LEGISLATIVE COUNCIL

Thursday 28 September 2006

The PRESIDENT (Hon. R.K. Sneath) took the chair at 2.18 p.m. and read prayers.

TRAMLINE

A petition signed by 53 residents of South Australia, concerning the proposal to construct a tramline from Victoria Square to North Terrace in Adelaide and praying that the council will do its utmost to convince the state government not to proceed to construct such a tramline and remove trees, flag poles and median strip and create extreme congestion in Adelaide's major thoroughfare and also requesting the retention of the existing free bus routes in that vicinity, was presented by the Hon. J.S.L. Dawkins.

Petition received.

JOINT PARLIAMENTARY SERVICE COMMITTEE

The PRESIDENT: I lay on the table the report on the administration of the committee 2005-06.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Police (Hon. P. Holloway)—

Dangerous Area Declarations—Report for the period 1 April 2006 to 30 June 2006—Section 83B of the Summary Offences Act 1953

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

River Murray Act 2003—Report, 2005-06.

QUESTION TIME

BRADKEN FOUNDRY

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the Bradken foundry expansion at Kilburn.

Leave granted.

The Hon. D.W. RIDGWAY: Comments were made this morning by the federal Labor member for Adelaide, Ms Kate Ellis, after attending a public meeting last night of in excess of 100 people, and also attended by the Hon. Nick Xenophon. At that meeting and on the radio this morning, Ms Ellis indicated that a report on the expansion of the Bradken foundry is inconsistent with the evidence and submissions put forward in the draft report. My questions are:

1. Will the minister confirm that the final report on the expansion of the Bradken foundry at Kilburn by the EPA was inconsistent with the evidence that appeared in the draft report?

2. What explanation can the minister give as to why the EPA's draft assessment of the site as high risk was left out of the final report?

3. Can the minister explain why information about a breach of national guidelines for particulates was also left out of the final report?

4. Will the minister confirm the member for Adelaide's assertion that the Bradken foundry is already breaching national guidelines for particulates in the air?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for his question. The original report monitoring the Bradken Foundry conducted by the EPA was a highly scientific report that came down a short while ago. That scientific report was then redrafted into plain English to make the information more accessible to the general public. That was circulated at the meeting last night and was released quite recently. The copies of the original scientific report are available to the general public. There has been absolutely no attempt to hide or cover up anything at all. The original report is available to members of the general public if they want the full and original copy of it. A redrafted plain English copy was also made in addition to the scientific study.

It is an appalling indictment on the EPA, which is an incredibly hard working department which does invaluable work for this community. The staff of that division are incredibly diligent, hard working and honest and it is nothing short of an absolute disgrace to imply that there was any dishonesty or attempt to cover up. I can only stress again that the original scientific report is publicly available to anybody who cares to read it. The honourable member opposite suggested that it warranted an FOI application. If he wants to spend his money on an FOI application, so be it. Since its release a short while ago, both reports are now publicly available.

The Hon. D.W. RIDGWAY: Will the minister please explain why the EPA's assessment of the site being high risk was left out of the final report?

The Hon. G.E. GAGO (Minister for Environment and Conservation): The details of that report are the responsibility of the EPA; they are the scientists and technical experts. As I have explained—and I can say it a third and a fourth time—a copy of the original scientific report is now publicly available. So, if any members want to avail themselves of that report, they can do so. The redraft of the report, or the additional report, is simply a means of providing plain, simple English to try to make a lot of scientific data more publicly accessible. I stress again that both reports, including the original scientific study, are publicly available.

The Hon. NICK XENOPHON: Will the minister explain where the 35-page draft report has been available, short of an FOI application, because it is not available on any web site, as of last night? Where is that report available? It was only obtained via the office of Kate Ellis, the federal Labor member for Adelaide, after an FOI request.

The Hon. G.E. GAGO: I do not know the exact date it became available. I understand that the federal member applied for an application when the report had not been publicly released and, again, I do not have the dates, but it was some time ago. Since then, both reports have become available. I cannot verify whether or not it is on the net, but I have certainly confirmed with the department today that both reports are available. Members of the public simply need to request the report, and the department will make it available.

The Hon. R.D. LAWSON: I have a supplementary question arising out of the answer. In response to the minister's statement that the report is available to any

member of the public who asks for it, was Ms Ellis lying to radio listeners this morning when she said that she could obtain it only through an FOI application?

The Hon. G.E. GAGO: As I have already stated, when the federal minister first applied for a copy of the report, which was some time ago, it was not publicly available at that point in time. Since then, though, the report has become available. It has been redrafted into plain English and has been made publicly available. I am happy to confirm the dates when the report was made available. On late advice, I advise that it will be available on the web site shortly. As I have stated, the report—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: —is publicly available.

Members interjecting:

The PRESIDENT: Order! The minister might want to repeat the last part of her answer.

The Hon. G.E. GAGO: Thank you, Mr President. As I have stated, both copies of the report are currently available, and it is available to anyone asking for a copy of the report. The other part of the question related to when it will be available on the web site. The information I have is that the report is about to be put on the web site. However, if members clean out their ears, as I have stated, both reports are currently available.

The Hon. J. Gazzola interjecting:

The PRESIDENT: Order! The Hon. Mr Gazzola will come to order! The Hon. Mr Xenophon has a supplementary question.

The Hon. NICK XENOPHON: Given the—

Members interjecting:

The PRESIDENT: Order! The behaviour in the council is outrageous.

The Hon. NICK XENOPHON: —minister's explanation that the final report does not contain unduly scientific language, or words to that effect, does she consider that the entire section on Bradken's failure to comply with current licence conditions, being omitted from the final report as it was set out in the draft report, does not fall within that criteria of being overly scientific?

The Hon. G.E. GAGO: I have already addressed this issue. Copies of those reports are available. There was never any attempt to cover up or hide; in fact, that is a completely outrageous suggestion. As I have explained—and I will do so for the fifth time, for the benefit of those who have trouble absorbing information—a scientific report was completed on the Bradken foundry site. That report was redrafted into plain English in an attempt to make that scientific information more readily available to the general public. Copies of both reports are available to the general public.

The Hon. D.W. RIDGWAY: Is the minister aware that Bradken's foundry is already breaching the national guidelines for particulates in the air?

The PRESIDENT: That is not a supplementary question. The honourable member did not indicate that he was asking a supplementary question. It was his second question and will be treated as such.

The Hon. NICK XENOPHON: I have a supplementary question arising out of the earlier answer of the minister.

The PRESIDENT: Has the minister answered the Hon. Mr Ridgway's question? It was his second question.

Members interjecting:

The PRESIDENT: He did not request a supplementary question, so it was his second question.

The Hon. G.E. GAGO: Could the honourable member repeat the question?

The Hon. D.W. RIDGWAY: I have had my second question—is that your ruling? The minister is asking me to repeat my supplementary question.

The Hon. G.E. GAGO: He cannot remember his own question. Perhaps I will remind the honourable member of his second question, which was in terms of breaching standards in particulate matter. The only evidence I have before me, or of which I have been advised, is that Bradken contributed to exceedances of particulate matter on four occasions. I understand that the standard for particulate matter exceedances is five occasions annually. So, in relation to national standards, I do not believe that is a breach of the national standard.

The Hon. D.W. RIDGWAY: I have a supplementary question, Mr President. The EPA report on community and industry environment improvement in the Kilburn-Gepps Cross area indicates that particulate matter was exceeded four times in a two-month period. The actual standard is a goal of no more than five events above the standard per annum. Will the minister concede that Bradken is breaching the national guidelines for air particulate pollution?

The Hon. G.E. GAGO: As I stated, there is no such evidence before me. The exceedances have been evidenced on only four occasions. In spite of that, the report also clearly identifies that Bradken is not the only source of or contributor to the particulate matter problem in that area. In fact, the report identified that road traffic, for instance, is a significant contributor to particulate matter. There are main roads near Bradken that would contribute to the measurements made in and around that site. I have been advised that road traffic contributes somewhere between 50 and 60 per cent on average to particulate matter. I have also been advised that there are a number of other industries in the area that also contribute to particulate matter. In fact, as I originally stated, there is no evidence before me to indicate that the particulate emissions from Bradken exceed national standards.

The Hon. M. PARNELL: Given the minister's response in relation to the exceeding of guidelines in relation to particulate matter, is the minister concerned that the Bradken foundry is well within the EPA's guidelines for separation distances? The guidelines state that foundries over 500 tonnes—and this is 32 000 tonnes—should not be within 500 metres of residential dwellings.

The Hon. G.E. GAGO: It is a most unfortunate matter. The Bradken foundry has been in a residential area for well over a decade. I cannot recall exactly when it was placed there. It was put there at a time when we planned, in a way, to build industries and then build residential properties around that industry to house the workers. Clearly, we know much better than that now. Our science and understanding of the contribution of those foundries to air quality and other issues has increased, and we now know that very poor planning decisions were made a long time ago.

The foundry has been there for a long time. The EPA has worked in an ongoing way with the proponents of the foundry. They have invested considerable money in an attempt to improve emissions, waste and other matters that

can and do affect the environment. They are willing to continue to do that. Recently, they completed a significant capital works program to help reduce problems, and they have also changed the chemicals they use in an attempt to improve work practices. They are prepared to work in an ongoing way with the EPA to improve work practices and the environment. Unfortunately, the foundry has been there for many years. They have invested a significant financial commitment in the redevelopment proposals for this site in order to improve its emissions and impact on the environment.

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the major development of the Bradken foundry.

Leave granted.

The Hon. D.W. RIDGWAY: Over the past couple of days in this place we had a debate on the development bill, and the Hon. Mark Parnell explored all aspects of the process for major developments extremely well. An article in *The Independent Weekly* entitled 'The price of progress' talks about the major project process, particularly with this government. It states:

> The Governor is an irrelevant decision maker because under section 48 of the Development Act 1993 the Governor won't be operating in a vacuum. She will be well advised. Before the last election the government revealed that it had established a special subcommittee of cabinet chaired by the minister for government enterprises Pat Conlon to help give her special advice.

First, given that this report is on the web site and in the public domain and states that Kilburn, in particular Bradken, exceeded the particulate concentrations in the air—and four times in two months; so it would have to be well over five times in 12 months—did the special committee chaired by the minister for government enterprises Pat Conlon take any of this information into account when it advised the minister; and, secondly, will the minister call a halt to the major project status of this development?

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): This is extraordinary. Earlier this year the Bradken proposal came to government and was declared a major project because there were major environmental, economic and social consequences as a result of that development. To enable them to be properly assessed it was declared a major project. Obviously, some of the members here were not listening to the debate we had the other night when the Hon. Mark Parnell suggested that perhaps parliament should be able to call on proposals to be declared major projects, so that there would be an environmental assessment associated with such projects. We have had this sort of nonsense in the media including some, I must say, by the Hon. Nick Xenophon who, on radio FIVEaa this morning, made this ridiculous comment:

> . . . and now the government is looking like fast-tracking a project that will expand.

Obviously, Nick Xenophon was not listening to the debate the other night because, in fact, major project status, if anything, delays the consideration of projects to enable full environmental assessment to take place. That is what is happening at the moment. We are going through that particular process at the moment. It would be completely inappropriate for me, as the minister who must ultimately make the recommendation on this, to comment on that process when it is halfway through.

Will I stop it? No, because I believe it is proper. This current process of local debate is just part of the whole consultation process, as I understand it. I can go through all the timing, if the honourable member wishes me to, about what has happened to date. Perhaps I should just briefly refer to some of it. Bradken Resources has been operating a foundry at Cromwell Road in Kilburn since 1949. The company is a major supplier of metal products to the mining industry. The company currently produces 12 500 tonnes of metal products per annum, with a work force of 180.

The proposal it is putting through at the moment is to increase output to 32 000 tonnes per annum with an additional 100 jobs. Of course, part of the upgrading would naturally be that this old foundry (which is totally out of date) would be replaced. This will be assessed, as part of the process, by agencies such as the EPA and others, and the company claims there will be a major reduction in the output from the foundry. That is why it is proposing to do it, because it is an old foundry. Yes, it is an old, dirty foundry, as foundries established nearly 60 years ago inevitably are.

Although there will be an increase—a near tripling—of output, the prospect is that there will be a significant reduction in the pollution that would come from that foundry. In 60 years they have learnt a heck of a lot, and modern technology is far more efficient than old technology. But, whether it comes up to it or not, that is part of the assessment process. As I said, as the minister who ultimately makes the recommendation, it would be improper for me to make comments on that process at this stage. As I said, I can only talk about what has happened to date.

The proposal is to be sited at the existing Bradken Resources foundry, and it involves the upgrading of existing building and equipment, including a new melting furnace and expanded heat treatment. An issues paper was prepared by the major developments panel and was released for public comment between 26 April and 23 May this year. Following consideration of government and public submissions, the panel determined that a public environmental report (PER) should be prepared by Bradken. The guidelines for that public environmental report were prepared by the panel and released on 5 July this year. Bradken is undertaking studies and investigations to address the requirements in the preparation of that PER. I believe its report is near to being finalised and we will have the opportunity to consider that. The issues that they will need to address in that will include the potential social impacts on the adjacent community due to increased truck movements; the environmental impacts relating to emissions of air, including odours; and the assessment of alternative location for the expansion, including the Wingfield cast metals precinct.

A further opportunity for public comment will occur when the completed public environment report is released for public exhibition. This process all has to take place. Inevitably, where there are expansions local politics will take place. I just wish that those members opposite, and some of the Independent members, would appreciate the process. I just wish that the process would be respected so that a proper decision can be made. As I said, just two nights ago we had a debate on major projects.

I made the point then that often the government is criticised in this respect, and the Hon. Nick Xenophon quite incorrectly accused the government of fast-tracking projects. How can you fast-track a project when this process has already been in place for nearly 12 months and still has a long way to go? This is scarcely fast-tracking. People should

perhaps read what the Hon. Mark Parnell was arguing. I think it was a very useful and interesting debate about the circumstances in which environmental impact assessments should be made of projects that are of significance to the community. If we are to have these sorts of debates, I believe it is in the best interests of everybody that they should take place in a proper, informed way. There is still a significant amount of this process to go through before any recommendation will get anywhere near the Governor.

To conclude, the reason why major projects decisions are made by the Governor is that effectively it means they would go to the full cabinet so that every member of cabinet would have a say in relation to the matter in question. So, rather than one minister making a decision—which is often the case in government where the minister alone can make a decision—where legislation provides that the Governor should make it, that effectively means the decision should go to cabinet as a whole, and that will ultimately be the case.

I would appeal to members to allow the processes of the major development to take place. There will be a chance for further comment, including a public meeting on all this to take place at some future date. However, as a final comment, it is important that the debate should distinguish between the pollution that is emitted from the current operation and what will be predicted to come from the new operation. What we are talking about in a major projects assessment is what will happen with the major projects. There are two issues here, and unfortunately they have been confused; that is, what is happening now with the current old foundry and what will happen if this new project proceeds. It is important that some distinction should be made in any media debate on this matter. Beyond that I do not wish to make any further comment, as it would be inappropriate for me to do so, because I have the duty on behalf of the public to ensure that this process is properly conducted through to the end.

The Hon. NICK XENOPHON: As a supplementary question: does the minister consider that the current levels of pollution being emitted from the Bradken plant are unacceptable?

The Hon. P. HOLLOWAY: That is not a matter for me; it is a matter for the relevant authorities. My job as the Minister for Urban Development and Planning is to ensure that the application for a major project is properly considered and that it goes through the proper processes, which include the public environmental report; the reporting from the EPA and other relevant agencies; and, of course, ultimately public consultation and assessment of the project.

The Hon. M. PARNELL: As a supplementary question: the minister referred to the more appropriate authorities, by which I assume he means the EPA. Will he confirm that the EPA will not have any right of veto over the licensing of the plant, on account of the fact that it has been declared a major project? The EPA loses the right of veto, because it has been declared a major project. It would have had a right of veto had it remained as an ordinary development under category 3.

The Hon. P. HOLLOWAY: If a major project is approved under section 46, then obviously that operation will have to comply with the relevant laws of this state. We are not talking about an indenture here which may or may not remove conditions but, ultimately, the EPA will apply the relevant licensing conditions and they will have to comply with its standards.

CRIMINAL LAW (UNDERCOVER OPERATIONS) ACT

The Hon. P. HOLLOWAY (Minister for Police): I lay on the table a copy of a ministerial statement relating to the Criminal Law (Undercover Operations) Act 1995 made earlier today in another place by my colleague the Attorney-General.

PLACES FOR PEOPLE

The Hon. R.P. WORTLEY: I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the Places for People project at Glenelg's Moseley Square.

Leave granted.

The Hon. R.P. WORTLEY: I understand that the Places for People program is aimed at revitalising or creating public spaces which are important to the social, cultural and economic life of the community. Can the minister explain how this program has assisted Holdfast Bay council's redevelopment of Moseley Square at Glenelg?

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): I thank the honourable member for his important question. This matter illustrates how this government is seeking to improve our community in a very significant way. The Places for People initiative was established in 2002 as an urban design grant program available to all South Australian metropolitan and regional councils, with the exception of the Adelaide City Council, for public space improvement strategies and projects.

As the honourable member mentioned in his question, the principal objective of the initiative is to help revitalise or create public spaces. Places for People is also aimed at fostering among councils a culture of strategic urban design and the establishment of sound practices that will benefit public open space projects. Funding under this initiative is provided for urban design frameworks and master plans, design guidelines, detailed designs and capital works. Grants totalling around $5 million have so far been provided under the Places for People scheme to councils throughout South Australia.

The Holdfast Bay council has received more than $1 million under the Places for People scheme for the major redevelopment of Moseley Square. This figure breaks down to: $10 000 in May 2002 for concept design work; $30 000 in December 2004 for detailed design development; $530 000 in February 2005 for documentation, stage 1 capital works; and $500 000 in June this year for stage 2 capital works. In addition to the grants under the Places for People scheme, the council has received $100 000 for 2004-05 from the planning and development fund through the coast park initiative for complementary works along the adjoining esplanade. The council has also contributed approximately $1.6 million towards the Moseley Square project.

This significant government and council investment reflects the importance of Moseley Square not only to communities at Glenelg and surrounding areas but also to the state, given the location's unique role in South Australia's history. Indeed, market research suggests that South Australians regard Moseley Square as one of the most significant public spaces in Adelaide, both as a premier leisure destination and as a major civic and ceremonial location.

History shows that, unlike many of Adelaide's important public spaces, Moseley Square was not planned as such. It was actually a result of having some land left over after the early process of defining public and private allotments was completed. The square was last upgraded in 1985, when the existing pedestrian focus was developed. The present redevelopment of Moseley Square involves the reconfiguration and upgrade of services, paving and landscaping to complement the redevelopment of the tram stop, and to provide more flexible and attractive areas for special events, as well as day-to-day enjoyment.

The designs are a combination of familiar and historical elements with fresh new designs and materials. I understand that the work completed so far has attracted a favourable public response. The project has been carried out in two stages to make sure that the impact on residents, visitors and traders is minimised. Stage 1, on the north side of the square, commenced in July 2005 and was completed about four months later. Stage 2 began in April this year and is scheduled for completion in November. The redevelopment of Moseley Square has significance for the broader community and deserves the support of all South Australians. The works under way can only enhance the square's reputation as an important meeting place for South Australians and a tourism destination for visitors.

DRIVER'S LICENCE, DISQUALIFICATION

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

Leave granted.

The Hon. D.G.E. HOOD: On 13 July last year *The Advertiser* reported that South Australian motorists are exploiting a legal loophole that prevents them from being convicted for driving whilst disqualified. The relevant disqualifications are: failure to pay fines, or for accrued demerit points. The law presently requires disqualification notices be served by post. An unacceptable and, indeed, significant number of offenders claim that the letter was never received. Without further proof, the police policy in practice is not to proceed further with the matters as, probably fairly enough, they perceive that they will struggle to record a conviction.

On 1 January this year *The Advertiser* reported that almost one-third of motorists responsible for fatal car crashes last year had previously received at least one driver's licence disqualification. Despite the state government reportedly setting up a task force in June 2005 to investigate this loophole, my understanding is that notices of disqualification continue to be served by regular post and thus the loophole still exists. My questions to the minister are:

1. How many motorists were sent a licence disqualification notice in 2005-06, and how many reported that it was never received?

2. What action has the minister or South Australia Police taken to rectify this situation?

The Hon. CARMEL ZOLLO (Minister for Road Safety): It is probably best that I respond to the honourable member's question. I do not have the details of how many people were disqualified or in which year. I undertake to obtain a response and bring back some advice for the honourable member.

MENTAL HEALTH

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Mental Health a question about the mental health MOU.

Leave granted.

The Hon. J.M.A. LENSINK: There is an MOU between health, the Ambulance Service, the Royal Flying Doctor Service and SAPOL which specifically relates to the transport of people with mental illness, particularly during acute episodes. On page 4 of that document it refers to transport standards and says that the least restrictive intervention will be used and that SAPOL will be used as an option of last resort, based on safety risk assessment. It also states that health workers should consider the following alternatives (that is, to transport by the police): first, private vehicle driven by family friend/carer if the individual is cooperative and prefers to have a family member accompany them; or, secondly, a taxi with a family member if the individual is voluntary and they prefer a family member to accompany them. It then runs through other options.

On 10 September I received an email from a constituent who says that on 17 August he was taken by ambulance to the Flinders Medical Centre from his home at Trott Park at the request of the police. He states:

> It all started on the same day where I left a note to a friend, stating that I was going to commit suicide. She found the letter before I thought she would and she subsequently called the police. They in turn arrived at my home before five and detained me until the ambulance arrived. However, neither the police nor the ambulance stated that I would foot the bill for the ride: if they did I would have refused. . . Since then I have spent a week in hospital. I am seeing various youth workers and my employer has been very accepting. . . The police were stationed at Sturt, just down the road, and I was willing to help and was giving no trouble. The other way would have been by taxi or public transport.

He then says that he has received a bill from the Ambulance Service. On that date he also emailed the Premier and the Minister for Health and, after I replied to him, he replied to my email of 15 September and said that I was the only one so far who had replied. Payment is due by the end of the month. This morning I was contacted by another constituent who, in slightly difficult circumstances and less able to cooperate, was transported to hospital by the South Australian Ambulance Service and has since received a bill for $683. My questions to the minister are:

1. Has the Ambulance Service breached the memorandum of understanding by not seeking alternative options in this case as outlined?

2. Was it the intention of the memorandum of understanding to engage in cost recovery via ambulance services?

3. How much does the government expect to raise from the transport of mental health patients by ambulance services in 2006-07?

4. To which agency will that funding be provided?

5. Will the government consider revising the protocol to ensure that people who need to be transported in this way are advised that a bill will be welcoming them on their return home from hospital?

The Hon. G.E. GAGO (Minister for Mental Health and Substance Abuse): I thank the honourable member for her questions. It is important to state that this government's approach to mental health is about affirming the rights, dignity and civil liberties of mental health consumers and their carers. We are also mindful that we need to balance these rights with the community's legitimate expectation that

they be protected from harm. I have spoken in this council before and stated that we plan to introduce legislation that will reform arrangements for the transportation of the mentally ill who are involved in an incident or disturbance. As the honourable member noted, we have reviewed the MOU with the police and emergency services in regard to the transportation of people with mental illness, including those involved in disturbances in the community. I have to say that a lot of work went into that MOU, and those changes have resulted in far more efficient and effective use of our emergency services.

After considerable consultation, a memorandum of understanding between mental health services, SA Police, the SA Ambulance Service and the Royal Flying Doctor Service was developed and signed. Further discussion regarding the progress and content of the MOU was recommended in February this year between the Mental Health Unit and senior staff at SAPOL, and that has resulted in an agreed process regarding safety risk and safety risk assessment not only for any individual involved in an incident but also the workers involved, as well as the broader community. There is also an agreement regarding the use of standard documentation and communication processes to facilitate the transfer of care between agencies. This has resulted in far more efficient and effective use of resources and enabled those services to be far more responsive.

That MOU, which was signed on 19 June 2006, was implemented on 1 September 2006, and it is being supported by ongoing training and evaluation. If and when problems identify themselves, we will look at and evaluate the effect of this MOU, and we are certainly happy to work at improving these measures in an ongoing way. I also inform the chamber that local liaison groups have been established to assist the partners in working together to resolve issues in an efficient way. The intention behind the MOU has been communicated to key staff across mental health services, particularly team leaders and staff in emergency departments and at general hospitals. I am informed that similar communication has occurred through police and ambulance hierarchies. In relation to specific details regarding issues of charging, I do not have that information in front of me. I am happy to take those questions on notice and bring back a reply.

The Hon. J.M.A. LENSINK: I have a supplementary question. Does the minister support mental health patients being charged for transport by ambulance to hospital?

The Hon. G.E. GAGO: The Ambulance Service of South Australia has never been a free service. To the best of my knowledge, there has always been a cost recovery component for that service, and that has been in place for a considerable period of time.

The Hon. J.M.A. LENSINK: I have a further supplementary question. Is the minister aware of whether the Ambulance Service is obliged to advise mental health patients being transported that they will be charged for the service?

The Hon. G.E. GAGO: I do not have the details around the charging of these services in front of me. As I have already indicated, I am happy to take those elements of the question on notice and bring back a reply.

ROAD SAFETY, COMMUNITY GROUPS

The Hon. B.V. FINNIGAN: I seek leave to make a brief explanation before asking the Minister for Road Safety a question about community road safety groups.

Leave granted.

The Hon. B.V. FINNIGAN: There are 34 community road safety groups in South Australia (29 in regional areas and five in metropolitan Adelaide), and the aim of these groups is to strengthen the partnership between the community and government in order to meet road safety targets. Will the Minister for Road Safety advise what activities these groups are undertaking?

The Hon. CARMEL ZOLLO (Minister for Road Safety): I thank the honourable member for his important question. The goal of community road safety groups is to foster ownership and create awareness of road safety issues, focusing on projects that tackle local issues. The groups are incorporated bodies and represent a cross-section of the community. Across the state, about 350 volunteers are involved with the groups, and these volunteers include police, emergency service personnel, service clubs, local government and other interested members of the community.

Each group has the opportunity to apply for an annual project grant of up to $5 000, which can be used for local road safety promotion, awareness projects and campaigns. Last year, the community road safety groups received $95 320 from the Community Road Safety Grants scheme for 25 local road safety projects. Some examples of the projects undertaken include the installation of local road safety signage for groups in the Riverland, Clare, the Coorong, the Mid North and the Limestone Coast. The signs feature messages encouraging seatbelt use and warn of the dangers of fatigue and speeding. The funding also allows many groups to provide young people with practical and theoretical defensive driving courses. These highlight the real risks associated with driving and encourage drivers not to get into risky situations in the first place.

Groups in Clare, the Riverland, Cleve, Yorke Peninsula, Port Lincoln, Orroroo and the Limestone Coast are currently subsidising the cost of the course in order for youth to attend. In Cleve, a special course for driving on unsealed roads has been undertaken by the group. The community road safety group in Whyalla has undertaken the 'Lights on during the day' campaign, and signs around Whyalla tell drivers to see and be seen. The 'See and be seen' signs are reinforced by local television and media commercials.

Four road safety groups on the Limestone Coast are now following Whyalla's lead and promoting the use of daytime lights. In Aldinga, Orroroo, Port Lincoln, Port Pirie and Whyalla local road safety groups support young cyclists with safe cycling programs, mock crashes and bus safety. Safe pedestrian crossings are brought to the attention of school students, thanks to group members in Unley, Eudunda, West Torrens, Mount Remarkable and Port Pirie. Available to every group is the Department of Transport, Energy and Infrastructure's six message trailers, which sit at the side of the road and flash an electronic road safety message.

The groups also have regular contact with the department's community road safety group officers, who offer wide-ranging advice on issues regarding the media, project ideas and community campaigns. The community road safety groups are an important tool in the ongoing quest to keep the state's road toll to a minimum. With dedicated officers and volunteers across the state, drivers in both metropolitan and

rural South Australia have the opportunity to take part in and take notice of various events, campaigns and projects that highlight the importance of road safety.

Since becoming the Minister for Road Safety, I have had the opportunity to meet members of different groups, and I met several members at the Cleve Field Days. I also met members at Naracoorte, Clare and also the City of West Torrens. I commend all members of our community road safety groups. They undertake some very valuable work in our community, and I congratulate them for their commitment.

EXCLUSIVE BRETHREN

The Hon. M. PARNELL: I seek leave to make a brief explanation before asking the Minister for Police, representing the Premier, a question about the Exclusive Brethren.

Leave granted.

The Hon. M. PARNELL: Concerns have been raised at the national level about the amount of influence this secretive sect, the Exclusive Brethren, has over the Australian political process. For example, a clause in this year's federal WorkChoices legislation that makes it easier to bar union officials appears to have been included specifically at the behest of the Exclusive Brethren sect. It has now been confirmed by the Industrial Relations Commission that, of the more than 30 employers who claimed a conscientious objection exception, every single one belonged to the Exclusive Brethren Church.

The closed and secretive Exclusive Brethren sect does not allow its members to vote, read newspapers, watch television or listen to radio yet it appears to have an unhealthy fascination with influencing the political process in secret. The sect took out print advertisements and distributed brochures during the 2004 federal election campaign in Australia and the Tasmanian election campaign this year. These are practices which the sect replicated in the New Zealand national election recently. Members will be aware from having watched last Monday's *Four Corners* program of the devastating impact this sect has on families.

Questions have now been raised about how much influence the sect has in South Australia. In exploring this situation I was surprised to discover that a special clause was introduced into the Fair Work Act 1994, as part of the Industrial Law Reform (Fair Work) Bill 2005. This clause provides that a union official may not enter a workplace under this section if no more than 20 employees are employed at the workplace and the employer is a member of the Christian fellowship known as The Brethren. In the debate on that bill, the Minister for Industrial Relations revealed that he had met with members of the sect in 2004. My questions are:

1. Has the Premier ever met with members of the Exclusive Brethren?

2. Which members of his government, apart from the Minister for Industrial Relations, have met with members of the Exclusive Brethren, what were the dates of the relevant meetings and what were the issues discussed at each meeting?

3. Were any commitments made to the government by the Exclusive Brethren in response to the inclusion of section 140(5) of the Fair Work Act 1994?

4. Has the Exclusive Brethren given financial donations to the Labor Party in South Australia while the Rann government has been in office; and, if so, how much?

5. In light of the concerning allegations against the sect, will the Premier publicly disassociate his government from the Exclusive Brethren?

The Hon. P. HOLLOWAY (Minister for Police): I will refer that question to the Premier. Inasmuch as it refers to individual ministers, I can say I certainly have not met with the Exclusive Brethren. It is my understanding that that particular clause in the Fair Work Act is one that was carried over from previous acts and has been around for many years. If there is any further information I will bring that back to the honourable member.

BELAIR NATIONAL PARK

The Hon. T.J. STEPHENS: My question is directed to the Minister for Environment and Conservation. Will there be a broad and proper public consultation process prior to redevelopment of the Belair National Park?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for the opportunity to answer this important question. Belair National Park is dear to all our hearts. It is South Australia's first national park and the second oldest national park in Australia. Belair National Park comprises approximately 840 hectares of valuable remnant bushland, formal recreational facilities and buildings and facilities of significant heritage value.

Members interjecting:

The Hon. G.E. GAGO: They ask a question and they just do not want to hear the answer. This is very valuable information and they just do not care. I am only too happy to provide the answer to this question. Belair National Park traditionally has played an important recreational role in the lives of South Australians, in particular those who live within the inner Adelaide metropolitan area. It receives more than 300 000 visitors annually. The Belair National Park Management Plan was adopted in 2003. Extensive consultation was undertaken as part of the management's planning process, during which a clear expectation was expressed by the community to provide well designed and maintained facilities within Belair National Park, while contributing to the heritage status of the park.

One of the key aims of the Belair Facilities and Service Upgrade Project (which is under way) is to showcase Belair National Park's traditional role in providing quality recreational opportunities for South Australians; and this is what our extensive community consultation has identified. So it is directly relevant to answering this question. It is also to maintain and protect the Belair National Park significant heritage fabric and many heritage listed buildings and facilities; to encourage positive visitor experiences through the provision of well-designed and maintained facilities that promote a consistent theme of heritage and bush picnics; and to continue to ensure the protection and enhancement of Belair National Park's environmental values and its significant role in biodiversity.

The Department for Environment and Heritage has committed more than $5 million over a five-year period, commencing 2003-04, to achieve these aims. Eleven major precincts located in the recreational and heritage zone within the Belair National Park have been identified for upgrades. Construction works for the Karka, Pines and government farm (the old Government House) precincts have been completed to date and cost $2 million. Design for a major upgrade to the Belair National Park entrance is now complete. The design of the new entry to the Belair National Park is the result of an extensive two-year traffic study conducted in collaboration with the City of Mitcham and the Department for Transport, Energy and Infrastructure. There was a

comprehensive and detailed involvement of those departments, and it also involved the public.

Plans to relocate the Belair workshop from the popular adventure playground precinct and consolidate the Southern Lofty District Office and the Cleland workshop site are also complete. Construction of the Belair National Park entry precinct and Southern Lofty District Office and workshop rationalisation is on schedule for tender in August 2006. The cost estimates for the works are currently on budget at $2.5 million. The concept designs for Playford Lake are scheduled to commence in late 2006. The planning for the adventure playground and main oval precincts are scheduled to commence in 2007. As part of the overall project aim, rehabilitation work on Karka Pavilion commenced in late 2002 and was completed in 2003. This was a joint DEH and Department of Administrative and Information Services project. As members can see, the work that has been planned and also the work that has been completed has been based on extensive consultation with the public, and public involvement.

MENTAL HEALTH, REGIONAL COMMUNITIES

The Hon. I.K. HUNTER: I seek leave to make a brief explanation before asking the minister for Mental Health and Substance Abuse a very important question about drought and mental health in rural communities.

Leave granted.

The Hon. I.K. HUNTER: Across the state rainfall during the past winter has either been below average or the lowest on record. At a time like this it is important to remember that the flow-on effects of drought are felt throughout the whole community and can often lead to family and personal stress. Will the minister advise the council on the information that is available to assist rural communities in coping with anxiety and depression that may be due to financial pressures that accompany drought?

The Hon. G.E. GAGO (Minister for Mental Health and Substance Abuse): I thank the honourable member for his important question, and also his ongoing interest in this important policy area. The government is taking the situation very seriously and has established a high level drought task force to provide advice to a special drought committee of cabinet. I have asked for a coordinated mental health response to the drought, which is currently being worked on as part of a whole of government response.

Country Health SA has been working closely with locally based mental health workers in identifying a range of strategies intended to assist farmers who are experiencing difficulties. Country Health SA has a network of arrangements where local people meet to discuss issues and identify solutions. Consumer and care advisory groups exist in many areas of the state to act as a conduit for identifying community needs as they emerge. A general alert has been issued to all locally based community and allied health workers and mental health practitioners regarding the need to be aware of the effect of the drought on the mental health of farmers and their dependants. A raft of other strategies is being planned and implemented to assist people to cope with mental health issues that can emerge because of the financial pressures placed on people in times of drought.

One of these strategies is the publication *Taking Care of Yourself and Your Family*, produced by Mid-North Health. The guide was written by an employee of the service, John Ashfield, who is based in Booleroo and who is one of our very valuable mental health workers. It was first published in 2003 in response to an identified need for a generic mental health resource to be used by rural families as a guide to coping with stressful situations and mental health issues.

The publication has been very valuable to rural communities over the past few years and is considered an important resource for wider distribution, given the impact of the drought conditions being experienced in country SA. The publication is also very useful for country general practitioners, rural counsellors, mental health workers and family support counsellors in providing assistance to people experiencing mental health issues and their families. The publication was jointly sponsored by Primary Industries and Resources SA (PIRSA) and the former department of human services and the commonwealth Department of Health and Ageing program.

The publication has proven to be very popular, with the first print run of 5 000 copies sold and a further 2 500 copies produced for the second edition. The publication provides a source of basic information about a range of mental health and related issues; a guide for helping others, especially in seeking assistance; a resource of strategies and self-help therapies; a resource of photocopiable information and self-help therapies that doctors can use as hand-outs (and I understand they have used this resource in this way in the past); a resource for the use of basic community mental health education; and a resource for health and human service workers.

The South Australian Farmers Federation sees this as a very valuable resource in these difficult times and has sought a reprint of the book, so I am pleased to be able to announce that the South Australian Farmers Federation will be funded to produce a further 16 000 copies of the book. These are about to be printed at a cost of $80 000, jointly contributed by the Mental Health Unit and Country Health SA. These books should be ready for free distribution to country communities as well as health and community workers within two weeks.

ESTIMATES COMMITTEES

The House of Assembly requested that the Legislative Council give permission to the Minister for Police (Hon. P. Holloway), the Minister for Environment and Conservation (Hon. Gail Gago) and the Minister for Emergency Services (Hon. Carmel Zollo), members of the Legislative Council, to attend and give evidence before the estimates committees of the House of Assembly on the Appropriation Bill.

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

That the Minister for Police, the Minister for Emergency Services and the Minister for Environment and Conservation have leave to attend and give evidence before the estimates committees of the House of Assembly on the Appropriation Bill, if they think fit.

Motion carried.

MURRAY RIVER WATER ALLOCATIONS

The Hon. G.E. GAGO (Minister for Environment and Conservation): I lay on the table a ministerial statement on the subject of further restrictions to River Murray water

allocations made earlier today by colleague the Minister for the River Murray.

EVIDENCE (USE OF AUDIO AND AUDIO VISUAL LINKS) AMENDMENT BILL

In committee.

(Continued from 26 September. Page 731.)

Clause 4.

The Hon. S.G. WADE: I move:

Page 4, after line 7—Insert:

(7) If the victim of an offence or an alleged offence, or a member of the victim's immediate family, advises the relevant prosecuting authority that he or she objects to the use by the court of an audiovisual link or an audio link in a proceeding in respect of the offence, the prosecuting authority must object to the use of the link.

(8) For the purposes of subsection (7)—

child—a reference to a child is not limited to biological and adopted children but extends to a person in relation to whom another (who is not a biological parent) stands in the position, and undertakes the responsibilities, of a parent;

immediate family of a person means that any one or more of the following:

(a) a spouse (including a putative spouse):

(b) a parent or guardian;

(c) a grandparent;

(d) a child (including an adult child);

(e) a grandchild (including an adult grandchild);

(f) a brother or sister;

victim, in relation to an offence, means—

(a) a person who suffers physical or mental injury, damage or loss as a result of the commission of the offence;

(b) a person who suffers psychological injury as a result of being directly involved in the circumstances of the offence or in operations in the immediate aftermath of the offence to deal with its consequences.

As I said in the second reading debate, in the context of the limitations of the technologies and potential impact on the quality of the evidence presented to the courts, the Liberal opposition particularly welcomes clause 6 of the bill, which allows parties to object to the use of audio and audiovisual links. Where parties have concerns about the use of audio and audiovisual links, they will have the opportunity to object. It is not a right of veto. The court would still be able to allow the use of the link, but the parties do have the right to object.

While the opposition supports the bill with the right to object, we think that the clause is defective in that it ignores the victims. Victims may have a legitimate interest in whether or not an audio or audiovisual link is used. The fact that victims have been overlooked is particularly disappointing, given the government's claims, restated as recently as last week in *The Advertiser*, that it wants to make victims more than just bystanders in the court process. The government's stance on victims seems more and more like mere rhetoric.

In terms of the right to object to the use of a link, I expect that the use of links will often be welcomed by victims; for example, audio and audiovisual links can allow victims to participate in proceedings while avoiding the need to attend the court with the potential trauma of facing the perpetrator of the crime. On the other hand, as highlighted so ably by Mr Xenophon's bill earlier this year, the victim may be keen to ensure that the defendant is physically present to listen while they outline how the crime has impacted on them. On this basis, a victim may object to the use of a link. My amendment will ensure that the victims are not left out and that they have the opportunity, through the prosecuting authority, to object to the use of a link.

The Hon. P. HOLLOWAY: The government opposes the amendment. I want to make sure that members understand that the video link is required to be used only if the defendant is in custody prior to trial. The bill is primarily concerned with remand appearances prior to trial. Remand appearances are not trial proceedings. This bill does not require that the court use the video link in trial proceedings. Remand proceedings typically take a very short amount of time, often no more than two to five minutes.

The Attorney-General in the other place advised in his second reading speech that in Western Australia audiovisual links are used in 90 per cent of remand appearances, not 90 per cent of court cases. The bill is designed to ensure that remand appearances do not require the physical presence of the defendant unless it is the defendant's first court appearance or a preliminary examination involving the taking of oral evidence. Remand appearances are a process for the court to determine what the defendant is going to do in terms of entering a plea, whether the defendant has proper legal advice, what is an appropriate trial date, and whether there are to be any pre-trial conferences.

These appearances do not deal with substantive matters relating to the case. The bill seeks to minimise the cost associated with transporting prisoners to court to make very brief appearances. There is little benefit to victims if the defendant appears in court personally for remand appearances. In fact, it is possible that the opposite is true, that the audiovisual link does not exclude the victim from the process. The victim will be able to attend court satisfied and safe in the knowledge that the defendant is physically far removed and of no threat to their personal safety because the defendant will be appearing by video link.

The bill will allow vulnerable victims and their families to be present in court when the defendant appears by video link. This may lower the anxiety and fear that some victims experience when faced with the alleged perpetrator of the crime. What will happen if the victim wants the video link used in the courtroom, but a member of their immediate family does not want the video link used? That is what the honourable member's amendment provides for and it is a question that needs answering. What if different members of the family have different views about whether the video link should be used? How would the prosecutors resolve these issues? In posing those three questions, it really reveals some of the difficulties with the honourable member's amendment. I reiterate that we are talking here about remand appearances that typically take a very short amount of time—often no more than two to five minutes—and these hearings do not deal with substantive matters relating to the case. They are a process of the court to determine what the defendant is going to do in terms of entering a plea, etc. For these reasons the government opposes the amendment.

The Hon. NICK XENOPHON: I support the amendment and congratulate the Hon. Stephen Wade for moving it. I understand what the minister is saying and I respect that. It is the victim that I am most interested in; obviously there may be differences of opinion of other family members—

The Hon. P. Holloway: How do we resolve those opinions in the context of this amendment?

The Hon. NICK XENOPHON: I would have thought that the primary concern should be for that of the victim. If the victim wants—

The Hon. P. Holloway interjecting:

The Hon. NICK XENOPHON: If it is the victim that wants the defendant to be there physically in the court—and I expect that this would be invoked rarely—then we should pay heed to the wishes of the victim. I expect that this will be rarely used in the context of the circumstances for which it would be applicable, but it has merit. This amendment would further empower the victim. I do not know whether the government is in a position in the context of this bill to give a response with respect to its election promise of insisting that defendants be present at court for sentencing for summary offences in cases where there has been a death or serious injury. I am grateful to the support of the opposition and to my crossbench colleagues with respect to the bill I introduced in similar terms some time ago.

I support the amendment. It ought to be kept alive in the context of its being considered in the other place, so that if there are teething problems they can be sorted out. I ask the mover, the Hon. Mr Wade: what happens in cases where there has been a murder, where the victim is deceased and there are family members? What mechanism could there be to sort out any disputes or conflicting views? I would have thought that you would go to the next of kin—the widow or widower—and, if there is no widow or widower, you look to the views of the children of the deceased. With those comments and that question to the Hon. Mr Wade, I indicate my continuing support for this amendment.

The Hon. S.G. WADE: I thank the honourable member for his query. The minister is setting up a red herring here. This is not an exclusive right to object. My amendment states:

> (7) If the victim of an offence or an alleged offence, or a member of the victim's immediate family, advises the relevant prosecuting authority that he or she objects to the use by the court of an audiovisual link or an audio link in a proceeding in respect of the office, the prosecuting authority must object to the use of the link.

My understanding of that provision is that, if a prosecuting authority received representations from the victim and the family, it could make both of those points available to the court. In fact, the prosecuting authority might have a contrary submission. It is a matter of the victim not having the ability in the court to make objections and the prosecuting authority being able to make those on their behalf.

In terms of why the family is even involved, clause 8 in particular reflects the Victims of Crime Act 2001, where provision is made for the immediate family of the victim because of the circumstances referred to by the Hon. Nick Xenophon (that is, the victim might be dead) and you would want someone to be able to speak on their behalf. Often, it is the family of the subject of the crime who, through that process, has become a victim in their own right—whilst not involved in the act, they are victimised by the consequences of the crime. It may well be that we will need to fine tune the provision. I believe it is important that we do not exclude the family, because, in some cases, they may be the voice of the victim.

The Hon. P. HOLLOWAY: We are talking here about remand hearings, which normally last for two to five minutes. We are talking simply about those matters, regardless of what one thinks about the merits in relation to the immediate victim. The way this amendment is worded, it talks about 'If the victim of an offence or an alleged offence, or a member of the victim's immediate family, advises the relevant prosecuting authority'. It also provides:

> immediate family of a person means any one or more of the following:
>
> (a) a spouse. . .
> (b) a parent or guardian;
> (c) a grandparent;
> (d) a child. . .
> (e) a grandchild. . .
> (f) a brother or sister;

You often have different views amongst a family. If they have different views on this matter, how on earth will that be resolved? Hopefully, that is unlikely to happen. I suspect that it is unlikely we will get objection to these things. However, let us not forget the purpose of this amendment, that is, simply to ensure that in these remand hearings against an alleged perpetrator they are simply to work out the details, such as what plea the alleged perpetrator is making. We are not talking here about using audio and visual links in relation to the conduct of the trial itself.

This amendment creates all these extra issues that have to be resolved that really add very little in terms of victims' rights. The Hon. Chris Sumner, a former member of parliament who sat in this place, more than any other person in this country developed the rights of victims of crime. The Labor Party has been at the forefront of helping victims of crime over the past 20 years in introducing legislation and schemes, etc. to advance that. In the name of helping victims, let us not put something into legislation that really does not achieve anything of substance and, in fact, potentially creates a whole lot of other issues.

The Hon. R.D. LAWSON: I do not have the conduct of this bill, and I have not examined it closely. I am surprised by the minister's statement that these provisions are limited to pre-trial occasions where an accused person is in custody. The heading of the division to be inserted is 'Use of audiovisual link or radio link generally'. The court is empowered, subject to relevant rules of court, to receive evidence from a person who is in the state but not physically in the court. Many of the provisions appear to me to be quite general, as the heading suggests. It is true that subsection (4) provides that certain things are to happen if a defendant is in custody prior to trial, but it does not appear to me that that provision limits entirely the operation of this general provision which, as I say, is headed 'Use of audiovisual link or audio link generally'.

The opening words of the minister's second reading explanation suggest that this is a bill of wider application than merely bail hearings. The second reading explanation states:

> . . . for the use of audio-visual links or audio links in courts.
>
> The Bill fulfils the Government's promise to improve access to the courts and recognises the benefits of technology. It makes it clear that a court may receive evidence or submissions by audio or audio-visual links, rather than requiring a person to appear physically before the court.

I must say that I would want the minister to put on the record a little more than he has to date, with his rather bland assurances that this provision will only have that limited application, or does the government take the view that it has that limited application only because various sections are expressed to be subject to relevant rules of court, out of which rules we have currently seen?

The Hon. P. HOLLOWAY: Clause 4(4) refers to the remand hearing. The terms of subclause (4) provide that, if the defendant is in custody prior to the trial:

> . . . the court should, subject to subsection (5) and relevant rules of court, deal with the proceedings by audio visual link and without requiring the personal attendance of the defendant.

Later, of course, subclause (1) would come into play. It provides:

(1) A court may, subject to this Division and any relevant rules of court, receive evidence or submissions from a person who is in the State but not physically present in the courtroom by means of an audio visual link or an audio link.

It provides that the court may use an audiovisual link. In other words, in the remand hearings in a magistrates court, the audiovisual link has to be used but, in other and later appearances, its use is subject to the wishes and rules of the court.

The Hon. R.D. LAWSON: Therefore, I am correct in my assertion that, when the minister suggested at the outset of the debate on this amendment that these provisions only apply to the situation where a defendant is in custody prior to trial, he was wrong. The correct reading is that in subsection (1) a court may, in certain circumstances, use an audiovisual link. However, according to subsection (5), in the limited case of where a defendant is in custody prior to trial and the facility is available, etc., the court must use it. So, it is generally facilitative in any proceedings; it is mandatory in relation to the situation where the defendant is in custody prior to trial and the facilities exist for dealing with proceedings by way of audiovisual link.

The Hon. P. HOLLOWAY: I am not quite sure which part of my earlier comments the honourable member objects to. I want to make sure that members understand that a video link is required to be used only if the defendant is in custody prior to trial.

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: It can be used, yes, but it is required to be used only if the defendant is in custody prior to trial. As I said, the bill is primarily concerned with remand appearances prior to trial. I think that is a fair comment: this bill is primarily concerned with that. I confirm that, subject to the court's wishes, the audiovisual link can be used to receive evidence or submissions from a person. But the fact that that is part of this bill does not detract from my comment that the bill is primarily concerned with remand appearances prior to trial. That is what the government would see if this bill is passed; that is, the use of audiovisual links primarily will have an impact on remand appearances.

The Hon. R.D. LAWSON: I think the minister's response is deplorable. My colleague the Hon. Stephen Wade has moved an amendment which seeks to give victims certain rights. The minister said that this is completely misconceived because this amendment only deals with bail applications and in bail applications victims do not ordinarily give evidence or participate. It is true that the Victims of Crime Act gives them rights in relation to bail applications, but for the minister to say that this is an unnecessary amendment, because this section applies only to bail applications, is completely misleading. I hope that the committee does not take any notice of it and supports the amendment.

The Hon. P. Holloway interjecting:

The ACTING CHAIRMAN (Hon. J.S.L. Dawkins): Order, minister! It is not appropriate for two members to be on their feet at once, and I will not tolerate that. Has the Hon. Mr Lawson finished?

The Hon. R.D. LAWSON: Yes.

The Hon. P. HOLLOWAY: I repeat that under the provisions of this bill the video link is required to be used—it is mandatory—only if the defendant is in custody prior to trial. Audiovisual links can be used in other circumstances—and that is provided for—subject to the court's wishes. We are talking here about its primary use, where this provision most commonly will be the case. In his second reading contribution the Hon. Stephen Wade said that the Attorney-General advised in his second reading speech in the other place that 90 per cent of court cases held in Western Australia use audio or audiovisual links. I point out that is not what the Attorney-General said.

The Attorney-General said that audiovisual links are used in 90 per cent of remand appearances, not 90 per cent of court cases; and that is where we expect the audiovisual links most commonly to be used. There are provisions in other acts, and I am happy to debate the logic and justification behind that, if necessary, but the principal purpose of this bill is to allow the use of the audiovisual links in remand appearances. Indeed, they are required to be used if the defendant is in custody prior to trial.

The Hon. S.G. WADE: I am disappointed that the minister is trying to mislead the committee in this way. Clearly, a victim's objection or the objection of a victim's family is not relevant to clause 4 because the court is required to use audiovisual links. It is unfortunate to take us up this path in terms of remand proceedings. The minister has conceded that these technologies can be used beyond the remand context. That is the context in which I imagine they will be most useful. It is in that context that I think the victim is most likely—

The Hon. P. Holloway: No; that is not where they will be most useful at all.

The Hon. S.G. WADE: For example, the military tribunal in the Kovco case used audiovisual links to Iraq. The victim and the family objected—

The Hon. P. Holloway: Well, who was the defendant they wanted to be protected from in the Kovco case?

The Hon. S.G. WADE: But the victim had the right to object; and in this context the government is trying to preclude victims from having a voice in the proceedings.

The Hon. P. Holloway: To which defendant? You don't know what you're talking about.

The ACTING CHAIRMAN: Order! The honourable member will ignore interjections and continue.

The Hon. S.G. WADE: The Kovco case is an example where victims had a view. Victims have the right to have a voice. The government has now conceded that the technologies will be used in cases other than remand cases. That being the case, I think it is clearly important for the victim to have a say. I urge honourable members to ignore the distractions of the government and support the amendment.

The Hon. R.D. LAWSON: I should add that the Kovco case is relevant, despite the minister's protestations sotto voce during the Hon. Stephen Wade's contribution a moment ago. Kovco is a case where the victim's family wanted the counsel engaged by them to be able to cross-examine certain witnesses face to face. They did not want to allow those witnesses to be 12 000 miles away in a room with a camera. It is perfectly reasonable that the victims ought be heard in those cases. All the amendment seeks to do is to give victims a standing to say to the court what their wishes are in relation to a particular matter.

The Hon. P. HOLLOWAY: The amendments that are moved by the honourable member would apply to the remainder of the clause. I said that the principal purpose of this bill is to allow the use of the video link in remand cases.

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: No, it is not limited. That is where it will mainly be used. In Western Australia the audiovisual links are used in 90 per cent of remand cases. The argument I am trying to put is that the honourable member's

amendment would apply to clause 4 which permits that. It says 'if a victim or a member of the family', so there could be differing views in particular cases, and how that is resolved, who knows? If there are different views on that, it leaves it up in the air legally, which I think is most unsatisfactory.

But, even if that could be resolved, the objection is, as I said, that an appearance might last only two to five minutes. There really is little benefit, if any, to victims. In fact, there could be a cost to victims if the defendant appears in court personally for remand appearances. It is possible the opposite could be true. The audiovisual link does not exclude the victim from the process. The victim will be able to attend court, satisfied and safe in the knowledge that the defendant is physically far removed and no threat to their personal safety—if the defendant will be appearing by video link. It does offer that.

The Kovco case really has no relevance whatsoever to the issue of remand appearances. How can it have? There was no defendant. Whatever the merits in a military tribunal, the Kovco case really has little relevance to a remand appearance that might last two to five minutes, and to whether or not this particular clause should apply to those remand proceedings, as it will.

I suppose the honourable member is arguing, 'Yes, this would also have some impact in relation to clause 1, which is where the court may, subject to this division and any relevant rules of court, receive evidence or submissions from persons.' I assume he is arguing that it has impact with clause 1 and that is what he sees as the main benefit. The point I am making is that clauses 7 and 8 will also impact on subclause (4) and that will, I suggest, have no benefit to victims and might even be contrary to their interests.

The committee divided on the amendment:

AYES (10)

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

NOES (9)

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

PAIR

Schaefer, C. V.	Hunter, I.

Majority of 1 for the ayes.

Amendment thus carried; clause as amended passed.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

CHILD SEX OFFENDERS REGISTRATION BILL

Adjourned debate on second reading.

(Continued from 26 September. Page 732.)

The Hon. I.K. HUNTER: I express my support for the bill and urge all members to support it. There can be no greater role for this parliament than the protection of our children, and I believe that with this bill we are taking another step in that direction. It is important in this debate to recognise who these offenders are. So often, it is too easy to vilify 'the other', to concentrate on so-called 'stranger danger', and close our eyes to dangers closer to home. It is understandable, of course, that we react in this way. Sometimes it is too painful to reflect too much on the real dangers but, if we are to be responsible, we must.

If we really want to protect our children, we must be alert to all of the dangers. Offenders come from all backgrounds, of course, but there are good statistics that give us clues as to where to look and where we must be vigilant. An Australian Institute of Criminology study shows us that, overwhelmingly, child sexual abuse is perpetrated by people either related to or known to the victim and, even where the victim was not related to or living with the offender, in most cases the parents knew that their child was spending time with the perpetrator. Overwhelmingly, offenders are males who report that they are exclusively heterosexual—and there may be some cognitive dissonance going on there, but we should not be surprised, given the nature of their offence.

Victims within families are often 10 times more likely to be girls than boys, while, overall, a victim is more likely to be male. Another important statistic worth noting—and this is perhaps a very small mercy—is that serial child sex offending is relatively uncommon, although this type of offender seems to be the most common focus of the media. Perhaps this simply reinforces the terrible fact that the crime may often remain hidden within families. Yes; children are attacked by strangers but, sadly, often the biggest threat comes from those they know and trust, and this is why it is incumbent upon us to speak this truth.

Perhaps a great number of child sex offences are still going unreported. Perhaps families are choosing not to alert authorities in many instances and, certainly, surveys of offenders suggests that this is the case. By speaking more openly, perhaps we can begin to remove the veil from this crime against the innocent. Of course, under reporting means that we can never know the true nature and extent of these crimes, but we must always remain aware that they happen inside families too, so that, as a society, we can better protect our children. The offenders' register is, of course, a good and sensible step in our fight against these crimes. I urge all members to support the bill, and I hope that the publicity surrounding it will result in good, balanced reporting of the dangers and not just those we find easy to confront.

The Hon. P. HOLLOWAY (Minister for Police): I thank honourable members for their indications of support for this bill. In his second reading contribution, the Hon. Robert Lawson stated that the model register that is created by this bill is a conviction based register. As such, he suggested that a person is not liable for registration unless they have been convicted of a child sex offence. He implied that this is a weakness in the legislation. This is not correct and may explain why the honourable member mistakenly believes that the South Australian legislation is not as comprehensive as that enacted in other jurisdictions.

I should first take the opportunity to clarify that, where an offender has committed a child sex offence, it is the sentencing of the offender rather than the conviction that results in the offender being liable for registration. That technical point aside, the member is, in any event, mistaken when he suggests that only those offenders who have been convicted of a child sex offence are liable for registration. Clause 6 of the bill sets out who is and who is not a registrable offender. Clause 6(1) provides that a registrable offender is a person

who has been sentenced for a class 1 or class 2 offence, or who is or has been subject to a child sex offender registration order.

A child sex offender order is an order made by a court that requires a person to comply with the reporting requirements of the legislation. Clause 9 of the bill deals with these orders. Specifically, clauses 9(1) and 9(2) prescribe when a court may make a child sex offender order as being:

· when sentencing an adult offender for either a class 1 or class 2 offence where the person is not already liable for registration, or any other offence;

· when sentencing an offender for a class 1 or class 2 offence committed while the person was a child;

· upon the application of the police were the offender has been sentenced for an offence against the law of another jurisdiction (and is not already liable for registration); and, importantly,

· when making a restraining order against the person under section 99AA of the Summary Procedure Act, known as paedophile restraining orders.

Section 99AA restraining orders are known as paedophile restraining orders. Conviction for a child sex offence is not a mandatory pre-requisite for a paedophile restraining order in all cases. Under section 99(1)(b)(iii) of the Summary Procedure Act, a court may make a paedophile restraining order against a person who has not been convicted of an offence provided the court is satisfied of certain matters.

It follows that the South Australian child sex offender legislation will allow a court to order the registration of a person who has not been convicted of a child sex offence provided that the person is subject to a paedophile restraining order, and the court is satisfied of the matters in clause 9(3) being that the person poses a threat to the sexual safety of a child or children. In this regard, the South Australian legislation goes further towards protecting children from predators than the equivalent legislation in any other Australian jurisdiction.

The Hon. Mr Lawson referred to the Layton report and the database maintained by the New South Wales Commissioner for Children and Young People. Two comments are necessary here. First, the register required to be established by this legislation is not, as the Hon. Mr Lawson seems to think it is, intended to be a resource for employment screening. Clause 3 of the bill makes this clear. The purpose of this legislation, as it is in other states, including New South Wales, is to require registrable offenders to keep the Commissioner of Police informed of their whereabouts and other personal details for a specified period so as to reduce the risk of their committing further child sex offences, and to facilitate the investigation and prosecution of child sex offences.

The register maintained by the New South Wales Commissioner for Children and Young People is a separate register to that maintained by the New South Wales police. It serves a different purpose. Secondly, clause 65 of the bill prohibits absolutely any registrable offender from not only engaging in but also from applying for child-related work; 'child-related work' is defined in clause 64 very broadly. The maximum penalty for a breach of clause 65 is proposed to be five years' imprisonment. Furthermore, clause 66 of the bill requires a person engaged in or who applies for child-related work to notify his employer or prospective employer if he is charged with a child sex offence within seven days of becoming aware of the charge. The maximum penalty proposed for a breach of clause 66 is $5 000.

The Hon. Mr Lawson questions why the government did not follow the New South Wales model. The answer is that the government has followed the national model, although it has based this state's legislation on the Victorian Sex Offender Register Act. Both the Victorian act and this bill—and for that matter the New South Wales legislation—incorporate the key features of the nationally agreed model. The New South Wales legislation is not the national model agreed at ministerial council level. That is why separate provision is made for New South Wales orders in the versions of the model enacted in other jurisdictions.

As to the contribution of the Hon. Ann Bressington, I can only assume by her comments that she believes the legislation in Queensland and New South Wales is tougher than the government's bill, and that her understanding of this legislation is based on the same erroneous assumption, namely, that the legislation is limited to people who have been convicted of or sentenced for a child sex offence. I trust that she now understands that this is not the case and that the government bill goes further. The Hon Ms Bressington also made reference to United States legislation. She did not elaborate on this, but one assumes she is referring to the fact that the equivalent registers in the United States, published under legislation known as 'Megan's law', are accessible by the public. As the Attorney-General made clear in another place, the government has no intention of granting public access to the register.

First and foremost, this could be counterproductive in terms of the objects of the legislation. Comparative data from the US and Australia shows that compliance rates for registrable offenders are much lower when the register is made public. Offenders fearing retribution from vigilantes and public humiliation break off contact with police, often moving without providing details of their new address. This makes monitoring them far more difficult. Secondly, the threat of reprisal against registered offenders is real. In the United States several registered offenders have been killed and many have been subjected to serious assaults and other offences by misguided vigilantes.

In the United Kingdom, when an irresponsible newspaper published what it claimed were the names and addresses of child sex offenders living in the community, not only were the police forced to step in to protect, and in some cases relocate, offenders, but also several innocent people and their families were attacked and driven from their homes by angry mobs, having been mistakenly identified.

In Australia there have been several occasions when police have had to commit resources to protecting and relocating child sex offenders upon their release from prison, when details of their release and post-release address were made public. The government does not want police resources diverted to protecting child sex offenders when those resources would be better spent monitoring child sex offenders.

The Hon. Mark Parnell noted comments by the Attorney-General in another place that the government will be moving amendments to address concerns about the so-called young love cases. I can confirm that the government has on file amendments to address these concerns, and I will speak to them in more detail in committee. The Hon. Mr Parnell indicated that he will be seeking assurances in committee that protection will be in place for some young offenders. I advise the honourable member that the bill contains protection for young offenders. Clause 6(3) provides that an offender sentenced for a class 1 or 2 offence does not automatically

become a registrable offender if the offence was committed while they were a child. In such cases the prosecution will have to apply for a child sex offender registration order. As I have already advised, a court may not make such an order unless satisfied that the offender poses a risk to the sexual safety of a child or children.

The Hon. Dennis Hood advised that Family First will not be proceeding with the amendments outlined by his colleague the Hon. Andrew Evans to place restrictions on internet use by registrable offenders. He advised that these amendments will be introduced in a stand-alone bill. I note that Mr Hood has introduced a bill to amend the Summary Procedure Act. The government will give careful and favourable consideration to the Hon. Mr Hood's bill.

The Hon. Nick Xenophon asked why the government's bill does not follow the New South Wales legislation in requiring the registration of offenders convicted of non-sexual offences against children. As I have already advised, the New South Wales legislation is not the national model agreed at ministerial council level. In any event the government does not believe that protection of children from sexual predators is enhanced by the inclusion on the register of people who have not been convicted of a child sex offence or who are not otherwise considered to pose a risk to the sexual safety of children.

The Hon. Mr Xenophon has placed amendments on file. These amendments will require some registrable offenders to wear or carry an electronic monitoring device and report to the commissioner the details of any planned travel outside South Australia. The wearing of a device will either be mandatory for registrable offenders required to register for 15 years or life or discretionary upon a court order. The government will oppose these amendments. The government is not convinced that suitable technology exists to allow for effective satellite monitoring of registrable offenders, or that this is a cost effective way of dealing with recidivism among child sex offenders. However, the government is committed to investigating whether this is the case and, as promised at the last election, has committed $200 000 to a trial of technology to determine whether satellite tracking of serious repeat offenders is a viable policy response. This trial, to be conducted by the Department of Correctional Services, is scheduled to be conducted in the 2007-08 budget year.

As I have said, the government has placed amendments on file. Although I will provide a more detailed explanation of these amendments in the committee stage, I advise that these amendments address a concern raised by the shadow attorney-general in another place and make a minor technical amendment to one of the key definitions of the bill. Again, I thank honourable members for their indications of support for this bill.

Bill read a second time.

In committee.

Clauses 1 and 2 passed.

Clause 3.

The Hon. NICK XENOPHON: I move:

Page 5, after line 9—Insert:

and

(c) providing for electronic monitoring of such persons in certain circumstances.

This is a test clause with respect to a number of other amendments that are consequential to it. This amendment provides for the electronic tracking of offenders, as the minister outlined in his summing up to the second reading stage, for those offenders who have been registered for a period of 15 years or more, or as the court decides; the court has discretion with respect to that matter.

I will briefly outline the issues. This amendment allows for electronic tracking via a GPS or satellite system. In May 2005, in a report in the *Daily Telegraph* in Sydney, the then New South Wales premier, Bob Carr, announced the following:

> . . . that serial sex offenders on parole would be fitted with tracking devices that will alert authorities if they go near schools or child-care centres. Known as STAR units, the electronic bracelets will feature GPS technology allowing corrective service authorities to monitor the wearer's every move. Serial sex offenders who have been convicted and have served a non-parole period in gaol will qualify for the electronic monitoring, which costs $5000 per device.

Then premier Carr went on to say:

> Offenders are trapped in an electronic bubble that can be tracked anywhere. . . The offender must wear an electronic anklet or bracelet and carry the STAR unit, which is the size of a large mobile phone. . . the device would pinpoint the offender's location to within 5m. . . an alarm would be triggered if the offender tried to remove the bracelet or didn't carry the unit.

The report goes on to state, essentially, that it would alert the authorities in such cases. We know that this technology exists, and we know that there have been studies. We also know that home detention electronic monitoring has been used in New Zealand. In Florida, on 3 May 2005, there was a media report entitled 'Florida signs law to track sex offenders via GPS for life', and that effectively does the same thing, so that we know where these are offenders are. We know there is a high rate of recidivism. That is why this bill has been introduced by the government, and I congratulate the government on introducing this legislation.

It seems that the technology associated with electronic tagging is improving daily. We know via the Acts Interpretation Act that the government has effectively two years from the date of assent (or it may be from proclamation) to implement any particular section of a bill. These amendments have been on file for the past two days. I urge my colleagues in the opposition and, indeed, my crossbench colleagues to keep this amendment alive, because it would enhance the bill and make it much more effective. I urge government members to heed the words of former premier Bob Carr when he was in office in relation to the implementation of electronic tagging. This is about using technology in a way that will make our streets safer from paedophiles. It will enhance what is intended in this bill. I urge honourable members to support the amendment.

In my brief discussion with the Hon. Robert Lawson (I do not think he will mind me saying this) I understand that the opposition may want to consider this more fully. But, at the very least, I urge the opposition to keep this amendment alive so that it will not be lost. This is an opportunity to improve this legislation and to make it more effective and ensure that our streets are made safer from paedophiles by requiring this electronic tagging.

The Hon. P. HOLLOWAY: The government opposes this amendment. As I indicated earlier, as it is consequential on the substantive amendment contained in proposed part 5A of the bill, I agree with the Hon. Nick Xenophon that it should be treated as a test amendment for this group of amendments. Proposed part 5A contains provisions that will require a registrable offender who is required to report for 15 years or for life, or who is subject to an order made under part 5A(2) to:

(a) at all times, while in South Australia, wear or carry an electronic monitoring device of a kind approved by the minister; and

(b) comply with any directions given either generally or in relation to the particular registrable offender relating to the electronic monitoring device.

The maximum penalty for a breach of the provision is proposed to be imprisonment for five years.

An application for an order under proposed part 5A may be made by the prosecution to the court on sentencing for a registrable offence or by the police on application to the Magistrates Court. Proposed part 5A also contains provisions requiring registrable offenders who are required to wear or carry a monitoring device to report and provide the details of any planned travel outside South Australia to the Commissioner and their return to the state within 24 hours, and any change to reported plans as soon as practicable. They also require the Commissioner to provide registrable offenders with notice of their obligations under proposed part 5A and the courts to notify the Commissioner when an order under proposed part 5A is made.

The government has sought advice from South Australia Police. That advice is that it does not currently possess the technology necessary to electronically track registrable offenders as required by these amendments. This raises three further matters of significant detail. Whether the necessary technology exists is not clear. Several jurisdictions—Western Australia and New South Wales—are reported as having trialled technology. The results of these trials are not reported, except that New South Wales has announced it will introduce satellite tracking of parolees. No details are provided. The same media reports relied upon by the Hon. Nick Xenophon note that the police in the United Kingdom encountered problems when trialling the technology there.

Even if the technology exists, the costs may be prohibitive. The media reports cited by the Hon. Mr Xenophon mention that the units worn by offenders cost $5 000 each. In addition, SAPOL would have to pay to link into the relevant satellite system, the GPS, and acquire the technology to do so. SAPOL would also have to acquire the technology to allow it to record accurately the information provided by the device via the satellite link-up. On top of all this, SAPOL would have to pay for the officers to monitor the devices.

In addition, even if that were all to be overcome, the question would arise whether this particular area would represent a good use of the expensive and scarce resources involved. It might be argued, for example, that home invaders are much more prolific offenders, with a higher risk of recidivism, and would be much better tracked, or that the government should concentrate its surveillance efforts on various serious offenders of all kinds. Indeed, at the last election the government promised to fund a trial of satellite monitoring of serious repeat offenders.

The sum of $200 000 has been committed to this trial, which is to be conducted by the Department for Correctional Services in 2007 and 2008. Until it is completed, the government will not know with any certainty whether suitable technology exists to allow for satellite monitoring in this state or the full costs of implementing it. Once this information is available, the government will be in a position to decide whether to implement satellite tracking and, if so, who will be tracked. It is not in a position to do so now.

Secondly, despite the Hon. Nick Xenophon's claims that other jurisdictions are implementing electronic surveillance of registrable offenders, the government's information is that monitoring is being contemplated only in respect of offenders released on parole. This bill is not about parole. The requirements imposed on registrable offenders under this bill are not intended as a substitute for nor as a means of extending an offender's parole. Thirdly, these amendments appear to be founded on a misunderstanding of the intent of this legislation. In his second reading contribution, the Hon. Mr Xenophon suggests that the monitoring of registrable offenders can be linked to satellite technology, GPS, so that offenders can be tracked to ensure that they do not go near places they are not supposed to—for example, schools, kindergartens or playgrounds.

The Child Sex Offenders Registration Bill will not and is not intended to restrict a registrable person's movements, except in so far as they will be prohibited from engaging in child-related work—something GPS monitoring will not be able to detect. For a registrable offender to have their freedom of movement restricted in the manner suggested by the Hon. Mr Xenophon, a court would have to make either a paedophile restraining order under section 99AA of the Summary Procedure Act or an equivalent order on sentencing under section 19A of the Criminal Law (Sentencing) Act. While an order under section 99AA or section 19A can form the basis of a child sex offender registration order, they are different orders founded on different grounds.

Fourthly, these amendments appear to be aimed at the most serious child sex offenders—those whose record of serious and repeat offending demonstrate that they pose a serious risk to the sexual safety of children. The Criminal Law (Sentencing) Act already provides the courts with a mechanism to protect the community from serious repeat child sex offenders. Division 3 of part 2 of the Criminal Law (Sentencing) Act empowers the Supreme Court to impose sentences of indeterminate duration on sexual offenders whom the court finds are incapable of controlling or unwilling to control their sexual instincts. It is for all these reasons that we advise that the government opposes the amendments.

The Hon. R.D. LAWSON: Before I make a brief contribution on the amendments of the Hon. Mr Xenophon, I should respond to a number of issues raised by the minister in his second reading response in which he accused me of having misunderstood the effect of this legislation, just as he, a moment ago, accused the Hon. Nick Xenophon of misunderstanding the effect of this legislation. My sin was to say in my contribution that this is a conviction-based system. The minister went to great pedantic lengths to suggest that this is not actually based on convictions at all. Incidentally, note the term 'offenders'; the people who are subject to these orders have been defined as offenders.

The minister said, 'No, they are not convicted at all. It is because they have been sentenced that they are on this. It is not conviction-based. It is actually rather more a sentence-based system.' They are not sentenced unless they have been convicted in the first place. To say that there is another small class of persons who might also be included on this who are not, strictly speaking, offenders but come in because a paedophile restraining order has been made against them is, I think, pedantic in the extreme. This is a scheme for the registration of those people who have been before the courts and are offenders as the act describes them.

The minister also said that I misunderstood the effect of the act by suggesting that I thought the scheme was really an employment register. I do not believe that any remarks I made suggested that it was. I did not have that understanding of the legislation. I think that one of the weaknesses of this

legislation is that it is not available for employment purposes—that was my point—as the New South Wales registers are.

The minister is assuring the committee that someone can apply to the government to be a child worker in the children's welfare department (or whatever name it currently uses), but that register would not be available to the person doing the hiring. The obligation is on the offender to disclose, and the offender actually commits a breach of the law by not himself disclosing to the department that he has such an order against him. He commits an offence because he is not allowed to apply or obtain employment in that particular field. There are these restrictions imposed upon him. The onus is on him to comply with the law and not to make an application for such a job. I believe that is a weakness. It is recognised in New South Wales as a weakness of our sort of scheme. It has a scheme which does not have that infirmity in it, so to that extent it is a stronger scheme.

This government is so fond of its breast beating about how tough it is on paedophiles, how much it hates paedophiles, how much it hates criminals, etc. but, when push comes to shove and it has an opportunity in this place to pass tough legislation, it always wimps out. But members opposite will go on radio and the public airwaves and say that they are as tough as anyone, no-one is tougher than them, and so on. But, when push comes to shove, what they have introduced is not as tough as they are suggesting. So, in the community they are flying under false colours.

I think the true attitude and response of this government is reflected in its response to the amendment of the Hon. Nick Xenophon. The Hon. Nick Xenophon suggests that in other places these devices are available and are being used. The minister says that they are only being trialled. The minister also says that it will cost a lot of money and that we do not have the technology. As the Hon. Nick Xenophon pointed out in moving the amendment, the government does not have to introduce this tomorrow. It has plenty of time in which to implement it. It has plenty of time to come back to this parliament and say, 'We are not capable of doing it. It is absolutely impossible. The technology used elsewhere has proven to be completely fallacious and tracks all the wrong people.' It is amazing that hire car companies can have cars covered by GPS systems and taxis can run GPS systems, but this government says, 'We don't think we can do that here. We don't believe such things exist. They may not work.' They are excuses. I ask the Hon. Nick Xenophon to indicate whether he has any further information about overseas experience and details about how these schemes work in the places where he suggests they are working.

The Hon. NICK XENOPHON: I want to pick up one thing that the minister said. It is true that we can have paedophile restraining orders and orders under the sentencing act in terms of requiring the tracking of an offender; that is where the mechanism can also exist. I believe that, if we are talking about offenders who have an order of 15 years, or more, or as the court sees fit, we are talking about people with a serious problem; and also there are some serious community safety issues. I believe it is more than worthwhile for the authorities to know where these people are going. I think their civil liberties ought to be curtailed, given the risk they have posed to the community in the past. We are not talking about a suspect but, rather, offenders who fulfil the criteria of this legislation.

In relation to the matters raised by the Hon. Mr Lawson, I indicate that from 3 May 2005 Florida's law requires mandatory lifetime tracking by GPS of those convicted of sex crimes against children 11 and under. It was signed by Governor Jeb Bush, and it was in response to the killing of 9 year old Jessica Lunsford after the lawmakers discovered that the man who murdered Jessica was a registered sex offender. I have a copy of a note here from the Office of the Governor of Illinois of 10 July 2005. The news item states that in order to help safeguard Illinois communities from sex offenders Governor Rod R. Blagojevich signed several important pieces of legislation that will strengthen the state's efforts to keep close tabs on sex offenders following their release from prison. It also states that they will tighten the restrictions and supervision of sex offenders. My understanding is that it provides for not only strengthened registration but also the tracking of offenders. It has a range of measures. I understand that there was a discretion to provide for the tracking of offenders with respect to that, but I will come back to that shortly.

In terms of New South Wales, the minister is right in saying that with respect to corrections it relates to parole matters, but we know that Western Australia has trialled electronic tracking of sex offenders. I have other material that suggests that there has been a plethora of technology to do with tracking. When my office first looked at this two or three years ago, there had been significant advances with respect to that. I also acknowledge that, given the Acts Interpretation Act, there is a two-year lead-in period, should the government require it. But the intention of this particular amendment is to have a rigour with respect to long-term sex offenders, or those with a long-term order, to be tracked electronically. I am not sure whether the Hon. Mr Lawson required more than that.

I can also refer honourable members to issues paper 254 of the Australian Institute of Criminology from May 2003, entitled 'Electronic monitoring in the criminal justice system,' which talks about electronic monitoring technologies and applications. The Australian legislative framework back there looks at the ethical, legal and practical issues. I am happy to provide honourable members with a copy of that material should they request it. The technology has improved significantly since that paper of 2003, and I believe that it is something that ought to be considered at this time.

The Hon. P. HOLLOWAY: The honourable member referred to the case in Florida, but even assuming that we had this technology—assuming that it was available at a reasonable cost—we have to consider whether our law and order dollar would give a better return if it was spent somewhere else in terms of public safety. Even if we ignore all those questions, suppose that we had the information in that case in Florida that the honourable member referred to; even if you have police monitoring somebody's location around the clock, how does that tell you whether or not they are committing a crime? It is all very well for the honourable member to use that horrific crime as an example, but we should really be asking ourselves, as legislators, 'Yes, but would that actually have enabled us to prevent the crime? How would it have contributed?'

There is no doubt that satellite tracking offers great potential. When I was in the United Kingdom recently I had a look at some of the research being done at the Home Office in relation to surveillance. There is no doubt that this technology is moving fast, and there is no doubt that technology is a huge assistance in police work. One only needs to look at DNA as a classic example. There is a lot of other important work in terms of screening and so on that is being

done by these researchers. But, while that is under way, we still have to consider the effective use of technology—and technology is moving fast.

One of the reasons for my recent visit was to look at some of this new technology. You will often have salesmen for new technology saying, 'Yes, this is a wonderful thing and it will do a lot.' But we have to be pragmatic. There is always far more technology around than we can reasonably afford. We have to ensure that the technology we use gives us the best value in terms of protecting public safety. Often the people who develop these technologies and sell them will promise all sorts of things about how good they are, but often that technology does not live up to its promise. That is as true in the policing area, as I have discovered as the police minister, as anywhere else. The government recognises that tracking offers huge promise and it should be used in the future. That is why it has provided money for this trial. It is important that we do have this trial not only so that we can see how effective the technology is, but also in terms of tracking that technology.

It is one thing to have this information, but one has to be able to disseminate the information and use it, and use it wisely. That, as much as anything, is why a trial is needed; to ensure that this information can be productively used in terms of deterring crime. As the Hon. Nick Xenophon just acknowledged: yes, it has great potential, particularly in terms of probation when people still have not met their obligations to society in terms of their sentence, and it is obviously something that we should look at. That is why the government is supporting this trial by Correctional Services to examine it.

It is premature and dangerous, I suggest, to put all of our faith in a new technology, no matter how promising that technology might be. Maybe in 10 years this technology will be commonplace and we will be using it, but at this stage it is important that before we just grab at a new technology we ensure that we get good benefit out of it and that there are not better, more cost-effective alternatives around.

The Hon. SANDRA KANCK: The Democrats will not be supporting this amendment. It seems to be predicated on a belief that the people who are on this register are those who would have fallen into the old 'stranger danger' category. We know that 85 to 90 per cent of people who abuse children are known to the children. In fact, from a web site that I found recently (www.spinneypress.com.au) it states:

> In the overwhelming majority of instances of child sexual offences, the perpetrator is the father, stepfather, mother's de facto partner, brother, uncle or grandfather of the victim.

So the reality is that where these people are likely to be is in their own homes, and having any sort of tracking devices is not going to make any difference.

The Hon. R.D. LAWSON: The minister suggested that one of the Hon. Nick Xenophon's misunderstandings of this legislation was that he thought the effect of the legislation was wider than it was. The minister said, 'This legislation is not intended to limit a person's activities. This legislation is not intended to restrict the movement of people. That is not this legislation at all. It is just actually to maintain a register.' That is what the minister is saying here: that this is not intended to limit a person's activities or restrict their movements, except to a certain extent.

But what is the government saying about this out in the wider community? What does the Attorney-General say in his press release when his legislation is introduced? Does he say, 'This legislation is not intended to restrict the movement or limit the activities of paedophiles'? No; quite the contrary. The Attorney-General tries to create the impression that it has this effect. He states:

> This is important legislation for every South Australian parent and the Rann Labor Government is contributing $500 000 to establish the register. . . [It] will give police a powerful new weapon by allowing them to monitor offenders.

It will allow them to monitor offenders and look over their shoulder. They will not only be looking at a register which is required to be updated by the offender reporting changes every so often; this allows them to monitor offenders. What better technology would there be to monitor offenders than to use the technology which is available and which is being trialled in other places? The Attorney-General continues:

> Under the bill offenders will have to report basics such as where they live, what car they drive. . . they have to report any of these changes. Even if they get a new tattoo, it will be an offence not to report that fact to police.

So, the impression sought to be created out there will be that the police will be looking over the shoulder of these offenders.

The Hon. R.I. Lucas: They speak with forked tongue.

The Hon. R.D. LAWSON: Indeed. As the Hon. Rob Lucas says, there is a lot of doublespeak with this government, and the Attorney is speaking here with a forked tongue. He concludes his press release, full of self-congratulation, with '. . . no longer will paedophiles be able to move freely between states safe in the knowledge that their sordid past will not catch up with them,' all because what is suggested is that we will be restricting their freedom of movement and their freedom of activities.

So, when the government says it wants to be tough, we agree with the principle of this; we agree that there should be a register, but we also agree that the register should be as effective as possible. We have not actually received the latest information in relation to these tracking schemes. The Hon. Mr Xenophon frankly admitted that some of the material he had from the United States was a couple of years old. I understand that there have been some recent developments. The minister himself said he saw some of these tracking systems while he was in the United Kingdom.

I believe that we should be looking much more closely at these issues, and I indicate that, although the matter has not been conclusively decided by my party, we are certainly keen to look at these matters during the next few weeks before parliament resumes and will be supporting the amendments moved by the Hon. Mr Xenophon to satisfy ourselves on those points. Frankly, we are not satisfied with the minister's assurances that this is impracticable and cannot be done.

The Hon. P. HOLLOWAY: Obviously, if the opposition is supporting the amendment it will be passed, and I think that will be regrettable. To base legislation in a serious area like this on a press release and the promise of technology is very bad legal practice. I do not think it reflects particularly well on this council that legislative reform could be put forward on the basis of a press release about what is happening overseas. It really needs—

An honourable member interjecting:

The Hon. P. HOLLOWAY: This will have to go back to the house. As I understood the Hon. Robert Lawson, he is provisionally supporting it. Let us conclude the debate on the bill and then we can look at it. For now, the government opposes the amendment. There is great potential in the use of this GPS tracking, but I think there is a fundamental legal point here as to whom it should apply to. In other places,

quite properly, it is being used for people who are still on parole. That is why the government would support a trial in relation to that, but to go beyond that crosses a philosophical threshold that we would need to think very carefully about. I do not think there is much point in delaying parliament any longer on this clause.

The committee divided on the amendment:

AYES (11)

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

NOES (8)

Finnigan, B. V.	Gazzola, J. M.
Holloway, P. (teller)	Hunter, I.
Kanck, S. M.	Parnell, M.
Wortley, R.	Zollo, C.

PAIR

Schaefer, C. V.	Gago, G. E.

Majority of 3 for the ayes.

Amendment thus carried; clause as amended passed.

Clause 4.

The Hon. P. HOLLOWAY: I move:

Page 7, line 24—
After 'offence' insert:
(including an order or direction requiring a person to enter into a bond)

This is a technical amendment. It is proposed to make sure that there is no ambiguity in the legislation. It is due to the peculiar wording of section 39 of the Criminal Law (Sentencing) Act. The status of becoming a registrable offender attaches at the point of being sentenced. The notion of 'sentence' is defined. That definition refers either to the imposition of a penalty or to the making of an order consequent on a finding of guilt. The person may successfully apply to be found guilty without a conviction being recorded under section 39 of the Criminal Law (Sentencing) Act.

It was always the intention behind the bill that an offender in that situation potentially should be a registrable offender. However, section 39 of the Criminal Law (Sentencing) Act provides that the court, upon finding the defendant guilty without recording a conviction and without imposing a penalty, must order the defendant to enter into a bond. It might be thought that this bond is, therefore, not a penalty. It looks like it is an order consequent upon a finding of guilt, but it is best to be clear about this; therefore, the amendment makes it clear that any bond is a penalty which, after all, is within the common use of the language.

The Hon. R.D. LAWSON: I rise to indicate the opposition's support for the amendment.

Amendment carried; clause as amended passed.

Clauses 5 to 8 passed.

Clause 9.

The Hon. P. HOLLOWAY: I move:

Page 11, line 14—
'under subsection (1) (a), (b) or (c)' and substitute:
to be made by court that is dealing with the person for an offence

This amendment is designed to make the application process for discretionary orders less complicated and unnecessarily wasteful of resources. A paedophile restraining order may result in a child sex offender registration order under clause 9(1)(d). If that is done in a Magistrates Court, that would mean that it would be done by application by a police officer, and that is what clause 9(5)(b) provides. In drafting, we overlooked the fact that a sentencing court may make a paedophile restraining order imposing sentence. If that is done, there would need to be a police officer present to make the application. That is not sensible. The prosecution should be able to make the application. This amendment is drafted to allow that to happen.

The Hon. SANDRA KANCK: I have no problems with the amendment, but I want to ask the minister about this clause. It is on the basis of this clause that someone will or will not be put on the register, so it is actually quite important. The Spinney Press web site that I talked about has a couple of interesting dot points. It states:

> It is commonly thought that the reconviction rate is high for adults who sexually abuse children. However, research shows the reconviction rate actually ranges from 13 to 23 per cent, and is less for those who successfully complete a specialised treatment program.

It then states:

> It is possible to identify a small group of high risk sex offenders whose likelihood for repeat offences is greater than 50 per cent.

What interests me about this is that we know we are going to leave it in the hands of the magistrates to determine whether somebody will be placed on this register. Will any extra training be available to those magistrates along the lines of this information to which I have referred that would ensure that those they put on to the register are those most likely to be repeat offenders?

The Hon. P. HOLLOWAY: First, registration would be mandatory in most cases where the offender has been sentenced for a child sex offence. There are some exceptions, maybe where the offender was below the age of 17 years. However, in most cases there would be mandatory registration. In addition to mandatory registration by the court, there is also the ability to make an order under the Child Sex Offenders Registration Act. Clause 9(3) provides that the court may make an order under this section only if, after taking into account any matter that it considers appropriate, it is satisfied that the person poses a risk to the sexual safety of any child or children. Presumably the courts will take evidence from experts, depending on the nature of the offence.

The Hon. SANDRA KANCK: So will any training be made available to magistrates to assist them in making this type of assessment?

The Hon. P. HOLLOWAY: Magistrates do not generally have training in such matters. Our magistrates in these matters inform themselves well. They attend conferences regularly, but there is no specific training the government provides for magistrates.

The Hon. SANDRA KANCK: I continue to be interested. As I pointed out, 75 per cent of child sex offenders will not reoffend, according to this information. How is a magistrate, who has no training, going to be able to decide whether this person—who is likely to be a father, a stepfather, a mother's de facto partner, a brother, an uncle or a grandfather of the victim—is likely to pose a risk to another child or children?

The Hon. P. HOLLOWAY: All magistrates would, as they do in making any other judgment, make a decision on the basis of the facts presented before them. One would expect the facts of the case would give the magistrate a good idea as to whether or not a person was likely to be a recidivist. Magistrates have to make such decisions every day in relation to a whole range of offences.

The Hon. R.D. LAWSON: On a related matter, has the government received any advice as to the likely number of persons who would be eligible to be registered on this register, or advice as to what has occurred in other jurisdictions that have implemented this scheme? I think the committee ought to be aware of the number of these matters, not only in connection with the training of magistrates but also the resources required to implement it.

The Hon. P. HOLLOWAY: We do not have the information here. In relation to the estimates for South Australia, it is my advice that SAPOL is now undertaking that exercise to try to obtain the information in relation to other jurisdictions. We do not have any evidence. However, we can try to obtain that information and provide it to the honourable member. I suppose this bill is likely to be back here again, so perhaps we can seek that information during the break.

The Hon. SANDRA KANCK: To assist the minister in that regard, the figures are that one in four girls and one in nine boys will be sexually abused before they reach the age of 18. So, we are possibly talking about a very large register. I welcome the fact that these relatives of the children will be put on a register. It is just that I do not think that a lot of other people who have considered this matter have worked out that the majority of people who will be on this register will be very normal, ordinary people whom we do not normally classify as paedophiles. I think that will be very educational for many in the community. However, I am concerned about whether or not we will be targeting the right people. Again, I come back to this figure that at least 75 per cent of child sex offenders do not reoffend.

The Hon. D.G.E. Hood: They get caught.

The Hon. SANDRA KANCK: They get caught and they do not reoffend.

The Hon. D.G.E. Hood: They do not get caught again.

The Hon. SANDRA KANCK: That is one way of saying it—they do not get caught again—and it could be as simple as that. That is obviously difficult to debate. In any event, I think we will have a very large register under these circumstances. I would be interested to know whether there will be any monitoring by the government of the sorts of people who have an order made against them to see whether or not they measure up to appropriate criteria. I have this awful suspicion, for instance, that we will find that there will be a preponderance of working-class people on these lists, because there is a view that educated people do not do these sorts of things. I have this awful feeling that there will be a sense that we might forgive someone just because they are well educated. Will there be any attempt by the court authorities to keep some sort of data about the nature of the people and their educational, economic and family backgrounds, and so on, so that we can keep track and make sure that particular groups are not being singled out and others effectively let off?

The Hon. P. HOLLOWAY: The government has no plans to do that and, of course, as has been pointed out, the government regards the confidentiality of the register as important. That issue has been well canvassed.

The Hon. Sandra Kanck: That does not breach confidentiality.

The Hon. P. HOLLOWAY: Notwithstanding the fact that the government does not have any plans to undertake that process, one would think that a lot of those issues would come out in the wash, so to speak. As this register is established, that information will become available and I am sure that, as a result of the process of obtaining the statistics and becoming familiar with this register, those sorts of questions will undoubtedly be addressed. As I said, at this stage the government has no specific plans to do that. It tends to happen with most other measures that governments introduce that, after time, they are monitored and considered.

The Hon. R.D. LAWSON: I should say in response to the expectations of the Hon. Sandra Kanck that my own belief is that this register will not be as extensive or contain as many entries as the honourable member suggests. True it is that reports suggest that there are a large number of unreported sex offences in our community, and also as the Legislative Review Committee, in its examination of conviction rates for sexual offences, showed, despite a large number of rape and other serious offences being reported, there are relatively few convictions in this state. That is the experience also in other jurisdictions in Australia, and it is the experience in the United Kingdom, where they are presently taking measures, which I believe would be regarded as draconian in this jurisdiction, to address the issue. Speaking personally, I would be surprised if the number of paedophiles on this register, which is certainly of limited application, would be very great at all.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 11, line 15—Delete 'the case of an order under subsection (1)(d) or subsection (2)' and substitute 'any other case'

This amendment is consequential on my previous amendment.

Amendment carried; clause as amended passed.

Clauses 10 to 59 passed.

Clause 60.

The Hon. NICK XENOPHON: I move:

Page 31, after line 32—Insert:

(ga) whether the registrable offender is a registrable offender to whom Part 5A applies;

This amendment is consequential to the previous test clause amendment. I want to make it absolutely clear that, in discussions I have had with the Hon. Mr Lawson and the Hon. Mr Hood, I have undertaken to provide during the break (hopefully, within the next week or so) an up-to-date schedule of jurisdictions that have used GPS technology, where it has been at and what has occurred. Of course, I also give this undertaking to the government and, indeed, all my crossbench colleagues. That information might assist my colleagues on the crossbenches and in the opposition with respect to their views about this amendment. I hope they will be convinced that this is something that is quite viable. If they are not convinced, there may be some alternative methods to strengthen this bill. I understand the basis upon which my colleagues who supported the earlier amendment have done so on a conditional basis, that is, their being provided with further information about the GPS technology and electronic tracking.

The Hon. P. HOLLOWAY: This amendment is consequential to the earlier amendment, so we will not divide on it.

Amendment carried; clause as amended passed.

Clause 61.

The Hon. SANDRA KANCK: Clause 61 provides that access to the register is to be restricted. I anticipated that there would be something in there that would talk about the penalties that would apply to someone who leaked information. As I indicated in my second reading speech, it is because the register is restricted that I was prepared to support the bill. I am concerned that, if information about who is a registered

sex offender can be obtained through nefarious methods, we could see people taking the law into their own hands, and that is certainly not something I want to see. So, what would be the situation if those people who are entitled to access that register provide information to other people who are not entitled to access it?

The Hon. P. HOLLOWAY: That is really covered in clause 67(2), which provides that if a person who has, or has had, access to information intentionally or recklessly discloses information in contravention of subsection (1) they are guilty of an offence, the maximum penalty for which is imprisonment for five years. As I indicated when addressing a previous amendment, the government is obviously concerned about some cases. I gave the example of a case in the United Kingdom, I think, where a number of innocent people were damaged by the misreporting of this sort of information, and we certainly would not like to see that sort of situation happen here.

The Hon. R.D. LAWSON: This clause restricts access to the register to circumstances which are prescribed by guidelines developed by the Commissioner of Police and approved by the minister. Has the government yet considered, or has the Commissioner developed, at least draft guidelines in relation to this matter?

The Hon. P. HOLLOWAY: My advice is that SAPOL is now in the process of developing those guidelines.

The Hon. R.D. LAWSON: Will the guidelines, once approved by the minister, be gazetted or otherwise made available publicly?

The Hon. P. HOLLOWAY: My advice is that that is not the intention.

The Hon. R.D. LAWSON: Is there any reason why important guidelines of this kind are not made available publicly?

The Hon. P. HOLLOWAY: I am advised that it is for the same reason that the government does not release police general orders.

The Hon. R.D. LAWSON: What is that?

The Hon. P. HOLLOWAY: Well, these are internal police documents. The government believes that this is of the same nature as those general police orders.

The Hon. R.D. LAWSON: With the greatest respect, we have been told that this is a highly secure register that can only be accessed in certain circumstances, but we are not told what those circumstances are in the legislation. That is being left not to parliament to consider but to the Commissioner of Police to determine and the minister to approve, with no public accountability whatsoever. Ordinarily, important measures of this kind are either in legislation or in regulations which are subject to parliamentary scrutiny. However, here we have the government devising guidelines—and they are only guidelines; one would not have thought that they themselves would reveal secret information. Frankly, I am not satisfied that this is an appropriate way of proceeding, and I am not satisfied with the minister's explanation that, 'Well, we don't release police general orders which relate to operational issues.' We understand that—

The Hon. P. HOLLOWAY: Which police officers get to see them and which police officers don't? How senior must they be? Essentially, they are the guidelines; that is what they will be.

The Hon. R.D. LAWSON: The minister says (whilst not on his feet) that these guidelines will indicate which particular officers might be entitled to access this information. If that is all the guidelines are going to say, there is no reason in the world why that information ought not be publicly available to reassure the public—as the minister has been anxious to reassure this committee—that this information will be kept secret. In his second reading explanation, the Attorney went to great lengths to explain why this is not a public register, why it will be a secret register, etc. Now we are being told, 'The legislation provides for guidelines, but we are not going to gazette them. We'll make them publicly available.'

The Hon. P. HOLLOWAY: I know that SAPOL has very strict guidelines about the circumstances in which police officers can access somebody's records. Police officers have been dismissed for gaining access to the police database for improper reasons. There are instructions there about who has access to that sort of information. Further, the police do not publish the access rules to the records of electronic surveillance and listening devices either. That is of a similar nature, and it is not made public. I think beyond that there is probably not much more I can say.

I would not have thought that that sort of information, if it is in the public domain, would be particularly helpful to any individual. I am sure that, if the shadow minister wanted to talk to the Police Commissioner about his thinking process in relation to those guidelines, the Commissioner would probably be happy to discuss that. I do not really think that making them public will aid the public in any substantial way. If the honourable member wants us to think further about it, so be it.

The Hon. R.D. LAWSON: I am deeply disturbed by the minister's concession that these guidelines will purely be a list of those officers who are entitled to access the register. For example, if it says officers above the rank of Deputy Commissioner, etc.; that is hardly a guideline.

The Hon. P. HOLLOWAY: Can I just elaborate on that. I gave the example of how police officers have sometimes been disciplined or dismissed for improperly accessing the police database. There are clearly guidelines that indicate the circumstances in which officers can access particular databases. I would have thought that this would be in the same vein. The guidelines might limit the circumstances in which particular officers might have access to information. I do not think that would be very different from what happens now with access to the general database, people's criminal records, or whatever.

Clause passed.

Clauses 62 to 66 passed.

New clauses 66A to 66H.

The Hon. NICK XENOPHON: I move:

New part, page 35, after line 25—Insert:

Part 5A—Electronic monitoring

66A—Application of Part

(1) This Part applies to a registrable offender who is not in government custody and—

(a) is required to continue to comply with the reporting obligations imposed by Part 3 for a period of 15 years or for the remainder of his or her life; or

(b) has been ordered by a court to comply with this Part.

(2) However, this Part does not apply to a registrable offender in respect of whom an order is in force, under Part 3 Division 6, suspending his or her reporting obligations.

66B—Court orders for electronic monitoring

(1) An order that a registrable offender comply with this Part may be made—

(a) by a court sentencing a person for a registrable offence; or

(b) by the Magistrates Court.

(2) The court may only make an order under this section if, after taking into account any matter that it considers

appropriate, it is satisfied that the person poses a serious risk to the sexual safety of any child or children.

(3) For the purposes of subsection (2), it is not necessary that the court be able to identify a risk to a particular child or particular children.

(4) The court may only make an order under this section on the application of—

(a) in the case of an order to be made by a court sentencing a person for a registrable offence—the prosecution; or

(b) in any other case—a police officer.

66C—Appeal against order

(1) If a court makes an order under section 66B, an appeal lies against the making of that order in the same way as an appeal against a sentence imposed by the court.

(2) On an appeal, the appellate court may—

(a) confirm, vary or quash the order; and

(b) make ancillary orders and directions.

66D—Registrable offenders to whom Part applies must wear electronic monitoring device

A registrable offender to whom this Part applies must, at all times while he or she is in South Australia—

(a) wear or carry an electronic monitoring device of a kind approved by the Minister for the purposes of this Part; and

(b) comply with any directions of the Commissioner (given either generally or in relation to the particular registrable offender) relating to the electronic monitoring device.

Maximum penalty: Imprisonment for 5 years.

66E—Report of intended absences etc

(1) Despite the provisions of Part 3 Division 2, if a registrable offender to whom this Part applies intends to leave South Australia for any period of time, the registrable offender must, at least 24 hours before leaving South Australia—

(a) report the intended travel to the Commissioner; and

(b) provide the Commissioner with the details specified in section 17(2) in relation to that intended travel.

(2) If the registrable offender decides-

(a) not to leave South Australia; or

(b) to change any other details given to the Commissioner under subsection (1), I the registrable offender must, as soon as practicable after making the decision, report the changed details to the Commissioner.

(3) If a registrable offender to whom this Part applies left South Australia, he or she must report his or her return to South Australia to the Commissioner within 24 hours after entering and remaining in South Australia (unless he or she is in Government custody).

(4) A registrable offender to whom this Part applies must make a report under this section—

(a) by writing sent by post or transmitted electronically to the Commissioner or to any other address permitted by the regulations; or

(b) in any other manner permitted by the regulations.

(5) A registrable offender to whom this Part applies must not fail to comply with an obligation under this section without a reasonable excuse. Maximum penalty: $10 000 or imprisonment for 2 years.

(6) In determining whether a person had a reasonable excuse for failing to comply with an obligation under this section, the court before which the proceedings are being heard is to have regard to the following matters:

(a) the person's age;

(b) whether the person has a disability that affects the person's ability to understand, or to comply with, those obligations;

(c) whether the form of notification given to the registrable offender as to his or her obligations was adequate to inform him or her of those obligations, having regard to the offender's circumstances;

(d) any other matter the court. considers appropriate.

(7) It is a defence to proceedings for an offence of failing to comply with an obligation under this section if it is established by or on behalf of the person charged with the offence that, at the time the offence is alleged to have occurred, the person had not received notice, and was otherwise unaware, of the obligation.

(8) A person must not, in purported compliance with this section, furnish information that the person knows to be false or misleading in a material particular.

Maximum penalty: $10 000 or imprisonment for 2 years.

(9) If a registrable offender leaves South Australia and is found guilty of failing to report his or her presence in a foreign jurisdiction as required by a corresponding law, the registrable offender is not to be prosecuted for a failure to comply with this section in respect of the travel out of South Australia.

66F—Notice to be given to registrable offender

(1) The Commissioner must give a registrable offender to whom this Part applies written notice of—

(a) the obligations imposed on the registrable offender under section 66D(b); and

(b) any other obligations imposed on the registrable offender under this Part; and

(c) the consequences that may arise if he or she fails to comply with any of those obligations.

(2) A registrable offender is to be given a notice under this section as soon as practicable after he or she first becomes a registrable offender to whom this Part applies.

66G—Courts to provide information to Commissioner

(1) This section applies if a court—

(a) makes an order or imposes a sentence that has the effect of making a person a registrable offender to whom this Part applies; or

(b) makes an order in relation to a registrable offender that has the effect of removing the person from the ambit of this Part.

(2) The court must ensure that details of the order or sentence are provided to the Commissioner as soon as practicable after the making or imposition of the order or sentence.

(3) In this section—

court does not include a court of a foreign jurisdiction.

66H—Failure to comply with procedural requirements does not affect registrable offender's obligations

A failure by a person other than a registrable offender to comply with any procedural requirement imposed on the person by this Part does not, of itself, affect a registrable offender's obligations.

These amendments set out the system that is being contemplated by the electronic tagging and monitoring of offenders. I reiterate the undertakings I have given to my colleagues before in terms of what I propose within the next week or two. I understand that it is consequential to the test clause amendment No. 1 that was passed earlier.

The Hon. R.D. LAWSON: I ask the honourable member to indicate whether his model of electronic monitoring as set out in this clause is based upon some other scheme of electronic monitoring.

The Hon. NICK XENOPHON: I can indicate, after brief discussions with parliamentary counsel, that these amendments are worded to be consistent with the sex offenders registration orders. I can say that this is not modelled on any particular legislation so it is pioneering legislation, and there is nothing wrong with that. We know in the Dunstan era all sorts of bills were passed applying to consumer protection and other issues in pioneering legislation, and there is nothing wrong with being brave when it comes to amendments that are intended to enhance the effectiveness of this bill and its intent.

New clauses inserted.

Remaining clauses (67 to 73) passed.

Schedule 1.

The Hon. P. HOLLOWAY: I move:

Page 39, after line 19—

Insert:

(1a) For the purposes of this schedule, an offence occurred in prescribed circumstances if—

(a) the victim consented to the conduct constituting the offence; and

(b) either—

(i) the offender was, at the time of the offence, 18 years of age and the victim was not less than 15 years of age; or

(ii) the offender was, at the time of the offence, 19 years of age and the victim was not less than 16 years of age.

This amendment and amendments Nos 5, 6, 7 and 8 in my name are all about the same thing. A great deal of discussion occurred in the other place about the position vis-a-vis this bill and the onerous regime it imposes where a defendant is convicted of a serious sexual offence but the offence occurred in the context of a consensual sexual relationship between two teenagers of comparable age. As everyone knows, the criminal law creating the offences makes no real concession to this reality of life.

In another place, the Attorney-General made it clear that his intention was that these situations should not be subject to mandatory and automatic registrable status. The Attorney and the shadow minister were reasonably clearly together in thinking that an offender having a sexual relationship with a child of a similar age should have a chance to argue that there should be no obligation to suffer from the registration regime. There is a clear upper age limit as the policy relates to offenders. If the offender is a child, registration is discretionary, so the mandatory problem does not arise. Under clause 9 of the bill, a court may make an order against a child only if it is satisfied that the person poses a risk to the sexual safety of any child or children. So, if the offender is 17 years or under, the person is not a registrable offender unless the court exercises a discretion to make it so, and that test applies.

There is also a clear lower limit as the policy relates to victims. The government recently amended the Criminal Law Consolidation Act to make it clear that sexual offences committed on a child under the age of 14 years are particularly heinous and deserve an enhanced maximum penalty. It follows logically that an offence committed on a child under the age of 14 years should not fall within this penumbral category. The next criterion is similarity of age between offender and victim. The tone of the discussion is that the penumbra is about people of similar age. Any definition of 'similar' will necessarily be arbitrary, but it can be sensible. The government proposes three years, and that is what the proposed amendments are designed to do.

The government has decided to make the three year differential an exemption from listed offences. Those offences are: unlawful sexual intercourse (amendment No. 5); maintaining an unlawful sexual relationship (amendment No. 6); indecent assault (amendment No. 7); and gross indecency (amendment No. 8). The net effect of the exemption is that an offender being sentenced for these offences with the exemption will be sentenced for an offence that is not a class 1 or class 2 offence and therefore the court will retain a residual discretion to impose registration obligations if the court is of the view that the offender is a risk to the sexual safety of a child or children. The government is of the opinion that this proposal fairly reflects the discourse between the parties in the other place.

The Hon. R.D. LAWSON: I indicate that we support this amendment and the matter raised by the shadow attorney-general in the other place. We applaud the fact that the government has accepted the suggestion made by the shadow attorney-general in the other place. This amendment highlights the fact that, although we frequently talk about paedophiles and paedophile offences, this act does actually go a deal wider than what might be termed paedophile offences. One would not ordinarily classify a person who engages in a heterosexual offence with a girl under the age of consent as a paedophile. Indeed, one would expect that in practically every case paedophilia is not involved. We think it is appropriate that there be an exception for these particular offenders and that the court retain only a residual power in the circumstances of a particular case to require registration of such offenders.

The Hon. M. PARNELL: The Greens are happy to support this sensible amendment, which provides some small level of protection in the 'young love' circumstances. I was inclined to call it the Romeo and Juliet clause but someone told me she was 13, so that would not cover it. Similar age definitions are sensible and we are happy to support them.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 40, line 2—After 'intercourse)' insert:
other than an offence that occurred in prescribed circumstances.

This amendment is consequential to the amendment we have just passed.

The Hon. R.D. LAWSON: I indicate support for this amendment.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 40, line 13—After '1935)' insert:
other than an offence that occurred in prescribed circumstances.

This is a consequential amendment.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 41, line 3—After 'child' insert:
other than an offence that occurred in prescribed circumstances.

This amendment is consequential.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 41, line 5—After 'indecency)' insert:
other than an offence that occurred in prescribed circumstances

Amendment carried.

The Hon. P. HOLLOWAY: Given that there has been some discussion and indications that further consideration needs to be given to some of the amendments passed earlier today, it might be appropriate at this stage to report progress. The bill is substantially complete, but if we report progress now, when we come back in a couple of weeks we will be able to reconsider that clause.

Progress reported; committee to sit again.

GENETICALLY MODIFIED CROPS MANAGEMENT (EXTENSION OF REVIEW PERIOD AND CONTROLS) AMENDMENT BILL

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

ADJOURNMENT

At 5.37 p.m. the council adjourned until Tuesday 31 October at 2.15 p.m.