question, I think my colleague the Minister for Gambling has made a statement on that, but I will refer that part of the question to him. The second part of the question referred to section 58 of the Lottery and Gaming Act. I will make sure that I get an answer back from whoever is responsible. Really, the same answer applies to the first question which is a matter of legality and, obviously, that is something for either the police or the Attorney's department. I will endeavour to get a response for the honourable member.

The Hon. NICK XENOPHON: Has the minister's office had any role to play resulting in my office not being able to receive any further information from SAPOL, despite the former police minister's assurance that we could speak to a senior officer about this investigation?

The Hon. P. HOLLOWAY: It is news to me. The first I heard about it is when the honourable member asked, but I will certainly follow that up.

The Hon. Nick Xenophon interjecting:

The Hon. P. HOLLOWAY: I imagine that if a matter is subject to some legal review or some police operation—-

The Hon. Nick Xenophon interjecting:

The Hon. P. HOLLOWAY: I think the honourable member was suggesting, by his question, that there was some investigation under way as to the legality of a particular scheme. I imagine the police would be loath to make any comment to anybody, including me for that matter, while the investigation was under way, other than to say that there was an investigation under way. I really do not know whether or not that is the case, but I will certainly get an answer for the honourable member as to why that has occurred. If there is a senior police officer who can enlighten the honourable member, I will see whether that can take place.

ROAD SAFETY, NAIRNE

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Road Safety a question about road safety at Nairne.

Leave granted.

The Hon. J.S.L. DAWKINS: The opposition understands that the minister recently inspected the road traffic conditions in the township of Nairne and the impact of those conditions on the safety of schoolchildren at the Nairne Primary School crossing. My questions are:

1. Will the minister indicate the time of day during which the visit was undertaken?

2. Will she also indicate the persons with whom she discussed road traffic matters during the inspection?

3. What action will be taken in relation to the traffic conditions in Nairne, particularly regarding the safety of the students at the Nairne Primary School?

The Hon. CARMEL ZOLLO (Minister for Road Safety): I thank the honourable member for his question. I became aware of the issue after a question was asked in another place and from the local media. I am not one who must be forced to attend or be invited anywhere, so I went off and had a look for myself during the morning school hours—I think it was the week after the question was asked in the other place—and I saw the situation firsthand. It is probably the worst case of planning I have seen in a long time. It is a school, with some 500 pupils, that faces a short dead-end narrow street. It has some history. I have also had correspondence from the member for Kavel, Mr Mark Goldsworthy, in another place and I have responded to him along the lines that the Department for Transport, Energy and Infrastructure has considered the installation of traffic signals or a roundabout to improve the operation of the Princess Highway at the Woodside/Saleyard Roads junction.

I am not sure whether the honourable member is familiar with the site or has been there. The school- children have a koala crossing, reducing traffic to 25 km/h, and school monitors. During school times they are used. It was felt that none of the treatments are justified due to the site's relatively low traffic volume for most of the time and its crash history. The koala crossing it is felt works well for the schoolchildren. I asked the new chief executive, Mr Jim Hallion, to look at it and accredited road safety auditors inspected the location on 24 May. Other than some minor maintenance work—signs, pavement markings and bars that will be completed by the end of this month—no road safety related action was recommended. During 2002, a 'safe routes to school' program was undertaken at the Nairne Primary School. This program combines traffic safety education with minor engineering treatments and community awareness to provide a safe environment for children using the roads system.

I am pleased to advise that the school has agreed to continue its involvement in the program, with classroom traffic safety education to commence during term three of the current school year. If the honourable member lives locally, he would be aware from local media interest that it has been well advertised. A meeting will be held on 21 June—today—involving the local school council, the Department of Education and Children's Services and Nairne Primary School representatives. Three officers from the Department of Transport, Energy and Infrastructure will attend that meeting to provide input as is felt needed. Our commitment to road safety for schoolchildren in this state is probably the best one could expect in Australia. We are the jurisdiction that has, around our schools when children are present, the low speed limit of 25 km/h. We are the jurisdiction in Australia that has chosen to do that for very good reason. We take road safety for schoolchildren very seriously.

The Hon. SANDRA KANCK: I have a supplementary question. In any changes that might be considered for this crossing, will the government be requiring federal money for those alterations and, if so, is the government confident of getting that money?

The Hon. CARMEL ZOLLO: I am not at all confident of getting any federal money. I guess one of the reasons why we have looked at that in particular is in relation to the state's black spot program funding. That has a set of criteria in terms of crash history, which is obviously not something over which I have some jurisdiction, because the department, rightly so, collects those statistics, and that program, as expected, was full. But, nonetheless, as I said, it did not meet the criteria. But, that is state black spot funding, which it was thought we could use. So, I have no confidence in obtaining any federal money.

ROAD SAFETY

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Road Safety a question about vehicle safety.

Leave granted.

The Hon. J. GAZZOLA: I am aware that crashes are rarely caused by the vehicle, but that the consequence of any crash can depend significantly on the safety features of the car. Will the minister outline what the government is doing in regard to vehicle safety in order to bring down the road toll?

The Hon. CARMEL ZOLLO (Minister for Road Safety): I thank the honourable member for his important question. The honourable member is quite correct in saying that the outcome of a crash can very much depend on the vehicle. Vehicle safety has come a long way in the past 10 to 20 years, with improved crumple zones, collapsible steering wheels, more pedestrian friendly front ends, front and side air bags for the driver and passenger and seat belt reminders. These are examples of excellent and potentially life-saving technology that is becoming more and more commonplace in vehicles. As the recently appointed Minister for Road Safety, I wrote—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: The Leader of the Opposition will come to order.

The Hon. J. Gazzola interjecting:

The Hon. CARMEL ZOLLO: Yes, perhaps I should start again. As the recently appointed Minister for Road Safety, I wrote to vehicle manufacturers Holden Limited, the Ford Motor Company, the Toyota Motor Corporation and Mitsubishi Motors. I outlined the South Australian road safety strategy, which is to achieve a 40 per cent reduction in fatalities by the end of 2010. I recognise that it is a challenging target. While a comprehensive approach, including improved road rules, enforcement regarding driver behaviour and road safety related infrastructure improvements are all key elements of reaching the target, I wanted to specifically ask our vehicle manufacturers to include as many safety features in their vehicles as possible. For example: electronic stability programs, intelligent speed adaptation, side curtained air bags, fatigue alerts and seat belt warnings, all of which can play a part in reducing road trauma.

I am very pleased to say that today Holden announced that it will be building the new generation of the Holden Commodore with the electronic stability program (ESP) as standard. Holden will also make ESP standard on its upcoming Statesman and Caprice flagship cars and the new Captiva sport utility vehicle. ESP technology gives drivers greater control of their cars when they need to take evasive action in emergency situations. It works by electronically correcting the path of the vehicle by individually applying brakes to each wheel and managing the engine's power.

Holden's announcement follows a meeting of transport ministers in Sydney earlier this month (2 June) when it was

resolved that the federal government would prepare a national action plan to accelerate the uptake of ESP in all new vehicles sold in Australia. Yesterday—some good news—I visited the RAA where it was announced that the Mitsubishi 380 had received a four-star rating in the latest round of independent crash testing.

This is the best ever result by an Australian built passenger car, and it puts the 380 in good company with most European models and slightly ahead of the Australian-made group. While other technologies, such as intelligence speed adaptation and lane deviation warnings, seem to be in the early stages of development, it is encouraging to see that two of the nation's biggest manufacturers—two important manufacturers in this state—are endeavouring to ensure the safety of road users. Obviously, manufacturers cannot control driver behaviour, and it is imperative that drivers respect the danger that cars can pose.

FISH FARMS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Emergency Services, representing the Minister for Agriculture, Food and Fisheries, a question about the escape of fish from Eyre Peninsula aquaculture operations.

Leave granted.

The Hon. SANDRA KANCK: On 7 March 2006 the Executive Director of PIRSA (Mr Ian Nightingale) was quoted in the *Port Lincoln Times* as saying that fish escapes were of concern but 'if you look back over the last four years the volume of escapes has dropped dramatically'. This statement is in direct contradiction to information that was sourced from PIRSA's web site at the time, although I understand that information may not be on the site at present. At that time PIRSA's web site indicated that in 2001 1 772 kingfish were reported as escaped. That number grew to 6 069 in 2002, and in 2003, 25 934 kingfish escaped. No records were listed for 2004, but in 2005, 30 970 kingfish escaped, as did 40 000 mulloway. So far this year—up until the time I accessed the web site, anyhow—300 kingfish and 99 000 mulloway had escaped. Clearly, Mr Nightingale's comments do not stand factual scrutiny. My questions are:

1. What damage to wild fish stocks are these escapes likely to have done?

2. What are the penalties for fish escapes from aquaculture projects?

3. Will Mr Nightingale be reprimanded for misleading the public regarding the number of fish escapes?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I will refer the questions to the Minister for Agriculture, Food and Fisheries in the other place and bring back a response.

EMERGENCY SERVICES LEVY

The Hon. D.G.E. HOOD: I seek leave to make a brief explanation before asking the Minister for Police, representing the Treasurer, a question about the Economic and Finance Committee 2006-07 forward report.

Leave granted.

The Hon. D.G.E. HOOD: The 2005-06 Economic and Finance Committee report states that there was $7.2 million in uncommitted cash balances in the Community Emergency Services Fund (CESF). The 2006-07 Economic and Finance Committee report, recently noted in the other place, at page 23 states:

> In the overall expenditure of the emergency services levy, 'other organisations for the provision of emergency services' accounted for $22.7 million. Of this amount the committee heard that $17 million went to the police, $500 000 for the state rescue helicopter, $1 million to the SA Ambulance Service; and the Department of Environment and Heritage received $2.2 million.

The committee expressed some concern about the lack of particularity of this spending. The same 2006-07 estimates report of the committee states that the cash balances in the CESF are now 'expected to reach $13.5 million by 30 June 2006, of which $3 million relates to working capital requirements'.

As a result of my calculations, conservatively that is a figure of $10.5 million in uncommitted cash reserves—up from $7.2 million in uncommitted cash reserves in the previous reporting year; in other words, an increase of $3.3 million in uncommitted cash reserves. In February this year (that is, before the state election) I called for the abolition of the emergency services levy and complained that it was just not going to emergency services but being used as general revenue. My questions are:

1. What proportion of the $22.7 million in spending which I have just mentioned was previously financed from general revenue?

2. How much of the uncommitted CESF cash reserves will be returned to members of the South Australian voting public?

3. If none, will the Treasurer amend the emergency services levy calculation so that the income more accurately matches projected expenditure?

The Hon. P. HOLLOWAY (Minister for Police): It is certainly my understanding that the expenditure on emergency services in this state is significantly in excess of the money that is received from the—

The Hon. Carmel Zollo: We have to more than double it.

The Hon. P. HOLLOWAY: Yes, it is more than double. As my colleague the Minister for Emergency Services says, the actual money spent on emergency services is more than double what comes in through the levy—

The Hon. Carmel Zollo: About double.

The Hon. P. HOLLOWAY: It is about double what comes in through the levy. As to the question involving cash balances and what that means, that is obviously a matter for the Treasury, and I will get that information and bring back a response.

HIGHWAY IMMUNITY

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Leader of the Government a question about highway immunity.

Leave granted.

The Hon. R.D. LAWSON: In March 2004, during the passage of the Law Reform (Ipp Recommendations) Bill, this parliament passed legislation which removed the right of citizens to sue highway authorities for negligence in relation to the design and repair of roads. Road authorities, including local councils, were entitled to continue what was known as the highway immunity rule. In this council an amendment was passed suggesting that that immunity rule continue for only a further two years. However, as a result of a compromise between the houses, it was agreed that the rule should

remain on the statute book but that the government would conduct an inquiry rather than have a two-year sunset period proposed by this council. The minister said on that occasion:

> The government undertakes that before the next election, which is due in March 2006, the government will establish a working party to examine the operation of the highway immunity rule, both in South Australia and elsewhere, and consider and evaluate possible alternatives to it.

My question to the minister is: has the government honoured its undertaking to appoint a working party to examine the operation of the highway immunity rule? If not, why not? If so, what is the progress of that working party?

The Hon. P. HOLLOWAY (Minister for Police): I will refer that question to my colleague in another place and bring back a reply.

MATTERS OF INTEREST

NUCLEAR POWER

The Hon. I.K. HUNTER: Even the most conservative amongst us are now recognising the need for urgent action on climate change and our reliance on fossil fuels. It is a shame, though not particularly surprising, that these conservatives are jumping from one big energy club to another where money speaks louder than community needs. Not only do the conservatives now acknowledge the threat of climate change, but they have also found it a convenient justification for their renewed support for the international nuclear power industry instead of, rather, embracing the Kyoto Protocol. The Prime Minister's recent trip to the United States suddenly precipitated debate which is now cast as urgent. It remains to be seen whether this debate is a genuine inquiry into a sustainable future or simply a justification for accepting the world's nuclear waste. I fear it is the latter.

Recently, federal cabinet announced an inquiry into nuclear power in Australia. This inquiry is suspect at two levels. First of all, the make-up of the task force, thus far announced, reveals the Howard government's true agenda. It is a nuclear industry committee set up to push the agenda of the industry, with little or no input from environment groups or representatives of renewable energy concerns. The very fact that Ziggy Switkowski was chosen to chair the task force (fresh from serving on the board of the Australian Nuclear Science and Technology Organisation) should be warning enough that this is anything but an independent inquiry.

Obviously the federal government was not particularly embarrassed by this appointment, but Mr Switkowski was so embarrassed that he stepped down from the board of the Australian Nuclear Science and Technology Organisation, otherwise he would be chairing an inquiry which would hear submissions from ANSTO and he would have to adjudicate on them. The second problem with this inquiry is related to the first. The overwhelming emphasis is on nuclear energy production (which clearly is not a short-term solution to global warming) instead of an inquiry into all possible energy sources. Surely a more reasonable and responsible approach would be to announce a far-reaching inquiry into all possible modes of non-fossil fuel energy production, as well as an inquiry into how we as a community might reduce our energy consumption generally.

Quite apart from any environmental and economic concerns, I would be surprised if any politician would be able to overcome the public aversion to nuclear power. Indeed, recent events at the Lucas Heights reactor show us that, even with the best of intentions and the strictest of safeguards, accidents can and do happen. The recent outcry over the proposed nuclear waste disposal facility in South Australia illustrates how strongly the community feels about having potentially hazardous material in their neck of the woods. And now Alexander Downer is talking about a nuclear power station. Where, one wonders, would that be sited—Stirling, Bridgewater, or perhaps the Old Mill at Hahndorf; all in Alexander Downer's electorate.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! The honourable member should refer to a member of another Australian parliament by their correct title.

The Hon. I.K. HUNTER: I stand corrected, Mr Acting President—the federal minister's own electorate of Mayo. As the Premier has said, it simply will not happen. In many ways, South Australia has led the way in moving to address the fossil fuel dependence. This government has plans to establish a climate change and sustainability research centre at Adelaide University, with annual funding of a quarter of a million dollars. We have been pro-active in the use of solar power, establishing the North Terrace solar precinct and putting solar panels on many of our major public buildings. We have also instituted the solar schools program. We have already installed 74 systems within our schools and pre-schools and aim to have solar power in 250 schools by 2014. Not only is this providing clean energy for those schools but it is teaching our children the value of sustainable energy.

South Australia is also a national leader in wind energy, and we now have 51 per cent of the nation's wind power capacity. However, it is fair to say that, at the moment, these technologies do not have the potential to provide steady, reliable base-load power generation for large populations. Tim Flannery, while cautiously supportive of at least debating the feasibility of nuclear energy, has put forward the very real prospect of harnessing geothermal energy, hitherto seen as wishful thinking. This has been made possible by the discovery of hot rocks or radioactive granite—a much accessible and practical source of heat than the active volcanic rock which has traditionally been associated with geothermal energy production—and we may have a substantial supply of it under our very own feet.

Currently, at least five companies are looking to generate electricity from geothermal sources in South Australia. If these programs are successful, these companies plan seismic programs to better define drilling targets and to drill three production scale test wells later in 2006. The Howard government needs to come clean about why its inquiry is focused on nuclear energy to the exclusion of the many alternatives available to us.

DRUG DRIVING

The Hon. T.J. STEPHENS: I rise today to clarify the opposition's concerns on the new drug driving legislation. First, I want to add my thoughts to concerns expressed by the Hon. Rob Lucas regarding the testing of MDMA (ecstasy, as it is commonly known). I cannot understand the dismissive nature of this government in not acting immediately to list the pure form of MDMA as a prescribed drug under the drug driving legislation. For the Victorian government to have

come out and publicly stated that it would need to act quickly to incorporate MDMA as a prescribed drug under its own drug-driving legislation is surely an indication that we must now follow suit. It has essentially said that the fact that MDMA was excluded as a prescribed drug was an error in its trial. For us to repeat their errors is simply not good enough and makes no sense whatsoever. Yesterday the road safety minister told members:

> It is trial legislation. If the police come to us and say, 'We believe you should be including this', of course we would take that on board, and we will include it.

However, it is the government that needs to lead the way on this and the legislation now needs to be changed to include MDMA.

Additionally, as has already been shared with the council during question time, several other states are in the process of considering adding MDMA as a prescribed drug in their drug driving legislation. Why are they doing this? Because the decision not to do so is quite simply a no brainer. Statistics show that there has been a sharp increase in the number of drivers killed in road crashes who tested positive to MDMA. For the government to claim that the opposition did not make these points when the legislation was before the parliament is incorrect. One needs only to read *Hansard* at the time to see that Liberal members, including the member for Schubert and the former member for Mawson, raised concerns about the fact that the legislation could be broadened to include ecstasy in any drug tests.

I now wish to clarify my position on the original policy of SAPOL that would have seen drivers who were caught with a blood alcohol level of .08 or above not drug tested. I am firmly of the belief that a person on a cocktail of drugs and alcohol, who then chooses to drive, is an extreme danger to the community. I am pleased that the community agree with this, which is obviously why the policy was adjusted so swiftly. Only recently, a young woman was sentenced for a hit and run accident involving a young man in the southern suburbs. The young woman had consumed a cocktail of alcohol, marijuana and ecstasy. This legislation is so important to help prevent such tragedies in the future. I welcome the change in policy, but I am concerned about the penalties. I believe that offenders who are both drugged and over the limit should face cumulative penalties to discourage the practice of combining drugs and alcohol and then driving. My personal belief is that a person on a combination of drugs and alcohol is likely to be even more dangerous than one who is just drunk, or vice versa, and should suffer more severe consequences once caught.

Finally, I found the Deputy Premier's words in the other place yesterday, regarding the opposition raising its concerns about no drug testing for those caught driving with an alcohol level of .08 and over, both deceptive and arrogant. After reading the Police Commissioner's new advice to the parliament, in regard to the policy backflip, *Hansard* reports the Deputy Premier as saying:

> So, sir, again, totally wrong accusation and allegation by the opposition.

At around the same time in this place the road safety minister told the council:

> The question, which I am about to answer, related to those who test .08 and above. The decision made by the police at the operational level was that they would not continue with the drug testing. I have been advised today—and I am happy to read it into the *Hansard* record, a minute from the Commissioner of Police, who has decided differently now.

Furthermore, the Police Commissioner admitted in his advice that the policy had now been reviewed, and it was accurate comments from the Assistant Commissioner of Police to *The Advertiser* that first raised the deficiencies in this legislation with the public. It was pressure from the opposition that contributed to this review taking place, and the arrogant Deputy Premier must accept this. It is his version of this story that is out of step with both the road safety minister and SAPOL, but clearly he is allowed just to get away with comments such as these, just as he is allowed to get away with budget blow-outs to key infrastructure projects, broken promise after broken promise, and delivering the May budget in September.

MURRAY BRIDGE ALP SUB-BRANCH CENTENARY

The Hon. J. GAZZOLA: I bring to the council's attention the centenary of the ALP Murray Bridge sub-branch. A dinner on 6 June at Murray Bridge celebrated the occasion, as well as providing guests with the opportunity to view an impressive collection of political memorabilia of Labor figures and historical political events. This excellent display belongs to a well-known Labor family, the McLarens. Mrs Noelene McLaren presented a comprehensive poster collection and Mr Harold McLaren provided a comprehensive record of regional and state media coverage of Labor state politics from 1905 to 1991 (the latter originally designed to celebrate the centenary of the Australian Labor Party in 1991), together with an updated yearly history of the sub-branch from 1906 to 2006 to further celebrate the sub-branch's centenary.

The efforts of the McLarens and other members of the sub-branch provide us with a picture of ALP history, and I acknowledge their efforts. While such endeavours are not unique, they are not readily or commonly undertaken. The display of political history that night keeps alive and relevant the traditions and aims of a proud political party and sub-branch. Here guests viewed a record not of a past tucked away in forgotten archives and museums but a living past.

As I said, the sub-branch's history mirrors the state and national development of the Labor Party. In 1904, the first annual conference of the United Labor Party of South Australia was held at the then Trades Hall in Grote Street, where the idea of what we now term 'country' sub-branches was mooted. On 12 July 1906, the state council granted branch status to the Murray Bridge local committee, as well as endorsing other country Labor committees in joining other local committees to sub-branch status.

The aims and objectives of the Murray Bridge local committee were summed up by Mr H. Chesson MP when he called on supporters to 'join the only party that stands for progress and prosperity for all sections', a message that rings as true today as it did 100 years ago as we witness the federal government shredding of fair industrial relations legislation. At this point in history, the Murray Bridge local committee had 81 financial members in a town population of 500 people and 125 houses, with overall membership (according to the records studied) rising to 220 members in 1911 and to a maximum of 400 in 1923.

As to the federal connection, the histories compiled by Harold McLaren refer to many visits and addresses by federal politicians, occurrences that arose not only through the passage of the Melbourne Express through Murray Bridge but also because of the economic and political relevance of the

town as a regional centre. A few examples illustrate this. In 1913, three Labor senators (Mr Senior, Mr O'Loghlin and Mr Newland) attended a ULP social function. In 1915, Senator Pearce (minister of defence) addressed a meeting in the town institute, and in 1916 Prime Minister Billy Hughes gave an address to about 500 locals during a Melbourne Express stopover. In 1922, Mr Scullin MHR addressed, reportedly, one of the largest meetings ever in the town, meetings he was to repeat in following years. In 1937, on another train stopover, the then federal leader of the opposition, John Curtin, addressed a public meeting.

There are other more recent state and federal visits too numerous to mention. This sub-branch and political community can also boast the successes of Gabe Bywaters, the member for Murray from 1956 to 1968 and a Labor minister in the Walsh Labor government in 1965, and Senator Geoff McLaren (father of Harold) from 1971 to 1983. From this outline we can understand why the centenary celebration dinner was such a successful event, and I wish the sub-branch another successful 100 years. In closing, it would be remiss of me not to mention Mrs Dorrie Goss of Murray Bridge who, at the age of 98, would probably be the oldest state Labor sub-branch member and, arguably, the oldest active Labor sub-branch member in Australia.

COURTS, SENTENCING

The Hon. R.D. LAWSON: I wish to speak today on the role of the jury in criminal sentencing. In the lead-up to the 2002 state election, the Liberal Party announced that, if returned, it would investigate altering the system of criminal sentencing to allow some input from the jury. As members would be well aware, under our system a jury of 12 citizens determines the question in certain criminal trials as to whether the accused is guilty as charged. However, under our system, which follows the English system, a jury has no formal role in relation to the sentence. That role is the exclusive province of the judge.

A jury may make a recommendation for mercy—and occasionally does—however, such recommendations have no formal standing and, indeed, such recommendations are rare. Our proposal envisaged that one or more members of the jury who had heard a criminal trial would confer with the judge during the sentencing process, which occurs after—and usually some time after—a finding of guilt. It was not envisaged under our proposal that the jury would determine the level of the sentence; however, there would be jury input by means of members of the jury discussing with the judge the appropriateness of a penalty to be imposed, yet the sole responsibility for that penalty would ultimately lie with the judge.

This was not a popular policy amongst members of the legal profession who do not believe that jury men and women have the capacity to pass judgment on sentencing issues because they are highly technical. However, there is no doubt that in the community there is a good deal of concern about many sentences imposed by the courts. It seems to us that one way of improving the public acceptance of sentences imposed by the courts is to have some citizen involvement in the process.

We have also suggested the establishment of a sentencing advisory council, similar to those that have been established in the United Kingdom, in Victoria, and in New South Wales. At the time, as I said, my proposal was not popular with the legal profession and it was (in typical fashion) rejected out of hand by the Labor government as being impractical and nonsense. However, last year I was heartened by an address from the Chief Justice of New South Wales (the Hon. Justice Spiegelman), who floated a similar idea for the purpose of increasing the level of public confidence in the judicial system. In an address he stated:

> The level of trust in our society is a form of social capital which, as has been increasingly come to be recognised, is as important as physical capital for the effective and efficient operation of our economy and society. Social capital includes institutions which are the fundamental bases for all forms of social interaction, and the administration of justice is one such element of social capital. Improving confidence in the administration of justice is a major issue. . .

That is according to Justice Spiegelman. He envisaged that a trial program of jury participation in sentencing processes should be undertaken. Neither he nor I have ever suggested that a jury would take over and have exclusive province in relation to the fixing of sentences as, indeed, happens in a small number of states in the United States. What is envisaged by Justice Spiegelman and by me is a process to enhance public confidence in the administration of justice.

Time expired.

CHILDREN OF PRISONERS AND OFFENDERS PROGRAM

The Hon. M.C. PARNELL: I rise today to share with honourable members some more information about the Children of Prisoners and Offenders Program run by the Offenders Aid and Rehabilitation Service of South Australia. Yesterday I asked the Minister for Correctional Services two questions concerning the ongoing financial viability of the program and, in particular, the possibility of the government providing some bridge funding to ensure that the program worker was not lost while more secure, ongoing funding was achieved.

The minister indicated in her answer that this request would be considered as part of the budget deliberations. However, the request for bridging funding was made precisely because OARS cannot wait until budget night to find out whether or not the program will continue. The minister also detailed a range of justice programs for children of prisoners, such as research, training of staff, handbooks and refurbishment of visitors' areas. Whilst these initiatives are most welcome, they do not replace the client-focused advocacy and counselling support provided by the Children of Prisoners and Offenders Program.

This program provides support directly to the children of prisoners and offenders. Through no fault of their own, these children face a range of unique and complex issues that arise from their parents' imprisonment. Perhaps the best way to explain the importance of the Children of Prisoners and Offenders program is to tell the story of one of the program's clients.

Anne (which I should say is not her real name) is a mother of four who began to see the OARS family therapist whilst she was awaiting sentencing on gambling-related fraud offences. The age of her children ranged from eight to 18. Anne was previously employed in a white collar job and has a large, close-knit network of family and friends. When the OARS worker first saw Anne she had done considerable work in relation to her gambling and the related offending, over the two years following her arrest. Anne was clearly along the recovery path and had undergone significant rehabilitation. She had engaged several gambling services and

was an active member of Gamblers Anonymous. She had also voluntarily banned herself from gaming venues.

However, despite two years passing, she had not been able to tell her children about her offending and her likely future imprisonment. This lack of disclosure is not uncommon, with parents understandably keen to shield their children from the shame and the stigma. However, secrecy and deception can lead to mistrust and further confusion for the children. When the OARS worker first began to work with Anne she expressed significant remorse, especially with regard to the impact on her children of her potential imprisonment. She did not know what to tell them or how to tell them. This became the focus of their initial work together. Anne was very clear that she would not reoffend and was keen to reinforce this, and strategies were identified for each of the children in an age-appropriate, sensitive way. For example, with her two youngest children she was encouraged to talk about the fact that she had 'crossed the line'.

Anne was particularly worried about her youngest son, who was eight years old. Soon after Anne was imprisoned, the OARS therapist began working directly with this child. During regular sessions at his school the worker used a range of therapies designed to draw out and address his feelings, including a worry box, picture cards to explore his feelings about his mother being in gaol, and making cards to send to Anne in prison. The therapist and the child also talked about his weekly visits to prison and the understandable sadness the child felt at having to leave her again.

Up until Anne's release from gaol the worker made fortnightly visits and ensured strong communications were maintained between Anne and all her family members. Now that Anne has left prison and returned to her role as an active and committed parent, with the support of OARS she continues, along with her children, to do well. Anne's story emphasises the importance of having a flexible child-centred program offering short-term and targeted support for the children of offenders.

Whilst there has been very little research into this topic, it is clear that parental imprisonment has profound effects on children. The children do it hard. Children of prisoners experience behavioural and emotional responses, including fear and anxiety, sadness and even physical symptoms, including health problems, regressive behaviour, bed wetting and things like that. There is also a strong interconnection between how a child deals with their parent's imprisonment and their own risk of future offending. Prisoners who maintain a strong connection with their children are themselves far less likely to reoffend, and also their children are far less likely to offend in future.

BRADKEN FOUNDRY

The Hon. NICK XENOPHON: Today I will speak on the issue of the Bradken Foundry at Kilburn and the concern of Kilburn residents and those in surrounding areas about the impact that foundry has on their quality of life and the environmental impact of that foundry. The project has been declared, I understand, a major project by the state government. The Hon. Mr Parnell is well aware of this, and I hope that he can be involved in this issue as well. It seems that the government is committed to allowing Bradken to expand its foundry from an output of 12 000 tonnes of steel to some 32 000 tonnes, with a commensurate increase of traffic and a whole range of other impacts on the local community. However, to be fair to Bradken, it says it will be able to install new technology that will ameliorate the environmental impact of such a development. I remain to be convinced of that. However, I know that the residents of this area have had enough of the impact on their health over a number of years and they have concerns that the foundry is responsible for adverse health outcomes, but that is something that must be tested in an evidentiary sense. Indeed, I know that on the occasions I have visited the area the smell—the odours coming from that foundry—even several hundred metres away was very noticeable. It was very unpleasant. I have been told by residents that they were good days when I visited them.

On 13 May I attended a public meeting organised by John Rau, the member for Enfield. Kate Ellis, the federal member for Adelaide, attended that meeting also. Some 80-plus residents voiced their concerns about the proposed development at that meeting. On 9 June I also attended a meeting of residents outside the Bradken factory. They expressed their concerns to the member for Enfield, the federal member for Adelaide and myself. It is apparent that the people of this area have not been treated well by the state government in relation to their concerns.

The fact that this is classified as a major project, which removes fundamental rights of appeal, is something which is of great concern to me. I understand the arguments of Bradken and its employees that they want to expand, and that they are concerned. One particular employee bailed me up when I visited on 9 June, saying that he was concerned about his and all his colleagues' jobs. Obviously, that is a concern, but the primary focus ought to be on health and safety issues and on the environmental impact of this foundry and the potential environmental impact if this foundry is allowed to expand.

It also begs the question of why this foundry could not be placed in an appropriate zone at Wingfield where, I understand, it will not have the impact on residents simply because there are no residents there, and that is the preferred outcome of residents. One of the arguments put is that Bradken has been there since 1949, and that is true. But, there must be an overriding obligation to ensure that what is occurring there is something that does not cause adverse health outcomes for residents.

I am very grateful to Mr Emmanuel Psaila, one of the residents who has been fighting this issue very hard, and one of the leaders in the community in relation to this. There are many other leaders who have been fighting this issue in terms of local residents. Mr Psaila made the point that the original Kilburn Primary School was built in 1914. It was demolished in the 1980s and replaced by the nursing home. The existing Kilburn Primary School was built in 1931. It is 200 metres south of the foundry. Trust houses were built in Foote Avenue Kilburn in 1943 and Goodman Avenue Kilburn in 1946. A number of owner-built houses were established subsequent to the foundry in the 1960s and up until the mid-1990s. He makes the point that these residents deserve better. I believe that the state government has not treated them well. It has not given them the respect they deserve in terms of their health concerns.

I believe that much more must be exposed in terms of the environmental impact on the area around this foundry, and that the expansion of this foundry, given existing concerns, seems to be a very ill-considered move. The state government's granting this major project status is something that beggars belief in terms of the available evidence today.

FOOD INDUSTRY

The Hon. CAROLINE SCHAEFER: Many members know of my ongoing interest in the South Australian food industry. As the former convener of the South Australian Food Plan and the Premiers Food Council, I am immensely proud of the reputation we developed as the premier food state in Australia. The genuine link is formed with industry groups such as Food Adelaide and Flavour SA, and the encouragement we gave to individuals to grow their product, to innovate and to export either overseas or interstate was second to none. I was also involved in several market development programs where we took producers to places such as Hong Kong and Singapore so that they could meet the eventual retailer or consumer of their product. The knowledge people gained by seeing their product on the shelves, how it arrived, how it was packaged, and what they could do to move into the premium category was invaluable.

The Olsen government also instigated the regional food groups and food offices. This gave small producers the opportunity to band together to achieve economies of scale and to learn more about packaging, labelling and marketing from each other. Above all, it provided opportunities to value add at point of product rather than point-of-sale. It provided inspiration and valuable jobs where they were needed most—in regional South Australia. The South Australian Food Plan was multi-dimensional. It provided impetus for large companies to grow exports, particularly overseas, for medium-size businesses to increase their productivity, and for small regional producers to have an outlet for their product with each link in the chain providing advice and encouragement to the next.

The Premier's Food Council was very much supported by a number of the major players within the industry in South Australia and, indeed, had people on it who were prepared to give their own time and expertise from interstate. This government, at its inception, considered this initiative important enough that it did away with the minister for primary industries and created the Minister for Agriculture, Food and Fisheries. But, now, into its second term, it can no longer be bothered with the food sector.

The Premier's Food Council is now not important enough to be chaired by the Premier; he no longer attends. The date of the meetings has been changed from a Friday to a Wednesday, regardless of whether or not that suits industry. Consequently, fewer industry leaders are attending or have any real commitment. Food Adelaide and Flavour SA continue to exist in spite of, rather than because of, this government. Market development programs really do not exist within the food sector, and what little marketing is done is by the Department of Industry and Trade, which leaves one to wonder what then is done within the portfolio of the minister for food.

What is really concerning is that the South Australian Food Plan has always been a moving scheme in four year tranches. My recollection is that the next four years should be signed, sealed, funded and launched by late this year or, at the latest, early next year, but I am reliably informed that virtually no consultation and no planning has taken place. I am left to wonder and to ask: will the already skeletal South Australian Food Plan exist at all by this time next year?

VICTIMS OF CRIME (VICTIM PARTICIPATION) AMENDMENT BILL

The Hon. NICK XENOPHON obtained leave and introduced a bill for an act to amend the Victims of Crime Act 2001. Read a first time.

The Hon. NICK XENOPHON: I move:

That this bill be now read a second time.

My involvement with respect to victims of crime began some years ago when I was contacted by Carolyn Watkins, whose husband Andrew was killed most tragically on 22 June 2001 (five years ago tomorrow). I have worked extensively with Carolyn and her family on this matter. It has been a pleasure to work with her and to meet and talk to her children Samantha and Phillip. On 22 June 2001, Andrew Watkins was cycling home from work when Andrew Priestley hit Mr Watkins' bicycle and then proceeded to drag him some six kilometres underneath his vehicle.

The evidence was that at the end of that six kilometre journey, when the defendant was zigzagging across the road, Mr Watkins was still alive. Mr Priestley left the scene. Mr Watkins was still alive when the ambulance got to him, but he died soon afterwards. A decision was made by the DPP to charge Priestley with death by dangerous driving, not manslaughter. That was a decision that was presented almost as a fait accompli by the then DPP, Mr Paul Rofe QC. That decision was presented to Carolyn and her family as one that they had to think about but, in any event, that was what the DPP's office was going to do despite the fact that there seemed to be a great body of evidence that suggested that a charge of manslaughter would have been much more appropriate.

It was as a result of that incident that, in a sense, I became involved in this issue, because Carolyn Watkins wrote to me in early 2003 asking a number of very pertinent questions—questions that she had previously asked the Attorney-General. Effectively, it would be fair to say that Mrs Watkins and her family felt violated by the system; that the system had let them down fundamentally as victims of crime; and they did not have a say, a voice, and a meaningful role in the system when it came to the death of her husband and the children losing their father. That is why this bill is important.

Since that time I have been approached by many victims of crime who have had similar experiences, where the system has left them disempowered and disenfranchised, and the current system simply does not work. More recently, I was approached by the family of Ian Humphrey, who was killed in a hit-run accident on 30 November 2003 by Eugene McGee. I also value and feel privileged as well to have been dealing with people such as Graham Humphrey (Ian's brother) and, of course, Di Gilcrist-Humphrey (the widow of Ian) in their quest to make some sense out of such a senseless and terrible tragedy.

The current system is not working and needs fundamental reform. I note that, when I wrote to the Attorney-General with a draft bill in early 2004 (and I appreciate that the Attorney did get back to me reasonably promptly), he did not favour the model that I then proposed with respect to dealing with the issue of victims of crime and interventions. I took that on board, but I also note that the Attorney, according to the Hon. Mr Lawson, has previously stated that the current system is

working reasonably well, but that is something to be debated and discussed at another time. I can say that, earlier today, I had a brief discussion with the Attorney and obviously he is clearly interested in this particular bill, and I appreciate his interest and concern and hope that this bill is adopted by the government in whole or, if not in whole, substantially, because of the reforms that it proposes—reforms that I believe are sensible and long overdue.

I also want to comment on the other cases that have come to me that indicate why the system needs to be improved and overhauled fundamentally for victims of crime in this state, both in relation to the plea bargaining system and the agreed facts. I commence by commenting on the issue of agreed facts. We know what happens when something goes wrong with the agreed facts, and that is the Nemer case that went all the way to the Supreme Court. The acting attorney-general (Hon. Mr Holloway) was absolutely right in issuing a directive under the DPP Act to request the DPP to take a certain action, and that was vindicated by the Supreme Court subsequently.

That was a case where the penalty seemed woefully inadequate based on the facts that ought to have been agreed, not the facts that were actually agreed—the facts that were presented to the court, the evidence that was clearly there. I know that *Today Tonight* is one particular media outlet that gets pilloried, but its producer Graham Archer deserves to be commended for his investigative work on a number of cases. One that comes to mind is the Scott Aitken case involving the death of two of his children where *Today Tonight* ran a two-part special over two nights outlining issues that it believed ought to have been raised by the court.

We ought to be grateful for that degree of investigative reporting in this state. One of the many other people who have approached me is Anne Walsh, whose 22-year old cousin, Stacey Lee Brown, was shot in the head and killed on 18 July 2002. Stacey was brought up by Ms Walsh's family and Ms Walsh was present during plea bargaining discussions with the then DPP Paul Rofe QC. Family members complained that the agreed facts did not accord with the available evidence, such that the pistol was disposed of and that forensic evidence indicated that Stacey was shot at point blank range at eye level, yet the court was told that Stacey was handing back the gun to the defendant with the barrel pointing at her when it fired. The DPP accepted a plea bargain on these facts to a charge of manslaughter rather than murder.

Another matter relates to the Glasson family. Diana Glasson was the mother of Karina Glasson, a 25-year-old who was killed on 4 July 2002 when the car she was driving was hit at a Para Hills T-junction by a car that was travelling, according to investigators, at between 85 and 135 km/h in a 60 km/h zone. The matter was handled by Police Prosecutions. The DPP's office was not involved. The solicitor for the defendant arranged for the scheduled court date to be brought forward (which is not uncommon in the Magistrates Court) for a guilty plea to a charge of driving without due care. The family was not notified and victim impact statements were never even presented to the court. They do not have to be, if I might say, because it is a summary offence. It is believed that a plea was done without the defendant being present in court and he received a $100 fine and no loss of licence.

By contrast, a speeding fine for travelling at 67 km/h in a 60 km/h zone is in the order of $135. That is another case where the family was simply devastated by the way the justice system dealt with their case. Essentially this bill does three things. First, it strengthens the existing provisions in the act on the treatment of victims in the criminal justice system. Secondly, it creates the office of the victims advocate. Thirdly, it allows the victims advocate to conduct inquiries on behalf of victims into investigations and prosecution so that victims can be assured that the matters are being dealt with properly. Currently Part 2 of the Victims of Crime Act declares the principles that should govern the treatment of victims of the justice system. For the most part, those provisions are expressed as declarations of how victims 'should' be treated or information that 'should' be provided to a victim.

The amendments would strengthen these provisions so that they are expressed primarily as rights to provide that victims must be treated appropriately and must be provided with certain information. The act already contains safeguards to ensure that a failure to comply with the provisions will not affect the conduct of the relevant criminal proceedings and to ensure that information that might jeopardise an investigation need not be provided. The bill does not affect these safeguards. The proposed new Part 2A deals with a victims advocate. The victims advocate would be a legal practitioner appointed by the Governor. Under division 3, a victim of crime may ask the victims advocate to inquire into conduct of the relevant criminal investigation or prosecution or some aspect of it which was of concern to the victim.

This type of inquiry would not delay the relevant investigation or prosecution, but should be conducted in parallel with it—and I emphasise that. This is not about delay, this is about keeping victims and victims' families informed and ensuring that they have a fair go and a fair say—and what could be wrong with that? It should not be the case that the most extraordinary cases receive attention, the public conscience is pricked and we as politicians act. The government and the Premier did the right thing by holding a royal commission into the McGee case—the Kapunda Road royal commission. The government should be commended for that. The government did the right thing by using its powers under the DPP act to issue instructions, in a sense to bypass the DPP's office, in the Nemer case.

However, there are dozens of other cases where a fundamental injustice has occurred. Other matters are currently before the courts upon which I cannot comment and which I believe will cause a similar, if not greater, degree of public outrage in terms of the justice system not working for the benefit of victims. That is why we need this bill. The Nemer and McGee cases should be the exception to the rule and victims should get a fair go. Having an inquiry that is parallel through the victims advocate is just a means by which a victim can have an independent person look at what is being done and can be reassured that everything is working properly.

For those who say that this is too radical, let us look at what occurs in Sweden, where victims of serious crime have the right to legal representation throughout the entire process. I am not suggesting that, but I am suggesting what I think is a fair process that will work in our current system. The other type of inquiry for which the bill provides is dealt with in proposed section 14G. This provision applies only to victims of offences of violence (which is defined in the measure) and only in relation to what the bill defines as examinable decisions, which are basically the major trial decisions relating to evidence to be submitted, submissions on penalty, or decisions to amend a charge or not to proceed with a

charge. Under this provision, the prosecution is prevented from acting on an examinable decision until the victim consents to it or, if the victim does not consent, until an inquiry is held by the victims advocate. The victims advocate may, if satisfied that it will be reasonable to do so, apply for a stay of the relevant criminal proceedings until the inquiry is completed, and such inquiries must be completed as a matter of urgency.

Again, there is an issue of discretion, but the powers are there to ensure that victims' interests are safeguarded adequately. The bill also provides for reports by the victims advocate following any inquiry, and these are handled in a manner similar to reports by the Ombudsman. Essentially, if the victims advocate has concerns and makes recommendations in relation to an investigation, the prosecution or proposed examinable decision, they are reported to the victim, the relevant law enforcement or prosecution authority and to the Attorney-General. The relevant law enforcement or prosecution authority must report back to the victims advocate, with copies being provided to the victim and the Attorney-General, on what steps are being taken to address the recommendations.

If the victims advocate is not satisfied with the response, the victims advocate may report to the Premier and may provide copies of the report to be tabled in parliament, with appropriate deletions to ensure that inappropriate information is not publicly disclosed. In this way, there is no mandated interference with the functioning of the investigator or the prosecutor, but there is transparency in the process, and information is provided to the government that would allow it to decide whether or not it should exercise its existing powers to issue a direction.

This is not a cumbersome piece of legislation. This is legislation that would work. This is legislation that would give real teeth to victims' rights being heard. This is legislation that will give victims a real voice in this state—a meaningful voice that can lead to action in cases where it is demanded. This is something that would act as a safeguard. Merely having an office of the victims advocate, and merely having a victims advocate with these powers, I believe, would change the culture and the way in which investigations and prosecutions are handled in this state. It would mean that victims would be at the pinnacle of the system, rather than getting the scraps, as they do in too many cases. I note that, in its 2006 election manifesto, the Rann government states:

> Victims are not bystanders to crime; so they should not be bystanders during the court process. A Labor government believes in 'justice in sentencing'—justice for victims, justice for the families of victims, and justice for the community.

The manifesto goes on to say that it proposes to give greater voice to victims of crime, and the ALP issued a media release on 16 March 2006. I held a media conference with Carolyn Watkins and Di Gilchrist-Humphrey on Tuesday 14 March flagging this bill and indicating what it proposed to do; it is good to see that the government responded so quickly following that. In its media release, the government talked about appointing a commissioner for victims rights, who would also oversee the appointment of victims advocates. The commissioner would:

- make submissions to the Court of Criminal Appeal on guideline sentences;
- consult the DPP in the interests of victims in general and, in particular, cases about matters, including victim impact statements and plea bargaining arrangements;
- consult the judiciary about court practices and procedures and their effect on victims;
- monitor the effect of the law on victims and victims' families; and
- make recommendations to the Attorney-General arising from the performance of the function of the commissioner.

These are all good things. What this bill seeks to do is to improve on this, and it is something on which I have been campaigning for years, and the government well knows that. It seeks to give real teeth to victims' rights, because there is nothing in the proposal of the government (and obviously I have not seen the legislation) that would give the sorts of rights proposed in the bill. I hope that the government will either adopt this bill or substantially support it so that we have meaningful changes to the law governing victims of crime in this state. It is something they deserve; and it is long overdue.

If nothing else, the onus is on the government to do the right thing for victims of crime in this state and not to delay this issue, which has been flagged for years, ever since the Nemer case, the Andrew Watkins case and the case involving the death of Ian Humphrey. These matters require urgent consideration. If I with my limited resources can knock up this bill by consulting with victims and their families, then surely the government ought to use the work that has been done to date and commend this bill either substantially or wholly.

The other issue that needs to be considered involves the victim impact statement legislation which was passed by this chamber recently. The government says that it does not support a piecemeal approach. I urge the government to reconsider this approach, because there are victims of crime in this state (including victims of industrial accidents who have been killed or seriously injured and their loved ones) who do not have the right to make a victim impact statement. Those cases are going before the courts on a regular basis, and these victims do not want to wait for a separate, discrete piece of legislation to allow them to have the right to read a victim impact statement in respect of summary offences.

Over the winter break, I urge members to seriously consider this bill. The Legislative Council, as it often is, can be a pacesetter and show the other place a thing or two about substantial law reform. Despite what the Premier may think of the upper house, I think we have an obligation to consider this legislation properly, pass it with the will of the council, and then let the government in the other place consider it and look victims in the eye and tell them why it will not support this piece of legislation. This bill is reasonable and practical and, at long last, it will give some real rights to victims of crime in this state. I urge members to support the bill.

The Hon. I.K. HUNTER secured the adjournment of the debate.

LOCAL GOVERNMENT (OPEN SPACE) AMENDMENT BILL

The Hon. NICK XENOPHON obtained leave and introduced a bill for an act to amend the Local Government Act 1999. Read a first time.

The Hon. NICK XENOPHON: I move:

That this bill be now read a second time.

This bill is about preserving open space that is controlled by local government. In the previous parliament, the Hon. Sandra Kanck was a great advocate of Lochiel Park, as was

I, and we worked very hard with local agitators including Margaret Sewell and June Jenkins. This bill has as its genesis the work of councillor Margaret Sewell and councillor Jill Whittaker of the Campbelltown council, two councillors for whom I have great regard. The bill relates to the Oakdale Avenue Reserve at Newton, which consists of some 10 000 square metres. The council decided to sell off (substantially) that reserve, despite the concerns of the local community, and this bill proposes to remedy that situation.

Currently, all local government land which is owned by council or which is under the council's care, control and management is taken to be community land unless the council resolves to exclude it under section 193 of the Local Government Act in accordance with the procedure set out in section 194. Currently, this procedure only requires the council to prepare a report on the revocation of the classification of land as community land and submit it to the minister for approval under section 194(2) and to follow the steps in its public consultation policy.

This bill provides for a new section which provides that, if a revocation of the classification of land as community land is to take place and that community land is significant open space, then the public consultation policy must provide for a copy of the council's report under section 194(2) to be provided to electors who reside within 500 metres of the land and for those electors to make submissions to the council in relation to this. If more than 10 per cent of electors notify the council that they want a poll to be conducted on the matter, a poll must be conducted under the Local Government (Elections) Act of the entire local government electorate. If electors vote against the proposal, the revocation of the classification cannot go ahead unless a subsequent poll is undertaken and the result changed or the council is re-elected and the proposal put again.

So, essentially the bill provides for a poll of residents within a 500 metre radius. Why 500 metres? In accordance with council planning reports, it is desirable to have open space so that members of the community who reside within 500 metres of that open space can have easy access to it. This is reasonable for young families with small children and senior citizens who would like to be able to walk to the reserve and have easy access to it without having to use a car or another form of transport.

Councillor Jill Whittaker recently provided me with a response that she received from the Office of Local Government relating to requests for ministerial consent to council decisions to revoke the classification of community land from council property. In reply to her question: 'Could you please advise me of the community land which has been put forward to the minister for revocation since the new rules applied to revoke community land status?', the Office of Local Government states:

> Since 2002. . . 172 applications have been received. I should point out that some applications may cover more than one parcel of land or may be located in different parts of the council area. Also, some applications have not been finalised due to the additional information being sought from the council, or they may have been withdrawn.

That indicates that there have been quite a few since 2002. In terms of which councils have sought revocations, councillor Whittaker was advised that 46 councils have applied for ministerial consent to revoke the classification of community land. She asked the question, 'Is there a process to ascertain what proportion of land previously called community land was taken off listings provided to councils?' The answer from the Office of Local Government was:

> In this question, I assume that you are referring to the process that councils could undertake, in consultation with the community, during the period from 1 January 2000 (the commencement date of the Local Government Act 1999) until 31 December 2003, to exclude certain land from classification as community land. While the Office did gather most of the public notices made by councils during the period, it has no consolidated record of the land that was ultimately excluded from classification. Again, this information would be available from each council.

That gives one an idea that there is some confusion as to the extent to which it applies, but there certainly have been many (some 172) applications for revocation of community land since 2002, and that is an area of real concern.

We need to have open spaces. The community needs to have access to open space for all residents, particularly senior citizens and parents with young kids. Open space is very important. When you consider that there has been a process of urban consolidation of smaller blocks of land, open space becomes much more important for families. That is what this bill seeks to do: it allows for community input. It allows for that radius of 500 metres so that it is still within a reasonable walking distance for residents, and that is what it seeks to do.

The issue of open space is a real concern. Once we lose open space it is lost forever. You are not going to get people demolishing their townhouses or new duplexes once the land has been sold. It is not going to come back to us as open space. If we consider the social implications of destroying open space and what it means to families and communities to be able to mix together to use it in a useful way for recreational activities, then this is a real crisis.

I believe that the Campbelltown council has not acted fairly in terms of the interests of residents, in the way that it has dealt with this issue. I share the concerns of my former colleague (Hon. Julian Stefani) about the way the Campbelltown council undertook a number of its decisions—and this is one of them—where I believe that it has done the wrong thing by residents.

I urge honourable members to consider this seriously during the break, because I would like to bring it back on for a vote as soon as reasonably possible and/or practical. It may not be enough to save the Oakdale Reserve; there may not be time. I urge the Minister for State/Local Government Relations to consider all the submissions and not grant this revocation without considering all the facts and the implication this will have on the local community. This is a practical mechanism to ensure that open space in our suburbs is preserved once and for all, where there is sufficient community consultation and sufficient community input for those who will be directly affected by the loss of this open space. I commend the bill to the council.

The Hon. I.K. HUNTER secured the adjournment of the debate.

ELECTRICITY (COMPENSATION FOR BLACKOUTS) AMENDMENT BILL

The Hon. NICK XENOPHON obtained leave and introduced a bill for an act to amend the Electricity Act 1996.

The Hon. Nick XENOPHON: I move:

That this bill be now read a second time.

Members may be aware of the recent draft report of ESCOSA in relation to two power blackouts that occurred earlier this year, and also of problems that consumers of electricity in

this state had in terms of power blackouts during a storm last August which affected many homes. Earlier this year I had the pleasure of meeting three residents of the Masonic Village at Somerton Park (Mrs Betty Bray, Mrs Joyce Fry and Mrs Thelma Burke), who were the subject of a blackout for more than 18 hours, but they had to wait some four or five months before they obtained any compensation from ETSA. That piqued my interest in this issue, and the fact that consumers, I believe, are getting a raw deal with respect to the compensation payable for blackouts in this state.

This bill provides for amendments to the regulatory framework relating to the electricity supply in South Australia and, more specifically, in relation to the compensation payable to ETSA customers affected by power blackouts. Compensation payments are provided for in codes which are administered and enforced by the Essential Services Commission. By way of a brief outline, and for the benefit of honourable members, the Electricity Act, together with the Essential Services Commission Act, provides the basis for regulation of the electricity supply industry in South Australia.

One of the responsibilities of the Essential Services Commission, which is established under this regulatory framework, is to make industry codes—such as the Electricity Distribution Code—in order to regulate the behaviour of licensed entities such as ETSA. ETSA is required to comply with these codes, as well as a number of other industry codes, which incorporate performance standards in relation to various matters, including supply interruptions.

The guaranteed service level (GSL) scheme, also contained within the Electricity Distribution Code, provides customers with direct payments from ETSA Utilities, where the level of distribution service falls below a predetermined threshold. Currently the guaranteed service level payout provides for $80 in compensation where power is out for more than 12 hours, $120 for more than 15 hours, and $160 for more than 18 hours.

The proposed amendments are aimed at strengthening the penalties payable to customers under the codes, so that they apply after three hours of blackout, and increasing amounts payable in compensation. Currently section 23 (1)(n)(v) of the Electricity Act provides:

> The Commission must make a licence authorising the operation of a transmission or distribution network subject to conditions determined by the Commission—

It goes on to set the framework and code provisions that need to apply in terms of minimum standards of service for customers which are at least equivalent to the actual levels of service for such customers prevailing during the year prior to the commencement of the section, and to take into account relevant national benchmarks developed from time to time.

Clause 4 of this bill amends section 23 after subsection (2) by stipulating that the code provisions referred to must include provisions that require the electricity entity to provide compensation to customers of not less than the amounts set out in schedule 1 for any periods for which the customers suffer a failure of electricity supply. It seeks to substantially increase it up to $1 000 for more than 18 hours. There can be a debate as to what is appropriate. I note that ESCOSA in its draft report is recommending a doubling with respect to failures of more than 18 hours, but I wonder whether that is adequate and whether it sends a sufficient signal to the supplier of electricity that, where they are responsible and where this could have been avoided, more substantial compensation ought to be payable.

Currently exemptions apply to the code requirements and the exemptions apply in cases where there has been an act or omission that has occurred in bad faith or through negligence, or to a customer if the customer has negotiated a special contractual agreement with the entity relating to the entity's liability for a failure of electricity supply, or in circumstances in which the entity is, according to the code, permitted to interrupt electricity supply or excused from the obligation to maintain electricity supply. There are exemptions there and essentially the compensation would apply where ETSA in this case could have avoided the interruption or taken steps that would have avoided the extent of the interruption.

The bill provides for these increased penalties. We have had the government, including the minister and the Premier, talking tough about these issues. This is an opportunity for the government to put its money where its mouth is or put money in the pockets of consumers who have had their supply interrupted unreasonably. The current level of compensation is manifestly inadequate, given the disruption that can be caused and given the health concerns. One of the residents I referred to ended up in hospital because her nebuliser could not work and she fell ill as a result of the power interruption and spent some time in hospital.

By increasing the penalty substantially, as this bill proposes, it will send a very clear signal to ETSA that it must adopt appropriate risk management strategies to do all that is reasonably possible to minimise the chance of disruption occurring, where it is within its control, and increasing penalties substantially would also send a very clear signal that it is in its fundamental economic interest to ensure that consumers are not needlessly disadvantaged.

I challenge the government, which has talked tough about ETSA, as it is about time we had some additional penalties, and we can do it through this bill. Do not leave it up to ESCOSA, which is a creation of this parliament. We have an obligation to do the right thing by consumers and we can send a clear signal to the electricity industry by substantially increasing penalties. I commend the bill to honourable members.

The Hon. I.K. HUNTER secured the adjournment of the debate.

STATUTES AMENDMENT (SURROGACY) BILL

The Hon. J.S.L. DAWKINS obtained leave and introduced a bill for an act to amend the Family Relationships Act 1975 and the Reproductive Technology (Clinical Practices) Act 1988. Read a first time.

The Hon. J.S.L. DAWKINS: I move:

> That this bill be now read a second time.

The bill I introduce today is to amend the Reproductive Technology (Clinical Practices) Act and the Family Relationships Act in relation to what is known as altruistic gestational surrogacy. For many months I have been working with two female constituents who are unable to carry children, although they are capable of falling pregnant. One now has a son, due to the willingness of her cousin to be a surrogate mother for a child which has the genetics of both the constituent and her husband. This surrogacy was carried out interstate, as such practices are illegal in South Australia. In the other lady's case her mother was willing to carry a child that would become her grandchild, but subsequently the woman's aunt is carrying the child.

These people are seeking the legalisation in South Australia of what is known as altruistic gestational surrogacy, as well as the recognition on birth certificates of the genetic parents of children born via this process. I emphasise that both constituents refer to the use of surrogacy only in relation to heterosexual couples who are unable to have a child naturally and who have a relative prepared to become the birth mother without any fee being involved.

As the child of the first couple grows, his biological mother finds herself in embarrassing situations due to the fact that her name does not appear on the birth certificate. An example is where the mother was travelling interstate by air with her child but without her husband. She encountered great difficulties when checking in for flights on both legs of her trip due to the fact that her name does not appear on her son's birth certificate. Such problems will continue to mount as the little boy approaches the age of enrolment at kindergarten and school.

As well as the two family situations I have mentioned, I am aware of other couples in South Australia who are in the same position. The bill I introduce will apply to heterosexual couples utilising a close relative as a surrogate mother, where no money changes hands. An application could be made to the Minister for Families and Communities for the surrogate mother to be someone other than a close relative but, as I indicate, an application would have to be made to the minister.

My correspondence to the relevant ministers last year resulted in clear indications from the then health minister, the Hon. Lea Stevens, and the Attorney-General, the Hon. Michael Atkinson, still taking control of births, deaths and marriage issues, that the government did not intend to take any action. However, the South Australian Council on Reproductive Technology indicated last year that the government should introduce legislation to remedy the situation. I quote from a letter sent to the first mentioned constituents Mr Clive and Mrs Kerry Faggotter from the South Australian Council on Reproductive Technology:

> Dear Mr and Mrs Faggotter,
>
> Thank you for writing to the SA Council on Reproductive Technology about the birth of your son Ethan through surrogacy interstate, and the problems you face here in South Australia. The council has asked me to provide you with an interim response, to acknowledge your letter, and to let you know that the council provided advice to the former minister for health about this issue last year. This advice included a recommendation that there should be legislative change to address the problems encountered by children born through surrogacy and their parents as a result of the current legislation.
>
> The minister will be attending the next meeting of the council on Monday 19 June, and the council will raise this issue for discussion with the minister, and will also give consideration to your case. The council will provide a further response after that meeting. Thank you again for bringing this important matter to the attention of the council.

That letter, dated 12 May 2006, was signed by Leanne Noack, the Executive Officer of the South Australian Council on Reproductive Technology.

This bill features amendments to the Family Relationships Act 1975 based on the establishment of recognised surrogacy agreements. I will outline the details of the new division of the act under which a new form of surrogacy arrangement would be recognised under the law of the state. New section 10HA sets out the criteria that will apply with respect to these arrangements, which will need to satisfy the requirements for a recognised surrogacy agreement, being an agreement under which a woman (the surrogate mother) agrees, first, to become pregnant or to seek to become pregnant; and, secondly, to surrender custody of, or rights in relation to, a child born as a result of the pregnancy to two other persons (otherwise the commissioning parents); and also in relation to which the following conditions are satisfied: the parties to the agreement are (a) the surrogate mother and, if she is a married woman, her husband; and (b) the commissioning parents, and no other person.

In addition, all other parties to the agreement are at least 18 years old; the surrogate mother has already given birth to a child (being a child who was alive at birth); the commissioning parents have cohabited continuously together in a marriage relationship for a period of five years immediately preceding the date of agreement; the commissioning parents are domiciled in this State; and the surrogate mother is a prescribed relative of at least one of the commissioning parents, or has a certificate issued by the minister in relation to the proposal that she act as the surrogate mother for the commissioning parents. I again add that the minister in this case would be the Minister for Families and Communities.

Continuing with the conditions, the surrogate mother and both commissioning parents each have a certificate issued by a counselling service that complies with the specified requirements, and the agreement states that the parties intend, first, that the pregnancy is to be achieved by the use of a fertilisation procedure carried out in this state; and, secondly, that at least one of the commissioning parents will provide human reproductive material with respect to creating an embryo for the purposes of the pregnancy, unless the commissioning parents have a certificate issued by a medical practitioner that certifies that this is not appropriate from a medical perspective.

In addition, the agreement states that no valuable consideration is payable under, or in respect of, the agreement, other than for expenses connected with, first, a pregnancy (including any attempt to become pregnant) that is the subject of the agreement; secondly, the birth or care of a child born as a result of that pregnancy; thirdly, counselling or medical services provided in connection with the agreement (including after the birth of the child); fourthly, legal services provided in connection with the agreement (including after the birth of the child); or any other matter prescribed by the regulations.

In addition, the agreement states that the parties intend that the commissioning parents will apply for an order under proposed new section 10HB after the child is born. Further, it will be necessary for the agreement to be set out in writing and the signatures of each party attested by a lawyer's certificate.

New section 10HB provides for an application to be made to a judge of the Youth Court of South Australia to give effect to the terms of a recognised surrogacy agreement after the birth of a child. An application will be able to be made only if the child is between the age of six weeks and six months. In deciding an application under this section, the welfare of the child will be the paramount consideration. The court will be able to require that any party provide an assessment from a counselling service before deciding whether to make an application under this section. If the order is made, the order will have effect as if it were an adoption order; first, so that for the purposes of any other act or law the child has been adopted by a commissioning parent or commissioning parents (according to the terms of the order); secondly, so that the child becomes in contemplation of law the child of a commissioning parent or commissioning

parents (according to the terms of the order) and ceases to be the child of any birth parents; and, thirdly, so that the rights of the child with respect to a commissioning parent or commissioning parents (according to the terms of the order) will be the same as an adopted child.

Special provision is also made in relation to the register of births. In general, the Registrar of Births, Deaths and Marriages, on receipt of notice of the making of an order in relation to a child, first, will endorse any entry made in the register of births relating to the child with a note recording the fact of the order and, secondly, add a fresh entry of the name or names of the commissioning parent or parents who are in contemplation of law the parents of the child under the terms of the order. However, a birth parent will be entitled on application to the court to obtain an order that his or her name be removed from the register of births as the parent of the child.

In addition, the bill amends the Reproductive Technology (Clinical Practices) Act 1998. First, it will be necessary to make provision for recognised surrogacy agreements under the act; secondly, the Code of Ethical Practice will need to take into account the use of artificial fertilisation procedures to give effect to recognised surrogacy agreements; and, thirdly, a licence under the act will extend the ability to carry out procedures for the purposes of recognised surrogacy agreements.

The word 'altruistic' is defined as either 'a regard for others as a principle of action' or 'unselfishness'. There is little doubt that this word accurately describes the wish of a female relative to assist a childless couple in a remarkable manner. I have introduced this bill to allow such a gift to be enacted in South Australia, while allowing the background of a child born as a result to be accurately described on the birth certificate. I commend the bill to the council. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will come into operation 3 months after assent. This period will provide an opportunity for any necessary regulations to be prepared and promulgated, and for any necessary administrative arrangements to be put in place.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Family Relationships Act 1975*

4—Amendment of section 5—Interpretation

This is a consequential amendment. The definition of ***fertilisation procedure*** currently found in section 10A of the Act will now also be relevant for the purposes of proposed new Division 3 of Part 2B of the Act. It is therefore necessary to include the definition under section 5.

5—Amendment of section 10—Saving provision

The saving provision in section 10 of the Act confirms that the determination of the status of a child under Part 2 of the Act does not affect the operation of a law that may provide for a subsequent change in the status of the child. A consequential amendment must therefore be made to make reference to the consequences of an order under proposed new Division 3 of Part 2B of the Act.

6—Amendment of section 10A—Interpretation

This is a consequential amendment (see clause 4).

7—Amendment of section 10B—Application of Part

This amendment includes another provision in the nature of a saving provision by confirming that the operation of Part 2A of the Act does not affect the operation of another law that may provide for a subsequent change in the status of a child (as that status relates to the mother or father of the child).

8—Insertion of heading

A new form of surrogacy arrangement is to be recognised under Part 2B of the Act. Such a surrogacy arrangement may have lawful operation. It is therefore necessary to divide Part 2B of the Act into a number of divisions.

9—Amendment of section 10F—Interpretation

A new form of surrogacy arrangement is to be recognised under the law of the State. For the purposes of the law, these arrangements will need to be in the form of ***recognised surrogacy agreements***, as described in proposed new section 10HA.

10—Insertion of heading

The existing provisions as to the illegality of certain surrogacy agreements will now appear in a particular division of Part 2B.

11—Amendment of section 10G—Illegality of surrogacy and procuration contracts

The existing provisions as to the illegality of surrogacy agreements will not apply to ***recognised surrogacy agreements***.

12—Insertion of new Division

A new form of surrogacy arrangement is to be recognised under the law of the State.

New section 10HA sets out the criteria that will apply with respect to these arrangements, which will need to satisfy the requirements for a recognised surrogacy agreement, being an agreement—

(a) under which a woman (the ***surrogate mother***) agrees—

(i) to become pregnant or to seek to become pregnant; and

(ii) to surrender custody of, or rights in relation to, a child born as a result of the pregnancy to 2 other persons (the ***commissioning parents***); and

(b) in relation to which the following conditions are satisfied:

(i) the parties to the agreement are—

(A) the surrogate mother and, if she is a married woman, her husband; and

(B) the commissioning parents,

and no other person;

(ii) all parties to the agreement are at least 18 years old;

(iii) the surrogate mother has already given birth to a child (being a child who was alive at birth);

(iv) the commissioning parents have cohabited continuously together in a marriage relationship for the period of 5 years immediately preceding the date of the agreement;

(v) the commissioning parents are domiciled in this State;

(vi) the surrogate mother is a prescribed relative of at least 1 of the commissioning parents, or has a certificate issued by the Minister in relation to the proposal that she act as a surrogate mother for the commissioning parents;

(vii) the surrogate mother and both commissioning parents each have a certificate issued by a counselling service that complies with specified requirements;

(viii) the agreement states that the parties intend—

(A) that the pregnancy is to be achieved by the use of a fertilisation procedure carried out in this State; and

(B) that at least 1 of the commissioning parents will provide human reproductive material with respect to creating an embryo for the purposes of the pregnancy, unless the commissioning parents have a certificate issued by a medical practitioner that certifies that this is not appropriate from a medical perspective;

(ix) the agreement states that no valuable consideration is payable under, or in respect of, the agreement, other than for expenses connected with—

(A) a pregnancy (including any attempt to become pregnant) that is the subject of the agreement; or

(B) the birth or care of a child born as a result of that pregnancy; or

(C) counselling or medical services provided in connection with the agreement (including after the birth of a child); or

(D) legal services provided in connection with the agreement (including after the birth of a child); or

(E) any other matter prescribed by the regulations;

(x) the agreement states that the parties intend that the commissioning parents will apply for an order under proposed new section 10HB after the child is born.

In addition, it will be necessary for the agreement to be set out in writing and the signatures of each party attested by a lawyer's certificate.

New section 10HB allows an application to be made to a judge of the Youth Court of South Australia to give effect to the terms of a recognised surrogacy agreement after the birth of a child.

An application will only be able to be made if the child is between the ages of 6 weeks and 6 months. In deciding an application under this section, the welfare of the child will be the paramount consideration. The Court will be able to require that any party provide an assessment from a counselling service before deciding whether to make an application under this section. If an order is made, the order will have effect as if it were an adoption order—

(a) so that, for the purposes of any other Act or law, the child has been adopted by a commissioning parent or commissioning parents (according to the terms of the order); and

(b) so that the child becomes, in contemplation of law, the child of a commissioning parent or commissioning parents (according to the terms of the order) and ceases to be the child of any birth parents; and

(c) so that the rights of the child with respect to a commissioning parent or commissioning parents (according to the terms of the order) will be the same as an adopted child.

Special provision is also made in relation to the register of births. In general, the Registrar of Births, Deaths and Marriages will, on receipt of notice of the making of an order in relation to a child—

(a) endorse any entry made in the register of births relating to the child with a note recording the fact of the order; and

(b) add a fresh entry of the name or names of the commissioning parent or parents who are in contemplation of law the parents of the child under the terms of the order.

However, a birth parent will be entitled, on application to the Court, to obtain an order that his or her name be removed from the register of births as the parent of the child.

New section 10HC will allow a judge of the Youth Court to address a situation where there has been a failure to comply with a requirement of this new Division but the Court is satisfied that in the circumstances it would be just and appropriate to dispense with the requirement.

Section 10HD allows the relevant Minister to delegate his or her functions or powers for the purposes of the new Division.

13—Insertion of heading

14—Amendment of section 13—Confidentiality of proceedings

15—Amendment of section 14—Claim under this Act may be brought in the course of other proceedings

These are consequential amendments.

Part 3—Amendment of *Reproductive Technology (Clinical Practices) Act 1988*

16—Amendment of section 3—Interpretation

It will be necessary to make provision for recognised surrogacy agreements under the Act.

17—Amendment of section 10—Functions of Council

The code of ethical practice will need to take into account the use of artificial fertilisation procedures to give effect to recognised surrogacy agreements.

18—Section 13—Licence required for artificial fertilisation procedures

A licence under the Act will extend to the ability to carry out procedures for the purposes of recognised surrogacy agreements.

Schedule 1—Transitional provision

1—Transitional provision

Any changes to regulations under the *Reproductive Technology (Clinical Practices) Act 1988* will need to come into operation when this measure is brought into operation (despite the provisions of section 20(4) of that Act).

The Hon. I.K. HUNTER secured the adjournment of the debate.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: UPPER SOUTH EAST DRYLAND SALINITY AND FLOOD MANAGEMENT ACT

Adjourned debate on motion of Hon. R.P. Wortley:

That the report of the committee, 2004-2005, on the Upper South East Dryland Salinity and Flood Management Act 2002, be noted.

(Continued from 7 June. Page 335.)

The Hon. D.W. RIDGWAY: I rise to support the noting of this report. The Environment, Resources and Development Committee has taken a keen interest over the past 12 months in the Upper South-East Dryland Salinity and Flood Management Act, as it is required to do by statute. A number of issues have arisen in the past 12 months. As most members would know, I am a levy payer in that catchment area (albeit at the very eastern end of the catchment area) and I have paid levies for longer than eight years into this project. One of the drains that is yet to be constructed is the Didicoolum drain, also known as the Marcollat Watercourse. It was of particular interest, so the ERD committee visited that area last August. I was disappointed that one of the members of the committee was unable to make it. I understand they had a genuine reason; it was not that they did not want to go. Of course, that person today is the Minister for Environment and Conservation.

From my point of view it is a little disappointing that we now have a minister who has not had a site visit down there as part of the committee, and I hope that she takes the opportunity to travel there in order to get an understanding of the area. I know, Mr President, that you come from Naracoorte. You are familiar with some of those areas and you have probably shorn sheep on some of the properties that have been affected by the rising groundwater and salinity. I do not mean to be critical of the minister, but I encourage her to visit the area in order to get a good understanding of how the project works.

When we visited the property of Dean and Sue Prosser on the Marcollat Watercourse and a couple of other properties, including the Willalooka Pastoral Company, we were faced with the dilemma of landowners who did not want the drain through their property. They are able to manage the environment extremely well with revegetation and a choice of pasture species that seem to tolerate or grow well. Perhaps the word 'tolerate' is not correct, because I do not believe their property is affected by salt.

They were quite concerned about what the drain would do, notwithstanding that the engineers of the project were certainly able to demonstrate to the committee a level of competence and suggest that they would be able to engineer a drain that would not affect the underground water table and still keep the Prossers' property in good heart. The Prosser property, from my understanding, has, if you like, a lens of freshwater floating on top of the saline groundwater that kept their property in good heart and, of course, their pastures used a lot of that freshwater to grow over a much longer season, sometimes up to nine to 10 months. In fact, the Prossers'

neighbour, Mr Ian Johnson, whose levy contribution was to be some $100 000, told minister Hill on one visit that he would be happy to pay his levy of $100 000 if he did not get a drain through his property.

So the ERD Committee recommended to the minister that he choose a different course for this drain and cut it back through the range into the Wongawilli Drain. We were advised by the minister that that was not an option that was available—it was estimated to be an additional cost of $2 million to $3 million—so it was disappointing that the minister chose not to take the advice of the ERD Committee and now we are faced with a drain going through some land of owners who did not particularly want that drain.

One of the complicating factors and concerns with that particular drain is that it may affect the underground aquifer under the Padthaway wine region, and some of the vignerons are concerned that, if we upset the very delicate balance, we might find over a number of years (and the Padthaway region is already suffering some difficulties with increasing salinity) that we have an adverse effect on the Padthaway grape-growing region, and we certainly hope that that will not be the case.

The Bald Hill Drain, which was another drain concerning which we met with a number of owners, is yet to be constructed. I know that the Hon. Sandra Kanck expressed a concern that that area should be perhaps left as a control, if you like, or as an area that does not have any drainage. Although the ERD Committee did not recommend that, we were concerned that the construction of the drain would reduce water flows into the wetlands thereby drying out those wetlands. I think that one of the things that has happened in the Upper South-East drainage scheme is that we have lowered the saline groundwater (and, as I mentioned before, in some areas there is a freshwater lens floating on top of the groundwater) and thereby, because of a combination of dry years, lowered the available freshwater on top, which I think is impacting quite significantly on some of the wetlands.

It is very concerning for not only that particular area of the state but also the whole state that we have a particularly dry period at the moment with virtually no rain and frosts which are causing a range of problems in other farming areas of the state. I think we have to monitor very closely the effect on wetlands, although the prime target of this particular scheme was to bring back agricultural productivity to land that had been affected by rising salinity.

Another of the suggestions that we have had before us, as I mentioned in a contribution here some weeks ago, was the diversion of some of the water from Drain M, which flows out through Lake George into the sea at Beachport, north westwards into the Upper South-East dryland salinity scheme, thereby getting more water into the southern lagoon of the Coorong. I know that there has been some comment on that matter. I expect that it will be an expensive project, although I have been told that the department has applied for that to be included in the scope of the project.

A University of Adelaide study was undertaken in October-December last year to determine the historic water quality of the Coorong, and I think that we must revisit that as a committee and get advice on that particular report to see whether there is any value in bringing freshwater northwards from Drain M. Of course, there are ongoing concerns with Lake George and the outlet into the sea at Beachport. In fact, I recently visited Lake George and there is quite a degree of siltation taking place in the mouth of the lake from tidal flow and, indeed, aerial photographs from 20 or 30 years ago show a changing of the landscape around the mouth of the lake.

I will make one quick reference to the biodiversity offset scheme which is available to levy holders such as myself—in fact, all levy holders—so that if you do not wish to pay the second round of levies in the scheme you are able to set aside some of the native vegetation on your property and it will be valued and thereby have a commercial value in the eyes of this program and you will not have to pay all or part of your levy. During one of the ERD Committee visits to this particular area the officers were talking about this and I mentioned that I had a property that had no significant areas of native vegetation.

I was informed by the officers that that would not matter because they would find something of significance from a biodiversity point of view and that I should put my name on the biodiversity offset scheme, or tick the box on the form when I received it. I said I did not believe them but if they thought they could find something I would be happy to tick the box. It would give me a saving, I think, of a couple of thousand dollars. I ticked the box, pretty close to 18 months or maybe two years ago. Recently, I received a phone call from a young lady in the department that is managing the biodiversity offset scheme and she said, 'We have just looked at an aerial photograph of your property and you don't have anything to offer.' I said I was not surprised, but was surprised when she was surprised when I informed her that departmental officers had told me there would be something on my property that would be suitable. We have some 250 hectares, and I guess there is probably, on average, three trees per hectare across the whole property, so that I estimate there would be somewhere around 750 to 800 remnant trees of blue gum, box and buloke, but no actual clusters.

I am intrigued that, on the one hand, I was told that, yes, they would be able to find something but, on the other hand, when they looked at it, there were not two, three, five or 10 hectares in the corner that could be fenced off and entered in that scheme. I am therefore not sure where I sit in the biodiversity offset scheme. The minister might like to take up with the department my comments about the biodiversity offset scheme, involving people who are confronted with issues such as this and who have ticked the box, having been assured that they would be able to find something but are now are unable to find anything. The ERD Committee has an ongoing role. We know that the Upper South-East Dryland Salinity Flood Management Act has a sunset clause, which finishes in December this year.

It is interesting that, when I was first elected, the then minister Hill said that he needed this new legislation to complete the project, yet now I see, with the lengths of drain yet to be completed, that the Bald Hill Drain will not be completed until June 2007, the Wimpinmerit Drain, June 2007 and the Didicoolum Drain, March 2007. I can see that at least three drains will now be outside the sunset clause. This parliament will be faced with a decision about whether we continue with the Upper South-East Dryland Salinity and Flood Management Act, or let it lapse and let it come under the drainage act that was in place beforehand. My understanding is that all the provisions of the previous act would still cater for the project. We have some deliberations ahead of us.

I also thank the committee members who visited the area last year for their input. I thank the staff members, secretary Philip Frensham and research officer Alison Meeks. We have a couple of new members: the Hon. Mark Parnell and the Hon. Russell Wortley, who I know are very keen and

energetic members of the committee. I am sure that they will make significant contributions to the committee and I look forward to their ongoing interest. Of course, the Hon. Bob Such from another place is a new member on the committee, along with the perennial—I will not say 'evergreen' but the 'perennial' because he keeps popping up everywhere—Ivan Venning, the member for Schubert. I thank past members for their contribution and interest, and I look forward to the new members being equally as interested in this particular report.

The Hon. SANDRA KANCK: This report says that the first signs of conflict about the USEDS project started to emerge towards the end of the 2004-05 reporting period—and that is correct. The comments that I wish to make could perhaps await the report for the 2005-06 period. However, I feel so strongly about it that I want to take this opportunity now to say what a very bad project the whole USEDS scheme is. For over a century or more, there has been a large amount of vegetation clearance and it has exacerbated the dryland salinity in that region. We had a circumstance in the 1980s in the South-East where native vegetation clearance was followed by massive crop failure due to aphids—and it was a monoculture lucerne crop, so they all fell prey to it. This was followed by drought and, in turn, followed by floods, which resulted in salinity coming to the surface when the water drained away many months later.

I can imagine that, when everyone saw that salinity, it really would have spooked them. Despite the incredibly unlikely possibility of those three events ever recurring one after the other within the same short time period, the engineering solution—and that is what it is—of the Upper South-East Dryland Salinity and Flood Management Scheme was considered to be the appropriate response. It was cautiously welcomed by some, although I have to say I was working at the Conservation Council at the time and I can remember saying, 'Oh, my God, another engineering solution. Is this is the best we can do?' Anyhow, time and experience have shown that many more questions have arisen about the wisdom of this decision than there are answers. Now we are seeing some farmers who are fighting to prevent drains on their properties and others questioning the appropriateness of paying levies from which either they do not directly benefit or which are being used to degrade their land.

I can understand that the opportunity this scheme presents for some farmers to turn what they experience as poorly drained land into agriculturally productive land would be very attractive and, of course, those are the farmers who are supporting the scheme. The then environment minister, John Hill, signed off in December 2005 on the construction of the Didicoolum Drain, a drain which, in all likelihood, will destroy the Kyeema wetlands. I found it very strange to have an environment minister signing off on something that would destroy wetlands. The owners of Kyeema have managed both these wetlands and adjacent agricultural land using sustainable principles, including the planting of over one million trees. There is no visible salinity on this property and the pasture is very high quality.

When the committee visited in August last year, a number of the members of the committee who are farmers commented that this was the best property they had seen in the South-East and they were doing this all along sustainable principles without the need for a single drain. However, the Didicoolum Drain has now been approved and it will irreversibly damage the property. The owners of this property are—I do not know at the moment but they certainly were at the time—incredibly distraught that this decision had been made.

The Willalooka wetlands have already been damaged beyond repair by a combination of drainage and grazing. All the evidence in this area shows that, where drains are constructed, permanent wetlands become semi-permanent and semi-permanent ones disappear. Again, I do not understand how John Hill (the former minister for environment) signed off on the Didicoolum Drain. Immediately before the writs were issued for the state election (I think it might have been the day before) the environment minister signed off on the Bald Hill/West Avenue Drain. The watercourse in this area is the only remaining natural one in the Upper South-East and, in all likelihood, it will be destroyed by this drain.

The Parrakie wetlands, the most significant wetlands now left in the Upper South-East, are part of the Bald Hill/West Avenue watercourse. They include 7 000 hectares of native vegetation and 23 wetlands, some of which contain nationally threatened species that should be protected at all costs. For example, if the southern bell frog is lost to this location, the nearest place it can be found is another 54 kilometres away. Yet environment minister John Hill signed off on what will be this destruction. I do not understand. It is sheer madness consciously to approve a scheme that will destroy native vegetation, that will destroy wetlands and, in turn, native animals. The whole scheme is actually based on a false premise—that the water table is rising in the area. It is not.

As far as I am concerned, if this government believes in wetlands, it should put a complete moratorium on any further drain construction in this area. The former minister for environment (not the present one, who I hope might see the light) accepted the advice that more drains are the way to go. One of his departments, the Department of Water, Land and Biodiversity Conservation (the same group that implements the plan) told him that it is the way to go. He took the view that the drains will help farmers, despite the advice from another of his departments—the Department of Environment and Heritage—which is in direct opposition to that of the Department of Water, Land and Biodiversity Conservation. Evidence was given to the committee about that, but I do not think that the current Minister for Environment and Conservation was present when the presentation was given. I have given her a photocopy so that she can see that people in her own department are saying that this is a very bad scheme.

People in the Department of Water, Land and Biodiversity Conservation reject the idea that the climate is drying; hence, they are going full steam ahead on this project. However, there is a lot of evidence that it is a drying climate and, in those circumstances, it is absolutely counterproductive to go down this path of moving water out of that system. I think that the Kyeema property shows that, with appropriate sustainable management, any issues of dryland salinity can be managed. My party and I believe that, as a matter of urgency, there should be a proper independent scientific evaluation—that is, one not done by the Department of Water, Land and Biodiversity Conservation—to determine whether the claims made on the effectiveness of the USED scheme are valid. Until that happens, we believe that all further drain construction should be put on hold.

I also believe that such a study, with proper analysis of the bores and not the occasional checking that is done, would show that the scheme is a waste of taxpayers' money and the money being paid as levies by the land-holders. I think that it is worth while recognising what sort of money we are

talking about. The maintenance costs alone of the scheme will be $700 million per annum. That alone is a good reason to have another look at the scheme. Apart from the financial issue, another good reason is that it is destroying the natural environment.

The Hon. David Ridgway mentioned the sunset clause in the act, which goes out of existence at the end of this year. I for one will be doing all I can to lobby MPs not to support any legislation that allows the extension of the act, because what is going on in the South-East with the USED scheme is nothing short of environmental vandalism.

Motion carried.

SOUTH AUSTRALIAN CERTIFICATE OF EDUCATION

Adjourned debate on motion of Hon. S.G. Wade:

That the Social Development Committee inquire into and report on reform of the South Australian Certificate of Education—

1. With particular reference to the seven principles for reform laid down in the SACE review—responsive, credible, inclusive, worthwhile, futures-oriented, connected, supportive; and
2. Any other related matter.

(Continued from 31 May. Page 227.)

The Hon. A.L. EVANS: I support the motion to refer the new South Australian Certificate of Education to the Social Development Committee for investigation and report, and I place my reasons on the record. First, there are financial concerns. I would like to see the expenditure of $54 million properly justified and, to achieve this, it would be necessary for the new SACE to be an improvement on the old SACE and provide an actual benefit to South Australian families. Secondly, the federal Minister for Education, Julie Bishop, proposes a new uniform certificate called ACE (the Australian Certificate for Education). I would like to know how ACE and SACE will fit together. Will students have an increased number of assessments in year 12?

Thirdly, I would like to refer to the Western Australian experience. The review of SACE comes at a time when secondary education in Western Australia is in turmoil because of a failed new certificate of education (WACE) derived from outcomes based education. Western Australian Premier Alan Carpenter has taken control of the debate out of the hands of his education minister, and Prime Minister John Howard has called outcomes based education gobbledygook. It appears as though this is the direction that the new SACE is taking. Clearly, South Australian families should not have to endure the disaster that was visited upon Western Australia.

We are told that the new SACE proposals differ from those in Western Australia, but generally it is difficult for people outside education to discern what these differences are. Indeed, the proposals for the curriculum and assessment, which have caused parents to protest and teachers to threaten industrial action in Western Australia, are strikingly similar. We are told that the new SACE will be based on capabilities rather than outcomes, as in Western Australia. We need an independent review to determine what the difference is. Why would we not want a system based on subjects? Are not subjects crucial for employers for access to jobs and for parents and senior students for further study? These are issues that could probably be dealt with if the bill was referred to the Social Development Committee.

In both states we are told that students will follow personal learning plans. How can teachers manage different plans for different students in the same class? How can they deliver quality education to classes with no common knowledge and little structure? Students need structure to learn systematically, and subjects such as maths and science demand it for their logical development. Without structure, knowledge is disorganised and can be meaningless.

Why should we scrap the current year 12? It is amazingly inclusive. Non-academic students can access flexible learning plans of all types: for example, community studies, community learning and a vast array of topics in vocational education and training (VET). Why cannot an increase in the school leaving age be managed by expanding these programs, using the $20 million suggested for new training centres? These issues are crucial for the future of our state. They are so important, complex and contested that debate in this chamber will not be enough. We need a full parliamentary inquiry carried out by the Social Development Committee. Only then can this chamber feel confident that it is in a position to do what is best for everyone. For the above reasons, I support the motion of the Hon. Stephen Wade.

The Hon. A.M. BRESSINGTON: I agree in principle with the government's review of SACE. The review strives to increase retention rates and ensure that education is relevant to the needs of students. It is because I support these objectives that I support this motion. The proposed reference to the Social Development Committee will give this parliament the opportunity to assure itself that the proposed changes are the best they can be. We still need to retain the three Rs and students need to understand that these three disciplines are essential to be successful in life and in the real world, particularly if their goal is to enter university and study disciplines such as science, technology, chemistry and physics where a good grounding and understanding of the three Rs is essential.

If we as legislators, educators and parents can alleviate our children's stress at exam time, then we should look at different ways to assess students in preparation for further study and the work force. We should also recognise that the 'success for all' approach in handing out SACE certificates to students does not disadvantage them or cause more problems than it is worth. The new SACE should be balanced between the more rigorous and academically based syllabus approach and success for all students. I agree with the Hon. Stephen Wade when he said in this place on 31 May this year:

> The most valuable gift families and communities can give their youth is a strong education, one that equips them to function as full citizens and able to make their own life choices.

If we go ahead with the ideology of success for all we may run the risk of dumbing down the curriculum and we could force universities to run remedial courses for first-year students, as Mr Rob Crewther, a former SSABSA member, states.

I support any changes in the SACE system that will help our youth reach their goals and prepare them for university and employment, but I think we need to explore the options and investigate the issues to ensure a practical and balanced approach. We need to go into outcome based education fully prepared and planned so we can obtain a balance between core-based essential subjects and new incentive subjects. To do this we can learn from the experience of Western Australia and other states.

The architects of Western Australia's new-age curriculum based on outcomes based education had to postpone its implementation because of confusion over the raft of changes. The Western Australian government had to make significant changes to the new education system and promised to remove the ideological bent and inject compulsory content such as the three Rs. Let us make sure that we get our reforms right. I believe this motion will help us towards that goal.

The Hon. SANDRA KANCK: I rise neither to support nor oppose this motion. I have some reservations about it. I consider that to have another review such a short time after a review is somewhat nonsensical. I had hoped that I might find time to work on some alternative wording of the motion that might satisfy the mover, but I have not had the opportunity to do that. It appears from what the Hon. Mr Wade said when he moved the motion that there is some concern at the university/academic level about what this particular change might bring about.

Change always creates problems. In the New South Wales school system I was in the second year of what was called the Wyndham scheme. There was an enormous amount of fuss about that. I still remember cartoons referring to it as 'the Wyndham scream' and things like that. Everyone thought the world was going to end as we knew it, but of course it did not.

I suspect that similar things will occur as a consequence of this SACE review; that there will be a fuss made but it will all settle down. Having said that, I think it is a bit of a nonsense to have a review of a review. At this stage I simply do not have reasons to oppose the motion, although I think it is something that could go on for years within the Social Development Committee, and I am not sure that is necessarily a good thing.

The Hon. S.G. WADE: In closing this debate I will keep my comments brief, but I did want to bring to the attention of the council some developments since I moved my motion. In moving the motion I did refer to the concerns raised by Mr Rob Crewther (a former SSABSA member and an Adelaide University physics lecturer) who said that the review ran the risk of dumbing down the curriculum. I referred to the comments of Dr Tony Gibbons (a member of the Flinders University Institute of International Education) who said that adapting curricula to students' individual learning and cultural needs was completely unworkable. There were also concerns by Mr Gary Le Duff (from the Association of Independent Schools) in relation to the cost.

Since I moved this motion there have been two further significant developments and, I believe, two further reasons why this reference to the committee would be of value. Only last Saturday the Western Australian government finally agreed to significantly redraft its proposed outcome based education proposal—this also is an outcomes based education proposal—and the Western Australian government was responding to strong concerns, particularly from the teaching profession. I believe we need to note those concerns.

Also, the South Australian Vice-chancellor's Committee has prepared a report since the motion was moved and it said it felt the SACE review was not in the best interests of South Australian universities, or a significant proportion of the students who undertake the SACE. Many of the review recommendations jeopardise the important aspirations of the state to develop a knowledge based economy that is nationally and internationally competitive. It said there was significant scepticism among university academic staff about whether the new SACE enhances South Australia's position to develop as a university city.

I think it is very important that we, as a council and as a state, move forward carefully in reforming an area as important as secondary education leading to employment, education and training opportunities. We need to make sure that we reform the certificate with care. It is with that attitude of care that the opposition believes that a reference to the Social Development Committee is appropriate. It will give all stakeholders the opportunity to express their hopes and concerns and to explore the implications of the proposed SACE reforms.

We accept the seven principles for reform laid down by the SACE review itself: that the certificate should be responsive, credible, inclusive, worthwhile, futures oriented, connected and supportive. The community debate on SACE is going on. The opposition believes that the Social Development Committee can expedite that community consultation and debate. It believes that the committee could facilitate consensus in a timely manner. It is much more useful to have a consideration of these issues at an early stage so that they can be considered in the implementation of the reforms. The Hon. Sandra Kanck said that she was not attracted to a review on a review, and neither am I. The opposition and I are suggesting that a parliamentary committee facilitate consultation—consultation on implementation was a specific objective laid down by the minister. I commend the motion to the council.

Motion carried.

ELIZABETH VALE SCHOOL

Adjourned debate on motion of Hon. Nick Xenophon:

1. That, in the opinion of this council, a joint parliamentary committee be appointed to inquire into and report on—
   - (a) the conduct of any Department of Education and Children's Services employee or officer involved in the selection process for the positions of principal and acting principal, respectively, at the Elizabeth Vale Primary School since December 2003, including any process relating to the appeal of the former principal, Ms O'Connor;
   - (b) the conduct and involvement of the minister and ministerial staff in this matter;
   - (c) the conduct of any Australian Education Union representative involved in the appointment process of a principal and acting principal, respectively;
   - (d) the conduct of any person identified above involved in the management or operation of the school since January 2006, with particular emphasis upon the-
     - (i) management of family grievances;
     - (ii) provision of learning programs;
     - (iii) management and duty of care of students;
     - (iv) management of the school's budget;
     - (v) level of consultation with the school's governing council;
   - (e) establishing appropriate selection guidelines and processes for future appointments of principals and acting principals in all public schools, including increasing the level of community representation in the process; and
   - (f) any other relevant matter.

2. That, in the event of a joint committee being appointed, the Legislative Council be represented thereon by three members, of whom two shall form a quorum of council members necessary to be present at all sittings of the committee.

3. That the joint committee be permitted to authorise the disclosure or publication, as it thinks fit, of any evidence or documents presented to the committee prior to such evidence being reported to the parliament; and

4. That a message be sent to the House of Assembly transmitting the foregoing resolution and requesting its concurrence thereto.

(Continued from 31 May. Page 234.)

The Hon. NICK XENOPHON: When I last spoke on this matter on 31 May I sought leave to conclude my remarks. I was hopeful, perhaps a little too optimistically, that this matter could be resolved. There was the appointment of a facilitator and a mediation process for the school, but communications received from Karen Gordon (the chairperson of the Elizabeth Vale Governing Council and my principal contact) indicate there are still unresolved matters, unfortunately.

Ms Gordon is of the view that this inquiry ought to proceed. Her view is that the questions that have been raised in relation to this matter will be answered only through an inquiry and that it is the only way; that an impasse has been reached; that the set of circumstances relating to the Elizabeth Vale School can be adequately addressed only through an open parliamentary inquiry.

I have already outlined the area of concern. It is a matter that has received much publicity. I note that the former principal, Lisa Jane O'Connor, was the subject of an extensive feature piece in last Sunday's *Sunday Mail*. Clearly this is an area of concern, but it should not be seen as a matter that is simply relating to the Elizabeth Vale school in that it raises broader issues of the governance of school councils, the input of schools in terms of the appointment of principals and of the input that parents have or ought to have with respect to the appointment of principals and issues of school governance generally. There are broader issues here, and that is why I believe a select committee inquiry would be a very useful exercise. By having such an inquiry it would act as a catalyst to a fair resolution of this matter. It will bring matters out in the open, rather than hindering the matter. I urge members to support it.

Should the council support such an inquiry being established, there are fairly discrete terms of reference and I imagine that the evidence that will be called will be reasonably confined to a number of key players involved in this matter and to broader policy issues with respect to the appointment of school principals, advertising and school governance generally. I urge members to support this inquiry as only good can come out of it. Unfortunately, the process with respect to the facilitator and the mediation process seems to have become bogged down, but there is no reason why that process cannot continue to proceed, and I hope it will eventually be fruitful. There is no reason why it cannot proceed parallel to a parliamentary inquiry, and I urge members to support the motion.

The Hon. CAROLINE SCHAEFER: I move to amend the Hon. Nick Xenophon's motion as follows:

In paragraph (1) leave out 'that in the opinion of this council a joint parliamentary committee' and insert 'that a select committee'.

Leave out paragraphs 2, 3 and 4 and insert:

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

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

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

In speaking to the amendment, I indicate the Liberal Party's support for the Hon. Nick Xenophon's motion. The amendment purely seeks to make the committee a select committee of the upper house rather than a joint committee of both houses, given that the government in the other place was opposed to establishing the committee. The reasons for forming this committee were adequately covered by the Hon. Nick Xenophon when he moved the motion. I make clear that the Liberal Party has no desire to turn this inquiry into a witch-hunt, but we too have received a number of complaints and concerns from parents of the Elizabeth Vale school, in particular from the governing council of that school.

There have been so many claims and counterclaims, so many issues of concern raised, that the only way for us to get to the bottom of this is to have an open inquiry within the parliamentary system where obviously relevant witnesses can be called, both from DECS and from the Elizabeth Vale Primary School parents governing council and anyone else who has an interest in this matter. As the Hon. Nick Xenophon has also indicated, there will be some opportunity because of this inquiry to look at governance issues within the system and, in particular, at what powers and respect the governing councils of schools have been treated with generally and what are their authorities. In no way does this necessarily criticise any of the individual people involved in what has become a fracas, but rather it is a genuine desire to get to the bottom of the issues so that the parents, children and staff of the Elizabeth Vale Primary School have the opportunity to get on with their education, with their business, and with that which they do best.

There have been so many claims and counterclaims that one is left wondering whether due process did take place. One wonders also why DECS, if due process took place, has such an aversion to what is a simple inquiry of one house of parliament in an effort to get to the bottom of this matter.

The Hon. I.K. HUNTER: I rise to oppose the motion. There continues to be complex issues between the school and the department, and an independent facilitator is working with both parties to resolve these concerns. This independent process has been agreed by both parties and is now under way. We need to allow this independent process to work without interference. Further debate at this time runs the risk of impeding the process. It is in the best interest of students and staff for this mediation process to reach resolution. The students and staff must be allowed to get on with their teaching and learning, and to this end I urge members to oppose the amendment.

The Hon. SANDRA KANCK: This is a vexed and controversial issue. The reasons for which the Democrats will support or oppose to the motion will be based on what is most likely to be in the interests of the children attending that school and, of course, the interests of the wider community. One must ask what is to be achieved by the setting up of a committee to examine this issue. It is very clear that the former principal, Lisa Jane O'Connor, was held in high esteem by many in that school community, and she obviously must have been a fairly charismatic person.

I read in *The Sunday Mail* that she had been a teacher at the school for 10 years, and for six of those 10 years she had been principal. However, something must have been very wrong because of the inordinate number of teachers who lodged stress claims during that time. I understand that 27 teachers lodged stress claims. While there was a public view that everything was going well in the school, privately the evidence is to the contrary. When the position came up for renewal, the interviewing panel chose not to reappoint Ms

O'Connor. I will quote *The Sunday Mail* article from 18 June which looks at this school and at what apparently happened. It states:

> . . . DECS senior executive Greg Robson sent a letter to every state school stating financial issues, student discipline and staff stress were among the areas of 'serious concern' that had arisen at Elizabeth Vale since early 2005. The allegations 'were a complete surprise' as DECS, she [Ms O'Connor] says, was well aware of a financial dispute between it and the school dating back to 2002 plus several ongoing WorkCover claims, all of which had been investigated and were being resolved by negotiation.

Of course, that immediately makes me prick up my ears if, as well as a debt problem, we are talking of several WorkCover claims. It continues:

> 'We have been investigated by everybody and everything and they have found no evidence of misappropriation or anything else, so you could say I am confused as to what is going on. . . '

I understand that, in relation to the debt issue, the governing council refused to meet with the department's financial adviser so, again, I find Ms O'Connor's comments in this article to be somewhat strange. The article continues:

> More than her own future, Ms O'Connor worries for the future of the school and whether there is a hidden agenda behind her 'public vilification' to discourage teachers from being different. 'My greatest fear is people will look at my experience and that of Elizabeth Vale and decide it isn't safe to be different or innovative. . . '

I really do not believe that will happen. As some members know, I was a teacher in New South Wales more than 25 years ago. I had an individualised reading program, I had an individualised spelling program, and I had an individualised maths program for every child in that classroom so, in a sense, there is nothing new about that. There were certainly no problems more than 25 years ago, so I cannot imagine that the decision not to reappoint Ms O'Connor would result in a message that you cannot be different.

I am also aware of the comfort of continuity in the teaching system. Again, from my experience in New South Wales, I am aware of a teacher who had been at the school that I was at for 10 years before I arrived. I must say that she was not a particularly inspiring teacher, but the children looked forward to going into her class because their older brother or sister had been in that same class, and there was a sense of ownership in relation to that. Interestingly, I visited that school last year, and after 25 years—which means that it is 35 years for her all told—she is still at that same school being as uninspiring as she was except that she has now become a deputy principal through a matter of attrition, I think. Again, the parents think that it is lovely to have that sense of continuity. It does not really matter. They do not look to see how good the teacher is; they just feel comfortable with it.

Coming back to this particular case, from the public's perspective, what we have heard in the media is very confusing. It could be that referral to a committee might sort out this confusion, but there is a departmental mediation process in train at the moment. I believe that setting up a committee such as this at the present time is at the very least inappropriate in its timing. The Hon. Mr Xenophon has told me that that mediation is not working. To some extent, I expect that it will not work while there is the opportunity for this committee to look at it. If they feel they have been wronged, why would they go through that mediation process when they can come along to a committee and make public statements and try to make people wrong, and so on? For me, if this committee is set up, issues such as school debt and how it has been handled will be opened up for the media to put out on parade. The issue of the stress claims of teachers would also be opened up for the media to broadcast, and I do not believe that would be good for Ms O'Connor.

They are just a couple of examples—and there are others that I choose not to put on the record—where I think committee scrutiny will actually rebound in a negative way on that school and that school community. I know that emotions are still raw. People are more able to be manipulated in that situation and, under the media spotlight, they are also more likely to be pushed into corners to make it even more difficult for some sort of resolution to be reached. I therefore believe that resolution needs to be done quietly and out of the media spotlight, and for that reason I will be opposing this motion.

The Hon. M.C. PARNELL: I am not inclined to support the motion. The Hon. Nick Xenophon did the right thing by delaying this motion some three weeks ago in order to give the mediation a chance to have effect. He has now told the council that mediation has not worked. By its very nature, the mediation process was always going to be difficult. My personal view is that I would prefer to be considering this matter after the winter break, because those few weeks that have elapsed are not enough time for such a complex issue to go through mediation. The Hon. Nick Xenophon says that there is no reason why a parliamentary inquiry cannot proceed in parallel with the mediation. I take the contrary view.

The establishment of a parliamentary inquiry will kill any prospect of mediation. We cannot have people sitting around the mediator's table one day and then giving evidence in a more adversarial context before a parliamentary committee the next day. I share the Hon. Sandra Kanck's concerns about the way in which the media will treat this. Clearly, we have a school which is facing, and has faced, its share of difficulties. While it might not be the opposition's intention for this to become a witch-hunt into public education in this state, I think there is the prospect of the media looking at it in such a way.

I also speak from the position of someone who has chaired my local state primary school's governing council, so I have some familiarity with the processes, including principal selection processes. My understanding is that there are no real questions about that process of selection. Certainly, there are questions about the outcome. I would be very concerned if every time a selection process for staff—for principal or deputy principal positions—did not come up with the right answer in terms of unhappy applicants, a committee was established to look into it. I would prefer not to be dealing with it so quickly, but I understand the Hon. Mr Xenophon wants it resolved today. With the present level of knowledge, my inclination is not to support the motion.

The Hon. A.M. BRESSINGTON: I move to amend the Hon. Caroline Schaefer's amendment in paragraph 2 as follows:

> By inserting prior to 'That standing order 389' the words 'That the committee consist of six members and that the quorum of members necessary to be present at all meetings of the committee be fixed at four members; and'.

I have a particular interest in this situation because Elizabeth Vale school is part of where I live. I attended the public meeting, which was attended by the Hon. Mr Xenophon and Ms Vickie Chapman. My concern is that this school had a number of students who found it very difficult to fit into the

Education Department and thrive and learn in the curriculum that was being offered. I was impressed by the principal's efforts to engage those children and keep them engaged, and by the number of unusual projects that she set in place for these children. The success rate of her projects meant that something like 60 per cent of the children, rather than dropping out of school at primary school level, continued on to the high school stages of education; and continue to stay engaged in high school because of her efforts.

The community at large in Elizabeth Vale, who are associated with that school, do believe that there has been a terrible injustice and that normal selection procedures of the new principal were not followed. They believe that the former principal has been treated unfairly. I believe that a select committee on this matter would help to clear it up for the community. It would help to solidify some of the procedures in place for the Education Department. As the Hon. Mr Xenophon said, the advertising process could be made more solid and easier to follow so that principals, students of schools, people on the school committee and parents associated with those schools are confident that their best interests are being met.

The Hon. P. HOLLOWAY (Minister for Police): I wish to speak briefly in this debate to oppose the amendments moved by the opposition; in particular, it is that part which is creeping into select committees all the time to suspend standing order 396. Standing order 396 has served this Legislative Council very well for 140 years or since it was first introduced. It provides:

> When a committee is examining witnesses, strangers [which could include the press] may be admitted, but they shall be excluded at the request of any member or at the discretion of the Chairperson, and shall always be excluded when the committee is deliberating.

Why is that standing order being changed? Why does the opposition wish to do that? Of course, it is to turn these committees into media spectacles. That is the whole problem that we face with standing committees because they are being turned into media spectacles. The Hons Sandra Kanck and Mark Parnell made the point that the last thing we need when looking at these sorts of issues is to turn it into a media circus. If we suspend that standing order that is exactly what will happen, and that is why the government will be opposing the amendment moved by the opposition.

The Hon. R.I. LUCAS (Leader of the Opposition): I did not intend to speak until that extraordinary, outrageous contribution from the Leader of the Government. I note the hypocrisy of the minister. During his eight years in opposition, he quite happily moved a similar provision to select committees, because, from his viewpoint, it was entirely appropriate that the government of the day be held accountable and those committees not be held as secret societies where no-one could see what was going on.

So, there is one rule for Labor governments and there is another rule for Liberal governments. When one looks at the behaviour of Labor members on select committees, it has been appalling over the years, including the behaviour of the Leader of the Government. Also, he was roundly condemned by various witnesses for statements he made recently in relation to evidence of witnesses presented to recent select committees, in addition to his performance on select committees prior to the change of government in 2002.

As one member of this chamber, I cannot stand the cant and hypocrisy of the leader of a government who says it is fine when he is in opposition to have these committees be open and accountable where people can see what is going on and the evidence can be heard; and this is a good and transparent thing, something for a strong democracy because it is a Liberal government and its administration is being held to account. Suddenly, when there is a Labor government that is being held to account, this is an outrage and travesty and ought to be opposed. That sort of hypocrisy ought to be strongly opposed and, for that reason, I would have thought anyone who was interested in the openness and accountability of government, even if for other reasons they were wondering about supporting this motion, ought on that basis to vote for the resolution and vote down the hypocrisy of the Leader of the Government and his government supporters in this chamber on this motion.

The PRESIDENT: I must say that this looks a bit messy. This has been on the *Notice Paper* for a while, and I inform members that the amendments should get to the clerk and staff before this, because it puts a bit of pressure on.

The Hon. Anne Bressington's amendment to the Hon. Caroline Schaefer's amendment carried.

The council divided on the amendment of the Hon. Caroline Schaefer as amended:

AYES (11)

Bressington, A.	Dawkins, J. S. L.
Hood, D.	Lawson, R. D.
Lensink, J. M. A.	Lucas, R. I.
Ridgway, D. W.	Schaefer, C. V. (teller)
Stephens, T. J.	Wade, S. G.
Xenophon, N.	

NOES (10)

Evans, A. L.	Finnigan, B. V.
Gago, G. E.	Gazzola, J. M.
Holloway, P. (teller)	Hunter, I.
Kanck, S. M.	Parnell, M.
Wortley, R.	Zollo, C.

Majority of 1 for the ayes.

Amendment as amended thus carried.

Motion as amended carried.

The council appointed a select committee consisting of the Hons A. Bressington, J.S.L. Dawkins, B.V. Finnigan, Caroline Schaefer, R. Wortley, and Nick Xenophon; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on 20 September 2006.

STATUTES AMENDMENT (ROAD TRANSPORT COMPLIANCE AND ENFORCEMENT) BILL

Adjourned debate on second reading.

(Continued from 20 June. Page 419.)

The Hon. CAROLINE SCHAEFER: I thank the Leader of the Government for accommodating me and allowing me to speak somewhat out of turn because I do have an appointment tonight. I am sure the shadow minister will more than adequately outline the position of the opposition on this bill. I certainly will not be and have no intention of stealing his thunder in this matter. I am sure all of us, for whatever reason, are in favour of making our roads safer, and this bill covers a number of amendments to the Road Traffic Act which will accommodate safer driving—or we certainly hope that it will. My issue is grain carting and the overloading of trucks. This issue has gone on for some time. I recognise that

this bill is national legislation and therefore there is very little leeway for change.

Many members may not understand that the weight of grain actually varies. One can overload a truck on one occasion, while loading exactly the same volume as was loaded previously. Mr President, you would understand that. It depends a great deal on whether there is moisture in the grain, whether it is a hot or cold day or whether there has been rain on the grain. There is some difficulty in getting loads absolutely accurate. The penalties in this bill for overloading are quite extreme and will have a detrimental effect on grain carriers within this state. It has been suggested to me by a number of grain carters that there should be a tolerance of, say, 5 per cent, or whatever it might be. They, too, have no desire to support those people who habitually overload their trucks and in doing so cut up the roads. They also want to see that stopped.

They merely want some tolerance in the event of accidentally overloading because, as I have said, when you are talking about grain, it is a volumetric measure as opposed to a weight measure, in many cases. I spoke to parliamentary counsel today about putting into legislation such a measure; that is, to allow for a tolerance for overloading of grain trucks, but I was advised that that could not be done because what I would be accomplishing, if you like, would be a constant variation of the ability to overload grain trucks. I was also again assured that this was a national scheme and there could be no variation. However, my understanding is that, when this legislation is dealt with in Western Australia, the farming lobby has every intention of introducing a tolerance.

Late this afternoon I received a document produced by AgForce in Queensland. I would like to explain that document because I do believe that many of the concerns of the farming community and many of the concerns raised by the Hon. Graham Gunn in another place regarding overloading farm trucks in particular would be alleviated if the government was prepared to give an assurance that it would look into such a scheme within South Australia. The program is called the grain harvest management scheme. The introduction states:

> The Grain Harvest Management Scheme (the scheme) recognises the difficulty of in-field loading a bulk commodity such as grain, with varying moisture contents and densities, to within an accurate weight tolerance. . . The Scheme will function. . . from 1 July to 30 June the following year. . . Overall, the intent of the scheme is to allow for an efficient grain harvest and to protect the road infrastructure through eliminating gross overloading by appropriate administrative procedures and compliance activities. Participation in the scheme is not restricted to farmers and is open to anyone making deliveries to approved receival points during the harvest.

The administration of the scheme has been taken on by AgForce, which is a peak agricultural organisation in Queensland. It encompasses the Cattlemans Union of Australia, the Queensland Grain Growers Association and the United Graziers Association. It is the peak agricultural group within Queensland. As I have said, it provides the administration of the scheme. One of the examples it has given, which I think is interesting for us all, is the case of a single-drive bogie trailer carrying 6.5 tonnes over its legal limit. That vehicle is 20 per cent overloaded, yet it produces twice the damage of a legally loaded vehicle. The same vehicle overloaded by 10 tonnes, or 32 per cent, produces three times the damage. It also notes that a single-axle rigid truck, when overloaded by five tonnes, will produce more road damage than that of a legally loaded road train.

This group recognises that it does not want habitual overloading, and it certainly does not want major overloading. However, the scheme it has introduced requires an accreditation process. Applicants to be part of the scheme are obliged to study an information book and answer a number of questions. Following successful completion of that process, they are required to register. They are registered on an annual scheme membership fee which, I understand, is $66 per truck. They receive a numbered Grain Management Harvest Scheme membership and identification stickers, which must be displayed prominently on their truck.

The primary benefit of membership of the scheme is the ability of vehicles registered within the scheme to take advantage of the following scheme flexibilities when in-field loading: maximum flexibility of up to 7.5 per cent above the registered gross mass for a vehicle or vehicle combination and axle/axle group flexibilities of up to 10 per cent above regulation axle/axle group masses. Maximum mass flexibilities are the scheme's mass limit for the configuration of the vehicle being used or the manufacturer's mass rating for the vehicle, whichever is the lesser. It is made very clear that under no circumstances is the manufacturer's gross vehicle mass or gross combination mass limit to be exceeded.

As I have said, participants need to attach their numbered sticker permanently to the vehicle. They are responsible for ensuring that they are aware of the manufacturer's gross vehicle mass or combination limit and that the loading and operating of their vehicle complies with all relevant laws and regulations, as well as the rules of the scheme itself. The other participants in the scheme are the registered receivers which, in the case of South Australia, is ABB Ltd as the receivers of grain. Registered receivers have agreed to work with Queensland Transport, the Department of Main Roads and AgForce, as the administrators of the scheme, to ensure its viability and success. From what I have read, it seems that the obligation on the registered receivers is to weigh, as one always must, at a weighbridge and provide the records of the weighing of the trucks to Queensland Transport and the inspectors.

The aim of the scheme is to provide efficiency and flexibility within the grain industry, while recognising the difficulties of accurate in-field loading of bulk grain and the need to ensure that the road network is protected. Registered receivers will not accept deliveries in excess of the scheme or regulation gross mass. So, trucks can be turned around. As I have said, they will allow Queensland Transport staff to access their sites in order to educate staff or discuss any issues associated with the scheme, and they will also allow inspection thereof.

There are some quite strict compliance conditions that are necessary. Normal roadside enforcement powers of transport inspectors are unchanged. However, unless the Grain Harvest Management Scheme is being abused, participating vehicles will not generally be subject to roadside enforcement. There are a number of compliance conditions. Vehicles refusing to be weighed will be penalised, vehicles found to be grossly exceeding the scheme mass flexibility will be penalised, and so on. Generally, the scheme allows for 7.5 per cent maximum flexibility on regulation gross mass for a particular vehicle combination and 10 per cent for maximum flexibility on regulation axle/axle group masses. Vehicles with a manufacturer's rating greater than the registered regulation masses but less than the permitted gross scheme masses and/or axle scheme masses are permitted up to the manufacturer's limits only.

It seems to me that there is, in fact, a scheme in practice in Queensland, with the cooperation of the government in Queensland, the peak body of the farmers and the receivers of grain, which would alleviate many of the concerns of country truck drivers, carters and farmers who have contacted me. As an example, these are the actions involving trucks that are registered within the scheme. They are subject to compliance. If they are not registered within the scheme, even if they are registered vehicles, if they are not carting grain it does not apply and, if they are not carting to their stated destination, it does not apply.

Up to 7.5 per cent over regulation gross mass limits, there is no penalty, provided the manufacturer's limits are not exceeded; greater than 7.5 per cent but less than 15 per cent, there is breach action; but on the third breach in this category, vehicles will be removed from the scheme; greater than 15 per cent over regulation gross mass constitutes a breach and vehicles are removed from the scheme; greater than 20 per cent over regulation gross mass, vehicles are breached and grounded and removed from the scheme. So, there is the authority to remove vehicles from the road.

I think this is a good compromise, a sensible scheme. On behalf of the constituency that I continue to try to represent, I ask the government to take a serious look at this scheme that is already operating in Queensland under a Labor government or to come back with at least a commitment to look at it. Again, I thank the minister for allowing me to bring this scheme to the attention of members tonight.

The Hon. I.K. HUNTER secured the adjournment of the debate.

[Sitting suspended from 6.16 to 8.02 p.m.]

DEVELOPMENT (DEVELOPMENT PLANS) AMENDMENT BILL

The Hon. P. HOLLOWAY (Minister for Police) obtained leave and introduced a bill for an act to amend the Development Act 1993 and to make related amendments to the Local Government Act 1999 and the Parliamentary Committees Act 1991. Read a first time.

The Hon. P. HOLLOWAY: I move:

That this bill be now read a second time.

The Development Act 1993 and associated regulations came into operation on 15 January 1994. This act and regulations set the statutory processes and procedures for the South Australian planning and development system. Substantial amendments to the Development Act 1993 were made in 1997, 2001 and 2005. This government is progressing with a wide range of initiatives to improve the state's planning and development system in order to provide greater certainty for the community and applicants in regard to policies, procedures and timeliness.

As part of this program, the Development (Development Plans) Amendment Bill 2006 is the second of a suite of bills that the government proposes to introduce. The introduction of these bills highlights the breadth of amendments proposed by the government. It also provides parliament with an opportunity to consider each bill in manageable parcels, rather than the all-encompassing Sustainable Development Bill introduced into parliament in 2005.

In addition to splitting the legislative initiatives into separate key parcels, a number of provisions in the sustainable development bill have not been included, or amendments have been made to the provisions as a result of consultation and amendments filed by the opposition and other parliamentary parties. There can be no doubt that the necessary improvements to the planning and development system should involve state and local government, giving greater priority to the setting of clear strategic policies in order to provide greater certainty for the community and applicants. Councils and agencies also need to have a clear strategic framework within which to work.

The bill reinforces the importance for state and local government to undertake strategic planning on a regular basis, and to involve the community in preparation of such policies. Such strategic policies set the framework for more detailed development assessment polices contained in development plans.

In relation to strategic planning, the bill refers to both physical and social infrastructure. There is a requirement that the relevant minister and government agencies provide councils with information on infrastructure planning. This is an important issue facing the state, and the government is committed to a systematic approach to the provision of infrastructure. The infrastructure planning associated with the section 30 review will be taken into account during the development plan amendment process, herein to be referred to as the DPA process. Additional infrastructure planning may also need to be undertaken at the DPA stage, and this is acknowledged in the bill.

The bill requires the government to review the planning strategy on at least a five-yearly basis. Such policies need to also address infrastructure issues. The bill also requires councils to undertake strategic planning on a five-yearly basis. Such provisions are addressed by clarifying the key elements in the councils' section 30 reviews which have been a requirement of the Development Act 1993 since 1994. Such state and local strategic reviews ensure that the full range of economic, environmental and social issues (including infrastructure planning) are set out.

This bill includes consequential amendments to the Local Government Act 1999, to enable the strategic planning requirements of the Development Act, and the strategic management requirements of the Local Government Act, to be undertaken as a single and complementary exercise. This avoids a duplication of procedures under separate acts of parliament.

The bill also encourages state and local government to ensure that development assessment policies contained in development plans are pertinent and up to date. This means that the community is more confident in the way in which their neighbourhood will evolve over time, and will assist applicants in deciding the most appropriate location to undertake development. As part of the streamlining of the amendments to development plans, the bill places particular emphasis on state and local government, paying greater attention to the timeliness of the review of policies and development plans.

In relation to desired character, the community has indicated that it considers the protection and enhancement of local neighbourhoods is important. Applicants have indicated that they require better information on the design standards by which their applications will be assessed. As a consequence, the government, through this bill, strongly promotes the inclusion of desired character policies in development plans. The separate issue of local heritage listing and development plans is to be included in a Development (Local Heritage) Amendment Bill 2006, which we propose to introduce into parliament later this year.

In relation to the development plan amendment process, the bill sets out the revised procedures by which councils are to prepare and consult on proposed amendments to the development plan for the area. The bill replaces the existing term 'plan amendment report' (or PARs, as they are known) with the term 'development plan amendment' (DPA) in order to more accurately reflect the role of the documents released for public consultation. The bill also provides three clear procedural paths to amend such policies.

Process A relates to complex controversial matters, with separate agency and public consultation. Process B relates to most policy amendments where the key strategic issues are clearly defined and agreed to by the council and the minister. Process B involves simultaneous agency and public consultation and as such the process will be much shorter than that of process A. The third process, process C, is the same as process B. However, it enables the community consultation process to be shortened to one calendar month rather than two, but on the proviso that every property affected by the proposed changes is notified by direct mail of the proposed DPA.

Agreement of process A, B or C will be reached by the minister and the council for each PAR/DPA at the initial statement of intent stage. The amendments to the procedures associated with the preparation of development plan amendments gives greater flexibility to the minister and councils on deciding upon the appropriate course to take. This avoids the one size fits all approach to amending development plans that currently exists, and will enable the process to be tailored to the complexity of issues at hand. This amendment will importantly speed up the process for development plan amendments that are relatively simple or have initial broad support, whilst allowing more time for the more complicated development plan amendments.

In regard to the timeliness of processing of DPAs, the bill requires that the ERD Committee of parliament be provided with a report showing the agreed timetable is set out in the statement of intent and the actual time taken. This will enable the ERD Committee, as well as the minister, to monitor the progress of DPAs. The bill also enables the minister to have an independent investigator to examine the policy review process of a council if there are consistent ongoing delays in the policy review provisions of the act. These provisions mirror the current provisions of section 45A of the act relating to the investigation of development assessment procedures of councils. The section 45A provisions were supported by the LGA when they were introduced in 2001.

I turn now to the improvement in PAR timelines. The Rann government has, over the past few years, put considerable effort into improving internal processes within the existing legislation in order to improve the processing time for PARs. Two initiatives of the Rann government have been the better development plan program, which has been warmly embraced by local government and the streamlining of PARs project that was introduced in September 2004 jointly by the former minister and the late John Legoe, who was at the time President of the LGA. Recent statistics show that 109 active PARs in July 2005 increased to 131 in May 2006. This demonstrates the continued trend of high levels of activity being undertaken across the state in relation to development plans. The government is keen to see such high levels of activity continue and acknowledges that increased levels of activity can at times mean resources are spread more thinly and can consequently result in longer time frames. However, despite the marked increases in activity, the statistics show more PARs are less than 24 months old—from 55 per cent to 59 per cent—and fewer PARs are older than 24 months—from 45 per cent to 41 per cent.

The intent of the changes proposed by the bill is to provide councils, government agencies and the community with procedural certainty through a horses for courses approach that the government is confident will, over time, deliver better quality development plans, whilst continuing to improve the median times. On the whole, council PARs are being completed more quickly. The median time frame for an approved council PAR process was 29 months in 2003-04. That figure is now down to 21 months in 2005-06. The average time to complete a ministerial PAR has fallen from 27 months in 2004-05 to 22 months in 2005-06. This demonstrates that this government is responding more quickly to issues of importance to the state.

Given the recent progress of the Development Panels Amendment Bill 2006, and the emphasis clearly being placed on councils to focus on engaging with their communities on getting their policies right, we expect the number of PARs to increase before the end of the next financial year.

In relation to the role of better development plans, the government last agreed to 11 BDP conversion statements of intent. We now have a situation where Ceduna, Alexandrina, Whyalla and Playford are preparing statements of intent. Twenty-five councils have shown general interest but are yet to lodge an SOI. Thirty-six out of the 68 councils—more than half the state—have voluntarily embraced the BDP program in preparing PARs.

I turn now to major development process amendments. This bill also incorporates provisions to improve the major development assessment procedures. Experience from the operation of these provisions since 1997 has indicated that the six week period associated with the issues paper provisions provide little or no additional information to that already identified by the expert panel responsible for preparing the guidelines. Thus, in line with the government's priority of promoting timely decisions without reducing the quality, these provisions are to be repealed. The six to 10 week public consultation for the different forms of major development assessment remains unchanged.

The role of the major developments panel is incorporated into the Development Assessment Commission. However, the current requirement for specialist experts is retained by the minister, appointing specialist members to the Development Assessment Commission when DAC is dealing with a major development proposal. Given the common membership on both existing bodies, and the ability to appoint additional specialist members, it is appropriate to reduce the number of statutory bodies. It will be easier for the public to understand the role of the commission and meetings will be easier to arrange while still maintaining the benefits of the current system. I commend the bill to the council. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Development Act 1993*

4—Amendment of section 4—Interpretation

This is a consequential amendment.

5—Insertion of section 10A

Under proposed new section 10A, the Development Assessment Commission will, when acting under Part 4 Division 2 Subdivision 1 of the Act, be able to be constituted of 1 or 2 additional members appointed by the Minister for the purpose. The role of the Development Assessment Commission in such a case will replace the role of the Major Developments Panel.

6—Amendment of section 11—Functions of the Development Assessment Commission

The role of the Development Assessment Commission is to be clearly focused on development assessment. In doing so, the Development Assessment Commission will be able to provide advice and reports to the Minister on trends, issues and other matters that have emerged through its assessment of applications under the Act.

7—Amendment of section 21—Annual report

The period for the completion of the annual report is to be extended to 31 October in each year.

8—Amendment of section 22—The Planning Strategy

The Minister will be required to ensure that the various parts of the Planning Strategy are reviewed at least once in every 5 years.

9—Amendment of section 23—Development Plans

Express provision is to be made relating to a Development Plan describing clear directions with respect to the characteristics and other aspects of the natural or constructed environment that are desired within the community.

10—Amendment of section 24—Council or Minister may amend a Development Plan

These amendments relate to the initiation of an amendment to a Development Plan. Section 24(1)(a)(iv) of the Act is to be recast and, in doing so, the ability of the Minister to act under this provision will be limited to circumstances where the Minister considers "that the amendment should proceed after taking into account the significance of the amendment and the provisions of the Planning Strategy". Section 24(1)(a)(iva) is also to be recast so that an amendment may be finalised if a council has failed to take a step under section 25 after being required to do so by the Minister. Section 24(1)(a)(v) is also to be recast given the proposed new arrangements under section 30. Another new provision will allow the Minister to initiate an amendment in order to achieve consistency in the format of Development Plans, or in headings, terms, names, numbers or other forms of identifying or classifying material, or in order to introduce, revise or extend a set of objectives or principles that have been developed by the Minister to provide or enhance greater consistency across various policies. Another amendment will allow the Minister to initiate an amendment at the request of the Mining Minister.

11—Amendment of section 25—Amendments by a council

These amendments relate to the processes to be followed by a council that is proposing to undertake an amendment to a Development Plan. The council will now prepare a "Development Plan Amendment" (or **DPA**) rather than a "Plan Amendment Report". The processes surrounding consultation on a DPA will be set out more fully in the Act.

12—Amendment of section 26—Amendments by the Minister

This provision makes a series of amendments to the processes that are to be followed by the Minister when the Minister is considering an amendment to a Development Plan.

13—Amendment of section 27—Parliamentary scrutiny

It is proposed that when an amendment under section 25 is submitted to the Environment, Resources and Development Committee under section 27 of the Act, the Minister will provide a report that sets out—

(a) the timelines that were agreed between the Minister and the council for taking each step in the process; and

(b) the actual time taken for each step; and

(c) a report on the reasons for any delays; and

(d) if relevant, a report on why Process C was adopted; and

(e) other material considered relevant by the Minister.

Another amendment to section 27 will extend the period within which the Environment, Resources and Development Committee must consider a DPA if the period would otherwise lapse within an election period.

14—Amendment of section 28—Interim development control

A proposed amendment to a Development Plan will now be given interim effect according to a determination of the Minister (rather than the Governor).

15—Amendment of section 29—Certain amendments may be made without formal procedures

The Minister will be able, by notice in the Gazette, to amend a Development Plan in order to provide greater consistency with any provision made by the regulations. Another amendment will allow the Minister to remove from a Development Plan a place relevant to State or local heritage where the relevant building or other item that has been demolished, destroyed or removed.

16—Substitution of Part 3 Division 2 Subdivision 3

The scheme for periodic reviews of Development Plans by councils is to be revised and incorporated into a scheme involving the preparation of *Strategic Directions Reports*. A report will be required to be prepared within 12 months after a significant alteration to the Planning Strategy, as identified by the Minister, or in any event within 5 years after completion of the last report under this section.

17—Insertion of section 31A

This provision will enact a new power to initiate an investigation into a council if the Minister has reason to believe that the council has failed to efficiently or effectively discharge its responsibilities under Part 2 Division 2 Subdivisions 2 or 3 in a significant respect or to a significant degree. The provision is based on the scheme that currently applies under section 45A of the Act.

18—Amendment of section 45A—Investigation of development assessment performance

These are consequential amendments.

19—Amendment of section 46—Declaration by Minister

Proposed new subsection (1a) will allow a determination as to whether a development or project is of major environmental, social or economic importance under section 46 to take into account cumulative effects associated with other developments, projects or activities that may occur within the vicinity of the relevant site.

Proposed new subsection (1b) will allow the Minister to make a declaration under section 46 with respect to a development or project that is related to a development or project of major environmental, social or economic importance (and that is within the ambit of a declaration under subsection (1)).

20—Repeal of section 46A

The Major Developments Panel is to be dissolved and its role transferred to the Development Assessment Commission.

21—Amendment of section 46B—EIS process—Specific provisions

22—Amendment of section 46C—PER process—Specific provisions

23—Amendment of section 46D—DR process—Specific provisions

These are consequential amendments.

24—Amendment of section 48—Governor to give decision on development

It is proposed to deal expressly with a situation where a person who has development authorisation under section 48 is seeking to have that development authorisation varied. Another amendment will allow the Governor to delegate a power or function to the Minister (as well as to the Development Assessment Commission).

25—Amendment of section 48E—Protection from proceedings

26—Amendment of section 49—Crown development and public infrastructure

27—Amendment of section 49A—Electricity infrastructure development

28—Amendment of section 52A—Avoidance of duplication of procedures etc

29—Amendment of section 75—Applications for mining tenements to be referred in certain cases to the Minister

These are consequential amendments.

30—Insertion of section 101A

Each council will be required to establish a strategic planning and development policy committee in accordance with the

requirements of this new section (unless the Minister is satisfied that another committee of the council is fulfilling the same functions).

Schedule 1—Related amendments and transitional provisions

The Schedule will make necessary or related amendments to other Acts, plus various transitional provisions in connection with the amendments effected by this Act.

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

EMPLOYEE OMBUDSMAN

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

That, pursuant to section 58 of the Fair Work Act 1994, the nominee of this council to the panel to consult with the Minister for Industrial Relations about an appointment to the position of Employee Ombudsman be the Hon. B.V. Finnigan.

In support of this motion, I indicate that, as I understand it, under section 58 of the Fair Work Act, there is a panel that consults with the Minister for Industrial Relations about an appointment to the position of Employee Ombudsman. There is one nominee to come from the Legislative Council and one from the House of Assembly. It is my understanding that the shadow minister in another place, the member for McKillop, has been nominated in that house. The government nominates the Hon. B Finnigan in the Legislative Council. I commend the motion to the council.

The Hon. R.I. LUCAS (Leader of the Opposition): I understand that this motion is in accordance with the conventions that have been followed by governments and oppositions in recent years. We have no opposition to the motion.

Motion carried.

COMMISSION OF INQUIRY (CHILDREN IN STATE CARE) (PRIVILEGES AND IMMUNITIES) AMENDMENT BILL

The Hon. P. HOLLOWAY (Minister for Police) obtained leave and introduced a bill for an act to amend the Commission of Inquiry (Children in State Care) Act 2004. Read a first time.

The Hon. P. HOLLOWAY: I move:

That this bill be now read a second time.

The Commission of Inquiry into Children in State Care has been operating since 18 November 2004. It investigates allegations of sexual abuse of state children and the deaths of state children caused by criminal conduct. So far, 872 persons have contacted the commission and made allegations of sexual abuse of them while in state care, and others have also contacted the commission alleging sexual abuse of other children while in state care. Incidentally, the commission is also investigating 619 deaths of children in state care back to 1908. It is anticipated that the vast majority of those deaths were not caused by criminal conduct but by natural causes, disease and accident.

The commissioner, E.P. Mulligan QC, has asked the government to promote in parliament an amendment to the Commission of Inquiry (Children in State Care) Act 2004. Honourable members will know that persons approaching the commission and giving evidence do so in confidence with the knowledge that what they say is not passed on to anyone else without their consent, unless the commissioner determines that he must do so in the public interest. Many matters have been referred to the police, and it is anticipated that criminal proceedings will be commenced against alleged perpetrators.

The commissioner wants to ensure that the confidentiality provisions of the legislation are always observed. It is necessary that persons can approach the commission in confidence. If those confidentiality provisions are not maintained, it is anticipated that many persons will decide to not make disclosure. It has been recognised that disclosure of sexual abuse by victims and survivors is part of an important healing process. The proposed amendment will prevent disclosure to alleged perpetrators of all the information which has been provided to the commission by the person making the allegations.

When a matter is referred to police, police undertake their own investigations, and the disclosure of information provided to them by an alleged victim occurs according to the usual procedures in the criminal justice process. Without the proposed amendments, the commissioner may be forced to disclose all information which he has received even though it may not be admissible in any legal proceedings. The commissioner is of the view that his work will be severely compromised if persons charged with criminal offences may compel disclosure of information which has been given in confidence. I commend the bill to members. I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Commission of Inquiry (Children in State Care) Act 2004*

3—Amendment of section 13—Privileges and immunities

This clause amends section 13 to prevent the issue of a subpoena or other court process—

- requiring an authorised person or person appointed or engaged under section 8 of the Act, or any person who formerly occupied such a position, to appear to give evidence of matters coming to the person's notice in his or her official capacity (or former official capacity); or
- requiring the production of a document, object or substance received by, or prepared or made in the course of or for the purposes of, the Inquiry.

The provision also provides that if such a process is issued before the commencement of the provision, it is of no force or effect.

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

STATUTES AMENDMENT (DISPOSAL OF HUMAN REMAINS) BILL

Second reading.

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

Leave granted.

The *Statutes Amendment (Disposal of Human Remains) Bill 2006* amends the *Births, Deaths and Marriages Registration Act 1996* to address an anomaly that prevents the lawful disposal of human remains by means other than cremation where the necessary medical certificates have been lost or destroyed.

The Bill also amends the *Cremation Act 2000* to authorise the Registrar of Births, Deaths and Marriages to issue a cremation permit in a small number of cases where the certificates necessary for a permit under section 6(2) of the Act cannot be produced.

In addition, the Bill contains consequential amendments to the *Coroners Act 2003* to make it clear that the State Coroner may issue an authorisation for the disposal of human remains for a reportable death, irrespective of when the death occurred. Other minor, technical amendments to these Acts are also included in the Bill.

I seek leave to have the remainder the second reading inserted into *Hansard* without my reading it.

Second reading

Currently, under section 50A of the *Births, Deaths and Marriages Registration Act*, human remains cannot lawfully be disposed of (by means other than cremation) unless the person seeking to dispose of the remains has a certificate as to cause of death, issued under either section 12 or 36 of the Act, or an authorisation for disposal issued under the *Coroners Act*. In the case of old remains that have been disinterred after many years' burial or internment, the original medical certificate as to cause of death may not be available. Where the deceased's death is not a "reportable death" under the *Coroners Act*, this precludes lawful disposal even though the deceased's death was duly registered and the original interment lawfully conducted.

To remove this anomaly, Part 2 of the Bill amends section 50A to add new subsections to provide that the Registrar of Birth, Deaths and Marriages or the Minister may authorise the disposal of remains (by means other than cremation) in the absence of the documents required under subsection (1). The Registrar may only issue an authorisation where the death is registered and she is satisfied that:

- the particulars entered on the Register record that the deceased died of natural causes; or
- the State Coroner does not require the remains for the purpose of an inquest or for determining whether an inquest is necessary or desirable.

This means that in cases where the cause of death is recorded as being other than from "natural causes", the Registrar must consult with, and be satisfied that, the State Coroner has no interest in the remains before authorising disposal.

In exceptional cases, where the requirements of subsection (1) or (3) cannot be satisfied, the Minister may authorise the disposal of human remains. New subsection (4) provides that such authority may be given by the Minister on such conditions as the Minister considers appropriate.

Part 3 of the Bill contains consequential amendments to section 32 of the *Coroners Act* to clarify that the State Coroner may issue an authorisation for the disposal of human remains for a reportable death, irrespective of when the death occurred. Currently, section 32 authorises the State Coroner to issue an authorisation for disposal of human remains. . . *[w]here a reportable death occurs*

To remove doubt that the State Coroner may issue an authorisation for the disposal of human remains for a reportable death, irrespective of when the death occurred, the Bill replaces the words *Where a reportable death occurs* with: *Where there has been a reportable death*.

Part 4 of the Bill amends section 6 of the *Cremation Act*.

In cases where the deceased's death is not reportable under the *Coroners Act*, section 6(2)(a) of the *Cremation Act* prohibits the Registrar from issuing a cremation permit unless the application is accompanied by either—

(1) certificates from two doctors (one of whom was responsible for the deceased's medical care immediately before death or who examined the body of the deceased after death); or

(2) a certificate from a doctor who has completed a *post mortem* examination of all the vital organs of the deceased, certifying that the deceased died from natural causes

The strict requirements of section 6(2)(a), although entirely appropriate, mean that cremation of old or incomplete remains is generally not possible in non-coronial cases. This will be so even where there is no suggestion of foul play, the deceased's death has been certified by a treating or examining doctor as having been from "natural causes", such details having been duly recorded in the Register of Deaths in accordance with the law applying at the time and cremation of the remains would otherwise be entirely appropriate. Where the remains of the deceased have been disinterred inadvertently, it can be distressing (not to mention expensive) for the family to have to inter the remains in a grave or mausoleum, which are the only choices for disposal within the State where cremation is not possible.

The Government believes that, in such cases, and provided the Registrar is satisfied that it is appropriate for the remains to be cremated, the Registrar should be able to issue a permit, subject to some safeguards, thereby allowing the family of the deceased to cremate the remains rather than bury or inter them.

As such, Part 4 of the Bill amends section 6 of the *Cremation Act* to insert a new subsection (3)(b) that authorises the Registrar to issue a cremation permit where the certificates required under subsection 6(2)(a) cannot be obtained. To ensure that an applicant for a cremation permit cannot use the new provision to circumvent the evidentiary requirements of subsection 6(2)(a), the issue of permits by the Registrar under the new provisions will only be permitted where the Registrar is satisfied that—

- there are good reasons why the certificates required under subsection 6(2)(a) cannot be produced; for example, because of the age or condition of the remains or because the certificates have been lost or destroyed;
- the deceased's death has been recorded in the Register, in accordance with the legislative requirements applying at the time of the deceased's death, as having been from "natural causes";
- the State Coroner does not require the remains for the purpose of an inquest or for determining whether an inquest is necessary or desirable, and
- there is no other reason why the permit should not be issued.

It will be up to the Registrar to determine what evidence she requires to be satisfied of the relevant matters in any particular case. To this end, the Registrar may, if she considers it appropriate, require the applicant to verify information on statutory declaration or by some other method.

All other relevant provisions of the *Cremation Act* will apply to permits issued under these new provisions. Relatives will retain the right to object to a cremation under section 7 and the Attorney-General, the State Coroner or a magistrate may prohibit a cremation under section 8.

The matters about which the Registrar must be satisfied will ensure that the new provisions will not become an alternative means by which relatives of deceased persons can obtain cremation permits in a way that circumvents the evidentiary requirements of section 6(2). That provision will remain the primary avenue by which cremation permits will be issued.

Furthermore, these provisions will not give people the ability to change their mind about the method of disposal of a relative's body once remains have been buried or interred in a mausoleum. As Members of this place would be aware, non-cremated human remains may only be removed from the place of burial or interment with the written approval of the Attorney-General. To ensure that appropriate standards of public health and decency are maintained, and the wishes of deceased persons respected, approval for exhumations are granted only where there are cogent and compelling reasons for doing so.

The passage of this legislation will not change the approach taken by the Attorney-General when considering exhumation applications.

It is important for members of the public to understand that, should they wish to have the remains of a deceased family member cremated because, say, the deceased had, before his or her death, expressed a desire to be cremated, the application for a cremation permit should be made at the time of death.

Parts 2 and 4 of the Bill also contain minor, technical amendments to the relevant provisions of the *Births, Deaths and Marriages Registration Act* and *Cremation Act* to clarify that certificates and authorisations issued under repealed legislation can be used to satisfy the relevant statutory requirements.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Births, Deaths and Marriages Registration Act 1996*

4—Amendment of section 50A—Documents to be provided before disposal of remains

This clause amends section 50A(1) to enable a person to dispose of human remains if that person has received a

certificate issued under the current Act or a corresponding previous enactment.

The proposed amendment to section 50A(1)(b) will enable an authorisation for the disposal of human remains to be issued under either the *Coroners Act 2003* or a corresponding previous enactment. This addition of the phrase "or a corresponding previous enactment" will allow for the disposal of old remains where the required documentation was issued under now repealed legislation.

This clause further amends section 50A by redesignating current subsection (2) as subsection (5) and by inserting new subsections (2), (3) and (4).

New subsection (2) will allow a person to dispose of human remains, in the absence of documents required by subsection (1), if an authorisation for the disposal of human remains has been issued by the Registrar or the Minister.

New subsection (3) will prevent the Registrar from issuing an authorisation under subsection (2), unless the deceased's death has been registered under the Act or a corresponding previous enactment and the Registrar is satisfied that the particulars entered into the Register record that the deceased died of natural causes or that the State Coroner does not require the human remains for the purposes of the *Coroners Act 2003*.

Proposed subsection (4) provides that an authorisation issued by the Minister may be subject to such conditions as the Minister thinks fit.

5—Amendment of section 55—Regulations

This clause amends section 55 by deleting and substituting subsection (2). The proposed amendment would allow the regulations to impose a penalty not exceeding a fine of $1 250 for a contravention of a provision of the regulations, to fix fees and provide for the payment, recovery, waiver or refund of fees.

Part 3—Amendment of *Coroners Act 2003*

6—Amendment of section 32—Authorisation for disposal of human remains

The proposed amendment to section 32 will broaden the authority of the State Coroner to authorise the disposal of human remains where there has been a reportable death (irrespective of when the death occurred).

Part 4—Amendment of *Cremation Act 2000*

7—Amendment of section 4—Interpretation

The proposed amendment to section 4 will insert a definition of ***Register*** so that it has the same meaning as in the *Births, Deaths and Marriages Registration Act 1996*.

8—Amendment of section 6—Issue of cremation permit

This clause amends section 6(2) to enable the Registrar to issue a permit if an authorisation for the disposal of human remains is issued under the *Coroners Act 2003* or a corresponding previous enactment.

It is proposed to delete subsection (3) and substitute new subsections (3) and (3a). New subsection (3) will provide for exceptions to the general rule stated in subsection (2) that a cremation permit may not be issued by the Registrar unless the application for the permit is accompanied by certain documents.

Current subsection (3) provides that a person may apply for a cremation permit in relation to a person who died out of South Australia without the documents required by subsection (2) if the application is accompanied by the equivalent documents obtained from the jurisdiction in which the deceased died. That subsection is to be re-enacted as paragraph (a) of new subsection (3).

New paragraph (b) of subsection (3) is an addition and will allow for permission to cremate in other cases where the documentation required under subsection (2) cannot be supplied. The Registrar will have the authority to issue a cremation permit if satisfied that—

- the deceased's death has been registered under the *Births, Deaths and Marriages Registration Act 1996* or a corresponding previous enactment; and
- the particulars entered in the Register record that the deceased died from natural causes; and
- there is good reason why the documents cannot be produced (a note is added to provide examples of what might constitute good reason for the non-production of documents); and
- the State Coroner does not require the human remains for the purposes of the *Coroners Act 2003*; and
- there is no other reason why the permit should not be issued.

Proposed subsection (3a) will give the Registrar power to require that information supplied to establish why documents cannot be produced to be verified by statutory declaration or some other means.

9—Amendment of section 9—Regulations

This clause amends section 9 by deleting and substituting subsection (2). The proposed amendment would allow the regulations to prescribe penalties, not exceeding $2 500, for breach of, or non compliance with, a regulation, to fix fees and provide for the payment, recovery, waiver or refund of fees.

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

STATUTES AMENDMENT (ROAD TRANSPORT COMPLIANCE AND ENFORCEMENT) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 449.)

The Hon. D.W. RIDGWAY: I rise on behalf of the Liberal opposition to indicate support for this legislation, albeit with a number of amendments which have been agreed to by our party room. This bill forms part of the proposed national uniform legislation, with the aim of improving safety in the heavy vehicle industry. As someone who has lived on a farm out of Bordertown, I have driven along the main highway between Bordertown and Adelaide more times than I care to remember, and it is not uncommon from the farm to see close to 2 000 heavy vehicles a day using that road. Unfortunately, there have been a number of fatal accidents adjacent to our property over the 40-odd years I have lived there.

The Hon. J.S.L. Dawkins: Are you that old?

The Hon. D.W. RIDGWAY: I am only a baby. I am sure a lot of them have been as a result of unsatisfactory securing of loads or breaches in the mass of loads. The transport industry is the key to a number of very important South Australian industries, such as the wine industry, the grain industry, the livestock industry and, of course, the fresh food industry, which must get produce to market as quickly as possible so that it can be sold for the best price and have a significantly longer shelf life.

Certainly, in my own business at Bordertown, prior to coming into this place, it was important to get our cut flowers to market in Melbourne or Sydney as quickly as possible. The freight industry was very well positioned to service our business. In fact, in the early days when we started that business it was predominantly supported by the rail service out of the little siding of Wolseley. When that closed we thought the world had ended, but the road transport industry came to the rescue and now we have a better, faster, more reliable service than we ever had with the rail service. My personal experience is that the road transport and freight industry is a modern progressive industry that services its client base.

Heavy vehicles in this bill are defined as 'any vehicle over 4.5 tonnes', which means it will apply to not only operators of large long haul businesses but also smaller delivery type operators, with the aim of increasing industry standards across all facets of the trucking industry. I am sure that is important. In my time in rural South Australia I have seen a number of small vehicles which have been inappropriately

loaded. I am sure that this bill will have some impact upon that part of our industry. The trucking industry is important to the state economy in the nature of the business it runs and to the Australian economy as a whole. Approximately 40 000 people work in the trucking industry. It is very competitive and subject to a lot of stress from outside factors, such as fuel prices, registration, stamp duty and other government charges. Of course, this then puts undue pressure on the operators and the freight forwarders, the people who produce the goods to be shipped and those who receive the goods.

This bill is already law in New South Wales and Victoria, and it is particularly important for South Australia because we have such a significant number of cross-border freight operators. Of course, in terms of my own proximity to the Victoria-South Australia border there are a number of cross-border operators. In fact, the little township of Wolseley, when rail was in its heyday, was a trans-shipping area. Trains would come in from Victoria on one gauge and, because the South Australian trains were on a different gauge, some 200 men were involved in trans-shipping the produce from one train to another. So I have been familiar with the cross-border transport and freight issues for a number of years. A number of freight operators who operate from Bordertown offer a daily service between Melbourne and Adelaide. Some have grown significant businesses, starting with one truck and servicing the client base. As the community has grown the business demands have grown; so I have seen that first hand.

This bill adopts all the essential and desirable elements of the proposed national uniform legislation and is more comprehensive than the legislation in other states. The bill amends the Road Traffic Act 1961 and the Motor Vehicles Act 1959. One of the key features of this bill is the chain of responsibility provision that extends the liability for breaches to all parties, including employers and managers, making them liable for breaches of an employee. The opposition received a copy of a letter from the minister outlining some of the industry codes of practice and understandings between the peak bodies and government on how they may implement some of the chain of responsibility codes of practice.

The reasonable steps defence provision in this bill gives all parties a chance to demonstrate through a method of evidence that they have taken reasonable steps to ensure that they do not breach the mass load restraint or dimension rules, which are determined according to risk. I will be exploring the reasonable steps defence with the minister during the committee stage of this bill. Offences will be categorised as minor, substantial or severe, with the penalties being adjusted accordingly. New enforcement penalties apply to both heavy and light vehicles. The South Australian Road Transport Association has explained that light vehicles that tow overloaded trailers and distributors who supply them will be liable under these new rules. Hence, this legislation will protect those who do the right thing from a small minority of people who do not.

The opposition has consulted a number of industry groups on this legislation and thanks them for their input. I know the shadow minister in another place, Martin Hamilton-Smith (the member for Waite), consulted extensively with the South Australian Farmers Federation, the South Australian Road Transport Association, the South Australian Freight Council, the RAA and Flinders Ports, and we hope we have been able to cover most of the points raised by those industry groups.

One of the concerns the Liberal opposition has with the bill is that it appears to be focused very much on the city and big business operators. The Liberal Party's party room heard a very passionate contribution yesterday from Mr Graham Gunn (the member for Stuart) on a whole range of amendments to this bill which, in his view and the party room's view, protect some of the people in country South Australia. We heard the Hon. Caroline Schaefer speak earlier this evening about a program that exists in Queensland that allows for grain trucks to be up to 7.5 per cent overloaded during the harvest period. Unfortunately, I was not present to hear all of her contribution but I will again explore some of the points she raised in her second reading contribution when we reach the committee stage of this bill.

The range of amendments that the opposition will propose tonight will try to lessen the influence of the experiences that some of our country members have seen when authorised officers and, in some cases, police officers carry out their duties in perhaps over-zealous ways, and to ensure protection for honest people in rural communities who happen to be just a fraction overloaded in their first or second load during harvest. I am not sure whether you are aware, Mr President, but often grain can vary in moisture content and the weight is a measure of kilograms per hectolitre, and often the weight varies between varieties of wheat, seasons and the fertility of the soil (whether it has been frost affected). A whole range of factors affects the weight of grain. Obviously, wheat is different from barley and barley is different from oats, but within the grains there is quite a significant variation. We are concerned that there will be quite a number of people inadvertently caught. The minister may explain that the reasonable steps defence is the way these people will be protected. However, the Liberal opposition wishes to pursue that through its amendments.

There is also a range of penalties that we think have been a bit too severe and we will argue and debate that we need a more consistent level of penalties across this bill. There is also provision for authorised officers and police officers to state their name, full rank and serial number but no penalty if they do not, and the opposition feels it is important that, if the person who has broken the law is subject to a penalty, then an authorised officer or police officer should also be liable to a penalty if they do not follow the direction under the act.

There are also a couple of amendments in relation to the associate, and the opposition feels it is not appropriate for a child of someone who breaches the provisions of this act to be served with any notice, summons or legal documents as a result of their parents doing something that is in breach of this act. So the opposition will attempt to amend that as well.

I think that sums up most of our concerns. We think there have been some inconsistencies, as I mentioned, with grain carting. I believe, in general, most people attempt to do the right thing, and I do not believe these people should fear the legislation. However, there are those who perhaps inadvertently breach some of the mass management issues, and certainly there are issues of mass management of grain and inconsistencies with grain itself, and we hope to be able to throw some light on this matter for the grain industry tonight, either by way of amendment or by way of having the minister explain how important it is to look after the good, honest farming people—and I am sure you, Mr Acting President, would have an understanding of that, and certainly the President has always said how he feels very fond of the people in the bush.

The Hon. R.P. Wortley: They are the salt of the earth.

The Hon. D.W. RIDGWAY: The Hon. Russell Wortley says they are the salt of the earth, and they are. You would

not be able to eat your daily loaf of bread if it was not for the hard-working farmer. So, with those few words, I indicate that the Liberal Party supports the bill and looks forward to the committee stage of the debate.

The Hon. SANDRA KANCK: I rise to indicate Democrat support for the second reading of this bill. Road safety is an area where government policy can have and has had a significant impact. One merely needs to reflect on the levels of carnage on our roads in the 1970s and the steady reduction in the number of deaths since that time to appreciate the value of good government policy. This bill deals quite specifically with the heavy vehicle industry. Being a long haul truck driver is one of the most dangerous occupations in contemporary Australia and heavy vehicles also pose a threat to other road users, which means there have to be a lot of good reasons for tight controls on the industry.

The two most significant components of this bill are the introduction of a chain of responsibility provision and graded offences for mass dimension and load restraint offences. Under the legislation, offences are categorised as minor, substantial or severe, with increasing penalties in that order. This is a good initiative. A heavily overloaded vehicle is a greater threat to other road users than one which is just moderately overloaded. Further, heavily overloaded vehicles do more damage to the roads, and hence to taxpayers, than vehicles carrying a lesser load.

Equally, I support the proposed increases in penalties and the new enforcement powers provided to police and transport inspectors. The likelihood of getting caught, combined with the severity of the penalty, can have a genuine impact on commercially motivated behaviour that is illegal. The chain of responsibility provisions in the bill constitute a more radical initiative than the hierarchy of offences discussed above. I am very interested in how far this chain of responsibility extends. At present, it is the drivers who carry the risk. The legislative changes in this bill will bring other employees, managers and the owners of trucking companies into the equation, which we think is appropriate. I also hope that individuals and companies demanding unrealistic delivery schedules and artificially low delivery costs are deemed responsible under this legislation.

I am aware of large supply and retail companies squeezing truck operators' margins, and this is an inherent part of the problem that this bill may not be able to address. I note that there is a reasonable steps defence in the bill; that is, all parties in the supply chain can avoid penalty by demonstrating they have taken reasonable steps to ensure their business operations have not contributed to breaches of the act. The closer one is to the commissioning of the actual offence, the more difficult it will be to make a reasonable steps defence. I indicate Democrat support for the second reading.

The Hon. R.P. WORTLEY: This bill is focused on achieving a safer work environment for the heavy vehicle industry by developing model national legislation which will improve our road transport laws through tougher penalties and uniformity across the country and which will create greater efficiency. This bill is a positive step forward in improving the safety of the transport industry and it will benefit all other road users and industries. This bill has been shaped as a result of extensive consultation undertaken by the traffic police and transport agencies across Australia, working under the leadership of the National Transport Commission to develop model legislation. I would like to recognise the work done by the industry representatives, in particular the Transport Workers Union, which brought this up as an issue as far back as 1992. At the time, it was viewed as another burden to the industry by the various players.

As a member of the TWU federal council from 1997 to 2005, the health and safety of transport workers was always one of the dominating issues at the annual council meetings. I especially note the contribution of the State Secretary of the South Australian-Northern Territory Branch of the TWU, Alex Gallacher, who is also a previous commissioner of the National Transport Commission. With jurisdictions having different criminal justice policies, the national model legislation was designed with essential and desirable only provisions. South Australia will be adopting all the desirable and essential elements. Extensive consultation with the Department for Transport, Energy and Infrastructure has helped to ensure that the legislation is relevant to South Australia and will help balance business and community concerns about improving road safety.

As am I, the South Australian Road Transport Association, along with a wide variety of industry bodies and stakeholders, including transport ministers, the RAA and the Transport Workers Union, are pleased to see the legislation coming forward. The highly competitive road transport industry is set to expand in the future and it is likely that the commercial pressures and demands placed upon businesses will only result in a greater impact and mistreatment of our roads. Nationally, the majority of domestic freight is moved by road. There are almost 97 000 kilometres of road in South Australia, plus 10 000 kilometres of unsealed roads. With road transport being responsible for 72 per cent of domestic freight moved around Australia and with the movement of freight increasing by 70 per cent during the past two decades (which is anticipated to double again by 2020), we need to take the appropriate steps now to prevent the wear and tear of this state's and nation's transport infrastructure.

This bill will have a long-term effect on the condition of our roads. This bill is focused on creating better safety outcomes in the heavy vehicle industry by improving compliance with road transport laws and safety. Road fatalities involving heavy vehicles in South Australia this year, sadly, have already taken six lives. In 2004 and 2003, 23 people were killed in accidents involving heavy vehicles. We can only hope that this bill reduces death caused by heavy vehicles and the personal pain created by the loss of a loved one. We are reminded far too often of the dangers our roads can bring, which is why we must encourage and enforce heavy vehicle operators to take more responsibility for ensuring their vehicles are roadworthy and safe at all times. The chain of responsibility will be a key feature in preventing businesses from breaching laws by extending liability for road law offences to all parties who, by their actions, inactions or demands, exercise control or influence conduct on the road.

All players in the road freight industry, including drivers, operators, loaders, packers, consigners and receivers will share responsibility if a vehicle is overloaded—particularly if profiteering because of the overloading of barley—to take reasonable steps to prevent the overloading. A grossly overloaded vehicle has a much greater potential of causing significant damage to our roads and, in the event of a crash, will have a much greater safety risk than a complying vehicle, which is why penalties will be based on a risk category of the breach. Efficiency should never be more important than the life of a freight driver or the lives of other road users. By

transport supply chains taking reasonable steps to ensure their business operations have not or will not contribute to a breach in road safety, they will be benefiting the community with a high regard for road safety standards. It will also benefit their company's viability through regular maintenance checks, resulting in less down time associated with breakdowns.

This bill seeks to provide a new chain of responsibility and enforcement powers to police and transport inspectors, with the ability to conduct investigations and address unsafe behaviour as soon as it is detected on the road. A wider range of administrative sanctions and court orders to deal with these offences will also be introduced with the bill. Courts may impose a number of orders such as a compensation order, commercial benefits penalty, suspension, cancellation or disqualification orders and supervisory intervention—penalties which would better deter business from overloading vehicles.

Our road toll has declined and it is partly due to the introduction of proven road safety initiatives implemented by Labor, such as speed enforcement, public education programs, 50 km/h speed zones and increased funding for black spots. However, in order to raise our road safety performance we must do more, which is why this bill is of high importance. Preventing road damage is an important first step in protecting the conditions of our roads. Hopefully, safer roads, safer people and safer vehicles will lower the number of heavy vehicles involved in serious fatal accidents.

The Hon. M.C. PARNELL: The Greens are pleased to support the second reading of this bill. It represents South Australia's enactment of model legislation and, in general, the Greens support any measure that makes our roads safer for all road users, not just the drivers of heavy vehicles but also those they interact with on the roads.

I want to comment briefly on a couple of the provisions. First, the philosophy behind the chain of responsibility provisions seems to be, quite clearly, that the driver of illegal behaviour is not always just the driver of the vehicle. The driver is often the freight company, the consigners or, as other members have mentioned, the people who are putting unreasonable expectations on the truck drivers. The first target of this legislation will be mass dimension and load restraint, but the framework it puts in place will apply equally to speeding, vehicle maintenance and fatigue management. I would be in company with almost every member here who has had the experience of driving late at night and seen headlights coming towards them: first, you hope to goodness that they are driving on the right side of the road; and, secondly, that they have had sufficient sleep and are not taking tablets to keep themselves awake. More often than not, we are okay but, as other members have noted, we have already had fatalities this year.

The Hon. R.I. Lucas interjecting:

The Hon. M.C. PARNELL: I am not naturally a nervous person, but I have to say that, while driving to Melbourne with my family late at night (although I try to avoid driving at night), I am conscious that many of the people driving on the road are probably in a worse state than I am. It is not necessarily because they are bad or wicked people who like to drive long hours without rest; it is the expectations that are often put upon them by the consigners. I look forward to the next raft of behaviours that will be regulated—speeding, vehicle maintenance and fatigue management.

I think that the 'reasonable steps' defence is a worthwhile addition to the bill. It shows that the reasonable freight companies should have no fear if they have good work practices in place that do not put unreasonable expectations on the drivers. In the briefing we had on the bill, I was happy that the government officers were accompanied by the Executive Director of the South Australian Road Transport Association. I think it is important that the bill has the support of the trucking industry, as we can understand that the trucking industry would want a level playing field. If everyone is playing by the same rules, and if no-one has any particular advantage in trying to squeeze four trips in where only three are legally possible, the competitive elements of the industry should not play out in unsafe practices on our roads. The Greens are happy to support the second reading.

The Hon. R.D. LAWSON: I rise to support the second reading of the bill and look forward to the committee stage. I will confine my remarks to only one aspect of the bill, namely, clause 4, which contains amendments to the Road Traffic Act and which deals with the powers of police in relation to drunk driving and drug driving. The bill proposes to insert a new provision into the Road Traffic Act that will empower a member of the police force, who believes on reasonable grounds that a driver is not fit to drive a vehicle because of alcohol or a drug, to do a number of things, including directing the driver not to drive for a certain period of time. The officer is also empowered to take away the keys to the vehicle and to not return those keys for some time.

However, the bill is not clear as to the way in which these objectives will be achieved. We agree with the general thrust of the provisions—namely, that police should have these additional powers because drunk and drug driving are serious issues. However, we believe that there can be a tendency to throw the baby out with the bathwater in some of these 'we are going to get tough' type provisions. The bill contains two elements that I believe should be improved; one is that the officer is entitled to direct the driver not to drive any other vehicle until permitted to do so by the police officer. A driver in this situation may well be inebriated or affected by a drug, and to give a direction of this kind, which if not complied with will lead to an offence being committed, but not to provide any evidence in writing of the time, for example, when one can resume driving is unfair and will, potentially, be productive of mischief.

We have not laid down a schedule, for example, of five, seven, 10 or 25 hours. There is no limit on the police powers here. No doubt they will adopt a sensible approach, but there is no limit on these very wide powers. Therefore, at the committee stage, I will propose that a police officer who gives such a direction will, at the same time, provide some written document to the driver to advise when he or she can resume driving; for example, 'You can't resume driving until nine o'clock tomorrow morning,' or 10 o'clock, or for 24 hours or some other specified period. This will provide not only some evidence if there is a prosecution later but also some information to the driver on when he or she is permitted to resume driving.

The provision also requires that a police officer who takes possession of the keys of a vehicle must allow the keys to be returned at a specified police station. There is no specification as to where that police station might be. Somebody might have their keys seized in Coober Pedy and be told that they can recover their keys from Adelaide Police Station, Port Augusta Police Station, Marla, or some other place. We believe that it would be far fairer to require the keys to be made available again at the nearest police station or at some

other police station to be mutually agreed between the officer who has taken the keys and the driver: 'Where do you want to get these keys back from? Where is the most convenient to you? If it is mutually convenient, we will make it the nearest town or some other mutually convenient place.' Likewise, the address of that place ought be put in writing and given to the driver.

An amendment of this kind will ensure that the object of the act is being fulfilled. The police already have wide powers to take immediate and effective action against those who are reasonably suspected of being incapable of driving. However, by the same token, this will provide some balance and sense in the system without imposing undue bureaucratic requirements. We know that the police can now issue yellow stickers to unroadworthy vehicles, tickets, notices and fines—they regularly do and they are always in writing—but it is only appropriate that in relation to these important provisions there be a similar requirement that some written notice be given. The person who receives the notice may not be able to comprehend it at the time, but when he wakes up in the morning and has sobered up no doubt he will see the note in his pocket.

With those brief remarks I indicate my support for the second reading and also my belief that there is a need not only for the particular amendment that I have foreshadowed but also for a number of other sensible amendments which the Hon. David Ridgway, who will have the conduct of the bill for the opposition, foreshadowed in his contribution.

The Hon. NICK XENOPHON: I rise to support the second reading of the bill. I note that the thrust of the bill relates to issues of road safety in respect of heavy vehicles. In that sense, this bill is a welcome additional measure to improve safety on our roads. I will focus in my brief contribution on the contentious parts of the bill, which relate to two issues. The first issue is that of tolerances: whether certain operators should be given an exemption or should have further tolerances given to them in relation to the weight limit of their vehicles.

Earlier today, I had a pleasant and constructive discussion with the Hon. Graham Gunn who is very passionate about these issues. He briefly outlined some of his concerns, and I appreciate the time that we spent on that; however, I remain to be convinced. The thrust of this bill is about safety, and if a vehicle goes beyond the weight limits that are prescribed on the basis of the weight that an axle can bear—there is some science with respect to that—then I worry about the consequences. An overloaded vehicle will not stop in time. There are handling problems, the vehicle may overturn, there is a whole range of issues, and that concerns me significantly.

The other issue relates to police powers. The Hon. Robert Lawson outlined some of his concerns and some of the amendments that he will move in this respect. I will obviously listen to the debate in relation to those amendments, but from the brief discussion I have had with Mr Steve Shearer of the South Australian Road Transport Association I understand that, for a number of reasons, the association does not have any difficulty with the powers prescribed in the bill. They include the fact that South Australia will be the only state to have uniform training for the police officers who will enforce this legislation and that there will be certain protocols and codes of practice in place with respect to enforcement. Obviously, that is important from the point of view of road transport operators.

I return to the issue of tolerances. As I understand it, the reasonable steps defence takes into account the codes of practice of various industries. There is a three red card system for inspectors in respect of the issue of overloading. It is not one red card as in soccer, but there are three red cards for operators who, particularly during the grain season, due to the various pressures of loading their vehicles are given some degree of latitude with respect to the enforcement of this legislation. That is reassuring from the point of view of operators who have concerns about this.

I have received a copy of a letter from the Minister for Transport addressed to the General Manager of the South Australian Farmers Federation, which sets out some of the concerns with respect to the reasonable steps defence, the enforcement guidelines, working with industry, SAPOL and DTEI training, and communications arrangements, and I am sure that these matters will be canvassed further in committee. At this stage I indicate my support for the bill. Of course, I will listen to the arguments of the opposition in relation to its amendments, but, given that one of the peak bodies for this industry (the South Australian Road Transport Association) has no difficulty with this bill (presumably, after having had extensive consultation with the government on it) and because the thrust of this bill is about road safety and the significant potential hazards that heavy vehicles can pose on the roads to other road users, I remain to be convinced of the need for the opposition's amendments, but I look forward to the committee stage.

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to address one particular aspect of the legislation which relates to the drug driving law changes. Following on from the contribution of the Hon. Mr Xenophon, I commend the earlier contribution to the second reading of the Hon. Robert Lawson in relation to the amendment that he intends to move.

Personally, I would be very surprised if there was not some degree of attraction to the Hon. Mr Xenophon, given his traditional position on these particular issues in the amendment (modest amendment that it is being moved by the Hon. Mr Lawson), with respect to those powers, particularly as they relate to police officers and their powers of direction. We can get into the detail of that, I am sure, in the committee stage, when the Hon. Mr Lawson speaks to his amendment and explains it more fully.

As I said, the aspect of the legislation that I wanted to address was the provision in the road transport compliance legislation; a provision which relates to a major problem the government created for itself last year concerning the drug-driving laws. Without going through all of the detail, members will recall the tortuous two years of trying to get drug-driving legislation into South Australia. I will not go into the background to all of that. Ultimately, the government was dragged kicking and screaming to the legislative table to introduce its legislation late last year. That legislation passed the parliament.

One of the key problems that has been identified by police in the legislation is that in that particular bill the police had no power, once having detected a driver with marijuana, cannabis or methylamphetamine in their system, to prevent them for a period of time from driving. The police have argued that they are able, in their view, through various devices, to prevent a driver, having been stopped and detected with this substance in their system, from actually driving off.

They have identified other provisions in relation to the Summary Offences Act, evidently, but also the potential to

require the individual to have another drug test (so we have been advised) and if they have that subsequent drug test, then the second offence provisions of this legislation come into play. If members recall, unlike drink-driving legislation, the first offence does not result in any automatic loss of licence. The police have argued to the Liberal Party (and, I am sure, to others) that they believe they have the power to stop somebody from driving away from a particular drug-testing station.

However, the police identified that the problem was that they were unable—for example, in relation to someone detected with methylamphetamine in the system—to direct that particular person not to drive for the next 24-hour period. We heard today from the Minister for Road Safety the argument that methylamphetamine can stay in the system for up to 24 hours and, therefore, the police were in a difficult situation. An acquaintance (of the person detected with drugs in the system) could drive the car off; they could go around the corner and, half an hour later or an hour later, the person with drugs in the system could hop back into the car again and they would not be committing an offence by doing so.

That was clearly a very significant flaw in the drug-driving legislation. A senior police officer last week was reported in *The Advertiser* as identifying that particular issue as a concern. What we have, therefore, in the Road Transport Compliance and Enforcement Bill—a bill, as my colleague the Hon. Mr Ridgway has explained, essentially about a national framework for road transport—is a particular provision stuck away which relates to trying to tidy up the problems in relation to the drug-driving legislation.

I do point out to members that, when this occurs in other pieces of legislation, the second reading explanation generally indicates to all members that the bill is substantially about this particular issue—the national framework for road transport legislation. However, the opportunity is being taken, at the same time, to do something else. We have had bills in this session—for example, in relation to superannuation finance issues—where the second reading explanation does indicate that we have taken the opportunity to make changes of a technical nature in this particular bill which relate to other issues, and they have been sometimes highlighted. Certainly, also, in other pieces of legislation—and I remind members of the dangerous driving legislation (if I can use that description; that is not the technical title for people speeding to get away from police chases)—the Police Commissioner advised that there were concerns and recommended various changes to legislation.

I point out to members that in this particular bill there is no reference at all to concerns of police, or others, about the need for this particular provision to be passed, and passed urgently, before the end of June, to ensure that the drug-driving legislation from last year could be effective. One has to go through the detailed explanation of clauses. As members know, the second reading explanations are read out in the council and the detailed explanations of clauses are incorporated into *Hansard* without ministers reading them. One had to go to the detailed explanation of clauses to find this particular provision.

Again, I think it is further evidence of the importance of having a Legislative Council, might I say, because if there had been no Legislative Council there would have been no debate at all on this particular issue. There would have been no amendment being canvassed, whether or not that is successful.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: There is safety in checks and balances. No one person or chamber is the font of all wisdom. We are all human and we all make mistakes or do not pick up particular issues. The Leader of the Government may believe he is infallible, but the rest of us, at least on this side, accept that we are not. There is safety in checks and balances and in a pause between one house and another considering legislation. If it had not been for the Legislative Council, none of the significant issues of concern to the media and the community in relation to the drug-driving legislation that has dominated media coverage in recent weeks and has been the source of concern to the Minister for Road Safety, under the heading of 'the agony and ecstasy of minister Zollo', would have been raised. There would not have been the focus on these issues that the community and media have demanded of the parliamentary process. We would have had legislation jammed through one house of parliament controlled by the government and the Premier without the opportunity for a public debate on those issues.

The issues that will need to be explored by members in committee in relation to this matter come across the issue that has been raised in the past week as to why the government has deliberately chosen not to include in the prescribed drug regime the pure form of ecstasy, MDMA, which other state Labor governments have either incorporated or propose to incorporate in their drug-driving legislation. One of the questions the minister will need to answer in committee is what will be the process when police officers detect a driver with MDMA in their system under this clause that the minister and government are proposing that the parliament accept.

It is clear that the police will have the power to direct a driver detected with cannabis or methylamphetamine not to drive for a particular period, but what will be the situation in relation to the police detecting a driver with MDMA in their system? In question time the minister has refused to answer these questions, but in committee she will be required to answer the questions on this provision, because it will be important for people to know the minister's response. The minister's view is that this is very rare or unlikely to ever occur (or whatever words or phrases she uses to describe her current position and the position of her Premier on this important issue). The minister cannot guarantee that this will not happen and, based on the evidence in Victoria and in the other states, it is not a view shared by other state Labor governments and Labor road safety ministers. The minister and the Premier in South Australia are increasingly isolated from their Labor colleagues on this important road safety issue.

Members will be concerned if the minister's response is that a driver detected with MDMA, having been taken from the scene of the drug test by an acquaintance or friend, can go around the corner, hop into the car again and have the power to drive the car without penalty. If that is the response of the Minister for Road Safety it will need to be on the public record and there will be significant concern from members in the community when they understand that that is the position of the Minister for Road Safety and the Premier in relation to that issue. We will explore those issues when we get to that clause in committee.

I wanted to highlight that issue for the minister during the second reading debate so that she and other ministers can consider it in response, and also to highlight to other members that this issue, quite unrelated to the national framework

for road transport compliance, is an important issue that needs to be pursued and resolved in committee.

The Hon. P. HOLLOWAY (Minister for Police): I thank members for their contribution to this bill and for their support, generally. However, it is important to point out that the amendments being moved by the opposition would undermine the intent of the underlying policy of the compliance and enforcement bill and would move away from national consistency. It would also make very difficult the enforcement of the bill by police officers and the Department of Transport's authorised officers. This is despite the fact that the opposition has been telling government stakeholders that they support the bill.

To give a couple of examples of the problems these amendments would cause, I point out that, first, the opposition wants to narrow the definition of 'responsible person'. This will severely restrict the ability of enforcement officers to investigate and gather evidence to mount successful chain of responsibility prosecutions. It would create an enforcement loophole that would enable unscrupulous parties to find ways of avoiding answering questions or complying with legitimate enforcement requests or directions to provide information, records or equipment. This would significantly undermine the national intent of the model legislation and potentially frustrate effective cooperation in cross-border investigation.

Secondly, the opposition does not want the bill to come into effect until all other jurisdictions enact the legislation. Not only is this contrary to the national agreement made to implement the compliance and enforcement in every jurisdiction by 2005, this deadline could not be met, and now jurisdictions are implementing these measures as quickly as they can. New South Wales and Victoria have already passed compliance and enforcement legislation, and Queensland and probably Western Australia will follow later this year. Most of our heavy vehicle traffic is between Victoria and New South Wales. Delaying passage of the bill will prolong the inconvenience caused to industry by inconsistent schemes.

Thirdly, the opposition wants to delete the definition of 'associates' from the bill, which means that people could hide the proceeds from breaches of road laws with family members or business associates, and therefore avoid any penalty, or they could register their vehicle in their spouse's or child's name and continue to operate the vehicle and avoid penalty. Fourthly, the opposition wants an exemption to livestock carriers from having to obey a direction to move a vehicle. This would undermine the powers of enforcement officers in relation to enforcement for livestock haulers. There is no general exemption for livestock in either New South Wales or Victoria, and this would create an inconsistency.

I point out that the government has already undertaken to address the South Australian Farmers Federation's concerns about the implementation of the bill. Fifthly, the opposition wants a penalty of $1 250 to apply to officers who do not produce their ID. This is not necessary as failure to comply with the request may invalidate another power exercised by the officer as it would provide a defence for not complying with a subsequent direction. Plus, it is already difficult for officers to enforce road traffic laws without the added risk of being prosecuted for an offence.

Sixthly, the opposition wants directions given re drink and drug driving to be backed up by written notices that are prescribed by regulations. This is an administrative burden that is not required, as police will already give these directions in writing as a matter of policy. Every jurisdiction in Australia has agreed to implement this model bill after many years of consultation and refinement. It is essentially about road safety for all road users and truck drivers. I point out that this bill is supported by all major stakeholders, including the South Australian Road Transport Association (SATA), the Transport Workers Union (TWU) and the RAA.

In relation to drug driving measures, the Hon. Rob Lucas, the Leader of the Opposition, said that the government had to be dragged kicking and screaming to pass this legislation. Let me just remind the committee that the road traffic legislation—

Members interjecting:

The Hon. P. HOLLOWAY: Listen to this; you might be interested in this. You have made a lot of comments in the past few days. Let us look at some of the facts. The Road Traffic (Drug Driving) Amendment Bill was introduced in this place on 19 October, and it did not pass until 29 November 2005. I can assure you that that delay—

The Hon. R.I. Lucas: One month.

The Hon. P. HOLLOWAY: It was over a month—six weeks. That delay certainly was not the government's fault. We had the Leader of the Opposition just telling us about how there was some secret involved with the passage of this bill. Let me read from page 2 814 of *Hansard* on Wednesday 19 October. My second reading speech introducing the bill states:

> For the purposes of protecting the community from drivers who are detected with an illegal blood alcohol content or who have tested positive roadside to the presence of a prescribed drug, the bill will provide police with additional powers to take steps to prevent the person from driving for a predetermined period of time. Police will be provided with a less intrusive alternative to arrest where they suspect a person may attempt to drive once they have left the scene. This provision will supplement the existing general power of arrest available to police.

This is the pertinent point:

> These new powers have been requested by and developed in conjunction with SAPOL and will not be primarily dealt with in this bill but have been included in the Statutes Amendment (Road Transport Compliance and Enforcement) Bill 2005 which will amend the Road Traffic Act 1961 to revise all powers relating to the direction and enforcement to achieve consistency with new model national compliance and enforcement legislation. It is anticipated that this bill will come into operation at the same time as the drug driving bill.

That bill was present at the time that the drug-driving measures were introduced but, of course, it was not possible to pass it before parliament adjourned; it is now here. The Leader of the Opposition has no excuse whatsoever for saying he was ignorant of these provisions, because the processes were set out quite clearly in the second reading explanation of 19 October. If he did not read it, he is incompetent.

To address the other measure on drug driving, the Leader of the Opposition said that this bill was jammed through the House of Assembly. All I can say is, if I read *Hansard* correctly, there was at least one night of debate on this bill in the House of Assembly. The fact that no opposition member in that place asked questions in relation to this matter is, I suggest, a reflection on them and not on the government.

Finally, let me address one other matter raised by the Leader of the Opposition. Again, this was spelt out in the drug driving bill when it was introduced in this place on Wednesday 19 October. Remember, it had been introduced in the House of Assembly, obviously, before that time. It states:

These amendments will not enable random testing for drivers for drugs other than THC and methamphetamine. These drugs will be prescribed in the regulations, and it may be the case that in future years other drugs will be tested for.

When we introduced this bill back in October last year, we made it quite clear that it would be for those two particular drugs. If we had tried to extend it to other drugs, we would have had the opposition attacking us for breaching our undertaking when we put up this bill. Of course, it is now six months later and other states that have introduced this trial are now saying, 'Well, look, we are doing things differently; we are extending it.' It ill behoves the opposition to criticise this government for doing exactly what we promised we would do. We said that we would limit it to these drugs in the trial, and we will do so. We also said that it may be the case that in future years other drugs will be tested. This is moving rapidly, and I can assure the honourable member that if the police come up with the details very soon—

The Hon. R.I. Lucas: No one believes you any more.

The Hon. P. HOLLOWAY: Well, they will believe us, because we have done exactly what we said we would do. Mr President, this bunch of incompetents did not pick this up in the house. The Leader of the Opposition was putting out press releases saying, 'Look, this government is trying to sneak it through.' Look at the bill, Mr President. It is item 2; we will be dealing with it. It is this great big clause. What does it say?

Mr President, you only have to pick up the bill and look at it; you only have to read it. If you look at part 2 it is right near the start on page 7—amendment of Road Traffic Act 1961, temporary powers relating to drink driving and drug driving. The honourable member is trying to say we are sneaking it through. The Leader of the Opposition has got his cheap headline. That is politics. Let us get on with the business of passing this important bill. As we indicated in October last year, we need this legislation to complement the drug-driving measures. I hope the council will support us in our attempts to get this worthwhile legislation through as quickly as possible. I commend the bill.

Bill read a second time.

In committee.

Clause 1 passed.

Clause 2.

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

Page 6, line 7—Delete 'Part 2 or section 16' and substitute 'this Act'.

Before speaking to the amendment, I will highlight a couple of things I overlooked to say in my second reading contribution. The minister did not refer to them, but they were items that minister Conlon in another place agreed to examine between the houses. I had a briefing from his officers on Monday; I will refer to them and maybe the minister will provide an answer shortly. New section 40I(3), the direction to move a vehicle to enable the exercise of other powers, provides that a court may not reduce or mitigate in any way a minimum penalty prescribed by subsection (2). Minister Conlon said that he would see between the houses how minimum sentences compare with other jurisdictions. In relation to the power to inspect on a road or certain official premises—and this was an amendment to insert the word 'heavy'—minister Conlon said that he would oppose the amendment, but if between the houses we could mount some good arguments—which I think we have—he would see whether it could be restricted to heavy vehicles.

In relation to new section 40R(1), the exact same amendment was moved to insert a 'heavy' vehicle, and minister Conlon agreed to look at it between the houses. New section 40S(7) provides:

Without limiting the above, the power to inspect premises under this section includes any or all of the following. . .

(d) the power to use photocopying equipment on the premises free of charge for the purpose of copying any records or other material.

The minister agreed to look at the proposed amendment to delete 'free of charge' and insert 'provided that an equal amount of reasonable cost of using the equipment was paid or offered to the occupier of the premises'. Minister Conlon said that he was happy to look at this amendment between the houses. He said he could see the merit in it, but he was concerned about its being administratively impossible. He agreed to look at it. In relation to new section 40T, the power to search premises, an amendment was moved to insert the word 'heavy' in relation to vehicles. New section 147(2) provides:

After the formal warning has been withdrawn, the person may be charged, or issued with an expiation notice, for the breach.

The amendment was to insert the words 'provided that a person may not be charged for a breach more than six months after the date of the alleged commission of the breach'. Minister Conlon said that there may be some argument for a time limit and he agreed he would look at it between the houses. He said that in his view six months was too short. I would like the minister's response to those questions.

The Hon. P. HOLLOWAY: We are moving an amendment in relation to powers for light vehicles (proposed new section 41J), and I will speak to that at the appropriate time. The honourable member asked about the court mitigating or reducing the minimum penalty for the direction to move a vehicle. My advice is that the direction to move a vehicle (new section 40I) to enable the exercise of other powers proposes deleting subsection (3), which prevents a court mitigating the minimum penalty for failure to move for the purpose of determining whether there has been a mass breach.

The minimum penalty for not complying with the direction is equivalent to the penalty for a severe risk breach for a mass offence. If this was deleted, the person with an overweight vehicle would have no incentive to comply with the direction as the penalty for being overmass may be higher than for not complying with the direction. Currently, there are minimum penalties in the existing legislation that cannot be reduced or mitigated. For example, section 152(4) of the Road Traffic Act provides that the court may not reduce or mitigate in any way the minimum penalty prescribed by subsection (3); a minimum of $5 000 for a first offence and minimum of $10 000 for a subsequent offence in relation to failing to comply with a direction to move a vehicle to determine mass. That is why we could not support that amendment.

The honourable member said that there was an issue about the withdrawal of formal warnings. A proposal was raised in another place in relation to new section 147, the withdrawal of formal warnings. In relation to inserting a provision that a person cannot be charged with an offence of the breach more than six months after the alleged commission of the breach following a withdrawal of a formal warning, I am advised that formal warnings are issued for minor risk breaches of mass, dimension and load restraint requirements. It is appropriate to be able to withdraw a warning and lay a charge if it appears that the warning has been ignored or the breach was part of a pattern of behaviour. As the chain of responsibility investigations are complex, involving many

different parties, and may be across several jurisdictions, allowing only six months to lay charges after the warning has been withdrawn is too short and may prevent appropriate prosecutions. I point out that both Victoria and New South Wales have no such restriction in relation to their provisions regarding formal warnings.

The other issue raised is free photocopying. The proposal was raised in another place in relation to new section 40S, concerning the power to inspect premises, and the insertion of an amendment not to allow free-of-charge photocopying by enforcement officers and, instead, the provision requiring payment for photocopying. This provision enables officers to photocopy material evidence then and there on the premises which they may otherwise remove to examine. This is more convenient for the business and is stated to clarify and avoid any argument when the power is exercised. New South Wales allows for free photocopying, and the Victorian legislation is silent on the issue.

In relation to clause 14, new section 35, appointment of authorised officers, I would like to address the proposal to restrict the appointment of authorised officers to only government employees. I am advised that this unnecessarily restricts the appointment power. All inspectors currently appointed under section 35 are public sector employees, but existing law has never restricted the appointment process in this way. Additionally, the Road Traffic Act currently provides that any ferry operator is an inspector for the purposes of the act, which means that they are not necessarily public sector employees. The bill recognises that persons appointed interstate, who also need not be employed by the government, are authorised officers for the purposes of the act.

Restricting the appointment of authorised officers to only public sector employees may create an anomaly with recognition of interstate authorised officers. In the event that a person who was not a public sector employee was appointed as an authorised officer, they would still be required to undergo the same training as is required of other authorised officers. They would also be subject to the same policies and guidelines that govern the exercise of their power, and compliance would be a condition of their employment. Any breach or non-compliance would lead to dismissal from their employment.

In relation to the time given to obtain legal advice prior to complying with a direction to produce records, there was a proposal raised in the other place regarding new section 40W, direction to produce records, devices or other things, to insert a provision enabling sufficient time to obtain legal advice before complying with a direction to produce records, devices or other things. The records or things sought are about the registration, insurance and operation of the vehicle and transport documentation. This type of thing is not subject to professional privilege rules allowing it not to be disclosed.

Failure to produce the records, devices, etc., would be an offence regardless of legal advice. The time given to gather and produce the records or things would usually be sufficient to enable a person to obtain legal advice. There is also a defence of a failure to produce where the person has a reasonable excuse. There is no such provision to this effect in either New South Wales or Victoria. If there are any other issues that the honourable member wishes to raise, I will deal with those.

The Hon. D.W. RIDGWAY: I guess perhaps I should have asked the question on the first clause of the bill, not the second clause. In moving this amendment and speaking to it, I indicate that this amendment is consequential, even though I have not said so, on amendment No. 2. This amendment says that section 75 of the Acts Interpretation Act does not apply to this act. Then amendment No. 2 seeks to insert:

> The minister must not recommend to the Governor that a proclamation be made bringing this act, or part of this act, into operation unless the minister is satisfied that—
> (a) an adequate exercise has been undertaken to inform all sections of the public of the contents of this act and to invite and consider the representations of the public as to the contents of this act and its commencement; or
> (b) similar legislation has been enacted by all other states of the commonwealth.

Certainly, if we are going to have significant changes to the way people are dealt with by the Road Traffic Authority when it comes to mass breaches—especially, as I highlighted in my second reading contribution, the farming community—this amendment directs the government to communicate over a significant length of time with the farming community to make it fully aware of the changes to the legislation. The minister said in his second reading conclusion that, while this legislation is in place in Victoria and New South Wales, it will not be in place until later in the year in Western Australia and Queensland, so it would seem reasonable to allow this act not to be enacted until it is in force in all other states of the commonwealth.

The Hon. P. HOLLOWAY: I have already addressed this matter in my response, but I indicate that the purpose of clause 2(2) is to ensure that, if for some reason part 2 is not commenced prior to the remainder of the bill, it and clause 16, which will repeal it, will not come into operation automatically after two years pursuant to section 7(2) of the Acts Interpretation Act. Once the bill is passed, it will take about six months to complete the training and publicity tasks to prepare enforcement officers, industry and the public for its commencement. There is no reason to prevent the bill coming into operation automatically after two years. Again, I remind the council that I understand this amendment is not supported by the South Australian Road Transport Association.

Amendment negatived.

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

> Page 6, after line 7—
> Insert:
> (3) The minister must not recommend to the Governor that a proclamation be made bringing this act, or part of this act, into operation unless the minister is satisfied that—
> (a) an adequate exercise has been undertaken to inform all sections of the public of the contents of this act and to invite and consider the representations of the public as to the contents of this act and its commencement; or
> (b) similar legislation has been enacted in all other states of the commonwealth.

As I explained when moving my first amendment, we believe that this compels the government to ensure that it communicates adequately with the community and, if it waits until all other states have the same legislation, it will have that time.

The Hon. P. HOLLOWAY: The government opposes this amendment. There is no need for proposed subclause (3)(a). Proclamation will not occur until about six months after the bill has passed to allow sufficient time for implementation, task training, education, system upgrades, community communication, etc. Extensive consultation has already been undertaken by South Australia in 2002, involving 25 meetings in metropolitan and regional areas, with over 1 500 information kits distributed. As to the new

proposed subclause (3)(b), South Australia should not wait until all the other jurisdictions enact the legislation. National agreement was made to implement compliance and enforcement in every jurisdiction by 2005. This deadline could not be met, and now jurisdictions are implementing this as quickly as they can.

As I indicated earlier, New South Wales and Victoria have already passed compliance and enforcement legislation, and Queensland and probably Western Australia will follow later this year. As most of our heavy vehicle traffic is between Victoria and New South Wales, delaying passage of the bill will prolong the inconvenience caused to industry through having inconsistent schemes, and that is why we oppose the amendment.

Amendment negatived; clause passed.

Clause 3 passed.

Clause 4.

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

Page 7, after line 32—
Insert:

(3a) If a police officer gives a direction under one or more of paragraphs (c), (d) or (g) of subsection (1), the officer must, as soon as reasonably practicable, give the person a written notice in the form prescribed by regulation repeating the effect of that direction and specifying the minimum number of hours that must elapse before the driver may be permitted to occupy the driver's seat, enter the vehicle or drive another vehicle, as the case may require.

I remind the committee that this provision relates generally to drink driving and drug driving and is not really related to the general issues concerning road transport compliance with which much of this bill deals. This section will give police a power to give directions for a person to leave a motor vehicle, if the police officer believes on reasonable grounds that the driver is not fit to drive by reason of the consumption of alcohol or drug.

As I indicated in my second reading contribution, we certainly support that notion. However, there does not appear to be any limit at all on the time limit within which a police officer can require that the driver not drive either that particular vehicle or any other vehicle. Will the minister indicate and confirm that it is the fact that there is no limitation on the power, and that neither the act nor the regulations contain any formula for determining how the period will be determined? It is a matter for the judgment of the particular police officer in the circumstances of the case.

The Hon. P. HOLLOWAY: The honourable member's amendment is opposed. This bill is flexible and allows directions to be made verbally or in writing. It would be administratively burdensome to require written notice of effective directions to be made after a direction was exercised, as it reduces the intended flexibility in the manner of giving directions. Police have confirmed that they intend to give drivers written directions when exercising powers in relation to drink and drug driving. This is a policy decision by SAPOL to ensure that there is no confusion in the driver's mind as to what direction has been given concerning the number of hours that must elapse before they are able to enter the vehicle, driver's seat or drive again. For this reason, the proposed amendment requiring written notice is not required.

Additionally, there are many other examples of state legislation that allow directions to be made orally. For example, section 41(1)(c) of the Rail Safety Act 1996, provides for the power of authorised officers to give directions in respect of the stopping or movement of rolling stock. We could talk about section 14(1)(a) of the Harbors and Navigation Act, regarding the power of authorised persons to direct any person who is apparently in charge of a vessel to manoeuvre the vessel in a specified manner, to stop the vessel, or to stop the vessel and secure it in a specified manner. Neither of these acts requires written notice to be subsequently given to the person to whom the direction was given. The honourable member also asked some questions. The answer to the honourable member's specific question is that the time for THC is five hours and 24 hours for methylamphetamine, based on the rates of dissipation.

The Hon. R.D. LAWSON: Could the minister indicate where the time limits of five hours for THC and the 24-hour period to which he just referred appear?

The Hon. P. HOLLOWAY: They are based on scientific evidence that we have. I mean, it is interesting to—

The Hon. R.I. Lucas: He is asking in relation to the legislation.

The Hon. P. HOLLOWAY: No, it is not in there, but obviously we are advised that they will be using these time limits in their directions.

The Hon. R.D. LAWSON: I think that the minister's answers to a number of these questions highlight the difficulty here. The police say that they propose giving written notices to people and that of course they intend to do that. If that is the case, why not actually stipulate it in the legislation? If that is what they intend to do, it is no imposition on them to have a requirement that they give the written notice the minister has indicated they propose. The minister said that five hours will be the maximum period in relation to THC. That is not written down anywhere; it is just what the police say they will do. How does the person who is given this direction know that it is five hours? How is he supposed to know police policy on this unless he is given a piece of paper saying, 'You cannot drive again for five hours'? The minister says that in plenty of cases—

The Hon. R.I. Lucas interjecting:

The Hon. R.D. LAWSON: Absolutely. As my colleague says, if the driver is inebriated or otherwise affected by some substance, how is it realistically to be expected that they will appreciate being told, in the blur of the moment, 'You are not allowed to drive again for five hours'? The minister said that there are other occasions when police are not required to give directions in writing. Of course, we accept that, when a police officer directs somebody to park his car on the side of the road, drive down this alley, or move their car, or when, as the minister says, a police officer gives a direction as to how a boat is to be manoeuvred, no-one expects directions of that kind to be issued in writing.

Hand signals are perfectly appropriate; we agree 100 per cent. We are not dealing with that type of direction: we are dealing with the specific requirement that you not drive your vehicle for a certain number of hours. That is why we believe it is entirely appropriate. Indeed, the police appear to acknowledge that it is appropriate because they say that they propose doing precisely what we say ought be in the legislation.

Of course, as I mentioned earlier, it is an offence to fail to comply with one of these directions of a police officer. You are liable under pain of fine to be convicted of an offence of failing to comply with a direction. A written notice provides the best evidence of the fact that a direction was given, what the direction said and the fact that you were given the direction. The police appear to acknowledge that themselves by saying that they propose to adopt the practice of giving a

written notice. It is very sensible on their part, and I believe that it is only fair and no imposition at all on the police to be required by legislation to do exactly what they say they will do. So, I urge members to support that aspect of the amendment.

The second aspect of the amendment relates to the return of the keys that might be seized by a police officer. Clause 4(5) provides that, if a police officer takes possession of the keys, the officer must advise the driver that the keys may be recovered from a specified police station. The officer must cause the keys to be taken to that particular station. My amendment specifies that the document given to the driver at the time the keys are seized will indicate on it where the keys can be recovered and, further, that they will be recoverable, ordinarily, from the nearest police station. That will be the rule unless the driver and the officer agree upon some other station. The police officer will be able to write the address of the place where the keys can be collected.

This is an entirely reasonable proposal, given that somebody may be inebriated and given, further, that the present power given to the police here is one that is extremely wide. To say that the keys must be 'recovered from a specified police station' without saying where that police station is would, theoretically, allow an officer at a roadblock at Coober Pedy, for example, to say, 'You can recover the keys, mate, a smart alec like you, from Port Augusta,' Adelaide, Whyalla, or somewhere else. I am not suggesting that that would necessarily occur, but police powers ought to be appropriately restricted. We believe that they will be responsibly exercised, but what is the harm in saying that the keys can be recovered from the nearest police station and identifying where that is, or some other place? I urge support for these amendments that will not get in the way of what the police propose to do, because the minister has already assured us that, certainly in relation to the direction not to drive, they propose to give a notice.

The Hon. P. HOLLOWAY: As I have indicated, the police already have a draft (and it is not the final draft) of driver direction notices that quite clearly set out the information. Of course, the police will do that for the reasons the honourable member says. If you start prescribing these things, I suggest that all you do is open the floodgates for lawyers who want to challenge things on technicalities, rather than on the principle that people have been notified, which they will be.

In relation to the matter the honourable member raises about surrendering the keys, again the government opposes this. Drivers who are required to surrender their keys are likely to have tested positive to a prescribed drug or alcohol. They may be agitated, irrational or possibly aggressive. These are the sorts of people with whom, unfortunately, the police have to deal. This amendment subjects the officer to having to negotiate with such a driver to determine which police station to take the surrendered keys. This is problematic, as an agreement may not be reached. The driver may be unreasonable, or only want the keys taken to a police station that is not open 24 hours, or to a location that is not reasonable. As a matter of practice, police will always take the keys to the nearest 24-hour police station from the place where the driver was directed to surrender the keys. This amendment would make the police officer's enforcement role very difficult. Therefore, the amendment is not supported.

In respect of a further amendment which requires a police officer—where they have asked the driver to surrender or have confiscated the keys—to give the driver a written notice, I point out that, if the keys have been surrendered in accordance with the direction, the written direction of the police, which will be given to drivers when exercising powers in relation to drink and drug driving, will include the location of the police station to which the keys are being taken. When the officer has taken possession of the keys, these written directions will always be given to drivers as a matter of policy. This constitutes the written notice the amendment seeks. For this reason, the government believes the amendment is not necessary and it is not supported.

The Hon. NICK XENOPHON: I seek some clarification from the mover of the amendment and, if need be, from the government and, indeed, the Minister for Road Safety. As I understand the Hon. Mr Lawson's amendment, he wants the police directions to be put in writing but, as I understand it, the police protocols will ensure that that is the case anyway. In relation to a drug driver or a drink driver of any vehicle, as I understand it, if they are over .08 they will be taken off the road anyway. They will not be allowed to drive and they will lose their licence immediately.

What does the Hon. Mr Lawson's amendment propose that deviates from what occurs now for drink drivers over .08 and what is proposed to appear in the drug driving legislation? It may not be fair to put all that onto the Hon. Mr Lawson. I would like to hear from the government in relation to this, but I query the need for the amendment in the light of what is already occurring and what is proposed to occur, notwithstanding the quite legitimate debate that the Hon. Mr Lucas has been leading in relation to the fact that a driver will not be tested for MDMA.

The Hon. R.D. LAWSON: I am delighted the honourable member has raised this point. The current provision is section 47IAA, which gives the police the power to impose immediate licence disqualification or suspension. It provides that, if a member of the police force reasonably believes that a person has committed an offence to which the section applies, the police officer may give the person a notice of immediate licence disqualification. A notice is required. In contrast, the provision that is currently before the committee does not say 'required to give a notice', which means something in writing—

The Hon. Nick Xenophon: That's only for .08, isn't it?

The Hon. R.D. LAWSON: It applies to category 2 and category 3 offences, a refusal to submit to an alcotest, or a refusal to submit to a blood test. In those cases, a notice is given. Existing legislation passed by the parliament accepts that it is appropriate to give the notice. In this case, the provision is that they merely be given a direction not to drive for a period of time. Under this bill, it is proposed that section 40I will provide that directions do not have to be given in writing, that they can be given by any means you like such as a hand signal or an electronic device. Although the police say they are going to give a written notice, other powers 'require' that they give a notice, and my amendment will simply 'require' that they give a notice as they say they are going to. At the moment, under this bill they would not be required to give anything in writing in relation to the period when a person cannot drive.

The Hon. Nick Xenophon interjecting:

The Hon. R.D. LAWSON: No. A driver does not have to be over .08 for this provision to apply. It provides that, if an officer believes on reasonable grounds that a driver is not fit to drive—

The Hon. A.M. Bressington interjecting:

The Hon. R.D. LAWSON: No. I think there is a misunderstanding here. This is a direction to leave a vehicle. 'Fit to drive' is defined in subsection (8) as follows: a person is fit to drive if he is apparently physically or mentally fit to drive a vehicle had not apparently affected by alcohol or any other drug. What really surprises me is that the honourable member does not grasp the point that I have been trying to make, namely, that the police say they are going to give a written notice. Of course they are going to give a written notice, they are working on the protocols at the moment. We are simply saying: well, if you're going to do that, you ought to be required to do it—let's formalise it.

The Hon. R.I. LUCAS: I support everything the Hon. Mr Lawson has said and I will not repeat that. The only point I make in response to Mr Xenophon's question—I am not sure exactly where he is coming from, but if I understand him correctly—is that one of the key differences between drink driving and drug driving is that the drink driving that has been referred to carries an automatic loss of licence, whereas in relation to drug driving there is no automatic loss of licence. So, if you are detected with cannabis, THC or methamphetamine, there is no automatic loss of licence for your first offence. Until this provision is passed, there is a problem with the legislation because the driver could go around the corner and half an hour or an hour later be driving the car whilst still affected.

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: Yes. No-one is opposing that. The only thing the Hon. Mr Lawson is pointing out is that, if the police are going to (they say) without legislative requirement issue a notice along the lines suggested by the Hon. Mr Lawson, he just wants to put that in the legislation to make sure that they will continue—and will be required to continue—to do that. So, it appears there is a wonderful overlap of agreement between what the police are going to do and what the Hon. Mr Lawson is ensuring is in the legislation so that, if the police were to decide some time down the track that this was all too inconvenient, they would no longer continue to do that, or if they decide that they do not have to, or they do not want to, there would be no legislative requirement.

The point I was making (without repeating the Hon. Mr Lawson's argument; I will leave that for him) is that there is a clear distinction between the drink-driving and the drug-driving legislation—that is, that the drug-driving legislation does not have a situation where, for a first offence, there is an automatic loss of licence. What the police are wanting, and what this bill is going to provide, is a mechanism—at least at this stage for those with THC and methylamphetamine in their system—whereby the police can say to them, 'You shall not drive for 24 hours in relation to methylamphetamine'—so we are informed—'or five hours in relation to THC.'

The Hon. A.M. BRESSINGTON: I am just a little confused about the need for all of these pieces of legislation. When we were dealing with the rock-throwing legislation, the Hon. Mr Lawson made the point that we were becoming over-particular with the legislation; that the legislation already existed, was already in place to enforce the law, and we were becoming too specific. It appears to me that perhaps that is what is happening with this amendment; that it is trying to over-prescribe and become too specific, when the provisions are already there for this to be done anyway. Am I wrong?

The Hon. P. HOLLOWAY: I think the honourable member has actually hit the nail on the head, because subclause (5) provides:

> If a police officer takes possession of keys or, in order to immobilise the vehicle, components of the vehicle, the officer must advise the driver that the keys or components may be recovered from a specific police station and cause the keys or components to be taken to the police station.

The reality is that if any policeman does not do that, does not use the prescribed form and follow it, someone will complain and it will be up before the Police Complaints Authority, and the officer will be hauled over the coals for not doing it properly. Obviously, it is clearly set out in the legislation that an officer has to do that. If we put the nature of the form being prescribed in the legislation, it will have several effects: one is that, given it is now 21 June, it will delay the start of the drug-driving test, because we will have to prepare all these regulations; and, secondly, it will achieve absolutely nothing, except the police have already prepared the draft—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: The draft is there, but that is not the point. If it has to be prescribed it will be—

The Hon. R.I. Lucas: It prescribes the drugs here.

The Hon. P. HOLLOWAY: They have been, yes. It has already been done, and that is the whole point I was making earlier. That went through and they were gazetted some weeks ago. The point is that that was in accordance with what we promised. We can change the whole scheme around, and I am sure the scheme will change—that is understood. At this stage we have to get this bill through to clarify the powers. As I said, it was all set out that we were going to do this back in October last year, and it was also set out which drugs we would prescribe.

The Hon. R.D. LAWSON: I can answer the Hon. Ann Bressington's question. I can assure her that I am not interested in creating unnecessary work for the police, or unnecessary complications. In fact, this measure is designed to make things simpler and for there to be no room for misunderstanding about what is being done. This is quite an extraordinary provision which enables a police officer to give a direction by any means at all, by subclause (3), that is, orally, or by means of a sign, or a signal, electronic or otherwise, or any other manner.

What we are saying in relation to the specific requirement not to drive is that it be given in writing. The police acknowledge that that is entirely appropriate. The minister says that that is what they propose doing. We have already worked out a protocol and they already have a form that they propose using. If that is the case, if they acknowledge the fact that that is appropriate, it ought to be in the legislation. This is very detailed legislation. Look at it: 'Direct the driver to vacate his seat. Direct him to leave his vehicle. Direct him not to enter the vehicle until permitted.' They are quite specific directions as to what is to happen in this case for the purpose of making it perfectly plain. We want to make it plain, as the police acknowledge it ought to be made plain, by providing a written document, and that is all.

The police are not saying that they could not do it, it would be impossible, too time-consuming, paperwork, etc. They are saying that they propose to do precisely that. If they do propose to do it, why should they not be required to do it?

The Hon. NICK XENOPHON: Could the Leader of the Government clarify this: if this amendment is passed, will it mean as a consequence that the drug driving legislation will not be able to come into force on 1 July, given this particular

amendment? I know that the opposition has, quite rightly, raised concerns about penalties or lack of penalties for MDMA in recent days. I am just worried that this might delay that. I understand that the South Australian Road Transport Association was quite comfortable with the government bill in that there are protocols in place, and it represents some 70 per cent of the operators in terms of heavy road transport in this state.

The Hon. R.D. Lawson: These are not road transport provisions.

The Hon. NICK XENOPHON: It relates to an amendment to this bill. I would welcome a response from the Hon. Mr Lawson, who has moved this amendment. Will it mean an inevitable delay in the implementation of the drug driving laws if this amendment is passed?

The Hon. R.D. LAWSON: I do not believe it will lead to any delay at all. The police already have the draft forms in front of them. The government has the power to issue a *Government Gazette* virtually at the drop of a hat and there will be no delay at all in consequence of this. Governments can find time to pass regulations and gazette them on a daily basis. This will not lead to any delay, as the minister has acknowledged.

The Hon. P. HOLLOWAY: No, I have not acknowledged that. In fact, I have said the reverse. It will delay, because the police draft is one driver direction notice, one form that is used for both. The opposition has two amendments. Members opposite want two forms of written notice, one to advise where the keys are taken to and another to advise how long the person can drive around in the vehicle. In fact, one notice is done. If you have two prescriptions, that is going to complicate these things. And for what purpose? The fact is that we all know it is going to happen anyway.

The act says that the police have to advise them, for their own protection if for no other reason, and to simplify things. We will do this. We do not need to put in a prescriptive law. Inevitably, someone will challenge this with some technicality and that will be an issue. How will the public interest be gained by that?

The Hon. R.I. LUCAS: One of the problems for those of us who have been in this chamber for a while is that we have had so many experiences of ministers giving assurances in this council that are not backed up by legislative intent, and to have those commitments and promises broken. I might remind the Leader of the Government that this government is guided by a philosophy whereby the Treasurer says that he has the moral fibre to break his promises and the government has the moral fibre to break its promises and commitments.

The problem is that the government on a number of occasions has given commitments in the chamber which it has not kept. That is why, in a number of other pieces of legislation, I recall the Hon. Mr Xenophon and others moving amendments to say, 'If you're going to do it, let's ensure that it's in the legislation so that it is rock solid.' The Hon. Mr Xenophon will recall one or two occasions where he has used that argument with me as Leader of the Opposition—and I suspect when I was leader of the government—when the opposition was moving similar amendments, and saying, 'If you're going to do it, let's just ensure it's in the legislation—what's the problem?' That is why I am surprised, given previous discussions I have had with the Hon. Mr Xenophon, which I will not go into detail—

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: I accept that but, understanding whence he normally came on these issues, and having had the experience of being lobbied both in government and in opposition by the Hon. Mr Xenophon, I will be surprised if he does not support the very logical amendment moved by the Hon. Mr Lawson, for the reasons he has given.

The Hon. P. HOLLOWAY: One of the amendments we are discussing provides that it must be the nearest police station or some other police station agreed to by the driver and the officer. Sometimes these people they will be dealing with will be very aggressive and difficult to deal with. If the Hon. Robert Lawson's amendment is carried they are supposed to negotiate with these people.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: It provides, 'which must be the nearest police station or some other police station agreed to by the driver and the officer'. If the nearest police station is not open 24 hours, it will be inconvenient. The police policy is a sensible one. This has been thought through. Why do you think we passed this law six months ago? It was to enable the police all this time to think through all the issues and prepare for the introduction of the bill. Now members opposite want to change this sort of thing at the last moment and override it by saying that it cannot be the sensible thing to go to the nearest 24-hour police station but, rather, just to go to the nearest one or something else agreed to by the driver and officer. If someone is spaced out on some cocktail of drugs and off with the fairies, somehow the police officer is supposed to negotiate with this person.

The Hon. R.I. Lucas: Then just go to the nearest one.

The Hon. P. HOLLOWAY: Which might well be closed. It does not make sense. That is the whole point. It is clear that this law provides for the fact that the police have to do certain things, and it is in the bill. The honourable member is just nitpicking and trying to get prescription for something the police will do and they will change their procedures.

It is interesting to point out that the amendment moved by the opposition through Robert Brokenshire last year—the insertion of a new clause 42A—is exactly what the government has picked up. In the opposition's amendment last year it did not include the need to prescribe it. The government has agreed, but suddenly the opposition has decided that it wants to go a bit further. If we amend this they will want to put something else in prescription. You cannot put everything you want to do in law: sometimes commonsense has to prevail. In this case, obviously, the police are required to give these instructions to people.

The honourable member was talking about flashing lights. They must have that power and instruction, because everybody who has been through a breath testing station knows that you have to obey the instruction to come off the road when the coloured cone is used. Where appropriate there will be written notices. The police have already incorporated that in their procedures, and this can only further cause delay, because it has to go through the right sort of processes, and we have about a week left before the start of the financial year.

The Hon. R.D. LAWSON: The Hon. Robert Lucas reminded those of us who have been here for some time that often we have had assurances—

Members interjecting:

The CHAIRMAN: Order!

The Hon. R.D. LAWSON: —that something will happen and, if it is not in the legislation, it does not happen. Those of us who have been here for a while know that the last refuge of the damned every time, with every government, is: 'If you pass this amendment you will delay the implementa-

tion of this measure.' This measure will not be delayed. That is simply a scare tactic on the part of the minister. He knows very well that this government—

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: They do it every day of the week.

Members interjecting:

The CHAIRMAN: Order! The Hon. Mr Lawson has the floor.

The Hon. R.D. LAWSON: The other thing is that I should remind the committee that the requirement about the keys and going to the nearest police station and the requirement in relation to the notice of the period during which the driver is not entitled to drive are two separate issues. We will be voting on them quite separately. I foreshadowed the key discussion, and we will not have it again. However, members might feel that they are convinced by what the minister said in relation to the inconvenience of having to indicate where the nearest 24-hour police station is (and, incidentally, there is nothing in the legislation to say that it has to be a 24-hour police station), and we know how few 24-hour police stations there are in South Australia—

The Hon. T.J. Stephens: Especially out in the country.

The Hon. R.D. LAWSON: —especially out in the country—rather highlighting the difficulty that can be created here. If the police have their own little rule, which is that they are only going to take it to a 24-hour police station, it is quite possible that someone in Coober Pedy will be coming to Adelaide to pick up the keys.

The Hon. T.J. Stephens: Well, it's only four hours to Port Augusta!

The Hon. R.D. LAWSON: As my learned friend said, it is four hours to Port Augusta. However, if you do not have a car and your wife does not have a car, it is a long walk.

The Hon. NICK XENOPHON: Everything that the Hon. Mr Lawson says is a key discussion, in my mind. The main reservation I have about amendment No. 1 is not so much that it is prescriptive, because it seems to be consistent with what has been indicated as what will be the police protocols, but that it could potentially delay the implementation of the drug-driving laws, and that is a concern for me. However, it seems to me that there is a dispute between the Leader of the Government and the Hon. Mr Lawson, on behalf of the opposition, with respect to that. My view is that—

The Hon. R.I. Lucas: Always believe the opposition!

The Hon. NICK XENOPHON: Yes, whoever is in opposition. My view is to support this amendment on the basis that there is some controversy about the impact it might have in relation to the drug-driving laws but, in the event that this cannot be resolved between the houses, I believe the amendment should be kept alive because of the concerns indicated by the Hon. Mr Lawson. However, in relation to the other amendments with respect to the keys and Mr Lawson's amendment No. 2, where there needs to be agreement between the driver and the officer, I see that as being absolutely absurd. I see the amendment with respect to keys as being totally impractical. There is a big difference between giving a notice to say that someone is not supposed to be driving for a certain number of hours and a police officer trying to work out where the nearest police station is. I see it as an unreasonable requirement to prescribe it to that extent in legislation.

I am prepared to support amendments Nos 1 and 4, for the purpose of keeping these amendments alive, in the same way that the opposition has supported amendments of mine. However, when it reaches the other place, that support is no longer there, and I understand that. I do not see the other amendments as having merit, in terms of supporting them. However, if in the meantime it appears clear that the amendment of the Hon. Mr Lawson could lead to a delay in the legislation—if that appears to be beyond doubt—obviously, I would reconsider my view with respect to supporting this amendment.

The Hon. D.G.E. HOOD: I agree with the Hon. Mr Xenophon and the comments he made. However, I wonder whether the minister can explain how it would delay the bill if the amendment was passed.

The Hon. P. HOLLOWAY: The drug-driving measures were passed in October last year, and it was indicated then that they would come into effect later in 2006 to give the police time to prepare for the introduction and to do all the necessary detail. As I said earlier, it was indicated last year that, when the compliance and enforcement bill came through, we would move this particular measure to clarify, at their request, the powers of police in relation to these issues. As I said, to facilitate things, we have effectively adopted the amendment that was then being used by the opposition.

The amendments that we have require the police to do certain things, to give people instructions. The reality is that they will do it in writing. The police have gone away, changed their policies and guidelines, and they have the paperwork all ready to go. The draft forms are all ready. Obviously, they cannot be finalised until this legislation is passed, but they are all ready to go. If they are to be prescribed by regulation, we have to go through all the formal procedures. A regulation would normally go through cabinet. It would have to be presented to the Governor and then there are the meetings of the Governor in Executive Council, and so on. We only have about a week—

The Hon. R.I. Lucas: You can do that in 24 hours.

The Hon. P. HOLLOWAY: You cannot draft the measure. As I said, the police have, over some time, drafted a driver direction notice which they would issue, which would cover all the requirements under this bill. If we start prescribing it in two separate ways, as the honourable member has done, we would need two separate forms. There is also the process that must be gone through. You do not just produce regulations, and there are all the other things with regulations. There is disallowance by parliament, and those sorts of things, although I suppose that would be unlikely if that is the view of the chamber. There are all these extra eventualities, but you do not just produce regulations out of thin air. You can do them fairly quickly, but—

The Hon. D.W. Ridgway: You can do it roughly in 24 hours.

The Hon. P. HOLLOWAY: Well, no; it is not that easy to draft. You are talking about two separate forms.

Members interjecting:

The Hon. P. HOLLOWAY: It is not quite the case, because the regulation will have to set out exactly what it is. The irony is that, in the regulation, the government could actually put whatever form it liked, and it would then be subject to parliament when we come back on 1 September. The irony is that it would hand it to the government to put into the form what it liked, anyway. That is why this is really such a phoney argument. The fact is that the police form that they have already done through their change in policy and approach is ready to go. They would have to change that.

I point out that any breach of operational policies by sworn officers is an offence under the Police Act and regulations, and officers may be charged with an offence under the Police Act and regulations, and the Commissioner of Police will deal with it. The Hon. Nick Xenophon has indicated that he in compliance, so let us just deal with it and move on. There are probably much more important issues to be dealt with in relation to this legislation.

The Hon. R.D. LAWSON: Can the minister indicate whether it is proposed to pass any regulations at all in relation to the 50 pages of this act and, if so, when will those regulations take effect?

The Hon. P. HOLLOWAY: We passed the other part of the Road Traffic Act in November or December last year, and it has already had regulations under it. It is understood that regulations will be passed within six months of the passage of this bill. However, as I said, under the Road Traffic Act, in relation to drug driving there is already the regulations that were prescribed earlier in respect of the two drugs that we said we would test for last year.

The Hon. CARMEL ZOLLO: The Hon. Dennis Hood should bear in mind that this legislation, as pointed out by the Leader of the Opposition, was requested by the police. It is their belief, obviously, that this is what works best. I think that we would be delaying this legislation by doing anything else. Perhaps the honourable member should ask the Hon. Rob Lawson from where his amendments are coming, apart from himself.

The Hon. R.I. LUCAS: Given that the question has just been answered, will the Leader of the Government indicate the date of the regulations in relation to the drug-driving legislation to which he has just referred? The minister can take that on notice if he does not have the answer.

The Hon. P. HOLLOWAY: Let me just clarify things. Obviously, the drug-driving scheme is due to take place on 1 July. As I understand it, regulations are to be passed within six months of the passage of the bill, when this would come into effect. The measures are already in place, I suppose. Proclamation will not occur for about six months. In effect, what will happen is that the police will do what they were proposing to do, anyway. However, as this bill would not come into effect, any regulations (if they are required) could be drafted then. I guess I will have to retract what I said about the procedures but, in effect, the police measures would come into effect anyway on 1 July. Of course, the proclamation of this bill would not occur until after about six months—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: As I said, I have just corrected that.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I am correcting the record, because this bill—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, not for that reason. If the Hon. Robert Lawson is really concerned about what will happen in terms of the police not doing it, the fact is that they will be doing it anyway after 1 July because the drug-driving regulations have been already gazetted. However, the regulations under this bill would take place in six months. In relation to that matter, I think we should—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, yes, I was wrong in relation to that matter, but it does not really change the fact that the police will be providing these notices anyway from 1 July.

The Hon. R.I. LUCAS: I will not unduly delay the committee, but I just say that I am deeply disappointed that the claim we made earlier in the debate that one could not believe what the minister was saying has been so quickly proved to be correct with his withdrawal of much of what he has been saying. One would hope that he makes an apology to the council. Will the minister clarify the date of the regulations with respect to drug driving? He has indicated that the drug-driving regulations have been passed. Will he indicate the date they were gazetted?

The Hon. P. HOLLOWAY: I am pretty sure it was 8 June. Take it as 8 June unless I am otherwise wrong.

The committee divided on the amendment:

AYES (8)

Dawkins, J. S. L.	Lawson, R. D. (teller)
Lensink, J. M. A.	Lucas, R. I.
Ridgway, D. W.	Stephens, T. J.
Wade, S. G.	Xenophon, N.

NOES (10)

Bressington, A.	Finnigan, B. V.
Gago, G. E.	Gazzola, J. M.
Holloway, P. (teller)	Hood, D.
Hunter, I.	Parnell, M.
Wortley, R.	Zollo, C.

Majority of 2 for the noes.

Amendment thus negatived.

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

Page 8, line 4—

After 'station' insert: (which must be the nearest police station or some other police station agreed to by the driver and the officer)

There has been some discussion already on this amendment, so I will not protract the discussion. It has been suggested, however, in the debate that the effect of this amendment is that a police officer would have to negotiate with or necessarily reach agreement with a person from whom those keys have been taken. That is not the case. The place to which the keys should be returned is the nearest police station or, if the police officer can agree with the driver, some other place. If agreement cannot be reached, or if the person is 'spaced out'—the expression used by some members—it will be the nearest police station.

The Hon. P. HOLLOWAY: I wish to further clarify what I said before. What I should have said is that part 2 of this bill is intended to bring that into operation as soon as the bill is passed. This will assist SAPOL in the enforcement of drink and drug driving offences. This power will be particularly useful when drug driving testing commences on 1 July 2006. It will enable police to be sure that a person who tests positive for alcohol or prescribed drugs will not be able to drive the vehicle until a safe period to be determined. The rest of the bill, which is what I was referring to, will apply in six months. So, part 2 will be brought into operation as soon as the bill is passed. So those earlier comments I made were, in fact, correct. It sounds a bit like Monty Python, doesn't it?

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No, I was correct in both parts, but I just did not put them together properly.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Not at all. As I said, I have already spoken to the Hon. Robert Lawson's amendments.

Amendment negatived.

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

Page 8, after line 6—Insert:

(5a) If a police officer takes possession of keys or components, the officer must, as soon as reasonably practicable, give

the driver a written notice in the form prescribed by regulation stating the address of the police station from which the keys or components may be recovered.

This amendment is not consequential upon the previous amendment. This is really a stand-alone amendment. It requires the police officer who takes possession of keys to give a written notice of the address of the police station from which the keys may be recovered. There is no requirement for negotiation, because the committee has clearly indicated it is not attracted to that idea; there is no requirement that the keys be returned to the nearest police station; there is simply a requirement that the police give a written notice to the person identifying the place from which these keys might be recovered.

The minister has told us that that is the nearest 24-hour police station. The minister might know where 24-hour police stations are in this state. I am sure that not every citizen does. I think it only reasonable that a person whose property is taken, whose family may be seriously inconvenienced by this, whose wife might need the motor car to take the kids to school or hospital tomorrow, should be given a notification of where the keys are to be collected.

The Hon. P. HOLLOWAY: We have already debated the substance of this bill, but again I point out that the driver direction notice prepared by the police will include the following: the key collection location; key to the vehicle, the driver, and the rego number are to be filled in. It says that the key to the vehicle being driven by the subject at the time of the issue of this direction will be able to be collected by the driver or their nominated representative at the nearest 24-hour police station to the issue of this notice at the time and date nominated below, and it gives the police station, the time and the date. So, the police, as I said, have this in hand.

The Hon. R.D. LAWSON: I will not delay the committee unduly, but the minister concedes that the police acknowledge the need for this and propose to do it. That's at the moment; they might change their minds at any time.

The Hon. P. Holloway: But why?

The Hon. R.D. LAWSON: They might.

The Hon. Carmel Zollo: They have asked for the power to do it.

The Hon. R.D. LAWSON: Well, if they have asked for the power to do it, I suggest that we give them the power in explicit terms according to the will of the parliament. That is why we actually pass laws here.

The Hon. P. Holloway: But they have been. They are required to do it. All you want to do is specify the actual shape of the ball.

The Hon. R.D. LAWSON: No; they are not required to do it. I hope the minister will not mislead the committee by saying they are required to give a notice of the address. They are not required.

The Hon. P. HOLLOWAY: For the committee's information, the regulations relating to drug driving were, in fact, gazetted on 8 June, as I indicated.

The committee divided on the amendment:

AYES (7)

Dawkins, J. S. L.	Lawson, R. D. (teller)
Lensink, J. M. A.	Lucas, R. I.
Ridgway, D. W.	Stephens, T. J.
Wade, S. G.	

NOES (11)

Bressington, A.	Finnigan, B. V.
Gago, G. E.	Gazzola, J. M.
Holloway, P. (teller)	Hood, D.
Hunter, I.	Parnell, M.
Wortley, R.	Xenophon, N.
Zollo, C.	

PAIR

Schaefer, C. V.	Evans, A. L.

Majority of 4 for the noes.

Amendment thus negatived.

The Hon. R.I. LUCAS: My question, which I flagged in the second reading contribution, is on this particular clause. Can the minister confirm whether the police have advised the government that the tests that will be used by police for drug driving under these particular provisions will indicate whether or not a particular driver has tested positive for MDMA, as opposed to THC or methylamphetamine?

The Hon. CARMEL ZOLLO: I believe that I answered that in question time today but I am happy to answer the question again. My advice is that police will detect MDMA at the roadside in its pure form, but cannot detect the difference due to the close alignment between MDMA and methylamphetamine at the roadside. The separation, as I said today, will only occur in the laboratory. The reason for this is that the equipment uses an antibody which is designed to connect with a particular molecule, and both methylamphetamine and MDMA have the structure that will couple with the antibody used. Therefore, police will not be aware that they have detected MDMA until they receive the results from the laboratory.

As I said today, it will be noted, and I also said today that the incidence of pure MDMA is rare. As I said, it will be recorded but it cannot be identified until that laboratory test comes back, and drivers are not informed until a few weeks later. So, the member is asking me will they be treated the same as the people who end up having the two prescribed drugs, and the answer to that is yes, because it will not be until much later that we will be able to say if or any people had MDMA.

The Hon. R.I. LUCAS: Can the minister clarify how soon after the roadside tests will police (as well as the drivers) receive the results of laboratory tests from the Forensic Science Centre?

The Hon. CARMEL ZOLLO: My advice is that drivers will be informed within a few weeks. So, clearly on the night, or whenever they are tested, they have no reason to be treated any differently, so they, too, will be taken off our roads. That is my advice.

The Hon. R.I. LUCAS: The minister did not understand my question exactly. When will the police be advised of the results of the laboratory analysis? Is that also several weeks later—

The Hon. CARMEL ZOLLO: Sorry, I did not hear the question.

The Hon. R.I. LUCAS: When are the police provided with the results of the laboratory analysis?

The Hon. CARMEL ZOLLO: I do not have that information here but, as I said, it has to be forensically tested in a laboratory so it will not be on the evening. So, my advice is that the police will be able to issue a direction not to drive. As I said before, two to three weeks.

The Hon. R.I. LUCAS: Can I just clarify that: the minister did indicate that two to three weeks is when the police will be aware of the laboratory analysis?

The Hon. CARMEL ZOLLO: That is my advice, yes.

The Hon. R.I. LUCAS: Can I clarify what the minister is saying to the committee. When one talks about the roadside test, there are two tests, as has been explained publicly by government representatives on various occasions. One is that there is a saliva test which is conducted in the car, and then there is a subsequent saliva test conducted in the drug bus. So, I wish to clarify that. Can the minister indicate, in relation to the first saliva test when the driver is tested within the car, what it is that the police can see from that in relation to THC, methylamphetamine, or MDMA?

The Hon. CARMEL ZOLLO: The honourable member is right, as I said today, that there are two tests. The first one is the swab and it is performed through the window of the car. If they test for THC, methylamphetamine or MDMA, obviously, as I just explained—

The Hon. R.I. Lucas: From that first step, would the police officer be able to see immediately that it is THC that the person is suspected of taking?

The Hon. CARMEL ZOLLO: That is right. I am sure the honourable member has seen the pamphlet which was distributed in last week's *Sunday Mail*. The picture shows what happens. There are two little parts to the test. One says 'cannabis' and the other one says 'amphetamines'. That first test is undertaken in the driver's car.

The Hon. R.I. Lucas: The police officer would know from the first test that it was either cannabis or methylamphetamine.

The Hon. CARMEL ZOLLO: Yes, that is right; and, if that is the case, they are then asked to accompany them to the drug bus, if you like, or van, and then they are asked to produce a further saliva test. Obviously, as I said, those results will not be known forensically for a few weeks.

The Hon. R.I. LUCAS: As it was explained to me by the police, there is a three-stage process as opposed to a two-stage process. The minister has just explained the first stage where the police officer can see that something comes up, I assume, which says it is cannabis, THC or amphetamines. Therefore that person is then taken out of the car and taken over to the drug bus. They are then tested in the drug bus and there is another result at that stage before it goes off to the Forensic Science Centre. It is not my understanding that the second drug bus sample goes off to the Forensic Science Centre without there also being another determination at that stage. My understanding from the police advice that we received is that these directions that we are talking about here will not come into play on the basis of the first test, which is in the car.

Let us say that you are in the car—bang, it says that you have cannabis. Under this power, the police cannot stop you from driving for 24 hours or five hours on that basis. My understanding was that you had to go to the drug bus to be tested again, and it was only after it was confirmed again in the drug bus that these powers could be used. That is contrary to what the minister has just indicated, that is, the second sample goes off to the Forensic Science Centre and you wait two or three weeks for that particular result. On that basis, these powers would be actioned on the initial test in the car. As I said, that is contrary to the advice police have given me and other representatives of the opposition. Can we clarify the minister's answers in relation to these important powers and when they will operate?

The Hon. CARMEL ZOLLO: Yes, the honourable member is right, the second analysis test—and I am pretty sure I did put that on the record today—will take up to 30 minutes. The direction will be given on the basis of those two tests. The first one in the car and then they go off to the drug bus where a second drug test will occur with oral fluid analysis.

The Hon. R.I. LUCAS: I thank the minister for that clarification. In the drug bus, again is it a piece of equipment like the equipment used in the car where it comes up again and says cannabis, THC or methylamphetamine?

The Hon. CARMEL ZOLLO: Is the honourable member asking in relation to MDMA?

The Hon. R.I. LUCAS: No, not yet. I am just asking what it actually shows in the drug bus to the police officer.

The Hon. CARMEL ZOLLO: It shows both, yes. It can show both again. It is a secondary test just to be sure.

The Hon. R.I. LUCAS: Is it the same test conducted a second time or is a different test conducted in the drug bus? Again my understanding was it was a slightly different test which the police were arguing was slightly more accurate than the first one which was an indicator.

The Hon. CARMEL ZOLLO: The reason the second test is done is precisely the reason you gave: it is more accurate. It takes a bit longer, that is, 30 minutes. So, you have an initial test in your car, which takes five minutes, and the second one takes 30 minutes.

The Hon. R.I. LUCAS: This second test can take up to 30 minutes, we were told. This second test will indicate on a screen or on a device or something that, again, either THC or methylamphetamine has been detected. What I want to know is at that stage what do the police see in terms of the test result within the drug bus. Is it a statement on a screen that says, 'This person has been detected with THC'—or methylamphetamine, or anything else? I just want to know what the police actually see from the test result.

The Hon. CARMEL ZOLLO: We will get some further clarification, but it is my understanding that it is the same as the breath test, basically.

The Hon. R.I. Lucas: The same as the breath test?

The Hon. CARMEL ZOLLO: Not the technicality of it. It is just a further test to get a better result. However, we will get some advice on it.

The Hon. R.I. Lucas: Is it on a screen? What is it? Does it come up and say again, 'THC', or whatever it is? Does it come up and say, 'methylamphetamine'?

The Hon. CARMEL ZOLLO: I do not know the finer technicalities and whether or not it comes up on a screen, but one assumes that it is a type of testing equipment that is obviously more sophisticated than the initial test. Obviously, it must have to come up and say whether there is THC or methylamphetamine in that test. As I have said, it is obviously a more accurate test than the original test and a safeguard for everyone concerned. But, if the honourable member wishes, we can get finer details for him and ensure that we correspond with him on it. Apparently, the saliva fluid is placed in the machine, which will analyse for about 30 minutes and the results will show up. It is obviously like a moving laboratory, if you like.

The Hon. R.I. LUCAS: If there is further information, I would be happy to receive it, but as I understand what the minister is saying, with that second subsequent test in the drug bus, after the test results come up, whether it is on a screen or whatever it is, again all it will say will be either 'THC' or 'methylamphetamine'. There will not be in that result the police receive at that particular stage any reference to the possibility of MDMA.

The Hon. CARMEL ZOLLO: As I said before, my advice—and I think it is worth repeating—is that the police

will detect MDMA at the roadside in its pure form but that, due to the close alignment between MDMA and methylamphetamine, they cannot determine the difference at the roadside. The separation can occur only in a laboratory. The reason for this is that the equipment uses an antibody that is designed to connect with a particular molecule. Both methylamphetamine and MDMA have the structure that will couple with the antibody used and, therefore, the police would not be aware that they had detected MDMA until they received the results from the laboratory—not from their own drug bus but from the laboratory. That is the advice I have been given.

The Hon. R.I. LUCAS: I am not sure whether the minister's advisers are aware of the technical nature of this. When one looks at the debate in the Tasmanian parliament, which was much more extensive than the debate we are having in terms of drug driving (I think that it is a good indication of competent legislators exploring the detail of these drug-driving tests before they sign off on them), there was reference to a series of different potential machines: Cozart RapiScan, the Drager drug test machine and the Drugwipe. Can the minister indicate the machine the government in South Australia has purchased or obtained to be used? Evidently, there are conflicting technologies.

The Hon. P. HOLLOWAY: It is in on the record. It is in the *Gazette*. I remember reading it in the *Gazette* on 8 June; two of them are described there.

The Hon. R.I. LUCAS: I do not want to delay the committee as, clearly, other provisions of the bill are more substantive to its overall nature. As I understand it, the government's advisers would be able at short notice to get us a copy of the regulation referred to on 8 June. If that is the one that refers to the nature of the machine, that would suffice from my viewpoint.

Clause passed.

Clause 5.

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

Page 12, line 2—Delete 'residence or'

This amendment refers to the definition in the bill of 'garage address', which provides:

(a) the address of the place of residence or business at which the vehicle is ordinarily kept when not in use

The Liberal Party has always protected the homes of individuals, and we feel that this provision may unduly allow police or authorised officers to enter people's residences.

The Hon. P. HOLLOWAY: The government opposes this amendment. All the definitions contained in clause 5 relate to other sections of the bill. There is nothing sinister in any of the definitions. They do not achieve anything on their own and must be considered in the context of the sections where they are used. 'Garage address' is used in the definition of 'responsible person', 'driver's base' and sections giving enforcement officers powers to inspect or search premises and to produce records, devices or other things.

In relation to sections 40S and 40T, the power to inspect and search premises, there is concern that it would give police and authorised officers the power to enter people's homes and invade their privacy. This is not the case. The use of the term 'residence' in the definition of 'garage address' is there only to ensure that people who run their business from their home address can be inspected or searched for compliance purposes.

To remove 'residence' from the definition of 'garage address' would severely curtail the effectiveness of the enforcement powers and leave a potential loophole that could be exploited by persons seeking to avoid the provisions of the law, as it would mean that the enforcement powers could not be used in relation to a person who runs their business from home. Inspection of any part of premises predominantly used for residential purposes is restricted within the section by requiring consent. Similarly, searching any part of premises predominantly used for residential purposes is restricted by requiring consent or a warrant.

The Hon. CARMEL ZOLLO: With the committee's indulgence, I place on the record the type of apparatus that is used for conducting drug screening tests and oral fluid analyses. Securetec Drugwipe II Twin is an apparatus for the purpose of conducting drug screening tests. Cozart RapiScan is approved for the purpose of conducting oral fluid analyses. These were both approved and they are in the regulations.

Amendment negatived.

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

Page 17, lines 39 to 43 and page 18, lines 1 to 30—Delete all words in these lines and substitute:

'responsible person', in relation to a vehicle, means the owner, operator or driver of the vehicle or any other person who controls or directly influences the operation or loading of the vehicle.

This amendment relates to the interpretation of this act and the definition of 'responsible person'. The bill provides:

'responsible person' means any person having, at a relevant time, a role or responsibilities associated with road transport, and includes any of the following:

(a) an owner of a vehicle;
(b) a driver of a vehicle;
(c) an operator or registered operator of a vehicle;
(d) a person in charge or apparently in charge of a vehicle;
(e) a person in charge or apparently in charge of the garage address of a vehicle or the base of the driver or drivers of a vehicle;
(f) a person appointed under an approved road transport compliance scheme to have monitoring or other responsibilities under the scheme, including (for example) responsibilities for certifying, monitoring or approving vehicles under the scheme;
(g) an operator of an intelligent transport system;
(h) a person in charge of premises entered by an authorised officer or police officer under this act;
(i) a person who consigns goods for transport by road;
(j) a person who packs goods in a freight container or other container in a package or on a pallet for transport by road;
(k) a person who loads goods or a container on a vehicle for transport by road;
(l) a person who unloads goods or a container containing goods consigned for transport by road;
(m) a person to whom goods are consigned for transport by road;
(n) a person who receives goods packed outside Australia in a freight container or other container or as a unit load for transport by road in Australia;
(o) an owner or operator of a weighbridge, or weighing facility, used to weigh vehicles or an occupier of premises where such a weighbridge or weighing facility is located;
(p) a responsible entity for a freight container;
(q) a person who controls or directly influences the loading or operation of a vehicle;
(r) an agent, employer, employee, contractor or subcontractor of any person referred to in the preceding paragraphs of this definition.

The Liberal Party believes that the clause would be much simpler if we amended it to include the definition of a 'responsible person' as set out in my amendment. It is much simpler and more concise. In fact, I have heard it said today that this national legislation is a much more wordy document than we would normally see drafted in South Australia.

The Hon. P. HOLLOWAY: The government opposes the amendment. The definition of 'responsible person' is relevant

to the scope of the enforcement powers available under the bill. A 'responsible person', which covers a wide variety of parties involved in the transport logistics chain, may be questioned, required to produce documents or provide information or otherwise involved in the chain of responsibility investigation.

Narrowing the definition in any way will severely restrict the ability of enforcement officers to investigate and gather evidence to mount successful chain of responsibility prosecutions. It would create an enforcement loophole that would enable unscrupulous parties to find ways of avoiding answering questions or complying with legitimate enforcement requests or directions to provide information, records or equipment. This would significantly undermine the national intent of the model legislation and potentially frustrate effective cooperation in cross-border investigations.

Amendment negatived; clause passed.

Clause 6.

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

Proposed new section 9, page 20, lines 38 to 41 and page 21, lines 1 to 16—Delete proposed new section 9.

This amendment proposes to delete new section 9, which deals with associates. Of particular interest to the opposition is subparagraph (1)(a), which provides:

For the purposes of this act, a person is an associate of another if—

(a) one is a spouse, parent, brother, sister or child of the other; or

It then goes on with a whole range of other qualifications for an associate. The Liberal opposition is very concerned about children being described in this particular clause and potentially being either served with documents or charged as an associate of an adult parent. For those reasons the opposition opposes this.

The Hon. P. HOLLOWAY: The government opposes the amendment. I can assure the honourable member that the definition of associates has nothing to do with prosecuting minors. This definition only relates to new section 163U—Commercial benefits penalty orders in the bill and amendment of section 168(1)(g)—Court imposed penalty revoking registration. The commercial benefits penalty order in section 163U enables the court to order a person to pay a fine up to three times the gross commercial benefit received by the person, or by an associate of the person, from the commission of an offence. If the definition of associate was removed the practical effect would be that people could hide proceeds from breaches of road laws with family members or business associates and therefore avoid any penalty.

Amendment negatived; clause passed.

Clauses 7 to 13 passed.

Clause 14.

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

Page 24, after line 5—
insert:
Penalty: $1 250.

This is an amendment to the clause which provides that:

(3) An authorised officer who is exercising or about to exercise a power is required to comply with a request to identify himself or herself, by producing his or her identification card.

The Liberal opposition believes that it is only fair and reasonable that if this person fails to do so they should incur a penalty. For that reason we would like to insert the penalty of $1 250.

The Hon. P. HOLLOWAY: This amendment is opposed. The production of an ID card by an authorised officer and police officer is required when requested if the officer is exercising or is about to exercise a power under the bill. Failure to comply with the request may invalidate another power exercised by the officer as it would provide a defence for not complying with subsequent direction.

Amendment negatived.

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

Page 24, line 8—
Delete '; or' and substitute:
; and

The clause currently provides:

(4) A police officer who is exercising or about to exercise a power is required to comply with a request to identify himself for herself, by—
(a) producing his or her police identification; or
(b) stating orally or in writing his or her surname, rank and identification number

The amendment removes the word 'or' and inserts 'and'.

The Hon. P. HOLLOWAY: The government opposes the amendment. The police identification shows the surname, rank and ID number and it is unnecessary to show the ID and repeat the information on the card. The amendment is therefore unnecessary and is opposed.

Amendment negatived.

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

Page 24, after line 10—Insert:
Penalty: $1 250.

Again, this is identical to amendment No. 6, that if the police officer who is exercising, or about to exercise his power, is required to comply with a request to identify himself or herself, if they do not, the opposition believes that they should incur a penalty, and the penalty should be $1 250.

The Hon. P. HOLLOWAY: The government opposes the amendment. The production of an ID card by an authorised officer and police officer is required when requested, if the officer is exercising, or is about to exercise a power under the bill. Failure to comply with the request may invalidate another power exercised by the officer, as it would provide a defence for not complying with a subsequent direction.

Amendment negatived.

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

Page 29, after line 3—Insert:
(5a) subsection (5) does not apply if the direction is unreasonable.

This relates to section 40H, which is the direction to stop a vehicle to enable the exercise of other powers and, in particular, to the direction—a person commits an offence if the person is subject to a direction under subsection (1) and that, (b) a person engages in conduct that results in contravention of this direction. Our amendment is to insert another subsection (5a) saying subsection (5) does not apply if this direction is unreasonable. That is where it is an unreasonable request in respect of the safety of livestock, passengers or other people in the vehicle, but particularly concerning livestock. When it comes to heat stress and the safety of the livestock, it would unreasonable to expect, for example, on a particularly hot day, a load of pigs or sheep or cattle that have come a long distance and are short of water and thirsty, to be stopped. We think that is an unreasonable direction.

The Hon. P. HOLLOWAY: The government opposes this amendment. The power is to direct a driver to stop the vehicle and not to move it, interfere with any equipment on it, or interfere with its load for the purpose of exercising other enforcement powers under a road law. This is an essential start to any investigation. This amendment would invite

drivers to refuse to allow, or to contest, all directions to stop their vehicle as being unreasonable. The government believes this would unduly hamper investigations of suspected breaches of the road laws. Additionally, in the interests of national consistency, the amendment should not be recorded as there is no such provision in New South Wales or Victoria.

I also point out that section 41J also covers this situation as if anything is done unreasonably, the officer must restore the vehicle load or equipment to the condition it was in before the exercise of the power. I just point out section 41J covers that situation.

Amendment negatived.

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

Page 29, after line 12—Insert:

(1a) subsection (1) does not apply in relation to a vehicle that is carrying livestock.

This is particularly in relation to the transport of livestock. It is to insert a new section (1a), that subsection (1) does not apply in relation to a vehicle carrying livestock. Again, this is in relation to a direction to move a vehicle to enable the exercise of powers. The opposition feels it is unreasonable if you have, as I mentioned before, livestock that has travelled a particularly long distance, that may be short of feed and water, to then be subjected to powers that may put those animals under undue stress. It is a shame the Hon. Sandra Kanck is not here, but I know the Hon. Mark Parnell would agree that it would not be reasonable to put livestock under undue stress and trauma, just because of a potential breach of this particular act. The Liberal opposition does not believe that it should apply in relation to carrying livestock.

The Hon. P. HOLLOWAY: The government opposes the amendment. There are no special circumstances that would warrant a livestock carrier being exempted from compliance with the enforcement powers. SARTA does not support this amendment, and I point out again that section 41J covers this situation, as I indicated earlier.

The Hon. M.C. PARNELL: Having been brought into this debate by the Hon. David Ridgway, I note that I am often in favour of more prescription rather than less but, in this case, I would be happy to trust the good judgment of police officers and other enforcement officers that they are not going to unreasonably subject truckloads of animals to death or discomfort. I do not think that the honourable member's amendment is necessary.

Amendment negatived.

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

Page 29, line 36—delete '30' and substitute:

20

This amendment relates to the prescribed distance, which means a distance in any direction within a radius that currently stands at 30 kilometres. The opposition moves to reduce that to 20 kilometres. Our understanding is that the prescribed distance is the distance that a driver of a vehicle can be required to return to or drive on to to be weighed or inspected, etc. We believe that that is an unreasonable request if you have livestock on board that have driven a long way. If it is a hot day, to have to turn round and go back 30 kilometres to a weighbridge and then back another 30 kilometres could add at least another hour to a journey. We know that there are certain limitations allowed by drivers for how many hours they can drive. It could then mean that the driver of that particular load of livestock is not able to complete his journey within the recommended time frame and then has to stop and rest, so the stock are longer out of water and suffering more stress and duress.

The Hon. P. HOLLOWAY: This amendment is opposed. The bill sets 30 kilometres as the distance from the location of the vehicle in which it can be directed to move or any distance on its forward journey. This means a vehicle will not be sent off its route more than 30 kilometres, which is the distance set in the national model legislation, and this should be supported for consistency. Both New South Wales and Victoria allow a direction of 30 kilometres. This does not mean that a vehicle will be directed back 30 kilometres. As a matter of practice, where possible, enforcement officers will be directing the vehicle along the forward route of its journey, thereby causing the least amount of disturbance to the truck driver's schedule.

The Hon. M.C. PARNELL: The Hon. Mr Ridgway will probably rue the day that he engaged me in this! I just remind the honourable member that, when it comes to police officers, they are also authorised officers under the Prevention of Cruelty to Animals Act, so they will have at the forefront of their minds a need not to put animals under undue stress.

Amendment negatived.

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

Proposed new section 40K—Page 31—

After line 25—Insert:

(4a) 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 and gives the driver a direction under subsection (2)(c) or (d) or subsection (4)(c), the officer must, as soon as reasonably practicable, give the person a written notice in the form prescribed by regulation repeating the effect of that direction and specifying the minimum number of hours that must elapse before the driver may be permitted to occupy the driver's seat, enter the vehicle or drive another vehicle, as the case may require.

Line 34—After 'station' insert:

(which must be the nearest police station or some other police station agreed to by the driver and the officer)

After line 36—Insert:

(6)(a) If a police officer takes possession of keys or components, the officer must, as soon as reasonably practicable, give the driver a written notice in the form prescribed by regulation stating the address of the police station from which the keys or components may be recovered.

These are corresponding amendments to ones previously defeated by the committee. Accordingly, I will not be dividing on them on this occasion. I think it is important that we have on the record our proposals in relation to the requirement for police officers to give written notices in the manner specified in my amendments. I know the feeling of the committee on these amendments, so will not divide.

The Hon. P. HOLLOWAY: We have had this debate before. We had temporary provisions and the more permanent provisions under this bill. There is six months proclamation for most sections of the bill and these enforcement sections will come into operation in six months. Part 2 came into effect immediately, but essentially the amendments are the same as those we discussed earlier, but these would apply in the longer term within the bill, whereas those we discussed earlier would have been interim measures. However, the same arguments apply and we oppose the amendments for the same reasons.

Amendments negatived.

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

Proposed new section 40L, page 32, after line 16—Insert:

(3) If an authorised officer or police officer gives a person a direction under this subdivision otherwise than in writing, the authorised officer or police officer must cause the person to be given

a notice in writing setting out the terms of the direction within 24 hours.

This relates to section 40L and the manner of giving directions under the subdivision. We propose to insert a new subsection (3). It is reasonably self-explanatory. If the authorised police officer does not give them a direction in writing, then they are compelled to do so within 24 hours.

The Hon. P. HOLLOWAY: The government opposes the amendment. The subdivision only applies to directions to stop, move or leave the vehicle. As the driver has to comply immediately, confirmation in writing is of limited value and creates an administrative burden on the enforcement officer. Practically it would be difficult for the enforcement officer to comply with a requirement to deliver the notice within 24 hours as the driver may still be on the road 24 hours after the direction is given and it would be difficult to locate him, and there is no similar requirement in either Victoria or New South Wales. Earlier to another part of this bill I gave examples of various sections where the powers of authorised officers to give directions applied.

Amendment negatived.

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

Proposed new section 40S, page 39, line 29—Delete 'free of charge' and substitute '(provided that an amount equal to the reasonable cost of using the equipment is paid or offered to the occupier of the premises)'.

This amendment is to delete the words 'free of charge' where it relates to the power to use photocopy equipment and premises free of charge for the purpose of coping any records or other material. We propose to insert 'provided an amount equal to the reasonable cost of using the equipment is paid or offered to the occupier of these premises'. I know this issue was discussed and minister Conlon said he would look at it between the houses.

We can understand if it is just a handful of documents or three or four pages that it would not be an unreasonable request to photocopy them. However, in many cases I suspect many sheets of papers will be copied and toner will be used and there will be wear and tear on the equipment. Also it can be difficult in an office situation if the authorised officer or police officer is in there taking copies, maybe not at the wish of the people involved. The opposition believes it would be desirable to pay a fee up to a reasonable cost for using the equipment and that it be paid or offered to the occupier of the premises.

The Hon. P. HOLLOWAY: The government opposes the amendment. This provision enables officers to photocopy material and evidence then and there on the premises, which they may otherwise move to examine. I am sure that, in most cases, this is more convenient for the business, and it is stated to clarify and avoid any argument when the power is exercised. Otherwise, presumably, you would take everything away and the business would not have its books at the time they come back—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: We are saying that you should not do that. What would happen otherwise is that you could seize the information and take it away. This is a measure whereby the photocopying then and there really is of convenience to the company. Therefore, if they have the machine there and can do it then and there, I think it is reasonable that they should pay for it, or it is reasonable to provide the service.

Amendment negatived.

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

Proposed new section 40W, page 44, after line 28—
insert:

(2a) A direction given to a person under subsection (1) must allow the person a reasonable period to obtain legal advice before the time stated when the records, devices or other things are to be produced.

This amendment relates to proposed new section 40W. It provides that a direction given to a person under subsection (1) must allow the person a reasonable period to obtain legal advice before the time stated when the records, devices or other things are to be produced. Proposed new section 40W provides:

(1) An authorised officer may, for compliance purposes, direct a responsible person to produce—

(a) any records required to be kept under an Australian road law; or

(b) any records comprising transport documentation or journey documentation in a person's possession or under the person's control; or

(c) any records, or devices or other things that contain or may contain records, in the person's possession or under the person's control relating to or indicating—

(i) the use, performance or condition of a vehicle; or

(ii) ownership, insurance or registration of a vehicle; or

(iii) any load or equipment carried or intended to be carried by a vehicle (including insurance of any such a load or equipment); or

(d) any records, or any devices or other things that contain or may contain records, in the person's possession or under the person's control demonstrating that a vehicle's garage address recorded in the relevant register is or is not the vehicle's actual garage address.

It continues:

(2) The direction must—

(a) specify—

(i) the records, devices or other things; or

(ii) the classes of records, devices or other things, that are to be produced; and

(b) state where, when and to whom the records, devices or other things are to be produced.

The amendment that the opposition proposes is that a direction given to a person under subsection (1) must allow that person a reasonable period to obtain legal advice before the time stated when the records, devices or other things are to be produced. The opposition believes that individuals certainly should be allowed some time to obtain legal advice before they have to present the said items.

The Hon. P. HOLLOWAY: The government opposes the amendment, for the reasons that I outlined earlier. The records of things sought, or about the registration, insurance and operation of the vehicle and transport documentation, or this type of thing, is not subject to professional privilege rules allowing it not to be disclosed. Failure to produce the records, devices, and so on, would be an offence regardless of any legal advice.

Amendment negatived.

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

Proposed new section 40Y, page 46, line 28—
delete ', but not otherwise' and substitute:
if the person given the direction is qualified to drive the vehicle, but does not authorise the giving of a direction

Proposed new section 40Y(3) provides:

(3) This section authorises the giving of a direction to run the engine of a vehicle, but not otherwise to drive the vehicle.

The opposition's amendment seeks to remove 'but not otherwise' and substitute 'if the person given the direction is qualified to drive the vehicle but does not authorise the giving of a direction'. Again, it is just to protect the property of individuals. If someone is not qualified to run, start or operate

a particular piece of equipment, it could be damaged and then, of course, we have an issue of who will pay for the costs of that damage. The opposition wants qualified people only to be operating these vehicles.

The Hon. P. HOLLOWAY: The government opposes this amendment. A direction under this section is given to a responsible person, who will probably be the driver and qualified to drive the vehicle, in any event. Further, the section does not authorise the driving of the vehicle but only running the engine. In the interests of national consistency, it is important to maintain the same requirements in all the jurisdictions. I remind the council that New South Wales and Victoria have enacted this requirement.

Amendment negatived.

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

Proposed new section 40Z, page 47, lines 18 to 22—Delete subsection (2).

Subsection (2) provides:

The authorised person 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 who is fit and willing to run the engine.

Again, it seems that there is the potential for somebody who is not qualified to drive the vehicle, who does not understand what damage they might be doing to the engine—there might not be any coolant in the engine—and who is required to start the engine, to do a whole range of damage to a piece of equipment or a vehicle.

The Hon. P. HOLLOWAY: The government opposes the amendment. This section already contains a constraint on the exercise of that power which requires the officer to first determine that there is no-one else in the vicinity who is more capable to run the engine than the authorised person. Therefore, an engine being run by a person who is not qualified to drive will only happen in those rare circumstances when there is no-one else qualified to do it. It is necessary to run the engine, for example, in order to examine the engine management system which can detect whether the vehicle has been speeding or, alternatively, where the vehicle is to be towed the engine needs to be run to decouple the trailer from the prime mover. Again, both New South Wales and Victoria allow persons who are unqualified to drive the vehicle to run the engine.

Amendment negatived.

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

Proposed new section 41B, page 48, line 8—Delete '72' and substitute '48'.

This amendment applies to subdivision 6—Warrants. Section 41B provides:

(1) This section applies if an authorised officer or police officer believes on reasonable grounds that—

(a) 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.

The opposition believes that 72 hours is too extensive a period of time. We believe that 48 hours, or two full 24-hour days, would be sufficient. I commend the amendment to the chamber.

The Hon. P. HOLLOWAY: The government opposes the amendment. It usually takes more than 48 hours (two days) for a driver to complete an interstate journey, in which case the relevant documents (evidence) will not have been brought back to the premises and will still be on the vehicle. Seventy-two hours is a more reasonable time frame. Anything less than 72 hours will make the provision unworkable. New South Wales has adopted 72 hours, and Victoria has no time limitation on its search warrants in its legislation. The government does not support the amendment.

Amendment negatived.

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

Proposed new section 41B, page 48, after line 29—Insert:

(iia) that the powers conferred by the warrant may only be exercised at a reasonable time of the day;

Subsection (5) provides:

A warrant under this section—

(a) must specify—

(i) the name of the magistrate issuing the warrant; and

(ii) the person authorised to exercise the powers conferred by the warrant.

A number of Liberal opposition members have had the experience of constituents contacting them when particular warrants are served at unreasonable times of the day—very early in the morning or late at night. The opposition thinks that this is an infringement on the privacy of people, and that these should be exercised only at a reasonable time of day.

The Hon. P. HOLLOWAY: The government opposes the amendment. We believe that it is too restrictive. The section already allows a magistrate to issue a warrant subject to conditions and limitation, and must only issue it where satisfied that it is reasonably required. Further, if the powers conferred on the warrant were only to be exercised at a particular time of day, there is a chance that the evidence may be moved by that time.

Amendment negatived.

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

Page 51, after line 15—Insert:

(5a) If an authorised officer or police officer issues an embargo notice under this section—

(a) in relation to a vehicle otherwise than by serving a copy of it on the registered owner of the vehicle, the authorised officer or police officer must also, as soon as reasonably practicable, cause a copy of the notice to be served to the registered owner of the vehicle; or

(b) in relation to the premises otherwise than by serving a copy of it to the occupier of the premises, the authorised officer or police officer must also, as soon as reasonably practicable, cause a copy of the notice to be served on the occupier of the premises.

This amendment is reasonably self-explanatory. If someone other than the owner is driving the vehicle, the owner should be served with the same notice within a reasonable period of time; and, likewise, if the owner of the premises is not able to be served with the notice, the owner of the premises within a reasonable period of time should be served with the same notice.

The Hon. P. HOLLOWAY: The government opposes the amendment. It creates an additional administrative requirement on enforcement officers which will increase costs. The notice may only be left in a prominent place if the enforcement officer has first taken all reasonable steps to locate the occupier of the vehicle or the premises. The offence of failure to comply with a notice requires that the notice has been served on the person, and if this was denied the prosecution would have to show that the officer had taken all reasonable steps to locate the occupier. This amendment is not necessary and is therefore not supported.

Amendment negatived.

The Hon. P. HOLLOWAY: I move:

Page 52, line 26—

After 'taken' insert:

or, instead at the option of the operator of the vehicle or the occupier of the premises, the Crown must pay reasonable compensation for the damage caused to the vehicle, equipment, load or premises.

This amendment is moved in response to an amendment moved by the member for Waite in another place. The Minister for Transport agreed to consider drafting an amendment to provide reasonable compensation to be payable by the Crown for the damage caused to a vehicle, equipment, load or premises by an authorised officer or police officer where the damage was caused by the unreasonable exercise of a power or by the unauthorised use of force. The government considered that the opposition's amendment was too broad and could have unintended consequences.

Our amendment will require the Crown to pay reasonable compensation for the damage caused to the vehicle, equipment, load or premises at the option of the operator of the vehicle or the occupier of the premises. As I indicated earlier with respect to some other sections, this section 41J was important in terms of addressing some concerns raised in those sections.

The Hon. D.W. RIDGWAY: The minister says 'reasonable compensation'. Who would determine what is reasonable in relation to the damage to an engine, transmission or some other property?

The Hon. P. HOLLOWAY: New section 41J—restoring the vehicle or premises to original condition after action taken—applies. Already, if there is damage, new section 41J provides that the officer must take reasonable steps to return the vehicle, equipment, load or premises to the condition it was immediately before the action was taken, or, instead, at the option of the operator of the vehicle or the occupier of the premises, the crown must pay reasonable compensation for the damage caused to the vehicle, equipment, load or premises.

The Hon. D.W. Ridgway: What is reasonable?

The Hon. P. HOLLOWAY: It provides 'at the option of the operator of the vehicle or the occupier of the premises'. It has to be either restored or, at the option of the operator of the vehicle or the occupier of the premises, it must pay reasonable compensation. I would suggest, with my limited knowledge of the law, that means that any payment would have to be acceptable to the operator. Presumably, that would be done in practice by getting different quotes or negotiating with the operator. Under the act the officer will be required to take reasonable steps to return it to the condition, otherwise that option could be exercised at the discretion of the operator of the vehicle.

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

Page 52, line 26—After 'taken' insert:
, and the Crown will be liable to compensate any person for loss suffered in consequence of the action taken

It is obvious that, should damage be caused to any property or vehicle, fair compensation should be paid. I guess it could be that someone has a vehicle off the road for a period of time; there will be an assessment of loss incurred while that vehicle is off the road if the damage is caused by an authorised officer or police officer.

The Hon. P. HOLLOWAY: Effectively, we have covered this already. The government believes that, after the member for Waite moved his amendment, the Minister for Transport agreed to consider this amendment. We believe it is more reasonable so we oppose the opposition's amendment. Obviously, we are happy to put forward this amendment. As I indicated earlier, if any damage is caused through adding this bit about compensation, it would be done by negotiation; otherwise, there is always the possibility of the person taking it to the court where the court could determine ultimately what was reasonable.

The Hon. D.W. RIDGWAY: We have two amendments being moved, and I am not sure to which one the minister is referring.

The Hon. P. HOLLOWAY: We believe the amendment moved by the opposition is too broad. The government amendment limits compensation in relation to only the vehicle, load, premises or equipment. It does not cover pure economic loss. So we were just looking at the actual equipment involved, not economic loss.

The CHAIRMAN: Just for the benefit of the members of the committee, both the minister and the Hon. Mr Ridgway wish to insert words at the same place. The minister's amendment was on file first.

The Hon. P. Holloway's amendment carried.

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

Page 53, after line 22—Insert:
41NA—Abusive language or wrongful obstruction or use of force by authorised officers etc
If an authorised officer, police officer or person assisting an authorised officer or police officer—
(a) addresses offensive language to any other person; or
(b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,
the officer or person is guilty of an offence.
Penalty: $1 250.
41NB—Improper access to documents or records
If an authorised officer, police officer or person assisting an authorised officer or police officer exercises, or purports to exercise, a power under a road law in relation to a person in order to obtain access to the person's documents or records for a purpose not related to the enforcement of a road law, the officer or person is guilty of an offence.
Penalty: $1 250.

The opposition believes these are reasonable amendments to ensure the authorised officers or people assisting the authorised officers act in a responsible manner in relation to their powers. It potentially protects the general public from malicious and over-zealous behaviour.

The Hon. P. HOLLOWAY: The government opposes the amendment. This proposal is not necessary as prohibition of this behaviour is covered by the code of conduct of public sector employees in relation to authorised officers, and also by regulation 17 under the Police Act, which prohibits employees from using abusive language and behaving in an inappropriate manner when dealing with members of the public. The penalty under the police regulations is $1 250. Other penalties that may be imposed on police officers include: termination or suspension of appointment; reduction of remuneration; transfer; reduction in seniority; fine not exceeding $1 250; and recorded or unrecorded reprimand.

In relation to the second proposed new section, the improper access to documents or records, again, the government opposes this as the power to direct a person to produce records, devices or things. Section 40W already stipulates that the direction has to be in relation to compliance purposes, which means in relation to a road law. Additionally, the code of conduct of public sector employees requires all public servants to act lawfully at all times.

Amendment negatived; clause as amended passed.

Clauses 15 to 23 passed.

Clause 24.

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

Proposed new section 129, page 66, lines 12 and 13—
Delete subsection (3)

This deletes subsection (3) from the penalties for offences against subdivision. It states:

A court may not reduce or mitigate in any way the minimal penalty prescribed in this section.

Again, this relates back to potentially minor infringements, or infringements by farmers at harvest time who are uncertain of the weight of their load because it contains a new variety of wheat, barley, oats or some other grain product. They may have inadvertently breached this act. The provision that a court may not reduce or mitigate in any way the minimum penalty prescribed in this section does not allow the court any leeway to recognise that someone has inadvertently been overloaded.

I can give an example of 20-odd years ago when I was carting a load of grain and suspected I was close to being over the limit but not quite. The queue at the local silo was quite long. It was close to 5 o'clock and, not wanting to sit in the queue for a length of time, I decided to go and fill with fuel. I did that, got into the queue and, when I was weighed, was 190 kilograms, having put 200 litres of fuel in the vehicle.

The Hon. B.V. Finnigan: Are you sure you didn't have lunch?

The Hon. D.W. RIDGWAY: I will not even reply to that. At five to 12, to be talking about my food consumption, I think is a bit rich by the Hon. Bernard Finnigan, but we might approach that another day. So, Mr Chairman, you can see that a couple of hundred litres of fuel pushed me over the limit. I contested it because the road traffic officer asked me where I had come from. I said I had come from the Pine Hill direction north-east of Bordertown and the infringement notice said they had observed me driving in a north-easterly direction along the Dukes Highway. The Dukes Highway runs east-west, not north-east and south-west. I was disappointed that they actually had not observed me—they had caught me on the weighbridge in Bordertown—and I was annoyed that because I had taken the time to fill with fuel I was overloaded. I was awarded the minimum penalty and sent on my way when I contested it. So, Mr Chairman, you can see the situation where there may be an opportunity for a court to have some flexibility with minimum sentences.

The Hon. P. HOLLOWAY: The government opposes this amendment. The minimum penalties are for subsequent offences only. This is designed to discourage reoffenders and to send a clear signal about the seriousness of the offence. If this amendment is made, a court could impose less for a subsequent offence than a first offence, which is an absurdity.

In relation to the sort of matters the honourable member spoke about from his experience, notwithstanding the implementation of these national legislative reforms, on-road enforcement by the transport department officers will include the continued application of the current red card system for minor mass load breaches by farmers. Under this arrangement, minor mass load offences involving the cartage of grain between paddock and silo are subject to a formal written caution (the red card system). This successful approach involves details of each breach being logged but formal action considered only on the third such overloading incident. This discretion to be used during each harvest is part of the commonsense and educated approach that will be maintained by compliance officers after the introduction of these reforms in South Australia.

I also point out that parties in the chain will have the benefit of showing reasonable steps to avoid liability. To use the opposition's example, you would have to show that you did not know or you could not be expected to know of the breach of mass. Obviously, if filling the vehicle with 200 litres of fuel overloaded your truck, you cannot claim a defence, in addition to which you have not taken all reasonable steps to avoid the breach. If you load petrol after loading grain, you should have loaded less grain. I do not know whether the member got a red card. I hope if he got the red card he did not do what Harry Kewell did and remonstrate with the umpire—although, at least he has not got a penalty, I guess.

Amendment negatived; clause passed.

Clauses 25 and 26 passed.

Clause 27.

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

Proposed new section 148, page 78, line 6—
delete '30' and substitute: 20

This is something that we discussed earlier. It is in relation to the prescribed distance in the bill, being a radius of 30 kilometres, and the opposition wishes to amend that to 20 kilometres. I will not prolong the debate. I am pretty certain what the outcome will be.

Amendment negatived; clause passed.

Clauses 28 to 32 passed.

Clause 33.

The Hon. D.W. RIDGWAY: Amendments Nos 24 and 25 are the same amendment to different clauses, so I assume that we can deal with them together. I move:

Proposed new section 163U, page 86, lines 7, 8 and 13—
delete 'or by an associate of the person,'

This comes under the commercial benefit penalty order. We spoke earlier about removing the definition of an associate person. The opposition was concerned that, perhaps, children of people may well be charged or served warrants under this provision, and it wishes to have the words 'or by an associate of the person' removed from the bill.

The Hon. P. HOLLOWAY: For reasons similar to those given earlier, the government opposes the amendment.

Amendment negatived; clause passed.

Clause 34 to 36 passed.

Clause 37.

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

Page 95, line 1—delete', and any associate of the person,'

I move the amendment but, knowing the outcome, I will not prolong the debate.

The Hon. P. HOLLOWAY: For reasons given earlier, we oppose the amendment.

Amendment negatived; clause passed.

Clause 38 to 63 passed.

Clause 64.

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

Page 104, line 24—Delete '$750' and substitute:
$400

This amendment is in relation to section 145 (1)(n). The bill deletes the dollar value of $310 and substitutes the value of $750, I understand as a penalty. The opposition wishes to delete the value of $750 and substitute $400. We believe an increase of, perhaps, 30 per cent is adequate—not something of the order of a 200 per cent increase.

The Hon. P. HOLLOWAY: The amount of $750 is reasonable in order to be able to consider implementing the indicative expiation levels in the national model legislation

which are, in many cases, higher than $400. The amount of $750 is also consistent with the amendment to section 176 of the Road Traffic Act in clause 43 of the bill. I also point out that $750 is supported by SARTA and the RAA. So, we oppose the amendment.

Amendment negatived; clause passed.

Clauses 65 to 67 passed.

Clause 68.

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

Page 105, line 28—Delete '; or' and substitute '; and'.

This amendment relates to the power to require a name and other personal details. A police officer who has required a person to state all or any of the person's personal details under this section is 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 amendment the opposition wishes to insert is to delete the word 'or' and insert 'and', so that it would then read 'producing his or her police identification and stating orally or in writing his or her surname, rank and identification number'.

The Hon. P. HOLLOWAY: For reasons given in relation to a very similar amendment earlier, we oppose the amendment.

Amendment negatived.

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

Page 105, after line 30—Insert:
Maximum penalty: $1 250.

If a police officer fails to identify himself or herself by producing his or her police identification or fails to state orally in writing his or her surname, rank and identification number, there shall be a penalty for that and that penalty should be $1 250.

The Hon. P. HOLLOWAY: The government opposes the amendment. It is similar to amendment No. 8 which was moved earlier, and for the same reasons we oppose it.

Amendment negatived; clause passed.

Clause 69.

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

Page 106, line 19—Delete '; or' and substitute '; and'.

This is similar to the previous amendment. We would like to remove the word 'or' and insert 'and' so that it would then read 'in producing his or her police identification and stating orally or in writing his or her surname, rank and identification number'.

The Hon. P. HOLLOWAY: We oppose the amendment for the reasons given earlier.

Amendment negatived.

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

Page 106, after line 21—Insert:
Maximum penalty: $1 250.

Notwithstanding the fact that we were not successful with our previous amendment—that is, if a police officer fails to produce his or her police identification or state orally or in writing his or her surname, rank and identification number—the opposition believes there should be a penalty and that that penalty should be $1 250.

The Hon. P. HOLLOWAY: We oppose it for the reasons given earlier.

Amendment negatived.

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

Page 106, after line 21—Insert:
74AC—Abusive language or wrongful obstruction or use of force by police officers

A police officer who—
(a) addresses offensive language to any other person; or
(b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to any other person,

is guilty of an offence.
Maximum penalty: $1 250.

This is the final amendment the opposition has this evening.

The Hon. P. HOLLOWAY: For the reasons given earlier, we oppose the amendment.

Amendment negatived; clause passed.

The Hon. D.G.E. HOOD: I am sure the committe will be thrilled to know that I have decided to withdraw my amendment to insert a new clause.

The Hon. R.I. Lucas interjecting:

The Hon. D.G.E. HOOD: Come on, Rob—the Hon. Mr Lucas, that is. In consultation with the government, it has been disclosed to me that there is a provision as part of the national legislation and that this forms part of it. There will be a review of the legislation in a couple of years, which is exactly what my amendment intended, anyway, so there is no need for it.

The Hon. P. HOLLOWAY: I thank the Hon. Dennis Hood and Family First for the constructive way in which they have approached this bill. Given the fact that during this debate we have been able to protect the national character of this agreement, which the government believes is very important and I think the industry associations do as well and that it was important to do that, it is only sensible, therefore, that the National Transport Commission should undertake a review.

It is my advice, as the Hon. Dennis Hood has said, that it is already planning a review process. The commission is planning to undertake a national review of the operation of the legislation at the end of 2006 and, given that all the amendments the opposition put have been defeated, we are now able to have legislation that is national and, therefore, that national review can take place. We thank Family First and the Hon. Dennis Hood for their support in achieving that result, and I assure them that that review will be undertaken nationally. As I have said, it is appropriate that there should be a review, and we certainly support the sentiment expressed in the motion moved by Family First, and we will be pleased to see what comes out of that national review when it is undertaken at the end of 2006.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

ANANGU PITJANTJATJARA YANKUNYTJATJARA LAND RIGHTS (REGULATED SUBSTANCES) AMENDMENT BILL

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

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

That this bill be now read a second time.

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

Leave granted.

Petrol sniffing has been a significant problem on the Anangu Pitjantjatjara Yankunytjatjara (APY) lands for many years. Its devastating effects on sniffers, their families and the wider community have been well documented—death, serious and

permanent disability, increased crime and violence, the break down of family structures, the loss of culture and community degradation.

This government has worked hard to put in place services to help sniffers and tackle the factors that contribute to petrol sniffing. This has included funding for the Nganampa Health Council for extra workers, the employment of youth workers in APY communities, activity programs to divert young people from petrol sniffing, the introduction of the 'Countering Risky Behaviours' curriculum in Anangu schools, a mobile outreach service to provide assessments, counselling and drug education, and the Commonwealth funded roll-out of Opal fuel. A residential substance misuse rehabilitation facility will also be built on the APY lands. Recent data has shown these strategies are having an impact. The Nganampa Health Council's 2005 survey of petrol sniffing on the lands found a 20% reduction in the prevalence of sniffing compared with 2004.

This reduction is pleasing but more still needs to be done. A particular priority for the Government is to stem the supply of petrol and other harmful substances to Anangu. To that end, the purpose of this Bill is to crack down on the trafficking of petrol and other regulated and illicit substances on the APY lands.

The Bill introduces a new offence to the APY Land Rights Act, which substantially increases the penalties for a person caught on the lands selling or supplying a regulated substance, taking part in the sale or supply of a regulated substance, or having a regulated substance in his or her possession for the purpose of selling or supplying the regulated substance, knowing or having reason to suspect that the regulated substance will be inhaled or otherwise consumed. The maximum penalty for a person or persons caught committing this offence is a $50 000 fine or 10 years imprisonment. This is a severe penalty, however it is in keeping with the provisions of the Controlled Substances Act. It sends the clear message that this Government believes the trafficking in petrol and other substances on the APY lands is no less serious than the trafficking of illicit drugs. The Bill also includes provision for the forfeiture of the vehicle used to traffic the regulated substance.

The APY Executive Board, the elected representatives of Anangu, and the Australian Government support the new sanctions.

This is the second time the Government has introduced this Bill. It was first introduced into the Legislative Council in May 2004, where it was passed with amendments introduced by the Hon. Nick Xenophon MLC. These were not agreed to in the House of Assembly, which restored the original Bill. The Legislative Council rejected the restored Bill and the Government subsequently withdrew it.

Two amendments were introduced by the Hon. Nick Xenophon MLC and passed by the Legislative Council. The first was that news media should not require a permit to enter the APY lands. The second was a requirement for the mandatory referral to an assessment service for any Anangu aged 14 years or over who is alleged to have committed an offence of inhaling or consuming a regulated substance on the Lands.

The Government does not support these amendments. Nor does the APY Executive Board, which endorses the original Bill introduced by the Government in 2004, support them.

The purpose of the permit system is to ensure controlled access to the APY lands. It was introduced for good reason. There are areas of the lands that are sacred sites and which only Anangu may visit. At particular times of the year certain areas may be off-limits because they are being used for traditional ceremonies. It is therefore essential that Anangu are able to regulate access. The APY lands can be a harsh and unforgiving country. In the event of an accident or an emergency breakdown it is vital to know who is on the lands and their location. Lastly, it needs to be remembered that the APY lands belong to Anangu—the South Australian Government vested ownership in 1981. It is therefore a basic courtesy to obtain the permission of the traditional owners before entering their land, just as it is a basic courtesy to obtain permission before entering anyone's home or property.

For these reasons, the Government can see no good argument for the media to be above the permit system. In any case, obtaining a permit is a simple and straightforward process. In 2005 nearly 2 200 applications were handled. Requiring the media to obtain a permit cannot be seen as restricting access but as a proper process that is courteous and respectful of the traditional owners.

With respect to the second amendment introduced by the Hon. Nick Xenophon, at the time it was considered in 2005 there was no assessment function available on the lands. Agreeing to the amendment would have meant the Government would have been in breach of its own legislation. A mobile outreach service has recently been established on the lands and one of its functions will be to provide substance misuse assessments. The service is currently staffed by one nurse, with the recruitment of other nursing and support staff underway. The next phase in the roll-out will be to link the service with the Australian Government funded Police Drug Diversion program. Once this has been done, the amendment sought by the Hon. Nick Xenophon will be unnecessary because the referrals he is seeking will be able to occur through the Drug Diversion program.

This Government has worked harder than any other to tackle petrol sniffing on the APY lands. The sanctions introduced by this Bill are a further and essential step in ridding the lands of its devastating effects.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*

4—Amendment of section 4—Interpretation

This clause inserts a definition of ***motor vehicle*** and ***regulated substance*** into section 4 of the principal Act. The definition of motor vehicle is consistent with that in the Motor Vehicles Act, while a regulated substance is defined as petrol, or any other substance declared by the regulations to be a regulated substance.

5—Repeal of section 38

This clause makes a consequential amendment.

6—Insertion of section 42D

The clause inserts a new section 42D into the principal Act, which provides that—

- it is an offence to, on the lands, sell or supply, or take part in the sale or supply, or have in your possession for the purpose of sale or supply, a regulated substance. The maximum penalty for contravention is a fine of $50 000 or imprisonment for 10 years;
- a police officer may seize and retain a motor vehicle that the officer suspects of being used for, or in connection with, an offence against the clause, or which affords evidence of such an offence;
- the mechanism for dealing with a motor vehicle seized under the clause, including its forfeiture upon conviction of the offence charged to which the motor vehicle's seizure relates, and the payment of the proceeds of the sale less costs to Anangu Pitjantjatjara Yankunytjatjara. The Minister may, however, permit the release of the motor vehicle on such conditions as the Minister thinks fit.

7—Amendment of section 43—Regulations

This clause makes amendments consequential upon clause 5 of the Bill. To preserve consistency, the clause mirrors the seizure and forfeiture provisions found in proposed section 42D of the principal Act in relation to a contravention of a by-law relating to the sale or supply of alcohol on the lands.

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

NATURAL RESOURCES MANAGEMENT (TRANSFER OF WATER LICENCES) AMENDMENT BILL

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

RIVER TORRENS LINEAR PARK BILL

The House of Assembly agreed to the bill without any amendment.

WATER EFFICIENCY LABELLING AND STANDARDS BILL

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

New clause, page 25, lines 3 to 9—Insert:

65 Credits to WELS Account

(1) Amounts equal to money received by the State—

(a) in respect of fines, expiation fees or undertakings given under section 42; or

(b) under Division 2,

must be paid to the Commonwealth for crediting to the WELS Account.

(2) The Consolidated Account is appropriated to the necessary extent to enable amounts to be paid to the Commonwealth in accordance with subsection (1).

Consideration in committee.

The Hon. P. HOLLOWAY: I move:

That the House of Assembly's amendment be agreed to.

The original clause was in erased type because the Legislative Council does not have the power to initiate money bills. This simply gives effect to that amendment.

Motion carried.

ADJOURNMENT

At 12.18 a.m. the council adjourned until Thursday 22 June at 11 a.m.