LEGISLATIVE COUNCIL

Tuesday 13 March 2007

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

OMBUDSMAN'S REPORT

The PRESIDENT: I lay on the table the report of the Office of the Employee Ombudsman 2005-06.

PAPERS TABLED

The following papers were laid on the table:

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

- Electricity Industry Superannuation Scheme—Report, 2005-06
- Review of the Shop Trading Hours Act 1977—Report, 2006-07
- Regulations under the following Acts—
  - Criminal Law Consolidation Act 1935—Notice to Admit Facts
  - Summary Procedure Act 1921—Admission of Facts
  - Supreme Court Act 1935—Vexatious Proceedings
- Rules of Court—
  - District Court—District Court Act 1991—Admission of Facts
  - Magistrates Court—Magistrates Court Act 1991—Notice Upon Committal
  - Supreme Court—Supreme Court Act 1935—Notice to Admit Facts
- Legal Services Commission of South Australia—Erratum to the Annual Report for the year ending 30 June 2006

By the Minister for Urban Development and Planning (Hon. P. Holloway)—

- Proposal for Extension of the Car Park adjacent to the Goodman Building, Hackney Road, Adelaide
- Regulation under the following Act—
  - Development Act 1993—Disclosure of Interests

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

- Reports, 2005-06—
  - Adelaide Hills Wine Industry Fund
  - Gaming Machines Act 1992 (revised)
  - Langhorne Creek Wine Industry Fund
  - McLaren Vale Wine Industry Fund
  - Riverland Wine Industry Fund

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

- National Environment Protection Council—Report, 2005-06
- Board of the Botanic Gardens and State Herbarium
- Regulations under the following Act—
  - Liquor Licensing Act 1997—
    - Dry Zones—Mannum
    - Renmark High School

By the Minister for Mental Health and Substance Abuse (Hon. G.E. Gago)—

- Regulations under the following Act—
- Controlled Substances Act 1984—
  - Packaging of Poisons
  - Prescriptions.

SHOP TRADING

The Hon. P. HOLLOWAY (Minister for Police): I lay on the table a ministerial statement made by the Minister for Industrial Relations on Tuesday 6 March.

VON EINEM, Mr B.S.

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I lay on the table a ministerial statement made in the other place by my colleague, the Attorney-General, on Thursday 8 March. I seek leave to make a ministerial statement.

Leave granted.

The Hon. CARMEL ZOLLO: The Chief Executive of the Department for Correctional Services, Peter Severin, has advised that on 28 February 2007 he became aware that a prisoner wrote a letter to him that was received in his office on 21 June 2005 alleging, among other things, that prisoner Bevan Spencer von Einem had been prescribed the drug Cialis. At the time this letter was first received in his office on 21 June 2005 it was noted by Mr Severin and forwarded to the Department for Correctional Services' Investigation and Intelligence Unit. Mr Severin understood that the allegations of sexual assault in the letter were of a serious nature and needed investigation, but he did not note the point relating to the drug Cialis. He has conceded that this was an oversight on his part.

Subsequently, Mr Severin indicated in the media that he had no recollection of the allegation relating to Cialis until it was raised in November 2006. This was his belief at the time. It is important to recognise that the prisoner's letter was properly dealt with, and I am advised that its contents subsequently led to the police investigation into alleged sexual offences committed by prisoner von Einem. I am advised that no prisoner was prescribed Cialis or a similar drug after this matter was raised with the Department for Correctional Services. Indeed, in this connection it is important again to set out the chronology of these events. The Prisoner Health Service had prescribed Cialis to a prisoner some time around 2001. It might be worth noting that the opposition was in government then—very worth noting. Prisoner von Einem was prescribed Cialis on 7 May 2003 and 12 May 2003.

Members interjecting:

The PRESIDENT: Order!

The Hon. CARMEL ZOLLO: Since May 2003, no Cialis or similar drug has been prescribed or supplied by the Prisoner Health Service. That is to say that no Cialis was prescribed in the two years before the prisoner's letter was received by Mr Severin's office and none since the letter was received on 21 June 2005. I have sought formal advice about these matters and am satisfied that the investigation into prisoner von Einem was in no way compromised or delayed. I am advised that the department has reviewed its procedures for managing prisoner correspondence, and it should be recognised that allegations are made by prisoners regularly and the credibility of these claims must be assessed case by case.

Many false, self-serving and incredible allegations are made by prisoners. The police investigation into the allegations against prisoner von Einem continues and it would be inappropriate to elaborate further on these matters.

WATER SECURITY

The Hon. G.E. GAGO (Minister for Environment and Conservation): I lay on the table a ministerial statement dated 6 March from the Hon. Karlene Maywald, Minister for the River Murray and for Water Security, entitled Water Security Update.

EDUCATION WORKS

The Hon. CARMEL ZOLLO (Minister for Correctional Services): I table a ministerial statement made on 8 March in the other place by the Minister for Education and Children's Services, on Education Works.

QUESTION TIME

VON EINEM, Mr B.S.

The Hon. J.M.A. LENSINK: I seek leave to make an explanation before asking the Minister for Correctional Services a question about ongoing issues with respect to prisoner von Einem.

Leave granted.

The Hon. J.M.A. LENSINK: As a result of questions in November last year, the minister made several comments in relation to the allegations that prisoner von Einem was receiving sexual performance enhancing medication. In relation to ongoing investigations, the minister made the following comments:

> We will leave no stone unturned. . . the Department for Correctional Services treats all allegations seriously and conducts its own investigations into allegations where appropriate. . . the department has significantly improved accountability in the corrections system.

My questions are:

1. What assurances did the minister seek prior to giving parliament the assurance on 6 February this year that investigations by Correctional Services were concluded?

2. Will she stand by all the comments she made last year?

3. Does she concede that her department's internal investigation procedures are still inadequate given that it has taken other investigations to uncover this piece of ignored correspondence?

The Hon. CARMEL ZOLLO (Minister for Correctional Services): I will make it perfectly clear once again. I was not aware that prisoner von Einem had been prescribed Cialis until November last year. There has not been any further investigation. Mr Severin advised me in November that he was unaware that Cialis had been prescribed. This was his genuine belief and recollection. Members of this council who have dealt with Mr Severin—and I believe the Hon. Michelle Lensink has dealt with him—should know that he is an honourable person; and to impeach his integrity in this way is a disgraceful act. I would ask the honourable member to read the ministerial statement that was laid before the house last week and the council this week.

The Hon. J.M.A. LENSINK: I have a supplementary question. Do I take it from the minister's answer that she does stand by all those comments, including 'no stone will be left unturned'?

The Hon. CARMEL ZOLLO: I am satisfied that the oversight by Mr Severin in no way compromised or delayed the investigation of sexual allegations against prisoner von Einem. The ministerial statement, which I laid on the table today and which was read in the house last week, is simply about setting the record straight—as indeed we should—that the CE had overlooked an earlier allegation that Bevan Spencer von Einem had been prescribed Cialis. It is important to recognise it. If the honourable member has been following the debate she would recognise that the prisoner's letter was properly dealt with. I am advised that its contents subsequently led to police investigations into sexual offences committed by prisoner von Einem. It is not difficult to understand.

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about ministerial incompetence in relation to Bevan Spencer von Einem.

Leave granted.

The Hon. R.I. LUCAS: Both the Minister for Correctional Services and the Minister for Health have woven a story over recent months that the first they were aware of the issue of Bevan Spencer von Einem having access to the Viagra-style drug Cialis was on Friday 17 November 2006. As we understand it, that was just prior to the *Sunday Mail* running a story on the following Sunday; and I think the *Sunday Mail* had contacted the government in relation to that story. Subsequently, the Rann government through its various ministers and spokespersons has also claimed that the only people who knew that Bevan Spencer von Einem had been prescribed a Viagra-style drug under the Rann government were the prescribing doctor, the pharmacist and the nursing staff involved. Without making comment at all, it is clear by the minister's own admissions that the statements made in both the House of Assembly and the Legislative Council were untrue. We have now been told that at least the minister's own Chief Executive had been aware almost 18 months prior to that, through a formal letter of complaint, that prisoner von Einem had access to the Viagra-style drug Cialis.

The government's latest story is that this particular letter was noted by the Chief Executive but that in some way in noting this issue the Chief Executive did not notice that the most notorious prisoner in South Australia's prisons was being accused of having access to a Viagra-style drug. In essence, that is the government's story on this issue. Also, we are told in the ministerial statement last week that this letter in the government's view was appropriately handled because it was forwarded to the Department for Correctional Services Intelligence and Investigations Unit. That immediately raises questions as to how many other officers in the correctional services department, the police department and possibly the health department were also apprised of this allegation some 18 months prior to November 2006. The government's position is that the letter was forwarded to the Intelligence and Investigations Unit, and the minister has indicated today that appropriate investigations were conducted. So, my questions are:

1. Can the minister indicate how many other officers within her department, other than Mr Severin and the officers in the Intelligence and Investigations Unit (and I also ask the minister how many officers in the Intelligence and Investigations Unit either saw that letter or were apprised of the material in that letter), as a result of the investigations, were also made aware of that particular letter or apprised of the contents of the letter; and how many other officers within the police department, if they were involved; and the health department if they were involved; or, indeed, any other government department or agency that might have assisted the intelligence—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, the Leader of the Government in the Legislative Council says it is a joke. Here we have a serious allegation and the Leader of the Government here says it is a joke. What is a joke is this Leader of the Government and this minister, and the officers reporting to the minister.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: And he is quite out of order in terms of his interjection as well, Mr President.

Members interjecting:

The PRESIDENT: And you are quite out of order in responding to it, as well.

The Hon. R.I. LUCAS: I could not hear you, Mr President, over the interjections.

The PRESIDENT: You are quite out of order for responding to it as well.

The Hon. Carmel Zollo interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: My questions to the minister are as follows:

1. Can she indicate how many officers, other than the chief executive officer and the immediate officers in the Intelligence and Investigations Unit, were either provided with a copy of that particular letter or were apprised of the most serious allegations in relation to the contents of the letter as they relate to the prescription of Cialis to prisoner Bevan Spencer von Einem?

2. Will the minister table a copy of the letter and, if need be, with deletions of any aspects of the letter that might relate to any ongoing police investigation? So, the opposition accepts that there might be an aspect of that letter which is the subject of an ongoing police investigation, and the minister can certainly delete that particular aspect of the letter.

The Hon. Carmel Zollo interjecting:

The Hon. R.I. LUCAS: Again, the minister thinks this is all quite funny. The minister thinks this—

The Hon. Carmel Zollo: There is an ongoing police investigation, and you expect me to table letters in parliament?

The Hon. R.I. LUCAS: Into the issue of Cialis? There is no ongoing investigation?

The Hon. Carmel Zollo: Haven't you been listening? Are you slow, or what?

The Hon. R.I. LUCAS: We have been listening.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: We have been trying to keep up with the minister's changing stories. Every week there is a different story.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: Every week there is a new story from this minister. My final question is:

3. Does the minister expect anybody to believe her story, and the government's story, that her chief executive officer noted a letter in relation to the most notorious prisoner in the prisons in South Australia which makes an accusation that he had been prescribed with a Viagara-style drug but immediately forgot all about it?

The Hon. CARMEL ZOLLO (Minister for Correctional Services): I do expect everybody to believe what I am saying, because it happens to be the truth and, as a minister of the Crown, it is my role to tell the truth. I have always been consistent and open in relation to this matter. I have not just once but twice tabled reports in this parliament. As soon as I learnt what Mr Severin had to tell me, I sought some advice, and information was provided to the other chamber last week, and this chamber today. As for tabling a letter in this chamber which is the subject of an ongoing police investigation which is now with the DPP, I assume the honourable member opposite is trying to be funny.

The Hon. R.I. LUCAS: Sir, I have a supplementary question deriving from the answer. Is the minister refusing to answer the questions as to how many other people within her department were aware of this letter or had been apprised of the controversial aspect of the letter as it related to the drug Cialis?

The Hon. CARMEL ZOLLO: The letter, as has already been stated in my ministerial statement, was noted. It contained serious allegations and was sent to the Intelligence and InvestigationsUnit of the Department of Correctional Services, because it contained those serious allegations of sexual assault. That letter was properly dealt with by the investigations unit.

An honourable member interjecting:

The Hon. CARMEL ZOLLO: And here we have someone saying 'and Cialis'. That is what I am doing here, and that is why we have tabled the ministerial statement. They might be very slow today, but that is what this is about: my coming forward and saying that my chief executive advised me that he had made an oversight, and it is correct for me to tell this parliament. They are either very slow or trying to be funny, or it is a slow news day because the other chamber is not sitting.

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about von Einem.

Leave granted.

The Hon. R.D. LAWSON: On 8 December 2004, I tabled in this parliament a letter from a prisoner in Yatala. The letter stated (amongst other things) as follows:

1. In June 2004, a female Correctional Officer—

who was named—

from the Protective Custody Unit in Yatala, was called to Correctional Services (Head Office) and reprimanded by its CEO—Peter Severin—for having taken into Yatala. . . a dress and make-up for murderer Bevan Spencer von Einem to parade himself in.

2. Also last year, murderer von Einem (now aged 59) was openly involved in a sexual relationship with another prisoner, some years younger. Not only did correctional staff condone this behaviour, but a number of correctional staff encouraged it. The young prisoner—

whom the person named, but whom I will not name—

was later moved to another division in Yatala. Soon thereafter, [that person] reported that he had been raped by von Einem; but no charges were ever laid against von Einem despite constant demands. . .

It appears that Mr von Einem in that rape might have been medically aided at taxpayers' expense. The letter continued:

3. Prisoner von Einem regularly preys upon other prisoners (and the younger, the better). Those whom he desires and intends to seduce, he pampers with 'gifts' from the canteen and the promise of thousands of dollars; in an attempt to coerce them into sexual compliance. . .

4. Within Yatala (protective custody), von Einem has a 'status' both amongst all staff and prisoners which can only be compared to that of a celebrity.

The letter further stated:

Employed as the only education tutor, he. . . can do as he pleases. Furthermore, von Einem has unrestricted movement within the entire protective custody unit; even regularly visiting the main laundry to make scones for staff and prisoners.

There was also other material in that letter which drew to the attention of the government claims by prisoners that von Einem was receiving special treatment.

On the following day the government, through then minister Terry Roberts, said as follows:

Prisoner von Einem is afforded no special privileges. He is not considered a celebrity. There is no evidence of rape or sexual abuse. Far from doing as he pleases or getting special privileges, prisoner von Einem has been held in high security ever since he began his sentence at Yatala some 20 years ago.

The minister in her ministerial statement today said that investigations into allegations of sexual offences by von Einem were prompted not by the letter which I read into the parliamentary record and which received expansive media coverage in December 2004 but, she is now saying, by a letter which was received by Mr Severin on 21 June 2005, some six months after this matter was first raised by me. The minister also claimed in her statement today that the prisoner's letter, to which she is referring, was properly dealt with and subsequently led to police investigations, thereby implying that there were no investigations into the allegations which I raised and which the government was so quick to dismiss. My questions to the minister are:

1. What action was taken, and by whom, in relation to the investigation of the matters raised by me in parliament in December 2004?

2. Were the same officers who investigated that claim also called upon to investigate the claims made in the letter of which Mr Severin claims to have read only part?

The PRESIDENT: In answering the question, the minister might want to disregard a number of opinions in the explanation.

The Hon. CARMEL ZOLLO (Minister for Correctional Services): I have been very gracious, Mr President, and disregarded many opinions here today.

The Hon. G.E. Gago: As always.

The Hon. CARMEL ZOLLO: As always. The allegations to which the honourable member refers were properly dealt with, as far as I am advised, by my predecessor. Those matters were the subject of an almost Star Chamber cross-examination last year in this place, and they were all dealt with properly. As I have said before, this letter was sent to the Correctional Services Investigations Unit and properly dealt with. It has informed the police investigation which is occurring now and which, I understand, is coming to an end.

The Hon. R.I. LUCAS (Leader of the Opposition): I have a supplementary question arising out of the answer. Is it the minister's contention that, if a serious allegation of sexual misconduct is made against the most notorious prisoner in her prisons, Bevan Spencer von Einem, her chief executive officer would not draw that to her attention as minister?

The PRESIDENT: I do not see how that arises out of the answer.

The Hon. CARMEL ZOLLO: I would ask the honourable member to explain what he means, because I am not quite sure what he is trying to say.

The Hon. R.I. LUCAS: It was fairly simple, I would have thought, but I will speak more slowly. If an allegation is made by a prisoner against the most notorious prisoner in the minister's prisons, is it her expectation that her chief executive officer would advise her (or the minister at the time) of those allegations?

The Hon. CARMEL ZOLLO: Those allegations, of course, were advised to my predecessor. We have just established that an investigation occurred and, subsequently, it has now led to a police investigation.

The Hon. R.I. LUCAS: I have a supplementary question.

The PRESIDENT: Order! Just before the leader asks that question, the original question from the Hon. Mr Lawson was regarding the questions that he asked here some time ago.

The Hon. R.I. LUCAS: Arising out of the answer is the standing order, and the minister said the letter—

The PRESIDENT: I did not hear anything that pertained to your question.

The Hon. R.I. LUCAS: The minister has just indicated that those allegations were raised with the Rann government (that is, the former minister) at the time. As she has indicated that the former minister was advised, is she now conceding that the Rann government, through the former minister for correctional services, did receive a copy of the letter, or was the former minister verbally briefed by Mr Severin?

The Hon. CARMEL ZOLLO: I cannot speak for a previous minister in this place but, as I said, all allegations are taken seriously. As I advised the chamber last year, those investigations, with the information and collaboration that was available, no doubt would have been properly dealt with at that time. As a minister in this place now, I see it as my duty to ensure that any investigation, like the one that we saw last year and earlier this year, does make systemic changes. It is my role to make sure that changes are made when allegations are brought to my attention. I believe I have well and truly done that. We are well into the process of drafting legislation to bring into this chamber and, as I said last year, I would like to see the support of the opposition in this chamber.

The Hon. R.D. LAWSON: I have a supplementary question arising out of the answer. The minister said that all allegations are treated seriously. Were the allegations tabled by me in this parliament in December of 2004 referred to the Department for Correctional Services Intelligence and Investigations Unit for investigation; and, if so, what was the result of that investigation?

The Hon. CARMEL ZOLLO: I think this is just a re-run of the same question, with all due respect. I have answered the question over and over again. It is seven different ways to ask the same question. It truly is a slow news day. Obviously the other chamber is not sitting.

As I said last year, my advice about the allegations which were made prior to my becoming a minister was that they were properly dealt with. In all this we have to understand that, when allegations are made, one always needs corroborating evidence, and I assume that, at that time, that did not occur. Sometimes prisoners have also been known to change their mind; indeed, I know that to be a fact. So, again, it is my role as the current minister to ensure that any allegations that are brought to my attention, as indeed they were last year, are immediately investigated and taken seriously. I have done that. I have continually reported to this parliament and I will bring in legislative changes, besides the ones that have already been enacted within the Department for Correctional Services.

The Hon. J.M.A. LENSINK: Can the minister inform the council of the date on which she was first advised of sexual misconduct allegations by prisoner von Einem? If she does not have that particular detail to hand, is she prepared to bring it back to the chamber?

The Hon. CARMEL ZOLLO: It is actually public knowledge. In January 2006, a respected *Sunday Mail* journalist, as he is known in this place, and indeed I believe he is, had an article published. When I became minister I was

aware of that issue because I saw some correspondence that was sent to—I think I can say this—the mother of the person making the allegations, as part of caretaker mode.

The Hon. J.M.A. LENSINK: Is the minister prepared to bring back a date on which she viewed that correspondence?

The Hon. CARMEL ZOLLO: I cannot bring an exact date because I probably did not mark it in my diary on that day, but it was part of the correspondence that I saw after becoming minister. I became minister on 23 March 2006; it probably was not in the first pile that I saw but it would have been some time that month.

The Hon. J.M.A. LENSINK: Does the minister follow the procedure of previous ministers in marking 'noted' on correspondence?

The Hon. CARMEL ZOLLO: That was a drop copy of some correspondence which had already been sent out.

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

The Hon. CARMEL ZOLLO: You did not listen, did you? It was sent out while we were in caretaker mode, so it was a drop copy of some correspondence. It will have a date on it and I cannot table something like that because, obviously, it is going to identify the person making the allegations.

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

The Hon. CARMEL ZOLLO: Yes; I do not have a problem bringing back a date. As I said, it was in the paper, for heaven's sake!

The Hon. J.M.A. Lensink: No; it was not.

The Hon. CARMEL ZOLLO: Yes; it was. Nigel Hunt actually made—

The Hon. J.M.A. Lensink: The date of the letter.

The Hon. CARMEL ZOLLO: The date of the letter—that is right; yes.

OPEN SPACE PROJECTS

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 funding for open space projects around the state.

Leave granted.

The Hon. R.P. WORTLEY: The state government, through the Planning and Development Fund, makes funding available to local councils throughout the state for worthwhile open space and community projects. The Regional Open Space Enhancement subsidy and Places for People initiatives, in particular, give councils the opportunity to revitalise their communities. Can the minister provide information about the latest round of grants made under these two excellent funding programs?

The Hon. R.I. Lucas: Read out every one for the past five years.

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): I am very happy to oblige the Leader of the Opposition and thank him for his supplementary question, in advance. I am happy to inform all honourable members that $1.8 million in government funding, through the Regional Open Space Enhancement and Places for People schemes, has recently been awarded to a number of significant open space and civic revitalisation projects around the state. This takes to more than $33 million the total amount of funding provided by the state government to open space projects during the past five years.

Almost $26.7 million has been allocated through the ROSES scheme and more than $6.4 million via the Places for People initiative. Grants under schemes such as ROSES and Places for People are made available to local councils throughout the state through the Planning and Development Fund which, of course, is a statutory fund established to support open space projects. Of the $1.8 million in grants made during the past few weeks, $1.03 million has been awarded under the ROSES initiative and $842 500 under the Places for People scheme.

These grants include $750 000, through the Places for People program, to the City of Charles Sturt for the Grange Square project. This is a partnership between the government and the council to develop a new civic space at Grange, improving an area currently dominated by bitumen and car parking spaces. The project will have important benefits for the local community, including new areas available for passive recreation and community events. It should draw more people to the Grange area, bringing particular benefits for the existing shops and businesses.

A grant of $75 000 through the Places for People program will support the City of Port Adelaide Enfield's plans to revitalise the centre of Port Adelaide. The grant will help the council prepare urban design master plans for the project which will focus on St Vincent Street and Commercial Road. The project will identify and plan priority public space and urban design projects to strengthen the port as a shopping and tourism destination, as well as to attract more investment into the area. The council project will also respond to opportunities to improve the amenity created by the construction of the new road and rail bridges over the Port River.

Through the Places for People program, a grant of $17 500 will go towards a project aimed at revitalising the Wallaroo waterfront and town centre. As many honourable members would be aware, Wallaroo is experiencing new residential and tourism development, and the council's urban design framework project will take this growth into account in the context of the existing character of the town. The project will consider using walking trails to link the town's heritage sites, recreational facilities and the waterfront, as well as streetscaping in the town centre.

There was a $300 000 grant through the ROSES scheme to the Adelaide City Council for further work on a trail linking many features of Adelaide's Parklands. The council plans to construct a three-metre wide ochre-coloured trail to link the diverse environmental, historical and cultural elements of the western and southern Parklands, with the ultimate aim being to complete a trail linking the north, south-east and west Parklands and the Torrens Linear Park. A grant of $43 325 through the ROSES scheme to the Wakefield Regional Council is for the third stage of its Balaklava Parklands project.

The Hon. J.S.L. Dawkins interjecting:

The Hon. P. HOLLOWAY: Well, I am pleased he is here today to hear this; I am sure he is already aware of it. The state government has previously committed funds to this project to develop passive recreational opportunities for the local community. The project involves the redevelopment of a degraded and under-utilised section of the Balaklava Parklands and includes the establishment of a native species botanical gardens and a recreation area with sports and game areas for children.

There are also grants totalling $221 000 through the ROSES scheme to three councils for the further development of a linear park along Adelaide's coastline. The grants will

enable the councils to implement coastal vegetation management plans as part of the Coast Park project. An amount of $63 540 will go to the West Torrens council, $71 320 to the Charles Sturt council and $86 400 to the Port Adelaide Enfield council. The funding will be used for planting, weeding and fencing to protect dune systems.

There is also a $21 250 grant through the ROSES scheme to the Goyder regional council for the implementation of the Eudunda Gardens project. The grant will help the council create a centrally located open space area connecting the Eudunda town centre with existing recreational facilities, including the golf course and swimming pool. The council's aim is to develop a visual and scenic contrast to the built environment as well as creating a green and attractive space at the entrance to the town.

A grant of $125 000 through the ROSES scheme is for two important open space projects in the city of Mitcham. The council will receive $112 150 to upgrade Apex Park at Hawthorndene, and $12 750 to improve links between the Sturt River Linear Park and the Belair National Park. Upgraded amenities at Apex Park will include play areas, toilets, picnic areas and the creek area. The second grant will assist the council to buy a portion of land next to Minnow Creek as part of the rehabilitation of both sides of the Sturt River.

There is also a grant of $120 000 through the ROSES scheme to the Mount Barker council towards the staged completion of its Nairne Linear Park project. The funding will help the council to further develop the linear park in the northern section of the Mount Barker district, providing a visual and scenic contrast to the surrounding built environment, and also provide the local community with a range of recreational and leisure opportunities. Major components of the project include the provision of recreational trails and play areas, extensive plantings and the redevelopment of the wetland environment.

Further, a grant of $200 000 through the ROSES scheme to the Salisbury council is for the upgrading of walking and cycling trails around the Greenfields wetlands. The development includes a nature trail with boardwalks and bird hides, which will provide significant benefits for local environmental education and ecotourism. The project will provide links between the wetlands, the new regional urban sustainability centre and the Dry Creek Linear Park.

All of these projects are very worthwhile and deliver free and accessible opportunities for passive recreation, while at the same time promoting biodiversity within communities around the state. The funding made available through the planning and development fund to such projects is proof of the state government's commitment to developing open space in the metropolitan area and throughout regional South Australia.

STEVENSON, Mr D.

The Hon. D.G.E. HOOD: I seek leave to make a brief explanation before asking the Minister for Police a question about the investigation of the Derrance Stevenson murder.

Leave granted.

The Hon. D.G.E. HOOD: This unfortunate case involves Derrance Stevenson, a lawyer in Adelaide who was found shot dead and placed in a freezer at his home. David Szach was convicted of his murder. He has always maintained his innocence and recently convincingly passed a polygraph test. I appeared on the *Today Tonight* program last night concerning the case of David Szach. He will be resubmitting his Petition for Mercy to the Governor after unsatisfactory appraisal was made of his original petition, which he then chose to withdraw.

A number of prominent lawyers have also expressed concern at the forensic pathology used in this case. Attached to their Petition for Mercy is a new report on the errors in the calculation of the time of death by the former state pathologist, Dr Manock, during the trial. Indeed, Professor Bernard Knight (Professor of Forensic Pathology and a British Home Office pathologist) notes that Dr Manock's evidence during the trial relied on 'very speculative and tenuous calculations' and was 'ill founded and that the degree of accuracy he offers cannot be substantiated'.

Dr Manock's questionable handling of this and many other cases must be answered and addressed. If Mr Szach is innocent, as he claims, it means that the real perpetrator of Derrance Stevenson's murder has never been apprehended and is probably still at large. My questions are:

1. In what circumstances will police reopen murder investigations?

2. Given that several pathologists have called into question Dr Manock's evidence during this trial, will the minister instruct police to reopen this case in the light of that new evidence and analysis which has now become available?

3. Does the minister accept that Dr Manock's handling of the case has called his professionalism into question?

4. Will the minister commit to investigating and trialling the use of polygraphs as an investigative tool to be used by the South Australian police force?

The Hon. P. HOLLOWAY (Minister for Police): In relation to the latter question, it is my understanding that polygraphs are not registered in this country and are not being used for investigations. However, it is really more a matter for the Attorney-General, as indeed is the general thrust of the honourable member's questions. As far as I am aware, in this case the person was found guilty by trial and was committed and, as I understand it, he has served his sentence. So, in terms of the police reopening the case, I do not think that that comes into question at all; rather, it is a matter for the Attorney-General to determine whether he believes that there are any grounds on which to have the conviction reconsidered. I will refer the question to the Attorney-General for his reply.

Given the recent media interest in the case, I am aware that Mr Szach wrote to the Attorney-General (Hon. Michael Atkinson) on 20 December 2004 and on 17 April 2005 about what Mr Szach has called his wrongful conviction for the murder of Derrance Stevenson in June 1979. The Attorney-General advises me that questions about the reliability of the forensic evidence given by Dr Manock were raised in 1995 with the then attorney-general (Hon. Trevor Griffin) and the then solicitor-general and now his Honour Chief Justice John Doyle. These concerns included the interim report, dated 9 March 1992, and the final report, dated 5 August 1994, of forensic pathologist Dr Byron Collins.

Mr Szach did not present the Attorney-General with any new evidence that would lead him to form a different view from the former attorney-general (Hon. Trevor Griffin) and the former solicitor-general and now Chief Justice Doyle. Nevertheless, as I mentioned earlier, I will refer the question to the Attorney-General and ask him to prepare a response to the matters raised by the honourable member.

MENTAL HEALTH, REGIONAL COMMUNITIES

The Hon. I.K. HUNTER: I seek leave to make a brief explanation before asking the Minister for Mental Health a question about services in country South Australia.

Leave granted.

The Hon. I.K. HUNTER: Mr President, people in rural and regional South Australia are a tough breed—as you demonstrate to the chamber every day. However, not all of us who hail from the country are superhuman. The drought the state is now experiencing can cause severe stress for rural communities, and isolation can significantly add to this. Will the minister inform the chamber what the government is doing to improve access to mental health care in the rural and remote regions of South Australia?

The Hon. G.E. GAGO (Minister for Mental Health and Substance Abuse): I thank the honourable member for his question and for his ongoing interest in this important policy area, and I am pleased to inform the council of yet another initiative to bolster mental health services in regional and rural South Australia.

Mid North and South-East residents experiencing hardship because of the drought will now have greater access to personal and family support with the creation of two new rural community counsellor positions. The new positions will augment existing community health services in the Mid North and the South-East, with a specific focus on mental health. We all know that farming is a very tough business at the best of times, but in a drought the financial and emotional demands placed on rural families can sometimes be overwhelming. Based at Booleroo and Bordertown, these positions recognise that people need support and advice that is locally-based and easy to access and so the service is flexible, allowing people to organise visits by the counsellors at home or on the farm to fit in with the busy schedules that people in rural communities often have.

This is the latest in a range of measures to be announced by the Rann government that are designed to boost mental health assistance in regional South Australia, and I am pleased that we are continuing to improve services in the bush. In addition to these new counsellors, last week I also announced that a new interactive self-help package, entitled 'Managing the Pressures of Farming', would be made available throughout the state. A total of 16 000 packages are being produced, and these will provide people on the land with an easy to use CD-ROM, a handbook, and a web resource that they can use in their own home when they need it. In conjunction with Beyond Blue, we are also committing to yet another reprint of the popular book *Taking Care of Yourself and Your Family.* This book has been applauded in rural communities and was written specifically as a self-help guide to assist with the stresses and strains that people on the land often experience.

Distance should not be a barrier to any South Australian accessing quality mental health services, and these new counsellors, as well as other measures announced recently, go some way towards addressing that issue. The state government also recently approved funding to extend the drought hotline number for assistance to 30 June 2008 as our response to the Social Inclusion Board *Stepping Up* report. It also includes 30 new intermediate care beds in country hospitals and places for eight mental health nurse practitioners in regional centres over the next four years. This is part of the government's $43.6 million statewide commitment announced last month as a first step in revolutionising mental health care in South Australia, which represents the most ambitious reform agenda ever seen in this state.

The Hon. J.M.A. LENSINK: I have a supplementary question. Can the minister comment on whether there has been an increase in demand for mental health services in country regions?

The Hon. G.E. GAGO: We have placed a lot of extra services into country areas, and we know that these services are being utilised. They are extra services and they are being utilised well, so that indicates that people are using more services. As I mentioned, we have the hotline number that has now been further extended, and this not only provides practical farming management and financial information but also has a mental health referral system attached. I understand that includes a direct line to a counsellor who can assist with the matter there and then or, if need be, that counsellor can refer the person to local mental health services.

In addition, and as I have said, this is the second or third reprint of the book that has been (I understand) applauded and well-used by rural communities and other services. Yes, the increased services that we are providing to country areas are being utilised, and the feedback is that they are greatly appreciated and that they are provided in a timely and fitting way.

PROJECT MAGNET

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Mineral Resources Development questions about Project Magnet.

Leave granted.

The Hon. SANDRA KANCK: On 13 May 2005, the Premier announced from London his intention to grant OneSteel an indenture, which ultimately meant that OneSteel would not have to measure and remedy its dust emissions. In August 2005, minister Holloway informed parliament that, unless the OneSteel indenture was passed through parliament, OneSteel would not receive approval from the board for Project Magnet. At the time, Ted Kittel and other members of the Whyalla Red Dust Action Group said that parliament was being bluffed, and they pointed out that the materials to build Project Magnet were already being stockpiled. An FOI has now turned up some emails that support the claims of Mr Kittel. An email from Mr Geoff Plumber, Chairman of OneSteel, to PIRSA states:

> The OneSteel board approved $329 million for Project Magnet on May 23rd 2005.

This means both OneSteel and PIRSA knew that minister Holloway's claims about the necessity of the indenture were not accurate. At times like these ministers often accuse the Public Service of not passing on the information; however, a further email which included a briefing note between the Deputy Premier and Mr Champion de Crespigny also stated:

> On May 23rd 2005, the OneSteel Board approved expenditure of $325 million for Project Magnet.

My questions are:

1. Why did the minister claim that the indenture was essential when it is clear that Project Magnet was proceeding in any case?

2. Given the existence of these emails and the involvement of other parties and the Deputy Premier, why has the minister not set the record straight since 2005 as he is required to do under the Premier's ministerial code of conduct?

3. Did the minister deliberately mislead parliament in August 2005?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I absolutely did not, and let me make no apology whatsoever for what is happening in Whyalla at the moment as a result of Project Magnet. That town is now booming, and I apologise to no-one—least of all the Hon. Sandra Kanck—for having played a part in it. Let us set the record straight and cap this absolute nonsense that has been going on. It is a pity that Sandra Kanck and her supporters did not spend a bit more of their time working for the benefit and progress of this state rather than spending hours digging through documents trying to find evidence.

The fact is that OneSteel informed the government in early 2005 that it was not willing to commit to Project Magnet unless the government made a commitment to give the necessary legislative certainty by amending the Broken Hill Proprietary Company's Steel Works Indenture Act 1958 to incorporate fixed environmental licensing conditions for a period of 10 years. That was made clear in early 2005. Cabinet gave approval on 9 May 2005 for amendments to the act (now called the Whyalla Steel Works Act) to provide the required level of certainty.

During early May 2005, the government communicated to OneSteel its commitment to provide regulatory certainty by changing the act. On the basis of that commitment by the government, OneSteel made the formal decision to invest $325 million (it is now a lot more than that) in capital expenditure to make Project Magnet happen. OneSteel announced that decision in a media release dated 23 May 2005. So, there is no misleading or any deception at all in relation to this matter. It is quite clear that the OneSteel board would not have made that commitment unless it was given that certainty, and the government provided that certainty.

As a result, investment is now under way at Whyalla. For the first time in many years, Whyalla has had some new housing subdivisions built as a result of the certainty that has been provided. Of course, a significant proportion of this investment—in fact, more than $60 million—is being spent on environmental improvements in the town. I know that is not enough for some people who would like a cure tomorrow.

However, as a result of this, I will sleep very easily knowing that not only have the economic conditions of the town of Whyalla improved greatly but also that, ultimately, in not too many months now, when Project Magnet finally begins, the environmental conditions in Whyalla will be greatly improved—and that would not have happened unless that project had been undertaken.

The Hon. M. PARNELL: I have a supplementary question. Minister, I think your words were 'not too long before the dust level improves'. My question is: what level of dust is acceptable to the government, and when will that level of dust be achieved at the monitoring station at Wall Street directly across the road from the Whyalla Town Primary School?

The Hon. P. HOLLOWAY: My department, along with the EPA, has been negotiating with OneSteel for some time in relation to appropriate standards beyond the completion of Project Magnet, and I hope these standards will be announced some time in the fairly near future.

The Hon. SANDRA KANCK: I have a supplementary question. Given that the government is continuing to negotiate with OneSteel, what is the explanation for the continued exceedances of environmental standards?

The Hon. P. HOLLOWAY: Until Project Magnet commences, the old method of transporting iron ore to Whyalla will continue. A huge multimillion dollar shed has been built there. Instead of the ore being trucked in and crushed right next to the town, when Project Magnet commences that crushing will take place at the mine site at Iron Duke and the ore will be processed through a slurry pipeline into the steelworks. The export hematite will be brought in by covered rail wagon, loaded in a closed shed and through closed conveyor belts. However, it is not just a matter of the new works being completed and made operational but also it will be necessary to dismantle some of the existing works before the town derives the full environmental benefit. In its discussions with OneSteel, the government is looking to ensure that there is a suitable time line for the decommissioning of the works that have created most of the problem.

The Hon. SANDRA KANCK: I have a further supplementary question. What is the time line the people of Whyalla can expect for an improvement in the air quality in East Whyalla?

The Hon. P. HOLLOWAY: I have not spoken to the people from OneSteel recently, but I will be up there next week, when I will get an update on this issue. The time line for the commissioning of the new plant is certainly around July or August this year, and by then there should be a noticeable improvement—and that improvement will continue. However, first of all, there has to be a clean up of all the outside dumps, and that will obviously take some time because, until the pipeline and Project Magnet are commissioned, there will still be some loads of ore outside the containment area. They will be progressively moved and it should take only a matter of two or three months. Then, of course, there is the decommissioning and, given the years of accumulated dust, that will obviously involve work. There will also need to be rehabilitation of the areas to suppress dust near where the stockpiles are currently contained. So, there should be a very noticeable improvement as soon as Project Magnet commences about halfway through this year and, from then on, there should be further improvements as other parts of the project come into effect.

POLICE RESOURCES

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Police questions about country police numbers.

Leave granted.

The Hon. T.J. STEPHENS: Recently I raised the fact that I had received advice that out of a total of 23 full-time positions allocated by SAPOL to the Ceduna Police Station currently only eight have been filled. I also highlighted the fact that there were no full-time police prosecutors, which means that these particular police officers have to make their way across from other areas of the state. Noting that Ceduna has one of the highest crime rates in South Australia, there have also been reports that SAPOL is investigating a proposal to shift the Ceduna prosecution unit to Port Lincoln. Figure that one out!

This weekend, a media article detailed that the entire Port Augusta prosecutions team has either transferred or is out on stress leave. Sources reveal that the situation has reached crisis point, with some minor files being dropped due to the

backlog of cases and even an allegation that some files reportedly are disappearing due to the workload. My questions are:

1. Will the minister confirm that the government currently has no answer to staffing problems in country South Australia?

2. Are metropolitan prosecution units being left short because their own prosecutors have to travel to cover for regional areas?

3. Given that the minister informed the council recently that it is becoming more and more difficult to get police officers into the more remote areas of the state, and that he has discussed this with the Police Commissioner, will he share with the council any new plans the government will put in place to recruit police to remote areas, given that it is becoming a huge problem?

4. Does the minister now acknowledge that police numbers in country areas of South Australia have in fact reached crisis point?

The Hon. P. HOLLOWAY (Minister for Police): No, I do not. Police numbers in this state are now more than 4 000. During the mid 1990s under the previous government they dropped as low as 3 400, so there are in excess of 600 extra police officers compared with the 3 400 there was in the mid 1990s under the former government. There has been significant additional police resources. There are some retirements of senior police. We have been very fortunate to have been able to recover some of that experience through our recruitment from the UK, but in relation to prosecutions there are some difficulties but they are being covered by the police.

Where there is need and there are shortages, as there are from time to time in country areas, those staff are reinforced and people are brought in from other areas of the state to ensure that short-term vacancies are filled. I do not accept that there is a crisis in terms of police numbers in country areas. There would have been a crisis had our numbers been 600 fewer, as they were 10 years ago during the term of the previous government. Given the numbers, there have been big increases—

The Hon. Caroline Schaefer interjecting:

The Hon. P. HOLLOWAY: What about Coober Pedy? If one looks at the number of police for those communities, they are at high levels. Look at the Pitjantjatjara lands: under the previous government how many police were there in the APY lands? There were none. They did not have any police in the Pitjantjatjara lands. They were the sort of standards the previous government set. This government has had a huge amount of ground to make up in terms of getting extra police and there are difficulties. I do not want to hide the fact that it is increasingly difficult to get workers, not just police but any workers, into the more remote areas of the state because we have a mining boom taking place. The mining industry is offering good wages.

The Hon. T.J. Stephens: This is the worst answer I have ever heard.

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: I know it is the worst answer for you. I am sure it is the worst answer for the honourable member because it reveals the total inadequacy, the failure and the shame. Rather than getting up, you should be on your hands and knees in front of me begging forgiveness for what you did to police numbers. Your record was appalling. Your record was a disgrace. You left the people of this state insecure. In their cuts, while they were selling ETSA and doing everything else, they let police numbers fall to an appallingly low level. The hypocrisy of these people to get up and criticise this government, when there have been increasing numbers of police every year—and we will continue to do so—and of the 100 extra police we put in every year, some go out to the regional areas—

The Hon. J.S.L. Dawkins interjecting:

The Hon. P. HOLLOWAY: They are laughing. What do you do when an opposition just denies the basic facts? Sure, one can understand the deep and abiding shame they should have that they allowed police numbers to get to such appalling levels. But, what we should not tolerate is their hypocrisy when they come in here and try to suggest that we have somehow neglected police in regional areas when we have put a significant effort into increasing police numbers. No one should pretend that it is easy getting workers into country areas or many parts of this state, because we have full employment in this state. Is the honourable member suggesting that this government should be apologising because we have the highest levels of employment in this state ever and the lowest levels of unemployment for many years? Is he suggesting that there is something wrong with that, and that we should be apologising?

It does mean that it is difficult to attract our workers into country areas. There are issues such as housing and a whole lot of other issues which need to be addressed. As I said earlier, I discussed this with the Police Commissioner and asked him to prepare a list in order to review the issues that impact upon recruitment in the regional areas of the state, and we will prepare a package in respect of what we can do. Notwithstanding the fact that it is difficult, it does not mean that it is impossible. The state has been successful in getting police out there, and it would be totally wrong and dishonest for honourable members opposite to suggest that there are problems in country areas with police numbers and that they have not been filled.

Certainly, we would prefer to have permanent police officers stationed in those regional areas. It is less than desirable, I agree, that we have to bring in officers to fill temporary positions, but we will do that if we have to. The Police Commissioner will ensure that that is done to ensure that there are adequate services out there. But, it would be preferable to find sufficient police officers to be stationed in these more remote regions of the state. We will be looking at and addressing this, but it is a problem that is faced not only by—

The Hon. J.S.L. Dawkins interjecting:

The Hon. P. HOLLOWAY: Well, you are talking about Port Lincoln and Ceduna—

The Hon. T.J. Stephens: Great cities.

The Hon. P. HOLLOWAY: They are great cities. This government is committed to ensuring that they have police resources that they require and deserve. But, it is not just police. I am sure that it is the same issue for nurses, teachers and a whole lot of other professionals because of the employment situation we face and also, of course, because of issues such as the high cost of housing. The high cost of housing is something that one hopes will become central to the forthcoming federal election in this country, and it certainly ought to be because it is one of the key factors in respect of attracting police officers and other public servants to country areas. It is the high cost of housing and the fact that the young people of this state are finding it increasingly difficult to get access to housing. The fact that they are not getting access to

housing is one of the big issues, and I hope it is an issue during the federal election later this year, as it deserves to be.

REPLIES TO QUESTIONS

AUDITOR-GENERAL'S REPORT

In reply to **Hon. J.S.L. DAWKINS** (15 November 2006).

The Hon. CARMEL ZOLLO: I am advised:

SAFECOM has an annual budget and planning cycle which provides for the presentation of workforce plans by emergency services agencies to the SAFECOM board for approval each August.

The *Fire and Emergency Services Act 2005* stipulates that chief officers must not make an appointment unless it accords with the workforce plan last approved by the commission.

Workforce plans for 2006-07 have been approved by the board.

PORTABLE AUTOMATIC WEATHER STATION

In reply to **Hon. CAROLINE SCHAEFER** (15 November 2006).

The Hon. CARMEL ZOLLO: I advise:

The four Portable Automatic Weather Stations (PAWS) units are held as pairs, with two being held at the Country Fire Service (CFS) Regional Office in Mt Barker and two being held by the Department for Environment and Heritage (DEH) at its Fire Management Unit in Keswick, Adelaide.

The units are deployed by CFS volunteers and DEH staff who have received specific training by the Bureau of Meteorology (BoM) as Field Weather Intelligence Officers.

These units are designed to compliment the network of fixed automatic weather stations maintained by the BoM around the country. The objective is to deploy the units as close as possible to major fires (and other incidents) as they occur, and which may not be reasonably close to an existing fixed automatic weather station.

While additional units may further enhance the service availability, the four units currently available can be deployed in acceptable timeframes. CFS and DEH will continue to evaluate the data and service availability and will consider acquiring additional units if and when a need is identified.

Each PAWS Unit cost approximately $26 000, funded as a joint project between the CFS and DEH. CFS paid approximately 60 per cent of the initial set-up costs with DEH paying for approximately 35 per cent. SA Water also made a contribution of $5 000 towards this project.

PORT STANVAC

In reply to **Hon. T.J. STEPHENS** (16 November 2006).

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

1. The Treasurer wrote to ExxonMobil seeking the company's consent to release the agreement. ExxonMobil has agreed to the release.

2. The government has been guided by ExxonMobil regarding the commercial sensitivity of the company's information.

3. The government does not have anything to hide and the Treasurer has released the agreement.

STATUTES AMENDMENT (REAL ESTATE INDUSTRY REFORM) BILL

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

The Hon. G.E. GAGO (Minister for Environment and Conservation): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill implements the recommendations of a review of the real estate industry and the adequacy of the existing regulation of that industry. The review was commissioned by the Minister for Consumer Affairs in 2003. It was prompted by an earlier Private Member's Inquiry into regulation of the real estate industry by the Member for Enfield, John Rau MP.

The reforms contained in the Bill are wide-reaching and are largely supported by industry, which was closely involved in the development of the recommendations leading to this Bill.

The Bill addresses concerns in the community about practices including dummy bidding at auctions, over-quoting by agents to secure property listings and bait advertising of properties for prices well below the actual estimated selling price. Undisclosed conflicts of interest and other misleading or deceptive conduct by agents are also addressed by this Bill.

During the course of the review of regulation of the real estate industry agents asked for legislation to provide a clear set of guidelines as to agents' obligations. The reforms will establish clear standards for land agents as to what is lawful and ethical behaviour in the selling of real estate. However, this Bill is not intended to derogate from or limit the fiduciary obligations owed by land agents under the general law, including to avoid conflicts of interest and account for benefits gained.

The measures are designed to be practical and enforceable solutions to the concerns of consumers about the lack of transparency of the real estate sale process, both from the vendors' and the purchasers' points of view.

The real estate industry in this State is regulated primarily by the *Land Agents Act 1994* and the *Land and Business (Sale and Conveyancing) Act 1994*, and both are amended by this Bill.

Land agents are involved directly with consumers in one of the most important and expensive transactions a consumer will ever enter into—the purchase of real estate. Agents receive large sums of money in the form of deposits and the contracts for the sale of land represent perhaps the most significant contracts consumers ever enter into. Further, the sale of land is a transaction that most consumers generally enter into only infrequently. Therefore, it is important that the legislation in place to protect consumers in their dealings with land agents is robust and effective, so that vendors and purchasers are confident that these most significant transactions are handled competently and ethically.

The issues of concern examined by the working party included over-quoting the value of properties to vendors to secure the listing of properties, bait advertising or under-quoting of estimated selling prices in real estate sale advertisements as well as dummy and vendor bidding during auctions.

The working party concluded there were also significant issues associated with the private treaty sale process, particularly where properties are not advertised for a price but with reference to a price guide and where multiple offers may be received by an agent.

There was consensus within the working party of the need to improve the regulation of ethical and professional conduct standards within the real estate industry. It was also agreed that auctioneers and sales representatives should have to be separately registered and that other measures are required to ensure that only appropriately qualified people operate within the industry.

The working party recognised the need to significantly improve the information set for consumers by means of mandatory consumer guides explaining their rights and responsibilities under sales agency agreements and auction processes.

Members of the working party were also in agreement that the legislation should specifically deal with conflicts of interest, especially in light of emerging trends in the industry such as agents becoming involved in property development and in the provision of financial and investment advice.

This Bill implements the following key measures, which were recommended by the working party:

- agents will be required to specify in the sales agency agreement their genuine estimate of the likely selling price of the property being sold. If the estimate is expressed as a range it must be expressed in figures with an upper limit that does not exceed 110% of the lower limit of the range (eg ranges of $200 000 to $220 000; $500 000 to $550 000 would be permitted). The agency agreement must also stipulate the price sought by or acceptable to the vendor;
- agents will be prohibited from making a representation (including in an advertisement or verbally) as to the likely selling price of a property (and where the representation is a

range this applies to any amount in that range) that is less than the agent's estimated selling price or the vendor's bottom line (whichever is the higher). For example, where the agent's estimated selling price is $300 000 to $330 000 but the vendor is not prepared to accept less than $350 000, the agent must not suggest a selling price, or range that includes any amount, under $350 000. The representation of a likely selling price may be a range but the upper limit of the range may not exceed 110% of the lower limit of the range. This provision will not apply where a property is advertised for a specified price;

· offers to purchase residential property must be made in writing and signed by the offeror, with agents not permitted to pass an offer to the vendor unless it is in writing and signed. If there has been insufficient time to record the offer in writing, the agent must ensure that the vendor has notice of the offer. Offers are required to be submitted to the vendor as soon as practicable after receipt and the agent must retain the offers for a reasonable period to enable these to be inspected by the regulator in the event of a complaint;

· all bidders will need to be registered to bid at an auction, with registered bidders to be provided with a guide to the auction process and related information about the sale process;

· a specific offence of dummy bidding (defined as bidding on behalf of the vendor) is created. It will also be an offence for any person to make or procure a dummy bid as well as for an auctioneer to knowingly take or procure a dummy bid;

· only one vendor bid, made by the auctioneer and disclosed as a vendor bid, will be permitted at an auction of residential land;

· agents will be required to record the agreed reserve, and document any changes to the reserve, in writing prior to commencement of an auction and to keep a record of all bids made at auction, which identifies the vendor bid;

· the existing *Land and Business (Sale and Conveyancing) Act* offence of making a false representation is broadened to include misleading representations in a broader set of circumstances;

· sales agency agreements for the engagement of agents will be required to comply with requirements including to specify how the property is to be offered for sale, the duration of the agreement (which may be capped by Regulation), details of all services to be provided by the agent as well as the costs of those services and to disclose the nature, source and amount of any commission, rebate or discount expected to be received by the agent in respect of services provided by the agent (which must in turn be passed on to the vendor);

· the use of caveats to secure payment of agents' fees will be prohibited. Agents should be in the same position as other service providers when collecting debts;

· agents will be required to provide a guide to a vendor explaining the vendor's rights and obligations under the sales agency agreement and explaining the terms of the agreement;

· auctioneers will be separately accredited by registration and sales representatives and trainee sales representatives employed by agents will have to be registered and carry photographic registration cards. Agents and auctioneers will also be required to carry photographic registration cards;

· agents will be required to disclose to the vendor any actual or potential conflict of interest the agent has in connection with the sale of a property. This disclosure requirement is intended to include a requirement to disclose any relationship with a person to whom the agent has referred a client for services, including a financial adviser, mortgage broker or financier, valuer or legal practitioner. There will also be a statutory requirement to disclose any benefit received or expected to be received in connection with the referral or from any other person in connection with the sale. This is intended to encompass a benefit in the nature of being appointed as the agent of the purchaser in the later sale of property owned by the purchaser. For example, where an agent facilitates the sale of a property to a developer who intends to build units on the land and the agent has an expectation of receiving the listing of the units the agent will be required to disclose this expected benefit to the vendor;

· the current prohibition on agents or their employees purchasing land that they are commissioned to sell is extended to situations where the agent has not actually signed an agency agreement with the vendor, rather has appraised the property and made an offer to the vendor before entering into an agency agreement. This prohibition will not apply where the vendor has another land agent acting for him or her. Although a Ministerial exemption is currently provided for this prohibition, this is changed so that the approval of the Commissioner for Consumer Affairs is required if the agent or employee wishes to purchase the land. In practice, this exemption power has been devolved to the Commissioner and an independent valuation and informed consent of the vendor are required before an exemption is granted. The Bill will formalise this practice and set out on the face of the legislation the criteria for obtaining an approval. The Commissioner's approval will also be required for the agent to receive commission or expenses in connection with the sale, otherwise this is prohibited;

· each place of business of an agent will have to be properly managed and supervised by a registered agent. This arises from concerns about regional agency offices being staffed solely by junior employees. To allow a measure of flexibility in the application of this requirement, regulations may specify what constitutes proper management and supervision.

Although the proposed reforms were developed in the context of metropolitan residential sales, industry representatives argued that the reforms may seriously impact on the ability of rural vendors and rural agents to sell properties. The Bill addresses this by introducing the concept of "residential land". The definition of "residential land" has been developed with the aim of excluding most farming properties. Prohibitions on dummy bidding and other unfair practices will apply to all land, but advertising requirements will remain as they currently are, and multiple disclosed vendor bids will still be allowed, for properties that do not fall within the definition.

The Bill also addresses a number of issues drawn to the attention of the Government through the consultation process, as follows:

· various penalties are increased to reflect the seriousness of those offences;

· "offer" is defined in order to clarify that responses to tenders and similar forms of sale, whether in the form of tender, expression of interest or other, are 'offers' for the purposes of the legislation. This amendment is intended to address concerns that agents are not following usual tender procedures when advertising properties for sale by tender or similar method. Agents will look at tenders prior to the closing date and may enter into negotiations with a tenderer or offeror or sell the property before the closing date for tenders (interchangeably called "offers", "tenders" or "expressions of interest"). The amendment will mean that the Bill requirements for offers to be recorded in writing (and made available for inspection by OCBA officers in the event of complaint about the sale process) and for offerors to be provided with information specifying how their offer will be treated will apply to these forms of sale. This will ensure that people submitting tenders or expressions of interest will be advised of how their offer will be treated, in particular, whether the agent intends to look at offers prior to the closing date and that the agent may negotiate with the highest offerees and not allow other offerors an opportunity to negotiate or increase their offer;

· prohibition of collusive practices at auctions. This prohibition forms part of the NSW auction reforms and is included in these reforms at the request of industry members as a cautionary measure;

· to support new misleading advertising provisions, agents (including franchisees) will be required to quote registration numbers in advertising;

· although the *Land Agents Act* contains a general defence for unintentional acts, a mirror provision has been inserted into the *Land and Business (Sale and Conveyancing) Act*, where many of the new offences are created.

In addition the Bill incorporates a number of other amendments that have arisen separately to the real estate industry review and are considered appropriate for inclusion in this Bill:

· agents will be required to provide specified information or warnings to any person to whom they may provide investment or financial advice. This follows from an Australian Securities and Investments Commission (ASIC) report into the financial advising activities of real estate agents and

the provision of property investment advice generally. That report recommended that where agents provide general advice about investing in real estate as an incidental part of acting as a land agent, they should be required to give a warning to the recipient of the advice that the advice is general only in nature and that independent advice should be sought as to the suitability of the investment in light of the recipient's particular circumstances;

· amendments to the *Land Agents Act* and *Conveyancers Act* to implement the recommendations of the Economic and Finance Committee's enquiry into the Agents Indemnity Fund. The amendments are designed to make the claims process for those who have suffered a fiduciary default at the hands of a land agent or conveyancer more transparent and easier;

· provision for the conciliation of disputes and advice to consumers to be paid for from the Agents Indemnity Fund is being added at the request of OCBA;

· the requirement that agents' trust accounts be audited by a registered company auditor is relaxed to enable alternative oversight requirements to be prescribed in circumstances such as where registered company auditors are not available in rural areas;

· the definition of 'small business' in the *Land and Business (Sale and Conveyancing) Act* (which attracts certain additional disclosure and cooling off rights) is amended to make it clear that the value of stock on hand is to be excluded in calculating the value of the business. The clarification is supportive of small business because it ensures that businesses gain the protection of the Act if valued under $200 000 (exclusive of stock);

· the laws in relation to the practice of "wrapping", or sale of land by instalment, are tightened to ensure that purchasers in rent-to-buy schemes are protected;

· a fit and proper person test is added to the eligibility criteria for registration of agents and sales representatives as well as conveyancers. This is in addition to the existing prescribed disentitling offences. This measure is consistent with the overall aim of the reforms to increase the standards for those working in the real estate industry. It is also consistent with other licensing legislation, for example, for second-hand vehicle dealers and security agents;

· agents will be required to give all prospective purchasers of property an information notice to assist them to discover whether there are features of the property that may adversely affect their enjoyment or safety. The content of the notice will be prescribed by regulation but at this stage it is intended that the notice include information about:

· how to detect the presence of asbestos in residential buildings and where to find further information about what to do if asbestos is found;

· how to detect any structural problems, termite or other pest infestation, salt damp or illegal building work;

· how to determine whether the property is close to a live music venue;

· how to determine whether the property has a septic tank or is close to high tension power lines and any consequent restrictions or obligations;

· how to determine whether hard-wired smoke alarms have been installed.

The notice is intended to be in the form of a generic checklist to alert purchasers about matters that they may wish to take into account in assessing the suitability of a property and direct them to sources of further information about those matters.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Conveyancers Act 1994*

4—Amendment of section 7—Entitlement to be registered

This clause includes as an additional criterion for registration for a conveyancer (and, in the case of a conveyancer company, for each director of the company) that of being a fit and proper person. These provisions replace the fit and proper provisions currently in section 45(1)(d)(ii) and (iii) (to be removed by clause 9).

5—Amendment of section 14—Interpretation of Part 4

The opportunity is taken to update the outdated reference to "*Corporations Law*" in the definition of ***auditor*** to "*Corporations Act 2001* of the Commonwealth".

6—Amendment of section 31—Indemnity fund

This clause makes minor drafting changes to section 31(1)(b) and also sets out the following additional purposes to which the indemnity fund may be applied:

· the costs of investigating compliance with the Act or possible misconduct of conveyancers;

· the costs of conciliating disputes relating to the activities of conveyancers;

· the costs of disciplinary proceedings under Part 5.

7—Amendment of section 32—Claims on indemnity fund

This clause enables a person to claim (in addition to actual pecuniary loss) compensation for reasonable legal expenses incurred in taking action to recover the loss less the amount that the person has received or may be expected to recover in reduction of the loss.

8—Amendment of section 34—Establishment and determination of claims

This clause introduces amendments equivalent to those proposed to be made to the *Land Agents Act 1994* by this Act. Subclause (2) gives the Commissioner the power to seek further information from claimants, verified, if necessary, by statutory declaration. The clause also requires the Commissioner to take certain new steps in the complaints process. Once the Commissioner has received a complaint, the Commissioner may—

· require the claimant to take specified action to recover the loss (in which case determination of the claim is postponed);

· determine the claim and if appropriate pay compensation;

· require the claimant to make contractual undertakings as to the assistance that the claimant must give the Commissioner in any action taken by the Commissioner to recover the loss.

In determining whether to require the claimant to take specified action to recover the loss, and what should constitute the specified action, the Commissioner must take into account the size of the claim, the complexity of the case, the claimant's financial circumstances, mental or physical health and any other relevant factors.

The provision also requires the Commissioner to keep the claimant informed of the progress of the claim in accordance with the regulations.

9—Amendment of section 45—Cause for disciplinary action

This clause amends section 45(1)(d) to match the amendments made by clause 4 with the effect that conveyancers must be fit and proper persons in order to be registered, not just after registration. (There will still be cause for disciplinary action under section 45 if events have occurred after registration such that a conveyancer is not a fit and proper person.)

Part 3—Amendment of *Land Agents Act 1994*

10—Amendment of section 3—Interpretation

This clause provides for definitions in the principal Act that reflect the changes made to that Act. In particular, sales representatives must, under the proposed reforms, be registered, as must agents or sales representatives who conduct auctions and so the definitions have been adjusted accordingly.

11—Amendment of section 6—Agents to be registered

This clause clarifies that an agent must not carry on business as an agent unless registered under the Act as an agent (as distinct from a sales representative).

12—Insertion of sections 6A and 6B

6A—Sales representatives to be registered

Section 6A(1) requires sales representatives to be registered under the Act with failure to do so an offence attracting a maximum penalty of $5 000. This section also makes it an offence for an agent to employ a sales representative who is not registered under the Act with the maximum penalty for contravening the provision being $20 000.

6B—Auctioneers to be registered

Section 6B requires persons who conduct auctions (being either agents or sales representatives) to be registered

as auctioneers. Failure to be registered as required attracts a maximum penalty of $5 000. This section also makes it an offence for an agent to employ an auctioneer who is not registered under the Act with the maximum penalty for contravening the provision being $20 000.

13—Amendment of section 7—Application for registration

This clause inserts new subsection (2a) in section 7. The subsection provides that proof of registration will include a registration card bearing a photograph of the registered person, and enables the Commissioner to require applicants for registration to have their photo taken or to submit such a photograph as part of the application process.

14—Amendment of section 8—Entitlement to be registered as agent

This clause includes as an additional criterion for registration for an agent (including, in the case of an agent body corporate—each director) that of being a fit and proper person. These provisions replace the fit and proper provisions currently in section 43(1)(e)(ii) and (iii) (to be removed by clause 24).

15—Substitution of section 8A

This clause substitutes section 8A with sections 8A, 8B, 8C, 8D and 8E.

8A—Entitlement to be registered as sales representative

Section 8A sets out what is required for a person to be entitled to be registered as a sales representative, namely, the person must—

- have the qualifications required by the regulations or, if the regulations allow, the qualifications considered appropriate by the Commissioner (for example, equivalent qualifications from interstate);
- satisfy requirements relating to the person's moral fitness to be registered as a sales representative.

8B—Entitlement to be registered as sales representative subject to conditions relating to training and supervision

Section 8B provides that if a person does not have the qualifications required by section 8A but otherwise satisfies the requirements of section 8A, the person may nevertheless be registered subject to conditions that the person undertake training (unless the person has previously failed to comply with such a condition). There is also a requirement that the person be supervised as specified in the regulations, with failure by an agent to properly supervise the person being an offence attracting a maximum penalty of $5 000. Subsection (5) enables the Commissioner to cancel the registration of a person registered under the section.

8C—Entitlement to be registered as auctioneer

Section 8C sets out what is required for a person to be registered as an auctioneer, namely, the person must—

- be registered as an agent or sales representative under the Act; and
- have the qualifications required by the regulations or, if the regulations allow, the qualifications considered appropriate by the Commissioner (for example, equivalent qualifications from interstate).

8D—Appeals

This section is the same as section 8A of the current Act and is relocated to avoid difficulties with renumbering of the sections.

8E—Power of Commissioner to require photograph and information

This clause inserts section 8E which gives the Commissioner the power to require, periodically, photographs and certain information from persons registered under the Act. This provision enables the Commissioner to ensure that persons continue to be properly registered and carry up-to-date proof of that registration.

16—Amendment of section 9—Duration of registration and annual fee and return

This clause amends section 9 to reflect the fact that registration under the Act will no longer refer only to agents, but also to sales representatives and auctioneers. Previous references to "registered agents" will now be to "registered persons".

17—Substitution of section 11

This clause removes section 11 (the provisions of which have been amended and relocated to section 8A) and replaces it with new sections 11, 11A and 11B.

11—Each of agent's places of business to be properly managed and supervised

Section 11 requires registered agents to ensure that each of their places of business are properly managed and supervised by a registered agent who is a natural person. The section is intended to address the problems associated with regional agency offices being staffed solely by junior people. Failure to comply with the provision is an offence attracting a maximum penalty of $20 000.

11A—Regulations relating to proper management and supervision

Section 11A allows for the regulations under the Act to set out what practices are required for the proper management or supervision of businesses or places of business under sections 10 and 11.

11B—Registration card to be carried or displayed

Section 11B requires natural persons registered under the Act to carry their registration cards for production on request by authorised officers or persons with whom they have dealings. Failure to do so is an offence attracting a maximum penalty of $1 250 or an expiation fee of $160.

18—Amendment of section 12—Interpretation of Part 3

This clause amends the definition of ***auditor*** to include a person who meets the requirements prescribed by regulation. The opportunity is also taken to update the outdated reference to "*Corporations Law*" to "*Corporations Act 2001* of the Commonwealth".

19—Amendment of section 22—Audit of trust accounts

This clause includes a requirement for the auditing of trust accounts to be carried out in accordance with the regulations.

20—Amendment of section 29—Indemnity fund

This clause makes a minor drafting change to section 29(3)(c) and also sets out the following additional purposes to which the indemnity fund may be applied:

- the costs of investigating compliance with the Act or possible misconduct of agents or sales representatives;
- the costs of conciliating disputes relating to the activities of agents or sales representatives;
- the costs of disciplinary proceedings under Part 4.

21—Amendment of section 30—Claims on indemnity fund

This clause enables a person to claim, in addition to actual pecuniary loss, compensation for reasonable legal expenses incurred in taking action to recover the loss less the amount that the person has received or may be expected to recover in reduction of the loss.

22—Amendment of section 32—Establishment and determination of claims

Proposed section 32(1a) gives the Commissioner the power to seek further information from claimants, verified, if necessary, by statutory declaration. The clause also requires the Commissioner to take certain new steps in the complaints process. Once the Commissioner has received a complaint, the Commissioner may—

- require the claimant to take specified action to recover the loss (in which case determination of the claim is postponed);
- determine the claim and if appropriate pay compensation;
- require the claimant to make contractual undertakings as to the assistance that the claimant must give the Commissioner in any action taken by the Commissioner to recover the loss.

In determining whether to require the claimant to take specified action to recover the loss, and what should constitute the specified action, the Commissioner must take into account the size of the claim, the complexity of the case, the claimant's financial circumstances, mental or physical health and any other relevant factors.

The provision also requires the Commissioner to keep the claimant informed of the progress of the claim in accordance with the regulations as well as giving the parties written notice of the determination.

23—Amendment of section 42—Interpretation of Part 4

This clause makes minor drafting changes to the definition of ***agent*** and amends the definition of ***sales representative*** to

reflect the fact that sales representatives must now be registered under the Act.

24—Substitution of section 43

43—Cause for disciplinary action against agents or sales representatives

This clause amends section 43 with the effect of applying the disciplinary provisions to registered sales representatives as well as registered agents.

The amendments also match the amendments made by clauses 13, 14 and 15 with the effect that agents and sales representatives must be fit and proper persons in order to be registered, not just after registration. (There will still be cause for disciplinary action under section 43 if events have occurred after registration such that the person is not a fit and proper person to be registered.)

25—Amendment of section 47—Disciplinary action

This clause amends section 47 reflecting that the disciplinary provisions now apply equally to sales representatives as to agents.

26—Insertion of section 48A

48A—Advertisements to include registration number of agent

This clause sets out new requirements for the publishing of advertisements by agents, namely the inclusion alongside the agent's name or contact details of the agent's registration number preceded by the letters "RLA", indicating that the agent is a registered land agent. Failure to comply with this provision is an offence attracting a maximum penalty of $2 500 or an expiation fee of $210.

27—Amendment of section 52—Register

This clause amends section 52 with the effect that a register must now be kept of all persons (not just agents) registered under the Act including details of disciplinary action taken, and notes of assurance accepted by the Commissioner under the *Fair Trading Act 1987*, in relation to such persons.

28—Amendment of section 62—Evidence

This clause amends section 62 reflecting the application of this section to all persons registered under the Act, not just agents as was previously the case.

29—Amendment of section 63—Service of documents

This clause amends section 63 reflecting the application of this section to all persons registered under the Act, not just agents as was previously the case.

30—Amendment of section 65—Regulations

Subclause (1) of this clause enables the regulations now to require any persons registered under the Act (including registered sales representatives and registered auctioneers) to comply with codes of conduct.

Subclauses (2) and (3) make minor drafting changes to section 65 ensuring that certain regulations may apply to an agent whether or not properly registered.

Part 4—Amendment of *Land and Business (Sale and Conveyancing) Act 1994*

31—Amendment of section 3—Interpretation

This clause inserts new definitions that reflect the amendments made to the principal Act and includes new definitions of ***auction record***, ***authorised officer***, ***bidders register***, ***commission***, ***offer***, ***place of residence***, ***residential land***, ***sales agency agreement*** and ***sales representative***. The clause also amends the definitions of ***purchaser*** and ***vendor*** to now include a person authorised to act on behalf of a purchaser and a person authorised to act on behalf of a vendor, respectively.

32—Amendment of section 4—Meaning of small business

This clause provides that in determining whether a business is a small business for the purposes of the Act according to the monetary parameters set out in the Act, the value of the stock-in-trade is to be disregarded.

33—Amendment of section 5—Cooling-off

This clause makes incidental changes to section 5 reflective of the proposed expanded definition of ***vendor*** which includes a vendor's agent. The term "certified mail" is replaced with "registered mail" to reflect current post office practice.

34—Amendment of section 6—Abolition of instalment purchase or rental purchase arrangements

This clause makes certain rental purchase contracts voidable and specifies that payment made by a person under the contract does not constitute affirmation of the contract. If such a contract is avoided, the person is entitled to recover amounts paid under the contract over and above fair market rent.

35—Amendment of section 7—Particulars to be supplied to purchaser of land before settlement

This clause makes minor drafting improvements consequential on the new definitions of vendor and purchaser (see clause 31). The clause removes the words "on behalf of" the vendor. The effect of this clause is to put beyond doubt that section 7 statements can be signed by or on behalf of the vendor and served on the purchaser or the purchaser's agent. Similar improvements have been made elsewhere in the Bill, for example, by clause 33 (amendment of section 5(5)), clause 36 (amendment of section 8(1)), clause 37 (amendment of section 9) and clause 42 (amendment of section 19).

The clause also substitutes section 7(1)(b)(ii), with a provision that requires a vendor of land who acquired a relevant interest in the land within 12 months before the date of the contract of sale to disclose in the section 7 statement all transactions relating to the acquisition of the interest occurring within the 12 month period. New subsection (5) defines ***acquired an interest in land*** to mean "obtained title to the land, obtained an option to purchase the land, entered into a contract to purchase the land or obtained an interest in the land of a category prescribed by regulation".

36—Amendment of section 8—Particulars to be supplied to purchaser of small business before settlement

This clause makes incidental changes to section 8 reflective of the proposed expanded definition of ***vendor*** which includes a vendor's agent.

37—Amendment of section 9—Verification of vendor's statement

This clause sets out the following additional requirements that an agent acting on behalf of the vendor or, in the absence of a vendor's agent, an agent acting on behalf of the purchaser must ensure are satisfied:

- that enquiries prescribed by regulation are made; and
- that immediately after the signing of the certificate in relation to the completeness and accuracy of particulars relating to land—a copy of the certificate is given to the vendor.

38—Amendment of section 13—False certificate

This clause imposes a maximum penalty of $20 000 or imprisonment for 1 year for knowingly giving a false certificate under Part 2.

39—Insertion of section 13A

13A—Prescribed notice to be given to purchaser

This clause inserts new section 13A which requires a vendor of residential land to take all reasonable steps to deliver the prescribed notice to a purchaser when the purchaser is present on the land at the invitation of the vendor in order to inspect the land prior to its sale.

The provision further requires the vendor to attach the prescribed notice to the vendor's statement when served on a purchaser, and an auctioneer to attach the prescribed notice to the vendor's statement when making the statement available for perusal by the public before the auction.

A ***prescribed notice*** is defined to mean a notice, in the form prescribed by regulation, containing information of the kind required by regulation relating to matters concerning land that might adversely affect—

- a purchaser's enjoyment of the land; or
- the safety of persons on the land; or
- the value of the land.

40—Amendment of section 14—Offence to contravene Part

This clause imposes an increased maximum penalty amount of $10 000 for contravention of a provision of Part 2 of the principal Act other than section 13 (which now carries the penalty referred to at clause 38 above).

41—Amendment of section 17—Service of vendor's statement etc

The term "certified mail" is replaced with "registered mail" to reflect the current terminology of the post office.

42—Amendment of section 19—Inducement to buy subdivided land

This clause makes an incidental change to section 19 reflective of the proposed expanded definition of ***vendor*** which includes a vendor's agent.

43—Substitution of Part 4

This clause substitutes Part 4 of the principal Act with new Parts 4 and 4A.

Part 4—Special requirements relating to agents and sales representatives

The heading of Part 4 reflects the proposed broader application of Part 4, namely to agents and sales representatives, not just agents.

20—Authority to act as agent

Section 20 requires agents to be authorised to act on behalf of vendors in the sale of residential land by means of a sales agency agreement. The section goes on to specify what must be in such an agreement, namely:

- the agent's genuine estimate of the selling price expressed without any qualifying words either as a single figure or as a price range with an upper limit not exceeding 110 per cent of the lower limit; and
- the selling price sought by or acceptable to the vendor expressed without any qualifying words as a single figure; and
- the manner of sale (eg by auction, private treaty or tender); and
- the duration of the agreement (which may be capped by regulation); and
- the rights of the vendor to terminate the agreement; and
- the services to be provided by the agent or a third person, the cost and the time for payment of those services; and
- the nature, source and amount of any rebate, discount, refund or other benefit expected by the agent from a third person for such services; and
- whether the agreement is a sole agency agreement; and
- whether the agent has authority to accept an offer for the land on behalf of the vendor.

The agreement must be dated and signed by the vendor and the agent and must comply with the regulations.

Failure by the agent to comply with any of the requirements of section 20(1) is an offence attracting a maximum penalty of $5 000.

Section 20(2) makes it an offence attracting a maximum penalty of $5 000 and an expiation fee of $315 for an agent to make a sales agency agreement without first supplying the vendor with a written guide in the form approved by the Commissioner explaining the vendor's rights and obligations under such an agreement.

Section 20(3) provides that an agent must not act for a vendor in the sale of non-residential land or a business or a purchaser in the sale of land or a business without being given authority to that effect by instrument in writing signed by the vendor or purchaser. The maximum penalty is $5 000.

Section 20(4) provides for formal requirements relating to the giving by agents to persons for whom they are acting of copies of agreements or instruments, with a maximum penalty of $5 000 or an expiation fee of $315 for contravention of that subsection.

Section 20(5) provides that matters specified or agreed in a sales agency agreement may not be varied unless the variation is in writing and dated and signed by the parties to the agreement.

Section 20(6) provides for formal requirements relating to the giving by agents to persons for whom they are acting of copies of variations to agreements or instruments, with a maximum penalty of $5 000 or an expiation fee of $315 for contravention of that subsection.

Section 20(7) makes it unlawful for an agent to demand, receive or retain commission or expenses if the agent has contravened a requirement of section 20 in acting for a vendor or purchaser. The maximum penalty for contravening this subsection is $5 000. Section 20(8) enables a vendor or purchaser to recover those expenses from an agent in those circumstances.

Section 20(9) provides that signed copies of sales agency agreements (including variations) and instruments under subsection (3) must be kept by the agent.

21—Requirements relating to offers to purchase residential land

Section 21(1) sets out obligations on agents relating to offers for residential land made by prospective purchasers, namely:

- all reasonable steps must be taken to have the offer recorded in writing in accordance with the regulations and signed by the offeror; and
- subject to subsection (5), the offer must not be passed on to the vendor unless it is so recorded and signed; and
- the offeror must, if the regulations so require, be given a notice in writing containing the information prescribed by regulation before signing the offer; and
- a copy of the signed offer must be given to the vendor within 48 hours or later if agreed with the vendor; and
- details of the offer may only be disclosed to the vendor or, on request, an authorised officer; and
- a copy of the signed offer must be kept by the agent.

Contravention of this section attracts a maximum penalty of $5 000 or an expiation fee of $315.

Section 21(2) applies similar provisions and the same penalty as in subsection (1) but to sales representatives. If an offer is communicated to a sales representative, it would also be taken to be communicated to the agent employing the sales representative, and so subsections (1) and (2) would apply simultaneously.

Section 21(3) clarifies subsections (1)(d) and (2)(d) (which specify that disclosure of the offer is restricted to the vendor or an authorised officer). Subsection (3) provides that nothing in the section prevents disclosure to persons engaged in the business of the agent—this disclosure being, in fact, part of the communication of the offer to the agent.

Section 21(4) requires a vendor who has received a copy of a signed offer from an agent or sales representative to acknowledge the receipt in writing as soon as practicable if so requested by the agent or sales representative with a maximum penalty of $1 250 for failing to do so.

Section 21(5) requires the agent or sales representative, before taking any steps on behalf of the vendor towards acceptance by the vendor of the offer for the vendor's residential land to ensure that the vendor has received copies of all written offers received by the agent as well as notice of any unwritten offers. Failure to do so is an offence with a maximum penalty of $5 000.

Section 21(6) is a regulation making power, enabling the making of regulations to modify the section where the agent has authority to accept an offer on behalf of the vendor.

Section 21(7) provides that contravention of section 21 does not render an offer or a contract for the sale of the land invalid.

22—Person signing document to be given copy

Section 22 requires agents and sales representatives to provide copies of certain offers, contracts or agreements to the person who has signed such an offer, contract or agreement. Contravention of this section attracts a maximum penalty of $5 000 or an expiation fee of $315.

23—Agent not to receive commission if contract avoided or rescinded

Section 23 provides that agents are not entitled to commission if a contract for the sale or purchase of land or a business is rescinded or avoided under the Act (except in certain specified circumstances). The section is based on current section 22 of the principal Act. Contravention of the provision attracts a maximum penalty of $5 000.

Any commission received or retained in contravention of the section may be recovered as a debt by the person who paid it.

24—Agent not to lodge caveat for sums owing by client

Section 24 makes it an offence attracting a maximum penalty of $5 000 if an agent secures payment of a debt by means of a caveat.

24A—Representations as to likely selling price in marketing residential land

Section 24A(1) clarifies expressions used in section 24(2) and is placed first in the section as it contains terms

that must be understood before sense can be made of subsection (2). For example, it defines the circumstances in which a representation is made in marketing a person's land and it sets out what does and does not constitute a "representation as to a likely price or likely price range". It also defines ***prescribed minimum advertising price***, namely, the amount that is the greater of—

- the agent's estimate of the selling price as expressed in the sales agency agreement as a single figure at the time of the representation, or, if that estimate is expressed in the agreement at that time as a price range, the lower limit of that range; or
- the selling price sought by, or acceptable to, the vendor as expressed in the sales agency agreement at the time of the representation.

Section 24A(2) makes it unlawful for an agent or sales representative to represent (whether in a published advertisement or orally or in writing to prospective purchasers) the likely selling price of residential land as being a price less than the prescribed minimum advertising price or a price range extending below the prescribed minimum advertising price or in respect of which the upper limit exceeds 110 per cent of the lower limit.

The penalty for contravening section 24A(2) is $10 000.

24B—Financial and investment advice

Section 24B enables the making of regulations that require agents or sales representatives who provide financial or investment advice to persons in connection with the sale or purchase of land or a business to provide the persons with specified information or warnings. Failure to comply with such regulations is an offence attracting a maximum penalty of $10 000.

24C—Agent to disclose certain benefits connected with sale or purchase

Section 24C provides that the agent acting in the sale or purchase of land or a business must disclose to his or her client:

- the nature, source and amount (or estimated amount or value) of any benefit the agent receives or expects to receive from a third person to whom the agent has referred the client, or with whom the agent has contracted, for the provision of services associated with the sale or purchase;
- the nature, source and amount (or estimated amount or value) of any other benefit any person receives or expects to receive in connection with the sale or purchase.

Failure to so disclose is an offence attracting a maximum penalty of $20 000.

Section 24C(3) sets out the kinds of benefits not requiring disclosure under the section. These are:

- a benefit disclosed in a sales agency agreement with the client;
- a benefit received or expected to be received by the agent from the client;
- a benefit received or expected to be received by the vendor or purchaser;
- a benefit related to the provision of services to the client that have been contracted for by the agent unless the agent has made, or is to make, a separate charge to the client in respect of the cost of the services;
- a benefit while the agent remains unaware of the benefit (but in any proceedings against the agent, the burden will lie on the agent to prove that the agent was not, at the material time, aware of the benefit);
- a benefit that the agent or another person receives if the agent has disclosed, in accordance with this section, that the agent or other person expected to receive the benefit.

Section 24C(4) specifies the manner and form in which disclosure under subsection (2) is required, namely immediately and in the form approved by the Commissioner.

Section 24C(5) explains how to determine the value of a non-monetary benefit and a benefit in relation to multiple sale or purchase transactions, for example, where an agent receives a discount for multiple newspaper advertisements.

Section 24C(6) defines the following terms used in the section ***agent***, ***benefit***, ***client***, ***purchaser's agent*** and ***vendor's agent***. Significantly, the definition of ***client*** is "the person for whom the agent is or has been acting" which means that even when the agent ceases to be the person's agent, the disclosure provisions continue to apply.

24D—Agent not to retain benefits in respect of services associated with sale or purchase of residential land

This section prohibits agents acting in the sale or purchase of residential land from charging a client an amount for expenses that is more than that paid or payable by the agent for those expenses. Contravention of this section is an offence attracting a maximum penalty of $20 000.

Section 24D(3) provides that in determining the amount paid or payable by the agent for expenses, any benefits received or receivable by the agent in respect of the expenses (other than a benefit that is contingent on the happening of an event that has not yet occurred) must be taken into account. Section 24D(4) enables an agent to make an estimate of the amount of the expenses in certain circumstances but, under subsection (5), if the agent discovers that he or she has overestimated the amount, the agent must immediately reimburse the client, with failure to do so an offence attracting a maximum penalty of $20 000.

Section 24D(6) also prohibits an agent acting in the sale or purchase of residential land from retaining benefits in the following circumstances:

- the agent refers the client to a third person for the provision of services associated with the sale or purchase of the land or contracts with a third person for the provision of services associated with the sale or purchase of the land that will be separately charged for by the agent; and
- the agent receives a benefit from the third person as a result of referring the client to the third person or contracting with the third person.

Contravention of section 24D(6) is an offence attracting a maximum penalty of $20 000.

Section 24D(7) gives a client a right of recovery of benefits retained by an agent in contravention of subsections (5) or (6).

Section 24D(8) mirrors section 24C(5) (above). It explains how to determine the value of a non-monetary benefit and a benefit in relation to multiple sale or purchase transactions, for example, where an agent receives a discount for multiple newspaper advertisements.

Section 24D(9) contains definitions of terms used in the section. These definitions are the same as those at section 24C(6) with the addition of ***expenses*** defined as "outgoings or proposed outgoings".

24E—Agent not to act for both purchaser and vendor of land or business

Section 24E provides that an agent must not act simultaneously for both purchaser and vendor of land or a business or enter into agreements that will or can result in the agent acting simultaneously for the vendor and purchaser. It is important to bear in mind in this section that "agent" refers both to natural persons as well as bodies corporate. Thus a body corporate agent may be in breach of this provision if 1 agent in the business acted for the purchaser and another agent in the business acted for the vendor of the same land at the same time. Contravention of section 24E(1) is an offence attracting a maximum penalty of $20 000.

Section 24E(2) prohibits a person from entering into agreements to act as agent in the sale or purchase of land or a business if the performance of services by the person under the agreements will or can result in the person acting as agent on behalf of both the vendor and the purchaser of the same land or business at the same time. Once again, contravention of the subsection is an offence attracting a maximum penalty of $20 000.

Section 24E(3) sets out a set of circumstances that are deemed to constitute a contravention of subsection (1). These are where—

- the sale of land or a business is negotiated by the agent on behalf of a person; and
- the purchase of the land or business is made subject to the sale of some other land or business by the purchaser; and
- the agent acts on behalf of the purchaser in the sale of the other land or business.

However, under section 24E(4), an agent will not be deemed to have contravened subsection (1) by virtue of this set of circumstances if the agent gives the purchaser a warning notice (being a notice in the form approved by the Commissioner) before the purchaser authorises the agent to act on behalf of the purchaser and the purchaser acknowledges receipt of the form in writing on a copy of the form.

24F—Restriction on obtaining beneficial interest where agent authorised to sell or appraises property

Section 24F prohibits an agent or a sales representative employed by an agent from obtaining a beneficial interest in land or a business that the agent is authorised to sell (subsections (1) and (2)) or has appraised (subsection (3)). Contravention of this section attracts a maximum penalty of $20 000 or imprisonment for 1 year. The section further describes what does and does not constitute the obtaining of a beneficial interest in land or a business or a contravention of the section, for example, it is not considered a contravention of subsection (3) if another agent is acting on behalf of the vendor in the sale. Nor will it be a contravention of the section if the person has obtained the prior approval of the Commissioner to obtain a beneficial interest. Under subsection (6) a person contravenes the section if an associate of the person (defined at subsection 11) obtains a beneficial interest in the land or business. Subsection (7) specifies some of the acts that will constitute the obtaining of a beneficial interest. These are:

- purchasing land or a business;
- obtaining an option to purchase land or a business;
- being granted a general power of appointment in respect of land or a business.

If a court convicts an agent or sales representative of an offence under the section, it may order the person to pay to the vendor any profits made or likely to be made from a dealing with the land or business.

Section 24F(9) makes it unlawful for an agent to demand, receive or retain commission or expenses if the agent has obtained a beneficial interest in land or a business unless the Commissioner has approved both the benefit under subsection (5) and the receipt of the commission or expenses. The maximum penalty for contravention of subsection (9) is $5 000. Section 24F(10) enables a vendor to recover commission or expenses retained by the agent in those circumstances as a debt. Section 24F(11) includes the following terms used in the section: ***appraise***, ***associate***, ***beneficiary***, ***domestic partner***, ***relative***, ***relevant interest*** and ***spouse***.

24G—Agent not to pay commission except to officers or employees or another agent

Section 24G prohibits agents from paying the whole or part of the commission to which they are entitled to anyone other than an officer or employee of the agent or a registered agent. Contravention of this section is an offence attracting a maximum penalty of $5 000.

Part 4A—Auctions

Part 4A entitled "Auctions" is a new Part that deals with the conduct of auctions.

24H—Standard conditions for auctions of residential land

Section 24H clarifies that the standard conditions prescribed for auctions by the regulations apply as contractual conditions to all auctions of residential land conducted by agents.

24I—Preliminary actions and records required for auctions of residential land

Section 24I sets out the requirements that the ***responsible agent*** (defined in subsection (5)) must ensure are satisfied in relation to an auction for the sale of residential land. Those requirements are:

- the standard conditions of auction must be displayed at the auction at least 30 minutes before the auction is due to commence and audibly announced as required by the regulations by the auctioneer immediately before the auction;
- an auction record must be made before the commencement of the auction consisting of a record of the reserve price (including any changes made to that price before the commencement of the auction), a bidder's register and any other details required by the regulations;
- if a bid is to be allowed by a person who was not registered in the bidders register before the commencement of the auction, the auction must be interrupted and the person's details entered in the bidders register;
- the identity of bidders must be verified in accordance with the regulations, and if the bidder is to bid on behalf of another person, the other person's identity must be similarly verified, as must be the person's authority to bid on behalf of that person;
- each person registered in the bidder's register must, when the person's details are being taken for entry in the register, be supplied with a written guide in the form approved by the Commissioner relating to the sale of residential land by auction;
- any change in the reserve price made during the auction must be entered in the auction record;
- the following details are to be recorded in the auction record immediately on their happening:

(a) a change in the reserve price;

(b) the amount of each bid and the identifying number allocated to the bidder;

(c) the vendor bids made by the auctioneer;

(d) other matters required by the regulations.

Failure to comply with any of these requirements is an offence attracting a maximum penalty of $10 000.

Subsection (2) makes the deliberate falsification of auction records (whether by agents, sales representatives or others) an offence attracting a maximum penalty of $10 000.

Subsection (3) prohibits disclosure of information in an auction record except as authorised under Part 4A or as required by an authorised officer. Contravention of this subsection is an offence attracting a maximum penalty of $10 000.

Subsection (4) provides that a contravention of the section does not affect the validity of a bid or a contract for the sale of the land.

Subsection (5) defines ***responsible agent*** as the agent who has entered into the sales agency agreement with the vendor for the sale of land (regardless of whether another agent is to be the auctioneer).

24J—Registered bidders only at auctions of residential land

Section 24J(1) prohibits the taking of bids by auctioneers not in possession of the bidder's register and from any person other than a registered bidder displaying an identifying number recorded in respect of the person in the bidder's register. This subsection also requires the auctioneer, when taking the bid, to audibly announce the bid as having been taken from a bidder with that person's identifying number. Contravention of, or failure to comply with the subsection is an offence attracting a maximum penalty of $10 000.

Subsection (2) relieves an auctioneer who refuses to take a bid from a person because of subsection (1) of any liability to any person as a result of such refusal.

Subsection (3) provides that the taking of bids in contravention of the section does not affect the validity of the bid or a contract for the sale of the land.

24K—Collusive practices at auctions of land or businesses

Section 24K(1) prohibits a person from inducing or attempting to induce, by collusive practice (defined at subsection (4)), another person to abstain from bidding or limiting his or her bidding at an auction or to do anything that may prevent free and open competition at the auction of land or a business. Contravention of the subsection is an offence attracting a maximum penalty of $20 000. Subsection (2) prohibits a person from abstaining from bidding or limiting his or her bidding at an auction or doing anything that may prevent free and open competition at the auction of land or a business as a result of a collusive practice. Contravention of this subsection is also an offence attracting a maximum penalty of $20 000.

Subsection (3) requires an auctioneer of land or a business to give notice, in accordance with the regulations, of the main parts of section 24K (warning against collusive practices) before the auction. Failure to do so is an offence attracting a maximum penalty of $5 000.

Subsection (4) defines ***collusive practice*** as including an agreement, arrangement or understanding under which 1

person will, on being the successful bidder at an auction of land or a business (and whether or not subject to other conditions), allow another person to take over as purchaser of the land or business through the auctioneer at the auction price.

24L—Dummy bidding prohibited at auctions of land or businesses

Section 24L provides for restrictions on dummy bidding (except as permitted by section 24M) at auctions of land or business, including a prohibition on:

- the making of vendor bids by a vendor;
- persons knowingly making vendor bids on behalf of a vendor;
- procuring another person to make a vendor bid contrary to the section;
- the taking by an auctioneer of a bid known by the auctioneer to be made by the vendor or on behalf of the vendor;
- the purported taking by an auctioneer of a bid when in fact no bid is being made.

Contravention of this section is an offence attracting a maximum penalty of $20 000.

Subsection (9) defines ***vendor*** as:

- a mortgagee or other holder of a security interest in respect of the land or business; and
- a person of a class prescribed by regulation.

24M—When vendor bid by auctioneer permitted

Section 24M provides for the lawful taking by an auctioneer of a single vendor bid at an auction of residential land or 1 or more vendor bids at an auction of land (other than residential land) or a business provided that the conditions under which the auction is conducted permit such a bid or bids, that the members of the public attending the auction have been told of that fact, that the bid is identified by the auctioneer as a "vendor bid" and that the vendor bid is less than the reserve price.

24N—Last vendor bid must be identified if property passed in

Section 24N applies where the property is passed in and the last bid was a vendor bid. In making any statement while marketing the property after the auction, the amount of the last bid must not be stated without also stating that the bid was a vendor bid. Contravention of this section is an offence attracting a maximum penalty of $10 000. The section also requires persons advising other persons of the last bid for the purposes of publishing the bid, and persons responsible for publishing such information to disclose the bid as being a vendor bid, the maximum penalty for contravention of which is $10 000. Certain defences apply at subsection (6), namely if the person making the statement or publishing the amount was not at the auction or relied on a statement by a person who purported to know what happened at the auction.

44—Amendment of section 26—Interpretation of Part 5

The opportunity is taken to delete the outdated reference in section 26(1) to "*Corporations Law*" to "*Corporations Act 2001* of the Commonwealth".

45—Amendment of section 27—Preparation of conveyancing instrument for fee or reward

This clause increases the current maximum penalty of $2 500 to $5 000 bringing it into line with penalty levels proposed by this Bill.

46—Amendment of section 28—Preparation of conveyancing instrument by agent or related person

This clause increases the current maximum penalty of $2 500 to $5 000 bringing it into line with penalty levels proposed by this Bill.

47—Amendment of section 29—Procuring or referring conveyancing business

This clause increases the current maximum penalty of $2 500 to $5 000 bringing it into line with penalty levels proposed by this Bill.

48—Amendment of section 30—Conveyancer not to act for both parties unless authorised by regulations

This clause increases the current maximum penalty for an offence against this section from $2 500 to $5 000 bringing it into line with penalty levels proposed by this Bill.

49—Amendment of section 33—No exclusion etc of rights conferred or conditions implied or applied by Act

This clause is related to new section 24H which has the effect of applying the standard conditions for auctions (contained in the regulations) as contractual conditions. Section 33 of the principal Act renders void any purported exclusion, limitation, modification or waiver of a right conferred, or contractual condition implied (and now "or applied") by the Act. The effect of adding the words "or applied" means that now the standard conditions for auctions contained in the regulations, being contractual conditions applied by the Act, will not be able to be excluded, limited, modified or waived.

50—Amendment of section 36—False or misleading representation

This clause substitutes current section 36(1) with a broader provision that protects not only prospective purchasers (as is currently the case) but vendors as well. A person commits an offence if he or she makes a false or misleading representation for the purpose of inducing another person to sell or purchase land or a business, securing an agency or entering into any contract or arrangement in connection with such a sale or purchase. The current maximum monetary penalty is also increased—from $5 000 to $20 000.

51—Insertion of sections 37, 37A and 37B

This clause inserts sections 37, 37A and 37B.

37—Signing on behalf of agent

Section 37 provides that if a document is required or authorised by the Act to be signed by an agent, the document may be signed by a person authorised to act on behalf of the agent.

37A—Keeping of records

Section 37A deals with the keeping of records and will apply wherever Part 4 or 4A requires an agent to keep a document or record. The section requires any such documents or records to be kept at a place of business of the agent in the State for 5 years and to be readily available for inspection at all reasonable times by an authorised officer. The maximum penalty for failure to comply with the section is $5 000. Section 37A(2) allows for the keeping of documents or records in electronic form, subject to the regulations.

Subsection (3) defines ***record*** as including a register.

37B—General defence

Section 37B provides a general defence to any charge of an offence against the Act other than Part 2. The defence is available if the defendant can prove that the offence was not committed intentionally and did not result from his or her failure to take reasonable care to avoid committing the offence.

52—Amendment of section 41—Regulations

This clause inserts new paragraph (aa) at section 41(2) which is a regulation making power, enabling the making of regulations to provide for a method of service (including service by electronic transmission) of a notice or document that is required or authorised to be served under the Act.

New paragraph (ab) is also inserted, allowing the making of regulations fixing fees in respect of any matter under the Act and providing for the payment, recovery or waiver of those fees.

The clause also enables the regulations to impose a maximum penalty of $5 000 and an expiation fee of $315 enabling penalties under the regulations to be brought into line with penalty levels proposed by this Bill.

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

PUBLIC FINANCE AND AUDIT (REFUND OR RECOVERY OF SMALL AMOUNTS) AMENDMENT BILL

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

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

That this bill be now read a second time.

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

Leave granted.

The *Public Finance and Audit (Refund or Recovery of Small Amounts) Amendment Bill 2006* ('the Bill') amends the *Public Finance and Audit Act 1987* ('the Act') to establish a procedure for dealing with small overpayments or underpayments of a fee, charge or other amount that is required to be paid to a public authority or public officer under an Act.

Government agencies have for a number of years implemented a practice, of administrative convenience, involving the non-collection of small underpayments or non-refunding of small overpayments. An example of small underpayments occurs when taxpayers base the payment of a fee on forms with outdated fees from a previous financial year. In many cases the cost of pursuing these small underpayments exceeds the amount being pursued.

The Auditor-General in his report for the year ended 30 June 2003 noted the practice of administrative convenience and accepted that where the amount of money is 'small', the cost of arranging a refund for an overpayment would be greater than the refunded amount. However, the Auditor-General was of the view that unless the practice is provided for in legislation, relevant agencies are obliged to refund overpayments and to pursue underpayments.

Although some legislation authorises public officers to waive specific fees and charges if it is considered impractical to collect them, there is no discretionary authority that applies to small overpayments or underpayments under an Act more generally.

The Bill establishes that where a fee, charge or other amount that is required to be paid to a public authority or public officer under an Act is overpaid by an amount not exceeding the prescribed amount, there is no requirement for the public authority or public officer to refund the overpayment unless the person who made the overpayment requests a refund within 12 months of the date of the overpayment. The Bill establishes that where a fee, charge or other amount that is required to be paid to a public authority or public officer under an Act is underpaid by an amount not exceeding the prescribed amount, an authorised person may waive recovery of the underpayment. The Bill does not compel a public authority or public officer to accept an underpayment or waive an overpayment of less than the prescribed amount. The Bill does not apply to an expiation fee, an expiation reminder fee or a fee imposed by a court or tribunal.

I commend the Bill to the honourable members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Public Finance and Audit Act 1987*

4—Insertion of section 41AA

This clause inserts a new section 41AA into the *Public Finance and Audit Act 1987*.

The proposed section outlines the general procedure to be followed for an overpayment or underpayment, not exceeding the prescribed amount, of a fee, charge or other amount that is required to be paid under an Act to a public authority or public officer.

The proposed section provides that there is no requirement on the public authority or public officer to refund an overpayment, not exceeding the prescribed amount, of a fee, charge or other amount except where the person who made the overpayment requests a refund within 12 months of the date of the overpayment.

The proposed section enables but does not impose a requirement on the public authority or an authorised person to waive an underpayment, not exceeding the prescribed amount, of a fee, charge or other amount.

The proposed section allows the Minister responsible for the Act under which a fee, charge or other amount is payable to authorise, by instrument in writing, a specified person, or person occupying a specified position, to waive the recovery of underpayments. The proposed section allows the Minister to vary or revoke an authorisation.

The proposed section does not apply to an expiation fee, an expiation reminder fee, an amount ordered to be paid by a court or tribunal or any fee, charge or other amount that is prescribed by regulation for the purposes of the proposed section.

The proposed section defines an authorised person as a person acting in accordance with an authorisation given under the proposed section by the Minister responsible for the administration of the Act.

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

MOTOR VEHICLES (THIRD PARTY INSURANCE) AMENDMENT BILL

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

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

That this bill be now read a second time.

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

Leave granted.

This Bill amends the *Motor Vehicles Act 1959* to exclude Compulsory Third Party ("CTP") cover for acts of terrorism involving the use of a motor vehicle. Implementation of the proposal will reduce the financial risk to the State, which guarantees the CTP Fund, without reducing the scale of CTP benefits provided to South Australians as a result of ordinary motor vehicle accidents.

Under the current provisions of the *Motor Vehicles Act 1959*, there is some uncertainty as to whether CTP claims could arise as a result of a terrorism event where that event involved the use of a motor vehicle. If a very large claim or claims resulting from terrorism activity were to arise, the CTP fund solvency would be severely impaired and rectification could involve either significantly increased CTP premiums or a contribution from consolidated revenue or both (the CTP fund is guaranteed by the Crown). As the CTP benefits are defined in law there would be no flexibility to vary awards of damages to make the overall cost affordable unless an exemption from liability from terrorism claims for the scheme is legislated.

The New South Wales, Queensland and Tasmanian Governments have passed similar legislation excluding terrorism insurance cover from CTP policies in those jurisdictions.

The definition of a ***terrorist act*** in this Bill is the same as the definition in the *Terrorism (Commonwealth Powers) Act 2002*. A terrorist act means an action or threat of action where:

- it causes serious physical harm to a person, serious damage to property or causes a person's death, or endangers a person's life, or creates a serious risk to the health or safety of the public, or seriously disrupts or destroys an electronic system; and
- the action is done or a threat is made with the intention of advancing a political, religious or ideological cause; and
- the action is done or the threat is made with the intention of coercing, or influencing by intimidation the Government (either Commonwealth, State, Territory or foreign country), or intimidating the public or a section of the public.

In excluding terrorism risks from the South Australian CTP scheme, the Government is effectively limiting the scheme to the events it was intended to cover, that is, to provide protection for people injured as a result of "normal" motor vehicle accidents. The Bill removes any uncertainty as to the scope of the CTP scheme.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Motor Vehicles Act 1959*

3—Amendment of section 99—Interpretation

This clause inserts a definition of ***terrorist act*** into section 99 of the *Motor Vehicles Act 1959*. That definition is the same as in the *Terrorism (Commonwealth Powers) Act 2002*.

The clause also inserts a new subsection (3a) into section 99, which provides that, for the purposes of Part 4 and Schedule 4 of the Act, death or bodily injury will not be regarded as being caused by or as arising out of the use of a motor vehicle if the death or bodily injury is caused by a terrorist act. The effect of the amendment is to remove death or bodily injury caused by terrorist act from the Compulsory Third Party scheme.

The Hon. J.M.A. LENSINK secured the adjournment of the debate.

PHARMACY PRACTICE BILL

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

The Hon. G.E. GAGO (Minister for Environment and Conservation): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill is one of a suite of health professional registration measures which have been reviewed and reformed in line with the requirements of National Competition Policy. Unlike other health professionals legislation reviews however, pharmacy legislation was reviewed at the national level on behalf of the Council of Australian Governments.

As has been the case for the other health professionals registration Bills, this Bill has been based on the model provided by the *Medical Practice Act 2004* with variations designed to respond to the specific issues unique to pharmacy and the conclusions of the national review.

The *Pharmacy Practice Bill 2006* replaces the *Pharmacists Act 1991*. Firstly, the key features which this Bill shares with the other health practitioner registration Bills will be discussed. This will be followed by a discussion of those aspects of the Bill which are particular to pharmacy.

Consistent with the Government's commitment to protecting the health and safety of consumers, the long title of the *Pharmacy Practice Bill 2006* states that it is a Bill for an Act "to protect the health and safety of the public by providing for the registration of pharmacists, pharmacy students, pharmacies and pharmacy depots". At the outset it is made clear that the primary aim of the legislation is the protection of the health and safety of the public and that the registration of persons and premises is a key mechanism by which this is to be achieved.

The Bill establishes the Pharmacy Board of South Australia which replaces the existing Board. The composition of the Board as prescribed in the *Pharmacists Act 1991* has been largely retained. This is to ensure that the Board has expertise from the various pharmacy professional groups, including those with relatively small numbers of pharmacists such as hospital pharmacies. As with other health practitioner registration boards, the Bill provides scope for the Minister to appoint 2 members to the Board who are not eligible for appointment under any of the provisions that prescribe specific qualifications.

A provision is included in all the health practitioner registration Acts that restricts the length of time any member of the Board can serve to 3 consecutive 3 year terms. This provision is designed to ensure that the Board has the benefit of fresh thinking. It will not restrict a person's capacity to serve on the Board at a later time but it does mean that after 9 consecutive years they are required to have a break for a term of 3 years.

Standards and expectations by Government in regard to transparency and accountability are now much more explicit than in the past. The *Public Sector Management Act 1995*, as amended by the *Statutes Amendments (Honesty and Accountability in Government) Act 2003*, provides a clear framework for the operation of the public sector, including the Pharmacy Board of South Australia.

Provisions relating to conflict of interest and to protect members of the Board from personal liability for acts or omissions in the exercise or purported exercise of official powers or functions are included in the *Public Sector Management Act 1995* and will apply to the Pharmacy Board.

Consistent with Government commitments to better consumer protection and information, this Bill increases the transparency and accountability of the Board by ensuring information pertaining to pharmacy services providers is accessible to the public.

New to the *Pharmacy Practice Bill 2006* is the registration of students. It requires that students undertaking a course of study in pharmacy be registered with the Board before they are permitted to provide pharmacy services as part of their studies. This provision ensures that students of pharmacy are subject to the same requirements in relation to professional standards, codes of conduct and medical fitness as registered pharmacists while working in a practice setting in South Australia.

The Board will have responsibility for developing codes of conduct for pharmacy services providers that will need to be approved by the Minister for Health to ensure that they do not conflict with competition policy commitments. To assist the Board in its role of monitoring compliance with the standards, the Bill introduces a requirement for pharmacy services providers to notify the Board of the names of the pharmacists through the instrumentality of whom they are providing pharmacy services, and to report to the Board any cases of potential unprofessional conduct or medical unfitness of these pharmacists. The Board may also make a report to the Minister for Health about any concerns it may have arising out of the information provided to the Board.

Similar to the *Medical Practice Act 2004*, this Bill deals with the medical fitness of registered persons and applicants for registration and requires that when making a determination of a person's fitness to provide pharmacy services, regard is given to the person's ability to provide these services personally without endangering a person's health or safety. This can include consideration of the mental fitness of a pharmacist or pharmacy student.

While the *Pharmacy Practice Bill 2006* shares the same principles and structure as the other health practitioner registration Bills there are some matters which are unique to pharmacy and I will now discuss these.

There are 2 central definitions provided for the regulation of pharmacy practice. The term "pharmacy service" is used when the broad practice of pharmacy is considered, for example, when discussing premises standards or restrictions on the number of pharmacies that may be operated by a natural person or corporate pharmacy services provider. This term includes the supply of goods and the provision of advice provided in the course of practice by a pharmacist.

The term "restricted pharmacy service" is defined as dispensing drugs or medicines on the prescription of a medical practitioner, dentist, veterinary surgeon or other person authorised to prescribe drugs or medicines. Other services may be declared by the regulations to be restricted pharmacy services. This narrower term is used to define what services should only be provided by or through the instrumentality of a competent pharmacist.

The National Competition Review of Pharmacy recommended that States and Territories should implement competency-based mechanisms as part of re-registration processes for all registered pharmacists.

In 2003 the Pharmacy Board of South Australia introduced a system of continuing professional development for pharmacists through the issuing of annual practising certificates to those pharmacists who participate in the Board's continuing professional development program. This program aims to ensure a competent pharmacy profession by assisting pharmacists to maintain and improve their ability to provide quality pharmacy services to the community.

The Bill allows this program to continue by requiring pharmacists who provide restricted pharmacy services to have gained a practising certificate. Pharmacists who do not gain such a certificate will only be permitted to provide such a service through the instrumentality of pharmacists who do have practising certificates.

One of the significant differences between the provisions of the Bill and other health practitioner legislation is the retention of restrictions on who may operate pharmacies.

The Bill provides strict restrictions on who is permitted to provide restricted pharmacy services and what will be taken to be providing restricted pharmacy services. Essentially the Bill allows pharmacists, companies that meet certain prescribed requirements and friendly societies that meet the criteria set out in the Bill to provide restricted pharmacy services. Companies grandfathered from the current Act that have provided pharmacy services since 1 August 1942 and continue to do so, have also been permitted to continue to provide restricted pharmacy services, although there will be restrictions in place which will prevent a grandfathered company from continuing to operate under certain circumstances—for example, if shares in the company are issued or transferred to a person who is not a pharmacist.

A provision has also been included in the Bill to allow for a 12-month transition in the event of the death of a pharmacist, a pharmacist becoming bankrupt or insolvent or a corporate pharmacy services provider being wound up or placed under administration or receivership.

There is also provision to prescribe by regulation the circumstances in which an unqualified person may provide restricted pharmacy services. This provision will be used to prescribe the hospitals that have on-site pharmacy departments servicing hospital patients. This will include the public hospitals and health services that currently dispense medicines on-site, and allow the Board to approve private hospitals to do the same. This is consistent with the provisions of the current Act and regulations under which a private hospital is permitted to operate its own on-site pharmacy to provide services to the patients of that hospital. It is not envisaged that any such regulation would allow hospital pharmacies to compete with community pharmacies, but will rather enable such hospitals to provide pharmacy services to their own patients.

It is this Government's policy that the public interest is best served by restricting the provision of pharmacy services to those operated by pharmacists or by corporate pharmacy services providers as defined in clause 3(5) of the Bill. This is intended to exclude non-pharmacists and organisations such as supermarkets from owning pharmacies. Clause 3(4)(a) of the Bill provides a regulation-making power to prescribe arrangements between a pharmacist and a non-pharmacist, including a supermarket, which may have been made for the purpose of avoiding the pharmacist-only ownership rules. Regulations could be made to prevent arrangements involving the use of voucher schemes and the like that provide an incentive or benefit and create an impression that the 2 businesses are connected. In addition, the Bill will enable regulations to be made to prohibit or regulate the use of certain names in connection with pharmacies or pharmacy businesses.

The Bill retains restrictions on the number of pharmacies from which individual operators may provide pharmacy services. An individual pharmacist will be able to provide pharmacy services from 6 locations, an increase from the cap of 4 under the current Act. Friendly Society Medical Association, a South Australian based friendly society which operates pharmacies under the trading name of National Pharmacies will be permitted to increase the number of pharmacies it may operate in South Australia from 31 to 40. This increase will allow members of this friendly society to be better serviced through access to more pharmacy locations.

Other friendly societies that meet the strict criteria set out in clause 3(5)(b) of the Bill will also be permitted to operate pharmacies in South Australia, with a new cap permitting 9 such pharmacies in total. This new cap effectively limits the total number of friendly society pharmacies in the South Australian market to 49, of which 40 can only be operated by FSMA. This figure was chosen as it provides the equivalent proportion of friendly society pharmacies in the market as was in place at the time that the limit on friendly society pharmacies was first introduced into South Australian legislation.

The Government believes this position is a reasonable compromise which retains some restrictions, while allowing increased scope for competition within the South Australian pharmacy market.

The Bill retains requirements for annual registration of pharmacy premises. This is to ensure that there is a proactive mechanism in place to allow the Pharmacy Board to protect public health and safety by dealing with issues such as the safe and secure storage and display of medicines. The provision in the Bill has been structured so that premises registration requirements can be prescribed by the regulations and by the Board. In addition, provision has been included to prevent the Board from registering, or renewing the registration of, premises as a pharmacy unless it is satisfied that members of the public cannot directly access the premises from within the premises of a supermarket. "Supermarket" will be defined in the regulations to provide flexibility around updating the definition.

An explicit provision for registration of pharmacy depots has been included in the Bill. Pharmacy depots are premises located in rural and remote communities where prescriptions may be left by consumers for pick up and dispensing by a pharmacy services provider. The prescription is then dispensed at the pharmacy services provider's registered premises and the dispensed medicines delivered to the pharmacy depot for collection.

These premises are therefore handling prescriptions and dispensed medicines which must be stored securely and under appropriate conditions, such as controlled temperatures. The Pharmacy Board currently registers pharmacy depots through the provisions in the regulations. It was considered more appropriate however to establish a system of registration in the Bill.

The Bill includes a provision which prohibits certain other businesses from being carried on at a pharmacy. This replaces the current provisions of the *Pharmacists Regulations 2006* which require businesses not commonly associated with the practice of pharmacy to be approved by the Board. In line with National Competition Policy principles, the requirement for Board approval has been removed and certain businesses have been prescribed. For hygiene reasons, the sale of animals and the preparation of food or beverages have been prohibited. The sale of tobacco and alcohol have also been prohibited as it is not appropriate for health professionals to be associated with the sale of products which cause the community harm. This provision also allows other business activities to be prescribed by the regulations should any other activities be considered unsuitable in the future.

The Pharmacy Practice Bill 2006 will bring pharmacy into line with the other registered health professions in many areas. It will ensure that the Pharmacy Board operates in a transparent and accountable manner and that complaints from the public are dealt with in an appropriate way.

The Government believes that the Bill provides an improved system for ensuring the health and safety of the public in regulating pharmacy practice in South Australia while recognising the unique position that pharmacists play in the provision of health services to the community.

I commend this Bill to all members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines key terms used in the measure.

4—Medical fitness to provide pharmacy services

This clause requires a person or body making a determination as to a person's medical fitness to provide pharmacy services to have regard to the question of whether the person is able to provide pharmacy services personally to another person without endangering the other person's health or safety.

Part 2—Pharmacy Board of South Australia

Division 1—Establishment of Board

5—Establishment of Board

This clause establishes the Pharmacy Board of South Australia as a body corporate with perpetual succession, a common seal, the capacity to litigate in its corporate name and all the powers of a natural person capable of being exercised by a body corporate.

Division 2—Board's membership

6—Composition of Board

This clause provides for the Board to consist of 9 members appointed by the Governor (6 pharmacists, 1 legal practitioner and 2 other members). It also provides for the appointment of deputy members.

7—Terms and conditions of membership

This clause provides for members of the Board to be appointed for a term not exceeding 3 years and to be eligible for re-appointment on expiry of a term of appointment. However, a member of the Board may not hold office for consecutive terms that exceed 9 years in total. The clause sets out the circumstances in which a member's office becomes vacant and the grounds on which the Governor may remove a member from office. It also allows members whose terms have expired, or who have resigned, to continue to act as members to continue and complete part-heard proceedings under Part 4.

8—Presiding member and deputy

This clause requires the Minister, after consultation with the Board, to appoint a pharmacist member of the Board to be the presiding member of the Board, and another pharmacist member to be the deputy presiding member.

9—Vacancies or defects in appointment of members

This clause ensures acts and proceedings of the Board are not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

10—Remuneration

This clause entitles a member of the Board to remuneration, allowances and expenses determined by the Governor.

Division 3—Registrar and staff of Board

11—Registrar of Board

This clause provides for the appointment of a Registrar by the Board on terms and conditions determined by the Board.

12—Other staff of Board

This clause provides for the Board to have such other staff as it thinks necessary for the proper performance of its functions.

Division 4—General functions and powers

13—Functions of Board

This clause sets out the functions of the Board and requires it to perform its functions with the object of protecting the health and safety of the public by achieving and maintaining high professional standards both of competence and conduct in the provision of pharmacy services in South Australia.

14—Committees

This clause empowers the Board to establish committees to advise the Board or the Registrar, or to assist the Board to carry out its functions.

15—Delegations

This clause empowers the Board to delegate its functions or powers to a member of the Board, the Registrar, an employee of the Board or a committee established by the Board.

Division 5—Board's procedures

16—Board's procedures

This clause deals with matters relating to the Board's procedures such as the quorum at meetings, the chairing of meetings, voting rights, the holding of conferences by telephone and other electronic means and the keeping of minutes.

17—Conflict of interest etc under Public Sector Management Act

This clause provides that a member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector Management Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with pharmacists generally or a substantial section of pharmacists in this State.

18—Powers of Board in relation to witnesses etc

This clause sets out the powers of the Board to summons witnesses and require the production of documents and other evidence in proceedings before the Board.

19—Principles governing proceedings

This clause provides that the Board is not bound by the rules of evidence and requires it to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms. It requires the Board to keep all parties to proceedings before the Board properly informed about the progress and outcome of the proceedings.

20—Representation at proceedings before Board

This clause entitles a party to proceedings before the Board to be represented at the hearing of those proceedings.

21—Costs

This clause empowers the Board to award costs against a party to proceedings before the Board and provides for the taxation of costs by a Master of the District Court in the event that a party is dissatisfied with the amount of costs awarded by the Board.

Division 6—Accounts, audit and annual report

22—Accounts and audit

This clause requires the Board to keep proper accounting records of its financial affairs and have annual statements of accounts prepared in respect of each financial year. It requires the accounts to be audited annually by an auditor approved by the Auditor-General and appointed by the Board, and empowers the Auditor-General to audit the Board's accounts at any time.

23—Annual report

This clause requires the Board to prepare an annual report for the Minister and requires the Minister to table the report in Parliament.

Part 3—Registration and practice

Division 1—Registers

24—Registers

This clause requires the Registrar to keep certain registers and specifies the information required to be included in each register. It also requires the registers to be kept available for inspection by the public and permits access to be made available by electronic means. The clause requires registered persons to notify the Registrar of a change of name or nominated contact address within 1 month of the change. It also requires a person who ceases to carry on a pharmacy business at a pharmacy to notify the Registrar within 1 month after the cessation. A maximum penalty of $250 is fixed for non-compliance.

25—Authority conferred by registration

This clause sets out the kind of pharmacy services that registration on each particular register authorises a registered person to provide. To provide restricted pharmacy services personally a pharmacist must hold a current practising certificate.

Division 2—Registration of pharmacists and pharmacy students

26—Registration of natural persons as pharmacists

This clause provides for full and limited registration of natural persons on the register of pharmacists.

27—Registration of pharmacy students

This clause requires persons to register as pharmacy students before undertaking a course of study that provides qualifications for registration on the register of pharmacists, or before providing pharmacy services as part of a course of study related to pharmacy being undertaken outside the State, and provides for full or limited registration of pharmacy students.

28—Application for registration and provisional registration

This clause deals with applications for registration. It empowers the Board to require applicants to submit medical reports or other evidence of medical fitness to provide pharmacy services or to obtain additional qualifications or experience before determining an application. It also empowers the Registrar to grant provisional registration if it appears likely that the Board will grant an application for registration.

29—Removal from register

This clause requires the Registrar to remove a person from a register on application by the person or in certain specified circumstances (for example, suspension or cancellation of the person's registration under this measure).

30—Reinstatement on register

This clause makes provision for reinstatement of a person on a register. It empowers the Board to require applicants for reinstatement to submit medical reports or other evidence of medical fitness to provide pharmacy services or to obtain additional qualifications or experience before determining an application.

31—Fees and returns

This clause deals with the payment of registration, reinstatement and annual fees, and requires registered persons to furnish the Board with an annual return in relation to the provision of pharmacy services, compliance with conditions of practising certificates and other matters relevant to their registration under the measure. It empowers the Board to remove from a register a person who fails to pay the annual fee or furnish the required return.

Division 3—Practising certificates

32—Issue of practising certificate

This clause requires the Board to issue practising certificates to pharmacists.

33—Conditions of practising certificate

This clause provides for a practising certificate to be issued subject to conditions, if the practice rules so require—

(a) requiring the holder of the certificate to undertake or obtain further education, training and experience required or determined under the rules; and

(b) limiting the kind of pharmacy services that the holder of the certificate may provide until that further education, training and experience is completed or obtained.

The clause also provides that if an applicant for a practising certificate has not held a practising certificate during the period of 12 months immediately preceding the making of the application, or the Board is satisfied that the applicant has not complied with the conditions of a practising certificate held by the applicant during that period, the Board may, in accordance with the practice rules, do either or both the following:

(a) before issuing a practising certificate, require the applicant to undertake or obtain further education, training and experience specified by the Board;

(b) impose 1 or more of the following additional conditions on the applicant's practising certificate:

(i) a condition restricting the places and times at which the applicant may provide pharmacy services;

(ii) a condition limiting the kind of pharmacy services that the applicant may provide;

(iii) a condition requiring that the applicant be supervised in the provision of pharmacy services by a particular person or by a person of a particular class;

(iv) such other conditions as the Board thinks fit.

34—Duration of practising certificate

This clause provides that a practising certificate remains in force from the date specified in it until the next date for payment of the annual fee fixed by the Board, unless sooner cancelled.

35—Application for practising certificate

This clause deals with applications for practising certificates.

36—Non-compliance with conditions of practising certificate

This clause provides that if a pharmacist fails to satisfy the Board of compliance with the conditions of his or her practising certificate, the Board may impose further conditions on the certificate or cancel the certificate and disqualify the pharmacist from holding a practising certificate.

Division 4—Pharmacies and pharmacy depots

37—Registration of premises as pharmacy

This clause makes it an offence for a person to provide restricted pharmacy services except at premises registered as a pharmacy and fixes a maximum penalty of $50 000.

38—Restriction on number of pharmacies

This clause makes it an offence for Friendly Society Medical Association Limited (FSMA) to provide pharmacy services at more than 40 pharmacies in South Australia. A person other than a friendly society must not provide pharmacy services at more than 6 pharmacies, and a friendly society other than FSMA must not commence to provide pharmacy services at a pharmacy if friendly societies other than FSMA already provide pharmacy services at 9 pharmacies, or if another number is prescribed, that number. The maximum penalty for a breach of these restrictions is $50 000.

39—Supervision of pharmacies by pharmacists

This clause requires a person who carries on a pharmacy business to ensure that a pharmacist is in attendance and available for consultation by members of the public at each pharmacy at which the business is carried on while the pharmacy is open to the public unless restricted pharmacy services or prescribed pharmacy services are not offered to the public and access to those areas of the pharmacy used for the provision of such services is physically prevented. A maximum penalty of $50 000 is fixed for non-compliance.

40—Certain other businesses not to be carried on at pharmacy

This clause makes it an offence to carry on certain kinds of businesses at a pharmacy. The maximum penalty fixed is $50 000.

41—Registration of premises as pharmacy depot

This clause makes it an offence for a person to use premises outside Metropolitan Adelaide as a pharmacy depot unless the premises are registered as a pharmacy depot and fixes a maximum penalty of $50 000.

Division 5—Special provisions relating to pharmacy services providers

42—Information to be given to Board by pharmacy services providers

This clause requires a pharmacy services provider to notify the Board of the provider's name and address, the names and addresses of the pharmacists through the instrumentality of whom the provider is providing pharmacy services and other information. It also requires the provider to notify the Board of any change in particulars required to be given to the Board and makes it an offence to contravene or fail to comply with the clause. A maximum penalty of $10 000 is fixed. The Board is required to keep a record of information provided to the Board under this clause available for inspection at the office of the Board and may make it available to the public electronically.

Division 6—Restrictions relating to provision of pharmacy services

43—Only qualified persons and corporate pharmacy services providers able to provide restricted pharmacy services

Subclause (1) makes it an offence for a person to provide a restricted pharmacy service unless, in the case of a natural person, he or she is a qualified person and provides the service personally or through the instrumentality of another natural person who is a qualified person or, in the case of a body corporate, the body corporate is a corporate pharmacy services provider and the body corporate provides the service through the instrumentality of a natural person who is a qualified person. A maximum penalty of $50 000 or imprisonment for 6 months is fixed for a contravention. A qualified person is either—

- a pharmacist who holds a current practising certificate and is authorised by or under this measure to provide a restricted pharmacy service; or
- a person authorised by or under other legislation to provide a restricted pharmacy service.

However, subclauses (2) and (3) provide that subclause (1) does not apply in relation to—

- a restricted pharmacy service provided by a natural person who is an unqualified person if the person carried on a pharmacy business before 20 April 1972 and has continued to do so since that date and the service is provided through the instrumentality of a natural person who is a qualified person; or
- a restricted pharmacy service provided by the personal representative of a deceased pharmacist or person referred to above within 1 year (or such longer period as the Board may allow) after the date of death if the service is provided through the instrumentality of a natural person who is a qualified person; or
- a restricted pharmacy service by the official receiver of a bankrupt or insolvent pharmacist if the service provided for not more than 1 year (or such longer period as the Board may allow) and is provided through the instrumentality of a natural person who is a qualified person; or
- a restricted pharmacy service provided by a person vested by law with power to administer the affairs of a corporate pharmacy services provider that is being wound up or is under administration, receivership or official management if the service is provided for not more than 1 year (or such longer period as the Board may allow) and is provided through the instrumentality of a natural person who is a qualified person; or
- a restricted pharmacy service provided by an unqualified person in prescribed circumstances; or
- a restricted pharmacy service provided by an unqualified person pursuant to an exemption.

The Governor may grant an exemption by proclamation if of the opinion that good reason exists for doing so in the particular circumstances of a case. The clause makes it an offence punishable by a maximum fine of $50 000 to contravene or fail to comply with a condition of an exemption.

44—Illegal holding out as registered person

This clause makes it an offence for a person to hold himself or herself out as a registered person of a particular class or permit another person to do so unless registered on the appropriate register. It also makes it an offence for a person to hold out another as a registered person of a particular class unless the other person is registered on the appropriate register. In both cases a maximum penalty of $50 000 or imprisonment for 6 months is fixed.

45—Illegal holding out concerning limitations or conditions

This clause makes it an offence for a person whose registration is restricted, limited or conditional to hold himself or herself out, or permit another person to hold him or her out, as having registration that is unrestricted or not subject to a limitation or condition. It also makes it an offence for a person to hold out another whose registration is restricted, limited or conditional as having registration that is unrestricted or not subject to a limitation or condition. In each case a maximum penalty of $50 000 or imprisonment for 6 months is fixed.

46—Use of certain titles or descriptions prohibited

This clause creates a number of offences prohibiting a person who is not appropriately registered from using certain words or their derivatives to describe himself or herself or services

that they provide, or in the course of advertising or promoting services that they provide. It is also an offence for a person to use the word "pharmacy" in the course of carrying on a business to describe premises that are not registered as a pharmacy or pharmacy depot. In each case a maximum penalty of $50 000 is fixed.

Part 4—Investigations and proceedings

Division 1—Preliminary

47—Interpretation

This clause provides that in this Part the terms ***occupier of a position of authority***, ***pharmacy services provider*** and ***registered person*** includes a person who is not but who was, at the relevant time, an occupier of a position of authority, a pharmacy services provider, or a registered person.

48—Cause for disciplinary action

This clause specifies what constitutes proper cause for disciplinary action against a registered person, a pharmacy services provider or a person occupying a position of authority in a corporate pharmacy services provider.

Division 2—Investigations

49—Powers of inspectors

This clause sets out the powers of inspectors to investigate certain matters.

50—Offence to hinder etc inspector

This clause makes it an offence for a person to hinder an inspector, use certain language to an inspector, refuse or fail to comply with a requirement of an inspector, refuse or fail to answer questions to the best of the person's knowledge, information or belief, or falsely represent that the person is an inspector. A maximum penalty of $10 000 is fixed.

Division 3—Proceedings before Board

51—Obligation to report medical unfitness or unprofessional conduct of pharmacist or pharmacy student

This clause requires certain classes of persons to report to the Board if of the opinion that a pharmacist or pharmacy student is or may be medically unfit to provide pharmacy services. A maximum penalty of $5 000 is fixed for non-compliance. It also requires persons who provide pharmacy services to report to the Board if of the opinion that a pharmacist or pharmacy student through whom the person provides pharmacy services has engaged in unprofessional conduct. A maximum penalty of $10 000 is fixed for non-compliance. The Board must cause reports to be investigated.

52—Medical fitness of pharmacist or pharmacy student

This clause empowers the Board to suspend the registration of a pharmacist or pharmacy student or impose registration conditions restricting practice rights and requiring the person to undergo counselling or treatment, or to enter into any other undertaking if, on application by certain persons or after an investigation under clause 51, and after due inquiry, the Board is satisfied that the pharmacist or pharmacy student is medically unfit to provide pharmacy services and that it is desirable in the public interest to take such action.

53—Inquiries by Board as to matters constituting grounds for disciplinary action

This clause requires the Board to inquire into a complaint relating to matters alleged to constitute grounds for disciplinary action against a person unless the Board considers the complaint to be frivolous or vexatious. If after conducting an inquiry, the Board is satisfied that there is proper cause for taking disciplinary action, the Board can censure the person, order the person to pay a fine of up to $10 000 or prohibit the person from carrying on business as a pharmacy services provider or from occupying a position of authority in a corporate pharmacy services provider. If the person is registered, the Board may impose conditions on the person's right to provide pharmacy services, suspend the person's registration for a period not exceeding 1 year, cancel the person's registration, or disqualify the person from being registered. If a person fails to pay a fine imposed by the Board, the Board may remove them from the appropriate register.

54—Contravention of prohibition order

This clause makes it an offence to contravene a prohibition order made by the Board or to contravene or fail to comply with a condition imposed by the Board. A maximum penalty of $75 000 or imprisonment for 6 months is fixed.

55—Register of prohibition orders

This clause requires the Registrar to keep a register of prohibition orders made by the Board. The register must be kept available for inspection at the office of the Registrar and may be made available to the public by electronic means.

56—Variation or revocation of conditions imposed by Board

This clause empowers the Board, on application by a registered person, to vary or revoke a condition imposed by the Board on his or her registration.

57—Constitution of Board for purpose of proceedings

This clause sets out how the Board is to be constituted for the purpose of hearing and determining proceedings under Part 4.

58—Provisions as to proceedings before Board

This clause deals with the conduct of proceedings by the Board under Part 4. It empowers the Board to make an interim order suspending a person's registration or imposing registration conditions restricting practice rights if in the opinion of the Board, it is desirable to do so in the public interest.

Part 5—Appeals

59—Right of appeal to District Court

This clause provides a right of appeal to the District Court against certain acts and decisions of the Board.

60—Operation of order may be suspended

This clause empowers the Board or the Court to suspend the operation of an order made by the Board where an appeal is instituted or intended to be instituted.

61—Variation or revocation of conditions imposed by Court

This clause empowers the District Court, on application by a registered person, to vary or revoke a condition imposed by the Court on his or her registration.

Part 6—Miscellaneous

62—Offence to contravene conditions of registration

This clause makes it an offence for a person to contravene or fail to comply with a condition of his or her registration and fixes a maximum penalty of $75 000 or imprisonment for 6 months.

63—Registered person etc must declare interest in prescribed business

This clause requires a registered person or prescribed relative of a registered person who has an interest in a prescribed business to give the Board notice of the interest and of any change in such an interest. It fixes a maximum penalty of $20 000 for non-compliance. It also prohibits a registered person from referring a customer to, or recommending that a customer use, a health service provided by the business and from recommending that a customer use, a health product manufactured, sold or supplied by the business unless the registered person has informed the customer in writing of his or her interest or that of his or her prescribed relative. A maximum penalty of $20 000 is fixed for a contravention. However, it is a defence to a charge of an offence or unprofessional conduct for a registered person to prove that he or she did not know and could not reasonably have been expected to know that a prescribed relative had an interest in the prescribed business to which the referral or recommendation that is the subject of the proceedings relates.

64—Improper directions to pharmacists or pharmacy students

This clause makes it an offence for a person who provides pharmacy services through the instrumentality of a pharmacist or pharmacy student to direct or pressure the pharmacist or student to engage in unprofessional conduct. It also makes it an offence for a person occupying a position of authority in a corporate pharmacy services provider to direct or pressure a pharmacist or pharmacy student through whom the provider provides pharmacy services to engage in unprofessional conduct. The clause also makes it an offence for pharmacy banner company, a person who has a right to exercise significant control over a pharmacy business or a person who supplies drugs or medicines to pharmacists to direct or pressure a pharmacist to engage in unprofessional conduct. In each case a maximum penalty of $75 000 is fixed.

65—Procurement of registration by fraud

This clause makes it an offence for a person to fraudulently or dishonestly procure registration or reinstatement of registration (whether for himself or herself or another person)

and fixes a maximum penalty of $20 000 or imprisonment for 6 months.

66—Statutory declarations

This clause empowers the Board to require information provided to the Board to be verified by statutory declaration.

67—False or misleading statement

This clause makes it an offence for a person to make a false or misleading statement in a material particular (whether by reason of inclusion or omission of any particular) in information provided under the measure and fixes a maximum penalty of $20 000.

68—Registered person must report medical unfitness to Board

This clause requires a registered person who becomes aware that he or she is or may be medically unfit to provide pharmacy services to immediately give written notice of that fact of the Board and fixes a maximum penalty of $10 000 for non-compliance.

69—Report to Board of cessation of status as student

This clause requires the person in charge of an educational institution to notify the Board that a pharmacy student has ceased to be enrolled at that institution in a course of study providing qualifications for registration on the register of pharmacists. A maximum penalty of $5 000 is fixed for non-compliance. It also requires a person registered as a pharmacy student who completes, or ceases to be enrolled in, the course of study that formed the basis for that registration to give written notice of that fact to the Board. A maximum penalty of $1 250 is fixed for non-compliance.

70—Registered persons and pharmacy services providers to be indemnified against loss

This clause prohibits registered persons and pharmacy services providers from providing pharmacy services unless insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person or provider in connection with the provision of such services. It fixes a maximum penalty of $10 000 and empowers the Board to exempt persons or classes of persons from the requirement to be insured or indemnified.

71—Information relating to claim against registered person or pharmacy services provider to be provided

This clause requires a person against whom a claim is made for alleged negligence committed by a registered person in the course of providing pharmacy services to provide the Board with prescribed information relating to the claim. It also requires a pharmacy services provider to provide the Board with prescribed information relating to a claim made against the provider for alleged negligence by the provider in connection with the provision of pharmacy services. The clause fixes a maximum penalty of $10 000 for non-compliance.

72—Victimisation

This clause prohibits a person from victimising another person (the victim) on the ground, or substantially on the ground, that the victim has disclosed or intends to disclose information, or has made or intends to make an allegation, that has given rise or could give rise to proceedings against the person under this measure. Victimisation is the causing of detriment including injury, damage or loss, intimidation or harassment, threats of reprisals, or discrimination, disadvantage or adverse treatment in relation to the victim's employment or business. An act of victimisation may be dealt with as a tort or as if it were an act of victimisation under the *Equal Opportunity Act 1984*.

73—Self-incrimination

This clause provides that if a person is required to provide information or to produce a document, record or equipment under this measure and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this measure or any other Act relating to the provision of false or misleading information.

74—Punishment of conduct that constitutes an offence

This clause provides that if conduct constitutes both an offence against the measure and grounds for disciplinary action under the measure, the taking of disciplinary action is not a bar to conviction and punishment for the offence, and conviction and punishment for the offence is not a bar to disciplinary action.

75—Vicarious liability for offences

This clause provides that if a corporate pharmacy services provider or other body corporate is guilty of an offence against this measure, each person occupying a position of authority in the provider or body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the principal offence.

76—Application of fines

This clause provides that fines imposed for offences against the measure must be paid to the Board.

77—Board may require medical examination or report

This clause empowers the Board to require a registered person or a person applying for registration or reinstatement of registration to submit to an examination by a health professional or provide a medical report from a health professional, including an examination or report that will require the person to undergo a medically invasive procedure. If the person fails to comply the Board can suspend the person's registration until further order.

78—Ministerial review of decisions relating to courses

This clause gives a provider of a course of education or training the right to apply to the Minister for a review of a decision of the Board to refuse to approve the course for the purposes of the measure or to revoke the approval of a course.

79—Confidentiality

This clause makes it an offence for a person engaged or formerly engaged in the administration of the measure or the repealed Act (the *Pharmacists Act 1991*) to divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

(a) as required or authorised by or under this measure or any other Act or law; or

(b) with the consent of the person to whom the information relates; or

(c) in connection with the administration of this measure or the repealed Act; or

(d) to an authority responsible under the law of a place outside this State for the registration or licensing of persons who provide pharmacy services, where the information is required for the proper administration of that law; or

(e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

However, the clause does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates. Personal information that has been disclosed for a particular purpose must not be used for any other purpose by the person to whom it was disclosed or any other person who gains access to the information (whether properly or improperly and directly or indirectly) as a result of that disclosure. A maximum penalty of $10 000 is fixed for a contravention of the clause.

80—Service

This clause sets out the methods by which notices and other documents may be served.

81—Evidentiary provisions

This clause provides evidentiary aids for the purposes of proceedings for offences and for proceedings under Part 4.

82—Regulations

This clause empowers the Governor to make regulations.

Schedule 1—Repeal and transitional provisions

This Schedule repeals the *Pharmacists Act 1991* and makes transitional provisions with respect to the Board and registrations.

The Hon. J.M.A. LENSINK secured the adjournment of the debate.

CRIMINAL LAW (SENTENCING) (DANGEROUS OFFENDERS) AMENDMENT BILL

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

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

That this bill be now read a second time.

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

Leave granted.

In its successful 2006 election campaign, the Rann Labor Government promised to continue its popular and successful law and order policies. The Bill before the House proposes the enactment of a number of those promises made under the heading of *Justice for Victims*. In so doing, it continues the Rann Labor tradition of introducing tough new measures to bring victims to the forefront of criminal justice policy and to combat the activities of those who would threaten society and members of the public.

The Bill requires sentencing courts to give primary consideration to the need to protect the community from an offender's criminal acts. The Bill introduces minimum non-parole periods for major indictable offences resulting in death or total permanent incapacity of a victim. The Bill proposes the detention of dangerous sexual and violent prisoners in custody, by removing non-parole periods for prisoners sentenced to life, where there is little prospect of rehabilitation, and where the protection of the community requires their continued incarceration. These measures are necessary to protect the South Australian public, whether as individuals or as a whole, from dangerous criminals. In proposing this Bill, the Rann Labor Government is keeping its commitments to the South Australian public. It should command the support of all parties and both Houses.

The first promise addressed is this:

· *The Sentencing Act will be amended to require sentencing courts to give primary consideration to the need to protect the community from an offender's criminal acts.*

Section 10 of the *Criminal Law (Sentencing) Act* contains a number of primary policies of the criminal law and, therefore, of sentencing. The current list includes carefully worded policies about home invasions, arson and bushfires and sexual predators. All of these deal with well documented public concerns. The Government proposes to introduce an additional policy at the head of the list. A new subsection is to be inserted that provides that a primary policy of the criminal law is to protect the safety of the community. The Government is of the opinion that this is no mere slogan, but a statement of a principal policy of the Government, the Parliament and the public of South Australia about the difficult task of balancing competing considerations in the difficult task of criminal disposition.

The second promise addressed is this:

· *The Rann Government will introduce minimum non-parole periods for major indictable offences resulting in death or total permanent incapacity of a victim. In these cases, the offender should be required by the court to serve four fifths of his or her head sentence, unless the defence can establish that there are truly exceptional circumstances that justify a lower non-parole period. In the case of mandatory life sentence for murder, the offender should be required to serve a minimum of 20 years, unless the defence can demonstrate truly exceptional circumstances that justify a lower non-parole period.*

This policy is to be found in clauses 5 and 8 of the Bill. The only addition to the stated policy is that the phrase "total incapacity" has a defined meaning. That meaning is that the victim is permanently physically or mentally incapable of independent function.

In addition, it has been necessary to deal with a technical issue in this part of the Bill. Section 18A of the *Criminal Law (Sentencing) Act* is an important and effective sentencing tool. It enables a sentencing court to impose a "global sentence" instead of having to reach a concluded and final sentence on each of the counts on which the offender has been convicted. Instead, the court reaches "indicative sentences" on each of the counts and, in the course of doing so, the court will decide whether those indicative sentences should operate concurrently with or cumulatively upon the other indicative sentences. By taking such an approach, the appropriate aggregate sentence to be imposed under the *Criminal Law (Sentencing) Act*, s 18A, can be determined (*R v Sevo* [2006] SASC 124). Where none of the offences the subject of a potential s 18A order are not subject to a prescribed mandatory minimum non-parole period, or all of them are, then no problem arises. But what if some are and some are not? The answer given by proposed s 32(5a) is that the non-parole period fixed in relation to the global sentence in such a case should be at least the length of the prescribed mandatory minimum non-parole period.

The third promise addressed is this:

· *Special legislation will be enacted to detain dangerous sexual and violent prisoners in custody, and to remove non-parole periods for prisoners sentenced to life, where there is little prospect of rehabilitation, and where the protection of the community requires their continued incarceration. The Director of Public Prosecutions or the Attorney-General will have the right to seek an order of the court to detain dangerous prisoners to ensure the adequate protection of the community.*

This policy is to be found in clause 9 of the Bill, proposing a new Division 3 of Part 3 of the Act dealing with Dangerous Offenders. It is proposed that the Attorney-General have the power to apply to the Full Court to negate the non-parole period of a person convicted of and sentenced for the crime of murder in prescribed circumstances. The effect of a successful application will be that the head sentence will remain but there will be no non-parole period applicable, and so it will be as if the original sentencing court had declined to set a non-parole period under section 32 of the Act. The application will be made and considered in the period 12 months before the offender becomes eligible to apply for release on parole.

Proposed s 33A(8) sets out a list of criteria against which the Court must measure the offender's circumstances. The paramount consideration of the Court in considering the case must be the protection of the safety of the community (whether as individuals or in general) (section 33A(7)) and the applicable test is whether the offender still poses a serious danger to the community or a member of the community (section 33A(9)). In determining the application, the Court may (but need not) be assisted by the expertise of the Parole Board in determining questions of this nature. It may be noted that the Parole Board brings to the question the experience and perspectives of a very senior legal practitioner, a psychiatrist, a person who has extensive knowledge of, and experience in, criminology, sociology or any other related science, a person who has extensive knowledge of, or experience in, matters related to the impact of crime on victims and the needs of victims of crime in relation to the criminal justice system, a former police officer; and a person of Aboriginal descent. It is well placed in expertise and experience to advise the Court.

The policy of the Government is that murderous offenders, guilty of particularly heinous crimes of that kind, who show little signs of remorse or rehabilitation, who may have defied all efforts to show them ways in which to reintegrate into the community as responsible and law abiding citizens, should not just be entitled as of right to become eligible for parole, but should be subject to rigorous assessment as to their suitability to even reach the point of eligibility.

In addition, on the advice of the Solicitor-General, the Government is taking this opportunity to clarify existing legislation. A person convicted of a wide range of sexual offences may be subject to an application by the Attorney-General for indefinite detention under section 23 of the Act. Such an application may be made at the time of sentence or at any other time while the person remains in prison. The application at time of sentence or early in the sentence may be refused for any number of good reasons. But once the prisoner has begun serving the finite sentence, things may change. His mental condition may deteriorate. He may refuse medication or other forms of treatment. The position may become such that another application is desirable, even certain to succeed, because of any one of a number of supervening events. But the fact that there was the earlier unsuccessful application may stand in the way. To prevent that problem arising, the Government proposes that clause 7 amend section 23 of the Bill, inserting a new section 23(2b) to ensure that an additional application may be made. In order to prevent the possibility of repetitive applications, a further application may only be made in the period 12 months before the prisoner is eligible to apply for release on the finite sentence on parole.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

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

4—Amendment of section 3—Interpretation

It is proposed to amend the definition of sentence so as to include the negation of a non-parole period as a consequence of the insertion of new Part 3 Division 3.

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

It is proposed to amend this section in a number of ways. An additional primary policy is to be inserted that provides that a primary policy of the criminal law is to protect the safety of the community. Two new subsections are to be inserted. New subsection (1a) provides that a court, in determining sentence for an offence, must disregard any mandatory minimum non-parole period prescribed in respect of the sentence under this Act or another Act. This new subsection is included so as to discourage the setting of a lower head sentence than would otherwise be imposed in the case where a minimum mandatory non-parole period is prescribed. New subsection (1b) provides that a primary policy of the criminal law is to protect the safety of the community.

6—Amendment of section 11—Imprisonment not to be imposed except in certain circumstances

The proposed amendment to this section is consequential on the proposed insertion of subsection (1b) in section 10.

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

This amendment is proposed out of an abundance of caution. Currently, section 23(2a) allows the Attorney-General to make an application to the Supreme Court to have a particular prisoner dealt with under that section. The proposed amendment will make it clear that such an application may be made by the Attorney-General even where an application (whether by the Attorney-General or the prosecution) has previously been made and declined by the Court. However, in that case, the further application may not be made more than 12 months before the person is eligible to apply for release on parole.

8—Amendment of section 32—Duty of court to fix or extend non-parole periods

It is proposed to add a couple of paragraphs to current subsection (5) of section 32. That subsection sets out the qualifications relating to the fixing of a non-parole period by a court. New paragraph (ab) provides that, unless the court is of the opinion that some lesser period is appropriate because of the exceptional circumstances surrounding the offence, any non-parole period fixed in relation to the sentence of life imprisonment for an offence of murder must be at least 20 years.

New paragraph (ba) provides that, unless the court is of the opinion that some lesser period is appropriate because of the exceptional circumstances surrounding the offence, any non-parole period fixed in relation to the sentence for a serious offence against the person must be at least four-fifths the length of the sentence.

A new subsection is to be inserted after subsection (5) that provides that where a person is sentenced under section 18A of the Act to the 1 penalty for a number of offences and a mandatory minimum non-parole period is prescribed in respect of the sentence for 1 or more of those offences, the non-parole period fixed in relation to the sentence imposed under that section must be at least the length of the prescribed mandatory minimum non-parole period.

It is proposed to further amend the section by inserting a number of definitions for the purposes of the new paragraphs to be inserted.

9—Insertion of Part 3 Division 3

The new Division is to be inserted after section 32 in the Part of the Act dealing with imprisonment.

Division 3—Dangerous offenders

33—Interpretation

This section contains definitions and interpretive provisions for the purposes of the Division. A serious sexual offence is defined, and provision is made for a reference to an offence of murder to include—

(i) an offence of conspiracy to murder; and

(ii) an offence of aiding, abetting, counselling or procuring the commission of murder.

This section also provides that an offence will be taken to have been committed in ***prescribed circumstances*** if, in the opinion of the Attorney-General—

(i) the offence was committed in the course of deliberately and systematically inflicting severe pain on the victim; or

(ii) there are reasonable grounds to believe that the offender also committed a serious sexual offence against or in relation to the victim of the offence in the course of, or as part of the events surrounding, the commission of the offence (whether or not the offender was also convicted of the serious sexual offence).

33A—Dangerous offenders

This section provides that if a person has been convicted, whether before or after the commencement of this Division, of an offence of murder and the offence was committed in prescribed circumstances, the Attorney-General may, while the person remains in prison serving a sentence of imprisonment, apply to the Full Court to have the person declared to be a dangerous offender. Such an application cannot be made more than 12 months before the person is eligible to apply for release on parole.

The Court may direct the Parole Board to hold an inquiry and report to the Court if the Court is of the opinion that such a report may assist the Court to determine any such application and the Board may exercise its powers under Part 6 of the *Correctional Services Act 1982* for the purposes of its inquiry.

The following persons are entitled to appear and be heard in proceedings under this section and must be afforded a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Court:

(a) the person (personally or by counsel);

(b) the Director of Public Prosecutions;

(c) the Commissioner for Victims' Rights.

The paramount consideration of the Court when determining an application under this section must be to protect the safety of the community, whether individually or in general.

A number of other matters are listed to be taken into consideration by the Court when determining an application under this section, including the likelihood of the person committing a serious sexual offence, an offence of murder or some other serious offence of a violent nature should the person be released from prison.

If the Court is satisfied, on the balance of probabilities, that the release from prison of the person to whom the application relates would involve a serious danger to the community or a member of the community, the Court must—

(a) declare the person to be a dangerous offender; and

(b) order that the non-parole period fixed in respect of the sentence of imprisonment for the murder be negated.

A person who has been declared to be a dangerous offender—

(a) will serve his or her sentence of imprisonment as if the fixing of a non-parole period in respect of that sentence of imprisonment had been declined by order of the court under section 32 of the Act; and

(b) may not make an application under that section for the fixing of a non-parole period for at least 12 months after having been so declared.

33B—Division does not affect Governor's powers etc in relation to parole

Nothing in this Division has any effect on the powers and authorities conferred on, or vested in, the Governor in relation to parole.

10—Transitional provision

An amendment made by Part 2 of this measure to the *Criminal Law (Sentencing) Act 1988* applies whether the offence to which a sentence of imprisonment or non-parole period relates was committed before or after the commencement of that Part.

The Hon. J.M.A. LENSINK secured the adjournment of the debate.

CLIMATE CHANGE AND GREENHOUSE EMISSIONS REDUCTION BILL

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

The Hon. G.E. GAGO (Minister for Environment and Conservation): I move:

That this bill be now read a second time.

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

Leave granted.

The Government considers this Bill to be a bold and historic legislation designed to tackle the single biggest threat facing our State and our planet: climate change.

This legislation, the *Climate Change and Greenhouse Emissions Reduction Bill 2006*, reinforces South Australia's position as an exemplar to Australia and the rest of the world in the field of the environment.

And it lays down a series of ambitious, yet vital goals for our State – goals backed by the weight of law.

The Bill breaks new ground on a number of fronts.

For example, it is the first climate change legislation to be introduced in Australia and only the third of its kind in the world, after California and the Canadian province of Alberta.

Most importantly, the Bill seeks to combat a phenomenon that we believe will strike Australia earlier and more severely than any other developed nation in the world – a phenomenon that poses a greater threat to us all than terrorism.

In order to place this Bill in its proper context, it is worth noting that its introduction is the culmination of four years of steady work and solid achievement by the State Government.

We have fostered the establishment and rapid growth of a thriving renewable-energy sector, such that South Australia is today the recognised national leader.

For example, with less than 8 per cent of Australia's population, South Australia is home to 51 per cent of the nation's installed wind power capacity.

We have gone from having no wind farms at all in 2002 to having six in 2006.

When a further two wind farms are completed in 2007-08, including the biggest to be built in Australia, the State's total investment in wind farms will exceed $1 billion.

Most importantly, our current and planned wind farms will save 1.2 million tonnes of greenhouse gas emissions a year – which is the equivalent of taking almost 300 000 cars off our roads annually.

Recently we began a trial of mini wind turbines on office buildings in Adelaide's CBD, including on the State Administration Centre in Victoria Square.

South Australia is also a leader in solar energy, with our State having 45 per cent of the country's grid-connected solar power.

We have placed solar panels on major public buildings on North Terrace – such as the Art Gallery of South Australia, the South Australian Museum, the State Library and this Parliament House – and soon we will install panels at Adelaide Airport.

We are also in the process of installing solar panels on 250 public schools across the State.

Finally in renewable energy, South Australia accounts for about 90 per cent of the national effort now being put in to the more experimental field of geothermal, or "hot rock", energy.

South Australia has this country's first Minister for Sustainability and Climate Change – a role the Premier was proud to take on after the March State elections.

We have introduced a number of energy- and water-saving measures for the construction of new homes – including the mandating, from July 2006, of a "five-star" energy rating and plumbed rainwater tanks.

We are also supporting the use of gas or solar water heaters in all new homes by introducing tough new greenhouse performance standards for hot water systems.

We are planting three million trees across Adelaide as part of a network of urban forests – and millions more will be planted as part of the River Murray Forest initiative.

And we are increasingly using alternative fuels in State Government cars, and "biofuels" in commuter buses and trains.

In order to demonstrate leadership, and to put our money where our mouth is, the Government has committed to buying 20 per cent of its energy needs from certified "green power" sources by 1 January 2008.

At present the highest jurisdiction is Victoria, with 10 per cent.

We continue to urge business and local councils in South Australia to match the State Government's 20 per cent commitment.

At the national level, the State Government has been promoting a national mandatory reporting scheme for greenhouse gas emissions.

We are also proposing the establishment of a national emissions trading scheme – and if the Commonwealth will not embrace it, we will go it alone with the other States.

This scheme is basically a market-based tool using industry caps, and the issuing and trading of permits by companies, designed to cut greenhouse gas emissions.

The Government is also encouraging the construction of energy- and water-efficient buildings in Adelaide's CBD.

In line with this, we have announced that South Australia's first council-approved "six-star, Green Star" building – which is now starting to take shape in Victoria Square – will soon be the home of SA Water.

South Australia's practical efforts in relation to climate change have drawn endorsements from a number of international experts and campaigners on the environment.

In September 2006, when he was touring Australia, the former Vice President of the United States, Al Gore, commended South Australia "for in many ways leading the world with visionary proposals to really do the right thing".

"And I congratulate you and your leadership for what you're doing, and I just wish the rest of the world – including my own country – was doing a lot of the things that you now have in prospect there," Vice President Gore said.

The Canadian environmentalist, broadcaster and author, David Suzuki, described the State Government as "among the most progressive" in the world – particularly for enshrining greenhouse gas emission targets in legislation, as we are doing through this Bill.

Also in September 2006, the former leader of the Soviet Union, and now the Chairman of Green Cross International, Mikhail Gorbachev, welcomed the proposal to introduce this Bill.

"South Australia should be proud of the strong leadership role it is taking in the fight against climate change in Australia and globally," Mr Gorbachev said.

This legislation also has the support of the Prime Minister of Britain, Tony Blair, who told the Premier in a letter that "I applaud your leadership on climate change and the goals you have set in your new Bill".

Although the State Government is very proud of this legislation, we remain deeply disappointed that it is not part of concerted and necessarily national action on climate change.

We in South Australia may be taking the lead in relation to many aspects of climate change policy.

But, sadly, Australia, as a country, is still lagging behind other parts of the world.

The Prime Minister, Mr Howard, recently had a "road to Damascus" moment – announcing the establishment of a special working party to develop a carbon-trading scheme for Australia.

For decades now, the world has been given regular warnings about the deteriorating health of our planet – warnings we have largely ignored.

Still, evidence of climate change continues to mount and the imperative for action is becoming clearer and more urgent by the day.

In South Australia, 2005 was the warmest year since reliable records began in 1910.

This most recent winter was our driest on record, prompting Level 3 water restrictions from 1 January 2007.

A recent CSIRO report tells us that over the next 20 to 50 years, South Australia can expect higher temperatures, lower rainfall, and an increase in the incidence of fires and drought.

What is even more concerning is that these trends are occurring faster than we previously thought.

We fear that South Australia's record-low winter rains in 2006, the current devastating drought and record-low inflows of water in to the River Murray together represent a frightening glimpse of the future under the effects of climate change.

At the global level, the release of the Stern Review, by Sir Nicholas Stern, former Chief Economist to the World Bank, has attracted worldwide attention – primarily because it is the first report by someone of high international regard that puts the issue of climate change firmly on the economic agenda, not just the environmental.

In his report, Sir Nicholas describes climate change as the "greatest market failure the world has seen".

Sir Nicholas's key message is that action to reduce climate change is pro-economic: that the costs of climate change to the global economy are likely to be far higher than the costs of reducing emissions.

Clearly, our window of opportunity for action is within the next 10 to 20 years.

The Stern Review tells us that failing to act on climate change could cost 5 per cent of global GDP each year from now on.

And the costs could be more than 20 per cent of GDP if "non-market" issues, such as impacts on health, are considered.

This legislation will position our State to take early action to reduce greenhouse gas emissions and to adapt to the inevitable impacts of climate change.

The Labor Party went to the March 2006 State election promising to introduce climate change legislation that would:

- set a target for cutting greenhouse emissions by 60 per cent of 1990 levels by 2050;
- require a report to Parliament on the issue of climate change; and
- establish a voluntary carbon offset program for business and government.

But the legislation being introduced today goes further – as it must –as the evidence of the impact of climate change mounts.

The international debate on climate change is moving rapidly, and it is essential that South Australia stays ahead of the pack rather than lagging behind.

South Australia is, by world standards, a small jurisdiction.

But this Bill will both demonstrate that we are an "early mover" on climate change and, we hope, encourage other jurisdictions to follow suit.

The overarching objective of the legislation is to set in place measures that will contribute to a more sustainable future for South Australia.

It will do this by:

- setting targets;
- promoting a commitment to action, including setting sector-specific and interim targets;
- promoting business and community consultation;
- positioning us rapidly to take up new initiatives as they emerge; and
- keeping us accountable for progress through regular reporting.

Climate change is an issue for the whole community, not just for government.

A total of 142 submissions and 36 letters of support were received during public consultation on this legislation.

As a result of the comments raised by business and community groups, we have made a number of important additions to the objectives of the Bill.

One of the new objectives relates to adaptation to climate change.

The development of strategies that will allow us to adapt successfully to these changes will play a vital role in South Australia's response to climate change, alongside measures to reduce and mitigate emissions.

To this end, a new objective to support measures to facilitate adaptation to the inevitable impacts of climate change has been included in the legislation.

This recognises the need to improve the community's capacity to deal with global warming, especially its impact upon biodiversity, natural resources and ecosystems.

A second new objective is to encourage energy efficiency and conservation as a measure to reduce emissions.

This is consistent with Government policy and recent initiatives in this area, including the requirement for all new homes built in South Australia to have a five-star energy efficiency rating, and the reduction in the Government's own energy consumption as a consequence of the Government Energy Efficiency Action Plan.

The final new objective is to promote research and development, and the use of technology, in order to reduce or limit emissions or to support adaptation to climate change.

This will support existing initiatives, such as the establishment of the Chair of Climate Change at Adelaide University, and it will give South Australia a competitive advantage by developing cutting-edge solutions.

Other major changes to be made as a result of the consultation process include:

- an increase in the frequency of reporting on progress from every four years to every two years;
- provision for the Minister to set a target and interim targets for emissions by South Australian Government agencies and instrumentalities;
- a requirement for sector agreements to be independently verified under the auspices of the Premier's Climate Change Council; and
- a requirement for the Minister to support initiatives to develop a scheme to promote the generation of renewable energy in the State.

The *Climate Change and Greenhouse Emissions Reduction Bill 2006* establishes three targets:

- to reduce, by 31 December 2050, greenhouse gas emissions within the State by at least 60 per cent of 1990 levels;
- to increase the proportion of renewable electricity generated so that it comprises at least 20 per cent of electricity generated in the State by 31 December 2014; and
- to increase the proportion of renewable electricity consumed so that it comprises at least 20 per cent of electricity consumed in the State by 31 December 2014.

As I said at the beginning, South Australia will be the first Government in Australia, and one of only a few internationally, to legislate for realising targets to reduce greenhouse emissions.

The United Kingdom has also indicated its intention to legislate for an emissions-reduction target.

South Australia's setting of a long-term target, to 2050, emphasises the need to make significant changes to the economy and the way we live if we are to make effective reductions in emissions.

This target will be relevant to all Government policy and strategy, and it will be a key determinant in economic, social and environmental decision-making.

This legislation is based on three principles.

The first principle is that the Government will work collaboratively with business and the community in order to achieve the Bill's targets.

We want this legislation, above all, to be positive and workable – a goal that is very much based on my belief that if you want to bring about profound and lasting change, it is always better to bring people along rather than compel or punish them.

The second principle is that the Government is committed to realising the targets without compromising our economic development, environmental sustainability and social justice objectives.

And the third principle is that the legislation should provide for a flexible, adaptable and responsive approach to managing climate change.

National and international climate change policy is evolving at a rapid pace.

So a flexible framework will allow South Australia to respond quickly and effectively, providing us with a strong competitive advantage and keeping us ahead of the game.

In terms of collaboration, the legislation commits the Government to work with business and the community to develop plans, policies and sector-specific and interim targets that will put us on the path towards achieving the headline targets.

Working with the community is also important to ensure that greenhouse reductions go hand-in-hand with economic development and community wellbeing – the second principle of the legislation.

To this end, the Premier's Climate Change Council will be established to provide the Government with an independent stream of advice on the impact of climate change on business and the wider community, and on the effectiveness of policy responses.

The Council will have a role in disseminating advice to business and the community, including encouragement for the adoption of leading-edge practices.

It will identify opportunities for reducing or eliminating "red tape" created by responses to climate change.

The Council will consist of between seven and nine members with expertise and interests representative of the South Australian community – including State and local government, business, science and the wider South Australian public.

Members will be appointed for a period of three years.

An additional element of consultation is the requirement to prepare regular reports on the effectiveness of the legislation.

Following public consultation, the frequency of reporting progress against the targets has been increased from four-yearly to two-yearly.

The reports will outline progress towards achieving targets, including: any interim or sectoral targets; new policy developments, such as sectoral agreements entered into and voluntary offsets achieved; and any national or international commitments or agreements that have been entered into.

The first such report will be prepared in 2009.

It is important that we keep a careful eye on progress.

To this end, it will be vital that we have the systems and processes in place to provide us with high-quality data and information that will inform this progress and any new policy developments that arise as a consequence.

The State Government is helping to lead the preparation of a new national approach to greenhouse gas emissions reporting that will be comprehensive, yet streamlined and economically efficient.

In support of this, and in line with a commitment made at the March 2006 State election, the Government is considering measures that will require greenhouse gas emission assessments for all major projects.

The plan may result in proponents of major projects being required, as part of the approval process, to report on the following:

- that the risks of climate change and changing energy markets have been adequately analysed and addressed;
- whether all sources and levels of greenhouse gas emissions to be generated from the proposal have been identified; and
- that the methods to minimise emissions have been identified (this may include disclosing how opportunities for renewable energy, low-emission technologies and energy-efficient options have been analysed).

The third principle of the legislation is its flexibility.

It seeks to provide an overarching policy framework, with operational aspects resting with other statutes and programs.

This policy framework will be consistent with national and international developments, and its flexibility will allow for the implementation of State, national and international policies as they emerge.

This flexible approach is intended to apply not only to policy responses, but to new opportunities for the State.

To this end, the legislation foreshadows the development of an industry plan for the State's renewable energy technologies industry.

As mentioned earlier, South Australia continues to host the highest proportion of renewable energy generation in all mainland jurisdictions.

The renewable energy targets will support further development of both centralised and distributed renewable energy.

The legislation provides for the Minister to promote the use of distributed renewable electricity in the State.

Flowing from this, the Government has announced that it has started preparing Australia's first "feed-in" legislation – which will provide householders with up to twice the standard retail price for surplus power they feed back into the grid, rather than the current dollar-for-dollar return.

The Government is consulting with energy retailers, regulators and distributors as well as the community about the new legislation.

Similar "feed-in" measures have been introduced in 16 European states and another seven countries outside Europe, including Canada, China and Israel.

The renewable energy industry will be supported further by the Government's decision to source 20 per cent of its energy needs from "green power" sources from 1 January 2008 at the latest.

The legislation will also support industry by providing the opportunity to publicly register its involvement in voluntary offset programs in a way similar to that already established by climate change legislation in California.

The legislation provides for the establishment of voluntary sector agreements between the Minister and organisations, individuals or specific sectors.

Sector agreements will provide the basis for organisations to develop and commit to actions and strategies to address the objectives of the legislation, and they will demonstrate serious intent to address climate change.

Agreements will include actions to:

- reduce emissions;
- adapt to climate change;
- develop appropriate technologies;
- reduce energy use; and
- increase the use of renewable energy.

A register of all those who enter into a sector agreement will be established and subject to public inspection.

Due to their voluntary nature there will be no sanctions for non-performance, and prior action to reduce emissions will be acknowledged.

Emissions trading is now regarded as part of the climate change solution, following lobbying by this State, New South Wales and Victoria for national discussion and debate on the issue.

A national blueprint for State-based emissions trading by the energy industry – which represents Australia's largest and fastest growing source of greenhouse gases – has been released for public comment.

Consistent with its flexible nature, the legislation includes specific provisions for the introduction of emissions trading in concert with other jurisdictions.

In the absence of strong national leadership, South Australia has stepped up to take a leadership position.

In addition to lobbying for emissions trading, in 2005 the Premier was successful in getting climate change placed on the agenda of the Council Of Australian Governments.

This led to the release of the COAG National Plan of Action on Climate Change.

The COAG Climate Change Group has been set up to progress the action plan.

The national approach to addressing climate change is largely based on technological solutions such as clean coal, renewable energy, low emissions technologies and nuclear energy.

South Australia's view is that, rather than focussing on one solution, a mix of complementary measures is required that can be delivered through a range of policy instruments, including market mechanisms, public education and advocacy, legislation and regulation, and new programs.

We have already made considerable progress in this regard.

Tackling Climate Change: South Australia's Greenhouse Strategy is the State's plan of action for climate change, and it is scheduled to be released soon.

It sets goals and objectives for a five-year plan of action for Government that will deliver the targets and policy measures outlined in the legislation.

South Australia's Strategic Plan commits South Australia to a range of greenhouse and energy efficiency targets, including the targets specified in the legislation.

During public consultation on this Bill, a number of groups called for the legislation to be strengthened through the inclusion of more mandatory measures to compel behaviours.

However, the overall intent of the legislation will continue to focus on voluntary measures and collaboration to achieve change.

One of South Australia's strengths is the close relationship between government and industry.

Our aim is to reach our targets working with industry, not just by imposing new rules.

It is the case that minimum standards need to be prescribed.

This Government believes that sufficient legislative force to achieve these standards exists already in other legislation such as the *Environment Protection Act*, the *Development Act* and the *Mining Act*.

The emphasis of this Bill is to achieve progress through government and industry working together.

The legislation provides for a review after four years to provide an objective assessment of the results of this approach.

Consideration will be given to mandating behaviours and outcomes at that time in areas where further progress is required, and where the climate change legislation is needed to cover any gaps in the other legislation as referred to previously.

While the emphasis of the legislation remains on voluntary measures, the Government has set itself compelling measures to demonstrate its leadership and commitment to take purposeful action.

The *Climate Change and Greenhouse Emissions Reduction Bill 2006* is a considered, comprehensive and balanced piece of legislation.

It seeks to bring about practical change for the better, to maintain South Australia's national and international leadership in relation to climate change, and to secure the long-term prosperity of our State.

For some people, this Bill will not go far enough; for others it will go too far.

But I believe it boldly speaks to one proposition on which we can all agree.

And that is that doing nothing on climate change is neither a reasonable nor responsible option in 2006.

I commend this Bill to the House.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

Clauses 1 and 2 are formal.

3—Objects of Act

Clause 3 provides that the objects of this measure are:

- to assist in the achievement of ecologically sustainable development in the State by addressing issues associated with climate change;
- to promote commitment to action within the State to address climate change;
- to encourage energy efficiency and conservation;
- to promote research and development with respect to the development and use of technology to reduce or limit greenhouse gas emissions or to support adaptation to climate change, including by developing ways to remove greenhouse gases from the atmosphere;
- to encourage the commercialisation of renewable energy and of technologies that will reduce or limit greenhouse gas emissions or support adaptation to climate change;
- to provide recognition to bodies and persons who commit to addressing climate change by achieving reductions in greenhouse gas emissions, by increasing the use of renewable energy sources, by introducing emissions off-set programs or by adopting other relevant initiatives;
- to encourage and facilitate business and community consultation and early action with respect to issues surrounding climate change;
- to support measures to facilitate adaptation to circumstances that will inevitably be caused by climate change, including by supporting measures that will improve the ability of the community, species and ecosystems to deal with the effects of climate change;
- to provide for reporting on progress being made within the State to meet the SA target, and other specific or interim targets associated with reductions in greenhouse gas emissions, and to meet targets associated with the use of renewable electricity;
- to promote action within South Australia that provides consistency with national and international schemes designed to address climate change, including schemes that relate to emissions trading and emissions reporting;
- to enhance the ability of the State to contribute to, and to respond expeditiously to, national and international developments associated with issues surrounding climate change.

4—Interpretation

This clause defines terms used in the measure. Key terms used are—

(a) ***Emissions offset programs***—programs designed to recognise or achieve a reduction in greenhouse gas emissions, or the removal of greenhouse gas emissions;

(b) ***Greenhouse gas emissions***—emissions of carbon dioxide, methane, nitrous oxide, hydro fluorocarbons, perfluorocarbons, sulphur hexafluoride or any other gas brought within the ambit of the definition by the regulations;

(c) ***Renewable electricity***—electricity generated from renewable energy sources.

Part 2—Targets

5—Targets

This clause sets a target of reducing by 31 December 2050 greenhouse gas emissions within South Australia by at least 60% to an amount that is equal to or less than 40% of 1990 levels. It also sets two related targets relating to the generation and consumption of renewable electricity in the State with a relevant target date of 31 December 2014.

Part 3—Administration

Division 1—The Minister

6—Functions of Minister

This clause sets out the functions of the Minister under this measure. It also provides that in performing these functions the Minister should work collaboratively within international networks for regional governments and with the Governments of other Australian jurisdictions, local government, the Premier's Climate Change Council and other relevant international, business, environment and community groups and organisations.

7—Two-yearly reports

This clause requires the Minister to prepare, on a two-yearly basis, a report on the operation of this measure and to table that report in both Houses of Parliament within 6 sitting days after the report is prepared. The clause also provides that the first report must be completed by the end of 2009.

8—Power of delegation

This clause empowers the Minister to delegate the Minister's functions or powers.

Division 2—Premier's Climate Change Council

9—Premier's Climate Change Council

This clause establishes the ***Premier's Climate Change Council***. The council will consist of between 7 and 9 members appointed by the Minister. The Minister should seek to appoint persons who can demonstrate a commitment to action to address climate change and an understanding of the issues and impacts associated with climate change.

10—Conditions of membership

Clause 10 provides for the appointment of members of the Council on conditions determined by the Minister for a term not exceeding 3 years. A member of the Council is entitled to fees, allowances and expenses determined by the Minister.

11—Functions of Council

This clause sets out the functions of the Council, the primary function being to provide independent advice to the Minister about matters associated with reducing greenhouse gas emissions and adapting to climate change.

12—Procedure at meetings

This clause provides for the Minister to appoint a member of Council as the presiding member of the Council.

13—Annual report

This clause requires the Council to provide a report to the Minister on its activities. The Minister must cause the report to be laid before both Houses of Parliament within 6 sitting days after the report is provided to the Minister.

Part 4—Policies, programs and other initiatives

14—Policies

Clause 14 provides that the Minister should seek to develop policies to assist in reducing or limiting climate change or greenhouse gas emissions, or mitigating the effects of climate change or greenhouse gas emissions, and policies to promote or implement measures to facilitate adaptation to circumstances that will be caused by climate change.

15—Voluntary offset programs

This clause provides that the Minister may recognise, promote or facilitate emissions offset programs initiated on a voluntary basis. It also provides that the regulations may support emissions offset programs.

16—Sector agreements

This clause provides that the Minister may enter into agreements (***sector agreements***) with a particular person or industry or business group on a voluntary basis for the purpose of recognising, promoting or facilitating strategies to meet any target set under this measure. It also requires the Minister to establish a register of sector agreements and a scheme to provide for the inspection and independent assessment of sector agreements.

Part 5—Miscellaneous

17—Protection of information

This clause makes it an offence for a person to disclose or use certain information gained by a person through involvement in the administration of this measure unless the person does so—

(a) when necessary for the purposes of this measure; or

(b) when expressly authorised, in writing, by the person to whom the information relates; or

(c) when required to do so by a court or tribunal constituted by law; or

(d) when authorised or required under the regulations.

The maximum penalty for an offence against this clause is $50 000.

18—False or misleading information

This clause makes it an offence for a person to furnish information to the Minister or another authority under this measure that is false or misleading in a material particular.

The maximum penalty for an offence against this clause is $10 000.

19—Conflicts of interest

This clause provides that a member of the Council who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Council—

(a) must, as soon as reasonably practicable, disclose in writing to the Council full and accurate details of the interest; and

(b) must not take part in any discussion by the Council relating to that matter; and

(c) must not vote in relation to that matter; and

(d) must be absent from the meeting room when any such discussion or voting is taking place.

The maximum penalty for an offence against this clause is $15 000.

20—Administrative unit report

Clause 20 provides that the annual report of the Minister's department must include a report on work undertaken within the department in relation to the development of climate change policy and related initiatives.

21—Review of Act

This clause requires the Minister to cause a review of this measure and its operation to be conducted on a four-yearly basis and to cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after the report is presented to the Minister.

22—Regulations

This clause provides that the Governor may make regulations contemplated by, or necessary or expedient for the purposes of, this measure.

The Hon. J.M.A. LENSINK secured the adjournment of the debate.

BARLEY EXPORTING BILL

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

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

That this bill be now read a second time.

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

Leave granted.

South Australia's *Barley Marketing Act 1993* (the ***Act***) restricts the export of bulk barley from this State to one entity, ABB Grain Export Ltd, a subsidiary of ABB Grain Ltd. Pressure to change this arrangement has been building for several years.

In particular, the arrangement does not comply with National Competition Policy, to which all State and Territory Governments and the Commonwealth Government remain committed. South Australia's failure to reform the Act to comply with National Competition Policy has cost the State more than $9 million in competition reform payments over the period 2002/03-2004/05, to the detriment of the entire South Australian community.

There is also a growing belief amongst growers that a move towards deregulation will provide them with a better opportunity to improve returns for the quality grain they produce.

Last year, in response to this continuing pressure for change, the South Australian Farmers Federation (***SAFF***) Grains Council agreed to the establishment of a Barley Marketing Working Group to deliver a marketing model that will satisfy both the Government's and growers' needs.

Respected former House of Representatives Speaker, Neil Andrew, agreed to chair the Working Group, which comprised three barley growers nominated by the SAFF Grains Council, Messrs Garry Hansen from Coomandook, Stuart Murdoch from Warooka, and Michael Schaefer from Buckleboo, together with two senior officers, Mr Geoff Knight and Dr Don Plowman, from Primary Industries & Resources SA.

The Working Group made an open call for submissions from relevant stakeholders who might be interested in contributing to the process. This included mailing a letter of invitation to all South Australian grain growers registered on the National Grower Register in July 2006, mailing specific letters of invitation to companies and groups who might wish to make a submission and placing two advertisements in the *Stock Journal*.

The Working Group's report records that 26 written submissions were received and that after reviewing all the submissions, 14 of the respondents were invited to make a further presentation to the working group at individual consultations. In addition, the Working Group held a series of consultations with other people who had specific advice and input that was relevant to the deliberations of the Working Group.

After reviewing four options for barley marketing in South Australia, ranging from the status quo to deregulation, the Working Group concluded that there should be a phased transition to deregulation. Since the Working Group submitted its report, in December 2006, the SAFF Grains Council has commended the Working Group and unanimously adopted the report's seven recommendations as being the most effective way forward for bulk export barley marketing in South Australia.

The purpose of this Bill is to establish a three-year licensing scheme for exporters of barley to operate from 1 July 2007 with an independent regulator, the Essential Services Commission of South Australia (ESCOSA), administering the licensing scheme. The Bill also repeals the *Barley Marketing Act 1993*, thereby allowing South Australian barley growers to deliver bulk barley to whomever they choose, including exporters licensed by ESCOSA.

The proposed Bill requires the Minister to establish an advisory committee to provide advice on matters relevant to the administration of the licensing scheme. The committee will include an independent chair, two barley growers, an industry representative with specialist skills, someone with a legal, commercial or economics background and a Government representative and must meet at least twice a year, reporting to the Minister on the outcome of their meetings. ESCOSA is obliged to take into account those reports when exercising its powers under this measure.

Provision is made in the Bill for the Act to be repealed by proclamation of the Governor or, if no such proclamation is made, for the Act to expire on the fourth anniversary of its commencement. Following the repeal or expiry of the Act (whichever comes first), the marketing of bulk barley in South Australia will be deregulated.

A plethora of independent reviews of "single desk" marketing arrangements, including South Australia's barley marketing arrangements, have found little or no benefit consequent upon a 'single desk'. Nevertheless, Members familiar with this issue would be aware that growers who favour retention of the export barley 'single desk' cite four major benefits: buyer of last resort; access to pools; security of payment; and maximising returns to growers. I take this opportunity to offer comment on each.

· Buyer of last resort

The reality, as the Working Group observed, is that there is no buyer of last resort as the current 'single desk' manager; ABB Grain Export Ltd, has the power under the Act to not receive a delivery of barley if it does not meet specification.

· Access to "pools

In a deregulated market it is anticipated that multiple export pools will be offered, most likely by ABB Grain, Graincorp and Elders, as is the case now in the deregulated Victorian and New South Wales barley markets.

· Security of payment

The proposed licensing process will include a prudential assessment of barley exporters by ESCOSA. To the extent possible, this process will address grower and industry concerns about 'rogue traders' who might default on payments to growers and damage the reputation of the industry.

· Maximising returns to growers

The current 'single desk' manager is required to maximise returns to growers. While an open market may bring about increased price volatility, it will increase competition for barley and provide growers with an opportunity to capitalise on this competitive pressure. According to the Working Group, there is evidence of greater returns to growers in Victoria, where the export barley market was deregulated in 2001, and Western Australia, where the export barley market is partially deregulated. Only SA and WA regulate barley marketing.

While most mixed farmers are familiar with open markets for their minor crops and for their wool and livestock, barley and wheat dominate their cropping income and they have relied on the barley and wheat "single desks" to market their grain. To facilitate the transition to an open market, the Government will underwrite an

education and training program for barley growers in South Australia. In addition to explaining the changes to barley marketing and introducing growers to price and other risk management tools, the program may include Victorian barley growers presenting "case studies" of Victoria's transition to an open barley market.

It is the Government's view that deregulation should pose no risk to either ABB Grain Export Ltd or ABB Grain Ltd.

While ABB Grain Export Ltd will lose the exclusive right to export bulk barley from South Australia, it enjoys grower loyalty established over many decades, providing it with a competitive advantage over new entrants into the barley exporting industry. Consequently, it is expected to remain dominant in the barley exporting industry—a position the company has maintained in Victoria since deregulation in that State in 2001.

ABB Grain Ltd is an integrated agribusiness with diverse investments and activity across the supply chain: from farm inputs, production, storage and handling and logistics to marketing and processing of a range of commodities. Only a quarter of ABB Grain Ltd's grain marketing activities now relate to the export of barley. Members may be aware that ABB Grain Ltd is a member of one of the consortiums recently granted a wheat export licence.

The Government is keen to progress these reforms of the bulk barley export industry at the earliest opportunity so as to provide surety for growers and marketers as they make plans for the 2007 barley crop.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause contains definitions of expressions for the purposes of this measure. In particular, barley is defined as the grain derived from the barley plant in unprocessed form (but will not include grain excluded from the ambit of the definition by the regulations).

4—Application of Act

This clause provides that this measure applies to the export of barley from a South Australian port to a destination outside Australia, but does not apply to the export of barley packed in a bag or container capable of holding not more than 50 tonnes of barley.

Part 2—Regulation of barley exporting

Division 1—Declaration of barley exporting as regulated industry

5—Declaration of barley exporting as regulated industry

This clause declares that barley exporting constitutes a regulated industry for the purposes of the *Essential Services Commission Act 2002*. As a result of this declaration (and the related amendment proposed to the *Essential Services Commission Act 2002*—see Schedule 3), the Essential Services Commission (the ***Commission***) may perform the licensing functions conferred on the Commission by this measure.

Division 2—Licensing of barley exporters

6—Obligation of barley exporters to be licensed

This clause makes it an offence for a person to export barley except as authorised by a licence issued under Part 2 of this measure. The penalty for the first such offence is a fine of $500 000 and, for a subsequent offence, $1 000 000.

7—Application for licence

This clause provides that applications for export licences must be made to the Commission in a form approved by the Commission, contain the information as specified in the form and be accompanied by the application fee.

8—Consideration of application

This clause provides that the Commission must have regard to the general factors specified in Part 2 of the *Essential Services Commission Act 2002* and only issue a licence if satisfied that—

- the applicant is a suitable person to hold the licence; and
- the applicant will be able to meet reasonably forseeable obligations under contracts for the export of barley; and
- the grant of the licence would be consistent with criteria (if any) prescribed by regulation for licences to export barley.

9—Authority conferred by licence

This clause provides that a licence authorises the person named in the licence to export barley in accordance with the terms and conditions of the licence.

10—Term of licence

This clause provides that a licence may be issued for an indefinite period or for a term specified in the licence.

11—Licence fees and returns

This clause provides that a person is only entitled to the issue of a licence once the person has paid the annual licence fee, or the first instalment of the fee (as required by the Commission).

12—Licence conditions

This clause provides that the Commission may grant a licence to export barley subject to any conditions that the Commission thinks appropriate.

13—Offence to contravene licence conditions

This clause makes it an offence for a licensed barley exporter to contravene a condition of the licence (penalty $50 000).

14—Variation of licence

This clause provides for the Commission to vary the terms and conditions of a licence.

15—Surrender of licence

This clause allows a barley exporter to surrender its licence by written notice.

16—Register of licences

Under this clause, the Commission must keep a register of barley export licences and make it available for inspection.

17—Suspension or cancellation of licences

This clause empowers the Commission to suspend or cancel a barley export licence on certain grounds.

Part 3—Reviews and appeals

18—Review of licensing decisions by Commission

This clause enables the Commission to review certain decisions of the Commission relating to licences under Part 2 of the measure on application. After consideration of the application, the Commission may confirm, amend or substitute the decision.

19—Appeal

This clause allows an applicant for review who is dissatisfied with the decision on the review to appeal against the decision to the Administrative and Disciplinary Division of the District Court (the ***ADD***). On an appeal, the ADD may affirm the decision or remit the matter to the Commission for further consideration in accordance with any directions of the ADD.

20—Minister's power to intervene

This clause provides that the Minister may intervene in a review or appeal under this proposed Part for the purpose of introducing evidence or making submissions on a question relevant to the public interest.

Part 4—Miscellaneous

21—Advisory committee

This clause makes provision for the Minister to establish an advisory committee to advise the Minister on the operation of and any matter arising under this measure. The clause sets out the qualifications for membership of the advisory committee, and provides that the Commission must, when exercising its functions under this measure, take into account the reports of the advisory committee to the Minister.

22—Regulations

This clause makes provision for the Governor to make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this measure.

23—Expiry or earlier repeal of Act

This clause makes provision for the expiry or earlier repeal of this measure by providing that the Governor may, by proclamation, fix a date for its repeal.

However, if no date for the repeal of this measure has been fixed by proclamation, it will expire on the fourth anniversary of its commencement.

Schedule 1—Appointment and selection of experts for District Court

This Schedule provides for the appointment and selection of experts for the purposes of appeals to be heard under this measure by the ADD.

Schedule 2—Repeal of *Barley Marketing Act 1993*

This Schedule provides for the repeal of the *Barley Marketing Act 1993*.

Schedule 3—Related amendment of *Essential Services Commission Act 2002*

This Schedule proposes to amend the *Essential Services Commission Act 2002* by inserting "grain handling services" as an essential service. The effect of including grain handling services as an essential service means that barley exporting may be declared to be a regulated industry for the purposes of that Act thus enabling the Essential Services Commission to be able to exercise the powers conferred on it by this measure.

The Hon. J.M.A. LENSINK secured the adjournment of the debate.

OPTOMETRY PRACTICE BILL

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

The Hon. G.E. GAGO (Minister for Environment and Conservation): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill is one of a suite of health professional registration Bills that have been reviewed and reformed in line with the requirements of National Competition Policy. These Bills have all been based on the model provided by the *Medical Practice Act 2004* with variations designed to respond to the specific issues unique to the different professional groups that are the subject of the legislation.

The *Optometry Practice Bill 2006* replaces the *Optometrists Act 1920*. While the original Act was passed by this Parliament in 1920, and amendments have been made in the subsequent 86 years, the world of 2006 is clearly a very different place from that of 1920. Technology and the training which optometrists receive has changed significantly over that time as well as the expectations the community has of health professionals. This Bill aims to provide a contemporary framework for the practice of optometry, recognising these changes and providing a sound foundation for the continuing development of optometric practice in South Australia.

Firstly, the key features which this Bill shares with the other health practitioner registration Bills will be discussed. This will be followed by a discussion of those aspects of the Bill which are particular to optometry.

Consistent with the Government's commitment to protecting the health and safety of consumers, the long title of the *Optometry Practice Bill 2006* states that it is a Bill for an Act "to protect the health and safety of the public by providing for the registration of optometrists and optometry students…" At the outset it is made clear that the primary aim of the legislation is the protection of the health and safety of the public and that the registration of optometrists and optometry students is a key mechanism by which this is to be achieved.

This Bill includes the same measures that exist in the *Medical Practice Act 2004* and the other health practitioner registration Acts to ensure that non-registered persons who own an optometry practice are accountable for the quality of services provided. These measures include:

- a requirement that corporate or trustee optometry services providers notify the Board of their existence and provide the names and addresses of persons who occupy positions of authority in the provider entity and of the optometrists through the instrumentality of whom they provide optometry services;
- a prohibition on optometry services providers giving improper directions to an optometrist or an optometry student through the instrumentality of whom they provide optometry services;
- a prohibition on any person giving or offering a benefit as inducement, consideration or reward for an optometrist or optometry student referring patients to a health service provided by the person, or recommending that a patient use a health service provided by the person or a health product made, sold or supplied by the person;
- a requirement that an optometry services providers comply with codes of conduct applying to such providers (thereby making them accountable to the Board by way of disciplinary action).

The definition of "optometry services provider" in the Bill excludes "exempt providers". This definition is identical to that in the *Medical Practice Act 2004* and the other health professional registration Bills and the exclusion exists in this Bill for the same reason. That is, to ensure that a recognised hospital, incorporated health centre or private hospital within the meaning of the *South Australian Health Commission Act 1976* is not accountable to both the Minister for Health and the Board for the services it provides.

Under the South Australian Health Commission Act the Minister for Health has the power to investigate and make changes to the way a hospital or health centre may operate, or vary the conditions applying to a private hospital licensed under the Act. Without the "exempt provider" provision, under this Bill the Board would also have the capacity to investigate and conduct disciplinary proceedings against these providers should they provide optometry services.

It is not reasonable that services providers be accountable to both the Minister for Health and the Board, and that the Board have the power to prohibit these services when the services providers were established or licensed under the South Australian Health Commission Act. Currently optometrists are not routinely employed in the public health system. However this may change in the future and this provision will ensure that optometry within the public system is dealt with in a similar manner to the other health professions in terms of accountability.

To ensure that the health and safety of consumers is not put at risk by individual practitioners providing services on behalf of a services provider, the Bill requires all providers, including exempt providers, to report to the Board unprofessional conduct or medical unfitness of persons through the instrumentality of whom they provide optometry services. In this way the Board can ensure that all services are provided in a manner consistent with a code of conduct or professional standard and the interest of the public is protected. The Board may also make a report to the Minister for Health about any concerns it may have arising out of the information provided to it.

While the Board will have responsibility for developing codes of conduct for services providers, these will need to be approved by the Minister for Health to ensure that they do not limit competition, thereby undermining the intent of this legislation.

Similar to the *Medical Practice Act 2004*, this Bill deals with the medical fitness of registered persons and applicants for registration and requires that when making a determination of a person's fitness to provide optometry services, regard is given to the person's ability to provide these services personally without endangering a patient's health or safety. This can include consideration of the mental fitness of an optometrist or optometry student.

The Bill establishes the Optometry Board of South Australia, which replaces the existing Board. The new Board will consist of 8 members, 4 being optometrists elected by their peers through an election conducted by the State Electoral Office, 1 legal practitioner, 1 ophthalmologist and other 2 persons. The Optometry Association of Australia (SA) has argued that an ophthalmologist on the Board is not necessary. However, the Medical Board of South Australia has a member who is a nurse and the Nurses Board of South Australia has a medical practitioner as a member. Similar arrangements apply to the other Boards where there are scopes of practice that overlap with another profession. The inclusion of an ophthalmologist on the Board does not derogate in any way from the autonomy of optometry as a profession, rather it reflects the fact that optometry and ophthalmology have overlapping areas of expertise. The fact that this Bill enables optometrists to prescribe ocular therapeutics, an activity in which ophthalmologists are also involved, is a very good reason for an ophthalmologist to sit on the Board.

The composition of the Optometry Board membership is consistent with the other health practitioner registration boards. Both the Occupational Therapists Board and the Psychology Board make provision for 9 members that include a representative of the Universities that provide instruction. The Optometry Board makes provision for 8 members, which does not include a university representative as South Australia currently does not provide university courses for optometry.

A provision is included in all the health practitioner registration Acts that restricts the length of time any member of the Board can serve to 3 consecutive 3 year terms. This provision is to ensure that the Board has the benefit of fresh thinking. It will not restrict a person's capacity to serve on the Board at a later time but it does mean that after 9 consecutive years they are required to have a break

for a term of 3 years. This Bill also includes provisions for elections to the Board using the proportional representation voting system and for the filling of casual vacancies without the need for the Board to conduct another election.

Standards and expectations by Government in regard to transparency and accountability are now much more explicit than in the past. The *Public Sector Management Act 1995* as amended by the *Statutes Amendment (Honesty and Accountability in Government) Act 2003* provides a clear framework for the operation of the public sector, including the Optometry Board of South Australia.

Provisions relating to conflict of interest and to protect members of the Board from personal liability when they have acted in good faith are included in the *Public Sector Management Act 1995* and will apply to the Optometry Board of South Australia.

Consistent with Government commitments to better consumer protection and information, this Bill increases the transparency and accountability of the Board by ensuring information pertaining to optometry services providers is accessible to the public.

Currently most complaints are taken to the Board by the Registrar acting on behalf of the complainant. Complainants do not usually take their own case to the Board because of the possibility of having costs awarded against them and, because they are not a party to the proceedings, they do not have the legal right to be present during the hearing of those proceedings. This is obviously an unsatisfactory situation so the relevant provisions of the *Medical Practice Act 2004* are mirrored in this Bill to provide a right for the complainant to be present at the hearing of the proceedings. This ensures that the proceedings, from the perspective of the complainant, are more transparent. The Board will be able however, if it considers it necessary, to exclude the complainant from being present at part of the hearing where, for example, the confidentiality of certain matters takes precedence and may need to be protected.

New to the *Optometry Practice Bill 2006* is the registration of students. This provision is supported by the South Australian Optometrists Board. It requires that students undertaking a course of training in optometry from interstate, overseas or in South Australia, should one commence again in this State, be registered with the Board prior to any clinical work that they may undertake in this State. This provision ensures that students of optometry are subject to the same requirements in relation to professional standards, codes of conduct and medical fitness as registered optometrists while working in a practice setting in South Australia.

While the *Optometry Practice Bill 2006* shares the same principles and structure as the other health practitioner registration Bills there are some matters which are unique to optometry and I shall now discuss these.

One of the significant differences between the provisions of the Bill and the current Act is that the Bill does not require the registration of optical dispensers. In some states of Australia optical dispensers have never been registered, the remainder, with the exception of New South Wales, have removed the requirement for their registration. The registration of health professionals is required for those professions whose practice has the capacity to cause harm to the public. In the case of optical dispensers there is no evidence that receiving the wrong glasses creates harm. It may be inconvenient, but that is no basis for professional registration.

The current Act restricts the practice of prescribing optical appliances by optometrists and medical practitioners. The Bill however recognises that there is another group of health professionals, the orthoptists who are trained to refract and prescribe glasses, but who have been prevented from prescribing because of the restrictions of the Act. Orthoptists specialise in the investigation and management of disorders of the eye and visual system. They generally work closely with ophthalmologists and their role includes examining patients with eye problems, especially those related to eye movement including amblyopia (lazy eye) or strabismus (squint).

Orthoptists diagnose these problems and determine appropriate management. As orthoptists form part of multidisciplinary teams, they are involved in the management of conditions such as glaucoma, cataract, stroke, retinal disease and neurological disorders. During their training, which is university based, they are taught to refract and are therefore competent to prescribe glasses. In South Australia, there are currently 10 orthoptists, 9 of whom work in public hospitals with ophthalmologists. The Royal Australian and New Zealand College of Ophthalmologists, the Chief Executives of the major public hospitals and the heads of the ophthalmology departments in these hospitals have all been strong advocates for allowing orthoptists to prescribe glasses. Orthoptists in Victoria are generally able to prescribe glasses and there is no indication that this has resulted in anything other than a better service being provided to patients.

A further issue which was not anticipated when the Bill was initially drafted is the matter of plano lenses and their potential effects on the eye health of the community. Plano lenses are contact lenses with no optical power which are used for cosmetic purposes or in some cases as a bandage for the eye. When used in the cosmetic context the lenses can be used to change the colour of the eye, or give the impression that you have cat's eyes, wolf eyes or a vast range of other sorts of eyes. These contact lenses are available from a range of retail outlets or on the internet. Because they have only been seen as cosmetic rather than serving a therapeutic purpose by improving eyesight, they are not subject to the same range of controls as contact lenses which are designed to improve sight.

There is mounting evidence that these lenses are not just a novelty but can potentially threaten the sight of a person if they are not used correctly. Any contact lens changes the physiology of the eye. If they are too loose they can slide up under the eyelid and require professional assistance to remove. If they are too tight they cut off the oxygen supply to the eye which can lead to severe problems. Any ill fitting lens can rub on the eye, causing abrasions and increasing the risk of infection. Some people should not wear contact lenses because of the shape of their eyes and for everyone it is important that the lens fits correctly.

In addition to having a properly fitting lens, it is important that the person who is going to wear the lens knows how to insert, remove, clean and store the lens, and not to share them with friends. The Medical Journal of Australia recently reported the case of a 13 year old girl who has sustained permanent vision loss through the use of these lenses. She borrowed some plano lenses from her friend over the weekend and on the Monday was brought to a hospital by her mother. She had an abscess on her cornea, required antibiotics to be given every 15 minutes and was in hospital for 3 weeks. She has suffered permanent vision loss as a result.

While this is only one case, it is a topic which is increasingly receiving coverage in medical, ophthalmology and optometry journals, within Australia and internationally. I have also been advised by the Optometry Board of South Australia that local optometrists are reporting an increasing number of people coming to their practices seeking assistance as a result of wearing these lenses. These cosmetic lenses are a relatively new phenomena in Australia but I expect their usage to increase. The United Kingdom and the United States of America have substantial experience with these lenses, and the Government is adopting in this Bill a similar approach to these countries by limiting these lenses to only being available on a prescription from an optometrist or medical practitioner. This way people who wish to wear these lenses will be properly assessed and provided with appropriate information regarding their insertion, removal, storage and cleaning. The community needs to be informed about the proper use of any contact lens with the aim of protecting individuals from loss of sight and other serious eye problems. This approach is supported by the Optometry Board, the Optometry Association of Australia, the Royal Australian and New Zealand College of Ophthalmology and the contact lens manufacturers.

The *Optometry Practice Bill 2006* will bring optometry into line with the other registered health professions which have been the subject of similar legislation. It enables optometrists to prescribe therapeutic drugs to treat eye conditions, thereby providing them the capacity to make a more significant contribution to the health of the community. Eye health problems will only continue to increase in South Australia with the ageing of the population. This Bill will ensure that the public can have confidence when they choose to use an optometrist that their health and safety will not be compromised. It will ensure that the Optometry Board of South Australia operates in a transparent and accountable manner and that complaints from the public are dealt with in a professional manner.

I commend the Bill to the House.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines key terms used in the measure.

4—Medical fitness to provide optometry treatment

This clause provides that in making a determination as to a person's medical fitness to provide optometry treatment,

regard must be given to the question of whether the person is able to provide treatment personally to a patient without endangering the patient's health or safety.

Part 2—Optometry Board of South Australia

Division 1—Establishment of Board

5—Establishment of Board

This clause establishes the Optometry Board of South Australia as a body corporate with perpetual succession, a common seal, the capacity to litigate in its corporate name and all the powers of a natural person capable of being exercised by a body corporate.

Division 2—Board's membership

6—Composition of Board

This clause provides for the Board to consist of 8 members appointed by the Governor. 4 must be optometrists elected by optometrists and 4 must be nominated by the Minister (1 ophthalmologist, 1 legal practitioner and 2 others). The clause also provides for appointment of deputy members.

7—Elections and casual vacancies

This clause requires the election to be conducted under the regulations in accordance with the principles of proportional representation. It provides for the filling of casual vacancies without the need to hold another election.

8—Terms and conditions of membership

This clause provides for members of the Board to be appointed for a term not exceeding 3 years and to be eligible for reappointment on expiry of a term of appointment. However, a member of the Board may not hold office for consecutive terms that exceed 9 years in total. The clause sets out the circumstances in which a member's office becomes vacant and the grounds on which the Governor may remove a member from office. It also allows members whose terms have expired, or who have resigned, to continue to act as members to hear part-heard proceedings under Part 4.

9—Presiding member and deputy

This clause requires the Minister, after consultation with the Board, to appoint a optometrist member of the Board to be the presiding member of the Board, and another optometrist member to be the deputy presiding member.

10—Vacancies or defects in appointment of members

This clause ensures acts and proceedings of the Board are not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

11—Remuneration

This clause entitles a member of the Board to remuneration, allowances and expenses determined by the Governor.

Division 3—Registrar and staff of Board

12—Registrar of Board

This clause provides for the appointment of a Registrar by the Board on terms and conditions determined by the Board.

13—Other staff of Board

This clause provides for the Board to have such other staff as it thinks necessary for the proper performance of its functions.

Division 4—General functions and powers

14—Functions of Board

This clause sets out the functions of the Board and requires it to perform its functions with the object of protecting the health and safety of the public by achieving and maintaining high professional standards both of competence and conduct in the provision of podiatric treatment in South Australia.

15—Committees

This clause empowers the Board to establish committees to advise the Board or the Registrar, or to assist the Board to carry out its functions.

16—Delegations

This clause empowers the Board to delegate its functions or powers to a member of the Board, the Registrar, an employee of the Board or a committee established by the Board.

Division 5—Board's procedures

17—Board's procedures

This clause deals with matters relating to the Board's procedures such as the quorum at meetings, the chairing of meetings, voting rights, the holding of conferences by telephone and other electronic means and the keeping of minutes.

18—Conflict of interest etc under Public Sector Management Act

This clause provides that a member of the Board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector Management Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with optometrists generally or a substantial section of optometrists in this State.

19—Powers of Board in relation to witnesses etc

This clause sets out the powers of the Board to summons witnesses and require the production of documents and other evidence in proceedings before the Board.

20—Principles governing proceedings

This clause provides that the Board is not bound by the rules of evidence and requires it to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms. It requires the Board to keep all parties to proceedings before the Board properly informed about the progress and outcome of the proceedings.

21—Representation at proceedings before Board

This clause entitles a party to proceedings before the Board to be represented at the hearing of those proceedings.

22—Costs

This clause empowers the Board to award costs against a party to proceedings before the Board and provides for the taxation of costs by a Master of the District Court in the event that a party is dissatisfied with the amount of costs awarded by the Board.

Division 6—Accounts, audit and annual report

23—Accounts and audit

This clause requires the Board to keep proper accounting records in relation to its financial affairs, to have annual statements of account prepared in respect of each financial year and to have the accounts audited annually by an auditor approved by the Auditor-General and appointed by the Board.

24—Annual report

This clause requires the Board to prepare an annual report for the Minister and requires the Minister to table the report in Parliament.

Part 3—Registration and practice

Division 1—Registers

25—Registers

This clause requires the Registrar to keep certain registers and specifies the information required to be included in each register. It also requires the registers to be kept available for inspection by the public and permits access to be made available by electronic means. The clause requires registered persons to notify a change of name or nominated contact address within 1 month of the change. A maximum penalty of $250 is fixed for non-compliance.

26—Authority conferred by registration

This clause sets out the kind of optometry treatment that registration on each particular register authorises a registered person to provide.

Registration on the register of optometrists does not authorise the person to prescribe, supply or administer drugs for the purpose of treating abnormalities or disorders of the eye unless the registration is endorsed with a therapeutic drugs authorisation.

Division 2—Registration

27—Registration of natural persons as optometrists

This clause provides for full and limited registration of natural persons on the register of optometrists.

28—Registration of optometry students

This clause requires persons to register as optometry students before undertaking a course of study that provides qualifications for registration on the register of optometrist, or before providing optometry treatment as part of a course of study related to optometry being undertaken in another State, and provides for full or limited registration of optometry students.

29—Application for registration and provisional registration

This clause deals with applications for registration. It empowers the Board to require applicants to submit medical reports or other evidence of medical fitness to provide optometry treatment or to obtain additional qualifications or experience before determining an application. It also empowers the Registrar to grant provisional registration if it appears likely that the Board will grant an application for registration.

30—Removal from register

This clause requires the Registrar to remove a person from a register on application by the person or in certain specified circumstances (for example, suspension or cancellation of the person's registration under this measure).

31—Reinstatement on register

This clause makes provision for reinstatement of a person on a register. It empowers the Board to require applicants for reinstatement to submit medical reports or other evidence of medical fitness to provide optometry treatment or to obtain additional qualifications or experience before determining an application.

32—Fees and returns

This clause deals with the payment of registration, reinstatement and annual practice fees, and requires registered persons to furnish the Board with an annual return in relation to their practice of optometry, continuing optometry education and other matters relevant to their registration under the measure. It empowers the Board to remove from a register a person who fails to pay the annual practice fee or furnish the required return.

33—Authorisation to prescribe, supply and administer therapeutic drugs

This clause empowers the Board to authorise an optometrist to prescribe, supply and administer drugs for the purpose of treating abnormalities or disorders of the eye.

Division 3—Special provisions relating to optometry services providers

34—Information to be given to Board by optometry services providers

This clause requires an optometry services provider to notify the Board of the provider's name and address, the names and addresses of the optometrists through the instrumentality of whom the provider is providing optometry treatment and other information. It also requires the provider to notify the Board of any change in particulars required to be given to the Board and makes it an offence to contravene or fail to comply with the clause. A maximum penalty of $10 000 is fixed. The Board is required to keep a record of information provided to the Board under this clause available for inspection at the office of the Board and may make it available to the public electronically.

Division 4—Restrictions relating to provision of optometry treatment

35—Illegal holding out as registered person

This clause makes it an offence for a person to hold himself or herself out as a registered person of a particular class or permit another person to do so unless registered on the appropriate register. It also makes it an offence for a person to hold out another as a registered person of a particular class unless the other person is registered on the appropriate register. In both cases a maximum penalty of $50 000 or imprisonment for 6 months is fixed.

36—Illegal holding out concerning limitations or conditions

This clause makes it an offence for a person whose registration is restricted, limited or conditional to hold himself or herself out, or permit another person to hold him or her out, as having registration that is unrestricted or not subject to a limitation or condition. It also makes it an offence for a person to hold out another whose registration is restricted, limited or conditional as having registration that is unrestricted or not subject to a limitation or condition. In each case a maximum penalty of $50 000 or imprisonment for 6 months is fixed.

37—Use of certain titles or descriptions prohibited

This clause creates a number of offences prohibiting a person who is not appropriately registered from using certain words or their derivatives to describe himself or herself or services that they provide, or in the course of advertising or promoting services that they provide. In each case a maximum penalty of $50 000 is fixed.

38—Prohibition on provision of optometry treatment by unqualified persons

This clause makes it an offence to prescribe optical appliances unless the person is a qualified person or provides the treatment through the instrumentality of a qualified person. A maximum penalty of $50 000 or imprisonment for 6 months is fixed for the offence. However, these provisions do not apply to such optometry treatment provided by an unqualified person in prescribed circumstances. In addition, the Governor is empowered, by proclamation, to grant an exemption if of the opinion that good reason exists for doing so in the particular circumstances of a case. The clause makes it an offence punishable by a maximum fine of $50 000 to contravene or fail to comply with a condition of an exemption.

39—Prohibition on optometry treatment with laser or by surgery

This clause makes it an offence for a registered person to treat any abnormality or disorder of the eye with a laser or by surgery. A maximum fine of $20 000 is fixed for a contravention.

40—Restriction on sale of optical appliances

This clause makes it an offence for a person to sell an optical appliance by retail unless it has been prescribed for the purchaser by an optometrist, orthoptist or medical practitioner. A maximum penalty of $10 000 is fixed.

41—Board's approval required where optometrist has not practised for 5 years

This clause prohibits a registered person who has not provided optometry treatment of a kind authorised by their registration for 5 years or more from providing such treatment for fee or reward without the prior approval of the Board and fixes a maximum penalty of $20 000. The Board is empowered to require an applicant for approval to obtain qualifications and experience and to impose conditions on the person's registration.

Part 4—Investigations and proceedings

Division 1—Preliminary

42—Interpretation

This clause provides that in this Part the terms ***occupier of a position of authority***, ***optometry services provider*** and ***registered person*** includes a person who is not but who was, at the relevant time, an occupier of a position of authority, an optometry services provider, or a registered person.

43—Cause for disciplinary action

This clause specifies what constitutes proper cause for disciplinary action against a registered person, an optometry services provider or a person occupying a position of authority in a corporate or trustee optometry services provider.

Division 2—Investigations

44—Powers of inspectors

This clause sets out the powers of inspectors to investigate suspected breaches of the Act and certain other matters.

45—Offence to hinder etc inspector

This clause makes it an offence for a person to hinder an inspector, use certain language to an inspector, refuse or fail to comply with a requirement of an inspector, refuse or fail to answer questions to the best of the person's knowledge, information or belief, or falsely represent that the person is an inspector. A maximum penalty of $10 000 is fixed.

Division 3—Proceedings before Board

46—Obligation to report medical unfitness or unprofessional conduct of optometrist or optometry student

This clause requires certain classes of persons to report to the Board if of the opinion that an optometrist or optometry student is or may be medically unfit to provide optometry treatment. A maximum penalty of $5 000 is fixed for non-compliance. It also requires optometry services providers and exempt providers to report to the Board if of the opinion that an optometrist or optometry student through whom the provider provides optometry treatment has engaged in unprofessional conduct. A maximum penalty of $10 000 is fixed for non-compliance. The Board must cause reports to be investigated.

47—Medical fitness of optometrist or optometry student

This clause empowers the Board to make an order suspending the registration of an optometrist or optometry student or imposing registration conditions restricting practice rights and requiring the person to undergo counselling or treatment or enter into any other undertaking. The Board may make an order if, on application by certain persons or after an investigation under clause 46, and after due inquiry, the Board is satisfied that the optometrist or optometry student is medically unfit to provide optometry treatment and that it is desirable in the public interest.

48—Inquiries by Board as to matters constituting grounds for disciplinary action

This clause requires the Board to inquire into a complaint relating to matters alleged to constitute grounds for disciplinary action against a person unless the Board considers the complaint to be frivolous or vexatious. The Board may make an interim order suspending registration or imposing conditions restricting practice rights pending hearing and determination of the proceedings if the Board is of the opinion that it is desirable to do so in the public interest. If after conducting an inquiry, the Board is satisfied that there is proper cause for taking disciplinary action, the Board can censure the person, order the person to pay a fine of up to $10 000 or prohibit the person from carrying on business as an optometry services provider or from occupying a position of authority in a corporate or trustee optometry services provider. If the person is registered, the Board may impose conditions on the person's right to provide optometry treatment, suspend the person's registration for a period not exceeding 1 year, cancel the person's registration, or disqualify the person from being registered. If a person fails to pay a fine imposed by the Board, the Board may remove them from the appropriate register.

49—Contravention of prohibition order

This clause makes it an offence to contravene a prohibition order made by the Board or to contravene or fail to comply with a condition imposed by the Board. A maximum penalty of $75 000 or imprisonment for 6 months is fixed.

50—Register of prohibition orders

This clause requires the Registrar to keep a register of prohibition orders made by the Board. The register must be kept available for inspection at the office of the Registrar and may be made available to the public electronically.

51—Variation or revocation of conditions imposed by Board

This clause empowers the Board, on application by a registered person, to vary or revoke a condition imposed by the Board on his or her registration.

52—Constitution of Board for purpose of proceedings

This clause sets out how the Board is to be constituted for the purpose of hearing and determining proceedings under Part 4.

53—Provisions as to proceedings before Board

This clause deals with the conduct of proceedings by the Board under Part 4.

Part 5—Appeals

54—Right of appeal to District Court

This clause provides a right of appeal to the District Court against certain acts and decisions of the Board.

55—Operation of order may be suspended

This clause empowers the Board or the Court to suspend the operation of an order made by the Board where an appeal is instituted or intended to be instituted.

56—Variation or revocation of conditions imposed by Court

This clause empowers the District Court, on application by a registered person, to vary or revoke a condition imposed by the Court on his or her registration.

Part 6—Miscellaneous

57—Interpretation

This clause defines terms used in Part 6.

58—Offence to contravene conditions of registration

This clause makes it an offence for a person to contravene or fail to comply with a condition of his or her registration and fixes a maximum penalty of $75 000 or imprisonment for 6 months.

59—Registered person etc must declare interest in prescribed business

This clause requires a registered person or prescribed relative of a registered person who has an interest in a prescribed business to give the Board notice of the interest and of any change in such an interest. It fixes a maximum penalty of $20 000 for non-compliance. It also prohibits a registered person from referring a patient to, or recommending that a patient use, a health service provided by the business and from prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by the business unless the registered person has informed the patient in writing of his or her interest or that of his or her prescribed relative. A maximum penalty of $20 000 is fixed for a contravention. However, it is a defence to a charge of an offence for unprofessional conduct for a registered person to prove that he or she did not know and could not reasonably have been expected to know that a prescribed relative had an interest in the prescribed business to which the referral, recommendation or prescription that is the subject of the proceedings relates.

60—Offence to give, offer or accept benefit for referral or recommendation

This clause makes it an offence—

(a) for any person to give or offer to give a registered person or prescribed relative of a registered person a benefit as an inducement, consideration or reward for the registered person referring, recommending or prescribing a health service provided by the person or a health product manufactured, sold or supplied by the person; or

(b) for a registered person or prescribed relative of a registered person to accept from any person a benefit offered or given as a inducement, consideration or reward for such a referral, recommendation or prescription.

In each case a maximum penalty of $75 000 is fixed.

61—Improper directions to optometrists or optometry students

This clause makes it an offence for a person who provides optometry treatment through the instrumentality of an optometrist or optometry student to direct or pressure the optometrist or student to engage in unprofessional conduct. It also makes it an offence for a person occupying a position of authority in a corporate or trustee optometry services provider to direct or pressure an optometrist or optometry student through whom the provider provides optometry treatment to engage in unprofessional conduct. In each case a maximum penalty of $75 000 is fixed.

62—Procurement of registration by fraud

This clause makes it an offence for a person to fraudulently or dishonestly procure registration or reinstatement of registration (whether for himself or herself or another person) and fixes a maximum penalty of $20 000 or imprisonment for 6 months.

63—Statutory declarations

This clause empowers the Board to require information provided to the Board to be verified by statutory declaration.

64—False or misleading statement

This clause makes it an offence for a person to make a false or misleading statement in a material particular (whether by reason of inclusion or omission of any particular) in information provided under the measure and fixes a maximum penalty of $20 000.

65—Registered person must report medical unfitness to Board

This clause requires a registered person who becomes aware that he or she is or may be medically unfit to provide optometry treatment to immediately give written notice of that fact of the Board and fixes a maximum penalty of $10 000 for non-compliance.

66—Report to Board of cessation of status as student

This clause requires the person in charge of an educational institution to notify the Board that an optometry student has ceased to be enrolled at that institution in a course of study providing qualifications for registration on the register of optometrists. A maximum penalty of $5 000 is fixed for non-compliance. It also requires a person registered as an optometry student who completes, or ceases to be enrolled in, the course of study that formed the basis for that registration to give written notice of that fact to the Board. A maximum penalty of $1 250 is fixed.

67—Registered persons and optometry services providers to be indemnified against loss

This clause prohibits registered persons and optometry services providers from providing optometry treatment unless insured or indemnified in a manner and to an extent approved by the Board against civil liabilities that might be incurred by the person or provider in connection with the provision of such treatment or proceedings under Part 4 against the person or provider. It fixes a maximum penalty of $10 000 and empowers the Board to exempt persons or classes of persons from the requirement to be insured or indemnified.

68—Information relating to claim against registered person or optometry services provider to be provided
This clause requires a person against whom a claim is made for alleged negligence committed by a registered person in the course of providing optometry treatment to provide the Board with prescribed information relating to the claim. It also requires an optometry services provider to provide the Board with prescribed information relating to a claim made against the provider for alleged negligence by the provider in connection with the provision of optometry treatment. The clause fixes a maximum penalty of $10 000 for non-compliance.
69—Victimisation
This clause prohibits a person from victimising another person (the victim) on the ground, or substantially on the ground, that the victim has disclosed or intends to disclose information, or has made or intends to make an allegation, that has given rise or could give rise to proceedings against the person under this measure. Victimisation is the causing of detriment including injury, damage or loss, intimidation or harassment, threats of reprisals, or discrimination, disadvantage or adverse treatment in relation to the victim's employment or business. An act of victimisation may be dealt with as a tort or as if it were an act of victimisation under the *Equal Opportunity Act 1984*.
70—Self-incrimination
This clause provides that if a person is required to provide information or to produce a document, record or equipment under this measure and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless provide the information or produce the document, record or equipment, but the information, document, record or equipment so provided or produced will not be admissible in evidence against the person in proceedings for an offence, other than an offence against this measure or any other Act relating to the provision of false or misleading information.
71—Punishment of conduct that constitutes an offence
This clause provides that if conduct constitutes both an offence against the measure and grounds for disciplinary action under the measure, the taking of disciplinary action is not a bar to conviction and punishment for the offence, and conviction and punishment for the offence is not a bar to disciplinary action.
72—Vicarious liability for offences
This clause provides that if a corporate or trustee optometry services provider or other body corporate is guilty of an offence against this measure, each person occupying a position of authority in the provider or body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the principal offence.
73—Application of fines
This clause provides that fines imposed for offences against the measure must be paid to the Board.
74—Board may require medical examination or report
This clause empowers the Board to require a registered person or a person applying for registration or reinstatement of registration to submit to an examination by a health professional or provide a medical report from a health professional, including an examination or report that will require the person to undergo a medically invasive procedure. If the person fails to comply the Board can suspend the person's registration until further order.
75—Ministerial review of decisions relating to courses
This clause gives a provider of a course of education or training the right to apply to the Minister for a review of a decision of the Board to refuse to approve the course for the purposes of the measure or to revoke the approval of a course.
76—Confidentiality
This clause makes it an offence for a person engaged or formerly engaged in the administration of the measure or the repealed Act (the *Optometrists Act 1920*) to divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

(a) as required or authorised by or under this measure or any other Act or law; or

(b) with the consent of the person to whom the information relates; or

(c) in connection with the administration of this measure or the repealed Act; or

(d) to an authority responsible under the law of a place outside this State for the registration or licensing of persons who provide optometry treatment, where the information is required for the proper administration of that law; or

(e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

However, the clause does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates. Personal information that has been disclosed for a particular purpose must not be used for any other purpose by the person to whom it was disclosed or any other person who gains access to the information (whether properly or improperly and directly or indirectly) as a result of that disclosure. A maximum penalty of $10 000 is fixed for a contravention of the clause.
77—Service
This clause sets out the methods by which notices and other documents may be served.
78—Evidentiary provision
This clause provides evidentiary aids for the purposes of proceedings for offences and for proceedings under Part 4.
79—Regulations
This clause empowers the Governor to make regulations.
Schedule 1—Repeal and transitional provisions
This Schedule repeals the *Optometrists Act 1920* and makes transitional provisions with respect to the Board and registrations.

The Hon. J.M.A. LENSINK secured the adjournment of the debate.

TOBACCO PRODUCTS REGULATION (SMOKING IN CARS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 20 February. Page 1452.)

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank members for their support of this bill. I am pleased to provide responses to a number of queries raised by various members through their seconding reading contributions. The Hon. Michelle Lensink asked whether this bill is a tokenistic measure. Public education campaigns on this issue have been run in the past. Members may recall the 'blue smoke' campaign, where a young child sits in a car seat in the back of a car whilst her mother is smoking and the child blows blue smoke from her mouth. The campaign had the tag line, 'If you smoke around your kids they smoke, too.'

Despite these types of education campaigns, and despite smoking being banned in indoor places and work vehicles, research has found that 31 per cent of smokers who have cars and children are still smoking in their vehicles whilst their children are present. Without some form of compulsion, it is unlikely that some adults will ever stop smoking in the presence of children in the confined space of a motor vehicle. A query as to how this law will be enforced was also raised. An honourable member asked how police officers will know whether a child is below 16 years of age. It should be reasonably easy for police officers to access the age range of most young children. In the case of ascertaining the ages of teenagers in the car, if the officer suspects that the teenagers are younger than 16 years then the onus will be on the person who is smoking (that is, the adult person) to provide evidence to the contrary.

The Hon. Michelle Lensink asked, 'To what extent does the government legislate for people to do the right thing by other people?' As adults we can choose to travel in a car with a smoker or we can ask the smoker not to smoke. This is not the case for children. Often children do not have a choice about whether they are exposed to passive smoking and, very often, they do not have a choice of alternate transportation. It would be good if all adults automatically made the decision not to smoke around their children but, as I have said earlier, research tells us that, unfortunately, 31 per cent of smokers who have cars and children are still smoking in their vehicles whilst their children are present.

The Hon. Michelle Lensink asked why the maximum penalty for this offence is only $200. This penalty is consistent with the penalty for individuals caught smoking in other enclosed public places. The Hon. Dennis Hood asked about the definition of 'motor vehicle'. The definition used is the same as the definition in the Motor Vehicles Act 1959, being that a motor vehicle is a vehicle that is built to be propelled by a motor that forms part of the vehicle. This is an accepted definition in South Australia, and potentially it could cause unnecessary confusion or inconsistency to depart from this particular definition in this legislation.

Like the Hon. Mr Hood, I was interested to read the media release from the Hon. Christopher Pyne on 28 November 2006 giving support to Tasmania's proposal to ban smoking in vehicles that are carrying children. The release did not mention that the South Australian government had introduced a bill to prohibit smoking in vehicles that are carrying children under 16 years of age when it had announced this measure the day prior. I wrote to the Hon. Christopher Pyne shortly afterwards to inform him about what we were doing here in South Australia and I encouraged other states and territories to introduce similar legislation. In fact, he congratulated South Australia on its efforts at the next ministerial meeting.

In his address the Hon. Rob Lucas drew a startling conclusion that, because more people are dying today of smoke-related illnesses compared with 1980, measures to reduce the number of people who smoke have been singularly unsuccessful. His conclusion is clearly wrong. Most diseases caused by smoking do not happen overnight. For example, lung cancer caused by smoking can take 20 years or more to develop. Lung cancer patterns in the community are an indicator of the smoking patterns of earlier decades; so, too, it can be said about other lung-related diseases such as emphysema.

This government is making an investment to improve the health of future generations. I believe that reducing the number of people who are smoking and reducing exposure to passive smoking will lead to a drop in smoking-related diseases—which we should see evidenced in 20 to 30 years. I commend this bill to members and look forward to discussing and expediting it through the committee stage.

Bill read a second time.

In committee.

Clause 1.

The Hon. NICK XENOPHON: First, can the minister elaborate on proposed education in terms of this new legislation, which I support, and what is anticipated in terms of publicity and an advertising campaign? Secondly, what resources does the minister envisage will be provided for enforcement of this legislation, both in the metropolitan area and in regional South Australia?

The Hon. G.E. GAGO: To partially answer the questions, I advise that the introduction date for this law is set to coincide with World No Tobacco Day (31 May 2007), and a comprehensive communication strategy will be developed to inform the public about this new law. The message will be particularly targeted at drivers, parents and caregivers by providing advertisements on the back of buses; and it will be promoted to parents via schools, kindergartens and other child-oriented organisations.

In terms of resources, I understand the need is assessed to be minimal, based on a similar type of enforcement of the use of mobile phones in cars. I understand, at least on preliminary advice, that it has quite a minimal resource impact on enforcement measures.

The Hon. NICK XENOPHON: Can the minister clarify what she means when talking about a minimal impact on resources? Does she mean that there will not be much given by way of resources to enforce this legislation? How will it be policed? It is a commendable piece of legislation but, unless there is some active and extensive enforcement, how will there be an effective deterrent to this sort of behaviour that puts children at risk?

The Hon. G.E. GAGO: As with the existing smoke-free legislation, the emphasis will be on educating people about the law and changing community attitudes, and we believe that this will initiate a cultural shift to ensure a high level of compliance rather than relying on direct enforcement. Police officers and tobacco control officers have the authority to issue warnings and infringement notices. The enforcement of this legislation will be similar in nature to enforcing legislation regarding driving while operating a hand-held mobile phone and driving without a seatbelt, which are currently enforced by traffic police. No additional resources were needed, I understand, when these measures were put in place, and I understand the assessment is that additional resources will not be required by police at this time. Of course, we will continue to monitor that.

The Hon. R.D. LAWSON: Further to the point just made by the minister, we are used to having blitzes and the like being conducted by police to address particular issues on the road. Is it envisaged that there will be any blitz or other special campaign at the time of the introduction of this measure in relation to smoking in cars? Secondly (a related but different question), very often when measures of this kind are introduced there is a moratorium period, during which time police only issue warnings and do not issue expiation notices or institute proceedings for an offence. Is it envisaged that there will be any similar moratorium in relation to this measure?

The Hon. G.E. GAGO: No. At this point in time, we do not envisage that a moratorium will be needed. We believe that the general community education and advertising campaign, as I have outlined, will be more than adequate to communicate these changes to the community generally. We do not envisage that a large number of people will be involved, in terms of enforcement. We believe that it would be more like a slow trickle.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. SANDRA KANCK: I move:

Page 2, lines 13 to 25—
Delete proposed section 48 and substitute:
48—Smoking in motor vehicles prohibited

(1) A person must not smoke in a motor vehicle being driven on a road (whether by the person or otherwise).
Maximum penalty: $200.
Expiation fee: $75.
(2) In this section—
motor vehicle has the same meaning as in the Motor Vehicles Act 1959;
road has the same meaning as in the Road Traffic Act 1961.

I spoke, I think, at fairly great length in my second reading contribution, and I indicated that I would move this amendment. The bill as it currently stands provides that a person must not smoke in a motor vehicle if a child is also present in the motor vehicle. My amendment is not dependent on a child being present, although it has a qualification, and that is that the vehicle is driven at the time.

There are good reasons for moving an amendment such as this. We do not allow people to smoke cigarettes in any public transport, be it buses, trains or trams, on all our domestic air routes in Australia and on many of our international air routes. I would be very surprised if we found that the pilots of our planes were smoking, but I am not aware whether or not that happens. One of the factors that I think is fairly strong, in terms of wanting to stop people smoking in vehicles, is the issue of bushfires. In Victoria and New South Wales, we know that the throwing of butts out of car windows as people are driving along is responsible for up to 4 per cent of roadside fires. There is also the issue of the distraction of someone lighting up a cigarette. We do not allow people to drive and use mobile phones because of that distraction from their driving and, similarly, lighting up cigarettes should be in the same category.

The Hon. M. PARNELL: The Greens would support measures that discourage people from smoking in all situations. I can understand exactly where the Hon. Sandra Kanck is coming from, with an absolute ban on smoking in cars, rather than just the government's proposal to ban smoking when children are present. One thing that attracts me about this amendment is that it captures a range of people who deserve protection but who are not otherwise protected by the government's bill.

The assumption seems to be that the only vulnerable, dependent people are children but, in fact, you can imagine a range of scenarios where a person that we might want to protect—such as a disabled adult, a child or a non-smoking spouse, or someone who we just happen to be getting a lift with—are not protected by this bill, so I can see the attraction of banning all smoking in cars to provide those people with some level of protection.

I also understand the arguments in relation to bushfires and distractions. Yes, we ban the use of mobile phones in cars because of the distraction they cause, but we have not yet reached the stage of banning the eating of food or the drinking of drinks. In fact, in America I understand that the choice of car is as much dependent upon the quality of the drink holder as it is on the number of cylinders or the power of the engine under the bonnet. I think there are lots of other dangerous activities done in cars that we should be discouraging, but we have not got around to doing it yet.

Unfortunately, I am not able to support the Hon. Sandra Kanck's amendment because it just goes that little bit too far. Whilst I certainly appreciate the intention and the motivation behind it, where you have people who, as a result of choice or addiction, are in a car by themselves or perhaps with other smokers, it does seem to be an unreasonable restriction to prohibit the activity. I congratulate the Hon. Sandra Kanck for putting the amendment forward because I can see that most of the drop in tobacco use in our society does flow from the restrictions that are imposed on people: restrictions imposed in the workplace, in cinemas, in places of entertainment. The Hon. Sandra Kanck is to be commended for trying to extend that range of places where smoking is prohibited. We looked earlier this year at a bill to prohibit smoking at bus stops, at the Christmas Pageant and at the royal show. Unfortunately, that was unsuccessful, but they were good cases where I think we could have banned smoking quite reasonably as it was not too much of a breach of civil liberties. But the total prohibition on smoking in cars is just going a tad too far for the Greens, at this stage.

The Hon. J.M.A. LENSINK: In relation to the Hon. Mark Parnell's contribution, to quote Meatloaf, 'You took the words right out of my mouth.' The Liberal Party will also not be supporting these amendments, for similar reasons. We did not support the proposition that we should ban smoking at specific events, and I will not go back into all of those issues, but suffice to say that the smoking of cigarettes in cars generally is a concern, particularly for a number of our country members, given the sort of geography that they represent. There is some sympathy for this measure but, as the previous speaker has stated, we think that it just goes a bit too far.

The Hon. D.G.E. HOOD: Family First will also not be supporting this amendment for the same reason. Essentially, we believe that the measure goes too far. Smoking is not something that Family First wishes to encourage but, at the end of the day, it is a legal activity and, for that reason, we will not support the amendment.

The Hon. G.E. GAGO: The government is opposing this amendment. The government's bill is a health measure designed to protect children from the harm of tobacco smoke. While most adults can ask a smoker not to smoke whilst they are present in a car, this is obviously not the case for children. While most adults who are passengers can also determine other means of transportation, children are not able to do that. Basically, I believe that the amendment does go too far. Smoking is a legal matter and we do not believe it is appropriate, at this point, to legislate against every single contingency that is available or that might apply. Basically, what an adult does in their own private vehicle and the risks they are prepared to take in relation to their health, we believe are fundamentally matters for themselves.

The Hon. SANDRA KANCK: Obviously, this is going to be resoundingly defeated, but I cannot let this pass without an observation about the hypocrisy that I have come to expect in this place when it comes to licit versus illicit drugs. Some 18 months ago we passed legislation in this place dealing with the illicit drugs; it was the so-called drug driving bill. Here is another drug that we are prepared to ignore; again, on that argument that this is a legal drug. I think that is a cop-out, but it is the normal lack of scientific and rational debate that I expect on this topic.

Amendment negatived; clause passed.

Title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

TOBACCO PRODUCTS REGULATION (EXPIATION FEES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 November. Page 1018.)

The Hon. J.M.A. LENSINK: The Liberal opposition supports this measure, which I understand shifts a number of offences from the regime of fines into the regime of expiation fees. I will not go into the range of what they all are, as they have already been outlined to the chamber, but suffice to say that the offences broadly relate to retail licensing and the sale of tobacco products. From my understanding of the law, and I think it is fairly clear, expiations carry a lower burden of proof than fines and are, therefore, easier to expedite because it negates the need for court involvement. The department's representatives advised in the briefing—and I thank them for their assistance—that restrictions on smoking in enclosed public areas already carry expiations which have proven to result in good compliance. If I have a criticism of the bill—not specifically this one but our legislation in general—it is that once again the penalties focus on retailers.

What the anti-smoking lobby and everybody will say is that the most important measures in smoking harm reduction are to target young people. For that reason, on behalf of the Liberal Party, I have drafted some amendments which look at the issue of young people. I acknowledge that this will be the third time that a form of this policy has been brought to the Legislative Council. The originator of this concept was indeed the member for Fisher (Hon. Dr Bob Such), who, in previous versions, attached a fine and a fee to the confiscation of products from minors. Those amendments were drafted so that children would be fined if they did not produce the tobacco products that they should not have in their possession.

Understandably, retailers are quite supportive of including some obligations for minors because they often feel that they bear the brunt of the penalties. We are told that some 20 per cent of young people obtain tobacco products from retailers, which clearly means that 80 per cent of them are getting them from someone else. The Liberal opposition believes that responsibility should be shared between different parts of our community. If one draws a comparison with the sale of liquor to minors, there are some fairly hefty penalties, not just for selling liquor to minors but, if somebody purchases liquor at the request of a minor, they are both guilty of an offence. Any minor who obtains or consumes liquor in regulated premises is guilty of an offence; minors can be asked to leave premises; and minors may not consume liquor in public places. The police also have the power to enter and search premises and confiscate liquor if they believe the law is being breached.

This amendment does not go as far. We are not asking—as we have previously—that the child in question be fined for not producing the tobacco products, but we are asking that the police, teachers and other authorised officers be given express powers to confiscate tobacco products. Understandably, in a litigious society, those particular persons would feel much more comfortable if they had the right to do so. We believe that this issue also has the support of the community.

In closing, I would like to express my thanks to parliamentary counsel, who have been very expeditious and professional in assisting me with this particular issue. I commend the bill and the amendment to the council.

The Hon. M. PARNELL: The Greens also support this legislation. We believe that not every offence warrants a court appearance. However, every offence does deserve some level of consequence. Providing for expiations for some of the lesser offences provides that consequence.

On my calculation, this is the fifth bill relating to tobacco that we have dealt with in this session of parliament. Members will recall that we had a government bill regarding the sale of fruity cigarettes. The Hon. Sandra Kanck introduced a bill in relation to clean air zones, the Hon. Nick Xenophon brought a bill to this place which looked at cigarette vending machines and product advertising, and we have recently been discussing smoking in cars. We spend an awful lot of time in this place talking about this most dangerous of drugs and how to reduce the impact of this deadly drug on South Australians, but how well are we matching the fine rhetoric in parliament with action?

I want to refer briefly to some amendments that I put forward to very different legislation last year relating to the Triple S Superannuation Scheme. I called for the fund managers of politician and public servant superannuation to provide an ethical investment choice. Government workers and parliamentarians are some of the very few people in society who do not have the same superannuation choice that other members of the community enjoy. My call last year was rejected. The Legislative Council, in its wisdom, decided that we should not direct our superannuation fund managers on how they should invest their money.

Before I am pulled up on relevance, what is the connection between ethical superannuation and the bill before us? Quite simply, the answer lies in the fact that your superannuation, Mr President, my superannuation and that of other members in this place and public servants is being invested directly in the tobacco industry. If you go to the annual report of Funds SA and look at the list of top shareholdings, you will find that one such company is Altria. That name does not mean much to most people but it is, in fact, the parent company of the tobacco giant, Philip Morris.

The Hon. Nick Xenophon: It sounds like 'altruism'.

The Hon. M. PARNELL: There is nothing altruistic about promoting a drug of death. This company receives some of Funds SA's 0.5 per cent investment in international equities. It might not sound like a great deal of money but, when we work through the figures, because superannuation is such a large pool of investment, some $164 million of South Australian money is being directly invested in the tobacco industry.

So, what on earth are we doing when, in one 12-month period, we debate five bills trying to restrict the impact tobacco has on our society? As other members have said, it is the biggest cause of hospitalisation and the biggest killer—far greater than many of the other drugs we spend time debating. Why do we allow South Australian money to be invested in that industry? If we were to take off our ethical hat and put on our investor hat, we should be cheering and clapping whenever the share price of Philip Morris goes up. Every new smoker who is recruited to the ranks boosts our retirement income. We should be batting for the tobacco industry as hard as we can. That is the message public superannuation shareholdings in the tobacco industry is sending to every public employee in this place.

I think that it makes no sense at all for these hundreds of millions of dollars of retirement funds to be put to work directly against government policy. In some cases, the individual workers whose job it is to promote education and health programs that discourage smoking find that that very work is being undermined by the compulsory investment of their superannuation. When we talk about Phillip Morris, I

think that it is important to remind members that we are talking about one of the big players in the tobacco industry. We are talking about the owner of brands such as Marlborough, Peter Jackson, Virginia Slims. These are brands about which all of us would have heard, and we are directly promoting investment in them.

Whilst I am very pleased to support a bill that provides for a more sensible regime for the expiation of offences, I do not think we should be kidding ourselves that, by passing bills such as this, we are doing anywhere near enough. At every opportunity, I will renew my call for South Australian members of parliament and public servants to be given an opportunity to invest their superannuation ethically, and that includes having a fund available that does not invest money in the tobacco industry.

The Hon. D.G.E. HOOD: Family First supports the second reading of the bill, which seeks to amend the Tobacco Products Regulation Act by bringing in expiation for a greater range of offences than currently exists. On 28 February this year, AAP reported that the graphic health warnings in Victoria were resulting in an increase of more than 27 per cent in calls to its Quitline, which is very encouraging.

I mention this because Family First's view is that graphic warnings, the removal of smoking from public areas, and prosecuting illegal activity actually works—contrary to the other side of the debate. We will take whatever opportunity we can to criticise harm minimisation because it is basically harm permission, by any other name. It is only since governments world-wide started getting tough that smoking has started heading in a downward trend, and I think it would give us all a laugh to read some of the quite serious, but now embarrassing, comments made in the past regarding softer approaches to smoking. In short, a tough approach on this issue does appear to be working.

The Hon. Andrew Evans, in his question to the minister in this place on 21 February this year, raised his concerns about the extent to which the minister is prosecuting breaches of the tobacco laws, and I would like to take a moment to reflect on that question. The minister responded that she would bring back a reply (and I look forward to that when she does), but she also said that it was hoped that increased fees would bring in more revenue and enable greater enforcement—which we would certainly support. I ask the minister, in her summing up, to address the projected resources that will be deployed to this end as a result of these expiation fees.

Family First does have some concern that, while revenue will be raised from these expiation fees to pursue a reduction in smoking, in reality there are not many people on the ground to actually do it. If, as a result of the expiation fees that are being touted by this legislation, there are more resources available to actually issue the expiation notices, we would see that as a good thing and would be behind that concept. In short, we want to be sure that we are not wasting our time legislating for something that is not being enforced. I am sure that is not the case; however, I would like to flag that for the minister's comments in her summing up.

Family First supports this reform, but I cannot let the opportunity pass without mentioning that the fine for smoking will now be the same as the fine for sticking chewing gum under the seat of a bus, for leaving your sprinkler on past the designated times or, in fact, for growing one cannabis plant in South Australia. So, growing a cannabis plant will essentially have the same fine as what will be covered under this legislation, the same fine as leaving chewing gum under the seat of a bus, and the same fine as for leaving your sprinklers on a few minutes past the designated time. That does seem to reflect the very soft attitude that we have towards cannabis in this state.

The Hon. Michelle Lensink also alerted us—indeed, she just mentioned it in her speech a moment ago—to the amendment she is proposing. Family First believes that the amendment deserves consideration and may, in fact, not go far enough. However, we look forward to her comments on that amendment in the committee stage, and we will give it due consideration. In closing, Family First supports the bill and looks forward to it passing through the parliament.

The Hon. NICK XENOPHON: I too indicate my support for this bill, but I see this as an opportunity to comment on the government's failings in other areas of tobacco control that I believe would have a greater impact on the problems that this bill is intended to tackle—that is, to reduce the level of smoking, particularly amongst young children.

In terms of the bill, I think it is fair to say that some tobacco control experts would consider these fines to be on the low side, compared to New South Wales. A related issue is how many officers of the department will be responsible for enforcing this, and how many inspections the government proposes will take place in the next financial year compared to the current and recent financial years. In other words, in due course can the minister indicate what are the resources for ensuring compliance? Will there be additional resources to ensure people comply with this bill so there is a risk of detection, of a fine or prosecution, to ensure that retailers are kept on their toes?

Can the minister also indicate the number of prosecutions for, say, the 2006 calendar year or the 2005-06 financial year (whichever is more convenient in terms of the way statistics are kept) and whether an upward trend is expected in relation to this? It also should be noted that the fine for supplying alcohol is $5 000, which is significantly more than what is being proposed here, and I think there is some inconsistency in approach. Why is it that the comparable fine for the illegal supply of alcohol is much higher than what is being proposed here?

Just as the Hon. Mark Parnell made comment about ethical choice of investment and the gobsmacking fact that the State Superannuation Fund is a significant investor in a business associated with a tobacco company, other inconsistencies need to be pointed out. It seems that the basis of this bill is to discourage children from smoking or to ensure compliance which will lead to a reduction in children's smoking. Why is it that from November South Australia will have the worst practice for tobacco displays in shops and a special deal for tobacconists as they can have 4 m^2 of tobacco advertising? All other shops can have 3 m^2 of tobacco displays in the face of children.

In many cases tobacco displays in South Australia could well increase, and even cartons are allowed. Most other jurisdictions have far less by law—for example, 1 m^2 in Western Australia. Tasmania is currently considering health department recommendations for a total out of sight policy. The compromise that the government has reached on tobacco displays has put commercial interests and the false claims of retailers ahead of the health concerns of children.

About 10 000 children in South Australia are already weekly smokers, and evidence shows that advertising displays in shops predispose children to smoking and related products, similar to other consumer products like confection-

ery. The fact that the strong recommendation for out of sight displays was backed by over 30 health, medical, welfare and church groups is very powerful. Advertising expert John Bevins, whose material is on the Action on Smoking and Health (ASH) web site, indicates that product display is advertising and how displaying cigarettes normalises them and advertises them, yet cigarette advertising is supposed to be banned.

I think that the government has really let down those in the health sector with this by failing to go further. The government has done a bit of tinkering around the edges in a sense but, when it comes to displays of tobacco products, we are going to have the worst practice in the nation come this November. That, to me, is something that the government must address, and it shows a lack of willingness to stand up to the tobacco lobby in this state.

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

LOCAL GOVERNMENT (STORMWATER MANAGEMENT) AMENDMENT BILL

(Continued from 22 February. Page 1540.)

In committee.

Clause 4.

The Hon. SANDRA KANCK: I move:

Page 5, line 17—After 'planning' insert:
(including policies and information promoting the use of stormwater to further environmental objectives and address issues of sustainability including the use of stormwater for human consumption, for the maintenance of biodiversity and other appropriate purposes)

I suppose this amendment is not exactly consequential on the previous amendment I was successful in moving, but it is a logical extension of that particular amendment.

The Hon. S.G. WADE: The opposition agrees with and supports this amendment.

The Hon. P. HOLLOWAY: The government opposes the amendment. The considerations are contained in the stormwater agreement and guidelines for preparation of stormwater management plans, albeit there is no specific reference to the use of stormwater for human consumption, and we do not believe they need to be legislated. However, given that this is a companion, I guess, to the earlier amendment, we accept that we probably do not have the numbers on this.

The Hon. NICK XENOPHON: I indicate my support for the amendment. This amendment makes it absolutely clear that we need to take into account environmental objectives and address issues of sustainability. This amendment can only add to this bill being a more effective piece of legislation.

Amendment carried.

The Hon. S.G. WADE: I have a question under clause 5—'Functions of Authority'. In relation to paragraph (h), can the minister advise the committee how regularly it is intended that the authority would provide advice to the minister?

The Hon. P. HOLLOWAY: My advice is that we expect it would be at least annually. Presumably, if an issue were to arise about which the authority thought it appropriate to advice the minister, the authority would do so.

The Hon. SANDRA KANCK: I move:

Page 5, after line 17—Insert:
(ca) to facilitate programs by councils promoting the use of stormwater to further environmental objectives and address issues of sustainability including the use of stormwater for human consumption, for the maintenance of biodiversity and other appropriate purposes;

As with the previous two amendments, this amendment clarifies that obligation to look at stormwater in terms of environmental objectives.

The Hon. P. HOLLOWAY: The councils that are responsible for stormwater management will facilitate and promote stormwater re-use. Stormwater re-use and environmental considerations are contained in the guidelines for stormwater management planning that will be approved and issued by the authority. The guidelines will be published in the *Gazette*. We make the comment (as we did in relation to the Hon. Ms Kanck's previous amendments) that we do not believe the amendments are necessary, but we accept that this is a suite of amendments and the government does not have the numbers.

The Hon. S.G. WADE: The opposition supports the amendment.

The Hon. SANDRA KANCK: The Hon. Mr Holloway's remarks cause me to make a further contribution. It is all very well to have these things in nice little agreements and guidelines, but there is nothing as strong as having it in the legislation.

The Hon. D.G.E. HOOD: Family First agrees with the government on this position. We believe that the issues of concern raised by the Hon. Sandra Kanck are covered, so for that reason we will support the government.

Amendment carried.

The Hon. R.I. LUCAS: I refer to page 7 under the heading 'Remuneration'. I put questions to the minister in the second reading as to the intended payment for the chair of the board and board members. Have any costs, expenses or payments been made to Mr Bolkus or any other person during this interim period?

The Hon. P. HOLLOWAY: My advice is that the chair will get the normal committee fee set by the Commissioner of Public Employment for the chairs of committees and for members.

The Hon. R.I. Lucas: What is that?

The Hon. P. HOLLOWAY: I am not sure.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I think there is a standard fee for most that these operate under.

The Hon. R.I. Lucas: The more important ones get more money and there is a classification.

The Hon. P. HOLLOWAY: It is obviously not at the top level, but we will have to take that question on notice. It is just a normal committee fee, not as it is with some body, such as the Economic Development Board and others, where there is a set fee. It is a sitting fee. Members who are not public servants or members of council staff will also be paid the normal committee fee set by the commissioner for this committee. We will get that information on the actual classification.

The Hon. R.I. LUCAS: The minister is saying that he will take on notice the actual sitting fee, but that it is a sitting fee and that Mr Bolkus will not be paid any form of chairperson's allowance or annual retainer: it will just be solely a sitting fee based on whatever is the appropriate level of classification for this committee.

The Hon. P. HOLLOWAY: That is my advice and understanding.

The Hon. R.I. LUCAS: I thought that, as part of this debate, there was some reference to the fact that, in some sort

of interim capacity, Mr Bolkus and possibly others might have been involved already in attending meetings, and so on. Has there been any payment to Mr Bolkus or anyone else during the interim period prior to the passage of the legislation? If that is the case, what has been the arrangement with Mr Bolkus or any other person?

The Hon. P. HOLLOWAY: It is my understanding that the committee has been operating. I am advised that there have not yet been any fees paid, but one would expect that they would be paid once the correct fee is set for those meetings which he has chaired.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes; those committees which he has chaired.

The Hon. R.I. LUCAS: Has the minister just confirmed that there will be retrospective payment to Mr Bolkus and the other members of the board or authority?

The Hon. P. HOLLOWAY: My advice is that there is only one other member for whom payment would be required. The rest are either public servants or council employees and, therefore, not entitled to payment. Did the Leader of the Opposition ask a question in relation to whether the authority was a public corporation?

The Hon. R.I. LUCAS: Yes; I was going to raise those again under clause 17.

The Hon. P. HOLLOWAY: For the record, the authority will not be a public corporation under the Public Corporations Act. Clause 28 provides that regulations may be made in respect of the operation and performance of the authority. The authority will have the ability to borrow with the approval of the Treasurer. Any debt to the authority will not impact upon the state budget, since the authority is an independent body that is not state government controlled.

The Hon. SANDRA KANCK: I move:

Page 8, lines 29 to 31—Delete '(and such objectives must be consistent with the objectives of the Stormwater Management Agreement)'

On its own it does not entirely make sense to simply delete those particular words, but it is a precursor to my amendment No. 5, where, again, as much for clarity as anything else, it is expanding on this requirement to take into account environmental objectives. So, although amendment No. 4 might not make sense on its own, it is making way for amendment No. 5.

The Hon. P. HOLLOWAY: I will put the government's position. Being consistent with the other amendments that the Hon. Sandra Kanck has made, stormwater reuse and environmental considerations are contained in the guidelines—the stormwater management planning—that will be approved and issued by the authority. The guidelines have been approved by the Natural Resources Management Council and will be published in the *Gazette*. The councils must prepare stormwater management plans in consultation with relevant regional NRM boards. The bill does not negate the need for a council to comply with or obtain approvals or licences under any other act or regulation. We will be opposing the two amendments.

At this point, it is worth re-emphasising what this bill is all about. This bill deals with the funds traditionally paid by state government to councils for stormwater management works. Essentially, they are funds for flood mitigation. That is what the state government has paid in the past, and this bill essentially deals with those funds that traditionally have been paid in that way. There are two clear measures. First, we are moving towards total catchment management and multi-objective outcomes, but we cannot ride out the need to fund flood mitigation. Secondly, the other clear measure is the ability to bring forward funds so that works can be undertaken earlier than may otherwise be possible.

Essentially, that is what this bill is about. It is about funding projects for which there are no alternative funds; however, there are other funding sources for NRM works. So, I think that, in this whole debate about objectives, the point needs to be made that, in the past, the state has specifically funded stormwater management works—flood mitigation, if you like. It is essentially what this bill is about. There are other sources of funding for NRM works. This government believes that these multi-objective outcomes are very important. We do not resile from that. However, it does need to be emphasised what this bill essentially is about.

The Hon. S.G. WADE: The opposition will be supporting the Hon. Sandra Kanck's amendment.

Amendment carried.

The Hon. S.G. WADE: With the leave of the chamber I propose to move the amendments filed in the name of the Hon. Mr Ridgway. I move:

Page 8, after line 31—Insert:

(ab) must set out appropriate public consultation processes to be followed by councils in the preparation of stormwater management plans; and

The bill provides in subclause (1) that the authority must issue guidelines for the preparation of stormwater management plans by councils. Subclause (2) provides that the guidelines must set out the elements to be reflected in stormwater management plans. The amendment seeks to insert a new subclause to require the authority's guidelines to set out appropriate public consultation processes to be followed by councils in the preparation of stormwater management plans. The amendment was drafted following concerns raised by the Residents for Effective Stormwater Solutions (RESS) in relation to their concerns on public consultation.

Minister Conlon indicated in the other place that consultation is already dealt with in the authority's guidelines. However, the clause itself does not specify that appropriate public consultation processes must be set out in the guidelines, and the opposition considers that public consultation is so important that it should be specifically referred to.

The Hon. P. HOLLOWAY: Just for the record, the government does not believe that these amendments are necessary, for the same reason that we did not believe that those of Ms Kanck were necessary; that is, that the bill already contains specific requirements that consultation must take place with the relevant natural resources management board and, in addition, that stormwater management plans must comply with the guidelines issued by the Stormwater Management Authority, which in turn must have been approved by the natural resources management councils. Those guidelines must be published in the *Gazette*. We do not believe that they are necessary, but we will not at this stage further take the time of the committee by dividing on it.

The Hon. SANDRA KANCK: I indicate Democrat support for the amendment and will just underline what I have said before: legislation trumps guidelines every time.

The Hon. M. PARNELL: I also support the amendment. I do not think it goes as far as my amendments, but I do not think it is necessarily inconsistent with them. My view is that these stormwater management plans are important documents that will infringe potentially on the rights of citizens in relation to their properties. They will guide the expenditure

of millions of dollars of public money and, therefore, a more formalised regime for public consultation is appropriate. When you think about statutory plans under other legislation, whether it be to do with fishing or national parks or under the planning regime, we have the basic requirements for public consultation set out in the legislation.

This amendment does, to a certain extent, handpass the ability to set the fine detail of public consultation into the guidelines rather than in legislation. Nevertheless, I think it is heading in the right direction. The absence of a mechanism for consultation in the legislation does not mean that consultation will not happen but, if we do put something in the act, it makes it more likely that proper consultation will happen. I am happy to support the amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 8, after line 35—Insert:

(2a) The objectives set out in the guidelines must—

(a) be consistent with the objectives of the Stormwater Management Agreement; and

(b) include—

(i) environmental objectives; and

(ii) objectives addressing issues of sustainability,

that are consistent with the objects of the Environment Protection Act 1993, the Natural Resources Management Act 2004 and other relevant legislation aimed at protection or enhancement of the environment, the maintenance of biodiversity and the sustainable management of natural resources.

As I indicated when I moved amendment No. 4, this is the other half of that amendment, where the real guts of it sits. This is, effectively, what replaces the wording that I had deleted in my amendment No. 4.

The Hon. P. HOLLOWAY: We have already discussed this.

The Hon. S.G. WADE: The opposition supports the second half of the Hon. Sandra Kanck's proposal.

Amendment carried.

The Hon. M. PARNELL: I move:

Page 9—

After line 3—Insert:

(ab) prepared in compliance with the public consultation requirements set out in subclause (3a); and

After line 7—Insert:

(3a) A council or group of councils preparing a stormwater management plan must comply with the following requirements in relation to public consultation:

(a) the council or group of councils must, having prepared a draft of the proposed stormwater management plan, cause to be published in the Gazette and in a newspaper circulating generally throughout the state an advertisement—

(i) giving notice of the place or places at which copies of the draft are available for inspection (without charge and purchase; and

(ii) inviting interested persons to make written representations on the draft within a period specified in the advertisement (being not less than two months) and to attend a public meeting to be held in relation to the draft;

(b) the council or group of councils must give due consideration to any submissions made by interested persons in accordance with this subclause.

Lines 37 and 38—Delete subclauses (2) and (3) and substitute:

(2) However, the authority must not approve a stormwater management plan unless—

(a) it is satisfied that the relevant council or councils have complied with the public consultation requirements set out in clause 13(3a); and

(b) the authority has received advice in respect of the plan from the relevant regional NRM board or boards in accordance with clause 13(4).

(3) On approval of a stormwater management plan the authority must—

(a) publish notice in the Gazette of the approval; and

(b) provide the minister with a copy of the approved plan.

(4) The minister must cause a copy of the approved stormwater management plan to be laid before both houses of parliament as soon as practicable after being provided with a copy of the plan in accordance with subclause (3) and either house may disallow the approved stormwater management plan within 14 sitting days after the copy of the plan was laid before that house.

The amendments relate to public consultation in relation to the preparation of stormwater management plans, but there is one additional element. My amendment No. 3 talks about the need to table the approved stormwater management plans in both houses of parliament with a right of disallowance; I will therefore treat that part of my amendment No. 3 separately. The regime for public consultation I have set out in my amendments is fairly basic. It includes the usual method of advertising the existence of a draft plan, giving interested persons the right to make a written submission to that draft plan, giving interested persons the right to attend a meeting where the draft plan is discussed and a requirement that, because we have had consultation and because it needs to be genuine, the decision maker must also be obliged to take that consultation into account when giving their final consideration as to whether or not the stormwater management plan should be approved.

As I said, these plans are important documents which will affect rights and which will direct how millions of dollars of public money is to be spent; and it seems to me no small obligation on the part of councils to require that a formal process and consultation be entered into. People might say that a number of the stormwater management plans are fairly insignificant, that they might not affect a wide area and that they might not involve the expenditure of much money. However, the same could be said of a development plan amendment that might involve, for example, just the rezoning of one small property, yet we still require all plans under that legislation to go through this type of basic consultation process.

It might be said that councils will choose to go through this method, and that is well and good, yet the importance of putting it in legislation is that it requires this as a minimum standard of consultation. Basically, it is a protection against councils that choose not to go through thorough public consultation. Those are the reasons why I say we should leave it to the legislation to deal with consultation rather than trusting it to some other subsidiary documents. Also, I will speak briefly to the second part of my amendment No. 3, which requires the tabling of these stormwater management plans with a right of disallowance by either house of parliament.

Again, that is no different to a number of other statutory regimes. It is also the arrangement, of course, for delegated legislation for regulations. If we look at them, the potential content of the stormwater management plans are no less important than many of the regulations that we face. If it is appropriate enough for regulations always to be subject to disallowance, I think it is appropriate for these stormwater management plans to go through the same process. I know that other amendments are tabled in relation to the Public Works Committee (being the appropriate level of supervision for certain works), and I will talk to that when we get to it.

It seems to me that the head document under which all works are to be carried out will be an approved stormwater management plan. Therefore, that is the plan that needs to be tabled before parliament. I think it would be unlikely that a plan would be disallowed but the right, nevertheless, must exist because these will be controversial documents. I commend my three amendments to the committee.

The Hon. P. HOLLOWAY: The government opposes these amendments because they are largely unworkable. They are opposed by the Local Government Association and they will delay funding for high priority works. It will mean that we will have to restart the plans that are already being processed in order to meet these requirements. The government also believes that the disallowance of councils' plans by the parliament is going way too far and is totally unnecessary. We have already passed some amendments moved by the Hons Ms Kanck and David Ridgway (moved on his behalf by the Hon. Mr Wade) to set out appropriate consultation processes to be followed by council in the preparation of management plans.

The government argued that these were unnecessary because they are required by the guidelines. This committee has decided to put them into legislation, but why do we need to go one step further (as these amendments would suggest) and start to put in all the detail about how that would take place? The government opposes these amendments. It is one thing to accept the amendments of the opposition and the Hon. Ms Kanck about guaranteeing public consultation, but to put in all this detail will make these works unworkable and it will delay funding for high priority works.

The Hon. S.G. WADE: The opposition is of the view that the guidelines are an appropriate place for public consultation processes. Following discussion with the Local Government Association it is our understanding that it is not accurate to say that under the current regime there will be 'no statutory obligations for consultation'. In that context a communication from the LGA states:

> It is the view of the LGA that consultation with communities regarding stormwater infrastructure projects are adequately covered given that the stormwater management plans are subject to the approval of the NRM board (under the NRM act) and the authority established under the bill. In addition, the projects are of considerable value. That is, if contributions of councils to projects meet with the provisions of section 48 of the Local Government Act then councils are required to consult with communities about these projects and address a range of prudential issues including risk, financial sustainability, etc.

In the context of that advice and the guidelines we have already discussed, the opposition considers that these amendments should not be supported.

The Hon. D.G.E. HOOD: Family First opposes the amendments. Whilst we think the thrust of the amendments is worthy of consideration, in reality we think practically they go too far and they would be very difficult to see through in any practical workable situations.

The Hon. SANDRA KANCK: I indicate Democrats support for the amendments. One only has to go back to look at the furore that arose with the plan amendment report in relation to Brownhill Creek's flooding solutions. Quite clearly, people felt they had been walked over and the pressure that arose resulted in the government withdrawing that particular plan amendment report. I see no harm in putting something like this in writing, effectively just as we do with EISs, so that people know what they can expect. It dots all the i's and crosses all the t's, and any authority that comes up with these plans will be able to say they did it the right way. No-one will be able to come back and say they missed any steps. I think it is a sensible thing that ensures accountability and public consultation.

Amendments negatived.

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

Page 13, after line 34—
After 'land' insert:
by agreement with the owner or in accordance with the Land Acquisition Act 1969 and any other applicable laws

The purpose of this amendment is to clarify the provisions for acquiring easements or other interests in land and the provisions regarding compensation. Clause 21(2)(b) provides that special powers in relation to private land should not be exercised with the intention that any infrastructure will be permanent unless the owner agrees or an interest had been acquired. Clause 21(3) provides that subclause (2) does not limit or affect the ability of a council or the authority to acquire land by agreement, but there is no mention in that subclause of acquisition under the Land Acquisition Act 1969.

This amendment seeks to clarify clause 21(3) by also including land acquired in accordance with the Land Acquisition Act 1969. If the authority is going to acquire a person's land, it ought to be done in accordance with the sentiment and provisions of the Land Acquisition Act, with all the provisions that that act contains. Again, this amendment results from consultation with RESS. The minister in another place has stated that the law as it currently applies would already have this effect. Nevertheless, the opposition believes that, if acquisition by agreement needs to be identified in clause 21(3), so should acquisition under the Land Acquisition Act 1969.

The Hon. P. HOLLOWAY: The government believes that this clause is totally superfluous, because how else can you acquire land other than by agreement with the owner or in accordance with the Land Acquisition Act? There is no alternative. They are the only two ways you can do it. So, really, we believe it is totally superfluous.

The Hon. Sandra Kanck: It does not hurt to have it in.

The Hon. P. HOLLOWAY: It probably will not do any damage, because there is no other way you can do it, but I guess a drafting purist would find it not acceptable. So, for technical reasons, we oppose it, but it really will not impact in any way on the outcome of the bill.

The Hon. SANDRA KANCK: I indicate Democrat support for the amendment. While I hear what the minister is saying, that these are the only ways that the land can be acquired, for those who find themselves in the situation of land being acquired, not to find the mechanism spelt out and to have to go looking and perhaps employ a lawyer in order to find out what their rights are and so on is not a good idea. I think if it requires us to do this in a number of pieces of legislation it is a good thing that people can have it spelt out and know exactly what situation applies to them.

The Hon. D.G.E. HOOD: In this case, whilst Family First can certainly understand the government's position, we see no harm in this clause being inserted in the bill, as it will provide some legislative protection particularly for people who are having land acquired. For that reason, we support the amendment.

The Hon. M. PARNELL: I, too, support the amendment, not because it is earth-shattering in its novelty, because I think the minister is correct that there probably are only two ways to acquire these interests but, if its only crime is that it

is guilty of setting out the obvious, it is no great crime. So I am happy to have it in the legislation.

Amendment carried.

The Hon. R.I. LUCAS: I have questions about page 11, which I presume is clause 17 of the schedule. I understood that the minister replied earlier to some aspects of the questions that I put, and I think he read out the statement that this body was not going to be a public corporation under the Public Corporations Act. I think that was probably a fair summary of what he said. I have a series of questions which I accept are probably only able to be answered by Treasury and which relate to the fund and also to the structure of the authority—that is, whether it will be a public non-financial corporation similar to the South Australian Infrastructure Corporation, and then a series of subsidiary questions as to the impact of its borrowings on general government sector net debt and also other budget aggregates such as operating payments and operating revenue, and therefore operating deficits or surpluses in terms of any payments made on an annual basis out of the fund.

I accept that these are, essentially, Treasury questions. If they have not been referred to Treasury, at this stage, I do not propose to try to delay the proceedings if the minister is prepared to undertake to let the Treasurer and Treasury have a look at them and provide an answer in writing. It probably will not be productive to try to delay the committee with a quite detailed debate about budget treatment of this authority at this stage.

The Hon. P. HOLLOWAY: Are these the questions that were asked in committee?

The Hon. R.I. Lucas: Yes.

The Hon. P. HOLLOWAY: The information that I provided earlier was that the authority will have the ability to borrow, with the approval of the Treasurer. Any debt of the authority will not impact on the state budget, since the authority is an independent body, which is not state government controlled. We can have a look at the matters raised in the honourable member's second reading contribution, and we undertake to write to him with respect to those matters that have not been addressed.

The Hon. R.I. LUCAS: In relation to the Local Government Disaster Fund, subclause (17) provides: 'The fund is to consist of the following money', and subclause 17(3)(c) provides 'any money received from the Local Government Disaster Fund'. Is the minister in a position to indicate what the processes for payments from the Local Government Disaster Fund into this fund will be? Certainly, the Local Government Disaster Fund covers things above and beyond flooding. It has been used for a range of functions in the past. What is the government's position in relation to payments out of the Local Government Disaster Fund into the Stormwater Management Fund?

The Hon. P. HOLLOWAY: Clause 17(3)(c) includes the provision that the Stormwater Management Fund will consist of any money received from the Local Government Disaster Fund. This provision was included at the request of the LGA to cater for the possibility that a contribution could be received from that fund in the future. There is no expectation or arrangement at this time for any contribution from that fund.

The Hon. R.I. LUCAS: Again, I am happy for the minister to take this question on notice, if he is prepared to do so. I will not repeat it. During my second reading contribution, I asked a specific question on the budget treatment of any potential payments out of the Local Government Disaster Fund into the Stormwater Management Fund and what the impact would be on various budget aggregates as a result of that—for example, whether any expenditures or payments out of the disaster fund into this fund would have an impact on the general government sector net operating position. As I indicated then, I had received some advice when I was treasurer in relation to payments out of the Local Government Disaster Fund. Again, I do not propose to try to delay the committee's proceedings. It is a specific question in terms of Treasury's handling of this issue. I am happy for the minister, if he is prepared to do so, to take the question on advice and correspond.

The Hon. P. HOLLOWAY: We can correspond, but I am advised that the answer is almost certainly that this authority is operating outside the government sector. Therefore, it will not impact on the budget. However, we can confirm that in more detail.

The Hon. R.I. LUCAS: I accept that assurance, but I indicate that payments out of the Local Government Disaster Fund, certainly on previous advice to me, have an impact on the budget position. So, whilst this particular authority might be outside the budget sector (which is what the minister is saying), payments out of the Local Government Disaster Fund in the past do have an impact on the net operating position, as reported by Treasury. That is my particular question. I am happy that the minister is taking it on notice, and I look forward to the reply.

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

Page 16, lines 12 to 21—Delete proposed clause 27.

Clause 27(1) provides that 'the provision of money from the fund. . . to meet the whole or part of the cost of construction of any work will not be taken to make that a public work for the purposes of part 4A of the Parliamentary Committees Act 1991.' Clause 27(2) provides that 'work to be constructed by the authority under clause 16(4) will, for the purposes of part 4A. . . be treated as if it were work to be constructed by the relevant council.' As such, the works would not be scrutinised by the parliament's Public Works Committee. This amendment standing in the name of the Hon. Mr Ridgway seeks to delete clause 27.

The opposition believes that public works, including stormwater-related works over $4 million, should be subject to the scrutiny of parliament. The parliament exists to hold the executive to account, and the scrutiny of public works is a key area of accountability. If this clause remains, it will mean that tens of millions of dollars of taxpayers' money can be spent without any reference to the parliament. I remind the committee that when the government put the amendment to increase the point at which Public Works Committee scrutiny begins (from $4 million to $10 million) the parliament negatived the amendment. The parliament was putting the government on notice that it will not resile from its role of accountability.

I also mention that the opposition is aware of the provisions in the act for scrutiny by the Auditor-General, but we believe that Public Works Committee scrutiny is still extremely valuable. First, the Auditor-General's consideration would be, by necessity, after the event and necessarily narrower than the scope of the considerations under the Parliamentary Committees Act and the Public Works Committee activities. Also, the Auditor-General's processes do not give the community the opportunity to be involved in the process to highlight their concerns. For all those reasons, we believe that this clause should be deleted.

The Hon. P. HOLLOWAY: The government opposes this because it is important to understand that these are local government works. There is a subsidy paid by the state government and that has all been well and good. There is also commonwealth money, for that matter, for these works. We want to clarify that local government works are not subject to the Public Works Committee, otherwise, where do we stop?

The Hon. SANDRA KANCK: I will be supporting the opposition amendment. It surprised me because I really had not noticed it. I saw the headline 'References to Public Works Committee' but did not read the clause when I was going through it. I assumed it meant that it would be referred to the Public Works Committee. It was only when I saw the opposition amendment that I became aware, in fact, that this clause provides that it not go to the Public Works Committee. I think we have to consider the sort of works we are talking about. For instance, in the middle of Morphettville Racecourse (which many people might have seen on their TV sets last night, looking at the Adelaide Cup) there is a very large wetlands now which would have cost a lot of public money to build in the first instance.

This situation is either black or white. Either we accept clause 27, as the government has put it here, or we accept the amendment that the opposition has moved, that is, we remove clause 27. I would be amenable to something that refers to the amount of money that is involved. For instance, as I said, the Morphettville Racecourse is one example where a huge amount of public money has gone into it, but there would be others where it is something not much more than a gravel pit and I do not think something like that needs to be referred to the Public Works Committee. But, as I am choosing between black and white here, between what the government is offering and what the opposition is offering, I think that it is wrong not to have some level of accountability for large amounts of public money. So, under the circumstances, I feel compelled to choose the option that the opposition is offering, which is to completely remove the clause.

The Hon. D.G.E. HOOD: Family First opposes the amendment proposed by the opposition for two reasons. First, we are in agreement that the body is predominantly a local government controlled body with a majority of board members (having at least four of the board members), so that gives us some comfort, in that there is sufficient scrutiny at that level. Secondly, as the Hon. Mr Wade mentioned, the Auditor-General does have powers to audit and, in fact, is required to do so every 12 months. So, for those two reasons, we will oppose the amendment because we believe that there is sufficient scrutiny.

The Hon. R.I. LUCAS: I enter the debate to highlight that the roles of the Public Works Committee and the Auditor-General, on these or related issues, are completely different. The role of the Auditor-General is, essentially, very limited in terms of auditing the accounts of this particular authority at the end of each financial year—having a look at what has occurred. The Public Works Committee is the only capacity that the parliament has, or someone other than the authority has, at the outset, to look at what is a major project. My understanding is that it will be projects over $4 million.

So, for the benefit of the Hon. Ms Kanck, it is not just a gravel pit; it will have to be gravel pits of a large size and with $4 million worth of expenditure. So, not every minor project goes there. There is an existing cut-off of $4 million in terms of public expenditure on project work which goes to the Public Works Committee, and the net result of what is occurring here, if the Liberal Party's amendment is passed, will be that only the big projects ($4 million and above) will go to the committee. The reason for that is the logical one, in that you do not want every gravel pit or minor renovation of a school building, which might cost $50 000, going to the Public Works Committee. It has been the judgment that only substantial public works with substantial public expenditure of $4 million and above would be required to go through that process.

In relation to this issue of the Auditor-General and the Public Works Committee, the Public Works Committee looks at the project at the outset. It is at that stage where you can actually have an impact and, on occasions, the Public Works Committee has had an impact in terms of looking at a project, taking evidence from experts and from others, putting a particular point of view and then recommending to the government of the day and the authority, 'Have you thought about changing this or changing that, and you can still achieve what you want to do.' So, it is actually advice at a stage when it is useful; it is at the outset when you are actually formulating the project.

The Auditor-General has no role in that. When you are looking at a massive wetlands project in the eastern Parklands, as I understand is envisaged, in and around the Victoria Park Racecourse, or the wetlands at Urrbrae High School on Cross Road, or the Morphettville project that the Hon. Ms Kanck talked about, you are talking about significant public works. There will be significant local input, I suspect, knowing the good people of the inner eastern suburbs and the Adelaide Parklands Authority and those who have an interest in any major project there.

If it is not going to the Public Works Committee, there will be no role for the parliament. We do not accept the proposition that the parliament itself should be voting on plans and things like that, but there is a specialist body of the parliament which provides advice in these things. It gives a forum for public participation and consultation, and ultimately governments and authorities are then responsible for making decisions, eventually, having received that advice. They are not required to listen to the advice of the Public Works Committee. There have been occasions in the past where both Liberal and Labor governments have listened to the advice of the Public Works Committee and have not accepted all of the advice of the committee.

The Auditor-General does not get involved at that stage. The Auditor-General is not going to be assisting the process when there is a huge debate about the wetlands in the eastern Parklands near Victoria Park. If you go to the Auditor-General at that stage and say, 'We need some help or advice at this stage', the Auditor-General is going to say, 'Nothing to do with me. I am here to audit the accounts and processes and things like that. That is my role and authority, it is the oversight I have, but in terms of potentially impacting or influencing a major public project, then the Public Works Committee is basically all that you have.'

I accept the position of the Hon. Mr Hood. I have not had a chance to put a proposition to him on that, and I understand that he has put his position. At this stage I indicate to him that I think there is a fundamental misapprehension of the role of the Auditor-General in relation to this process. He has an important role to play, but it is not at the stage that we are talking about; it is further down the track.

The Hon. P. HOLLOWAY: I will illustrate the government's position by way of example, because at the moment we have a $20 million proposal amongst five councils to

address stormwater issues in the region above Gawler River. Of that, the state is providing $7.75 million and it has secured the same amount ($7.75 million) from the commonwealth, and the five councils collectively constructing these works are providing the remaining $4 million for the total project.

The Hon. R.I. Lucas: $16 million of it is actually state and federal money.

The Hon. P. HOLLOWAY: Yes; as I said, $7.75 million is from the state and $7.75 million is from the commonwealth. The commonwealth is not asking its Public Works Committee to look at its funding; it is in fact going to the provision of this work. What are we looking at? Are we going to examine the $7.75 million state component of the $20 million works, or the whole lot? Where do we draw the line in relation to this? The fact is that this project is being constructed by the five councils. It is their project. We are providing money through the authority for that purpose. While I am on my feet, I have just been provided with some information—

The Hon. R.I. Lucas: Hot off the press, is it?

The Hon. P. HOLLOWAY: No, it is just in relation to the authority costs, as follows:

> The presiding member has been remunerated at the rate of $190 per meeting, as determined by the Commissioner for Public Employment, for his attendance at three meetings of the interim stormwater committee management, plus one councillor whose remuneration is $160 per meeting for the three interim meetings.

The Hon. S.G. WADE: In responding to the comments of the government, I would like to indicate what I see as a lack of consistency. We have heard the argument that the Public Works Committee should not review these works because the committee does not normally deal with local government, yet the Auditor-General we say is an appropriate form of oversight even though, as I understand it, the Auditor-General does not normally review local government. I think the government needs to be consistent and, in that context, I would urge the government to support the opposition proposal to provide oversight of the Public Works Committee.

In relation to joint ventures, my understanding is that a proposal can be less than $4 million where the state government is engaging external parties. It still needs to go to the Public Works Committee. The fact that the minister is now giving us examples of projects where the state government is proposing to commit well over the $4 million limit but somehow, because it is a joint venture with a local government authority, it should be exempt from accountability, to me, is extremely concerning in terms of accountability.

I also remind the committee that, in the other place, the government refused to insert a definition of 'stormwater'. I have already made my views very clear: that I regard this bill as faulty because it does not reflect integrated water catchment management. In my view, a provision such as this would be an invitation to every water and infrastructure provider in the government to somehow get their project linked to stormwater and somehow get it through the authority so it can avoid the oversight of the Public Works Committee.

Certainly there is a lot of work that is done by SA Water, for example, that would have relevance to stormwater. I am not suggesting that the authority would do this, but I think giving other elements of government an opportunity to sidestep the Public Works Committee scrutiny through this provision would be extremely concerning. So, I urge honourable members to support the opposition amendment.

The Hon. NICK XENOPHON: I indicate my support for the opposition amendment. I believe that having this level of scrutiny is a good thing. As the honourable Leader of the Opposition suggested, the Public Works Committee cannot stop a proposal such as this, but it will give it a level of scrutiny that we will not otherwise have.

I remember the remarks made by my former colleague in this place, the Hon. Julian Stefani. I think he made some good points about the need for local government to be more accountable to its ratepayers. I think that this parliament can play a role in these major stormwater projects. I did not have an opportunity to speak on the earlier amendment.

The Hon. P. Holloway: So, why do we have councils? Why don't we just get rid of councillors? If we are going to take over their role, why have councillors?

The Hon. NICK XENOPHON: The Hon. Mr Holloway poses those questions. I know that some constituents have that view about the role of local government; however, that is another debate. I indicate my support for the amendment. I do not think that it is unreasonable and, given the amounts involved in some of these projects, I believe that this level of scrutiny should be welcomed.

The committee divided on the amendment:

AYES (10)

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

NOES (7)

Evans, A. L.	Gago, G. E.
Gazzola, J. M.	Hood, D. G. E.
Holloway, P. (teller)	Hunter, I.
Wortley, R.	

PAIR(S)

Ridgway, D. W.	Finnigan, B. V.
Lensink, J. M. A.	Zollo, C.

Majority of 3 for the ayes.

Amendment thus carried; clause as amended passed.

Schedule and title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

CRIMINAL LAW (FORENSIC PROCEDURES) BILL

In committee.

(Continued from 22 February. Page 1536.)

Clauses 12 to 23 passed.

Clause 24.

The Hon. P. HOLLOWAY: I move:

> Page 13, line 22—Delete 'If a forensic procedure is to be carried out on a protected person' and substitute:
>
> If, in accordance with an authorisation under a Division of Part 2, a forensic procedure is to be carried out on a person who is a protected person within the meaning of that Division

This amendment is consequential to the previous amendment No. 5, which reduces the age of consent to a volunteers and victims procedure to 16 years. Clause 24 deals with the right to have a witness present. It will mean that the definition of 'protected person' will depend on the division of part 2 in which it is used. For example, for a volunteer procedure under division 1 the relevant age will be 16 years whereas for

the suspect and offender procedure under divisions 2 and 3 the relevant age will be 18 years.

The Hon. R.D. LAWSON: I indicate that the opposition supports this.

Amendment carried; clause as amended passed.

Clause 25.

The Hon. NICK XENOPHON: I move:

Page 14, line 1—After 'volunteers' insert:
and victims

This is a consequential amendment. This ensures that victims are included or acknowledged in the definition.

The Hon. P. HOLLOWAY: The government accepts that this is consequential to earlier amendments that were passed.

The Hon. R.D. LAWSON: So does the opposition.

The Hon. D.G.E. HOOD: And Family First.

Amendment carried; clause as amended passed.

Clauses 26 to 34 passed.

Clause 35.

The Hon. NICK XENOPHON: I move:

Page 16, line 25—After 'volunteers' insert:
and victims

Again, this inserts the words 'and victims' and it is consequential to previous amendments.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 16, line 22—After 'person' insert:
(within the meaning of Part 2 Division 1)

It is consequential to the amendment to include a definition of 'protected person' in clause 6 to change the age of consent to a volunteer procedure to 16 years. The amendment clarifies that the relevant person for the purposes of the request for destruction is the person who gave the consent under part 2 division 1.

The Hon. R.D. LAWSON: The opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 36.

The Hon. NICK XENOPHON: I move:

Page 17, line 7—After 'volunteers' insert:
and victims

I want to clarify this for the benefit of honourable members. After some discussion, parliamentary counsel has agreed that it is more appropriate to have the words 'and victims', and that is how I moved it previously. I want to make it clear that the amendments should read 'and victims' so that there is not any question mark. I think that honourable members were aware of that, so I want to clarify that I have moved the amendment in an amended form so that after 'volunteers' the words 'and victims' are inserted. That is what was understood in terms of previous amendments; I do not want there to be any lack of clarity in relation to that.

The Hon. R.D. LAWSON: Certainly, our support for amendment Nos 16 and 17 already moved and for subsequent amendments is on the basis that the expression is 'and victims', rather than 'or victims', as printed.

The Hon. P. HOLLOWAY: Certainly, it is the understanding of the government that, although we do not support this amendment, if it was going to be in the legislation, it is certainly better to have the word 'and'. Likewise, we assume that that is what it has been for all those amendments mentioned by the Hon. Robert Lawson.

Amendment carried; clause as amended passed.

Clause 37.

The Hon. P. HOLLOWAY: I move:

Page 18, after line 1—Insert:

(9) If a senior police officer makes an order under this division, the officer must make a written record of the order and the reason for the order.

(10) If the respondent can be located, a copy of the record of the order must be given to the respondent.

This amendment will require a senior police officer to make a written record of an assimilation or retention order, the reasons for the order, and to provide a copy of the record of the order to the respondent. The Police Complaints Authority was concerned that the lack of a requirement to reduce retention and assimilation orders to writing, as is provided in clause 18, could impede the audit process. This amendment deals with that concern, and I commend it to the committee.

The Hon. R.D. LAWSON: I indicate opposition support for the amendment, although I notice that, apparently, the amendment does not impose any obligation for the written record to be retained. I would have thought, however, that it was implicit in the provisions that these records would be retained, and I ask the minister to indicate whether that is his advice. Frankly, if there is no obligation or intention to retain a copy of the record, the utility of these provisions will be circumscribed.

The Hon. P. HOLLOWAY: I can certainly advise that the State Records Act would apply. In fact, I am surprised the Hon. Robert Lawson, who I think introduced the State Records Act into parliament, has forgotten that that act requires that such records be kept.

Amendment carried; clause as amended passed.

Clause 38.

The Hon. NICK XENOPHON: I will move amendment Nos 19 and 20 in an amended form. I move:

Page 18—
Line 6—
After 'volunteers' insert 'and victims'
Line 12—
After 'volunteers' insert 'and victims'

Amendments carried.

The Hon. P. HOLLOWAY: I move:

Page 18, Lines 13 and 14—
Delete 'because he or she was a child, may, at any time after reaching the age of 18' and substitute:
(within the meaning of Part 2, division 1) because he or she was a child under the age of 16 years, may, at any time after reaching the age of 16

This amendment is consequential on the inclusion of a definition of 'protected person' in clause 6. The amendment will mean that a person under the age of 16 years who is the subject of a volunteer procedure will be able to request the destruction of the relevant forensic material on reaching 16 years of age. This is consistent with giving a person of 16 years of age the ability to consent to a volunteer forensic procedure.

Amendment carried; clause as amended passed.

Clause 39 passed.

Clause 40.

The Hon. P. HOLLOWAY: I move:

Page 20, lines 24 to 35—Delete paragraph (b) and substitute:

(b) enter into an arrangement with the minister responsible for the administration of a corresponding law of the commonwealth or with CrimTrac, providing for the transmission of information recorded in the DNA database system kept under this section to CrimTrac for the purpose of that authority doing any, or all, of the following:

(i) causing the information so transmitted to form part of NCIDD;

(ii) comparing the information so transmitted with other information on NCIDD;
(iii) identifying any matches between the information so transmitted and other information on NCIDD;
(iv) transmitting information arising from such matches to the Commissioner of Police.

(3) In this section—

CrimTrac means the CrimTrac Agency, established as an executive agency by the Governor-General by order under section 65 of the Public Service Act 1999 of the commonwealth;

NCIDD means the database that is known as the National Criminal Investigation DNA Database and that is managed by the commonwealth.

This amendment seeks to clarify the relationship with the commonwealth legislation and participation in the National Criminal Investigation DNA Database. The commonwealth drafted a bill to amend its legislation last year to clarify the operation of the database. The provision in this bill was based on that earlier provision. However, the amendment passed by the commonwealth is in a different form. This amendment picks up the approach adopted in the commonwealth legislation.

The amendment makes it clear that the minister can enter into an arrangement with the commonwealth minister or CrimTrac for the transmission of information to form part of the national criminal investigation DNA database. It will also allow CrimTrac to compare the information with other information on the NCIDD and identify any matches and transmit information arising from the matches to the Commissioner of Police.

Amendment carried; clause as amended passed.

Clause 41 passed.

Clause 42.

The Hon. P. HOLLOWAY: I move:

Page 21, lines 16—After 'profile' insert 'derived from forensic material of a person on whom a forensic procedure has been carried out in accordance with an authorisation under part 2 division 1'.

Clause 42 is intended to ensure that, where an individual has undergone a volunteer procedure under part 2 division 1, they have control of how much DNA profile obtained from their forensic material may be used. The structure and conditions of clause 42 are aimed at persons who have been subject to such a volunteer procedure. It is premised upon the requirement that a relevant person's consent must be given before profiles derived from forensic material obtained by way of a volunteer procedure can be stored on either of the volunteers limited purposes or volunteers unlimited purposes indices.

The amendment makes it clear that the storage of DNA profiles derived from biological material of deceased persons, whose identity is known on the volunteers unlimited purposes index, is not affected by clause 42. This does not amount to a change from the current legislative regime. The amendment is consistent with the definition of the volunteers unlimited purposes index in clause 39 where a distinction is drawn between forensic material obtained by way of a volunteers' procedure and biological material of deceased persons whose identity is known.

Amendment carried; clause as amended passed.

Clause 43 passed.

Clause 44.

The Hon. P. HOLLOWAY: I move:

Page 23, lines 4 and 5—Delete 'under this Act by the Minister and the minister responsible for the administration of a corresponding law' and substitute 'by the minister under section 40(2)'.

This amendment is consequential on the amendment to clause 40. It recognises that the minister may make an arrangement under new clause 40(2) with either the minister responsible for the administration of the corresponding law or with CrimTrac.

Amendment carried; clause as amended passed.

Clause 45 passed.

Clause 46.

The Hon. NICK XENOPHON: I will move my amendment in an amended form. I move:

After the word 'volunteers' insert the words 'and victims'.

Amendment carried; clause as amended passed.

Clause 47.

The Hon. P. HOLLOWAY: I move:

Page 24, line 39—After 'procedure' insert ', or refused consent under section 42,'

This clause currently only refers to the inadmissibility of the failure or withdrawal of consent to a forensic procedure. However, there is also a consent procedure in clause 42 that deals with storage of a profile on the database. The fact that a failure to consent to storage on the database could be led as evidence against a person could raise issues as to whether a consent is given freely or under duress. There is no justification for allowing that type of evidence to be led when evidence of the other matters covered in clause 47 of the bill cannot. This amendment addresses this inconsistency.

Amendment carried; clause as amended passed.

Clause 48 passed.

Clause 49.

The Hon. P. HOLLOWAY: I move:

26, lines 6 and 7—
Delete 'under this act by the minister and the minister responsible for the administration of a corresponding law' and substitute:
The minister under section 40 (2)

This amendment is consequential to amendment 10 in my name. It recognises that the minister may make an arrangement under new clause 40(2) with either the minister responsible for the administration of a corresponding law or with CrimTrac.

Amendment carried; clause as amended passed.

Clauses 50 to 53 passed.

Clause 54.

The Hon. P. HOLLOWAY: I move:

Page 27, line 35—Delete 'body; and' and substitute:
body,

This amendment is the first of a package of four amendments dealing with the power to conduct a forensic procedure on a dead person. The substantive amendments are amendments 16 and 18 in my name.

The Hon. R.D. LAWSON: For the benefit of the committee, can the minister outline the purpose of this bundle of amendments?

The Hon. P. HOLLOWAY: Perhaps I should anticipate the other amendments and deal with them all together; it might make it clearer. As the bill is drafted, subclause (2)(c) has the effect that a police officer, accompanied by such assistants as the officer thinks necessary, can carry out a forensic procedure. The Coroner has queried whether this is appropriate. There is no limitation on who can conduct the types of forensic procedures. This amendment rewords the subclause to make it clear that a forensic procedure can be carried out on the body of a deceased person where a senior police officer has authorised the forensic procedure.

A further amendment will be made to the clause to specify who can carry out the forensic procedure. That is in my amendments 16, 17 and 18, which are consequential to the previous amendment. It clarifies who can carry out a forensic procedure for the purposes of this section. The new subclause will allow a forensic procedure to be carried out by a medical practitioner or a person who is qualified by the regulations to carry out the procedure of the relevant type. I trust that, together, that explanation addresses the question as to why it is necessary to clarify the issue about carrying out forensic procedures on a dead person.

The Hon. R.D. LAWSON: Can the minister explain to the committee the powers of police in relation to taking DNA samples from, say, a body discovered at sea—a person not at all suspected of any serious offence—or a body located in any place other than a hospital or a place where a post-mortem is to be conducted? What powers exist for the purpose of taking DNA samples in those circumstances?

The Hon. P. HOLLOWAY: My advice is that this probably comes under the Coroners Act in relation to investigating the causes of the death.

The Hon. R.D. LAWSON: Well, yes, in relation to ascertaining the cause of death, but I suppose the DNA material might be required for the purpose of ascertaining the identity of a missing person, for example, and that is, of course, a function of the police. Is the minister telling the committee that, absent provisions in the Coroners Act, the police do not have power to take DNA samples from deceased persons? I imagine they take photographs, fingerprints and the like.

The Hon. P. HOLLOWAY: My advice is that, under the current provision, the police cannot do that without the consent of the next of kin, the person who has effective control over the body.

The Hon. R.D. LAWSON: Absent the next of kin, when you do not know who the person is and you have found them floating off the Brighton jetty?

The Hon. P. HOLLOWAY: My advice is that it is for exactly such a situation that we need the amendment.

The Hon. R.D. LAWSON: Is it not the case that this particular power applies only to where the police officer is satisfied that the deceased person is a suspect of a serious criminal offence? I am speaking here of the case where it is not known whether they are a suspect, a victim or who they are.

The Hon. P. HOLLOWAY: My advice is that this is part of the coronial procedures, in terms of identifying who the person is. This gives sufficient authority under the Coroners Act.

Amendment carried; clause as amended passed.

Clause 55 passed.

Clause 56.

The Hon. P. HOLLOWAY: I move:

Page 28—
Line 34—Delete 'Minister' and substitute:
Attorney-General
Line 36—Delete 'Minister' and substitute:
Attorney-General

Clause 56(3) requires the Police Complaints Authority to report to the minister rather than to the Attorney-General. The Police Complaints Authority has sought clarification as to what is intended with the reference to 'minister'. It notes that clause 42 refers specifically to the Attorney-General. The term 'minister' will mean the minister to whom the act is committed, therefore the amendment will replace the reference to 'minister' with a reference to 'Attorney-General'. This is consistent with the Police Complaints Authority's general reporting responsibility. My second amendment deals with the tabling of the report on the annual audit. As with earlier amendments, the reference to 'minister' will be replaced with the term 'Attorney-General'.

Amendments carried; clause as amended passed.

Clause 57 passed.

Schedule and title passed.

Bill recommitted.

Clause 3.

The Hon. P. HOLLOWAY: I move:

Page 6, line 18—Delete 'fingerprints from a person' and substitute:
prints of the hands or fingers of a person

I thank the committee for its consideration of this matter. The definition of 'simple identity procedure' in clause 3(a) currently allows for the taking of fingerprints from a person. The concept of fingerprints is not defined within the bill. However, it has been identified that the definition of 'forensic procedure' earlier in clause 3 distinguishes between the taking of prints of the hands and prints of the fingers.

This amendment merely clarifies the scope of authority being bestowed by the concept of simple identity procedures. It has always been the government's intention that the definition of 'simple identity procedure' would permit police to undertake their normal fingerprinting procedure, which involves printing of the fingers, thumbs and palms of the subject. This amendment does no more than make it clear that police are not limited to taking prints of the fingers but can conduct the full fingerprinting process by obtaining a scanned or wet image of fingers, thumbs and palms as per their usual procedures.

It will avoid any doubts as to what can and cannot be done during the course of a simple identity procedure. As the clause currently stands, the current phraseology may prevent the use of the police LiveScan technology, which requires the sequential scanning of different parts of the hands to complete the fingerprinting process. The LiveScan process is an efficient and effective means of confirming identity, and it is important that police should be able to avail themselves of its benefits. Therefore, any doubt as to the authority provided by the concept of simple identity procedures needs to be removed so as not to potentially jeopardise the technological advantage of LiveScan. I commend the amendment.

The Hon. R.D. LAWSON: Could the minister indicate whether any operational difficulty has arisen by reason of this definition because, of course, the definition of 'fingerprinting' has been in the forensic procedures legislation for some time and for some years in the Summary Procedure Act. Has anyone taken the point that the existing legislation does not authorise the taking of a handprint or, indeed, that one's thumb is not a finger for the purposes of taking a fingerprint; and, if so, what has been the result of the point being taken and how have the difficulties been overcome in the past?

The Hon. P. HOLLOWAY: My advice is that this matter has never arisen. However, since it was discovered that the potential anomaly could be there, it was considered prudent to put the matter beyond doubt by clarifying it. My advice is that, in the past, the issue has not arisen; but, certainly, we would not want to see it arise in the future.

Amendment carried; clause as amended passed.

New clause 11A.

The Hon. NICK XENOPHON: I move:

After its contents—Insert:

(2) However, failure to give a written statement under subclause (1) does not affect the admissibility of evidence obtained as a result of the procedure.

This amendment arises out of what was discussed earlier in committee to make absolutely clear that giving a written statement under subclause (1) (that is, where 'forensic material is obtained from a person by carrying out a volunteers and victims procedure') is a requirement. The amendment passed earlier included a requirement that one had to explain the right to request destruction. It makes sense to give that right (which had a context) to advise the victim or volunteer of the right to destruction.

This amendment puts absolutely beyond doubt that the failure to give a written statement under subclause (1) does not affect the admissibility of evidence obtained as a result of the procedure. This amendment gives a positive onus that information about their rights as to destruction be provided to volunteers. However, in the absence of that positive onus, that obligation by law, that will not affect the chain of evidence. As I understand it, that was a concern of the government, although I cannot imagine the circumstances in which that might arise—it would be so narrow, so rare. So, for the sake of completeness, I have moved this amendment.

The Hon. P. HOLLOWAY: The government supports the amendment. We are pleased that the honourable member takes this view. Members might recall that the government opposed new clause 11A when moved previously by the Hon. Nick Xenophon when we last debated this bill. At least the addition of this clause does somewhat mitigate any potential misinterpretation. At least it ensures that a legal loophole does not develop that potentially could result in evidence not being submitted. We are pleased to support the amendment.

The Hon. R.D. LAWSON: I note that the government supports the amendment. I believe the committee would support it, also. The opposition will support it. It is somewhat odd to have a provision relating to the destruction of DNA material provided by volunteers or victims to give them (as the Hon. Mr Xenophon has provided in new clause 11A) a right to receive a statement explaining the right to destroy. If for some reason the DNA is not destroyed, it would appear that it can still be used as evidence in criminal proceedings. Usually the criminal law is such that if appropriate statutory provisions are not complied with the evidence cannot be given, the philosophy being that the reasons these procedures are laid down are important reasons and if police did not follow them they cannot use the material in evidence. Generally, it is seen that that is one way of ensuring that the police will follow the procedures because, if they can use it in evidence in any event, it seems rather futile to require them to do something where there is no sanction if they do not. Notwithstanding that comment, I indicate we support the amendment.

The Hon. P. HOLLOWAY: It must be remembered that one of the functions of the volunteers and victims procedure is to enable mass testing to be conducted. If during a mass testing process one of the participants does not receive the statement as required, clause 46 in the absence of this amendment will operate to prohibit the admission of evidence obtained as a result of the procedure. That means that even if an individual is identified as the offender but the requisite statement was not provided then evidence of the identification could not be led without leave of the court. That is the sort of situation that could arise. As a result of this amendment that situation will be addressed.

The Hon. D.G.E. HOOD: Family First supports the amendment. We had initial concerns about the original amendment proposed by the Hon. Mr Xenophon. We believe that this second amendment addresses those concerns and closes the potential for a legal loophole (which was our original concern). We support the amendment.

New clause inserted.

Bill reported with amendments; committee's report adopted.

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

That this bill be now read a third time.

I thank the council for its support for what I think will put this state at the forefront of legislation that deals with forensic procedures.

Bill read a third time and passed.

[Sitting suspended from 6.05 to 7.45 p.m.]

DEVELOPMENT (ASSESSMENT PROCEDURES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 November. Page 1169.)

The Hon. T.J. STEPHENS: I rise on behalf of the opposition, specifically, the Hon. David Ridgway, to speak on this bill during the second reading stage. I also advise that the Liberal Party supports all the government's amendments except that which seeks to amend clause 23 of the bill in its present form. The opposition also seeks further clarification from the minister on a number of clauses. I indicate that the opposition seeks to receive clarification as soon as possible, so I will raise each and every one of them during this second reading stage so that the government is fully aware of the areas in which the opposition requires more detail and, hopefully, it can report back to the council promptly.

The opposition recognises that the bill seeks to make a number of positive changes to improve planning and development procedures in South Australia and agrees that greater certainty for applicants and for the community is a step in the right direction. We support elements of the bill that create greater efficiencies, such as the removal of referrals on matters that a referral agency has already resolved prior to an application being lodged. The bill provides for a single major development process for a combined mining and mine processing proposal instead of two separate major development assessments, and the opposition is supportive of this. There will be a single integrated report and a single decision with reduced red tape at the end of the process, and this can only be beneficial to the parties involved.

The bill also adds a new notification category with respect to applications relating to developments on a boundary. The bill enables councils to require certain forms of bonds for particular developments to cover the cost of damage to infrastructure which might occur during this process. The Local Government Act 1999 will be amended to reflect this.

The bill makes several clarifications, including clarifications to technical language, using the act so as to further explain definitions. It clarifies the entitlement of a council to act as a relevant authority for development applications

relating to developments the council has had preliminary involvement in. The bill clarifies the ability of a relevant authority to negate an application at any stage as a non-complying development.

I take this opportunity to ask the minister whether he can report back to the council with a number of clarifications on the following topics. Under clause 7(3)(b)(ii), will the minister advise what is likely to constitute 'prescribed circumstances'? Will the minister advise what is likely to constitute a 'prescribed class' in relation to building work under clause (8)? Will the minister advise what is likely to constitute a 'prescribed kind' in relation to the use of land under clause 10(3), new section 38(2)(b)(ii)?

The bill repeals the Swimming Pools (Safety) Act 1972 with the objective of standardising safety standards. However, the opposition seeks the minister's advice on what is likely to constitute a prescribed event. Under clause 19, in new section 71AA(1), the section dealing with swimming pool safety, for example, in the scenario that the sale of a house constitutes a prescribed event, would the buyer or the seller of the house be liable for updating the swimming pool area to the approved safety standards before the sale of the house is allowed? Should the seller of the house be responsible for this update under the regulations?

Has the minister considered the financial impracticability in many situations where, for example, a pensioner or a person in a tight financial situation would be responsible for funding such safety upgrades? In the case of such a person's being unable to meet these costs, under the ambit of the act and regulations, would they in fact be unable to legally sell their home? One might assume that the funds would come out of the sale proceeds, but there would need to be clarification in the legislation regarding that aspect.

With respect to clause 26(3)(17)A of the bill, where an applicant is proposing a development to an existing building, would the regulations require that the existing building be updated to the sustainability requirements? Finally (as I mentioned earlier in my contribution), the opposition currently opposes clause 23. In our party room discussions, we decided that the insertion of the proposed paragraph was unnecessary. Our view is that the scope to demonstrate an interest in a matter is far too broad and does not effectively explain who could demonstrate an interest. The Property Council has also pointed out that this clause could be used as a slowing mechanism for development applications. With those few points, I again indicate the opposition's broad support for the bill. We look forward to the committee stage.

The Hon. D.G.E. HOOD: I rise briefly on behalf of Family First in order to indicate our support for the second reading of this bill, which seeks to amend the Development Act to improve the state's planning and development system. It is not a particularly controversial bill, and it makes a few commonsense changes to the act. We have received no lengthy submissions with respect to this bill, but that does not mean that we simply rubber-stamp it. As it turns out, it is just as well that we did not do so, and I will point out why in a moment.

Family First is pleased to see the emphasis on water and energy efficiency that is inherent in this discussion. Councils will, it seems, be able to ensure that new developments comply with standards for water efficiency or energy efficiency. During the current drought, South Australian families are getting into the habit of saving water and being discerning as to their use of water and that, of course, is pleasing. Likewise, due to our limited power generation facilities, South Australians know that there is a need to conserve energy. We think that this aspect of the bill is a good measure in that it requires developers to take these things into account—and, in our view, it can be done. Perhaps one day when real estate is sold we will see five-star ratings on the energy and water efficiency of individual homes. I think that this measure in the bill is one of many that can start us thinking about conserving vital resources in this great state.

The other element that I want to touch on very briefly (as I mentioned in the introduction) is something that Family First picked up when scrutinising this bill. Apart from this section, basically, this bill is good law, as far as we are concerned. However, when looking at clause 23 of this bill (and I note that the Hon. Terry Stephens mentioned that clause in his speech a moment ago), we were somewhat surprised by one element of it; that is, the category of people who could obstruct a development seems to us to have been expanded significantly. In our view, the only people who ought to be able to use such an appeal right are those who are directly affected by the development. Not everyone may see it that way, and we look forward to the debate and to hearing the views of others on that matter. However, by Family First raising this issue, the government has introduced its own amendment, in consultation with the chief judge of the Environment, Resources and Development Court. We cannot quibble with that approach and, therefore, we support it: indeed, we support the government's amendment.

The government has spoken of its desire to encourage the development of this state, which Family First strongly supports. A sure way to frustrate that development is to leave a gate swinging open (for instance, as clause 23 did, as originally drafted) for any interested person to claim a relevant interest in a development and take the matter to court. I might add that such an interested person would take the matter to the Environment, Resources and Development Court instead of the Supreme Court, which would otherwise be the case, and the costs of that jurisdiction would serve as a disincentive for any interested person to appeal the development.

However, clause 23, as it originally stood, would have opened the gate to the ERD Court, which is notorious for being a no-cost jurisdiction because each party bears their own legal costs. The winner does not, as is usually the case, get some or all of their legal costs paid for by the loser. We can envisage a situation, therefore, where a clever serial complainant could oppose developments at little or no cost to themselves and cause a great deal of mischief, if you like.

The ERD Court's no-cost jurisdiction is great for the little people who are, unfortunately, affected by a development—and we certainly support that aspect of it—but it does open the gate for nuisance makers to stymie development in South Australia. That is something we certainly do not want to see happen. The government's amendment to this bill narrows that category of people who would be able to pursue nuisance type claims, and we certainly support that. In short, Family First supports the bill and certainly this amendment, and we look forward to the debate in the committee stage as to opposing views on the matter I have raised.

The Hon. NICK XENOPHON: I indicate my support for the second reading of this bill. It contains a number of provisions that could best be described as tidying up the legislation. It is part of the government's continuing reform of planning laws in this state. I acknowledge the assistance

I have received from the minister's adviser, George Vanco, who has always been willing to discuss policy issues with me. We might agree to disagree, but I find those discussions helpful in the context of this legislation.

I have been involved with a number of community groups which are concerned about issues of planning and heritage, the principal group being the Friends of the City of Unley Society (FOCUS). On 2 September last year I chaired a think tank where a number of community groups came together to discuss their concerns about South Australia's heritage, and I found that process useful in assisting me to consider this particular bill and set out some of my concerns.

I will now focus on some of the concerns and questions that I wish to put to the minister. I indicate to the council that I propose to table some amendments tomorrow, or by Thursday at the latest. As I understand it, that will give honourable members enough time to consider them because, as I understand it, the government's intention is to go into committee at the end of this week and to consider the committee stage in the final week of the sitting of this current session.

In relation to category 2A developments, the concern raised by FOCUS and others is that it will allow developers to put in applications that should be category 2, but have them treated in a manner suited to category 1. The view of FOCUS is to delete this clause altogether because it actually makes things worse for those who are concerned about the impact of these sorts of developments. The concern of FOCUS and other similar groups is that it could affect the streetscape, the impact on the character of a street, of a neighbourhood and, therefore, there ought to be some wider notifications, so that there are broader issues to be considered. My fallback position, if I am not successful on that, is that the new category 2A should allow for a notification of 60 metres (which is the current position with respect to category 2 development applications) and that the current category 2 should have a 100-metre area where notification should take place.

Another matter I wish to raise is the disparity between developers and residents in terms of a development. I think the Hon. Mr Parnell, given his work and his expertise in this area, can say a lot about the imbalance between a major development, for instance, and a residents' group. There is a lot of disparity there. What I will be proposing is that there be a residents' advocate service that would provide assistance and information, to give some basic level of information and support for those wishing to lodge an objection, for instance, so they can prepare their case properly. I believe that that should be welcomed by some developers in the sense that it would narrow down the issues and focus the parties on what is appropriate, given the legislation. I think it is important that that sort of advocacy service be available for residents.

One of the other concerns that has been put to me by FOCUS is that some developers are not constructing the same buildings as specified in their application plans. What FOCUS has suggested is that there should be increased penalties with respect to this. There are current penalties in force but, as I understand it from the research that has been done on this, since the introduction of private certification councils have had less involvement in inspections and enforcement, and the number of inspections undertaken by councils are not anywhere near the number there used to be prior to the introduction of private certifiers. Whilst there have been some amendments to the Development Act to address this problem, the problem still exists, and I think it is important to increase penalties with respect to that.

I ask the minister to indicate, in due course, the level of inspections and prosecutions that take place now under private certification, because I think there is a real concern. Someone may look at an application that has been lodged with council for a development and decide not to object to it on the basis of the plans, the way it will affect the streetscape or whatever other reason; then when it is actually built—after amendments are filed subsequent to the application process—it turns out to be something significantly or appreciably different, and that is a real bugbear, and even the dimensions and scales are not quite right. I think there needs to be a degree of accuracy and rigour. One way of achieving that is to increase penalties with respect to that.

As I understand it, and I am not sure of the time frame, a review of current penalties was to be conducted by Planning SA—I think it was some time last year, or it may have been the year before that, prior to the election—so I ask the minister to indicate whether there is any review of penalties and their effectiveness in terms of enforcement clauses. What happened to that review? It is my understanding that a review was undertaken some time ago.

The Hon. P. Holloway interjecting:

The Hon. NICK XENOPHON: Well, I will wait for the minister's response with respect to that. There is another issue with respect to open space. It is my view that open space ought to be wholly and predominantly made up of land that is not covered by water and that is available for use by members of the public. I know the Hon. Mr Wortley asked questions of the minister today about issues of open space. One of the concerns that has been put to me by one particular developer is that funds obtained through the scheme are not being used in the areas where the developments are being approved.

He told me of a case up in Salisbury, or a northern suburbs council—I do not want to particularly single out Salisbury council—where they said, 'Open space is going to be a headache here. There are liability issues for this particular park.' They did not want to know about it and they were discouraging in respect of it. I know the minister has outlined a number of very good open space developments, but my concern is that we need to be more rigorous in the definition of open space so that it genuinely is open space that is available for use by members of the public.

Finally, there is an issue of signage. My concern is that we ought to do what is the case in New South Wales, where, when a development is being proposed, a sign on the property actually gives some details of what is being proposed so that neighbours can see exactly what is being proposed. It is more open and transparent. It would give the details, the name and address of the developer, a short paragraph describing the development, the development application number and the date of the development. I do not think that sort of information is too onerous. It could just be a pro forma, which is not unreasonable. It could just be a very low-cost placard on a property. I think it would be a very positive step to get into the culture of giving that level of information to residents and neighbours. They are the sorts of amendments I am flagging.

I indicate that I generally support clause 23. I know the opposition has concerns in relation to that clause, and I think there ought to be a balance to ensure that no frivolous or vexatious applications are made in terms of interventions unduly slowing down a development. On the other hand, I think we need to have a balance where residents who feel disempowered by the planning process have some additional

rights. Having a mechanism such as clause 23 will change the culture of development in some cases so that people are more aware of the impact on their neighbours, their neighbourhood and on the community, and I think that would be a positive step. I look forward to any proposals the government has to amend or compromise in relation to that. In principle I think that is a good idea.

With those comments, I indicate my support for the second reading of the bill. I have flagged a number of amendments, and I hope that at least some of those will be attractive to members in this chamber, particularly in relation to giving some clarity on the issue of open space and in relation to ensuring that there is a little bit of information for applications and some effective sanctions to ensure that what is being lodged in council very accurately reflects the actual development.

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

DEVELOPMENT (REGULATED TREES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 December. Page 1290.)

The Hon. SANDRA KANCK: As an employee of the Conservation Council in the early 1990s, one of my tasks was to answer initial queries from the public about environment and conservation issues. During the two years of my employment there, I would have to say that the most common question was about how people could protect trees. This ranged from issues with neighbourhood disputes to the Department of Transport intending to cut down trees so that a road could be widened.

I remember being taught as a young child very early on in primary school about the value of trees. In fact, I still have my natural science book that says trees are good for shelter, shade and even firewood if they are chopped down, but it was something that was praising the value of trees. However, many people see trees as a nuisance: they drop leaves, heaven forbid, and they have branches that sometimes drape across people's boundaries. For some people those boundaries are incredibly important; their identities are tied up in those boundaries.

By contrast, one of my neighbours has a nectarine tree of which probably half spills over into my yard. I assist in watering that nectarine tree so that I can pick the nectarines. My backyard neighbour has a river red gum that drops bark into my yard, and I relish that. When we have a heavy wind, I go and get the wheelbarrow and collect all the bits of bark, break them up and distribute them over the garden as leaf litter. However, it is very clear that not everyone sees trees as a blessing, as I do. Trees are very often a cause of neighbourhood disputes. Most *Messenger* newspapers—if people read them—will have accounts of local council meetings about trees and people wanting them chopped down. One of the things I have certainly noticed is that European migrants do not understand Australian trees, particularly those that keep their leaves all year round and therefore shed leaves all year round, as opposed to deciduous trees that drop them all at once.

Some people feel so passionately about getting rid of trees that cases end up in court; a number have been adjudicated upon by the ERD Court, and the ramifications of some of those decisions are at least in part responsible for this bill. The regulations define any 'significant' tree in terms of its size, but a court decision about 18 months or two years ago determined that other qualifications would in future be needed, such as the tree being a notable visual element in the local landscape or being classed as a rare or endangered native species under the National Parks and Wildlife Act.

I received an email in November last year from Jim Jacobsen, who was then a former councillor with the City of Burnside, and from the heading I see that a lot of other members did, too. He forwarded a motion from one of the council meetings in September about the failure of the significant tree protection legislation. It moved that the Burnside council write to members of parliament to let them know that, in the council's opinion, 'the significant tree protection legislation has now become unworkable, following the undermining of the planning legislation by various decisions in the courts'. I am not aware of having received anything from Burnside council to that effect but, nevertheless, Mr Jacobsen reflects on what he describes as the 'impossible position' Burnside council finds itself in as a consequence of those decisions. The emails states:

> The Prestige case took away our opportunity to protect a significant tree, even one protected by the development plan approved for the site, if it could be shown to pose only a potential threat to health or property.
>
> The Lilburn case decided that even a low cost retaining wall that might be viewed as a structure of value, in both a financial sense by way of replacement and in a practical sense by way of retaining earth.
>
> Smolak found that even a relatively insignificant veranda was deemed to be a substantial building.
>
> The Botting case found that boundary fences and outbuildings only need to be threatened with substantial damage to warrant removal.
>
> In the Paes case we found that even if future damage to a substantial building is likely to be minimal or non-existent the tree cannot be protected because the damage which might have already been done or might likely occur. Simply the possible impact of a tree on the soil in which it grows is sufficient cause to have it removed.
>
> Finally in Zanini et al, a crack of between 1 mm and 5 mm was deemed to be regarded as substantial damage in that such cracks had the propensity to allow entry or moisture, etc. by Australian standard AS2870. That such a crack was easily filled again was not a consideration of the tree removal application.

It is fairly clear in the examples given that over and over again there are attacks on the rights, as I suppose they might be called, of people to have and maintain trees. I have previously asked questions in this place about significant trees, and last year I held a forum here with interested parties to discuss the wider issue of the ramifications of these court decisions. Representatives from Salisbury and Burnside councils attended, and their positions could not have been much more different if they tried. Salisbury council told us that, prior to that ERD Court decision in 2005, the system was effectively saying that, unless reason can be given to the contrary to remove the tree, it should stay.

However, while that was the case, Salisbury council was lobbying members of parliament saying that the legislation should be changed so that, unless there were good reasons to retain the tree, it should be removed. So Salisbury council was delighted by Judge Trenorden's decision which, it said, turned things around for the council; previously 85 per cent of applications for tree removal were knocked back but once that ERD Court decision was handed down it was completely changed around and 85 per cent of applications were approved. Salisbury council said it was a council that was pro individual rights—a quite significant comment that I will

refer to again—and as support for that position the council argued that it has an ageing community, and clearing up after trees and so on becomes a problem for such a community.

As I have said, Burnside council had the polar opposite position. It said that decisions about trees were placing a higher value on built form than environmental heritage, that the legislation was biased towards removal and not retention, that a person or group who wants to retain a tree is put in the defensive position of having to justify the tree's existence, and that the ability to negotiate a sustainable urban forest is lost when no vegetation (except those trees classed as significant) is retained. Those are not actual quotes, but they indicate the thrust of what Burnside council was saying.

The minister, in his second reading explanation, made an interesting observation. He said that 'councils are best placed to manage the conservation of trees in an urban landscape'. I stress the word 'conservation', because Salisbury council did not seem to be very much interested in conservation. Nevertheless, the minister says, 'councils are best placed to manage the conservation of trees in an urban landscape, given their understanding and representation of their community's views'.

I told the chamber I would return to the comment made by the Salisbury council representative regarding the council being about pro individual rights. Clearly, Salisbury council is in a position to represent its community's views and, if the majority of that community is saying that trees are a nuisance, then, as the legislation before us leads me to conclude, it will only help the council to put its community's views into action, that is, to get rid of the trees. So I am not as optimistic as the minister when he says that councils are in the best position to manage the conservation of trees. In some cases councils will be in the best position to manage either the mutilation or destruction of trees.

However, the bill before us has some aspects of merit, including the make good orders. The Conservation Council has suggested that make good orders be associated with significant on-the-spot fines, and it is my intention to move amendments to that effect when the bill is debated in committee. The establishment of an urban trees fund is also commendable, but the Conservation Council has suggested that it needs something to define its role and to protect the funds, and I will move amendments to that effect when we are in committee.

There are a couple of good things in the bill, but there are some things that disturb me. In particular, there is an amendment to insert a new subsection (3a) in section 39 that provides:

> A relevant authority should, in dealing with an application that relates to a regulated tree that is not a significant tree, unless the relevant authority considers that special circumstances apply, seek to assess the application without requesting the provision of an expert or technical report relating to the tree.

That raises some interesting questions for me about dealing with an application. An application for what? Quite clearly, we are talking about an application to diminish a tree, in some way, whether it be by pruning, mutilation or complete removal. It is destruction in one form or another, whether it be part or all of the tree.

The question that arises for me in terms of this proposed new subsection (3a) in section 39 is: what knowledge base will the council have for making a decision about such a tree—that is, a tree that is a regulated tree but not a significant tree—unless it seeks advice? The presence of this clause seems to almost guarantee that some form of either partial or full destruction of the tree should occur. The Conservation Council's comment about proposed new subsection (3a) is as follows:

> Absolutely oppose preventing a council from requiring a tree assessment as part of an application to remove a tree (excepting when a tree is obviously a serious danger to people or property). Trees are of such value to our community that it is not an acceptable excuse that the assessment should be discontinued because of the cost. A list could be compiled of suitably qualified tree assessors who are NOT also tree loppers—

I have to say this has quite a degree of attraction for me. It points out that by doing that you eliminate conflict of interest—

> . . . and kept by councils, the Environment Resources and Development Court (ERDC), and the DAC. One person to be appointed from the list to make an independent assessment; this would remove the current adversarial situation where both parties employ an assessor.

As I read this legislation, if Buddha had sat under a plane tree in Adelaide for his enlightenment and if that tree had not hit the magical two-metre circumference, and if the relevant authority (that is, the local council) had not included that tree in an amendment to the development plan, that tree would go. In his speech the minister stated:

> A regulated tree will be subject to a preliminary assessment of whether the tree is significant, which is intended to be based on whether the tree contributes in a measurable way to the character and visual amenity of a site and its locality or has a biodiversity value as a specimen in its own right.

I wonder who it is who gets to determine 'a measurable way'. That is a very personal interpretation. There is nothing in the legislation that defines what is a measurable way other than that two-metre circumference. I think it is significant to recognise that most Australian native trees, especially those in areas of low rainfall, will never reach that two-metre circumference.

The bill renames significant trees as regulated trees, although significant trees will exist as a separate entity, so it is a dual classification. I was told at my briefing that regulated trees are the entry point in this scheme. The criterion for inclusion as a regulated tree is simply the current size definition; thereafter, I guess it is a case of the devil being in the detail. We are going to be dependent on the regulations to define what a significant tree is, and it comes down to the government's approach: 'We are the government and we are here to help you, so trust us.' I would like to know from the minister what is proposed for those regulations to define what is a significant tree. It makes it very difficult for us as a parliament to make a decision on something like this when it is left entirely to the regulations.

Given that this bill has been with us now for a number of months, and it would have been in the planning for a number of months before that, I am sure that some draft regulations must be available. I would appreciate the minister providing a copy of those draft regulations before we get to the committee stage. I would like to know whether there will be any consultation with groups such as the Conservation Council and the National Trust of South Australia in developing those regulations.

I mention the National Trust, because it has developed a significant tree conservation policy, which defines significant trees as having natural, and/or historic, and/or cultural, and/or aesthetic, and/or botanical significance that is highly valued at national, state or local level—and it has to be only one of those. I guess Buddha's tree of enlightenment, if it were here in Adelaide, might be saved under the National Trust's tree conservation policy. The policy states:

Significant trees may be in the form of:
- individual specimens, avenues or stands of trees or native vegetation
- a landscape design, memorial arrangement or celebratory alignment
- immature specimens, mature, post-mature or notably old

Significant trees may occur in:
- public parks and reserves, streets, car parks, private and public gardens
- major cities, rural towns or isolated communities
- agricultural or rangeland areas

At least that gives a bit of a definition as to what the National Trust would recommend if it were to be consulted, but we remain in the dark as far as what the government intends.

The National Trust of South Australia maintains its own publicly-available register of significant trees, and individuals, groups and local government can nominate trees to this register. The National Trust says that it will advise the owners of such trees and local government of the register's contents. Will the minister in his summing up advise whether the state government intends to establish a significant tree register of its own and, if not, what relationship could be developed with the National Trust of South Australia to assist it in maintaining that register so that it can be easily accessed by local councils and maybe even the Development Assessment Commission from time to time?

The new approach in this bill is not that new in that it still relies on local councils to make a decision to protect trees via the development plan, yet in the seven years of operation of the Development (Significant Trees) Amendment Act less than a handful of councils have gone down this path. From that perspective, despite the minister's faith in local government to get it right, I suspect that from time to time the state government may be called on—and probably will be called on—to prepare regulations to protect specific trees, and I hope that when that happens the government will be willing to do it.

I recognise that some trees probably should not have automatic protection (and I would imagine those being included in the regulations), such as radiata pine or olive trees, because they have pest status, but there would even be exceptions to that. Can members imagine the fuss it would cause if the Adelaide City Council was to remove the olive grove in North Adelaide? The minister was at pains in his speech to point out that significant trees, as currently defined, can be removed, and that is fairly obvious.

As I have said, most native trees will not reach the two metre circumference that is required. So, yes, an awful lot of our native trees could be removed under the current legislation and also under the new legislation, when they become regulated trees. Given that there is this relative ease for removing trees, I am interested in how this legislation will interact with the South Australian Urban Forest Biodiversity Program, and I would like to know whether the minister consulted with the Department of Environment and Heritage in preparing this legislation and what was its response, particularly in relation to the urban forest.

The river red gum is an example of a tree that is not rare or endangered under the National Parks and Wildlife Act, so it could be removed as part of the definition of 'regulated tree'. But they are surely a significant part of our landscape and their removal would significantly alter urban creek lines and the balance of nature, be it in terms of fauna that live in or on such trees or even in increasing groundwater salinity. A tree, which of itself may not be significant, can sustain threatened animal and bird species, so I have great concerns about proposed new section 39(3)(a) in this bill. In summary, the bill has both good and bad, but unfortunately some of the most crucial aspects of it will rely on regulation that none of us have seen. I indicate support for the second reading, but I will be moving amendments in committee.

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

STATUTES AMENDMENT (AFFORDABLE HOUSING) BILL

Adjourned debate on second reading.

(Continued from 22 February. Page 1506.)

The Hon. T.J. STEPHENS: I rise on behalf of the Liberal opposition to speak on this bill. The member for Bragg and shadow housing minister in the other place spoke at length and in great detail on this bill and highlighted our numerous concerns. I will not be as lengthy in my contribution, but I advise that the Liberal Party opposes the bill. We have genuine concerns about the bill and, as the shadow minister stated last week, the committee stage of the bill revealed that the government effectively will be given the power and ability to borrow so it can offer house and land packages across the state. The removal of all boards and independent accountability leaves all power and decision making with the minister and the CEO of housing.

The government has total control of the Land Management Corporation, which holds the majority of available land for development in South Australia. The LMC's charter, incidentally, is to make a profit on a commercial basis. The opposition is against the Rann government going into property development. The bill also gives Housing SA the capacity to borrow large sums itself for private development. The opposition's position on the 15 per cent rule—a rule requiring private developers to set aside 15 per cent of their development for affordable housing—is a smokescreen that is essentially unworkable. Our advice from property developers is that the rule is set to fail and will force up the price of housing for all other purchasers.

It has also been raised in the other place that this legislation does not effectively address the massive problems caused by disruptive tenants, especially in the South Australian Housing Trust, nor does it provide solutions to the fact that thousands of South Australians are still sleeping rough. The member for Bragg has sought several briefings on behalf of the opposition, and recent advice we have received from the interchurch housing unit has posed some questions that I would like the minister to consider and provide the council with answers at a later stage. The shadow minister has asked questions about this clause during committee, but some other questions were recently raised with us that will need clarification, and I will record them in *Hansard* today.

The ICHU members have concerns with section 21A of the bill relating to covenants. Their understanding is that this covenant is intended to regulate the use of affordable housing grants to community housing organisations (CHOs), in particular affordable housing grants to build houses on church-owned land. The bill provides, at section 21A(2)(b), that the covenant may be registered and have effect under the terms of this section so as to bind subsequent owners of the land, despite the fact that the covenant does not benefit land of the South Australian Housing Trust. The concerns of the interchurch housing unit are as

follows: 1. The ICHU states that churches would not provide land under this term of the covenant as there is a risk that it will reinvent the same perpetuity difficulties that caused the churches to stop providing their land under the old SACHA debenture agreement, and also cause them to refuse to enter into the facilitation agreement, which was intended to replace the SACHA debenture agreement.

2. Churches also see a risk that this term will take their houses away from the open housing market and place them in some new, unknown and difficult to manage niche market. Such a shift would reduce the attractiveness of houses on church land to potential buyers and reduce their market value.

3. The churches are also concerned that this term will cut across the government's own affordable housing objective to have CHOs borrow money to generate additional community housing. The churches take the view that the covenant is likely to be a significant barrier to the banks and other institutions. Under these terms, HomeStart Finance may end up being the only CHO lender.

4. Tenants buying social housing houses (including ICHU member houses) will be aware that future buyers will also be bound by the covenant. This seems likely to reduce both tenant buyer and future buyer interest in ICHU member houses. Any reduction in buyer interest is likely to place the asset management strategies of ICHU members at risk. It could reduce the uptake rate on the minister's 2006 written invitation to all social housing tenants to buy their house under the EquityStart program.

The bill also states that an owner of the land may, with the consent of, or at the request of the SAHT, vary the covenant and discharge a covenant. The churches will not provide land where there is a risk that they may be prevented from using their land in their interests or have that interest determined by the SAHT. I would be very interested in hearing the minister's response to these concerns and have them reported back to the council. In closing, my colleague the Hon. Stephen Wade will look into the disability housing sector at length. I look forward to his contribution.

The Hon. R.P. WORTLEY: I stand to support the bill, which, importantly, seeks to deliver more affordable sustainable housing for those most disadvantaged in our community, and which will provide the legislative framework for the establishment of the South Australian Affordable Housing Trust. The new trust will work with industry and partners to deliver a more affordable housing market. This will be achieved by ensuring that a proportion of the new housing developments will include affordable housing.

The affordable housing bill, which is an integral part of the Labor housing reform, amends the South Australian Housing Trust Act, the South Australian Cooperative and Community Housing Act 1991, the Housing and Urban Development (Administrative Arrangements) Act 1995, the Residential Tenancies Act 1995, the Housing Improvement Act 1940 and the Development Act 1993. The bill is about addressing the emerging and changing needs of affordable housing in our community for today and for our future generations.

A home once cost the equivalent of about three times the average household income. It currently costs six to nine times the average income, leaving little wonder as to why the proportion of first home buyers and younger home buyers has been declining for over a decade. Renters are also feeling the pressure of property price rises, with approximately 65 per cent, or 350 000 low income renters finding themselves in housing stress by having to pay more than 30 per cent of their income in rental costs.

As a community we seem to be living in the fast lane with rapid changes accruing in economics, technology and environment, resulting in many young couples and families finding it easier to over extend themselves financially. Society is changing at a rapid rate. People are living longer, which has resulted in added pressure on the housing market. This means that we have to think in new and innovative ways if we are to appropriately cater for sustainable housing needs into the future. First home buyers on lower incomes are finding it harder to afford their dream home. It is believed that 40 per cent of people earning the lowest incomes can afford only one in 20 homes on the market.

It has been some 70 years since the establishment of the Housing Trust. It is time to do things differently. It is time we rethink roles and relationships between authorities, industry and the community. The proposed trust and legislation surrounding affordable housing in South Australia will be renewed by the passing of this bill to further our commitment to the growing demand for affordable housing. Under the amended legislation the responsibility for strategy asset management and housing services will be established under clear ministerial control, and so a greater emphasis will be given to the delivery of affordable high-need housing outcomes. To help close the increasing gap for young and disadvantaged people trying to afford their own home, a new South Australian Affordable Housing Trust will be created as a division of the South Australian Housing Trust.

The amended legislation will mean that the housing minister and the Chief Executive Officer of the Department for Families and Communities will replace the following existing boards: the South Australian Housing Trust, the South Australian Community Housing Authority and the Aboriginal Housing Authority as well as taking on the responsibilities for the way in which housing services are delivered. The reshuffling of the management of South Australia's housing services will reaffirm South Australia's position as an innovator in housing policy, and it will seek to help more South Australians live in the community they choose and in a home which they can afford to own.

Action towards creating an affordable housing market needs to be implemented to ensure that South Australia can continue to grow and prosper. This innovative legislation will drive the economic and social wellbeing of individuals, families and communities by establishing the right mix of housing and support services, enabling people and communities to take charge of their lives and giving them greater independence. The important amendment to the Development Act 1993 is to specify the need to consider affordable housing in strategic planning and local government development plans. This will reinforce the need to plan for affordable housing in the future.

If we want our children and grandchildren to be able to afford their first home, we need to encourage our planners—such as councils—to make local assessments of housing needs and to make appropriate decisions towards the diversity of housing types and prices that a range of people can afford. I support this bill, which supports and meets the growing demand to provide affordable housing and planning for today and for the future.

The Hon. S.G. WADE: The South Australian Housing Trust was established in 1936 by the Butler Liberal Country Party government. It was the first state housing authority in

Australia and was charged with 'the provision of accommodation necessary for decent living at low rentals for people coming within the lower income group'. Over 70 years the South Australian Housing Trust constructed more than 100 000 homes and made a significant contribution to the economic and social development of the State of South Australia. Rental properties of all the housing programs currently number about 45 000.

Under this government there has been a large sell-off of Housing Trust stock. The revenue from sales over the past three years has been $132.4 million, $101.3 million and $105.9 million respectively. Mr Peter Smith, Deputy Chief Executive of the Department for Families and Communities, is reported to have indicated that this sell-off by Labor will continue, with the goal of reducing the stock to around 15 000 to 20 000 properties in public housing.

In his second reading explanation in the other place, the minister summarised the government strategy in the following terms:

> It is to take the existing asset base of the Housing Trust and allow us to convert that in proper cases to involve investing in partnerships with the private sector and the community housing sector in a way that we are not permitted to do under the existing structure of the South Australian Housing Trust.

Selling public assets to allow one to engage in partnerships with the private sector could be called privatisation. I have no ideological fixation with the public ownership of assets but, call me old-fashioned, I do expect political parties to honour their commitments. In 2006 the Premier issued what he called a 'no privatisation decree' in which he stated:

> There will be no privatisation of state government assets during the entire term of the re-elected Rann Labor government.

The ALP's public housing policy for the 2002 election stated:

> Labor will end the threat of privatisation of the Housing Trust and will support a vibrant Housing Trust remaining in public ownership.

The shadow minister for housing in another place quoted from the *State of South Australia* in which Lionel Orchard and Kathy Athurson provide the following critique in relation to housing:

> Critics argue that the changes give little hope to those on the public housing waiting list to gain access to the housing they need while the policies have effectively outsourced responsibility for providing low-cost housing to the private sector.

They have noted that these reforms mean 'the unique balance between the public and private housing investment and administration associated with the trust will be officially abandoned.' Further, they state:

> Gary Storkey CEO of HomeStart and a central adviser to government on the recent reforms has noted 'I think the Housing Trust as we know it is coming to an end. The idea of state-based institutions is dying.'

So much for the privatisation decree. The Labor Party may want to play semantic games but selling off public assets to invest in joint ventures sounds like privatisation to me.

What is the brave new world being offered by this bill? The South Australian Housing Trust name will be retained but the authority will be moved from an independent statutory authority to one that is constituted by the chief executive of the Department for Families and Communities alone. The Housing Trust arm of the department will focus on being a high-needs housing provider serving those most vulnerable in our community. Housing Trust assets will provide higher subsidy services to those in greatest need in the community.

The key innovation of this bill is the establishment of a new South Australian Affordable Housing Trust as a division of the South Australian Housing Trust to help deliver more affordable homes for South Australians who are locked out of the housing market. The Affordable Housing Trust is charged with seeking to meet the needs of those families who miss out on public housing as it becomes more tightly targeted as public housing stock is reduced by two-thirds. The Affordable Housing Trust will focus on partnerships with the not-for-profit and private sectors with lower government subsidy requirements for families in housing stress but requiring services which are less capital intensive than public housing.

In looking at this bill I ask the council to consider the impact of these changes on people with disabilities, their families and carers—a sector that is often in particular need of housing and care support. In terms of planning, the original State Strategic Plan target for disability housing was pathetic. Its aim was 'to increase the number of community-based accommodation options for people with disabilities'. The government had met that target when it increased the number of places by one. When the plan was launched, plans were already well underway for significant increases. It indicated a singular lack of ambition.

This is indicative of a government which lacks commitment to disability services. This government is the lowest spending government on disability services per capita throughout Australia, spending around half that which is spent in New South Wales. I welcome the new plan target, which at least has a touch more courage. The target states:

> Housing for people with disabilities: double the number of people with disabilities appropriately housed and supported in community-based accommodation by 2014.

I had hoped that the deadline could be closer because I suspect the demand already exceeds that amount.

In considering how these reforms relate to this target, we need to look at the work done on the housing plan and the supported accommodation strategy. In March 2005 the Labor government released the Housing Plan for South Australia, which 'aims to return South Australia to the forefront of innovative housing policy and help improve the economic and social wellbeing of individuals, families and communities.' In the section 'Where we want to be', the plan gives two objectives particularly relevant to people with disabilities. It states:

- improved accessibility—improve access to the housing and support services for the members of the community who face disadvantage and disability. . .
- responsive housing design—make sure that future housing design is responsive to changing community preferences, demographic trends and universal access design principles;

In the section 'The challenge of change', the plan states:

> Housing policy needs to continue to evolve to remain relevant to individual and community needs and responsive to market conditions.

It continues:

> Diversity of need. . . People with a disability require housing that in its design, location and form enables and sustains independent living.

The housing plan has five main objectives and identifies associated key actions. In the context of Objective 2 'High need housing', Objective 2.2 refers to 'accessible and flexible housing' and states:

- Respond to the changing demographic profile by promoting accessible and adaptable housing design in residential development that accords with disability access principles.
- Increase social rental housing stock which is suitable for seniors and people with disabilities.

In May 2006 the government announced it was giving effect to the plan through its housing reform agenda, which would involve a change of governance covering subsidised and supported accommodation in South Australia and would encourage developments which include 15 per cent affordable housing, in particular 5 per cent high needs housing. This bill gives effect to those plans.

Parallel to the housing reform process, the government commissioned work on supported accommodation. In December 2005 the government established the Supported Accommodation Task Force, drawing members from the state government, ACROD, ANGOSA, the Disability Advisory Council, the Mental Health Coalition and the Liquor, Hospitality and Miscellaneous Workers Union. In December 2006 the Supported Accommodation Strategy was released. In the section on Recent Progress and Improving Supported Accommodation, we are told:

> The supported accommodation strategy sits alongside the Housing Plan for South Australia, which is aimed at increasing the supply of housing and accommodation opportunities for people in South Australia, including those with a disability.

I ask the minister to clarify how the Housing Plan and the Supported Accommodation Strategy interact, particularly in the context of a lack of clarity in the strategy document as to who is the focus of the strategy. The minister's message states:

> . . . most people with a disability live successfully in the community, with some government assistance and the support of their families. . . and friends. But there is a smaller proportion of people, those with more profound disabilities, who need a more specialised service. This Supported Accommodation Strategy is about improving supported accommodation options for those South Australians and their families.

However, later in the report, supported accommodation is defined in the following terms:

> Supported accommodation service provides accommodation and services to support people with a disability and needed to enable a person with a disability to remain in their existing accommodation or to move to more suitable or appropriate accommodation. This includes group homes, in-home care and other models. There are two subcategories of supported accommodation: firstly, those that are fully supported, such as group homes providing a 24 hour/7 days a week basis service; secondly, those that provide partial support, such as in-home care.

The second group included in this definition (those needing partial support) seems to be the same as the first group which is excluded from the scope of the report in the minister's message. The government needs to clarify the target group for supported accommodation and how supported accommodation will interact with general disability housing. The minister's message in the strategy declares that the Supported Accommodation Strategy will deliver:

- a single waiting list for people needing supported accommodation in the community;
- a single system of service coordination through Disability Services SA to help people navigate services;
- a requirement for all service providers to meet service standards;
- services based on people's support needs, not diagnosis; and
- a new accommodation act to better ensure that all service providers meet acceptable standards.

There is an element of mystery as to the recommendations of the Supported Accommodation Task Force. There have been suggestions that the recommendations as rendered in the report are not the recommendations made by the task group. Anyway, while that pall hangs over the credibility of the recommendations, this is what the report purports to recommend: firstly, the policies and guidelines, including the creation of a single point of entry for accommodation and personal support services which are consistent, equitable and transparent; secondly, improved planning processes for the increased supply of community-based accommodation and personal support services; and, thirdly, better legislation to protect people with disabilities who are living in supported accommodation to afford them appropriate standards of accommodation and support. I would appreciate the advice of the minister as to the ongoing role of the supported accommodation task group.

The terms of reference of that group indicate that it will: oversee the development and implementation of the Supported Accommodation Services Plan; and the group will advise the chief executive and the Minister for Disability on resource allocation, new initiative development, and funding and risk management in relation to supported accommodation. I seek clarification as to whether that continues to be the intended role, given that the housing and disability reforms have been announced since the group was formed.

To mark the International Day for People with a Disability on Sunday 3 December 2006, the state government announced three projects which it said formed part of the accommodation strategy. The three projects were:

1. A single waiting list will be established for people needing supported accommodation in the community.

2. A major investment of $21 million in the Julia Farr Housing Association.

3. The state government's Disability Housing Program in Housing SA will undergo a major expansion.

I would like to look at each of these projects in turn. First, there is the issue of the establishment of a single waiting list. We are told that Disability SA offices will be established as the single entry point into supported accommodation services and will manage a single waiting list. The single waiting list is being created through an assessment of every person on existing supported accommodation lists across every service provider in South Australia. That is a very significant undertaking. A person will be registered on the waiting list for supported accommodation once the following requirements have been met: first, they have been assessed by a service coordinator as eligible for placement in supported accommodation; and, secondly, that the necessary documentation has been completed—for instance, a supported accommodation booking form.

Everyone assessed as eligible will be prioritised on the waiting list according to the needs of that person, their families and carers, available resources and access to alternative services. Therefore, eligibility does not guarantee assistance. The supported accommodation strategy, we are told, will build on this streamlined system by establishing a single government disability housing program, which the government claims is well connected to the personal support system. So, presumably, this is the single access point and the single list that the minister promised on 3 December.

Then we turn to the questions and answers for housing customers on the Department for Families and Communities Reform website, where customers are assured that these reforms will increase the supply of supported accommodation

for people with a disability through the work of the South Australian Affordable Housing Trust. We are told: 'SAAHT will make these houses available through Housing SA, which will be the single access point for the general public.' So, that is our second single access point and, presumably, our second list.

Further, a Housing SA website, which purports to have been updated as recently as 10 February 2007, responds to the question, 'Is there housing for people with disabilities?' by identifying three sources of accommodation services available for people who have a disability, and it provides contact numbers for each of Disability SA, Community Housing Associations and Housing SA. So, Community Housing Associations are apparently a third access point, and it seems that there may be a multiple set of waiting lists there, too. The government needs to clarify what it means by 'single access point' and a single list, and how these arrangements will work in practice.

The second major project within the supported accommodation strategy identified in the December announcement was the so-called investment of $21 million in providing community housing that will be managed by the Julia Farr Housing Association. The Julia Farr Housing Association is a non-government organisation that provides housing for people with disabilities. A significant number of its tenants are people moving from the Julia Farr campus at Fullarton, which was formerly known as Julia Farr Services. As a former chair of the board of Julia Farr, I am particularly interested in the progress of this family of services that is Julia Farr.

On ABC Radio 891 on 4 December, the Minister for Families and Communities indicated that the $21 million was part of a $34.85 million package that the government had given Julia Farr 'in cash and in kind' to float back out as an NGO. As best as I can work it out, $6.8 million of that was the transfer of group homes that were already Julia Farr property. That transfer was announced in July, and $8 million was new funding, which was also announced in July. The $21 million was the December announcement.

I think it is important for the council to appreciate that this is not a rash of largesse by Treasury. As Julia Farr floated back out as an NGO (as the minister put it), the government retained the Fullarton campus. The Highgate building on the Fullarton campus, in particular, is a very valuable property—a nine-storey building in a prime residential district with huge development potential. I think it is unlikely that any more high-rise buildings will be built in the inner south-eastern corner of Adelaide. The book value of the campus is more than $26 million. The 2004-05 annual report shows land and improvements of $32.7 million. If one takes off the $6.8 million of community houses, one gets about $26 million. However, I suspect that the market value is probably double that—$50 million or more.

I call on the government to publish all the relevant details of the deal that has been done with Julia Farr. The questions that should be answered include: what was the market value of the Fullarton site? How much was transferred in cash to Julia Farr entities? How much, and in what form, were assets transferred in kind to Julia Farr entities? And are there any encumbrances on any of these transfers? My understanding is that the board felt it was not able to negotiate freely on the arrangements. The government was determined to take the asset, and the board felt that it would be given only what the government determined it would be given.

This is a stern warning in the context of this bill. It is a stern warning to any non-profit organisation seeking to engage with this government under the Affordable Housing Bill. With Julia Farr I consider the deal was a significant transfer of value to the government, effectively a tax on a charity. I am concerned that the non-profit sector is just as vulnerable to a greedy government as to a greedy private developer. As the shadow minister for housing in another place put it:

> The functions under this bill. . . are again to suck up the resources of the private not-for-profit sector. Anyone who has some spare land, spare cash or a trust fund will be raided to this extent.

I call on this government to put aside this arrogant 'bureaucracy knows best approach' and develop genuine partnerships with the not-for-profit and community sector.

The third project announced by the government on 3 December was the doubling of the Disability Housing Project, by providing an extra 200 properties over the next four years. Under the Disability Housing Project non-profit incorporated organisations, government departments or agencies may lease residential accommodation from Housing SA for the purpose of providing supported accommodation or special housing requirements. I note that this commitment was included in the revised State Strategic Pan released earlier this year—curiously, without a number of properties mentioned. I look forward to the completion of the work being done on the waiting list for supported accommodation to see whether the doubling of the program will be sufficient.

The shadow minister for housing in another place has put on record the opposition's concern at the practical impact of the 15 per cent affordable housing target. Tempted as I am, I will not dwell on this aspect of the legislation. One of my particular concerns is that focusing 5 per cent of supply of the market on high-needs clients (only some of whom will be people with a disability) may actually disadvantage people with a disability within the housing market. Mandated high-needs housing may be overspecified and overly expensive. To protect people with a disability who are participating in the rental and purchase markets, we need to ensure that they have the greatest possible access to the greatest proportion of the market. In this context, I welcome the target in the housing plan for South Australia for 75 per cent of all newly built homes in public housing to meet accessible and flexible housing design criteria that comply with disability access principles.

Accessible housing design criteria (more commonly known as universal housing design) refers to housing that is designed to meet the needs of people of all ages and abilities. The seven internationally recognised universal design principles are all relevant to housing. The first is equitable use: that house design is useful and marketable to people with diverse abilities. Second, flexibility in use: that house design accommodates a wide range of individual preferences and abilities. Third, simple and intuitive use: that use of the design is easy to understand, regardless of the user's experience, knowledge, language skills or current concentration level. Fourth, perceptible information: the design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities. Five, tolerance for error: the design minimises hazards and the adverse consequences of accidental or unintended actions. Six, low physical effort: the design can be used effectively and comfortably with a minimum of fatigue. Seven, size and space for approach and use: appropriate size and space is provided for approach, reach, manipulation, and use regard-

less of the user's body size, posture or mobility. For more detail I refer members to the Australian Network for Universal Housing Design and their principles for a fully universally designed house released in February 2004.

I welcome the fact that the housing plan embraces universal housing design by adopting the target of 75 per cent of all newly built houses in public housing to meet accessible and flexible housing design criteria that comply with disability access principles. However, just as I do not want people with disabilities trapped in 5 per cent of the housing market, I do not want them to rely on the renewal of a diminishing public housing stock to get access to accessible property. I would call on the peak bodies in the housing industry to explore applying universal design principles to their housing supply.

Just as the community has grown to demand energy efficiency, I hope that one day the community will demand universal housing design. Everyone will be a winner. People with disabilities will be able to access the homes of friends and relatives; more people will be able to age in place; more people will be able to function at home during periods of illness and injury; and, of course, people with disabilities will be better able to acquire suitable housing. Housing—affordable, accessible, supported housing—is vital to the full participation of South Australians with a disability.

The Hon. NICK XENOPHON: I make some brief remarks in support of the second reading of this bill. I commend my colleague the Hon. Mr Wade for his contribution in what is a crisis in housing affordability and matters the government must deal with in terms of, particularly, disability housing. I am concerned that this bill is doing not much more than shuffling the deck chairs on the sinking ship of housing affordability. The government has acknowledged that housing affordability, as a ratio of average earnings, has risen from 3.5 a number of years ago to 6.5, which is one of the highest in the Western world. In Canada it is in the region of 4 to 4.5. As a key indicator of people's income being used to purchase housing, it shows that there has been a very deleterious trend that spells bad news for young people who have not been in the housing market to break into it.

As a socially cohesive factor, we know how important having your own home is. We know, Mr President, from the inquiry the Statutory Authorities Review Committee conducted into HomeStart (when you were chair of that committee) several years ago, that HomeStart has played a valuable role in getting people into the housing market. The problem now is that housing affordability has been on a downward spiral, particularly for young people breaking into the market; those that, for whatever reason—their circumstances have changed—need accommodation.

My concern is that this particular bill, whilst restructuring and reorganising, will not deal with some of the fundamental issues. The government needs to have a broader approach; it needs to look at a whole range of factors which are all tied in with the issue of housing affordability and, in a sense, tied in with what this bill is intended to achieve. With issues such as stamp duty, land tax, first home owner's grant, release of land, development controls in terms of where developments can take place, particularly in non-heritage suburbs (for want of a better expression), looking at issues of shared equity—which the government has looked at, but I have some concerns about the long-term implications of that—there is a whole range of factors that must be taken into account.

My concern is that this bill puts a fairly narrow prism on one particular area of housing affordability, and particularly affordable housing. I think we need to look at other factors, such as the affordability of labour for housing. The skills shortage in this country has meant that the cost of tradespeople (carpenters, bricklayers, plumbers) has gone up so much that it is reflected in the price of housing.

I note that the Hon. Mr Stephens has made reference to a number of church groups that have concerns about how this will be structured and whether they can be accommodated for joint ventures, in a sense, with the government but still have some certainty as to the use of their land. I have received representations from those groups, and I would be interested in the committee stage as to what safeguards there will be for the use of land in those sorts of arrangements. I know the Inter-Church Housing Unit Incorporated, which is a commission of the South Australian Council of Churches, has expressed a number of concerns about ensuring that there is an equitable arrangement with respect to the financial contributions of so-called partners as commercial equity interest in a housing development and that they are treated as such. I would be interested in hearing from the government how this bill will assist in facilitating that. There was concern from that sector a number of weeks ago. I do not want to single out the Inter-Church Housing Unit particularly, but there was a broad concern that there should be substantial and significant guarantees of the development of such projects that would ensure affordable housing.

I look forward to the committee stage of the bill. I am concerned that this bill will not do anywhere near what it is intended to do. I think the government also has to get real on a number of other initiatives to do with housing affordability, such as the skills shortage (which is national, in part), issues such as stamp duty, land tax and the cost of land for development. In that regard, I look forward to the Statutory Authorities Review Committee's inquiry into the LMC (Land Management Corporation), because I am concerned about the number of young people and the number of vulnerable South Australians in this state who will not have an opportunity to have affordable housing. In terms of social cohesion and in terms of the importance of housing affordability as a key social indicator, I think we are slipping behind.

I do not want to conclude my remarks without reflecting on the visionary work of the Playford government half a century ago in terms of setting up the Housing Trust and setting the pace—

The Hon. P. Holloway: The Hon. Ben Chifley funded a lot of it as well.

The Hon. NICK XENOPHON: The Hon. Mr Holloway says that Ben Chifley funded a lot of that, and that is acknowledged, but the Playford government put its hand out, it had a vision, and it was funded by the commonwealth. So I can be bipartisan in my criticism. The federal government, as I understand it, has significantly cut grants for public housing over the years, and that obviously has compounded the issue of housing affordability in this state.

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

STATE LOTTERIES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 February. Page 1508.)

The Hon. NICK XENOPHON: I support this bill. I am pleased that the government, after a lot of badgering and questions asked over a number of years, has decided to get on with this bill. I do not propose to unnecessarily restate the comments I have made in relation to my private member's bill, which covers essentially the same territory but which goes further with respect to minors and lotteries.

This bill essentially deals with the Lotteries Commission. I want to comment on some material that I have received from GATS, a private counselling and treatment service. I know of a number of people who have been assisted with their addictions—particularly gambling addictions—by this service. GATS has said that it is important to raise the legal age for gambling because the human brain does not develop fully at 16, and some argue that it is up to the early 20s. However, increasing the legal age to 18, making it consistent with other forms of gambling, is important. Sixteen and 17-year-olds need to have an opportunity to develop a healthy relationship with money.

It adds to the vulnerability of gambling addiction in the adolescent population to allow gambling on Lotteries products at 16 and 17 years of age. Let us not forget that people can bet on multiple lines with Lotteries and spend a lot of money in one hit. In addition, $1 000 can be put on a Keno ticket, which is the form of gambling closest to poker machines, in the sense that it is electronic, occurs every few minutes and is instantaneous gratification.

The work carried out by Paul Delfabbro from the psychology department of the University of Adelaide indicates the prevalence of adolescent gambling in the community and the fact that they are more vulnerable as a group to developing gambling problems down the track. If they develop the gambling bug at a younger age, there is a risk of deeper and more ongoing problems later on. This bill is about bringing it into line so that 16 and 17 year olds cannot play Lotteries products, although it does not deal with minor lotteries, and I will consider those at the committee stage with respect to amendments.

It is an overdue reform. I welcome the bill and commend the government for taking up the concerns of the community and the welfare sector, which I hope I have articulated over the years, in relation to the age of Lotteries play. The Inter-Church Gambling Task Force has been consistent and persistent in its concerns about the impact of gambling and raising of the age for the playing of Lotteries. I support the bill and look forward to its speedy passage.

The Hon. R.P. WORTLEY: Since lottery tickets went on sale in South Australia on 15 May 1967, we have seen vast changes in betting in this state. People can bet on nearly anything these days—horseracing, football, car racing, *Big Brother, Dancing with the Stars, Australian Idol*, and even the weather. Centrebet has backed Rudd against Howard to win the next prime ministership (17:10 against 19:10), which just shows what sorts of things we can bet on. Although I am quite positive that betting on who will become the next prime minister is not so appealing to teenagers, the many other betting options targeting younger audiences are the concerning factor, and that is why I stand here today to support the bill, particularly the minors and special appeals lottery amendments to the State Lotteries Act 1966.

The bill seeks to increase the legal age for lottery play from 16 to 18 years in order to discourage gambling among younger people in the community. This amendment has been strongly supported by the general community and the Department for Families and Communities. Penalties have been increased to move them more in line with community expectations and to highlight the importance of protecting the younger members of our community from unnecessary betting. The importance of the amendment is highlighted by the findings of a survey conducted by Adelaide University. It is reported that one in six South Australian students in years 10 to 12 gamble at least once a week on Keno and scratchie tickets.

These figures are also supported by the findings of the Independent Gambling Authority. The key results of its study, which involved over 18 000 people, are as follows. Overall, 44 per cent of young people aged 16 and 17 years had gambled in the past year, with 1 per cent deemed to be problem gamblers. The most popular form of gambling for 16 and 17 year olds was instant scratchie tickets, and 30 per cent of young people had played these within the last year.

Although buying scratchies at a young age might seem like harmless fun, there is strong evidence that those who gamble intensely as adolescents are more likely to go on to become problem gamblers. We need to limit the overwhelming gambling opportunities targeting our younger community members, and this amendment is a great step towards achieving that goal.

Secondly, I would like to express my support for the special appeals lottery amendment to the bill. This will provide a mechanism for SA Lotteries to conduct lotteries to raise funds for specified purposes. For example, SA Lotteries would be able to implement its mass media power to conduct lotteries for charitable purposes such as drought, fire and disaster relief. The character of these special lotteries would need to be approved by the minister on a case-by-case basis.

SA Lotteries already plays a large role in returning money to the South Australian community. Since its establishment in 1967, it has contributed $1.7 billion to the hospitals fund and, since 1987, $7.8 million to the recreation and sport fund. It is believed that SA Lotteries returns to the South Australian community—through avenues such as winnings, funds and agent commissions—approximately 96 cents in every dollar spent by players. SA Lotteries is currently able to sponsor events as a form of support for local organisations, and at the moment sponsors programs such as SA Lotteries Symphony Sessions, the Tour Down Under, the Australian Hotels Association, the Newsagency Council of South Australia, the Australian Dance Theatre, and the State Theatre Company of South Australia. By changing the legislation, SA Lotteries will be able to continue and further its support to other organisations through allocating sole lotteries to an organisation.

I support this amendment, which has been established to enable SA Lotteries to give back additional funding to those in need in the South Australian community. SA Lotteries has developed a wide range of products to keep pace with changing trends and to establish further ways of returning money to the local community, and amending the bill will enable it to continue and strengthen its local support and national growth.

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to support the second reading of the bill. The issue of whether young people can vote at the age of 16 or 18 years has been (and continues to be) an issue of conscience for members of the Liberal Party, and that will be the case with this legislation. We have recently debated and voted on a similar provision in the Hon. Mr Xenophon's private

member's legislation; the remaining aspects of the bill are to be treated in the normal way by the Liberal Party.

First, and regarding the conscience vote issue, my views were clearly expressed in the recent debate on the Hon. Mr Xenophon's bill, so I will not repeat them at great length. I have not changed my position on this issue, which is that I see no problem, and have no concern with, 16 and 17-year olds being able to purchase a X-Lotto ticket—or, indeed, have someone (such as a grandmother or grandfather) purchase such a ticket for them.

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: I do not have any problem with it. I think I said during the debate with the Hon. Mr Xenophon that in my view neither he nor Mr del Fabro—indeed, no-one—has produced any evidence that has concluded that 16 and 17-year olds are being turned into problem gamblers by being able to buy X-Lotto or Keno tickets.

The Hon. A.M. Bressington: Where does the behaviour start?

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I think the behaviour starts as it does with other things like smoking and drug addiction, etc.—through what they see others doing. However, in the end the judgment call that each of us has to make is whether, at the age of 16 and 17, these young people are old enough and adult enough to make judgments for themselves. As we have indicated in many other debates, we allow them to drive cars and have relationships, do a whole range of things at that age, but the government is intending not to allow them to purchase a X-Lotto ticket or have someone buy one for them.

The Hon. R.I. LUCAS: A lot of our young people are drinking at 16 and 17, as the Hon. Ms Bressington—

The Hon. A.M. Bressington: They're not allowed.

The Hon. R.I. LUCAS: They are allowed to drink at home.

The Hon. A.M. Bressington interjecting:

The Hon. R.I. LUCAS: No, but they are allowed to drink at home. There is no offence created by drinking at 16 or 17. I am, I have been and I remain unconvinced by this notion that at 16 or 17 these young people are being turned into problem gamblers by access to X-Lotto tickets. Members of the government and others in this chamber obviously have a different view. I think it is essentially tokenism by the government and others. They are unprepared—in some cases, for reasons which I agree with—to support the anti-gambling proposition put by the Hon. Mr Xenophon and others within the broader community and, from their viewpoint, this is an easy one for them to put in the tick column to the effect that, 'We are getting tough on gambling because we are going to stop 16 and 17 year olds. Aren't we a good government? Give us a pat on the back.' I have not been—and I do not intend to be—part of that tokenism and hypocrisy.

As to arguments that members make that young people at some stage start gambling, the reality is that young adults start doing a variety of things at some stage, whether it be gambling, drinking, smoking or other things. The judgment call we must make is at what age do we think they are adult enough to make those judgments? We may well advise them to the best of our ability that we do not think they should go down a particular path and, ultimately, they will make their own call. As I said, I do not believe young people taking a X-Lotto ticket on a weekly basis is anywhere near as concerning as quite a number of other activities that we have discussed in other legislation and on other occasions.

The Hon. R.P. Wortley interjecting:

The Hon. R.I. LUCAS: At $1.70? The Hon. Mr Wortley says Mr Rudd at $1.70 at Centrebet is a sure bet, so I am sure that he will be investing a lot of his hard earned on that, and I will leave that judgment call to him. All I can say is that politics is littered with sure bets strewn in the gutters of Canberra or Adelaide.

The PRESIDENT: It is a sure bet that interjections are out of order!

The Hon. R.I. LUCAS: That is certainly true, Mr President. As I said, my position remains the same on that, and other members of my party will express their conscience votes. In relation to the rest of the bill, we are not opposing the legislation; in fact, we support it, but I have a number of questions to which I hope the minister will provide a reply from the Lotteries Commission during the second reading debate or the committee stage. The intriguing part of this is that the key to this legislation is the capacity to give the Lotteries Commission greater gambling grunt in terms of being able to attract gamblers to gambling products.

The second reading explanation makes it clear that in recent years the research has shown that bigger jackpots for X-Lotto are what drives higher sales in terms of lottery ticket purchases. One only has to see the publicity for the $23 million or $32 million jackpots at the start of the year that were advertised over many weeks and to note the discussions that go on in workplaces, family groups or groups of acquaintances to know how people are attracted to purchasing big jackpot tickets like that.

On the one hand, this legislation is saying in a tokenistic way, 'We're going to crack down on problem gambling by stopping 17 year olds from purchasing lottery tickets,' but on the other hand it is creating the framework for even bigger gambling jackpots through the substantive amendments to the definitions of 'Australian lotteries body' and 'foreign lotteries body' and other associated amendments. We have the arrangements with X-Lotto that have given bigger jackpot pools in South Australia and other states, and this is creating the possibility of bigger international pools, that is, not just an Australian pool but a pool with particular communities or jurisdictions (I am not sure which communities or jurisdictions; that is one of the questions I will be putting), whether it is an Asian, American or even a European pool, or whatever it might happen to be. Instead of $23 million, we will be seeing a $100 million jackpot, or whatever, as we see with the $100 million and $200 million jackpot prizes in the state lotteries in the United States.

I am not sure how lofty the ambition is here with the Lotteries Commission but, as I have said, under our current arrangements, we are seeing $20 million and $30 million jackpots. So, clearly, if the Lotteries Commission is looking internationally, it is looking for much bigger jackpots than that—and I personally have no concerns with that. I will be taking my weekly X-Lotto ticket and then some in the probably forlorn event that at some stage I may participate in one of the prizes—as, indeed, most of the people with whom I associate take a punt on X-Lotto. We are more likely to be doing that than the Hon. Mr Wortley putting a large lump of his money on Kevin Rudd at $1.70 on Centrebet.

It would be interesting to ask the Lotteries Commission how much the prize money is boosted by 17 year olds. I suspect that it is nowhere near as much as the money people like the Hon. Mr Wortley, I and others put into the jackpot pools, unless the Hon. Mr Wortley's 17 year old kids, if he

has any, have a lot more money than the young people with whom I associate.

One of my questions is: what are the intentions of the Lotteries Commission in terms of the international jurisdictions and these international lottery pools that are being considered? The second reading explanation states that 'to take advantage of international pooling or cooperative opportunities, the act must be broadened to include international authorities as well as retaining the current ability to conduct joint lotteries within Australia.' In the debate in the lower house, there was precious little discussion on this issue. I am flagging this issue, and I will be looking for answers in the second reading reply. During the committee stage, I trust the minister will have available a senior Lotteries Commission officer who is able to answer questions from members of the committee about of the Lotteries Commission's ambitions in relation to these areas.

Another issue I want to raise is that in the second reading explanation there is a reference in clause 8, as follows:

> A further amendment to this section will now allow the claim period to be met in the instance of a lottery prize being paid over an extended period in instalments, if at least the first instalment is collected or taken delivery of within the twelve month period.

I want the government to clarify whether the prizes in current lotteries can be provided in ongoing instalments. I do not confess to be an expert on Lotteries Commission arrangements, but I am personally not familiar with that in the normal X-Lotto product.

Certainly in the United States, where you have the $100 million and $200 million jackpots, it is not uncommon to have a jackpot where someone wins $2 million a year for the next 40 years of their life. They do not get all the money up front but get $2 million for the rest of their natural life. That appears to be common in the United States. I was not aware that it was able to be done in Australia or South Australia. I stand to be corrected and seek a response from the government. Is that currently available under legislation or is this legislation being amended to allow the sort of arrangement where you might have a $100 million jackpot at $2 million or $3 million a year for the remainder of somebody's life, or for however many years it might happen to be?

The third and final area I want to raise is in relation to the special lotteries. It was always an ongoing debate. I had the Lotteries Commission reporting to me for a relatively short period when I was a minister. During our time in government there was always the suggestion of raising money for a good cause by having another lottery. On the surface it often sounds a wonderful idea, but I am interested in hearing from the Lotteries Commission experts what research they have conducted in terms of the impact of additional lotteries or special lotteries on the current revenue throughput through their existing lotteries. If you have two or three lottery products being sold every week of the year—Monday, Thursday and Saturday—and you add to that another 26 special lotteries, one every fortnight, for some good cause—there will always be a good cause—I assume it will have a significant impact on the revenue throughput of the existing lotteries and there will not be the net increase one might assume.

The question I assume becomes: how low can you go before it does not impact on the existing revenue throughput? If you only put in another half a dozen lotteries for the year, will you get all the money currently being punted and an extra half a dozen? If you have a wonderful lottery to help the starving children in Africa, will people put money into that but not put money into the current lotteries, which put money into hospitals in South Australia? I am not suggesting that starving children in Africa will be the subject of a potential special lottery, but it may be for the victims of Bali or the drought. I am not sure what guidelines the government will establish as the legislation is quite wide in its terms of reference as to what you could have a special lottery for.

I seek from the Lotteries Commission executive who will be advising the minister specific answers regarding what guidelines they are looking at in terms of both the number of potential special lotteries and what the impact might be on the revenue going through the existing lottery base for SA Lotteries. It is a naive notion to assume that you could just add an unlimited number of special lotteries without impacting on the existing gambling base going through the existing lottery products. I am not suggesting the Lotteries Commission is taking that naive view, but clearly it has a view that the market can absorb a number of additional special lotteries without impacting on its revenue base, and I seek a response from the Lotteries Commission as to its thinking in that area.

I refer to clause 10. The second reading explanation states:

> Unlike other Australian lottery jurisdictions, SA Lotteries has been unable to fund the payment of missed prizes from the prize reserve fund. The amendment will allow such a payment to be made so long as certain criteria are outlined.

Can the minister explain exactly what this particular amendment is seeking to achieve? I do not know whether I have a misunderstanding of what a missed prize is. I assume that it is someone who has not collected their prize, but, if that is an incorrect understanding, perhaps the minister will also explain the importance of whether or not you can fund it from the prize reserve fund. I am assuming that, if that is not allowed at the moment, the Lotteries Commission is funding it from some other fund. What is the disadvantage of the other fund that funds missed prizes from the viewpoint of the Lotteries Commission? With that, I indicate that the Liberal Party will be supporting the second reading with the proviso that the issue of minors will be a conscience vote.

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

NUCLEAR POWER REFERENDUM

The Hon. P. HOLLOWAY (Minister for Police): I table a ministerial statement made by the Premier on Tuesday 6 March.

INDONESIA AIR CRASH SUPPORT

The Hon. P. HOLLOWAY (Minister for Police): I table a ministerial statement made by the Premier on Thursday 8 March.

MINING BOOM

The Hon. P. HOLLOWAY (Minister for Police): I table a ministerial statement made by the Premier on Wednesday 7 March.

ADJOURNMENT

At 9.41 p.m. the council adjourned until Wednesday 14 March at 2.15 p.m.