LEGISLATIVE COUNCIL

Tuesday 16 October 2007

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:18 and read prayers.

SOUTH AUSTRALIAN PORTS (DISPOSAL OF MARITIME ASSETS) (MISCELLANEOUS) AMENDMENT BILL

ELECTION OF SENATORS (CLOSE OF ROLLS) AMENDMENT BILL

His Excellency the Governor, by message, assented to the bill.

SUMMARY PROCEDURE (PAEDOPHILE RESTRAINING ORDERS) AMENDMENT BILL

His Excellency the Governor, by message, assented to the bill.

ANSWERS TO QUESTIONS

The PRESIDENT: I direct that the written answer to question on notice No.16 be distributed and printed in *Hansard*.

ROADS, SHOULDER SEALING PROGRAM

16 The Hon. S.G. WADE (31 July 2007). Can the Minister for Road Safety advise, in relation to the shoulder sealing program:

1. How many additional kilometres of road will receive shoulder sealing under the 2007-08 program?

2. Which roads have been identified for should sealing work?

3. How are roads assessed and prioritised in relation to the program?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs): I am advised that:

1. In the six years of the Shoulder Sealing Program between 2001-02 and 2006-07, approximately 690 road kilometres in total of shoulder sealing had occurred.

2. With the $7.2 million allocated to the Shoulder Sealing Program in 2007-08, approximately 125 road kilometres of shoulder safety works will be undertaken.

3. These works will be undertaken on the following roads:

- Barrier Highway—Main North Road to Burra
- Riddoch Highway—Keith to Padthaway
- Gawler to Kersbrook
- Tea Tree Gully—Mannum
- Kadina to Moonta
- Main North Road
- Flinders Highway
- Riddoch Highway—Naracoorte to Mount Gambier
- Streaky Bay to Poochera
- Mount Crawford to Mount Pleasant
- Echunga to Meadows
- Gorge Road
- Flinders Highway—Coffin Bay turnoff to Todd Highway Junction
- Barossa Valley Way
- Lyndoch to Chain of Ponds
- Lincoln Highway—Whyalla to Port Augusta

4. Analysing the available 5-year crash data at the time of developing the program has identified a list of priority road sections that will benefit from targeted safety improvements.

PAPERS

The following papers were laid on the table:

By the President—

Report of the Auditor-General, 2006-2007—Parts A, B (Volumes 1-5) and C

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

Reports, 2006-07—
- ANZAC Day Commemoration Council
- Electricity Supply Industry Planning Council
- Listening and Surveillance Devices Act 1972
- Operations of the Auditor-General's Department
- South Australian Rail Regulation
- State Procurement Board
- Tarcoola-Darwin Rail Regulation
- Witness Protection Act 1996

Police complaints Authority Report dated 14 September 2007—pursuant to Section 57 of the Criminal Law (Forensic Procedures) Act 2007

Suppression Orders made pursuant to Section 71 of the Evidence Act 1929

Regulation under the following Act—
- National Electricity (South Australia) Act 1996—Civil Monetary Liabilities

Rules of Court—
- District Court—District Court Act 1991—Criminal and Miscellaneous
- Supreme Court—Supreme Court Act 1935—Sexual Offence

Transparency Statement—Water and Wastewater Prices in Metropolitan and Regional South Australia, 2007-2008

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

Reports, 2006-07—
- Adelaide Cemeteries Authority
- West Beach Trust

City of West Torrens—Local Heritage Plan Amendment Report by the Council

Regulation under the following Act—
- Development Act 1993—Statement of Interest

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

Office for the Ageing (Activities associated with the administration of the Retirement Villages Act 1987)—Report, 2006-07

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

Reports, 2006-07—
- Adelaide Dolphin Sanctuary Act 2005
- Local Government Finance Authority of South Australia
- Vulkathunha-Gammon Ranges National Park Co-Management Board
- Zero Waste SA

Regulations under the following Acts —
- Food Act 2001—Enforcement Agencies
- Liquor Licensing Act 1997—Dry Zones—Kadina
- Optometry Practice Act 2007—Registration

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

Controlled Substances Advisory Council—Report, 2006-07

SANTOS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:24): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P. HOLLOWAY: I wish to make a ministerial statement, as made by the Premier in another place, which relates to an agreement with Santos. Today, the South Australian government has taken the historic step of agreeing to proceed with the removal of the 15 per cent shareholding cap that applies currently to Santos. The government will move to introduce legislation as soon as practicable into the parliament and the shareholding cap will be lifted 12 months after the repealing legislation comes into effect. This follows a review of the 28 year old Santos shareholding restriction that was introduced by the former Corcoran government to prevent a takeover by Alan Bond. This legislation protected Santos and the state's security of gas supplies. However, the company now believes the cap inhibits its growth potential.

The government has consistently stated that it would consider the removal of the share cap only if the state can be assured that this is in the interests of South Australia. In particular the state has sought guarantees to ensure an ongoing and strong corporate presence in South Australia and an enduring contribution to the development of the state, even if Santos were eventually to be taken over. For the benefit of the Leader of the Opposition, this is precisely what his fellow Liberal commonwealth ministers urged the South Australian government to do.

We want to see Santos grow and make sure that South Australia benefits from Santos' growth. In consideration of this matter, Santos has provided a deed of undertaking to the state, signed by Santos Chairman Stephen Gerlach, regarding the continuation of the corporate presence and contribution of Santos to the state. The deed of undertaking provided by Santos provides three fundamental commitments, which guarantee a strong and ongoing commitment by Santos to South Australia. These include: a continuing Santos presence in South Australia of effectively 90 per cent of the current South Australian based roles, which includes 100 per cent of the roles at its major South Australian operational sites. This equates currently to approximately 1,700 jobs in South Australia. It also includes a social responsibility and communication benefits fund of some $60 million over 10 years to be applied to a range of community development purposes, and these commitments will be supported by a $100 million legally enforceable compensation mechanism should there be a significant reduction in corporate presence.

The Santos deed of undertaking provides a platform for the future growth and development of the company, while also providing assured ongoing benefits to South Australia. In order for this to happen this parliament must agree to legislative changes. I call upon the opposition members in the upper house to put aside any temptation they may have to play games with the repealing of the cap and to put South Australia first.

YOUTH JUSTICE REFORMS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:32): I lay on the table a copy of a ministerial statement relating to youth justice reforms made earlier today in another place by my colleague the Attorney-General.

QUESTION TIME

POLICE RESOURCES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:33): I seek leave to make a brief explanation before asking the Minister for Police a question about police resourcing.

Leave granted.

The Hon. D.W. RIDGWAY: This government has continually made a lot of noise during its term and a half in office about being tough on law and order and tough on crime. On 11 September 2007 the Minister for Police said, in relation to Taser technology, that the STAR Group was the group best equipped to deal with any offender presenting a risk to the public. Police officers on the beat in South Australia have expressed their concerns about community safety, and these officers, in addition to STAR Group officers, are faced with a constant threat of dangerous and combative or high-risk subjects who endanger police officers, bystanders and even themselves. My question is: will the Minister for Police place on record his government's commitment to finally get tough on law

and order, in particular in relation to gang-related crime and violence, by supporting today's call for the deployment of Taser devices to all South Australian police patrols, thereby safeguarding the South Australian community?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:34): It is a pity that the shadow minister for police was not at the Police Association conference this morning. His colleague the Hon. Terry Stephens was; and perhaps if he asked the Hon. Terry Stephens he would know that the Police Commissioner mentioned that in the last, I think, four years there had been just 25 occasions on which Taser devices had been deployed by the STAR Group. What the Police Commissioner also indicated in his address to the police conference this morning was, of course, that Taser technology has improved significantly over recent years. The range was originally as little as 10 feet, but those devices have improved significantly and now have a greater range. However, because they use significant force there is a need to consider the circumstances under which police would use them.

At the moment, the police are equipped with a significant amount of gear. They have, obviously, firearms, capsicum spray, handcuffs, spare ammunition, batons and the like. We can keep giving police extra gear but, at the end of the day, if we are not careful, we will have to give them a stronger belt to keep all the equipment on. What is important is that the South Australian police are equipped with the best equipment to deal with the situations with which they are faced. This government has provided record amounts of money for the police force and has made a very fair but generous offer to the police to address many of the issues the police face, including looking at the attraction allowance to get police into the more remote locations in the state and to retain detectives, prosecutors and the like. That enterprise bargaining offer is being considered by police as we speak.

In relation to the matter of Tasers, like all equipment, the government will take the advice of the Commissioner and senior police officers, and if that advice is considered appropriate to deal with situations that they face then the government will provide that. Nobody could say that the South Australian police force has been under-resourced under this government. We have just provided it with a new aircraft and a new boat for water operations. The police have been provided with a number of new police stations: Berri, Port Lincoln, Victor Harbor, Mount Barker, Gawler, Golden Grove and Aldinga. A series of new police stations have been built by this government. Indeed, if one reflects on what has happened with infrastructure generally within this state, when this government came to office the previous government was spending about $330 million a year, or thereabouts, on—

The Hon. R.I. Lucas: That is not true.

The Hon. P. HOLLOWAY: Well, it was just over $300 million. If one looks at the budget—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: The person who is interjecting is extremely embarrassed by his record. This government is now spending about three times more on capital than the previous government was, and one of those areas is the police. So, as I said, there is a new police aircraft, a new boat, a series of new police stations and we have increased the numbers of police from as low as 3,400 back in the mid 1990s to now over 4,000. The causes of crime within our society are complex. Tasers will not provide a golden bullet to solving all of the issues with crime in South Australia. If that is the response to crime that members opposite have, if the best they can do is to say, 'Look, let's go for another piece of technological equipment', if they think that that is the sole solution to complex issues then they really need to think again.

As I said, there has been a trial of Tasers. The Police Commissioner is considering how that particular piece of equipment would be best employed and the conditions under which it is done. One of the things that needs to be considered is the safety of the equipment that police use. The police have to be adequately trained in the use of that equipment and they have to develop the protocols for when such equipment would be best used. But, as I said, given that they have been employed 25 times (I think it was) over four years, let us not pretend that this opposition's sniping is in any way adding any worthwhile contribution to the debate on law and order in this state.

What this government has done is to give the police the physical resources, unprecedented levels of budget, new police stations and new equipment. What is more, the government is providing the police with adequate remuneration, where necessary, to attract and retain police officers to difficult parts of the state. Further, some of the best legislation has been introduced to

assist the police; for example, the DNA legislation, which was passed by this parliament last year and which is providing huge benefits to the police. This state is leading the country and, indeed, in many respects leading the world with the introduction of this legislation. The ministerial statement made by the Attorney-General which I have just tabled announces that we will be introducing some more changes to Youth Court legislation, as a result of a report by Monsignor Cappo, to address particular problems in that area.

I can assure all members of this place that there will be a constant stream of legislation. This government will back the Police Commissioner and, if the Police Commissioner wants additional equipment, this government will support him in those requests. Also, there will be a stream of legislation that will enable our police to better enforce the law within this state.

POLICE RESOURCES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:41): I have a supplementary question arising out of the answer. The minister said that the government often seeks advice from senior police officers. In that case, does the minister disagree with the South Australian Police Association President, Peter Alexander, who believes that Taser technology is a vital tool for our officers and who has said that he is greatly disappointed to see Taser technology go unsupported in this state?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:42): Taser technology is indeed useful technology, and it has been deployed by the specialist forces (the STAR Group) in this state. As I have said, if the honourable member had been at the association's conference this morning, he would have heard the Commissioner say that the police were currently considering ways in which that technology could be more widely introduced through the force. I have full confidence that the Police Commissioner, who is in regular touch—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: I talk to the Police Association regularly, and I listen to the police force. At the end of the day, the Police Association is debating those and a number of other issues at its Police Association annual conference, as is appropriate. No doubt, I will be meeting with Peter Alexander, Andy Dunne and other members of the Police Association after the conference finishes tomorrow and listening to their views. At the end of the day, the South Australian police force is subject to the direction of the Police Commissioner, and I have full confidence in our Police Commissioner to act in the best interests of the South Australian public and its police force.

POLICE RESOURCES

The Hon. T.J. STEPHENS (14:43): I have a supplementary question. Will the minister indicate to the chamber how many assaults there have been on police officers over the last four years while this ridiculously inadequate trial of Tasers has been taking place, given that they have not been issued to the uniform patrol people, who need them? In fact, how many of those assaults would have been avoided if uniformed police had been equipped with Tasers?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:43): That question really sums up the inadequacy of the South Australian opposition, if it thinks the solution to our crime problems is a piece of technology. I can imagine that, if a police officer used a Taser and missed the target, which is relatively easy, and was then assaulted, these people would be standing up in this place and condemning the government for not adequately training the police or for giving them the wrong equipment. Alternatively, if someone was using a Taser, and the Coroner or someone else subsequently found out that there had been an excessive use of force, we would, no doubt, have people in this parliament demanding my head because this equipment had been misused. Technology will not provide the sole solution to crime. Our police need to have the best equipment available, but the regime in which it operates needs to be carefully considered for the best protection of police themselves. As I said, the police already have a series of equipment at their disposal, from firearms through to capsicum spray and other equipment. What the police need to do, if they are to use different sorts of equipment, is to work out the protocols on when that sort of equipment is best employed.

POLICE RESOURCES

The Hon. T.J. STEPHENS (14:45): As a supplementary question, given that every other jurisdiction in Australia and, I guess, in most First World countries, use Tasers, what is the matter with our police that makes them inadequate to use the equipment? Is the minister suggesting that our police are inferior to others within Australia?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:45): The South Australian police force is held in higher esteem than any other police force in this country, and one reason is that it is a very disciplined and well-run force. It has an excellent Police Commissioner, who has held the position for over 10 years and, as a result of the calibre of those running the force, we have the most respected police force in this country. The police force in this state does not act on the whim of the opposition or other members who are seeking to gain political points. Indeed, the issues raised by the Police Association will be not only properly considered but also carefully considered. It will not act on a whim, and that is why the South Australia Police is held in such high regard within this country.

GLENSIDE HOSPITAL REDEVELOPMENT

The Hon. J.M.A. LENSINK (14:46): I seek leave to make an explanation before asking the Minister for Mental Health and Substance Abuse a question about the Glenside redevelopment.

Leave granted.

The Hon. J.M.A. LENSINK: The Liberal opposition has been contacted by a constituent who received a letter on 20 September from the Chief Executive of CNARs in relation to aged care at Glenside. It states that, currently, there are new aged care acute facilities under development, and it refers to transitioning of aged care services to the 'wider aged care sector'. In the cabinet cover sheet that accompanied the Cappo report in February, one of the risks noted was 'commonwealth negotiations re aged care bed funding'. I am also in receipt of an email, dated 10 October, from the commonwealth Department of Health, which states:

> Of the 120 beds mentioned in the report, 55 are commonwealth aged care funded beds. These are currently located at the Makk & McLeay Nursing Home which is part of the Lyell McEwin Health Service in Hillcrest. The rest of the beds are state funded. I have spoken with the Department in Adelaide and they say the state's position—

that is, the South Australian government—

> regarding these licences and the residents is unclear. They believe the State wants to get out of the aged care provision and that the intent will be to transfer both the licences and the residents to other appropriate facilities but they have had no formal indication to that effect.

My questions are:

1. Are the facilities mooted in the letter to my constituents intended to be mainstream or psycho-geriatric?

2. Has the government failed to negotiate with the commonwealth regarding the licences?

3. What are the financial implications of the entire redevelopment plan if the commonwealth will not play ball on bed licences?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:48): I thank the honourable member for her important question. Indeed, she should hang her head in shame in terms of the federal government's lack of responsibility in taking up—

Members interjecting:

The Hon. G.E. GAGO: It is interesting that they do not want to hear the answer. They are very embarrassed because here in South Australia we have one of the highest percentages of mental health aged care beds under the responsibility of the state government. We know that in other states it is a federal government responsibility to provide aged care residential facilities and appropriate care, and it has been badly neglected in this state. Those aged care residents have been cost shifted in and left to the responsibility of the state government—and of course we have come to the party. Part of our plan is to rectify that imbalance and to ensure that the federal

government does in fact take adequate responsibility for caring for the elderly, and that includes the elderly who have mental illnesses.

So, in terms of the current plan, we have already transferred 30 mental aged acute care beds from Glenside to the new mental health unit at the Repatriation General Hospital and then Lyell McEwin and Queen Elizabeth hospitals, once these new modern facilities have been built, the aged acute services will no longer be delivered from the Glenside campus. Currently there are 23 aged acute beds at Glenside. I have to qualify that those other aged care beds are also planned to be provided at Lyell McEwin and Queen Elizabeth hospitals. Currently there are 23 aged acute care beds at Glenside, and I can confirm that the medical centre has been decommissioned in line with the transfer of those beds.

Currently, as part of our stepped model of mental health reform, it has been recognised that it is more appropriate that extended aged care patients be cared for in commonwealth accredited aged care facilities in the community. There are currently 48 extended aged care beds on the Glenside campus, and it is modern and appropriate practice to care for these patients in commonwealth accredited residential care facilities within the community, as occurs in other states. Some 24 of those beds will be transferred to a refurbished ward at Oakden, and the remaining patients will be transferred to aged care facilities close to their family or community. Mental health services will provide training and also regular support to those facilities. So, where specialist mental health care is needed, that will be provided.

The transition of our aged care patients will obviously involve extended consultation. As the honourable member has already identified, we are consulting very closely with those consumers and their families. They will be involved in the consideration of future care facilities and location of their loved ones, and that consultation has just begun. It is in the very early stages. We will continue to consult and continue to find the best model of care appropriate to meet the needs of these very important mental health consumers.

GLENSIDE HOSPITAL REDEVELOPMENT

The Hon. J.M.A. LENSINK (14:53): As a supplementary question: can the minister confirm whether the state government has in fact had any dealings with the federal government to transfer these licences?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:53): To the best of my knowledge, I understand that discussions have occurred with representatives of the federal government for some time now. It is an issue that is obviously of concern to us, and to the best of my knowledge these discussions have commenced.

COUNTRY FIRE SERVICE

The Hon. S.G. WADE (14:54): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question related to the CFS.

Leave granted

The Hon. S.G. WADE: The Productivity Commission on government services shows that the number of volunteer fire fighters in South Australia has fallen 40 per cent under this government from 17,000 to less than 11,000. In July the Chief Officer of the CFS warned that we needed to find another 2,000 volunteers in the next three years. On Friday last the Chief Officer said that the drought had further depleted the number of CFS volunteers in drought affected areas. He said:

> Many farming families are reaching the end of their financial resources and are being forced into making some hard decisions.

He went on to say that farming families are being drawn away into mining ventures. Mr Ferguson said that the loss of population is likely to increase over the next six months—that is, during the highest risk bushfire period of the year. I am advised that the on/off nature of mining rosters means that the number of CFS volunteers on the books of CFS brigades overstates the number of volunteers actually available to respond to calls, as half those involved in mining are likely to be out of the region at any one time. My questions to the minister are:

1. What steps has the government taken to ensure that we know what resources are actually available to fight fires in country South Australia?

2. What contingency plans does the government have in place to ensure that South Australia's drought-affected areas will have an adequate local fire response in the upcoming bushfire season?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:55): I thank the honourable member for his questions in relation to, essentially, the drought conditions the state is facing and the volunteer capacity within the CFS. Clearly, when we see such drought conditions it does affect those on the land and our Country Fire Services because, essentially, farms need to be viable and, if they are not viable, farmers are going to look for other means of earning a livelihood. As Chief Officer Euan Ferguson said, some are being attracted to the mining industry for obvious reasons. I suppose one of the ironies of that is, of course, that if in the long term farmers do leave their properties and leave the land we will probably see less cropping and, no doubt, more grazing. Ultimately, we may see less fuel and unfortunately, perhaps, fewer properties to defend with fewer lives to be saved. However, having said all that, of course, the Country Fire Service is both well engaged and well prepared for any drought conditions. Clearly, the Chief Officer is on the government's Drought Task Force. He is also now the president of AFAC. We support and sponsor the bushfire CRC. Our firefighters are well resourced and well prepared.

An honourable member interjecting:

The Hon. CARMEL ZOLLO: Of course, we have other contingencies in place in relation to that. First of all, of course, we have mutual aid agreements between the MFS and the SES. In relation to the obvious: a lot of it is crown land. We have seasonal firefighters in the DEH and SA Water, and we have provided extra funding to ensure—

An honourable member interjecting:

The Hon. CARMEL ZOLLO: They are primarily defending our own crown land, so we think it is important that we take on that responsibility. Nonetheless, there is excellent cooperation between the CFS and DEH. Indeed, the DEH crews work as part of CFS crews. As I said, it is not as if this government is not well prepared and not well engaged in relation to any drought contingencies in the state. Of course, strategies have been developed within the CFS in relation to water issues to ensure that there are more brigades to respond, and, in relation to seeing that we have more water carriers available. I could go on, and I have placed on record many times that we have increased our aerial firefighting capacity in the state. There is very little that we are not engaged in to ensure that we are adequately prepared in this state.

REGIONAL PLANNING

The Hon. I. HUNTER (14:58): I direct my question about regional planning to the Minister for Urban Development and Planning. Will the minister provide the chamber with the details of the regional planning initiatives sponsored by this government?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:59): I thank the honourable member for his question. As part of the government's focus on improving the economic and lifestyle opportunities for South Australians, the government has been proactive in working at implementing a whole suite of initiatives to improve the planning framework in this state. This is evident from the strategic frameworks established by government, including the Strategic Plan, to the relevant planning strategies as well as legislative reforms in areas such as development assessment panels and other system improvements which have been lauded by locals and interstate stakeholders alike. The government is committed to continuing this reform and improvement process, and the planning review currently underway is evidence of this. Building on this effort, the government has also been proactive in working with local councils to improve the environment for regional collaboration and master planning, designed to improve regional investment, community integration and quality of lifestyle.

A master planning exercise has been completed with the City of Victor Harbor and Alexandrina councils to promote integrated planning for the coastal and adjacent hinterland area from Victor Harbor to Goolwa, including the towns of Middleton and Port Elliot, as well as Hindmarsh Island. The process began with an issues paper to initiate discussion. The meetings and workshops were conducted in a spirit of cooperation and collaboration, with both councils subsequently agreeing on the final draft of the master plan. The master plan provides the

framework for the two councils to work more closely together to ensure a consistent planning approach across the South Coast region to benefit the wider community.

The South Coast Master Plan provides strategies to meet the coming demand for housing, commercial, employment and recreational land. Priority has been given to retaining the coastal park and open hills as a backdrop. Sites have also been identified for renewable energy generation. Goolwa will be the focus for major housing expansion and new industrial development, while Victor Harbor will be the regional centre for services and major commercial activity and residential expansion. The master plan was advertised on 11 October, with a consultation period to 14 December. Once finalised, the master plan will be incorporated into the planning strategy for the outer metropolitan Adelaide region and will eventually become incorporated into the respective council development plans.

The Greater Mount Gambier Master Plan was released for public consultation on 2 October. Public notices were placed in *The Advertiser* and *The Border Watch* newspapers of 2 October, with the consultation period to conclude on Friday 7 December 2007. Historically, there have been tensions between the two councils in relation to the nature, location and form of development taking place within the greater Mount Gambier area. Discussions were conducted in a spirit of cooperation and compromise, resulting in both councils agreeing to release the draft master plan for public consultation. The master plan outlines the sequence for residential development, which includes provision of residential land for the next 50 years.

Key guiding principles of the master plan include reinforcing the primacy of the city centre as the business, shopping, cultural and social hub of the city, whilst establishing a commercial and retail hierarchy throughout greater Mount Gambier to enable the diversification of industry, business and retail activities. Potential gateway entrances from the north, west and east of the city have also been identified. Current urban design guidelines and policies for the gateways are being further developed. Once finalised, it is proposed that the master plan will be incorporated into the planning strategy for regional South Australia and become a statutory document. Eventually, the guiding principles of the master plan will be incorporated into the respective council development plans. I encourage all members to read these important documents and to contribute to the finalisation of these master planning processes.

EXCLUSIVE BRETHREN

The Hon. M. PARNELL (15:02): I seek leave to make a brief explanation before asking the Minister for Police, representing the Minister for Industrial Relations, a question about the Exclusive Brethren.

Leave granted.

The Hon. M. PARNELL: Last year, I asked a question in this place about the interaction between the Rann government and the closed and secretive Exclusive Brethren sect. I was keen to find out which ministers had met with members of the Exclusive Brethren and what issues were discussed. In particular, I was keen to find out more about the special clause that was introduced into the Fair Work Act 1994 by minister Wright as part of the Industrial Law Reform (Fair Work) Bill 2005. This clause provides that a union official may not enter a workplace if more than 20 employees are employed at the workplace and the employer is a member of the Christian fellowship known as The Brethren. In his reply to me, minister Holloway said:

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

No further information has been provided by the minister, so I used the freedom of information laws to find out more. The first thing that I discovered was confirmation that this special clause relating to union rights of entry was, indeed, new and had not, in fact, been around for many years, as the minister suggested. Secondly, I discovered a very intriguing series of correspondence and communication that pointed to a very surprising, strong and sustained influence on South Australian law by the Exclusive Brethren sect. For instance, one email reported the following phone conversation from a Brethren lobbyist. The email states:

> They represent a Universal Christian Fellowship called the Brethren. They're 'responsible for inserting the original conscience clause in legislation (section 144) in 1972, and have made constant representations on industrial relations, since influencing legislation, along the way'...Over the years they have had meetings with ministers for industrial relations as the ministers have changed.

In Saturday's *Advertiser* Nick Henderson and Michael Owen followed this up with minister Wright and their report says:

> Minister Wright said his staff had met with senior members of the group, but insisted he had never had any contact with them.

This directly contradicts a claim from the freedom of information documents, this time in an email from a public servant, documenting a phone call she had received, which stated:

> I have just taken a call from Kevin Seeley re setting up a meeting with the minister regarding an industrial relations matter. Kevin said he spoke to the minister before the election and was asked to get back in touch with him once the election had finished. Both him and Warwick are willing to meet with the Minister wherever is most convenient and Kevin said perhaps the minister would like to call him first to refresh his memory of their last conversation.

If members had watched last night's *4 Corners* expose on the brethren they would have heard the name Warwick Joyce mentioned. According to today's *Australian* newspaper, Warwick Joyce is described as 'an Exclusive Brethren sect leader who booked 10 full-page advertisements in Adelaide suburban newspapers at a cost of $10,000 during the last campaign'. This same Warwick Joyce received the following letter from minister Wright in March 2005, which stated:

> Dear Mr Joyce, As you would be aware, the government's industrial law reform Fair Work Bill was passed by the state parliament on Wednesday 9 March 2005. I know how much you supported the parliamentary debate by your regular attendance during the course of it. I am pleased to be able to advise that the clause you specifically sought inclusion of has now become law and I wish to take this opportunity to thank you for your support.

I remind members that federal opposition leader Kevin Rudd stated, in regard to the Exclusive Brethren, 'I believe this is an extremist cult and sect. I also believe that it breaks up families.' He said that on ABC Radio on 22 August. Premier Rann has described the Exclusive Brethren as 'seriously weird gear' and stated, 'I mean, they are like a cult.' He said that on Mix Radio on 22 August and in fact repeated it again today on Radio FIVEaa when he was asked whether he had ever met Exclusive Brethren members and he described them again as 'weird, weird, weird gear'. My questions of the minister are:

1. Why did the Rann Labor government introduce specific anti-union clauses in state legislation against its own long-held support for union access to workplaces?

2. Is the government still supportive of its decision in 2004 to introduce a special and unique exemption to South Australian industrial relations law to a group it now describes as an extremist 'weird gear' cult?

3. Did minister Wright mislead the public when he insisted to *The Advertiser* that he had never had any contact with the Exclusive Brethren, when departmental documents clearly indicate otherwise?

4. Will minister Wright now come clean with exactly what contact he has had with Exclusive Brethren members?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:08): If the Minister for Industrial Relations is approached by a group in relation to the legislation under his jurisdiction with a case, I will not criticise him for meeting with those individuals. I meet with all sorts of people with all sorts of different views who do not agree with me about matters of legislation coming before me. We have a responsibility to govern for all South Australians, whether or not their views are weird.

The Fair Work Bill came before the parliament and it refers to this group being an exemption. That clause was passed by all members of parliament, so I do not think anyone could say that there was anything covert in relation to legislation being brought before this parliament. The honourable member asked why the Labor Party should be supporting an anti-union measure. It has been my understanding, just as with the Electoral Act and in other matters, that people have deep religious views and, whilst we may not agree with their views, we respect those customs within our laws. Whether they are seriously weird or not is not really the issue. The bottom line is whether or not that clause should have been passed and should that group with those views have been exempted. This parliament to my recollection unanimously said that it should have.

RODEOS

The Hon. C.V. SCHAEFER (15:10): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about rodeos.

Leave granted.

The Hon. C.V. SCHAEFER: On 16 August the minister introduced a series of quite draconian regulations regarding the sport of rodeos and the rodeo circuit in South Australia. I have a letter written by her predecessor, the Hon. John Hill, to the Festival State Rodeo Circuit which says in part:

I am writing to you as the representative of the Festival State Rodeo Circuit to advise you of recent discussions that have taken place between representatives of DEH (Department for Environment and Heritage), APRA (Australian Professional Rodeo Association) and the RSPCA concerning rodeos in South Australia.

It goes on to say that he convened a meeting, and the letter then states:

I am pleased to advise that this meeting was convened on 25 January 2006, and that the RSPCA, DEH and APRA agreed on the following statements:

- Rodeos in South Australia are far more regulated than in most other states;
- The NCCAW (National Consultative Committee of Animal Welfare) standards are practical and achievable and it is the responsibility of rodeo personnel to ensure that these standards are met;
- Rodeo permits should be issued to the stock contractor, who is primarily responsible for the management of the livestock, rather than the organiser, who has more of an administrative role in rodeos;
- Reporting to DEH's Animal Welfare Unit within 21 days of a rodeo is reasonable. This is also the case in Victoria; and
- Both groups would accept that, as a condition of permit, electric prods less than 25 centimetres in length, and which can be more easily concealed, not be permitted on rodeo grounds..

All parties agreed that public confidence in required standards being met by rodeos is enhanced if RSPCA inspectors attend and verify compliance. APRA also has internal mechanisms of fines and disqualifications for personnel who do not comply with standards.

Finally, the government wishes to include the presence of a veterinarian at every event. All these conditions have been met and:

The government...will ensure that DEH, the RSPCA and APRA continue to work together to consider and implement further improvements to rodeos in South Australia.

Given that, as we all know, the minister never even contacted APRA to let it know she was introducing regulations—let alone consulted with it—my questions are:

1. Who did the minister consult with before introducing the regulations?

2. Why has the minister reversed the position of the previous minister?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:13): I thank the honourable member for her questions. I understand that a number of the issues she has raised are matters that are before the Legislative Review Committee and also in a bill before this council, as well as in the papers before us. Nevertheless, I will make some general comments. I do not apologise for pursuing a set of regulations and legislation to protect innocent animals. We are talking about adults who get up on full-grown horses and chase little calves; they rope them, throw them to the ground and tie them up. These are grown men who perform these actions, which I have seen performed.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: It is the role of the RSPCA to provide advice in respect of protecting animal welfare, and that is what it has done. It has provided me with a series of advice—

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Order! The Hon. Mr Ridgway will rope himself in!

The Hon. G.E. GAGO: —since I have become the minister with responsibilities in this area. I have taken a course of action, in the 15 months that I have been minister, to uphold and protect the interests of animals that are basically sport and game for a handful of people. I have made it very clear, since I became minister, that I have no intention of banning rodeos. The measures I have put in place are not about stopping or banning rodeos. I accept that for some in the community they are a very important event and they are very closely linked to some communities. I have also acknowledged in this place before that in some communities they play a very important role; for instance, funding to various sporting groups, etc. I have met with a number of these organisations. In fact, they have come to my office and put their case before me (members

of the rodeo industry) in relation to discussions and considerations in response to a discussion paper that was put out very early.

Again, a wide number of stakeholders had an opportunity to respond to that and we listened to their responses and took those into consideration. The bottom line is that what we have here are particular points of view that are not shared. I have got the responsibility, as the minister responsible for animal welfare, to protect the interests, welfare and safety of animals and, therefore, I have taken a course of wide ranging actions to improve the enshrining of the code of conduct into enforceable legislation, with things like reducing the size of the electric prods that are used, particularly those that are easy to conceal. So, we have looked at issues around that and at tightening up the requirements for a vet to be on site, and I do not resile from my responsibility.

I have looked further at the issue of calf roping and have taken the advice of the RSPCA, which raised with me issues of concern for these juvenile animals. They are very young animals, they are in a state of physical under-development, and we have got grown men on grown horses chasing these small animals, frightening them, lassoing them, throwing them to the ground and then tying up their legs, for the enjoyment of the public. Well, I have drawn a line in the sand. I have taken the advice of the RSPCA and I have said no in respect of those juvenile animals, that they have to be above a certain weight to be involved in a roping event, and I do not resile from that.

I have listened to the industry concerns, I have met with members of the industry and I have listened to their concerns, but the bottom line is that I have listened to them and heard their concerns. They have even brought the ropes into my office to show me, and I have heard what they have had to say. The bottom line is, and it is very fundamental, that we disagree on this. I disagree with the industry. My role as the minister responsible for animal welfare is to protect the interests and welfare of animals, and that is exactly what I am doing.

METROPOLITAN FIRE SERVICE

The Hon. R. WORTLEY (15:19): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question regarding energy saving initiatives within the Metropolitan Fire Service.

Leave granted.

The Hon. R. WORTLEY: In recent years, the Metropolitan Fire Service has announced the building of a number of new fire stations. Will the minister advise whether any thought was given to incorporating efficient energy technology in these new buildings?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:20): I thank the honourable member for his important question. The South Australian Metropolitan Fire Service has been progressive in its approach to energy efficiency. The Elizabeth and Golden Grove stations were built to an innovative design and are recognised as being amongst the leading stations in Australia. I am advised that the MFS has had inquiries from overseas about the station design, and that is due, in part, to considerations which were made in station design and energy efficiency.

Apart from the general efficient design considerations, two kilowatt photovoltaic systems (solar panels) were installed in those stations during construction. In a further move to enhance energy efficiency, the Beulah Park fire station, which is currently under construction, will have a 12 kilowatt grid-connected system. That station, when it comes on line, will produce more electricity than is needed for its operation, providing credits to be utilised by other sectors of the fire service. This 12 kilowatt system will become the minimum standard for future new stations. Under the grid-connected system, energy generated is fed into the station's power system, with any surplus being provided back to the electricity distribution grid. This system lends itself well to the fire service, where stations draw minimal power while firefighters are out on a call.

In addition to the inclusion of photovoltaic systems at new stations, 1.5 kilowatt systems are also to be installed at five other existing MFS stations. Importantly, in January 2007, the MFS commenced a program to install an eight kilowatt grid-connected photovoltaic system at the MFS Wakefield Street complex, at a cost of $100,000 (including system set-up costs). In August, a further eight kilowatt bank of photovoltaic cells was installed at a cost of $75,000. Late last month (September), the 16 kilowatt systems came on line. The MFS has tested the 16 kilowatt system, and it has reported that the new 'green initiative' is regularly generating approximately two-thirds of the power drawn by the Wakefield Street complex.

The MFS has a long-term plan to increase the system at its Wakefield Street complex to 32 kilowatts, maximising energy efficiency under this technology. The MFS has also commenced a two-year program of replacing hot water services with solar systems by 2009 across all metropolitan and regional fire stations. Obviously, the newer fire stations already have this technology fitted as part of their modern and energy-efficient design. These initiatives will assist the MFS in meeting the government's Strategic Plan target of a 25 per cent reduction by 2014 on 2000-01 energy consumption levels for government buildings. The project is an ongoing one, with further energy-saving initiatives to be undertaken as opportunities arise. I understand that the optimising of existing energy-consuming equipment is also being considered.

ARSON

The Hon. D.G.E. HOOD (15:23): I seek leave to make a brief explanation before asking the Minister for Police, representing the Attorney-General, a question about arson offences and imprisonment rates.

Leave granted.

The Hon. D.G.E. HOOD: I refer the minister to my question of 27 September this year concerning sentencing for arson offences. Since I asked that question, I have taken a close look at the Office of Crime Statistics and reporting data concerning arsonists who start bushfires. I remind the chamber of the government's strong rhetoric in 2002 (as I mentioned in my explanation on 27 September) when it promised to get tough on bushfire arsonists. Despite there being some three reporting years since this 'get tough' regime began, the crime statistics have separate statistical lines for arson to cars, arson to schools, arson to warehouses or factories, arson to homes, and arson to shops, but there is no statistical line for bushfire arson. Another bushfire season is upon us, and scientists are telling us that this state will have more, not fewer, bushfires. So, the need to deter bushfire arsonists is greater than ever.

My questions are directed to getting to the bottom of how many people have received punishment or have been gaoled for bushfire arson since 2002. Frankly, it would seem from the crime statistic reports that no-one has stood before the courts charged with starting a bushfire and been sent to prison, as was clearly implied by the tough stance taken by the government in 2002. My questions are:

1. How many offenders have been given terms of imprisonment for lighting bushfires since 1 January 2003?

2. Will the government instruct the Office of Crime Statistics and Reporting, and the relevant reporting agencies, to operate a separate reporting line for bushfire arson in future crime statistical reports?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:25): I will refer that question to the Attorney-General to see what statistical information we can provide and, if it is possible to separate that information into the future, I think it is a request that deserves serious consideration. I will refer it to the Attorney for his attention.

CRIMINAL COURT DELAYS

The Hon. R.D. LAWSON (15:25): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Attorney-General, a question about criminal court delays.

Leave granted.

The Hon. R.D. LAWSON: In September 2005, charges were laid against Ms Wendy Utting, Mr Barry Standfield and Mr Craig Ratcliff as a result of events that occurred in early 2005. In August 2006, at the committal stage of these proceedings, Judge Marie Shaw tossed out most of the charges. However, the Director of Public Prosecutions laid ex officio indictments, and a few weeks ago Justice Nyland dismissed the application of the accused to have the charges permanently stayed. Earlier this month, a number of witnesses in the case were advised that the trial will not commence until 6 October 2008—that is, more than two years after the charges were laid and almost 2½ years after the events out of which these charges arose. This case highlights the endemic delays in our criminal courts, which have been noted by the Chief Justice and others in a number of reports. The Attorney-General has always assured this parliament that the matter of delays was in hand and that improvements were being implemented to reduce those delays.

Justice delayed is justice denied, and this case clearly highlights the fact that the situation in the state has not improved. My questions to the Attorney-General and to the government are:

1. What action has the government actually taken to reduce the delays in our criminal courts?

2. Has there been assessment of the effectiveness of those measures?

3. What does the government propose to do to improve the situation?

4. Given the fact that a number of government ministers and officials are said to be witnesses in this particular case, did the government make any representation, or were representations made on behalf of the government, to have the trial of this matter deferred until October 2008?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:28): I am sure that the Hon. Robert Lawson is well aware that a review of the criminal justice delay issue was undertaken within government. I will refer the questions to the Attorney-General and bring back responses on how the findings have been implemented and what results are available to evaluate the findings of those reports.

FLORA AND FAUNA

The Hon. I. HUNTER (15:29): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about threatened flora and fauna.

Leave granted.

The Hon. I. HUNTER: The states and territories of this country carry much of the responsibility in relation to environmental management, but often the good work which is done in one jurisdiction and which can be beneficial to all is not shared. A similar argument about international environmental projects can be made. Will the minister inform the council of moves to ensure better cooperation with other statutory authorities undertaking environmental work that may ultimately be of benefit to South Australia?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:30): I thank the honourable member for his ongoing interest in matters to do with conservation. I am very pleased to be able to report that South Australia stands to benefit enormously from an agreement signed last week with New Zealand's environment department. As members would be aware, New Zealand occupies a special place on the world stage record as there are areas that are incredibly pristine in its environment and also very varied areas, and it is generally a very beautiful environment. Like South Australia, our friends across the Tasman face many environmental challenges, such as introduced predators, balancing agriculture with conservation and many other natural resource management issues. For this reason the government has sought a new cooperative arrangement with New Zealand; one that will boost not only our conservation efforts but also our tourism potential.

The arrangement I signed on Friday with New Zealand's Minister of Conservation, Chris Carter, will see an even closer working relationship between our neighbour's department of conservation and our Department for Environment and Heritage. An open and free exchange of ideas and innovation, considering initiatives like staff sharing between these two fantastic departments, will effectively increase our knowledge of best practice standards and keep us up to date with the most innovative conservation techniques. For instance, our good work through programs such as Operation Bounceback or our captive warru breeding programs would benefit our New Zealand counterparts in helping restore populations of the Great Spotted Kiwi, and similarly we can learn from New Zealand's work at the forefront of conservation management worldwide and share in the valuable knowledge of its experts, including its exemplary management of its many parks and wildlife sanctuaries, which it does particularly well.

As members would be aware, we also share a direct link with New Zealand through the many migratory species, including birds, which move between the two jurisdictions, and these species will benefit from closer cooperation on their management. Already, work has been undertaken on the impact of rabbit haemorrhagic disease on the biological diversity of the Flinders Ranges National Park, and we have also seen the reintroduction of the tammar wallabies from New Zealand to Innes National Park. Both South Australia and New Zealand will clearly benefit from this

accord and, by visibly linking our great environmental initiatives, we can both benefit from that arrangement.

ANSWERS TO QUESTIONS

MAWSON LAKES

In reply to the **Hon. J.S.L. DAWKINS** (25 July 2007).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): The Minister for Transport has provided the following information:

1. A high standard of traffic management has been maintained throughout the construction of the works, in accordance with the Australian Standard for 'Traffic Control Devices for Works on Roads'.

2. The intersection works have been staged to minimise traffic disruption and to ensure that two lanes of traffic are maintained in each direction, with minimal traffic restrictions during peak periods. As the stages of work have progressed it has been necessary to change the traffic management arrangements through the site.

3. The new signalised Main North Road intersection is planned to be fully operational by the end of August 2007. The overall Elder Smith Road project is expected to be completed in September.

POLICE ATTENDANCE

In reply to the **Hon. A. BRESSINGTON** (26 July 2007).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): Police attendance at accidents is governed by South Australia Police General Orders. The General Order, 'Vehicle Collisions' stipulates that, whenever practicable, police will attend or be tasked to the scene of collisions involving either death or injury, hit and run, allegations of liquor or drugs involved or a traffic hazard has occurred.

The monetary value of damage caused as a result of a collision is not a criteria for police attendance. As there was no indication that any of the four attendance criteria existed, the advice given to the young man in the example quoted appears to have been correct. The accident tow line would be called by the party or parties involved and the accident would need to be reported to a police station as soon as possible but, except in exceptional circumstances, within 24 hours after the crash in accordance with Rule 287 of the Australian Road Rules. Regulation 30 of the Road Traffic Regulations further stipulates requirements to report crashes. Section 43 of the Road Traffic Act contains additional duties of a driver where a person has been killed or injured.

DROUGHT COUNSELLORS

In reply to the **Hon. C.V. SCHAEFER** (13 September 2007).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): Kay Matthias is, in fact, the General Manager of the Rural Financial Counselling Service SA Inc. She is not a public servant.

SELECT COMMITTEE ON PRINCE ALFRED COLLEGE INCORPORATION (CONSTITUTION OF COUNCIL) AMENDMENT BILL

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:34): I bring up the report of the select committee, together with minutes of proceedings and evidence.

Report ordered to be published.

MARINE PARKS BILL

Adjourned debate on second reading.

(Continued from 25 September 2007. Page 719.)

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:35): I

rise today to thank honourable members for their contributions to the second reading debate. I am very heartened by the fact that everyone who has spoken on this matter has committed to support the establishment of marine parks. I also note that a number of concerns were raised by a number of people in this place and also by stakeholders interested in the protection of our marine environment. Marine parks are new to South Australia and the uncertainty which accompanies any change is natural. We have listened carefully and, in response, I have a number of amendments that address the concerns, I believe, in a very fair and appropriate way.

In relation to community involvement, the passion and commitment that people have for our marine environment is inspiring. Across the state people have indicated a strong desire to be involved in both the establishment and ongoing management of marine parks and, of course, it has always been the government's intention to involve as many people as possible in the process of creating a marine parks system. However, to provide more certainty, I will be moving several amendments that provide the detail of this commitment. When management plans are developed, I will add a list of representatives of key sectors whose views I will seek when making or amending management plans. It is important to note that this will occur in addition to the process previously outlined in the bill and not instead of it.

In addition, a number of representations have been made for the establishment of a marine parks council. The government believes that community involvement in the development of marine parks is essential. We currently have three committees that provide advice directly to us: the Marine Advisory Council, the Marine Parks Stakeholder Reference Group and the Scientific Working Group. The government gratefully acknowledges the important contribution that these parties have already made. I understand that stakeholders want to be sure that these arrangements will continue. To this end, the Hon. Caroline Schaefer has drafted an amendment to establish a Marine Parks Council and, in the spirit of bipartisan support, I wish to advise the honourable member that the government supports this amendment and I congratulate her on her work with stakeholder groups in reaching this amendment. The government will also be supporting the further amendments of the Hon Mark Parnell which will ensure that the council has an appropriate role in respect of advising on community nominations and will also have standard requirements regarding conflict of interest. I look forward to discussing these further in the committee stage.

In the definition of 'management plan zones', several questions have been raised about the definitions of the four zones proposed to facilitate the management of marine parks. There were concerns about South Australia being consistent with national and international standards, and the idea of directly employing IUCN protected area categories was specifically suggested. I am advised that best legislative practice on this matter is to articulate the outcomes sought by zones in subordinate regulations which would also specify the activities and uses to be permitted, prohibited or otherwise regulated within each of the zones.

In this way there can be no ambiguity about the purpose of the zones and how their outcomes would be achieved. This process was employed in legislation by the commonwealth and the New South Wales and Queensland governments. I note that the Hon. Caroline Schaefer has proposed some definitions of management zones, in consultation with stakeholders, to provide some extra certainty that stakeholders are seeking, and I have an amendment that expands the definitions of zones so their purpose is more explicit. The slightly tighter definitions now have the support of environment groups and industry bodies, and I look forward to the support of the opposition on these expanded definitions.

Another issue that the Hon. Caroline Schaefer and I have been discussing with industry stakeholders is the provision for managing the effects of any displaced effort. In particular, industry is seeking greater certainty about compensation to affected individuals. That is obviously not an easy issue. The government has been exploring ways to maintain the flexible arrangements negotiated with industry in 2005 to minimise the impact on commercial fishers and aquaculture operators while providing the requested certainty. I am pleased to advise that we have come to an arrangement on this matter. I note that the amendments proposed by the Hon. Ms Schaefer and the government are almost identical, and I believe that we can easily resolve this matter in the committee stage. To provide additional support on this issue, the government has also invited commercial fishing, aquaculture and seafood industry associations to be part of a working group to assist with the development of mechanisms and subsequent regulations that will govern this matter, and I am hopeful that this group will meet for the first time in the near future.

Government accountability and transparency are fundamental to the development of any project, and the establishment of marine parks is no exception to this. One of the key areas of

discussion (and, may I say, attention in the media) has been the preparation of impact statements outlining the environmental, social and economic implications of marine parks. It has always been the government's intention to release such impact statements, along with draft management plans, to make sure that all members of the community have complete information about possible implications of a marine park. It has been suggested to me that there is no guarantee that future governments will honour these undertakings, and stakeholders seek certainty in this legislation.

To provide this certainty, the government has drafted amendments that provide a two-stage process. First, a statement of the environmental, economic and social values of each area subject to a marine park boundary declaration will be released before a draft management plan is written. The values statement will articulate information about why the environment of the particular location was selected for inclusion in the marine park. It will also include information about the social and economic uses of the area. The values statements will be informed by the research of government officers and by information provided by communities during public consultation on the marine park boundaries.

After the draft management plan is written, the government will release a full economic, social and environmental impact statement of the proposed zoning arrangements for the marine park, developed in consultation with local communities. Meaningful information on the likely impacts cannot be known until plans and their zoning arrangements have been drafted, because the types of zones and their locations will have a direct bearing on the level of impact (both positive and negative). Trying to develop an impact statement prior to this stage really is putting the cart before the horse. To increase this high level of accountability even more, I am proposing that any future changes to management plans will be referred to the Environment, Resources and Development Committee of parliament for review to allow parliamentary scrutiny of these changes, noting that the plan amendments will already have been developed through an extensive public consultation process.

A range of stakeholders interpreted clause 6, 'Interaction with other acts', to mean that the marine parks legislation would override other legislation, creating a conservation hierarchy over resource use and other management activities in the marine environment. This is not the case. Marine parks will work most effectively in conjunction with other management plans and legislation. The Marine Parks Bill complements existing statutes to ensure integration and avoid duplication of policies, structures and mechanisms. To address these concerns this clause has been amended to state that the prohibitions or restrictions applying within a marine park can only override other legislation as prescribed in regulations. I am also pleased that the Hon. Dennis Hood has agreed to withdraw an amendment providing for recreational fishing in sanctuary zones and replace it with an amendment which ensures that people fishing with a hand line or rod and line will be warned in the first instance rather than prosecuted. It is the government's view that marine parks need the support of the community and that education rather than penalty is often the most effective way to bring about cultural change. Therefore, we will support the Hon. Mr Hood's amendment in this area.

Concerns have been raised by a number of industry stakeholders that the objects of the legislation do not give ecologically sustainable development an equal weighting with conservation, but rather that ecologically sustainable development is a secondary object of the bill. We must remember that this is first and foremost conservation legislation crafted to function within the triple bottom line context. Resource use legislation, such as the Fisheries Management Act 2007 and the Aquaculture Act 2001 does not replace environmental protection or ESD on an equal basis with resource utilisation. I understand that after consultation with the government the Hon. Mrs Schaefer has modified her proposed amendment to clause 1 on the objects of the bill and I thank her for this.

The government will oppose, however, the Hon. Mrs Schaefer's proposed amendment to clause 8(3)(f). Some people have suggested that the government will use this clause to introduce fees and charges for people who use the marine environment, particularly commercial and recreational fishers. I can quite clearly rule this out. Fisheries, both recreational and commercial, will continue to be governed under the Fisheries Management Act 2007. This is an important and nationally agreed definition of 'ecologically sustainable development' that supports the principle that the cost of restoring damage is borne by those who cause the damage and not by law-abiding members of the public. I am happy to discuss that more in committee.

I will take a few moments to address the issue raised by the Hon. Sandra Kanck during the Environment, Resources and Development Committee's inquiry into marine protected areas held in 2004-05, on which I served. The honourable member submitted a minority report that included a recommendation to provide areas of high conservation value protection from inappropriate

development until the protection of a marine park could be afforded. In response to this the bill provides the Governor with the ability to grant interim protected orders where necessary for the proper management of a proclaimed marine park until a management plan is adopted. The interim protection orders will take effect immediately from the proclamation of the outer boundary of the marine parks and will remain in force until the management plan for the park is formally adopted. It is the government's intention to declare all 19 marine parks as soon as possible and any necessary interim protection orders will be proclaimed at the same time. There will be no three-year wait for protection.

It is very pleasing that members of this place worked together to achieve genuine agreement on most matters raised about this bill, and I thank all members for the very professional and considered way they have approached these issues up until now. I also acknowledge the considerable input and thank representatives of the Conservation Council, the Wilderness Society, the South Australian Fishing Industry Council, the Seafood Council of South Australia and the Recreational Fishers Advisory Council for their contributions to this bill. In closing, I look forward to continuing bipartisan support during the committee stage. Our cooperative efforts will lead to the proclamation of this legislation, leaving a legacy for future generations long after we are gone.

Bill read a second time.

In committee.

Clauses 1 and 2 passed.

Clause 3.

The Hon. C.V. SCHAEFER: I move:

Page 5, after line 13—insert:

'Chief Executive' means the chief executive of the department and includes a person for the time being acting in that position;

Page 6—

After line 5—insert:

'Council' means the Marine Parks Council of South Australia established under section 22A;

After line 7—insert:

'Department' means the administrative unit of the Public Service that is, under the minister, responsible for the administration of this act;

These amendments relate to the establishment of a marine parks council for South Australia (which is my amendment No. 15). With your permission, Mr Acting Chair, I will speak to amendment No. 15 because my amendments Nos 1, 2 and 3 are consequential to that.

The ACTING CHAIRMAN (Hon. J.S.L. Dawkins): Proceed.

The Hon. C.V. SCHAEFER: When this bill arrived (as I said in my second reading speech), absolutely no stakeholders were happy with it. That, to me, is quite breathtakingly poor, given that the government has had some six years to work on it. One of the major issues with the fishing industry, the regional development boards, the Local Government Association in the South-East, the Conservation Council and the Wilderness Society was that once the original bill was passed there was very little need to consult with anyone—certainly, very little need to consult with the key stakeholders. As such, there has been a great deal of work done by those key stakeholders.

My amendment No. 15 establishes a marine parks council, to consist of 10 members appointed by the Governor on the nomination of the minister and the chief executive ex officio. Of the members appointed: one must be a person who has knowledge or experience in the field of commercial fishing; one must be a person who has knowledge of or experience in the field of aquaculture; one must be a person who has knowledge of or experience in the field of recreational fishing; three must be persons who have knowledge of or experience in the field of marine conservation; two must be persons who have qualifications or experience in a field of science relevant to the marine environment; one must be a person who has extensive involvement in community affairs; and one must be a person who has extensive knowledge of indigenous culture. Each person appointed must be a person who can demonstrate knowledge of or interest in the requirements necessary to manage the marine environment in a responsible manner.

It is quite an extensive amendment, when we come to it, but it gives real teeth to the council and imposes restrictions, if you like, on the minister of the day inasmuch as that minister must refer to the council before taking final decisions. Having spoken to my amendment No. 15, I repeat that my amendments Nos 1, 2 and 3 are definitions of the chief executive, the council, and the department as they are referred to in my amendment No. 15.

The Hon. M. PARNELL: The Greens support this amendment. We think that it is a sensible addition to the bill and it provides what could be a very useful resource to the minister in helping him or her answer some important questions about, for example, the composition of management plans and the details of those management plans. There are two issues that always arise when we establish advisory committees such as this. The first one is: who is on it? The second one is: what is their job? The job of this body is to act as an advisory committee. Its functions are set out in proposed new section 22(f), and primarily it is to provide advice to the minister on the establishment of parks, any orders that might be issued under the legislation and anything in relation to the boundaries of parks.

I also foreshadow an amendment that I have to this bill that I will move later on. I will not speak to it now, but I think that the council should also have an important role to play in assessing community nominations for marine parks. So, I think it is an important job that this marine parks council can do, and it can give advice to the minister. The composition of the council is always a vexed question, and I have had a number of conversations with the industry bodies that the minister alluded to before, and conservation bodies such as the Wilderness Society and the Conservation Council, as well as with the Hon. Caroline Schaefer. A committee of 10, with all of these various interest groups on it, is a reasonable balance, I think. At the end of the day, it depends who the minister puts on the committee. You could look at it through jaundiced eyes and you could see this committee stacked in favour of commercial users of the sea, or you could look at it and see it stacked in favour of conservation.

I would think that this is overwhelmingly a conservation piece of legislation and, therefore, that the most important advice for the minister to receive will be conservation advice. I note that there are three persons on this council who have knowledge of and experience in the field of marine conservation. At the end of the day, a minister, with or without the advice of a council, will make whatever decisions they will make, but it seems to me that this is a useful addition to the bill and the Greens will be supporting it.

The Hon. G.E. GAGO: The government supports this amendment, as indicated and outlined in the summing up of the second reading debate. We believe that the establishment of a marine park council will help facilitate stakeholder involvement in the development of management plans and will play a very important advisory role. As we have also previously indicated, in light of constituting that council, the government will then move to abolish both the Marine Advisory Committee and the stakeholder reference group because they would no longer be needed. However, members of the government's independent scientific working group will be requested to continue to meet under their current terms of reference until we have established the system of marine parks.

I believe that the proposed constitution of the council is fair and balanced and I look very much forward to working with that council. It is a very small matter but I would ask the honourable member just to consider this in the wording of her amendment, and that is that, given that it is fundamentally a conservation piece of legislation, she list the membership of the committee in a way that would involve the conservation members of the committee first and then industry groups later.

The Hon. M. PARNELL: I ask the mover whether she would be prepared to re-order the listing of expertise such that (d) appears ahead of (a), (b) and (c); in other words, to renumber those items in subsection (3) of proposed new section 22A?

The Hon. C.V. SCHAEFER: I remind my colleagues that we are now talking about my amendment No. 15. Let us get to that stage before we start 'picking nits', for want of a better expression. Personally, I find a request like that, given the amount of consultation that has taken place and given that we have spent three weeks on these amendments, pedantic in the extreme. However, I am prepared to have a look at it between now and amendment No. 15. I have just moved my amendment Nos 1, 2 and 3.

Amendments carried; clause as amended passed.

Clause 4.

The ACTING CHAIRMAN: Both the minister and the Hon. Caroline Schaefer have amendments to page 8, lines 11 to 19, and there are minor differences in their amendments. We need to deal with the minister's amendment first, and then I will ask the Hon. Caroline Schaefer to move her amendment.

The Hon. G.E. GAGO: I move:

Page 8, lines 11 to 19—Delete subclause (2) and substitute:

(2) It is intended that the regulations will make provision for the following types of zones:

(a) a *general managed use zone*—being a zone primarily established so that an area may be managed to provide protection for habitats and biodiversity within a marine park, while allowing ecologically sustainable development and use;

(b) a *habitat protection zone*—being a zone primarily established so that an area may be managed to provide protection for habitats and biodiversity within a marine park, while allowing activities and uses that do not harm habitats or the functioning of ecosystems;

(c) a *sanctuary zone*—being a zone primarily established so that an area may be managed to provide protection and conservation for habitats and biodiversity within a marine park, especially by prohibiting the removal or harm of plants, animals or marine products.

(d) A *restricted access zone*—being a zone primarily established so that an area may be managed by limiting access to the area.

(3) The regulations may, for the purposes of a zone, apply various prohibitions or restrictions to the different types of zones.

(4) The regulations may provide for other matters associated with the establishment or management of a zone (including by regulating other activities or circumstances that may arise by virtue of the creation or existence of a zone).

Comments were made during the second reading debate that this bill does not contain definitions of the proposed zones. It was stated that this omission means that there are no guarantees that South Australian zoning will have any parity with national or international standards. I have been advised that best practice would be to articulate the outcomes sought by zones in subordinate regulation and that that would also specify activities and uses that are to be permitted, prohibited or otherwise regulated within each of the zones and that, in this way, there can be no ambiguity about the purpose of the zones and how their outcomes can be achieved. This process was employed in commonwealth, New South Wales and Queensland legislation, and we have received quite a deal of support for it. All stakeholders support the concept of defining zones in the bill, and the Liberal Party has drafted amendments likely to be supported by minor parties. It is of utmost importance that, if we are to have definitions of zones, they are defined on the government's terms.

Parliamentary counsel has advised that definitions proposed by the Liberal Party are too broad and will make drafting the regulations difficult and likely to result in motions for disallowance or challenges that the proposed restrictions do not align with the act. For example, the definition of 'sanctuary zone' will support Family First's call for fishing in this zone, as a few hooks and lines will not damage the natural condition of the environment. Further, a number of commercial fisheries could make similar claims; for instance, rock lobster and abalone. This would open the door for potentially all forms of fishing and defeat the purpose of the zone and, indeed, the purpose of the bill. Other stakeholders believe that the zone definition should align with the IUCN protected area categories. Most jurisdictions generally adopt simple names and explanations to assist community understanding, and the IUCN categories are not formally directly employed, although definitions have consistent outcomes.

The Hon. C.V. SCHAEFER: As I say, these amendments are the result of long and arduous discussions with a number of stakeholders. I believe that some of those stakeholders will regret agreeing to the minister's new amendment, and I will point out a couple of reasons for that. The minister's amendment for a general managed use zone (which, we have been assured, means that we can pretty well continue with the activities that take place) now provides 'while allowing for ecologically sustainable development and use', whereas my amendment states 'while also providing a sustainable flow of natural products and services to meet community needs'. So, we have just chucked community needs out the door.

The restricted access zone is now defined as a zone 'primarily established so that an area may be managed by limiting access to the area'. My amendment provides, 'being a zone primarily established so that an area may be managed by permitting access by permit only'. So, instead of permitting access, we are now limiting access. However, I am well aware that these amendments have been agreed to by the key stakeholders. Yesterday, I agreed to withdraw my amendment as

part of a consensus process, and I will do so having put on the record my concern about those changes which, while they may appear to be subtle, I think change the tone of the bill. I withdraw my amendment.

The ACTING CHAIRMAN: My advice is that, because the Hon. Ms Schaefer has not yet moved her amendment, she does not need to withdraw it.

The Hon. C.V. SCHAEFER: I will not proceed with it.

The Hon. SANDRA KANCK: When I made my second reading contribution, I said that I would introduce amendments along these lines. Subsequently, with the work done by the Hon. Caroline Schaefer and, subsequent to that, with what the minister has produced, it has become unnecessary. I do not have the same degree of concern about the subtle changes that the Hon. Caroline Schaefer thinks are not quite so subtle. For example, in the definition of general managed use zone, what the minister proposes is to allow ecologically sustainable development. I think it provides for that sustainable flow of natural products and services to meet community needs. What it will do, however, is focus the minds of those who are exploiting those marine resources to ensure that it is done in an ecologically sustainable way.

I commend the Hon. Caroline Schaefer for not moving her amendments. I think that she has been very big-hearted in this process. I believe that what the minister has provided instead will make it clearer. If there were any risk that allowing them in the form originally proposed by the Hon. Caroline Schaefer would open this up to challenges in various ways, I think it would be important that we remove that opportunity because, first and foremost, we want to protect the marine environment.

The Hon. M. PARNELL: I support the government amendments and also acknowledge the decision of the Hon. Caroline Schaefer not to proceed with hers. I do not share her concerns, particularly in relation to the general managed use zones. I do not see that community needs are out the window with the government's words. The government's words are about allowing economically sustainable development and, when we look at definitions of that concept, we can see that it is meeting the needs of this generation, future generations and the environment. It is pretty much the embodiment of triple bottom line.

My main concern about general managed use zones is that they may well be indistinguishable from surrounding areas of sea that are not part of the marine park. In other words, the worst case scenario could be that the area in the managed use zone is managed in exactly the same way as in other areas of the sea. I think the Hon. Caroline Schaefer has some concerns about the maps that have appeared showing different ocean bioregions. My understanding is that those maps do not represent the boundaries of marine parks in any meaningful way. My point here is that, for marine parks to be genuine conservation vehicles that are managed differently from those other parts of South Australian state waters—which I believe will still be the majority of state waters—the majority of marine parks should be composed of the habitat protection sanctuary and restricted access zones.

I do accept what the minister is saying, that it would not be a good outcome to find disallowance motions or judicial reviews for regulations and for management plans on the basis of perceived technical breaches of the words that are used in the zones here. I think prefacing these words by using the word 'primarily' (all of them start, 'being a zone primarily established' and then the reasons are given) is important and will probably protect those types of challenges.

In relation to the restricted access zone, I guess it is a case of whether the glass is half full or half empty; and, whether you start off from a position of permitting access by permit or start off by restricting access, you can end up in the same place, so I do not share those concerns about the restricted access zone. Given that, as I see it, we have reasonable support in the chamber for these zones, I will not say any more than to support their inclusion in the legislation.

Amendment carried; clause as amended passed.

Clauses 5 to 7 passed.

Clause 8.

The Hon. C.V. SCHAEFER: I move:

Page 9, after line 11—Insert:

(iii) protecting and conserving features of natural or cultural heritage significance; and

(iv) allowing ecologically sustainable development and use of marine environments; and

(v) providing opportunities for public appreciation, education, understanding and enjoyment of marine environments.

There has been considerable concern among most people that ecologically sustainable development was secondary to the objects of the act. I must say I am quite mistrustful, but I hope this amendment moves ecologically sustainable development into the actual main objects of the act and gives it equal weighting with other matters such as conservation of marine biological diversity.

The Hon. G.E. GAGO: The government supports both of these amendments.

The Hon. SANDRA KANCK: I want to acknowledge the Hon. Caroline Schaefer for moving this. I know she would not, at any stage, have come out on the side of the environment movement when it came to protecting the rights of fishers, but I think she has—

The Hon. C.V. Schaefer: That is unfair and not true.

The Hon. SANDRA KANCK: I apologise if you think it is unfair. Even though she does not trust the government and what it is going to do, I think she is doing a very positive thing by moving this and, again, I want to acknowledge her for that.

The Hon. M. PARNELL: I will also support this amendment. Again, this is a piece of conservation legislation. Conservation must be at the forefront of this legislation, otherwise we are trying to recreate the Aquaculture Act and the Fisheries Management Act. Those acts are based on the principles of ecologically sustainable development so, when it comes to exploitation of the marine environment, ESD is in there; it is covered in those pieces of legislation. This is probably a little semantic, but it is important to me that protection and conservation of marine biological diversity maintains its rightful place at the top of the list of objects—and it does that. When we can maintain biological diversity and we then move on to some commercial use, of course, it must be done in an ecologically sustainable way. Whilst this does shuffle the order of things around a little bit, the most important thing is that it is a conservation bill and conservation is still at the top of the list of objects.

Amendments carried.

The Hon. G.E. GAGO: I move:

Page 9, line 39—Delete 'damage' and substitute:

harm

Following public consultation on the draft Marine Parks Bill, stakeholders expressed concern about the interchanging of the terms 'damage' and 'harm' in the draft bill. Accordingly, all references to 'damage' were changed to 'harm,' as this term is defined in the bill and can be further defined in regulations. Unfortunately, in this instance, this was not picked up in the redrafting and it is now being amended to ensure consistency.

The Hon. C.V. SCHAEFER: This amendment purely provides equity, if you like, in the drafting and we support it.

Amendment carried.

The Hon. C.V. SCHAEFER: I move:

Page 10, lines 6 to 12—Delete paragraph (f)

This, to me, is a very important amendment. As it currently stands in the bill (f) says, and this is still part of the objects of the act:

Environmental factors should be taken into account when valuing or assessing assets or services, costs associated with protecting or restoring the marine environment should be allocated or shared equitably and in a manner that encourages the responsible use of the marine environment. People who obtain benefits from the marine environment or who adversely affect or consume natural resources should bear an appropriate share of the costs that flow from these activities.

That is a cost-recovery clause, whether we like it or not. It does not just say those who adversely affect; it also says 'those who obtain benefits'. The fishing industry is on full cost-recovery fees now. The government has assured us that this clause does not apply to it. It has assured us that it is not a back-door method of introducing a recreational fishing licence. It then begs the question as to who will pay these fees, as suggested in this clause.

The explanation I was originally given was that it will be a few film crews. There is already a permit system in place where people pay to have access to these areas for the purpose of

filming. Someone else asked about an oil spill. There is already sufficient environmental legislation to take care of the payment of costs as a result of any oil spill or any accident. So, again, who does this clause apply to? The minister is going to stand up and say that it does not apply to any of the people I have just suggested. However, if it does not apply to them and if it is not necessary for things like diving or filming, and if it is not necessary for things like accidental environmental damage and if, in fact, the penalty in this bill for environmental damage is $100,000, why then do we need this clause at all?

I have a principle that applies equally to the water as it does to the land, and that principle is that, if we as taxpayers and citizens of South Australia want to introduce environmental protection, all of us should pay for that environmental protection. Similarly, I have a view that pastoralists who are not allowed access to water, for instance, for purposes of environmental protection or who have to fence off areas of their properties for purposes of environmental protection, should not bear those costs. If we want that to happen (and most of us want environmental protection) then we as taxpayers and citizens of South Australia—that is, the government which controls our taxes—should bear those cost. That is my purpose for persevering with this amendment.

The Hon. G.E. GAGO: The government does not support this amendment, as indicated in the summing up of the second reading debate. It is important to note that the bill adopts a definition of 'ecologically sustainable development' designed to ensure consistency with the commonwealth's Environment Protection and Biodiversity Conservation Act 1999 and the intergovernmental agreement on the environment and other relevant policies in this area. This definition addresses the issue of maintaining the economic, social and physical wellbeing of our communities and the functioning of our natural and physical resources. The Liberal Party has filed this amendment to remove subclause (3)(f) from the objects of the act. This forms part of the universally adopted definition of 'ecologically sustainable development' agreed to by the commonwealth and all states and territories in 1992. This amendment, if agreed to, would create inconsistencies with other contemporary legislation passed by this parliament, including the Natural Resources Management Act 2004.

The key issue of concern regarding this subclause is the inference that the government will use this to introduce a raft of fees and charges for people who use the marine environment, particularly commercial and recreational fishers. That is not the government's intention. Fisheries, both recreational and commercial, will continue to be governed under the Fisheries Management Act. This subclause does have important linkages with the efficient enforcement provisions for marine parks and helps to make sure that the cost of restoring damage is borne by those who cause the damage, not by law-abiding members of the public. It also reflects the fundamental concept that all members of the community are treated equally to deliver their desired conservation outcome. Marine parks, like their terrestrial counterparts, are a community asset, and all funding for their establishment and management will be met by the government. This is not a cost shifting or cost recovery exercise.

The Hon. C.V. SCHAEFER: The minister has outlined some of the people who will not be caught by this clause: can she tell us who will be?

The Hon. G.E. GAGO: In response to the member's question, the minister needs the capacity to issue permits for activities where there is currently no regulatory regime in place, such as tourism operations, research programs and organised events, or where requirements are broader than the scope of other legislation. The proposed list of activities requiring permits was circulated for comment as part of the public consultation process for the Encounter Marine Park Draft Zoning Plan. This list was consistent with existing provisions for the management of similar activities under the National Parks and Wildlife Act 1972—for example, tourism operations, research programs, organised competitions, commercial photography, filming and sound recording. This should ensure management consistency within our terrestrial and marine protected area estate. The regulation regarding activities in marine parks will not be finalised until this bill is enacted, and the government will continue to liaise with stakeholders and communities to inform them with respect to the development of these regulations.

The Hon. C.V. SCHAEFER: The minister has just read out a briefing note, but I would really like an example of what tourism activity, for instance, will be required to pay for protecting or restoring the marine environment. Either it is a tourism activity that is suitable to be part of that zone as it is declared or it is not a tourism activity. Similarly, with scientific research, either it is included in this whole act of zoning or it is not. The minister can tell me until she is blue in the face that this is not a cost shifting exercise. Of course it is a cost shifting exercise.

The Hon. SANDRA KANCK: I indicate that the Democrats will not be supporting this amendment. If one reads subclause (3)(f) in the context of clause 8(3), one will see that it begins: 'The following principles should be taken into account', and that is what these are. From subclause (3)(a) through to (k) it is a set of principles. It does not even say 'must'; it states 'environmental factors should be taken into account...costs associated with protecting or restoring the marine environment should be allocated'. So, in a sense, it provides a set of guidelines. However, without the word 'must' there, it really does not have a great deal of strength. It is important to have that there as part of the objects, because it states the principles and it gives guidance when the marine parks are being put together and the various zones are being worked out, but there is nothing in there, as I see it, that will make anyone do anything.

The Hon. C.V. SCHAEFER: I remind the Hon. Sandra Kanck that that is what we thought when the Natural Resources Management Act was passed in this place, and there has been nothing but cost shifting ever since.

The Hon. D.G.E. HOOD: Along the lines of the Hon. Caroline Schaefer's question, I am struggling to think of a specific example where it would be appropriate to recoup costs under this circumstance from somebody—a group or whoever it may be—who has 'consumed natural resources from the area in question'.

The Hon. G.E. GAGO: During consultation on the draft bill we know that environmental film makers Dr Jan Aldenhoven and Glen Carruthers from Green Cape Wildlife Films also met on a number of occasions with departmental staff during their current project filming cuttlefish and dolphins in Spencer Gulf to discuss this very issue and, as part of their submission on the draft bill, they advised:

> As film makers we would support the proposal that it be necessary to apply for a permit to film in any zone of a marine protected area. We would also suggest that, even within a restricted access zone, under certain circumstances it could be valuable to the community and environment to allow some commercial filming that had educational or scientific value. We would like to see a provision that overseas film crews must demonstrate that they have correct work visas before they can be granted permits to film.

At present the correct permit is a 420 media permit, so it is not a trivial issue. Another example in terms of tourism might be a marine mammal interaction operator for whom it would be appropriate to have a permit. I will get back to Mr Hood.

The Hon. M. PARNELL: I support paragraph (f) staying in, so I will not support the Hon. Caroline Schaefer's amendments as I see this principle being important to retain in legislation. It gives statutory recognition of a number of important principles, including the fact that environmental services are provided by the marine environment and the environment generally and that we need some equity in the allocation of costs in relation to that. Noting the minister's most recent response, commercial users' licences are an appropriate vehicle for people who want to commercially use a park. It is the system that currently exists. If you want to film in a national park you would need to get a commercial users licence to do that, which is not unreasonable. It is interesting to hear that even people who make their living from filming do not object to such a provision.

The alternative to having a clause like this is that we are at risk of revisiting the tragedy of the commons, that this is not privately owned land but a communal asset and we need to allocate rights and responsibilities, as this legislation does. I have some sympathy with what the Hon. Caroline Schaefer is saying, and she talked about farmers in the terrestrial environment. Many of these properties are providing environmental services and there is a valid question as to the extent to which the community as a whole should pay for some of those services. Taken to its logical extreme, we end up with a situation like we did with native vegetation legislation, where the starting point was: I have a right to chop down every tree on my property and you need to compensate me for not doing that. That was the origin of that legislation. We have now moved on to saying, 'No, those resources are held on behalf of the whole community and we will not compensate you with cash for protecting them on behalf of the community.'

There are minor incentives such as fencing and things like that. We can end up on a slippery slope, much as we have with our water resources, where it is becoming expensive to buy back water for the environment because we have not properly valued the commons and properly allocated rights and responsibilities in relation to that resource. I do not see paragraph (f) as being an onerous provision. The Hon. Caroline Schaefer raised a number of scenarios where you could use this to bring about what she sees as unfair taxes or fees. If we were to look at just the words, one could say that a future government could decide to go down a path that some of us might think

is unfair but, as the Hon. Sandra Kanck says, we are entrenching a principle, a principle that is important as it goes to the heart of the definition of 'ecologically sustainable development' and I would be loath to remove it from the legislation.

The Hon. G.E. GAGO: In response to the question asked by the Hon. Dennis Hood on resource consumption, this is a standard ESD provision. We are trying to maintain consistency across legislation. The Marine Parks Bill is not a resource consumption use legislation, that is, it is not charging commercial fishers for a permit. The Fisheries Act is the resource consumption legislation and this is about providing a standard across legislation.

The Hon. D.G.E. HOOD: The words that concern me are 'consuming natural resources'. Will the minister give an assurance that, in the instance of a recreational fisher catching a fish from one of these environments by chance or by accident, this wording will not be used to introduce any charges or levy on that sort of activity?

The Hon. G.E. GAGO: The short answer is no, as that is provided for under the Fisheries Management Act.

The Hon. D.G.E. HOOD: No, you will not give an assurance?

The Hon. G.E. GAGO: No, this legislation will not be used in that way.

The Hon. C.V. SCHAEFER: If it will be used for hardly anything, anywhere, any old time, and there is already the provision to provide for and charge a fee for a permit for film people, scientists and all of those, what possible harm can be done by removing this clause? Why is it there?

The Hon. G.E. GAGO: As I have already stated, it is an internationally accepted standard definition. It provides consistency across legislation and that is why we need it.

The committee divided on the amendment:

AYES (7)

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

NOES (11)

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

PAIRS (2)

Lawson, R.D.	Finnigan, B.V.

Majority of 4 for the noes.

Amendment thus negatived; clause as amended passed.

Clause 9 passed.

Clause 10.

The Hon. C.V. SCHAEFER: I move:

Page 10—

Line 34—After 'proclamation' insert:

made on the recommendation of the minister

After line 36—Insert:

(1a) The minister must, in formulating a recommendation for the purposes of subsection (1), seek, and have regard to, the advice of the council.

Page 11—

After line 13—Insert:

(c) any advice received from the council,

Line 32—Before 'alter' insert:

on the recommendation of the minister,

After line 35—Insert:

(8a) The minister must, in formulating a recommendation for the purposes of paragraphs (b) and (d) of subsection (8), seek, and have regard to, the advice of the council.

These are drafting amendments. They are all consequential on my amendment No. 15.

The Hon. G.E. GAGO: The government supports the amendments.

Amendments carried; clause as amended passed.

Clause 11.

The Hon. G.E. GAGO: I move:

Page 9, line 12, after line 11—Insert:

and

(c) a reference to an *initial management plan* for a marine park means the management plan first declared by the Governor to be an authorised management plan for the marine park after the establishment of the marine park.

Stakeholders have requested that any future changes to management plans, including zoning arrangements, are subject to parliamentary scrutiny. This amendment will provide accountability to an independent review process, which provides the minister with the ability to consider and, if appropriate, address any issues raised by the Environment, Resources and Development Committee. If the issues are not addressed to the satisfaction of the Environment, Resources and Development Committee, a management plan must then be laid before both houses of parliament; and either house may then move a resolution to disallow the management plan.

The Hon. M. PARNELL: I support the amendment. As a member of the Environment, Resources and Development Committee, I have seen various documents that have been sent to us for comment. As I have said before in this place, in relation to many of those documents (in particular, development plans under the Development Act), the horse has well and truly bolted before the Environment, Resources and Development Committee gets to look at it. In other words, all the good it is to do, or the harm that is to be done, has usually well and truly been done by the time we see it in that committee. When it comes to management plans of an ongoing nature, they are a different creature because they affect the conduct of people on a day-to-day basis.

Therefore, this provides a real level of scrutiny where, if there are problems with a management plan, they can be picked up and rectified and the plan, because it operates into the future, will not have done all of its work. So, I can distinguish the more useful role the ERD Committee perhaps will play in supervising management plans under this act than it does in relation to development plans under the Development Act. I think this is a useful and important check and balance, if you like, in the legislation. It does provide an extra level of accountability and, through the witness provisions committees have, it provides stakeholders with an opportunity to talk to people about what they like or do not like in management plans.

The Hon. C.V. SCHAEFER: The opposition supports the amendment. I wish I had the same confidence the Hon. Mark Parnell has displayed. I, too, was a member of the ERD Committee, and many times management plans were submitted long after the event had taken place. In the end, the decision is taken by the minister but, certainly, it does introduce a greater level of transparency. My understanding is that, if the ERD Committee is not happy with the management plan, it must then be referred to the parliament. Again, it does allow for better transparency than is currently in the bill. We support the amendment.

Amendment carried; clause as amended passed.

Clause 12 passed.

Clause 13.

The Hon. G.E. GAGO: I move:

Page 12, line 19—Delete 'identify' and substitute 'establish'

The government has filed this amendment to subclause (1)(b) to state that a management plan must establish the various types of zones within a park and define their boundaries. This is primarily a goodwill gesture to the Wilderness Society, and it does strengthen the provision.

Amendment carried; clause as amended passed.

Clause 14.

The Hon. G.E. GAGO: I move:

Page 13, after line 11—Insert:

(ab) publish on a website, determined by the Minister, a statement of environmental, economic and social values of the area concerned; and

It has always been the government's intention to release an environmental, social and economic impact statement to accompany draft management plans to ensure that members of the community have complete information regarding the potential implications of a marine park. The amendment requires the government to prepare a statement of the environmental, economic and social values of an area established as a marine park to be released prior to commencing the development of a draft management plan. This will be released following the requirement of government to publish a notice of intention to make or amend a management plan. The values statement will clearly articulate the biodiversity, habitats and ecosystems selected for inclusion in the marine park and will also state the known social and economic uses of the area. The values statement will be informed by the research of government officers and by information provided by communities and stakeholders during the consultation on marine park boundaries.

The Hon. C.V. SCHAEFER: The opposition supports the amendment.

Amendment carried.

The Hon. G.E. GAGO: I move:

Page 13, line 12—After 'amendment' insert:

and a statement (an impact statement) of the expected environmental, economic and social impacts of the management plan or amendment

This amendment requires that, as part of the process of developing a draft management plan in consultation with local communities and industry, the government will prepare a full economic, social and environmental impact statement for the proposed zoning arrangements for the marine park. Meaningful information on the likely impacts cannot be known until after the development of the draft management plan and zoning arrangements. The designation and location of each zone will directly relate to the magnitude and nature of any potential impacts. As I have said earlier, trying to develop an impact statement prior to identifying proposed zoning arrangements is really putting the cart before the horse. It should be noted that the impact statement accompanying the draft management plan is not a statutory document but an accompanying explanatory document.

The Hon. C.V. SCHAEFER: Is the minister saying, in code, that an impact statement will be published but, if there is a massive public outcry, the minister will not take any notice of it anyway?

The Hon. G.E. GAGO: What we are proposing is a process to enable the community to put their views forward. We develop an impact statement; the government then seeks comment on the zoning from the community. We accept that the community are likely to have a great deal of local on-ground knowledge and history. This is an opportunity for them to put their views forward. If we have got something wrong, this offers an opportunity for the community to have their say and to give us the information we need to get it right. That information will be considered and, if necessary, the plan will be revised.

Amendment carried.

The Hon. C.V. SCHAEFER: I move:

Page 13, after line 14—Insert:

(iaa) the Council; and

This amendment is consequential to my amendment No. 15.

The Hon. G.E. GAGO: The government supports the amendment.

Amendment carried.

The Hon. G.E. GAGO: I move:

Page 13, lines 18 to 20—

Delete subparagraph (iii) and substitute:

(iii) a representative of any native title holders or claimants that have a native title determination or registered native title claim; and

The draft marine parks bill initially required the minister to consult with and consider the views of representatives of all signatories to any indigenous land use agreement (ILUA) that is in force in relation to any of the area comprising a marine park. During consultation on the draft bill the Aboriginal Legal Rights Movement requested that this be expanded to include a representative of any native title claimants that have a registered native title determination in relation to any of the area comprising the marine park. The government agreed to this amendment to ensure that the bill reflected both the formal native title process and the ILUA process. Subsequently, the Crown Solicitor's Office Native Title Unit recommended a technical amendment to cover indigenous groups that have a registered native title claim but who are, however, yet to decide whether they will pursue either an ILUA or a formal native title determination. Accordingly, this amendment is seeking to ensure that all indigenous groups with a registered native title claim are formally engaged in the marine parks process regardless of their preferred course of action.

The Hon. M. PARNELL: The Greens support this amendment. It would seem to us that all the talk of reconciliation and further engagement with the first peoples of this country amount to nothing if we do not acknowledge them at every opportunity in land use legislation. I think that is what this amendment does, and we congratulate the government on inserting this measure into the bill.

Amendment carried.

The Hon. G.E. GAGO: I move:

Page 13, after line 20—

Insert:

(iv) such persons or bodies as the Minister determines to be leading representatives of—

(A) the environment and conservation sector; and

(B) local government; and

(C) the commercial fishing industry; and

(D) the aquaculture industry; and

(E) the recreational fishing sector; and

(F) the mining and petroleum industries; and

(G) the tourism sector; and

(H) the general business sector,

When drafting these provisions in the bill, the government sought to establish the broadest consultation process possible, enabling all interested South Australians to participate in shaping our marine parks. This amendment expands the mandatory consultation on a draft management plan to include a range of leading representatives from peak stakeholder bodies with an interest in the marine environment. These groups will now also be contacted to provide direct comment and input to draft management plans. It is important to note that this will occur in addition to the process previously outlined in the bill and not instead of it.

This provision further broadens the government's commitment to consultation on marine parks. It complements the proposed amendment by the Liberal Party to establish a marine parks council and will ensure that the minister receives expertise-based advice from the council and representative-based advice through the expanded mandatory consultation requirements. It is important to note that the expanded mandatory consultation requirements include sectors not represented on the marine parks council, including local government, the mining and petroleum industries, tourism and the general business sector.

The Hon. SANDRA KANCK: I indicate support for the amendment. I am sure that this sort of consultation would have occurred, but I think it is a very good idea to have it in the legislation so that it spells out who the interest groups are and so that there can be no mistake with somebody being overlooked in that process of consultation.

The Hon. C.V. SCHAEFER: The opposition supports this amendment. I have a question of the minister. Will the minister reaffirm that this body, committee or whatever you like to call it will be a separate group for consultation for each separate marine park? So, if a marine park is

established off Ceduna, this would essentially be a different group of people from those dealing with a marine park established off Victor Harbor.

The Hon. G.E. GAGO: The honourable member raises two issues. First, this clause is about seeking the views of stakeholders—most likely via letter, for instance—on the draft management plan. With regard to the second issue, the government is committed to regional consultative committees to provide a local conduit for the local community to provide information whilst we are developing the marine park management plans. We are happy to be guided by the needs of the local community. For instance, if there were two marine parks very close together and the local communities believed that the interests across them were the same, then it might only be one committee for those parks. However, if it was identified that there needed to be two separate regional consultative community groups, then we would be happy to have separate ones. However, generally, we are committed to the principle of regional consultation.

The Hon. C.V. SCHAEFER: This is an amendment to clause 14, a procedure for making or amending management plans. It states:

> The minister must, as soon as practicable after the establishment of a marine park, commence the process or the making of a management plan in relation to the park.

From that, I had assumed (and I was kindly briefed by the minister's officers yesterday) that each marine protected area would have its own management plan. Under that provision, the minister must, in relation to a proposal to make or amend a management plan, do certain things: seek the views of all relevant ministers, of a representative of all signatories to any indigenous land use agreements and a representative of any native title claimants. Then, as a PS, we have such persons or bodies as the minister determines to be leading representatives of—and there is a list: the environment and conservation sector; local government; the commercial fishing industry; the aquaculture industry; the recreational fishing sector; mining and petroleum industries; the tourism sector; and the general business sector.

I was pleased when I saw that amendment because I thought that it really did give some transparency and an opportunity for input at a very local level. I assumed that those people under paragraph (c) would be part of the local consultative committee. What I am hearing from the minister now is that all she has to do is write these people a letter. I really do seek clarification as to what that amendment is outlining. Are these people to be part of a local consultative process and a local consultative committee, or are they merely going to be dropped a letter, or perhaps an email, by the minister?

The Hon. G.E. GAGO: I can clarify that each of the 19 marine parks will have its own management plan. Each plan will be developed in consultation with the list of stakeholder groups as proposed in this particular amendment. In addition, we will be establishing a regional consultative committee for each park. Some of those groups, including the stakeholder group, are most likely to be also included in the regional consultative committee, but not necessarily. The consultative committee is established to ensure local interest and input. It could involve, for instance, individuals, groups and/or organisations. It will depend on the interests of those groups in respect of that particular marine park.

The Hon. C.V. SCHAEFER: Will the minister give me an example of what form the consultation with these bodies (which are now named in her amendment) will take? If they are not a part of the consultative committee, what sort of consultation will take place? Frankly, there are a lot of people in the proposed Encounter exercise that do not believe they were consulted at all.

The Hon. G.E. GAGO: There is a range of ways in which we propose to consult with the stakeholder groups that are listed, in terms of seeking their views, advice and suggestions. It is likely to involve forums such as both formal and informal meetings with these organisations, written requests for information and circulation of documents, where the organisations are requested to formally respond and forward their responses and formal comments back to the department. So, it could involve a range of various means of consultation.

In relation to the regional consultative groups, these forums are established to provide for those interests and voices that will not necessarily be captured by those stakeholder organisations—for instance, local individuals who might not be represented by a particular fishing organisation or aquaculture group but who, nevertheless, have lived and worked in the area and have legitimate interests in a park and are also likely to have some very important information to assist us in putting our parks together. So, it is a two-tiered approach, if you like, to capture those groups whose interests are formally represented through organisations, and their concerns and

input will be captured that way, and also those people who are not represented by those broader organisations.

The Hon. C.V. SCHAEFER: I find the minister's answers elusive, evasive and very disturbing. However, I will be supporting this amendment because, as bad as it is, it is better than what was there before.

The Hon. M. PARNELL: I am supporting this amendment. In response to the Hon. Caroline Schaefer's concerns, I think that she may well have missed the point. The way I see this provision working is to say that, when an important document such as a management plan becomes available for people to comment on, we want to make sure that important stakeholders do not miss out on knowing that it is available and that they can comment on it, which is why I think that the whole of clause 14, which talks about putting things on the web and in the newspaper, is a fairly standard public notification clause. The introduction of the web, I think, is also important.

The alternative to the sector-based list of notifications would be to identify actual organisations. I think there are still some acts of parliament that require ministers to consult with the United Farmers and Stock Owners, for example, an organisation that does not exist any more. So, I think it makes sense to describe these peak organisations in terms of sectors and industries. What the Hon. Caroline Schaefer seemed most concerned about was something that I do not believe is in the bill (and the minister will correct me if I am wrong); this idea of regional consultative committees. You do not need legislation to establish them: they will be established, I guess, by administrative action.

My understanding is that that model has worked very well in the terrestrial environment, where regional consultative committees have been of great benefit to the National Parks and Wildlife Service in managing difficulties with its neighbours, if you like, especially in farming communities. It is my understanding (and I will ask the minister to clarify this) that these proposed consultative committees (and whether there is one per park or whether they are regionally based I do not think matters much) will be created outside this legislation. They are not part of the bill but, if the minister can assure us (and perhaps assure the Hon. Caroline Schaefer) that the types of interests that are proposed to be included in paragraph (4) are the types of interests that would be involved in a regional consultative committee, that might be helpful to the committee.

The Hon. G.E. GAGO: The answer is yes, in response to both the Hon. Mark Parnell's questions. We do not need legislation to establish the consultative committees: we can do that through an administrative act. They are the kinds of interests that we would be looking for, as well as those locally who are prepared to put up their hand and take an active interest.

Amendment carried.

The Hon. G.E. GAGO: I move:

Page 13—

Line 22—After 'management plan' insert 'and impact statement'.

Line 24—After 'plan' insert 'and impact statement'.

Line 29—After 'plan' insert 'and impact statement'.

These amendments require the government to publish the impact statement, along with the draft management plan, on a website determined by the minister, and also require that they be available for inspection without charge or purchase at a place or places determined by the minister. They require that the government must, by notice published in the *Gazette,* in a newspaper circulated generally within the state and on a website determined by the minister, give notice of the place or places at which copies of the impact statement, along with the draft management plan, are available for inspection.

Amendments carried.

The Hon. G.E. GAGO: I move:

Page 13, lines 36 to 38—Delete subsection (6) and substitute:

(6) If the minister is of the opinion that a draft amendment of a management plan is not substantive in nature—

(a) the minister need not prepare a statement of environmental, economic and social values or an impact statement; and

(b) the minister may dispense with the requirements of subsection (4)(e).

This amendment provides that, if in the minister's opinion a draft amendment is not substantive in nature, the minister need not prepare a statement of environmental, economic and social values or an impact statement or undertake the mandatory public consultation requirements: 'is not substantive in nature' refers to issues that are not significant, such as an administrative or typographical error.

The Hon. M. PARNELL: The key to this amendment (and the words are already there in the existing bill) are the changes to the management plan that are not substantive in nature. I wish to test three scenarios and have the minister tell me whether or not they are substantive. The first would be a change to an internal zone boundary and whether that could possibly be regarded as non-substantive; secondly, any change to access arrangements, such as who is or who is not allowed or the circumstances in which they are or are not allowed to attend or visit an area; and, thirdly, whether a change to any lists of permitted or prohibited activities in marine parks might be regarded as not substantive.

The Hon. G.E. GAGO: The three examples the Hon. Mark Parnell lists would all be considered to be substantive in nature. The sorts of examples that would be considered not to be substantive in nature would be where the Great Barrier Reef Marine Park Authority inadvertently published an incorrect GPS coordinate that placed the end of a zone in the middle of the Coral Sea. Clearly this was an administrative error that needed to be rectified without the need to prepare a values and impact statement or undertake public consultation.

Amendment carried.

The Hon. G.E. GAGO: I move:

Page 14—

Lines 3 to 6—Delete paragraph (a) and substitute:

(a) must consider any views expressed to the minister under this section in relation to the draft and any representations made by members of the public in response to the notice; and

Lines 13 to 14—Delete 'after a management plan is declared to be an authorised management plan' and substitute 'after the declaration of an initial management plan for a marine park'.

These amendments are consequential on the expanded consultation amendment.

Amendments carried; clause as amended passed.

New clause 14A.

The Hon. G.E. GAGO: I move:

Page 14, after line 20—insert:

14A—Parliamentary scrutiny

(1) On the declaration by the Governor of a draft management plan to be an authorised management plan the Minister must, within 28 days, refer the plan to the Environment, Resources and Development Committee of the Parliament.

(2) The Environment, Resources and Development Committee must, after receipt of a plan under subsection (1)—

(a) resolve that it does not object to the plan; or

(b) resolve to suggest amendments to the plan; or

(c) resolve to object to the plan.

(3) If, at the expiration of 28 days from the day on which the plan was referred to the Environment, Resources and Development Committee, the Committee has not made a resolution under subsection (2), it will be conclusively presumed that the Committee does not object to the plan and does not itself propose to suggest any amendments to the plan.

(4) If an amendment is suggested under subsection (2)(b)—

(a) the Minister may, by notice in the Gazette, proceed to make such an amendment to the plan; or

(b) the Minister may report back to the Committee that the Minister is unwilling to make the amendment suggested by the Committee (and, in such a case, the Committee may resolve that it does not object to the plan as originally made, or may resolve to object to the plan).

(5) If the Environment, Resources and Development Committee resolves to object to a plan, copies of the plan must be laid before both Houses of Parliament.

(6) If either House of Parliament passes a resolution disallowing a plan laid before it under subsection (5), the plan ceases to have effect.

(7) A resolution is not effective for the purposes of subsection (6) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall within the same session of Parliament) after the day on which the plan was laid before the House.

(8) If a resolution is passed under subsection (6), notice of the resolution must immediately be published in the Gazette.

(9) This section does not apply to an initial management plan for a marine park.

This looks at the expansion of the level of accountability for marine parks and to expand that level of accountability even further. It also determines that it is appropriate to require that any future changes to management plans governing activity in the parks be referred to the Environment, Resources and Development Committee of parliament for review. This is to allow parliamentary scrutiny of changes made after the initial plan has been developed through an extensive public consultation process.

The Hon. C.V. SCHAEFER: The opposition supports this amendment. It does allow for a reasonably transparent system of scrutiny by the parliament and, therefore, by the public.

New clause inserted.

Clause 15 passed.

Clause 16.

The Hon. D.G.E. HOOD: I move:

Page 14, after line 36—

(2) If the circumstances of an alleged offence against subsection (1) are constituted by a person undertaking recreational fishing by use of a hand line or rod and line, a prosecution cannot be commenced against the person unless the person had previously been given a warning in the prescribed manner and form by an authorised officer and, in allegedly committing the offence, acted in contravention of that warning.

(3) For the purposes of subsection (2), a certificate executed by an authorised officer certifying as to the giving of a warning specified in the certificate constitutes proof of the matters so certified in the absence of proof to the contrary.

(4) Subsection (2) does not apply if it is alleged that the offence was committed in a restricted access zone.

(5) In this section, *hand line*, *recreational fishing* and *rod and line* have the same respective meanings as in the Fisheries Management Act 2007.

This is a very simple amendment. Essentially, it seeks to ensure that any recreational fisher using a rod and line or a hand-line who happens to stray into one of these zones completely by accident, who is not aware of what they are doing (and it seems there is some support within the chamber), initially be given a written warning before they are slapped with a fine. This is a way of ensuring that, should people who are genuinely trying to do the right thing accidentally do the wrong thing, they are given a fair warning rather than receive a nasty fine before they go home for the day.

The Hon. G.E. GAGO: As I indicated in my second reading summary, the government supports this amendment. The Hon. Dennis Hood has sought to provide certainty to recreational fishers in South Australia that they receive a warning if they inadvertently stray into a sanctuary zone whilst angling for their dinner. This is unusual for legislation and is normally an administrative practice, but I am happy to support the amendment to demonstrate the government's goodwill towards the state's recreational fishers. Obviously, I still urge all recreational fishers to become actively involved in shaping our marine parks through the various consultation and community engagement provisions contained within the bill.

The Hon. M. PARNELL: I support this amendment. However, I indicate that I would not have supported the original amendment drafted by the Hon. Dennis Hood because I thought that providing what would effectively be open slather recreational rod and line fishing went too far. I know that the honourable member has taken on board some of the information provided about the effect of the recreational catch on some of our species stock.

The real test for community acceptance of this legislation will, I think, depend largely upon education. I believe that if a person did not come across any signs on the beach or anywhere near the marine park, if information was poor, then it is appropriate they not have the book thrown at them for an accidental first offence. On the other hand, I would like to think that the government, in the roll-out of these parks, will go to great lengths to tell people where these parks are, where their boundaries are, and what is or is not allowed in different parts—so, hopefully, people will do the right thing. However, I think this provides a reasonable compromise; it lets people off for a first offence (as it were), and it is only if there is recidivism, if they say, 'Well, we're going to come back and fish anyway', then criminal penalties will apply. I commend the honourable member for this amendment which, I think, improves the legislation.

Amendment carried; clause as amended passed.

Clauses 17 to 19 passed.

Clause 20.

The CHAIRMAN: I understand there are two amendments to clause 20: one in the name of the minister and the other in the name of the Hon. Caroline Schaefer. I believe they say different things, but they do refer to the same lines. If the minister would move her amendment then the Hon. Caroline Schaefer can move hers.

The Hon. G.E. GAGO: I move:

Page 16, lines 35 to 39 and page 17, lines 1 to 11—Delete subsections (1) and (2) and substitute:

(1) If the rights conferred by a statutory authorisation under another Act are affected by the creation of a zone or the imposition of a temporary prohibition or restriction of activities within a marine park, the Minister must pay fair and reasonable compensation to the holder of the statutory authorisation or, if the Minister considers it appropriate to do so, compulsorily acquire, and pay fair and reasonable compensation for, the statutory authorisation, or any interest (or part of any interest) under a statutory authorisation.

(2) The regulations may, for the purposes of this section—

(a) provide for a scheme for the payment of compensation to the holders of statutory authorisations whose rights are affected by the creation of a zone or the imposition of a temporary prohibition or restriction of activities within a marine park;

(b) provide for a scheme of compulsory acquisition and the payment of compensation to persons whose statutory authorisations, or any interests under a statutory authorisation, are compulsorily acquired;

(c) prescribe the method of calculation of amounts payable as compensation under this section;

(d) provide for a process of objection and appeal in relation to the payment of compensation under this section.

This amendment seeks to provide industry with certainty that compensation must be provided to any holder of a statutory authorisation, commercial fisher or aquaculture operator affected by the creation of a zone or the imposition of a temporary prohibition or restriction of activities within a marine park. This amendment is identical to the amendment prepared by the Liberal opposition in consultation with SAFIC and other industry representatives, and it has been welcomed by industry, as it addresses their concerns.

The Hon. C.V. SCHAEFER: Mr Chairman, you have said that the amendments say different things. Having been, I think, conned a couple of times so far in this debate, I seek to know what different things it does say, because my understanding is that the amendments are identical. The minister has put on file the same amendment as I had on file. If that is the case, I will not proceed with my amendment. However, I would like it noted that I did place that amendment on file first.

The Hon. G.E. GAGO: I have been advised that the amendments are identical.

Amendment carried; clause as amended passed.

Clause 21.

The Hon. G.E. GAGO: I move:

Page 17, lines 21 and 22—Delete paragraph (b) and substitute:

(b) to seek and assess community nominations for marine parks after taking into account the objects of this act;

I am advised that this is only a very minor amendment to seek and assess community nominations for marine parks after taking into account the objects of the act. So, it is linking the broader objects of the act to that nomination process.

Amendment carried; clause as amended passed.

New clauses 22A to 22G.

The Hon. C.V. SCHAEFER: I move:

Page 18, after line 19—Insert:

Division 1A—Marine Parks Council of South Australia

22A—Establishment of Council

(1) The Marine Parks Council of South Australia is established.

(2) The Council consists of—

(a) 10 members appointed by the Governor on the nomination of the Minister; and

(b) the Chief Executive (ex officio), or a person for the time being nominated by the Chief Executive to be a member of the Council.

(3) Of the members appointed on the recommendation of the Minister—

(a) 1 must be a person who has knowledge of, or experience in, the field of commercial fishing;

(b) 1 must be a person who has knowledge of, or experience in, the field of aquaculture;

(c) 1 must be a person who has knowledge of, or experience in, the field of recreational fishing;

(d) 3 must be persons who have knowledge of, or experience in, the field of marine conservation;

(e) 2 must be persons who have qualifications or experience in a field of science that is relevant to the marine environment;

(f) 1 must be a person who has extensive involvement in community affairs;

(g) 1 must be a person who has extensive knowledge of indigenous culture, especially in connection with the marine environment.

(4) Each person appointed to the Council must be a person who can demonstrate knowledge of, or an interest in, the requirements necessary to manage the marine environment in a responsible manner.

(5) Before nominating a person or persons for appointment to the Council, the Minister must—

(a) by notice published in a newspaper circulating generally throughout the State, invite expressions of interest for appointment to the Council within a period specified in the notice; and

(b) take reasonable steps to consult with a body or bodies that, in the Minister's opinion, represent the interests reflected by the relevant appointment.

22B—Presiding member and deputy presiding member

(1) The Minister must appoint 1 of the members of the Council (the presiding member) to preside at meetings of the Council.

(2) The Minister may appoint another member of the Council to be the deputy of the presiding member (the deputy presiding member) to preside at meetings of the Council in the absence of the presiding member.

22C—Terms and conditions of membership

(1) An appointed member of the Council will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.

(2) However, an appointed member of the Council may not hold office for consecutive terms that exceed 6 years in total.

(3) The Governor may remove an appointed member of the Council from office—

(a) for breach of, or non-compliance with, a condition of appointment; or

(b) for misconduct; or

(c) for failure or incapacity to carry out. official duties satisfactorily.

(4) The office of an appointed member of the Council becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Council; or

(e) is absent without leave of the presiding member of the Council from 3 consecutive meetings of the Council; or

(f) is removed from office under subsection (3).

22D—Vacancies or defects in appointment of members

An act or proceeding of the Council is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

22E—Remuneration

An appointed member of the Council is entitled to remuneration, allowances and expenses determined by the Minister.

22F—Functions of Council

(1) The Council has the following functions:

(a) to provide advice to the Minister on the establishment of marine parks, including the areas to be specified as marine parks;

(b) to provide advice to the Minister in relation to the introduction, variation or revocation of interim protection orders;

(c) to provide advice to the Minister in relation to a proposal to alter the boundaries of a marine park;

(d) to provide advice to the Minister in relation to a proposal to establish or alter a zone within a marine park;

(e) to provide advice to the Minister in relation to the management of marine parks, the formulation and operation of management plans under this Act, and the extent to which the objects of the Act are being achieved through the implementation of management plans under this Act;

(f) to provide advice to the Minister on ways to promote community participation in the management of marine parks and the conservation of relevant marine environments;

(g) to carry out such other functions as may be assigned to the Council by or under this Act or by the Minister.

(2) The Council must, in providing advice to the Minister, take into account the objects of this Act.

22G—Council's procedures

(1) A majority of the appointed members of the Council constitutes a quorum of the Council.

(2) If the presiding member and the deputy presiding member of the Council are both absent from a meeting of the Council, a member chosen by the appointed members present at the meeting will preside.

(3) A decision carried by a majority of the votes cast by the appointed members of the Council at a meeting is a decision of the Council.

(4) When a matter arises for decision at a meeting of the Council—

(a) each appointed member present at the meeting (other than the member presiding at the meeting) has a deliberative vote; and

(b) if the deliberative votes are equal, the member presiding at the meeting may exercise a casting vote,

(and the person appointed under section 22A(2)(b) does not have a vote).

(5) A conference by telephone or other electronic means between the members of the Council will, for the purposes of this section, be taken to be a meeting of the Council at which the participating members are present if—

(a) notice of the conference is given to all members in the manner determined by the Council for the purpose; and

(b) each participating member is capable of communicating with every other participating member during the conference.

(6) A proposed resolution of the Council becomes a valid decision of the Council despite the fact that it is not voted on at a meeting of the Council if—

(a) notice of the proposed resolution is given to all members of the Council in accordance with procedures determined by the Council; and

(b) a majority of the appointed members express concurrence in the proposed resolution by letter, telegram, telex, fax, e-mail or other written communication setting out the terms of the resolution.

(7) The Council must have accurate minutes kept of its meetings.

(8) Subject to this Act and any direction of the Minister, the Council may determine its own procedures.

This quite long amendment provides for the setting up of a marine parks council, including the powers and duties of the council, and it provides for the necessity for the minister to take notice of that council. I spoke to the amendment earlier, and a number of consequential amendments have already been passed.

The Hon. G.E. GAGO: As previously indicated, the government supports this amendment; I have previously outlined the reasons for our support.

The Hon. M. PARNELL: I move to amend the Hon. Ms Schaefer's amendment as follows:

New Division—

Page 18, after line 19—

New section 22F(1)(a)—delete paragraph (a) and substitute:

(a) to provide advice to the minister on the establishment of marine parks, including—

(i) advice on any community nominations for marine parks; and

(ii) advice on the areas to be specified as marine parks;

This amendment is consequential on two things: first, the right of the community to make nominations for marine parks; and, secondly, the creation of the marine parks council, which we have already approved through the Hon. Caroline Schaefer's amendments. My amendment is fairly straightforward, and it basically provides that, as we now have the marine parks council, part of its job should be to provide advice to the minister on the establishment of marine parks, including advice on any community nominations for marine parks and advice on the areas to be specified as marine parks. It basically makes it clear that part of the job of this new council is to look at community nominations and, accordingly, to make recommendations to the minister.

The Hon. C.V. SCHAEFER: The opposition supports the amendment.

The Hon. G.E. GAGO: The government supports the amendment.

The Hon. M. PARNELL: At the risk of being pedantic, I would like to invite the Hon. Caroline Schaefer to revisit this question about whether, in her amendment where we have the list of expertise of members on the marine parks council, she would be agreeable to paragraph (3)(d)—

The Hon. C.V. Schaefer interjecting:

The Hon. M. PARNELL: You say no. I will not pursue that line of inquiry and I will simply move my amendment to the Hon. Caroline Schaefer's amendment.

The CHAIRMAN: What about your amendment to insert 22H?

The Hon. M. PARNELL: I move:

New division, page 18, after line 19—

After section 22G insert:

22H—Conflict of interest

(1) A member of the council who has a direct or indirect pecuniary or personal interest in a matter decided or under consideration by the council—

(a) must disclose the nature of the interest to the council; and

(b) must not take part in any deliberations or decisions of the council on the matter.

Maximum penalty: $4,000.

(2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(3) A disclosure under this section must be recorded in the minutes of the council.

This is a fairly straightforward amendment and simply includes a standard conflict of interest clause, which is appropriate for all statutory bodies. I think it is an omission to have a statutory body, such as the marine parks council, without a conflict of interest clause, which basically requires people to disclose direct or indirect pecuniary or personal interests and to not take part in discussions or deliberations where there is a conflict of interest, and it creates a criminal penalty for breaching those conflict of interest provisions. It is not a remarkable clause: in fact, it is replicated in almost all statutory bodies.

The Hon. G.E. GAGO: The government supports this amendment. It is consistent with other legislation and we believe it adds a level of certainty and protection.

The CHAIRMAN: Do you support both of the Parnell amendments?

The Hon. G.E. GAGO: Yes, the government supports both amendments.

The Hon. C.V. SCHAEFER: Does that mean then that a person who has knowledge of or experience in the field of commercial fishing who is appointed by the minister is obviously going to have a pecuniary interest? While I have no objection and, in fact, I thoroughly agree that that interest should be published and declared, is the Hon. Mr Parnell suggesting that they may then not take any part in the deliberations of the council?

The Hon. M. PARNELL: The way I look at this is if, for example, the council was discussing the plan of management for area X and the person who is the commercial fishing expert on the council says, 'I make my living fishing in area X', then I think that is a direct conflict of interest. However, the fact of that person being involved in commercial fishing or having what it terms 'knowledge of and experience in the field of commercial fishing' I would have thought that in the absence of a more direct personal conflict of interest that the fact of involvement in the commercial fishing industry probably would not preclude them from a debate on the marine parks council about commercial fishing in marine parks.

My understanding of the rules of conflict of interest is that, whilst my amendment talks about direct or indirect pecuniary or personal interest, they would need to be interpreted, in a way, otherwise I think the Hon. Caroline Schaefer's thoughts might be that any person connected with any part of the commercial fishing industry is precluded from discussing any management plan, and I do not think that that type of interpretation of a conflict of interest clause would in fact occur. So, I think these provisions are fairly safe. This one, from memory, is modelled on the Fisheries Management Act conflict of interest provision, or other legislation at least, so the words have been used elsewhere and they seem to have survived the test of time in other legislation. That is my answer to the honourable member.

The Hon. C.V. SCHAEFER: Given that assurance I support the amendment.

The Hon. D.G.E. HOOD: In the case of an owner of a bait and tackle shop for recreational fishers in an area offshore that was to be influenced by a decision that was to be made, would the Hon. Mr Parnell see that as a potential conflict of interest, if an area was adjacent to the store in question?

The Hon. M. PARNELL: The owner of a bait and tackle shop would have to fulfil one of the criteria for membership of the council, so the situation would only arise if that person was also one of these other 10 people, perhaps a commercial fisher who ran a bait shop in their spare time. I personally would not have thought that that would provide a direct interest. The other thing is that when you look at conflict of interest provisions there are two sides to it: there is the disclosure and then there is the not taking part in deliberations. It is always a question of fact and degree as to how big an interest it is, and it is very common on statutory bodies for people to say, 'Well, I have this interest, and I think it's pretty remote', and other members might say, 'No, you're right, you keep going with deliberations'. Ultimately it is up to the person concerned because you are the one who wears it, if it is found that you did have a conflict and you did not declare it. But I would think that, as it has in other statutory committees, common sense would prevail and the interest would need to be fairly direct for someone to attract the criminal penalties that attach to conflict of interest provisions. So, I do not see it as a big danger area.

The alternative would be not having a conflict of interest provision which would lead to outrageous situations, potentially, where people with direct interests are able to engage. In fact, the

very first court case I won in South Australia was precisely a committee that did not have conflict of interest provisions, and the Crown Solicitor's Office said, 'We cannot defend the decisions that have been made by this committee.' I won that court case in the Environment Resources and Development Court against the Aquaculture Committee of the Development Assessment Commission without a single legal argument in court, because the Crown said, 'No, we cannot have commercial aquaculture operators, commercial fishers and their industry representatives on the decision-making body when deciding whether aquaculture developments can go ahead or not.' So, I just give that as an example, that the absence of a conflict of interest clause leads to all sorts of strife. I, for one, am prepared, in this case at least, to trust the good judgment of the authorities not to chase people for very minor—what I would not call conflicts of interest, but where it is just an interest, because we want people who are interested to be part of this marine parks council.

The Hon. C.V. Schaefer's amendment to insert new sections 22A, 22B, 22C, 22D and 22E agreed to; the Hon. M. Parnell's amendment to insert new section 22F(i)(a) agreed to; new section 22F as amended agreed to; the Hon. C.V. Schaefer's amendment to insert new section 22G agreed to; the Hon. M. Parnell's amendment to insert new section 22H agreed to.

Clause 23.

The Hon. G.E. GAGO: I move:

Page 18, line 27—After 'Minister' insert:

, being persons who must, in either case, be employed in the Public Service of the State

My staff have been meeting with the Local Government Association and various local councils, and it has become evident that this sector is concerned about the state government's delegating powers to local government without expressed agreement. Marine parks, like their terrestrial counterparts, are a community asset, and all funding for their establishment and management will be met by the government. This is not a cost shifting or a cost recovery exercise. To address local government's concerns, the government has filed amendments to clause 23 (appointment of authorised officers) to make explicit that these officers must be in the employment of the state. However, we have included some flexibility to enable officers of a local council to be appointed as an authorised officer at the request of the council.

Amendment carried.

The Hon. G.E. GAGO: I move:

Page 18, after line 27—Insert:

(1a) If the area of a marine park includes land within the area of a council, the Minister may appoint persons, nominated by the council, to be authorised officers under this Act.

Amendment carried; clause as amended passed.

Remaining clauses (24 to 38) and title passed.

Bill reported with amendments; committee's report adopted.

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (17:56): I move:

That this bill be now read a third time.

The Hon. SANDRA KANCK (17:57): I want to make a few observations about what has happened in relation to this bill. Having gone through the process of second reading, the Hon. Caroline Schaefer spoke to me about some of her concerns and indicated that she would convene a meeting to discuss some of the issues and, principally, her concern for the need for the council that has now been established in these amendments. She duly did so, and there was a meeting with her, Mark Parnell and me, as well as the fishing industry and the environment movement. I have to say that, if the Hon. Mark Parnell or I had convened that meeting, the fishing industry would have been much more suspicious of the motives, so Caroline had a very important role to play. As I mentioned earlier, I had said in my second reading contribution that I would move amendments but, as a consequence of the good work undertaken by the Hon. Caroline Schaefer, that became unnecessary. I think that the process of putting together those amendments arguably forced the government to come up with some of its own amendments.

The consequence is that we have a bill which I think, in its amended form, is a great improvement for all the stakeholders. I think it is another example of the excellent way in which the

Legislative Council operates. We see so often that, when bills are introduced or processed in the lower house, any opposition is effectively quashed. What we have seen with this bill is that opposition has been expressed, differing points of view have been argued out and, where possible, amendments have been proposed. The consequence is that we have a bill leaving this chamber in a much better form than that in which it was introduced. I think it is a tribute to all those involved—the Hon. Caroline Schaefer, the Hon. Dennis Hood, the Hon. Mark Parnell, people from the fishing industry, the minister and the environment movement. In a sense, everyone is a winner, and I personally have been very impressed by the way the Legislative Council has gone about this.

Bill read a third time and passed.

NATIONAL ELECTRICITY (SOUTH AUSTRALIA) (NATIONAL ELECTRICITY LAW—MISCELLANEOUS AMENDMENTS) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (18:00): 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.

Introduction

The Government is delivering on a key Council of Australian Government's energy commitment through legislation to improve the operation of the National Electricity Market.

The National Electricity (South Australia) (National Electricity Law—Miscellaneous Amendments) Amendment Bill 2007 will make important reforms to the National Electricity Law. This Bill will streamline the regulation of electricity distribution networks by allowing a single regulator, the Australian Energy Regulator, to regulate all distribution networks in the National Electricity Market. This together with earlier reforms to transmission network regulation will ensure that the National Electricity Market has a single national regulatory framework for electricity networks.

The regulatory framework established by this Bill provides the appropriate balance between providing certainty for network businesses while providing avenues for the protection of consumers.

The Bill introduces important changes to the Australian Energy Regulator's powers including a new set of revenue and pricing principles that will guide the regulator in making regulatory decisions, clarify its information gathering powers in order for it to effectively undertake its functions, and introduce an element of transparency through the ability for the regulator to prepare and publish reports on the performance of regulated businesses. New merits review provisions have also been introduced to allow the review of the Australian Energy Regulator's decisions by regulated businesses and users and consumers, providing the appropriate checks and balances on the decision making process.

These reforms will also streamline the National Electricity Law's rule change process by improving the Australian Energy Market Commission's ability to handle and manage rule change proposal submitted by stakeholders while ensuring that the rule change process is still accessible to all relevant stakeholders.

In short, this Bill will strengthen and improve the quality, timeliness and national character of the economic regulation of the National Electricity Market. In turn, this should lower the cost and complexity of regulation facing investors, enhance regulatory certainty and lower barriers to competition.

Background

As Honourable Members will be aware, South Australia is the lead legislator for the National Electricity Law.

The existing co operative scheme for electricity market regulation came into operation in December 1998 and was amended in July 2005 to implement important governance reforms to the National Electricity Market. The lead legislation is the National Electricity (South Australia) Act 1996. The current National Electricity Law is a schedule to this Act, and that Law, together with the Regulations and Rules made under the National Electricity (South Australia) Act are applied by the

other National Electricity Market jurisdictions, that is, New South Wales, Victoria, Queensland, Tasmania and the Australian Capital Territory, by way of Application Acts in each of those jurisdictions. The Commonwealth is also a participating jurisdiction through the application of the regime to the offshore area.

As Honourable Members will be aware, South Australia is participating in the reform of the regulatory framework of Australia's energy markets in response to the Council of Australian Government's Energy Market Review of 2002.

In June 2004, the Australian Energy Market Agreement was signed by all first Ministers, committing the Commonwealth, State and Territory Governments to establish and maintain the new national energy market framework. This new framework saw the introduction of the National Electricity (South Australia) Amendment Bill 2005 into the South Australian Parliament. As you may recall the 2005 Bill introduced important governance reforms to the National Electricity Market, through separating high level policy direction, rule making and market development, and economic regulation and enforcement.

As part of those reforms, the Australian Energy Market Commission and the Australian Energy Regulator were established. The two new statutory bodies were initially given responsibility for electricity wholesale and transmission regulation in the National Electricity Market jurisdictions. The 2005 Bill also enshrined the policy making role of the Ministerial Council on Energy in the context of the National Electricity Market.

In June 2006, the Australian Energy Market Agreement was amended and signed by all first Ministers, committing the Commonwealth, State and Territory Governments to establish a consistent framework for energy access and specific reforms to the distribution and retail framework. Aspects of these reforms are the subject matter of this Bill.

As part of that commitment, an expert panel was appointed in December 2005 to provide advice on a national framework for energy access pricing. The Panel presented their report, the Expert Panel Report on Energy Access Pricing, to the Ministerial Council on Energy in April 2006. The Ministerial Council on Energy responded to the Expert Panel Report by announcing a set of policy decisions for its major energy market reform program. These policy decisions were publicly released in November 2006.

A subsequent legislative package will make further amendments to the National Electricity Law to regulate the retail electricity market, other than retail prices, and the non economic aspects of distribution.

New regulatory arrangements for distribution

This Bill reforms the regulatory framework governing the National Electricity Market by conferring the economic regulation of electricity distribution networks on the new national institutions established in July 2005—the Australian Energy Market Commission and the Australian Energy Regulator. The Bill also recognises appropriate transitioning from jurisdictional arrangements to a national framework, maintaining the South Australian tariff equalisation arrangements, and maintaining obligations relevant to the sale and lease of the electricity distribution network in South Australia. I will elaborate on these matters further below.

The Australian Energy Market Commission and the Australian Energy Regulator's role will extend to include the regulation of gas transmission pipelines and gas distribution networks for all relevant jurisdictions. The broad framework outlined in this Bill will be largely replicated in the new National Gas Law which will be Introduced to Parliament in the coming months. These pieces of legislation aim to ensure consistent national economic regulation of electricity and gas networks.

Also subject to separate legislation is the establishment of a national framework for the non price regulation of electricity and gas distribution and retail, which is expected to be implemented during 2008 subject to jurisdictional agreement on that framework.

While a number of provisions of the National Electricity Law have been retained, albeit with some amendments, the new regulatory arrangements have required the inclusion of a range of amendments and additional provisions which I will outline. In addition, the National Electricity Rules will also be amended to provide for a national framework for electricity distribution revenue and pricing regulation.

South Australian arrangements

This Bill contains provisions that preserve important elements of the current South Australian regulatory scheme.

There are a suite of pricing arrangements which together serve to preserve the scheme of state wide pricing for distribution services for all small customers. These provisions are currently located in the South Australian legislation and will be continued to ensure that this important principle continues to operate under the national framework.

The national framework also maintains existing obligations arising from the South Australian Electricity Pricing Order. These obligations formed part of the foundation for the privatisation of the electricity distribution network in South Australia. The recognition of these arrangements ensures that, in accordance with the terms of the Electricity Pricing Order, the regulatory guidance established as part of the privatisation process is continued.

The amendments to the National Electricity Rules include appropriate transitional provisions to manage the transfer from the South Australian jurisdictional arrangements to the national framework. I will outline these matters below.

Consultation

The Amendments to the National Electricity Law in this Bill have been subject to extensive consultation with industry participants and other stakeholders that began with the Expert Report in 2005. As part of the preparation of their report, the Expert Panel encouraged stakeholder participation in its review. To this end, the opportunity was provided for stakeholders to make written submissions on matters arising from the Panel's terms of reference. Stakeholders also had the opportunity to make written submissions on the Panel's Draft Report and to meet individually with the Panel after the second round of submissions had been considered.

Further consultation has been undertaken on the implementation of the recommendations contained in the Expert Panel Report. Two exposure drafts of the National Electricity Law were made available to the public in January and August of 2007 and an exposure draft of amendments to the National Electricity Rules was consulted on in April 2007.

The first exposure draft of the National Electricity Law was released for a six week stakeholder consultation period. A public forum on the exposure draft was also conducted. This forum explained the response to the Expert Panel recommendations, provided information on the content of the National Electricity Law, and provided stakeholders with an opportunity to comment and seek clarification on the key aspects of the legislation. Written stakeholder submissions were also invited on the exposure draft of the National Electricity Law. In total, 29 submissions were received in response to the exposure draft.

The second round of consultation on the National Electricity Law involved round table discussion with stakeholders on matters of workability. We take this opportunity to thank all parties for their valuable contributions to these important reforms. Stakeholder comments on the exposure drafts were a valuable contribution towards ensuring the effectiveness of this Bill.

National Electricity Objective

This Bill incorporates an amended version of the National Electricity Market Objective from the existing National Electricity Law. It is now known as the National Electricity Objective and will be mirrored in the National Gas Law.

The alignment between the objectives of the gas and electricity regime is an important foundation for the regime. A single consistent objective across gas and electricity will increase the prospect that the regimes remain closely aligned over the long term, even in light of the capacity in both regimes for interested parties to make applications to changes rules through the Australian Energy Market Commission. For this reason, the objectives clause is drafted as an objective of the law, rather than an objective of the market.

The National Electricity Objective is to promote efficient investment in, and the efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity, and the safety, reliability and security of the national electricity system.

Just as the Australian Energy Market Commission must test changes against the objective of the law when making rules, the Australian Energy Regulator must perform its functions in a manner that will or is likely to contribute to achieving the objective of the law.

It is important to note that the National Electricity Objective does not extend to broader social and environmental objectives. The purpose of the National Electricity Law is to establish a framework to ensure the efficient operation of the National Electricity Market, efficient investment, and the effective regulation of electricity networks. As previously noted, the National Electricity Objective also guides the Australian Energy Market Commission and the Australian Energy Regulator in performing their functions. This should be guided by an objective of efficiency that is in the long term interest of consumers. Environmental and social objectives are better dealt with in other legislative instruments and policies which sit outside the National Electricity Law.

Form of Regulation Factors

Determining what services are to be regulated requires an assessment of the potential for market power to be exploited by a service provider.

In order to ensure that the appropriate regulatory framework is applied, this Bill creates new provisions for the recognition of two available forms of regulation: direct controlled network services and negotiated network services. Where electricity network services are neither classified by the Australian Energy Regulator as direct controlled network services or negotiated network services, the network service is not subject to economic regulation.

A direct controlled network service is a service for which the price is fixed by the Australian Energy Regulator in a revenue or network pricing determination. The National Electricity Law will provide the framework for either allowing the National Electricity Rules, via the Australian Energy Market Commission rule change process, to specify particular services as controlled by a price control mechanism, or allow the Australian Energy Regulator to determine the classification of services in a regulatory determination. Both decision makers are guided by the form of regulation factors.

Negotiated network services are those transmission and distribution services regulated under a negotiate/arbitrate regime. These services are not subject to upfront price control, but a binding arbitration mechanism is provided for the resolution of disputes about price and non price aspects of access between the relevant parties.

The 'form of regulation factors' guide the assessment of the form of regulation to apply to the electricity network service (that is, whether it is appropriately classified as a direct controlled network service, or a negotiated network service). This framework effectively implements the Expert Panel recommendations.

The first of these form of regulation factors assesses the presence and extent of any barriers to entry in a market for electricity network services. Many of the services provided by electricity networks can be characterised as natural monopolies and need to be regulated to ensure that consumers' interests are met.

Another factor that predisposes electricity networks towards natural monopoly status is the interdependent nature of network services. This means that it is usually more efficient to have one service provider provide an electricity network service to a given geographical area. Additionally it may be more efficient to have the same company provide other network services to the same geographical area.

The second and third form of regulation factors require that the Australian Energy Market Commission and the Australian Energy Regulator identify these interdependencies and network externalities as potential sources of market power.

The fourth form of regulation factor looks to consider the extent to which market power possessed by the owner, operator or controller of a transmission or distribution network by which services to be subject to regulation are provided is likely to be mitigated by countervailing market power possessed by the users of those services. This factor allows the Australian Energy Regulator or Australian Energy Market Commission to apply a lighter form of regulation to a network that is subject to this type of countervailing market power from a major user.

Another factor that may cause the Australian Energy Regulator or Australian Energy Market Commission to consider a lighter form of regulation, is the degree to which electricity network services and the power that they provide can be substituted for other products. For example, embedded generation installed at a customers premises may be economic for some classes of customers and therefore provide effective competition to electricity network operators. When available, natural gas may also compete with electricity for some or all of a customer's needs. The fifth and sixth form of regulation factors allow the Australian Energy Market

Commission and Australian Energy Regulator to consider the presence and extent of substitutions for users to be provided with the particular service.

Finally, customers can only negotiate with service providers when they have adequate information, to determine whether or not payments required of them accurately reflect the efficient cost of providing the service. In a competitive market the efficient cost is revealed as competing providers seek to out bid each other down to the point where they are covering their costs plus a normal profit. Where a business is a natural monopoly this does not occur and it can be difficult for consumers and regulators to access information from natural monopoly service providers. The final form of regulation factor allows the Australian Energy Regulator and Australian Energy Market Commission to consider the extent to which there is adequate information available to users, to enable them to negotiate with the service provider on an informed basis.

Revenue and Pricing Principles

A key feature of the amended National Electricity Law is the inclusion of six principles that guide the development of the framework for the regulation of electricity networks. These revenue and pricing principles will guide the Australian Energy Market Commission in making the rules governing the regulation of electricity transmission and distribution networks, and the Australian Energy Regulator when making regulatory transmission or distribution determinations.

These principles are fundamental to ensuring that the Ministerial Council on Energy's intention of enhancing efficiency in the National Electricity Market is achieved. To provide certainty to the industry and consumers, this Bill will apply the principles through the National Electricity Law rather than the National Electricity Rules, where their predecessors were found. The aim of the pricing principles is to maintain a framework for efficient network investment irrespective of the evolution of the regulatory regime (via changes to the National Electricity Rules) and the industry. It is proposed that these revenue and pricing principles will be replicated in the new National Gas Law to ensure a consistent framework for energy access pricing.

The first of these principles requires that a regulated network provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in providing services, complying with a regulatory obligation or requirement or making a regulatory payment. At least efficient cost recovery is vital if service providers are to maintain their electricity networks in order to meet community expectations of the service levels they receive, and to undertake further investment to serve Australia's growing population.

The Bill also defines the meaning of a regulatory obligation or instrument and the meaning of a regulatory payment.

A regulatory obligation or requirement is defined to cover obligations or a requirement imposed on network service providers through participating jurisdictional instruments and also recognises obligations and requirements imposed by the National Electricity Law and Rules. The National Electricity Law reflects the policy intent that an order of compensation under an Act or an obligation or requirement to pay a fine, penalty or compensation for breaches of service standard or reliability standards is not included as a regulatory obligation or requirement.

A regulatory payment is defined as a sum that a regulated network service provider has been required or allowed to make to a network user or end user for a breach of a reliability or service standards, such as guaranteed service level payments, to the extent they are efficient.

Equally vital to ensure that Australia's current and future electricity needs are met, is that regulators can provide service providers with incentives to maintain and improve the services.

The second principle requires that service providers should be provided with effective incentives in order to promote the economically efficient investment in and provision and use of network services.

The third principle requires that regulators have regard to the regulatory asset base adopted in any previous determination conducted by the Australian Energy Regulator or jurisdictional regulators, or as specified in the rules. This principle is important to ensure that the regulatory framework recognises the long lived nature of electricity network assets by recognising how sunk assets have been considered previously in rules or previous regulatory determinations.

It is also important that risks are appropriately compensated for when determining efficient revenues and prices. The fourth principle ensures this by requiring that prices and charges for the provision of regulated network services, allow for a return commensurate with the regulatory and commercial risks involved in providing the service to which that price or charge relates.

The fifth principle explicitly requires the Australian Energy Regulator to have regard to the economic costs and risks of the potential for under and over investment by a regulated network service provider in its network. The cost of under investment is lower service standards for consumers and ultimately higher costs to correct these, while the cost of overinvestment is unnecessarily high prices to consumers. This principle will ensure that Australian consumers receive the level of service that they expect and at the right price.

The final principle requires that regard be had to the economic costs and risks of the potential for under and over utilisation of a service provider's network. This principle guides decision makers to consider the efficiency of the usage of existing assets and balance this against the principle of over and under investment. Utilisation is another important indicator of whether the network is operating efficiently. Underutilisation over a previous regulatory control period might indicate that prices have been set too high. It may also be an indicator of over investment, which can also result in high prices. Either way it can have adverse consequences on consumers. Conversely, over utilisation is an indicator of under investment which can result in poor service standards.

Decision making framework

A key aspect of the regulatory framework established by this Bill is the recognition of a "fit for purpose" decision making framework as recommended by the Expert Panel.

The National Electricity Law reflects the Ministerial Council on Energy policy intention to establish a "fit for purpose" decision making model by allowing the rules to set out the decision making framework and determine the level of discretion the Australian Energy Regulator has in dealing with the different aspects of a regulatory determination.

The "fit for purpose" framework acknowledges that, for the purposes of making a regulatory distribution determination, there is often such a range of revenue and price components (and inter relationships between them), that it may be appropriate in some cases for the regulator to be required to accept a reasonable proposal put forward by a service provider. In other cases, it will be appropriate to leave the regulator with the discretion to determine an outcome, or even to require the regulator apply a more specific test to different elements of the proposal. Under this model, the regulator is guided in its decision making by the express provisions in the National Electricity Rules which govern the available level of discretion, along with the National Electricity Objective and the revenue and pricing principles which apply by virtue of the National Electricity Law.

When applied as part of future changes to the National Electricity Rules, the "fit for purpose" framework will provide an appropriate degree of flexibility by allowing the regulatory framework to evolve and adapt models of regulatory decision making according to the degree of regulatory risk or certainty desired by the market.

I will shortly outline the framework established in the initial electricity distribution revenue and pricing rules.

Information Gathering Powers

This Bill introduces substantial amendments to the Australian Energy Regulator's information gathering powers under the National Electricity Law, designed to address ongoing issues of information asymmetry between regulated business and the regulator recognised by the Expert Panel.

The amendments enable the Australian Energy Regulator to obtain adequate information from industry to set efficient prices for energy services without placing an unnecessarily heavy administrative burden on industry whilst supporting competition in the energy market place and protecting commercially sensitive information.

Information on costs incurred in supplying network services is a critical input into the regulatory process and is an essential starting point for determining regulated prices for services supplied in such a market.

The Bill replaces section 28 of the National Electricity Law and introduces new Divisions 4 and 5 to Part 3 of the National Electricity Law. These powers will be replicated in the National Gas Law to provide a consistent information gathering regime across electricity and gas, fully implementing the concerns of the Expert Panel about the necessity of information provision in gas and electricity regulation.

The Bill makes the National Electricity Law search warrant provisions consistent with current criminal law policy by strengthening the suitability criteria for authorised people and introducing identity cards. The Bill revises the National Electricity Law by removing the concept of a 'possible breach' and strengthening individuals' rights in enforcement operations by the Australian Energy Regulator. Search warrants are a tool for breaches of the legislative regime rather than economic regulation.

The National Electricity Law retains the Australian Energy Regulator's ability to obtain information or documents from any person where such information or documents are required by the Australian Energy Regulator for the purpose of performing or exercising any of its functions and powers. The Australian Energy Regulator's information gathering powers under this provision extend to existing information. However, persons are not required to provide information or documents pursuant to such a notice where they have a reasonable excuse for not doing so, such as that the person is not capable of complying with the notice. Information that is the subject to legal professional privilege is also protected from disclosure under such a notice.

The National Electricity Law also extends the Australian Energy Regulator's information gathering powers. The Bill creates the concepts of a 'general regulatory information order' and a 'regulatory information notice', and outlines the processes by which these instruments may be used by the Australian Energy Regulator.

A general regulatory information order is an order made by the Australian Energy Regulator that requires each regulated network service provider of a specified class, or each related provider of a specified class, to provide the information specified in the order and to prepare, maintain or keep information described in the notice in a manner specified in the order. A regulatory information notice is a notice prepared and served by the Australian Energy Regulator that requires the regulated network service provider, or a related provider, named in the notice to provide the information specified in the notice and to prepare, maintain or keep information described in the notice in a manner and form specified in the notice.

The Australian Energy Regulator can only serve a regulatory information notice or make a general regulatory information order if it considers it reasonably necessary for the performance or exercise of its functions. In considering whether it is reasonably necessary, the Australian Energy Regulator must have regard to the matters to be addressed in the service of the regulatory information notice or the making of the general regulatory information order, and the likely costs that may be incurred by an efficient network service provider or efficient related provider in complying with the notice or order. The Australian Energy Regulator must also exercise its powers under this section in a manner that will or is likely to contribute to the achievement of the national electricity objective.

A key component of these reforms is to extend the Australian Energy Regulator's information gathering powers to parties related to the service provider. This mechanism is designed to ensure that the Australian Energy Regulator has sufficient information to perform its functions and to discourage service providers from using corporate structures to avoid disclosure of information to the regulator, without allowing the Australian Energy Regulator to unduly interfere in competitive commercial arrangements.

The National Electricity Law requires the Australian Energy Regulator to consider additional matters in considering whether it is reasonably necessary to serve a regulatory information notice or make a general regulatory information order for related providers. One of the matters the Australian Energy Regulator is required to consider is whether the service provider is able to provide the required information rather than imposing an obligation on a related provider. The Australian Energy Regulator is also required to consider the extent to which the services provided by the related provider to the service provider are provided on a genuinely competitive basis.

The National Electricity Law clarifies the functions upon which the general regulatory information order and regulatory information notice powers extend. A regulatory information instrument must not be served solely for the Australian Energy Regulator's enforcement functions, appeals or collecting information for the preparation of a service provider performance report. Outside of these areas, the tests for issuing a regulatory information instrument are sufficient to ensure these powers do not create an unnecessary regulatory burden.

The National Electricity Law also recognises that there are certain circumstances where the Australian Energy Regulator needs to issue an urgent regulatory information notice. In such circumstances, the Australian Energy Regulator is required to identify that the notice is an urgent

regulatory information notice and given reasons as to why the regulatory information notice is an urgent notice.

In instances where there is non compliance with a regulatory information instrument, either a general regulatory information order or a regulatory information notice, the National Electricity Law gives the Australian Energy Regulator the ability to make certain assumptions in instances where the regulated network service provider or related provider does not provide the information to the Australian Energy Regulator in accordance with the applicable regulatory information instrument or provides information that is insufficient.

These instruments are intended to clearly set out the information requirements on service providers to report annually and at a revenue reset. By creating clear obligations, regulators, users, related parties and network service providers will be able to more clearly ascertain compliance with the law and the efficiency of prices for services. As well, the framework set out in the National Electricity Law should help to avoid information being collected in several different ways under different parts of the National Electricity Rules.

These amendments will require the Australian Energy Regulator to take into account the comments received, including the likely costs of compliance, before issuing a regulatory information notice. Consultation is intended to ensure the Australian Energy Regulator does not exercise its powers without regard to why it requires the information and taking into account the regulatory burden that may be imposed by the request for information.

Disclosure of confidential information

This Bill also establishes a comprehensive framework covering the circumstances were the Australian Energy Regulator is authorised to disclose confidential information. The Trade Practices Act generally requires the Australian Energy Regulator keep information confidential but allows the National Electricity Law and National Gas Law to specify how and when the Australian Energy Regulator may disclose confidential information. In the regulatory framework for energy, while there is a legitimate need to protect confidential information particularly that relating to businesses in competitive parts of the market, there is also a need to disclose much of a network service provider's information to the public to allow adequate scrutiny of its costs.

Accordingly, the Australian Energy Regulator is able to disclose confidential information with consent, where aggregated, for court proceedings or to accord natural justice. Additionally, where none of the previous options apply or are appropriate, the Australian Energy Regulator is able to disclose information where it would not cause detriment or if the public benefit of disclosing outweighs the detriment. The Australian Energy Regulator must give affected parties 5 business days to comment on such a disclosure and if submissions are received, must issue a further disclosure notice and wait a further 5 business days before disclosure. These decisions are also subject to merits review in the Australian Competition Tribunal.

Performance Reporting

This Bill allows the Australian Energy Regulator to publish performance reports on the financial and operational performance of network service providers. This is a key aspect of transparency for both distribution and transmission network service providers and will be of great benefit to users and consumers. Performance reporting on regulated services is an important element of the regulatory framework as it allows the Australian Energy Regulator to consider whether the network service providers are complying with the regulatory determinations, and to promote competition by comparison for monopoly service providers.

In preparing a report on the financial and operational performance of a network service provider, the National Electricity Law provides that the Australian Energy Regulator can only prepare a report in a manner that will, or is likely to, contribute to the achievement of the National Electricity Objective. The National Electricity Law also provides that the report prepared by the Australian Energy Regulator can include performance against network service standards, customer service standards, and profitability of the regulated services. The report may also cover other performance of network service providers directly related to the economic regulatory functions of the Australian Energy Regulator. The purpose of these requirements is to provide the regulator and users and consumers with information about how the regulated network service provider is performing more broadly to ensure it can deliver reliable and efficient network services.

The National Electricity Law also requires the Australian Energy Regulator, before preparing a performance report under the law to consult with persons specified in the Rules and in accordance with the consultation process outlined in the Rules. The initial rules require the

Australian Energy Regulator to consult with service providers, associations representing network service providers, and the public generally in order to determine the appropriate priorities and objectives to be addressed in the preparation of a performance report. In preparing the performance report, the Australian Energy Regulator is also required to consult with jurisdictional safety and technical regulators to avoid unnecessary duplication.

The Rules also provide the service provider with an opportunity, at least 30 business days before the publication of the report to, submit information and make submissions relevant to the subject matter of the report, and the service provider must be given an opportunity to comment on material of a factual nature to be included in the report. This provides an opportunity for affected stakeholders to be consulted while at the same time encouraging transparency and insight into a network service provider's performance.

Performance reporting is already a major part of the distribution regulatory regime in South Australia and it will be an important addition to the national framework. This provision will be repeated for gas in the National Gas Law.

The Rule Change Process

The Australian Energy Market Commission has been responsible for developing the National Electricity Rules since July 2005. This process has been successful and has resulted in important developments such as the transmission pricing rule and reform of regional boundaries. As with any new process, over the last two years some concerns have been raised about the workability of the current rule change process.

This Bill will address these workability concerns and assist the efficient operation of the rule change process. It was always intended that the Australian Energy Market Commission, although not being able to initiate rule changes itself, would be able to solve the issues or problems raised by a rule change proposal by implementing a solution which it considers best contributes to the achievement of the national electricity objective. Amendments in this Bill make that power clear.

The Australian Energy Market Commission will be given a greater ability to manage its workload including the power to consolidate multiple rule change proposals and deal with them as one proposal where it considers this to be efficient. The Australian Energy Market Commission will also be given longer to prepare its draft and final rule determinations and will be able to prospectively extend timelines for complex matters. The Australian Energy Market Commission will also be able to stop the clock on a rule change proposal while it is requesting additional information from a proponent.

This Bill will introduce a new fast track procedure that will allow the Australian Energy Market Commission to shorten the time required to make a rule, from 26 weeks to 17 weeks, when the rule change proposal has been effectively consulted on by National Electricity Market Management Company, the Australian Energy Regulator or the Reliability Panel. Fast tracking is designed to prevent duplication of consultation processes and to ensure that rule changes are processed efficiently.

While the Bill introduces the power to levy fees for rule change applications, it has been decided not to levy any such fees in the initial Regulations. This recognises the public interest in an open and accessible rule change process but allows further action should the revised process lead to a large number of vexatious applications.

These changes will also be implemented in the National Gas Law.

Merits Review

This package will introduce a mechanism for limited merits review by the Australian Competition Tribunal of specified regulatory decisions under the National Electricity Law. This merits review model will be mirrored in the National Gas Law to ensure consistent regulation of electricity and gas.

These amendments will allow a range of affected parties, including; network service providers, users and consumer associations, to seek review of the primary transmission and distribution determinations made by the Australian Energy Regulator (which apply for particular regulatory periods, usually 5 years). Regulations under this Act may prescribe other decisions of the Australian Energy Regulator under the Rules to be decisions subject to merits review, and it is intended that pass through applications during a regulatory period under the Rules will be so prescribed. No others decisions are currently intended to be included in the initial Regulations.

Merits review will only be available if the original decision contained errors of fact, if the original decision maker's discretion was incorrectly exercised, or if their decision was unreasonable, having regard to all the circumstances.

An applicant for merits review will need to seek leave from the Tribunal to bring an action for review and, amongst other things, will need to meet a materiality threshold. The Tribunal must be satisfied that there is a serious issue to be heard. In addition, for revenue related errors, the amount at issue as a result of all of the alleged grounds of review must exceed the lesser of $5 million or 2 percent of average annual regulated revenue. An application for leave setting out the grounds of review must be made within 15 business days of a reviewable decision being published.

There will be a relatively wide scope for persons and groups to intervene in merits review proceedings, once commenced. Persons with a sufficient interest in the original decision are able to intervene, as well as jurisdictions, and user and consumer associations and interest groups with the leave of the Tribunal. Specific provision is made for the intervention of user and consumer associations and interest groups to overcome legal arguments that regulatory decisions are not sufficiently connected to their concerns or members.

The Tribunal will be able to affirm or vary the original decision, or set the decision aside and either substitute a new decision or remit the matter to the Australian Energy Regulator for reconsideration.

Consistent with the current gas regime and the desire to make the original decision making process meaningful, arguments to make out a ground of review must be based upon submissions made previously to the Australian Energy Regulator. The Australian Energy Regulator is also able to raise related and consequential matters in a review to ensure that the Tribunal takes account of broader issues affecting the decision.

Access Disputes

This legislation introduces a new procedure for disputes relating to access, and these provisions will be common with the National Gas Law. Under the new Part 10, a dispute occurs when a user or prospective user is unable to agree with an electricity network service provider about one or more aspects of access to an electricity network service that are specified by the Rules to be an aspect about which there can be an access dispute. The initial distribution rules will specify price and non price aspects of access to a distribution network as aspects about which there can be an access dispute.

It is not proposed, however, to so specify aspects of access to transmission networks. Transmission access disputes will therefore continue to be subject to the dispute resolution framework in Chapter 6A of the National Electricity Rules.

These amendments will allow the Australian Energy Regulator to act as arbitrator between parties to an access dispute. They will establish the Australian Energy Regulator's powers and make their access determinations binding on the parties to an access dispute. This access dispute framework is consistent with the Competition Principles Agreement and Parts IIIA and XIC of the Commonwealth Trade Practices Act.

Under the new process the Australian Energy Regulator will be required to terminate access disputes where it is clear that the service sought in the dispute is capable of being provided on a genuinely competitive basis. The Bill also ensures that existing contractual rights are protected in access disputes and that, by obliging the Australian Energy Regulator to take into account the revenue and pricing principles, network service providers are appropriately compensated for providing access.

Other elements of access

The Bill also establishes in the National Electricity Law the fundamental obligation on network service providers to comply with the distribution and transmission determinations made by the Australian Energy Regulator. This recognises the fundamental importance of the determinations in the regime. Additionally, networks and other users will be prohibited from engaging in conduct for the purpose of preventing and hindering access to a network in a similar way to section 44ZZ of the Trade Practices Act and section 13 of the Gas Pipelines Access Law. The changes will assist the National Electricity Law and Rules to be an effective access regime under the Trade Practices Act and accordingly provide immunity from inconsistent regulation under Part IIIA of the Trade Practices Act.

Enforcement guidelines

In response to several significant power system incidents, in October 2005 the Ministerial Council on Energy directed the Australian Energy Market Commission to undertake a review into the enforcement of and compliance with technical standards under the National Electricity Rules.

Following an extensive consultation process, in September 2006 the Australian Energy Market Commission released its Final Report making a number of recommendations about compliance with, and enforcement of, technical standards relating to electricity generators. Its recommendations focused on improvements to the processes and procedures for compliance monitoring, notification and rectification of technical standards. It also recommended that the Ministerial Council on Energy should propose a rule change to give effect to those recommendations.

The National Generators Forum in consultation with the Australian Energy Regulator and National Electricity Market Management Company is developing rule changes relating to generator technical standards which resulted from the Australian Energy Market Commission review.

The Ministerial Council on Energy, in its communiqué of May 2007 noted this work and commented that it was appropriate and consistent with the overall market governance model for the National Generator's Forum, in consultation with National Electricity Market Management Company and the Australian Energy Regulator, to initiate a rule change proposal based on the Australian Energy Market Commission recommendations through the rule change process.

To ensure that the proposed rule changes work consistently with the governance principles under the National Electricity Law, this Bill introduces some important amendments which will give effect to the compliance and enforcement regime of the Australian Energy Regulator. The National Electricity Law will include compliance programs as a factor for a Court to consider when determining a penalty level. In addition, a provision will be inserted into the National Electricity Law providing that the Australian Energy Regulator, with respect to its enforcement functions, may publish guidelines specifying matters to which it will have regard in deciding whether to issue an infringement notice or institute proceedings with respect to a breach of the National Electricity Law or Rules. These amendments to the National Electricity Law are an essential addition to ensure that the legislative framework appropriately provides the framework for compliance with the Law and Rules, an effective enforcement and monitoring regime, and provides the appropriate certainty for market participants on how the Australian Energy Regulator will perform its enforcement functions and powers.

National Electricity Rules

The amendment to the National Electricity Law is accompanied by amendments to Chapter 6 of the National Electricity Rules, which guide the Australian Energy Regulator in making revenue and pricing determinations for distribution services. This legislation allows initial amendments to the rules to be made by ministerial instrument to achieve a national framework for the economic regulation of distribution. After the enactment of the initial rules, the Australian Energy Market Commission will be able to amend the distribution rules through the rule change process. The Australian Energy Regulator will also become the regulator for the purposes of regulating electricity distribution networks and will be guided by the National Electricity Law and Chapter 6 in performing this function. It is noted that the new Chapter 6 distribution revenue and pricing rules will be applied by the Australian Energy Regulator and come into operation at the next regulatory resets for electricity distribution networks. The intent is not for that framework to apply to existing distribution regulatory determinations.

The principle change will be the replacement of the distribution pricing rules in Part D and E of Chapter 6 of the National Electricity Rules and the derogated jurisdictional arrangements, with nationally consistent distribution revenue and pricing rules. The new rules look to implement the following.

First, the amended rules implement the advice of the Expert Panel and in particular the revised pricing principles and framework for decisions on the form of regulation. In developing the rules, the Ministerial Council on Energy has been guided by the National Electricity Objective. Consistent with the objective, the distribution rules are designed to accommodate the "fit for purpose" decision making model.

Second, the amended rules take into account the work and drafting style of the Australian Energy Market Commission in its revised transmission revenue and pricing rules. This is to ensure that the Ministerial Council on Energy's objective of creating a consistent regulatory framework, to

the extent appropriate, is established for transmission and distribution regulation, while at the same time recognising fundamental differences between distribution and transmission networks.

Third, the amended rules build upon the existing distribution arrangements in each State and Territory to ensure unnecessary disruption and uncertainty is not created by the changes to the national framework required by the amended Australian Energy Market Agreement. To manage this, savings and transitional provisions are included to ensure appropriate transitioning from the existing regulatory framework to the new national framework.

The amendments to Chapter 6 of the rules have created a framework that balances the need to provide certainty to business and consumers with the challenges of bringing six varying regulatory regimes into one.

I will now outline some of the key elements of the new national electricity distribution revenue and pricing rules.

Classification of distribution services and the regulatory process

The rules set out a principles based approach to determine the form of regulation and the control mechanisms used to determine revenues and prices, on a determination by determination basis. This will allow the Australian Energy Regulator to accommodate the wide range of jurisdictional arrangements across the National Electricity Market.

The rules provide for distribution services to be classified between standard control services – in which the Australian Energy Regulator will apply a building block approach to setting the revenue requirements, alternative control services—in which the Australian Energy Regulator can apply a "light handed" form of price or revenue control, or the negotiate/arbitrate framework. In classifying these services, the Australian Energy Regulator is to have regard to how the distribution services were previously classified and whether there has been a change in circumstances, guided by the form of regulation factors, which would warrant a change in the classification of a distribution services. The regulatory framework for the treatment of negotiable distributions services, standard control services and alternative control services is provided for in the rules.

A two stage determination process that balances certainty and flexibility has been included in the rules. This commences with the ability for the Australian Energy Regulator to prepare and publish a Framework and Approach document in anticipation of every distribution determination. The aim of this document is to set out the form of price control to apply in a distribution determination, set out the classification of distribution services, tailor the application of incentive schemes to individual distribution business, and cover other appropriate regulatory matters. This element of the process will aid the network business to prepare the revenue application it is required to submit 13 months prior to the expiry of a distribution determination, and encourage stakeholder participation in the regulatory process.

Determining the revenue requirements

The rules provide for a framework upon which the Australian Energy Regulator is to determine the revenue requirements using a building block approach for standard control services.

The Australian Energy Regulator is appropriately guided by a "fit for purpose" framework in assessing the element of a service provider's regulatory proposal. For example, the rules set out the basis upon which an initial asset base is established for a regulated network service provider. Existing regulatory asset values for each distribution business are set out in the rules, and the rules also allow for a roll forward approach. The rules also set out a framework to consider capital and operating expenditure requirements, which are key elements of a service provider's costs. The Australian Energy Regulator is guided by principles that enable it to determine whether to accept the forecasts proposed by a service provider.

The rules also provide a process upon which the Australian Energy Regulator determines the cost of capital. The final decision on the cost of capital for a distribution network provider is part of the final regulatory determination. However, the rules allow the Australian Energy Regulator to publish its views on industry wide cost of capital values and methodology in a regulatory intent document. This framework creates a balance between creating uniformity in the investment incentives of network service providers across the National Electricity Market while also recognising that these methodologies and values change as the market conditions change.

The rules also provide a mechanism for adjusting the regulatory determination through the recognition of pass through events. The intent of the pass through provisions is to recognise costs,

whether positive or negative, that are outside of the service provider's control while protecting the incentive properties of the regulatory framework. The rules define certain pass through events but provide the regulator with the flexibility to specify additional events in its determination.

A key feature of the rules is the ability for the Australian Energy Regulator to develop incentive schemes around capital and operating expenditure efficiency, service standard efficiency and demand management. These schemes can be tailored to consider the unique circumstances of the network service provider during the Framework and Approach phase of the regulatory process. In developing the schemes, the Australian Energy Regulator is guided by principles including that it must be satisfied that the application of a scheme is likely to result in future benefits to customers sufficient to warrant the payment of any rewards to the service provider. The schemes are in addition to the minimum service standards and other guaranteed service level arrangements in place through other jurisdictional instruments.

Distribution pricing rules

The new rules also set out a distribution pricing framework which was developed having regard to the approach applied across jurisdictions.

While the pricing arrangements promote the setting of efficient prices, the rules will also contain a side constraint which limits the increase in distribution tariffs to the greater of CPI minus X plus two percent or two percent per annum for a class of customers. The X factor and side constraints together ensure appropriate smoothing of price or revenue increases or decreases.

The rules also set out process for the Australian Energy Regulator to annually approval a service provider's pricing proposal and ensure compliance with the distribution determination and other requirements of the rules.

Removing barriers to demand side response and distributed generation options

The new rules help deliver on the Council of Australian Governments' commitment to remove barriers to the efficient uptake of renewable and distributed generation.

Consistent with this commitment, the Ministerial Council on Energy, in developing the new rules actively sought independent expert opinion on potential barriers to distributed generation and demand side response. A consultation paper addressing these barriers was released in parallel with a draft of the new rules and public submissions on the report were considered as part of the new rules. The purpose of these changes is to ensure that the rules do not inadvertently discourage demand management and embedded generation options that benefit the market and consumers.

The new rules provide the appropriate balance in considering network and non network options in meeting investment drivers as well as ensuring there are appropriate incentives for network businesses, to the extent it can, manage demand. Included in the new rules are provisions to ensure that home owners with solar PV units capture the benefits of their energy savings in reduced network charges and large customers who manage their demand to make lasting reductions will also be able to have their tariff allocation reassessed. Treatment of embedded generators is equalised with large generators by ensuring they are not charged to export electricity to the grid. The new rules include a Demand Management incentive mechanism to help address network operator incentives for adopting efficient non network options. Efficiency incentives also now consider arrangements that reduce electricity lost in distribution networks.

The Ministerial Council on Energy is continuing to address barriers to the efficient uptake of renewable and distributed generation in its current work programs, including as part of the Ministerial Council on Energy's work stream that looks to create a national framework for electricity distribution network planning and connection arrangements and as part of the non price distribution and retail legislative package. Addressing these issues will help to reduce greenhouse emissions in an economically efficient manner.

Reliability Panel

The Bill covers off the immunity of members of the Reliability Panel to ensure that it can continue to function effectively and fulfil its crucial role in the National Electricity Market. Any liability claim will instead lie with the Australian Energy Market Commission.

Australian Energy Market Commission officials assisting the Reliability Panel are already covered through the existing immunity provision in the National Electricity Law.

Savings and transitional provisions

To ensure a smooth transition to the new National Electricity Law and Rules, savings and transitional provisions are included in both. Additional savings and transitional provisions will also be included in the Regulations.

These provisions will enable existing distribution determinations to continue operating under the current rules until they expire. The existing jurisdictional ring fencing guidelines will be retained and will be transferred to the national framework under the non price distribution and retail legislative package. The capital contributions framework will also be retained and dealt with through a separate work stream creating a national framework for electricity network planning, connection and connection charges.

The transitional provisions will also allow jurisdictional regulators to share information with the Australian Energy Regulator to enable them to administer existing determinations and facilitate them making future revenue determinations.

South Australian savings and transitional provisions

As I previously noted, the South Australian transitional provisions contained in the National Electricity Rules appropriately provide for the transition from the current regime to the national framework.

The first of the transitional arrangements will ensure that some aspects of the Essential Services Commission of South Australia's determination for the regulatory period 1 July 2005 to 30 June 2010 are reflected in the Australian Energy Regulator's first regulatory determination for the South Australian electricity distribution network. This will ensure that the South Australian distribution network is protected from being disadvantaged by the transition to the new regime.

Protection of South Australian consumers from sudden price rises is also important. As I noted previously, the distribution rules allows for the application of a 'side constraint' on tariffs in relation to the provision of standard control services. Transitional arrangements in South Australia will impose an additional $10 per annum limit on increases to the fixed supply charge component for small customer's electricity bills. This arrangement will remain in force for the entire 2010 2015 South Australian distribution determination. The transitional provision will also allow the Australian Energy Regulator to review the application of this additional side constraint prior to issuing its framework and approach paper for the 2015 regulatory reset.

Interpretation provisions

The Bill includes minor amendments to the schedule of interpretative provisions. This Schedule 2 to the new Law means the Law is subject to uniform interpretation in all participating jurisdictions and will be consistent with the National Gas Law.

Conclusion

As I noted at the beginning of this speech, this Bill will strengthen and improve the quality, timeliness and national character of the governance and economic regulation of the national electricity market, for the benefit of South Australians and all Australians.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Definition

The "NEL" means the National Electricity Law (set out in the Schedule to the Act).

4—Amendment provisions

This clause is formal.

Part 2—Amendment of National Electricity (South Australia) Act 1996 as part of the national scheme

5—Amendment of section 2 of the NEL—Definitions

This clause provides the definitions connected with the amendments to be made to the NEL, makes consequential amendments, and deletes the definitions that are no longer required.

6—Amendment of the NEL—New sections 2A to 2F inserted

A number of additional provisions will explain key concepts under the NEL.

For example, an access dispute will be a dispute between a network service user or prospective network service user and a network service provider about an aspect of access to an electricity network service specified by the Rules to be an aspect to which Part 10 applies.

Another provision will set out the form of regulation factors under the NEL, being—

(a) the presence and extent of any barriers to entry in a market for electricity network services;

(b) the presence and extent of any network externalities (that is, interdependencies) between an electricity network service provided by a network service provider and any other electricity network service provided by the network service provider;

(c) the presence and extent of any network externalities (that is, interdependencies) between an electricity network service provided by a network service provider and any other service provided by the network service provider in any other market;

(d) the extent to which any market power possessed by a network service provider is, or is likely to be, mitigated by any countervailing market power possessed by a network service user or prospective network service user;

(e) the presence and extent of any substitute, and the elasticity of demand, in a market for an electricity network service in which a network service provider provides that service;

(f) the presence and extent of any substitute for, and the elasticity of demand in a market for, electricity or gas (as the case may be);

(g) the extent to which there is information available to a prospective network service user or network service user, and whether that information is adequate, to enable the prospective network service user or network service user to negotiate on an informed basis with a network service provider for the provision of an electricity network service to them by the network service provider.

7—Amendment of section 6 of the NEL—Ministers of participating jurisdictions

This amendment deletes redundant provisions.

8—Amendment of the NEL—Section 7 substituted and new section 7A inserted

The NEL is to have a revised objective, being to promote efficient investment in, and efficient operation and use of, electricity for the long term interests of consumers of electricity with respect to—

(a) price, quality, safety, reliability and security of supply of electricity; and

(b) the reliability, safety and security of the national electricity system.

New section 7A will set out a set of revenue and pricing principles for the purposes of the NEL.

9—Amendment of section 8 of the NEL—MCE statements of policy principles

MCE policy principles will expressly apply in relation to making a Rule or conducting a review under section 45.

10—Amendment of the NEL—New Division heading inserted into Part 2

Part 2 of the NEL is to be divided into Divisions.

11—Amendment of section 11 of the NEL—Electricity market activities in this jurisdiction

Section 11 of the NEL is to be amended so that its application is expressed to be to a generating system connected to the interconnected national electricity system, as it exists in the particular jurisdiction.

12—Amendment of the NEL—New Division 2 inserted into Part 2

Specific compliance obligations are to be placed on operators, with civil penalty provisions.

13—Amendment of section 15 of the NEL—Functions and powers of AER

The AER is to be vested with a number of additional functions under the NEL. Express provision with respect to the AER having the power to do all things necessary or convenient to be done in connection with the performance of its functions is to be included in the NEL.

14—Amendment of the NEL—New section 16 substituted

Section 16 of the NEL must be revised to take into account the national electricity objective and the revenue and pricing principles.

15—Amendment of the NEL—New section 18 substituted

Section 44AAF of the Trade Practices Act 1974 will have effect as if it formed part of the NEL.

16—Amendment of the NEL—New heading to Division 2 of Part 3

Division 2 of Part 3 is now to be specifically relevant to search warrants.

17—Amendment of section 19 of the NEL—Definitions

The term relevant provision is to apply to any provision of the NEL, the Regulations or the Rules.

18—Amendment of the NEL—New section 20 substituted and new sections 20A and 20B inserted

An authorised person will be required to comply with any direction of the AER in exercising powers or functions as an authorised person. An authorised person will have an identity card issued by the AER.

19—Amendment of section 21 of the NEL—Search warrant

An application for a search warrant may be made if an authorised person reasonably suspects that there may have been a breach of a relevant provision and there is or may be a thing or things of a particular kind connected with the breach on or in the relevant place.

20—Amendment of the NEL—deletion and substitution of sections 22 and 23

The provisions relating to access to premises under the terms of a warrant are to be clarified and revised.

21—Amendment of section 24 of the NEL—Copies of seized documents

These are clarifying amendments.

22—Amendment of NEL—New section 25 substituted

A document or other thing seized by an authorised person under a warrant must always be given to the AER.

23—Amendment of section 26 of the NEL—Extension of period of retention of documents or things seized

24—Amendment of section 26 of the NEL—Obstruction of person authorised to enter

These are consequential amendments.

25—Amendment of the NEL—New Divisions 3 to 7 of Part 3 inserted

The information gathering powers of the AER are to be revised for the purposes of the NEL.

26—Amendment of the NEL—New section 31 substituted

Section 24 of the Australian Energy Market Commission Establishment Act 2004 is to apply as if it formed part of the NEL.

27—Amendment of section 32 of the NEL—AEMC must have regard to national electricity objective

This is a consequential amendment.

28—Amendment of section 34 of the NEL—Rule making powers

This amendment will make it clear that the AEMC may make Rules for or with respect to any matter or thing contemplated by the NEL, or necessary or expedient for the purposes of the NEL. It is also to be made clear that certain matters in guidelines or other documents adopted under the Rules may be left to be determined by the AER, the AEMC, NEMMCO or a jurisdictional regulator.

29—Amendment of the NEL—New sections 35 and 36 substituted

Sections 35 and 36 are to be revised. Certain Rules will not be able to be made without the consent of the MCE. A Rule may not provide for a criminal penalty or civil penalty for a breach of a provision of a Rule.

30—Amendment of section 37 of the NEL—Documents etc applied, adopted and incorporated by Rules to be publicly available

Section 37(2) of the NEL is to be revised so that it sets out 2 methods of making a Rule publicly available.

31—Amendment of the NEL—deletion of section 40

The definition in section 40 of the NEL is now to be found in section 2 of the NEL.

32—Amendment of section 41 of the NEL—MCE directions

A direction from the MCE to the AEMC for the conduct of a review may extend to—

(a) any matter relating to any other market for electricity; or

(b) the effectiveness of competition in a market for electricity for the purpose of giving advice about whether to retain, remove or reintroduce price controls on prices for retail electricity services.

33—Amendment of section 42 of the NEL—Terms of reference

The MCE will now be able to—

(a) require the AEMC to have specified objectives in the conduct of a MCE directed review which need not be limited by the national electricity objective;

(b) require the AEMC to assess a particular matter in relation to services provided in a market for electricity against specified criteria or a specified methodology;

(c) require the AEMC—

(i) to assess a particular matter in relation to services provided in a market for electricity; and

(ii) to develop appropriate and relevant criteria, or an appropriate and relevant methodology, for the purpose of the required assessment.

34—Amendment of section 45 of the NEL—Reviews by AEMC

This amendment makes it clear that publication of a report must take into account the operation of section 48 of the NEL.

35—Amendment of section 46 of the NEL—AEMC must publish and make available up to date versions of Rules

This amendment makes it clear that the Rules must be maintained on the AEMC website.

36—Amendment of section 47 of the NEL—Fees

This amendment makes it clear that a fee may be calculated in accordance with a specified formula or methodology. A fee may extend to a service under the Regulations.

37—Amendment of section 48 of the NEL—Confidentiality of information

This is a consequential amendment.

38—Amendment of section 49 of the NEL—Functions of NEMMCO in respect of national electricity market

This amendment inserts a note to refer to the fact that NEMMCO will also have responsibilities with respect to the new Consumer Advocacy Panel.

39—Amendment of the NEL—New Parts 5A and 5B inserted

These new provisions provide for the vesting of functions and necessary or convenient powers.

40—Amendment of section 58 of the NEL—Definitions

The list of civil penalty provisions needs to be revised.

41—Amendment of section 61 of the NEL—Proceedings for breaches of a provision of this Law, the Regulations or the Rules that are not offences

This is a drafting matter to provide consistency with section 61(1) of the NEL.

42—Amendment of section 62 of the NEL—Additional Court orders

The note is no longer appropriate.

43—Amendment of section 64 of the NEL—Matters for which there must be regard in determining amount of civil penalty

In determining a civil penalty amount, it will now also be expressly relevant to have regard to whether the service provider had in place a compliance program approved by the AER or required under the Rules, and the extent of compliance with such a program.

44—Amendment of the NEL—New Division 2A of Part 6 inserted

The Commercial Arbitration Acts of each jurisdiction are to apply to proceedings involving a Rule dispute and decision or determination of a Dispute resolution panel in accordance with new section 69A.

45—Amendment of the NEL—New section 71 substituted

These amendments make clearer provision with respect to appeals from decisions or determinations of a Dispute resolution panel, being appeals on questions of law.

46—Amendment of the NEL—New Divisions 3A and 3B of Part 6 inserted

These amendments introduce a scheme for merits review and other non judicial review.

47—Amendment of section 74 of the NEL—Power to serve a notice

The AER will be required to serve an infringement notice within 12 months after the date on which the AER forms a belief that there has been a breach of a civil penalty provision.

48—Amendment of section 81 of the NEL—Payment expiates breach of civil penalty provision

The acceptance of the infringement penalty by the AER should determine the matter.

49—Amendment of the NEL—Deletion of section 84

50—Amendment of section 85 of the NEL—Offences and breaches by corporations

51—Amendment of section 86 of the NEL—Proceedings for breaches of certain provisions in relation to actions of officers and employees of relevant participants

52—Amendment of the NEL—New Subdivision heading inserted into Division 1 of Part 7

These are consequential amendments.

53—Amendment of section 87 of the NEL—Definitions

Various definitions must be revised or deleted for the purposes of Part 7.

54—Amendment of the NEL—New Subdivision 2 of Division 1 of Part 7 inserted

The form of regulation factors and the revenue and pricing principles will be relevant to certain rule making functions of the AEMC.

55—Amendment of the NEL—New heading to Division 2 of Part 7

56—Amendment of the NEL—New section 90A inserted

It is necessary for the Minister to assume additional rule making functions.

57—Amendment of section 91 of the NEL—Initiation of making of a Rule

This amendment clarifies the operation of section 91(2) of the NEL.

58—Amendment of the NEL—New sections 91A and 91B inserted

The AEMC will be able to make a rule that is different from a market initiated Rule if the AEMC is satisfied that its proposed rule will or is more likely to better contribute to the achievement of the national electricity objective.

59—Amendment of section 92 of the NEL—Contents of requests for Rules

A request for the making of a Rule may give rise to the requirement to pay an application fee prescribed by the Regulations.

60—Amendment of the NEL—New section 92A inserted

The AEMC will be able to waive an application fee under section 92.

61—Amendment of the NEL—New sections 93 and 94 substituted and new section 94A inserted

The powers of the AEMC to consolidate requests for rules are to be clarified. The processes surrounding the consideration of a request for a rule are to be revised to some extent. The AEMC will be given express power to request additional information from a person who requests the making of a rule.

62—Amendment of section 95 of the NEL—Notice of proposed Rule

If the AEMC decides to act on a request for a rule to be made, or forms an intention to make an AEMC initiated rule, the AEMC will publish notice of the request or intention and a draft of the proposed rule.

63—Amendment of section 96 of the NEL—Publication of non controversial or urgent final Rule determination

The period for acting under section 96(1) is to be extended from 4 weeks to 6 weeks.

64—Amendment of the NEL—New section 96A inserted

Certain requests for rules will be able to be dealt with expeditiously.

65—Amendment of section 99 of the NEL—Draft Rule determinations

A draft rule determination will be made within 10 weeks after the date of the notice under section 95, or 5 weeks in the case of a rule under section 96A.

66—Amendment of section 101 of the NEL—Pre final Rule determination hearings

It will be made clear that the AEMC may decide to hold a hearing in relation to a draft rule determination on its own initiative.

67—Amendment of section 102 of the NEL—Final Rule determinations

The AEMC will make a final rule determination and publish it within 6 weeks after the period for submissions or comments comes to an end.

68—Amendment of the NEL—New section 102A inserted

Provision must be made for cases where the AEMC decides to make a more preferred rule.

69—Amendment of section 107 of the NEL—Extensions of periods of time in Rule making procedure

The AEMC will be able to extend a period of time in necessary cases (rather than relying on a "public interest" test).

70—Amendment of the NEL—New section 107A inserted

Further consultation may occur in relation to a proposed rule change and accordingly specified time periods may be extended.

71—Amendment of section 108 of the NEL—AEMC may publish written submissions and comments unless confidential

This is a consequential amendment.

72—Amendment of the NEL—New section 108A inserted

The AEMC will be required to prepare a report if it does not make a final rule determination within 12 months after publication of the relevant notice under section 95.

73—Amendment of section 119 of the NEL—Immunity of NEMMCO and network service providers

74—Amendment of section 120 of the NEL—Immunity in relation to failure to supply electricity

These are consequential amendments.

75—Amendment of section of the NEL—New section 122 and new parts 10 and 11 inserted

It is necessary to include an immunity provision with respect to members of the Reliability Panel. A new Part relating to access disputes is also to be enacted. Other miscellaneous provisions are also to be inserted into the NEL.

76—Amendment of Schedule 1 to the NEL

The matters that may be the subject of the Rules are to be revised and expanded.

77—Amendment of Schedule 2 to the NEL—Clause 1

78—Amendment of Schedule 2 to the NEL—Clause 2

79—Amendment of Schedule 2 to the NEL—Clause 4

80—Amendment of Schedule 2 to the NEL—Clause 8

81—Amendment of Schedule 2 to the NEL—Clause 10

82—Amendment of Schedule 2 to the NEL—New Parts 6A and 6B of Schedule 2 inserted

83—Amendment of Schedule 2 to the NEL—Clause 39

84—Amendment of Schedule 2 to the NEL—Clause 41

85—Amendment of Schedule 2 to the NEL—Clause 42

These clauses enact additional provisions with respect to the interpretation and operation of the NEL.

86—Amendment of Schedule 3 to the NEL—Clause 1

87—Amendment of Schedule 3 to the NEL—New clause 4A inserted

88—Amendment of Schedule 3 to the NEL—New clauses 10A and 10B inserted

89—Amendment of Schedule 3 to the NEL—New clause 18 inserted

These are transitional provisions to be inserted into the NEL.

Part 3—Amendment of National Electricity (South Australia) Act 1996 to make consequential amendments

90—Amendment of section 12—Specific regulation making power

These amendments will allow the regulations to deal with matters of a transitional nature on account of amendments made from time to time to the new National Electricity Law.

91—Insertion of section 15

The provisions of clause 2 of Schedule 2 of the National Electricity Law relating to the conferral of functions and powers on Commonwealth bodies will extend to any such conferral effected by a provision of the Act or a regulation under the Act.

Part 4—Amendment of National Electricity (South Australia) Act 1996 to address local issues

92—Insertion of Part 6

New Part 6 will facilitate the transfer of the economic regulation of electricity distribution to the Australian Energy Regulator under South Australian law. Under these provisions, ESCoSA will continue to administer the 2005 2010 Electricity Distribution Price Determination made in April 2005 and the AER will undertake responsibility to make future price determinations, subject to certain requirements set out in new section 18(5) and to the provisions of the relevant South Australian Pricing Order.

Debate adjourned on motion of the Hon. D.W. Ridgway.

AUSTRALIAN ENERGY MARKET COMMISSION ESTABLISHMENT (CONSUMER ADVOCACY PANEL) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (18:01): 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 Bill I am introducing today significantly strengthens the consumer advocacy arrangements for both gas and electricity through the establishment of a consumer advocacy funding body to facilitate consumer engagement with industry. The legislative basis for the proposed consumer advocacy arrangements forms part of the national 'economic' legislative package of energy reforms, the first part of which is the National Electricity (South Australia) (National Electricity Law—Miscellaneous Amendments) Amendment Bill 2007.

The current national consumer advocacy arrangements were developed by the National Electricity Code Administrator in 2001 recognising that consumers should have the same rights to be involved in National Electricity Market decision making as service providers in the market. On 4 November 2005, the Ministerial Council on Energy endorsed new arrangements to strengthen consumer advocacy across the Australian energy sector to provide a long term framework for energy advocacy and to include gas advocacy in the energy funding mix. The new framework will also have a focus on small to medium end-users. The new arrangements will replace those currently in place under clause 8.10 of the National Electricity Rules.

The Ministerial Council on Energy decided that in order to provide for long-term energy advocacy arrangements which dealt with both gas and electricity and to enable clear and transparent governance and accountability mechanisms, the most appropriate mechanism to implement the new consumer advocacy arrangements would be through amendments to the Australian Energy Market Commission Establishment Act 2004.

This Bill establishes the Consumer Advocacy Panel (the Panel) as a constituent, but independent, part of the Australian Energy Market Commission. This will clearly recognise the Panel's role in the Australian energy market rather than just gas or electricity. While the Australian Energy Market Commission will be responsible for the administration of the new Consumer

Advocacy Panel, to ensure the independence of the Panel is not compromised, the Bill clearly states the Panel's functions in allocating grants and commissioning research are not subject to the direction or control of the Australian Energy Market Commission or Ministerial Council on Energy.

The Panel is comprised of a Chair and four other Panel members, who will be responsible for grant allocation activities and commissioning research in both the gas and electricity sectors. Regulations to be made under the Bill will include criteria with which any grant funding must be consistent.

The Panel is empowered to identify areas of research which would benefit consumers. The Bill also provides for a cap on research projects that the Panel can initiate to a maximum of 25 per cent of the Panel's total annual grant budget. This is to ensure that the emphasis remains on using funds that are available for advocacy purposes.

The Panel is required to seek to promote the interests of all consumers of electricity or natural gas while paying particular regard to benefiting small to medium consumers of electricity or natural gas. The proposed focus on small to medium consumers is not designed to limit consumer advocacy and research funding to a defined group, but recognises that small to medium consumers are less likely to have detailed knowledge of the operations of the energy market and are less likely to have the financial resources to support advocacy. Nevertheless, all energy consumer advocates will be eligible to be considered for funding. Small to medium consumers will be defined in the regulations as those that use less than 4GWh of electricity or 100TJ of natural gas per year.

The Ministerial Council on Energy will have responsibility for appointing the Chair and other Panel members. It will also approve the grant allocation guidelines. The Chair and other Panel members will be selected on the basis of their technical expertise and will need to be independent of sectoral representation. The Panel will be supported by an Executive Director and staff.

The Panel is required to publish a draft of its annual budget on its website for public comment. This provides an opportunity for the public to scrutinise the Panel's budget and to provide submissions. In addition, the Panel's budget is subject to approval by the Ministerial Council on Energy. The operations of the Panel, including all financial transactions on its behalf, will be subject to scrutiny by the Auditor-General as part of their auditing of the Australian Energy Market Commission.

The Australian Energy Market Commission will be responsible for grant funding and other costs that relate to gas advocacy and the National Electricity Market Management Company will be responsible for grant funding and other costs that relate to electricity advocacy. As market measures similar to that of the electricity market operator have yet to be developed for natural gas, the Australian Energy Market Commission will be the funding body for gas related advocacy projects until such market operator mechanisms are developed.

The Panel will have the discretion in determining the appropriate ratio of funds, between electricity and gas, required to fulfil its administration needs as well as grant funding for joint benefit projects. It is anticipated that at the early stages of the new consumer advocacy arrangements that there will be a higher proportion of funds directed towards electricity advocacy rather than gas advocacy as the gas market has not yet reached the same level of maturity as the electricity market. Hence, the funds for joint benefit projects and the administrative costs of the Panel in the initial years may be more broadly funded by National Electricity Market Management Company market customer fees.

In summary, the Bill recognises that active participation by energy users and suppliers is important to the development of a more innovative and responsive energy market, achieving effective competition and maximising the benefits of market reform of the energy sector. The far-reaching consequences of the current program of reform underline the need for effective participation by both end users and suppliers. In particular, the growing convergence of electricity and gas markets will require effective and strategic consumer advocacy funding across the whole energy sector.

This Bill has the full support of all Commonwealth, State and Territory Ministers on the Ministerial Council on Energy.

I commend the Australian Energy Market Commission Establishment (Consumer Advocacy Panel) Amendment Bill 2007 to Honourable Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of Australian Energy Market Commission Establishment Act 2004

4—Insertion of heading

The Act is now to be divided into distinct parts.

5—Amendment of section 3—Interpretation

These amendments relate to defined terms that are associated with the provisions of this measure. One definition to note is that small to medium customer will have the following meaning:

(a) of electricity—a consumer whose annual consumption of electricity does not exceed a level (expressed in megawatt hours) fixed by regulation for the purposes of this definition;

(b) of natural gas—a consumer whose annual consumption of natural gas does not exceed a level (expressed in terajoules) fixed by regulation for the purposes of this definition.

6—Insertion of heading

This is a consequential amendment.

7—Amendment of section 6—Functions

This amendment will make it clear that the AEMC will have other functions conferred under this or any other Act or law.

8—Substitution of section 18

This amendment will enact a provision that protects a Commissioner or a member of the staff of AEMC from personal liability for an Act or omission in good faith in acting or purporting to act under the Act. The relevant liability will lie instead against the AEMC.

9—Amendment of section 26—Accounts and audit

These amendments will make it expressly clear that the account established by AEMC under Part 4 will form part of the accounts of AEMC and will be subject to audit under section 26 of the Act.

10—Amendment of section 27—Annual report

The report of the Panel under Part 4 will be incorporated into the annual report of the AEMC.

11—Insertion of Parts 3, 4 and 5

This clause inserts two new Parts into the Act.

New section 28 will provide for the establishment of the Consumer Advocacy Panel.

New section 29 will set out the functions of the Panel. The functions will be principally focussed on supporting research and other projects that are intended to benefit consumers of electricity or natural gas (or both). A key function will be to consider and assess applications for grant funding. It will also be made clear that the Panel can itself initiate research projects to be funded under this scheme.

New section 30 will require the Panel to have regard to relative objectives set out in a National Energy Law and, when promoting the interests of all consumers of electricity or natural gas, to pay particular regard to benefiting small to medium customers.

New section 31 provides that, subject to the Act, the Panel is not subject to direction by the AEMC or the MCE in the performance of its functions.

New section 32 sets out the process by which members of the Panel will be appointed and the relevant qualifications for office.

New section 33 provides that a member of the Panel will be appointed—

(a) for a term (not exceeding 4 years) specified in the instrument of appointment; and

(b) on conditions (including conditions as to remuneration) specified in the instrument of appointment.

New Section 33(3) will ensure that a member of the Panel maintains a degree of independence from the energy industry.

New section 34 provides that a member of the Panel may be removed from office for—

(a) breach of, or non compliance with, a condition of appointment; or

(b) misconduct; or

(c) failure or incapacity to carry out official functions satisfactorily.

New section 35 provides that the office of a Panel member will become vacant in specified circumstances.

New section 36 will allow the AEMC to make acting appointments associated with the membership of the Panel.

New section 37 provides that there is to be an Executive Director of the Panel. The Panel will also have such other staff as are reasonably necessary for the effective performance of its functions. The Executive Director and staff will be employed by the AEMC but the AEMC will not be able to give directions to staff so as to derogate from the independence of the Panel.

New section 38 relates to the meetings of the Panel.

New section 39 regulates any conflict of interest that may arise in a matter under consideration by the Panel.

New section 40 is an immunity provision.

New section 41 will require the Panel to prepare annual budgets for—

(a) administrative costs associated with the work of the Panel, including the remuneration of Panel members and the costs of employing its staff; and

(b) the allocation of available funding.

A budget will be subject to the approval of the MCE.

The Panel must, in preparing a budget—

(a) seek to maximise the amount of funding available for the allocation of grants by keeping administrative costs associated with the work of the Panel to a minimum; and

(b) ensure that money that is proposed to be made available for research projects initiated by the Panel does not exceed 25% of the Panel's total budget for funding projects; and

(c) clearly distinguish between—

(i) money that is proposed to be made available for research projects initiated by the Panel; and

(ii) money that is proposed to be made available for research projects put forward by other persons or bodies.

New section 42 provides for the responsibility of the AEMC and of NEMMCO for the administrative costs of the Panel.

New section 43 provides for the responsibility of the AEMC and of NEMMCO for meeting the grant funding requirements of the Panel.

New section 44 provides that the amounts to be provided by NEMMCO and the AEMC for the purposes of this Part are to be made available under an agreed scheme or, in default of an agreement, on a quarterly basis in advance.

New section 45 provides that the criteria for grant allocation are to be determined by the MCE and promulgated in the form of regulations under the Act. The Panel will then develop guidelines for grant allocation after consulting with the AEMC and other interested stakeholders.

New section 46 will facilitate the provision of grant funding for approved projects.

New section 47 will require the Panel to prepare an annual report.

New section 48 provides that the Public Sector Management Act 1995 and the State Procurement Act 2004 will not apply in connection with the operation of the Act.

12—Renumbering of section 28—Regulations

This is a consequential amendment.

Schedule 1—Transitional provisions

The schedule sets out various transitional provisions associated with the enactment of this measure.

Debate adjourned on motion of the Hon. D.W. Ridgway.

WEST BEACH RECREATION RESERVE (BOATING FACILITIES) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

[Sitting suspended from 18:04 to 19:46]

PENOLA PULP MILL AUTHORISATION BILL

In committee.

(Continued from 27 September 2007. Page 843.)

Schedule 1.

The Hon. CARMEL ZOLLO: Before the committee considers the schedule of the bill, I would like to provide some answers to the questions raised by members the last time we considered this measure. I would also like to provide some clarification regarding the proposed power use of the mill relative to domestic and household electricity consumption in metropolitan Adelaide. The Hon. Mr Parnell asked about further testing with regard to draw-down from a test bore at Kalangadoo. I understand that the Hon. Mr Parnell refers to the testing of a confined aquifer well at Kalangadoo which was established during 2006. This was a short-term test on a new well that had been established in the area. With any pumping from a well there is a draw-down in the aquifer as water is removed from the system, particularly in the immediate area of the well. The test conducted resulted in localised draw-down, which is normal for extraction responses in this aquifer. Further testing of the confined aquifer in the area of the production wells will need to be undertaken by the developer as part of the ongoing monitoring requirements under their licence conditions.

The Hon. Sandra Kanck asked when the further research being undertaken on the aquifers in the South-East will be completed and available to the public. I am advised that a project is currently being conducted in the South-East region jointly funded by the National Water Commission, Water Smart Australia and the state government. Part of this project to which I think the Hon. Sandra Kanck refers is the resource sustainability component. This project aims to improve our knowledge of groundwater in the South-East unconfined aquifer. There are three principal objectives: improving our ability to estimate the replenishment of aquifers in the region by rainfall; improving our knowledge of how the geology of the region impacts on groundwater flow and salinity, including developing a better understanding of the interaction of groundwater with different geological units; and structural features such as faults, as well as developing a better understanding of groundwater-dependent ecosystems in the region, including wetlands, coastal ponds and sink holes. This is a three-year program due for completion during 2010.

As to the Hon. Mark Parnell's question as to whether we are aware of the content of the draft water allocation plan, and whether it includes an across-the-board cut of 30 per cent for water users, I provide the following response. The Natural Resources Management Board for the South-East region is currently reviewing the water allocation plans for the area. The review documentation is not yet in a final draft format. It is not possible to pre-empt what the outcome of the plan review

will be. However, it is possible that reductions to water allocations will need to occur in some management areas to bring them back to more sustainable levels of allocation. At this stage there are no plans to review allocations for the combined aquifer management areas from which the pulp mill will take water.

In response to the Hon. Sandra Kanck's statement as to the interest expressed in the previous tender process for opening the South-East railway, I provide the following clarification. In the 2001 tender process there were three expressions of interest from:

- Australian Southern Railway (later to become Genesee & Wyoming);
- Freight Australia (later bought out by Pacific National); and
- Gateway Rail.

Australian Southern Railway (ASR) was selected as the preferred tenderer by government. However, ASR decided not to proceed with its proposal for commercial reasons. The government then went back to Freight Australia and Gateway Rail seeking further proposals. Gateway Rail submitted a further proposal, which the government assessed, but the parties could not reach agreement for a number of reasons. Of course, what has changed significantly with this proposal to open the railway is that there is now the potential to have a minimum 750,000 tonnes of freight underpinning the financial viability of this optimal freight solution.

In response to the Hon. Michelle Lensink's request for further detail on certain flora and fauna species, I provide the following information. With respect to the species mentioned I make the following points: significant recent regional survey work has been undertaken on the species of interest to the honourable member. The eastern pygmy possum is not a nationally threatened species and the likely impact of the proposed mill on eastern pygmy possums is likely to be minimal. The southern bell frog has been surveyed recently in the South-East and is not limited to the South-East. Populations in the South-East continue to exist in reasonable numbers, although the drought has impacted on the population. The smooth frog is not considered to be nationally threatened and is at the western limit of its range in the Lower South-East. According to the recent census of South Australian plants, plains joy weed is not considered to be a distinct taxonomic entity in South Australia, as it is taxonomically classed here. It is considered to be at a secure level nationally and, as such, it is neither under threat nor deemed necessary for inclusion in a species recovery program.

The committee should note that the proposed pulp mill site is a pastured paddock and the Department for Environment and Heritage has advised that the habitat of the pulp mill site is already 'highly degraded, as are the pastoral lands adjacent'. I further remind members of the requirements for the pulp mill proponents to rehabilitate and set aside an area of more than 200 hectares as a conservation reserve in perpetuity and that this area provide a significant habitat for all native species in the vicinity of the mill. If the honourable member wishes I can provide a copy of the advice I have received.

In response to the Hon. Mark Parnell's question as to the national standards or regulatory regime for the manufacture of hydrogen peroxide, I inform the council that the requirement for running any plant in connection with any dangerous good, such as hydrogen peroxide, is described in section 12 of the current South Australian Dangerous Substances Act 1979. Under the current conditions it would be expected that persons responsible for the plant would apply world's best practice in reducing possible risks by using information such as that published on 29 April 2004 and 7 June 2004 in the *Official Journal of the European Union*

With respect to the Hon. Mark Parnell's request for confirmation of the measurements of the proposed hydrogen peroxide plant, I am advised that the size of the hydrogen peroxide plant, as set out on page 32 of the report detailing the Penola pulp mill, provides for the reservation of an area of land for the peroxide plant to be built. It is envisaged that the peroxide plant itself will be smaller than the total area reserved for construction of the peroxide plant. Reservation of the larger area will ensure that all statutory requirements with respect to buffers, setbacks and site containment can be achieved.

I would like to move to the issue raised by the Hon. Mark Parnell in the media and in this place regarding proposed power use by the mill relative to domestic and household electricity consumption in metropolitan Adelaide. The last time this issue was discussed here, the Hon. Mark Parnell provided figures to support his claim that power use by the proposed mill was about 70 per cent of the residential power use in Adelaide. Firstly, I would like to clarify that the figures I quoted,

as provided by the Electricity Supply Industry Planning Council, were for domestic consumption of power in metropolitan Adelaide and that these figures are correct; that is, the proposed power use of the mill would be about 22 per cent of the domestic, as opposed to business, customer energy requirements for metropolitan Adelaide.

However, the Hon. Mark Parnell has wanted this figure to be as large as possible and, as such, has gone to the residential power use in metropolitan Adelaide. Accordingly, I have gone back to the Electricity Supply Industry Planning Council and asked for its estimate of the mill relative to this category of power use. On the basis of the data available for the 2006-07 financial year, the planning council has provided me with calculations and a final figure of about 52 per cent—a far cry from the 68 per cent proposed by the Hon. Mark Parnell. This figure would reduce to about 46 per cent if we used the estimate of residential power use for 2009-10, which is the year that the mill is likely to become operational. Having said all that, a more sensible approach would be to look at the potential power use of this mill in relation to the total power use in the state. If we do this, the proportion it represents reduces to about 13 per cent for 2006-07 and 12 per cent for 2009-10. This is without factoring in the increased demand associated with the anticipated full expansion of Olympic Dam.

With regard to the job ahead of the committee this evening, which is to consider the schedule of the bill, I would like to make the following brief comment which, hopefully, will help to frame our discussions. The relevant state technical experts have put the content of the schedule together over a period of time, which has allowed each of them to feel comfortable with its content and the approach they have prescribed. Furthermore, each of those experts has had the opportunity to modify the content and the approach taken through the rigorous consultative process of the parliamentary select committee with respect to this bill. As a result, what we have before us today is process and content that has already been the subject of significant scrutiny, and we believe that it should not be unreasonably delayed, given that the 13 main clauses of this bill have already been adopted by both houses of parliament.

The Hon. SANDRA KANCK: Sir, before I move my amendment, can I seek your guidance on how we will deal with the schedule, because I understand that we do not go through it in its component clauses one by one?

The CHAIRMAN: No.

The Hon. SANDRA KANCK: So, we can just range all over the whole schedule in questioning?

The CHAIRMAN: No. It is up to you to move your amendment, and that will be debated and voted upon. So, we will do that first.

The Hon. SANDRA KANCK: And then we can question the rest of the schedule?

The CHAIRMAN: Yes, you can ask questions on the rest of the schedule.

The Hon. SANDRA KANCK: I move:

Page 11, after line 25—Insert:

(3) The minister must ensure that copies of a report provided to the minister in accordance with subclause (2) are tabled in both houses of parliament within six sitting days after the receipt of the report by the minister.

It is, I suppose, a simple accountability process, because dioxins are one of the things that are produced in pulp mills as a matter of course. I think most people know about the state of Lake Bonney in the South-East as a consequence of its being used as a dumping ground for pulp mill waste from the mid-1950s. I understand that it is in a slightly better state than it was some years ago, but it still has a long way to go. This amendment requires the reports that are provided to the minister about dioxin emissions to be tabled in the house. I included this amendment because I know that, in the past, groups associated with assorted projects that had been trying to get information about dioxins have found it very difficult. Really, when you are thinking about something of this nature, it should be very accessible. When I am talking about the problems that dioxins cause, I refer to a note from Dr Mariann Lloyd-Smith of the National Toxics Network. She refers to the Stockholm Convention on Persistent Organic Pollutants 2001. That convention obliges countries to:

...reduce the total releases of the byproducts dioxin and furans from man made sources with the goal of continuing minimisation and, where feasible, their ultimate elimination.

There is good reason for that because, when one checks to find out what dioxins do, there is a list of what I suppose you could call some of the major side-effects. These include immune system toxicity, central nervous system toxicity, hormonal disruptions, impact on kidneys and liver, learning delays in children, breast cancers, birth defects, endometriosis and diabetes. It is a fat-soluble product which means that it bio-accumulates in humans and it is transferred through the placenta from mother to baby. In the environment movement dioxins are known and described as 'poisons without passports' because of the way in which they are able to move from one species to another and from mother to baby. Because of the danger of dioxins, I think this information does need to be publicly available.

The Hon. M. PARNELL: I have a number of matters that relate to the schedule but, first, I would like to thank the minister for her response—

The CHAIRMAN: We are actually dealing with the Hon. Ms Kanck's amendment.

The Hon. M. PARNELL: I will support the amendments but I will not speak to it. I will speak to the schedule once we have dealt with the amendments.

The Hon. J.M.A. LENSINK: The Liberal party supports this amendment. I cannot see any reason why, if there is a report produced for the minister, it should not be provided to the parliament in the interests of accountability.

The Hon. A. BRESSINGTON: I also rise to support the amendment and to indicate that I fully concur with what the Hon. Sandra Kanck said about these dioxins. I also add that it was only two days ago that there was a discussion about the longevity of dioxins and their carcinogenic effect and that generational carcinogenic effects have not even begun to be understood as yet. I believe that makes the need for this amendment and this report to be adopted by parliament as a safeguard and as a public health measure as well.

The Hon. CARMEL ZOLLO: I indicate that we will not be supporting the amendment. The EPA has categorically stated that, with this type of pulp mill, dioxins will not be produced at all. There is no way that dioxins can be produced with this type of mill. It is regrettable that the honourable member has gone down this path.

The Hon. SANDRA KANCK: I reject that, in fact. The process of burning lignin, which will occur in this pulp mill, produces dioxins.

The Hon. CARMEL ZOLLO: For the clarification of the committee, I will read out the submission (No. 103) to the select committee from the Chief Executive of the EPA in relation to dioxins as follows:

> Dioxins are formed through incomplete combustion in the temperature range 300 to 400 degrees centigrade. The formation of dioxins has been extensively studied but the reactions which lead to their formation is not fully understood. What is known is that if the combustion gases contain both carbon and chlorine in the desired proportions in this temperature range then dioxin-like chemicals will occur.
>
> When the EPA was initially informed of the construction of the pulp mill very little information was supplied outlining pulp production processes. Anecdotal evidence on the operation of pulp mills led the EPA to believe that dioxin-like chemicals could form and to ask whether they would form by 'de novo synthesis' in the boiler off gas.
>
> The EPA has held numerous meetings with the proponents of the pulp mill since and has concluded that the mill will be built to a satisfactory standard. The process with the highest potential for dioxin formation is during the combustion of wood fibre waste in the boiler. The EPA is of the opinion that a purpose built boiler for the combustion of this waste would avoid 'de novo synthesis' by rapidly cooling the exhaust gas through the critical temperature range. Rapid cooling ensures that the chemical reactions which lead to the formation of dioxin-like chemicals will not occur. Thus dioxin-like chemicals will not be emitted into the atmosphere at a level which exceeds the international standard of 0.1 nanograms per cubic metre.

The Hon. SANDRA KANCK: It is interesting to hear the minister make these statements when clause 7 of the schedule is specifically related to dioxin testing. I find it most peculiar. If the government is saying that dioxins are not going to be produced but it has included a clause in its own bill that relates to dioxin testing, I want to know why clause 7 of the schedule is there.

The Hon. CARMEL ZOLLO: Very simply, the select committee recommended it as a precautionary approach.

The Hon. SANDRA KANCK: Then I commend the select committee. It is probably the only decent thing it did, and we should continue that precautionary approach. Why would the government not agree to have the findings of the testing that are referred to in this clause to be made publicly available?

The Hon. CARMEL ZOLLO: Mr Chairman, I think I have made my comments.

Amendment carried.

An honourable member interjecting:

The CHAIRMAN: Questions can be asked from that point in the schedule.

The Hon. SANDRA KANCK: You did not say before that we couldn't ask—

The CHAIRMAN: Four amendments have been move to the schedule. The questions asked now will be after those amendments.

The Hon. M. PARNELL: I thank the minister for her response to the questions that were put on notice and I express some concern if, having been prevented from immediately responding to the minister's answer to the questions, we are somehow now bound not to discuss anything in this schedule prior to what must be about the second or third to last clause. I do not think that is the best way—

The CHAIRMAN: The honourable member might go back through *Hansard* and see the normal way that the council operates through the bills. Questions can be asked on any parts of the schedule that are after the Hon. Ms Kanck's amendment. I am not going to allow speeches: I am going to allow questions on the remainder of the schedule.

The Hon. M. PARNELL: With respect, Mr Chairman, at the end of *Hansard* when we concluded, we had passed the government's amendments to clause 1, part 1 of schedule 1 which related to some minor numbering changes. You then allowed the minister, I think quite properly, to respond to the questions which, at our last committee meeting, she said she would take away and answer. You then insisted, sir, on Sandra Kanck moving her amendment, relating to the parts of the schedule that refer to specified conditions, reservations and requirements; general conditions, reservations and requirements; conditions relating to stormwater and surface water; conditions relating to groundwater; soil testing up to dioxin testing.

If you are saying that we are not allowed to ask questions on any of those topics, I would ask if you could reconsider, sir, as I have a couple of questions on those points. With your indulgence and with the indulgence of the committee, I would like to ask questions on those earlier parts of the schedule. I make the point that the project, the pulp mill, is described in the schedule: the schedule is the project. The questions that relate to the operations of this project are questions that go to the schedule. I do not intend to go backwards and ask questions about clauses of the bill we have already dealt with.

The CHAIRMAN: I do not intend to allow you to do that, either.

The Hon. M. PARNELL: Quite properly, Mr Chairman. With your indulgence I would like to address some issues in schedule 1 prior to subclause (7) relating to dioxin testing.

The CHAIRMAN: There have already been three amendments on that section of the schedule and the honourable member had the opportunity to ask questions.

The Hon. Sandra Kanck: You said I had to move my amendment.

The CHAIRMAN: The minister moved three amendments to that schedule last time.

The Hon. M. PARNELL: I will not ask questions before those amendments—we have moved on from those.

The CHAIRMAN: I will allow you to ask a couple of questions—not to make statements but to ask the minister questions if you need answers on those matters. Your party will not last for long, I can assure you.

The Hon. M. PARNELL: Thank you, Mr Chairman. I will be as efficient as possible. I wanted to put on record my thanks to the minister for answering the questions as she did. Whilst I may have been expecting a bit much for an apology in relation to the greenhouse and electricity figures, I make the brief observation that, when we recalculated we moved our figure down a bit, having found some more recent figures. We got down to 58 or 59 per cent, so with the government's 52 per cent we are very close together, but the fact is that this is a major greenhouse producer. We asked the minister about the water allocation plan and whether it had the 30 per cent cut to all users, and the reply was that it was a draft and she thought that there was a possible reduction in some management areas but, if I recall the response correctly, it was not likely in the

relevant extraction areas for the pulp mill. Is there a level for water to drop to in the groundwater bores that would trigger the minister's intervention to reduce the allocation?

The Hon. CARMEL ZOLLO: My advice is that there is always a trigger when it comes to sustainability of resources. However, the way in which the water has been allocated for use out of this confined aquifer has been extremely precautionary. We do not envisage that there is any real physical risk to the sustainability of this resource.

The Hon. M. PARNELL: Can the minister clarify that there is no trigger? You are confident that there will be no problem and therefore you have no trigger for further intervention. In other words, it does not matter how far it might drop, there is no trigger for intervention. Is that what I understood you to say?

The Hon. CARMEL ZOLLO: With all due respect, there is always a trigger.

The Hon. M. PARNELL: Are you in a position to tell the committee what the trigger is in this case?

The Hon. CARMEL ZOLLO: I do not have that technical information with me, but we undertake to bring that information back to the honourable member.

The Hon. M. PARNELL: Minister, in your response to the question about national standards governing the hydrogen peroxide plant, you referred the committee to section 12 of the South Australian Dangerous Substances Act. Do I take it from your answer that there are no national standards and, if that is the case, is a member of the select committee, Mr Tom Kenyon, wrong when he says there are national standards governing the manufacture and the operation of a hydrogen peroxide plant?

The Hon. CARMEL ZOLLO: I am not certain what Tom Kenyon in the other place has said but, as I said earlier about the national standards or the regulatory regime for the manufacture of hydrogen peroxide, the requirement for running any plant in connection with any dangerous good, such as hydrogen peroxide, is described in section 12 of the current South Australian Dangerous Substances Act 1979.

The Hon. SANDRA KANCK: What does that then require the pulp mill proponents to do? What sort of conditions apply?

The Hon. CARMEL ZOLLO: As I said earlier, under the current conditions, it would be expected that persons responsible for the plant would apply world's best practice in reducing possible risks by using information such as that published on 29 April 2004 and 7 June 2004 in the *Official Journal of the European Union*.

The Hon. M. PARNELL: In schedule 1, paragraph 4, 'Conditions relating to stormwater and surface water', I note the Protavia report listed in clause 1 of part 1 of schedule 1. The report for the Penola Pulp Mill Authorisation Bill by Penola Pulp Pty Ltd dated May 2007 states:

> Depending on rainfall patterns each year, it is possible that surface waters in late winter, early spring that differ annually in depth, extent and duration could periodically inundate the site.

My question to the minister is: what precautions will be put in place in relation to this potential for flooding?

The Hon. CARMEL ZOLLO: We believe this legislation sets out that requirements do have to be put in place. I am not here to give technical information regarding what exactly will have to be done, but the requirements are clearly stipulated and, of course, the EPA monitors that.

The Hon. M. PARNELL: I fear the minister's answer to my next question may be the same, because one of the requirements in clause 4 of schedule 1 provides:

> The pulp mill must be designed, constructed and operated so as to ensure that at all times..
>
> (c) there is a maximisation of stormwater reuse on the project site.

I would like the minister to tell us what those proposals for water reuse are and, if the minister does not have details, where they might be found.

The Hon. CARMEL ZOLLO: I think the Hon. Mark Parnell made some comment that he feared my response may be similar, and to some extent it is. Clearly, we state here the conditions relating to stormwater and surface water, and this is what this company will have to do. How it actually does it in terms of monitoring will be up to the EPA.

The Hon. M. PARNELL: The same clause goes on to say that the mill must be operated such that 'there are no discharges, with the exception of treated stormwater, to surrounding waters'. What treatment are we talking about? What part of the project relates to the treating of stormwater? I do not recall seeing any details in any documentation that explains how that might take place—or, in fact, where that might take place. Can the minister please enlighten us?

The Hon. CARMEL ZOLLO: Again, I do not think it is up to us in this debate to come up with the technicalities required. From this parliament's point of view (because we are not the technicians) it does not matter to us what techniques are actually used. They have to demonstrate to the EPA that they are treating the water in a way that is acceptable to the EPA.

The Hon. SANDRA KANCK: Can the minister advise the chamber what on-the-ground presence the EPA will have once this project gets under way?

The Hon. CARMEL ZOLLO: I have to say to the honourable member that, like any other project that is licensed by the EPA, the EPA has a regime of monitoring and testing that is appropriate to the risk that it estimates for a particular project, and it will be dealt with by the EPA in its normal way. I place on the record, as I think we have before, that we do have an independent EPA in this state that is quite comfortable with the approach taken in this bill. I am not going to presume upon its expertise, nor do I think that parliament is the place to set the standards of pollution levels, etc.

The Hon. SANDRA KANCK: Yes; leave it to the experts. The minister has not answered the question that I asked, which is about what the on-ground presence of the EPA would be. So, can the minister advise me of whether there is an officer of the EPA stationed at, for instance, Mount Gambier? In addition to that, what sort of monitoring stations will be set up in relation to groundwater and air quality by the EPA in and around the pulp mill?

The Hon. CARMEL ZOLLO: Despite not wanting to get into the independent EPA autonomy, if you like, I am advised that the EPA will have one person completely dedicated to this project to monitor the mill.

The Hon. SANDRA KANCK: There was also a second part to my question, which was: will there be any monitoring stations set up in and around the pulp mill, both looking at groundwater and air quality?

The Hon. CARMEL ZOLLO: Again, not wanting to get into the technical detail; I am advised that the EPA has established regimes depending on the density of the population around the project and the perceived risk around the project. It has a method of monitoring, and that is a technical issue. As I have said before, the EPA is an independent, autonomous body.

The CHAIRMAN: I think I have allowed enough latitude on those questions prior to the Hon. Ms Kanck's amendment. Any further questions should relate to clause 8—Conditions relating to air quality, and the rest of the schedule. Does the Hon. Ms Kanck have a question in relation to that?

The Hon. SANDRA KANCK: Mr Chair, I do protest. You insisted that I move my amendment; you gave me no choice but to move my amendment. I sought clarification; I asked you, if I moved my amendment, whether I would still be able to move around the rest of the schedule and ask questions, and you indicated that I would be able to.

The CHAIRMAN: I told you that you could move around the rest of the schedule from your amendment.

The Hon. SANDRA KANCK: You did not, Mr Chairman.

The CHAIRMAN: I thought I made that pretty clear.

The Hon. SANDRA KANCK: No, you did not; otherwise I would not have moved my amendment at that point.

The CHAIRMAN: Perhaps you misunderstood my directions. I have allowed a number of questions on that, as I told the Hon. Mr Parnell I would, and I think the honourable member has exhausted that. The minister has answered those questions, and she keeps referring you to the EPA.

The Hon. SANDRA KANCK: Mr Chairman, the government has said that this bill is a replacement for an EIS. We have a responsibility to ask some of the questions and put some of the

problems, that would have been done if there was an EIS. It is outrageous to prevent questioning on something of this moment.

The CHAIRMAN: You have exhausted questions.

The Hon. SANDRA KANCK: I have not exhausted questions, Mr Chairman.

The CHAIRMAN: On this section, you have moved amendments and voted for amendments right up to clause 7. As I have said, I have been very tolerant, and I think questions should now be from clause 8 to the rest of the schedule.

The Hon. M. PARNELL: With your indulgence, Mr Chairman, I have one further question that relates to clause 5, and then, personally, I am happy to move on to questions after clause 7, although if the Hon. Sandra Kanck has questions up to that point, I do not want to tread on her turf. However, with your indulgence, Mr Chairman, I do have a question that relates to water. I am asking the question because the biggest single selling point of this project—what sets this project aside from every other pulp mill in the world and what sets it aside from the Tasmanian pulp mill, where we had a demonstration on the steps of Parliament House not long ago—is its interactions with water. So, I would like to ask one further question that relates to its water management, if the minister is happy to answer.

My question relates to the proponent's most important claim that we are going to have zero liquid discharge from this mill. As honourable members would know, most pulp mills are on rivers or they are on the sea, and they discharge to the sea or to the river. We are told that the big selling point for this pulp mill is that there is no discharge to groundwater or to surface water. The proponent has said that it has engaged leading international companies to make sure that this happens. If you go the Protavia website and look at its newsletters Nos 3 and 4, you will find a reference to a company called Veolia Water, as follows:

> Veolia Water is the company in charge of designing and constructing the water and waste water treatment plant at the Heywood and the Penola pulp mills.

That is great; this is a leading waste water company. However, those of you who read the interstate press would have noticed perhaps that the *Portland Observer* of 20 July stated:

> A multinational company involved with water effluent treatment services to the pulp and paper industry will seek to have its name removed from the website of pulp mill proponent Protavia.

It goes on to state:

> Protavia has listed global company Veolia Water as one of several project partners for both the now scrapped Heywood pulp mill project and the current proposed $1.5 billion Penola pulp mill. However, Veolia Water Solutions and Technology's Marketing Manager, Sophie Nguyen, said in an email earlier this week, 'Veolia Water is not involved with the Heywood and Penola project. We will ask Protavia to remove the mention on their website.'

My question to the minister is: what confidence can we have that this proponent is serious about zero liquid waste discharge, and who is now in charge of ensuring zero liquid waste discharge? I would appreciate it if the minister does not just say, 'Oh, the EPA will make sure that it will happen.' If they have previously claimed that they had this world leading company helping them and this company is disowning Protavia, how can we be assured of zero liquid waste discharge?

The Hon. CARMEL ZOLLO: My advice is that it is obvious that the report describes the project. This authorisation is about a project which delivers zero liquid discharge. If the project cannot deliver zero liquid discharge—which is one of the fundamental descriptions of the project—the licence is not guaranteed. For the Hon. Mark Parnell's information, there are two other pulp mills which deliver zero liquid discharge.

The CHAIRMAN: I understand that that was your last question.

The Hon. M. PARNELL: It was my last question prior to the Hon. Sandra Kanck's amendment, which was for clause 7; my next question is on clause 8. Clause 8 deals with conditions relating to air quality. Unless I misheard the minister, the words that I wrote down that she uttered a few minutes ago are: 'Parliament is not the place to set pollution standards', yet we find that those pollution standards are being set by this parliament in this bill. We can see that table 1 is, in fact, pages and pages of pollution standards. There are two things that are certain about pollution standards and tables such as this. The first is that new forms of pollutants are discovered all the time. If you want to compare, for example, the Australian national pollutant inventory with the United States' toxic release inventory, you will find that hundreds more chemicals are recorded in the United States and have limits set for them. We know that the list expands.

The other thing that is certain is that, as medical knowledge increases, exposure levels decrease. In other words, the amount that is safe to be exposed to decreases. We find that all the time in the nuclear industry, but also in other forms of pollution. My question for the minister is: having set these figures in concrete, and having set them in legislation, what assurance can she give us that, every time an EPA standard pollution table such as this has an extra item added to it or an exposure level is changed, those changes will apply to the Penola pulp mill?

The Hon. CARMEL ZOLLO: I am advised that under section 5(1)(b) there is potential for us to do that—to vary or revoke conditions. Can I clarify my earlier comments. What we are doing in parliament is ratifying the standards set by the EPA.

The Hon. M. PARNELL: I thank the minister for referring us to section 5, because it seems to refer to applications being lodged with the minister by or on behalf of the person undertaking the project. The person undertaking the project is not going to say voluntarily, 'Please make the pollution standards a little bit tougher. We note that the rest of the community is now to be exposed to a lower standard. Can you please apply that to us?' Perhaps that is not the area, but can the minister explain why the proponent is likely to take that action.

The Hon. CARMEL ZOLLO: I advise the honourable member that if it is not varied under the section we are mentioning here, it can be picked up under the EPA licence. It can be varied under the EPA licence because the licence allows for variations and conditions as part of that licence.

The Hon. M. PARNELL: Am I to take it that, as a matter of law, anything the EPA puts in its licence in the future will prevail over anything in this act? Is that what the minister is saying?

The Hon. CARMEL ZOLLO: My advice is that, as the honourable member is talking about a new pollutant, a change would not be inconsistent with the act.

The Hon. M. PARNELL: If we are not talking about a new pollutant but the same pollutant with a different exposure level, does the licence prevail over the legislation? We could get a situation where the rest of society has to comply with a tough standard in relation to a pollutant, but this company, with the benefit of this legislation, will be able to hide behind perhaps some ancient provision in this bill that we are set to pass today.

The Hon. CARMEL ZOLLO: My advice is that, if it was to change the volume or the indicator—the pollutant concentration—that is in the table, then obviously the minister would bring it back to the parliament to amend under recommendation from the EPA.

The Hon. SANDRA KANCK: Clause 8 deals with air quality. As the Hon. Mark Parnell has remarked, there is page upon page of different substances and it requires that any odours emitted from the plant are contained under certain criteria. Why is odour the only thing that matters? I mean, some chemical substances do not have a great deal of odour but can be very damaging, if inhaled. Why has it specifically focused on odour?

The Hon. CARMEL ZOLLO: I understand that there are two classes: one is toxicity and the other is odour, so it is just not focusing on one.

The Hon. SANDRA KANCK: You have toxicity and odour. Why is there not, for instance, a table on flammability?

The Hon. CARMEL ZOLLO: I am advised that these are conditions relating to air quality.

The Hon. SANDRA KANCK: In that case, I come back to hydrogen peroxide. Basically, the minister indicated that, because it is mentioned in some other department—something to do with the EPA or something—

The Hon. M. Parnell: The Dangerous Substances Act.

The Hon. SANDRA KANCK: — yes, the Dangerous Substances Act— we do not need to have it listed here. Are the substances listed in this schedule also listed in the Dangerous Substances Act, or are they here because they are not in the Dangerous Substances Act?

The Hon. CARMEL ZOLLO: The table comprises everything the EPA monitors in regard to air quality. Just because we have this comprehensive table before us does not mean they are consumed or produced by this mill.

The Hon. SANDRA KANCK: If we are going to be talking air quality, I will mention a couple of things to which I referred in my second reading contribution, one of which is anthraquinone. In terms of exposure, and as far as inhalation is concerned, it says that there

should be local exhaust or breathing protection, which indicates to me that there might be something there about air quality. With respect to hydrogen peroxide (which is also not listed), this document from Chemwatch states:

> Inhalation of vapours or aerosols may cause lung oedema.

There are lots of pages here. That quote appeared on page 2 of 10 pages, and page 9 states:

> Asthma-like symptoms may continue for months or even years after exposure to the material ceases.

So, why is it not listed here in the schedule?

The Hon. CARMEL ZOLLO: My advice is that if anthraquinone and hydrogen peroxide are not on the list it is because the EPA does not believe they should be monitored. Every chemical that is on the list is a chemical that the EPA believes worthy to be monitored. Clearly, there are other chemicals, and they draw that information from the material safety data sheets and other sources of independent information. If they are not on the lists provided here it is because the EPA does not believe they are worthy of being monitored.

The Hon. SANDRA KANCK: Will the minister advise whether the hydrogen peroxide plant will be associated with the manufacture of hydrogen on site and, if so, what chemical processes will be involved?

The Hon. CARMEL ZOLLO: The answer is no. I point out that the EPA's evidence to the committee is that it is the end impact on the ambient environment about which it is concerned. It does not matter where the impact originates. Whether it is a pulp mill, a refinery or a factory, it is the impact of the emissions (or whatever) on human health or the environment that is of concern.

The Hon. M. PARNELL: I have a question that relates to solid waste, but I would hate to prevent anyone from asking a question on clause 9 in relation to noise. Members would be aware that the Mount Gambier council has made it clear that it does not want waste from this mill in its landfill. What does the solid waste consist of and where will it go?

The Hon. CARMEL ZOLLO: I am advised that confidential negotiations are underway with councils in the South-East as to the disposal of the waste, and they are progressing well. However, I would like to make the point that quantity and quality is not the issue. The issue is that the disposal of that waste must meet the EPA conditions for its disposal, to be duly licensed by the EPA.

The Hon. M. PARNELL: I accept the minister says that confidential negotiations are underway, but I draw the committee's attention to page 91 of the Penola pulp mill report, table 19, 'Local and regional landfills', where it goes through the only three landfills close by. The first one is the Wattle Range Council and, basically, the notation says that it is probably too small and not suitable, and that the council has a preference not to accept this waste. It then goes on to the Naracoorte-Lucindale landfill at Naracoorte, operated by Cleanaway, and the notation here is:

> Cleanaway advises it has a preference not to accept large volumes of ash waste, as landfill capacity is at a premium.

Then we get to Mount Gambier (and it is at Caroline), and it states:

> The Caroline landfill is the only engineered landfill in south-eastern South Australia and, as such, is the only feasible landfill option should technical specifications of the waste ash not permit disposal as an inert waste.

It continues:

> Council has a preference that the pulp mill ash not be disposed of to its landfill in order to maximise the working life of the site.

What can the minister tell us is new, given that none of the landfill sites in the region wants to take this stuff?

The Hon. CARMEL ZOLLO: I have already stated that my advice is that negotiations are proceeding well. Again, I have to make the point that where it will be disposed of is not the issue: it will be required to meet the conditions set down by the EPA and that, to me, is paramount.

The Hon. J.M.A. LENSINK: I am also in possession of the report referred to by the Hon. Mark Parnell, and I am slightly bemused by the minister's response. If she is not able to advise, due to confidentiality reasons, as to where the negotiations are at, can she disclose whether the advice comes from the councils themselves or from the proponent?

The Hon. CARMEL ZOLLO: Once again, I have to advise the honourable member that discussions are ongoing, and it is not appropriate for me to place on the record of this council who they are ongoing with. That is the concern of the company. Again, it will not be able to dispose of this waste without appropriate licence from the EPA. Where the disposal is undertaken will be taken into account. The licence is issued. Again, I can really only reiterate—and I am sorry that members opposite think this is very flippant—that this is an EPA licensing issue. It is an independent body in this state. It is an EPA licensing issue.

The Hon. SANDRA KANCK: I think that we have been treated very poorly by the government in relation to the committee stage of this bill. So much of what we are asking about is about the environment and EPA licensing; yet the government has not seen fit to bring in an adviser from the EPA so that these questions can be answered. We are just getting information waved at us and we are being told to accept it without any proper scientific base. It is very clear to me that some of the waste that is going to come out of this is hazardous waste. There is not a hazardous waste facility in the South-East. I want to know whether the hazardous waste will be trucked from Penola to Adelaide (for instance, to the Dry Creek median temperature incinerator) or will it be trucked up to Brisbane where there are facilities for incineration of hazardous waste—because it cannot go in landfill.

The Hon. CARMEL ZOLLO: Can I just place on the record that the EPA, at this time, does not have a proposal in front of it on which to issue a licence. What we have in front of us is this legislation. I refer honourable members to conditions relating to solid waste. I also place on record that there is no hazardous waste.

The Hon. M. PARNELL: Without wishing to explore any further these confidential discussions and without wishing to be hypothetical, given that the relevant councils are on the record as saying that they do not want this waste, is there any capacity to force a local council to take this type of waste against its wishes?

The Hon. CARMEL ZOLLO: No.

The Hon. J.M.A. LENSINK: I would like to express sentiments similar to those of the Hon Sandra Kanck. After all, with an indenture bill, we are really being asked to bypass a number of the usual practices in terms of planning and development and I think, therefore, it is incumbent upon the government to have as many answers for us as possible. I do find some of those responses, particularly in relation to waste, disappointing. In relation to the site at Mount Gambier (the Caroline landfill—which is no reflection on my honourable colleague), there is a report from the Mount Gambier council which is referenced as 'Groundwater monitoring 490/1/1'. The presiding member of the City of Mount Gambier has reported that:

> Testing does not indicate any leachate issues at this time, although it is now becoming obvious that a groundwater mound exists within the site that was not known about (this mound may indicate a connection between the upper and lower aquifers).

Will the minister advise what advice the EPA has received regarding this and any linkage to the Caroline landfill being used as a potential site for waste disposal from the mill?

The Hon. CARMEL ZOLLO: I would like to place on the record that this legislation is not approving licences: it is setting up a framework of conditions. In relation to the question the member has just asked, obviously, when a site is provided to the EPA, it will look at all the factors as to whether or not the site presents a risk to groundwater resources. Essentially, it is no different to council putting forward a simple dump. They must be licensed by the EPA. The EPA would look at the risk involved and it will license it depending on the risk.

The Hon. M. PARNELL: If there are no further questions on waste, I would like to move to clause 11 of schedule 1, which will no doubt delight the minister because it is on the very back page of the bill. This is the clause that relates to conditions involving greenhouse gas emissions. Subclause (1) provides for a report prepared by an expert. Who appoints that expert? Who is to say whether or not they are an expert? Does the government have a list of experts that it recognises as capable of writing such reports?

The Hon. CARMEL ZOLLO: I am advised that, if they are not an expert, they have not satisfied the conditions of the clause. Someone has to be factually an expert. The minister has to be clearly satisfied that the person concerned is an expert.

The Hon. M. PARNELL: A related question: is the minister at present satisfied that anyone is an expert? Is there anyone you could go to who meets that criteria? Where would one start?

The Hon. CARMEL ZOLLO: As one would normally do in that situation, the minister will, no doubt, consider several names that will be put forward. Clearly he will look at the CVs, if nothing else, and take advice from the Office of Sustainability and Climate Change.

The Hon. M. PARNELL: I note that the report to be prepared needs to report on scopes 1, 2 and 3 emissions. Scope 1 emissions are direct greenhouse emissions from sources owned or controlled by the company; scope 2 are indirect emissions associated with the generation of purchased electricity; and, scope 3 emissions are indirect emissions that arise as a consequence of the activities of the company that occur from sources not owned or controlled by the company. Is it required that the proponent report on construction as well as operation under those three areas?

The Hon. CARMEL ZOLLO: My advice is that it is unclear. However, there would be no problem in incorporating that under scope 3, other indirect GHG emissions, which is an optional reporting category.

The Hon. M. PARNELL: To clarify, rather than it being possible to do it, is it a requirement to do it? Will they be required to report their greenhouse gas emissions in relation to construction as well as to the operation? Clause 11(2) says 'the report must detail all measures applied in the design and implementation of the development to minimise greenhouse gas emissions'. An inference might be drawn that that only relates to the operation of the mill rather than its construction. I want to make clear that the government's requirement of a report under clause 11 is that under scopes 1, 2 and 3 greenhouse gas emissions related to the construction of the plant will also be reported upon.

The Hon. CARMEL ZOLLO: My advice is that the words that we have applied here in the design implementation are not clear enough to put an obligation on the proponent in relation to construction. Clearly, where we have the greatest concern in relation to greenhouse gas emissions is in the operations.

The Hon. M. PARNELL: Just to follow that up, I agree with the minister that the words are not clear enough. I am looking for an assurance that the minister will ask the proponent to include in this report the greenhouse gas emissions relating to construction. I am reluctant to move amendments on the run, but I want the minister to make it clear that it is her expectation that construction greenhouse gases will be included in this report.

The Hon. CARMEL ZOLLO: My advice is that no other industry at the moment is required to produce a statement about the impact at the construction stage.

The Hon. M. PARNELL: My next question is even simpler. What will happen to this report? What is this report for?

The Hon. CARMEL ZOLLO: I think we need to be very clear that this is one of the very few value-adding industries where the combination of plantation forests and this mill will result in a neutral to positive impact on greenhouse gas emissions. The purpose of this clause is to maximise the positive side of this impact at the design stage.

The Hon. M. PARNELL: Still on this report, it is not a requirement in the bill that the report be tabled before parliament—in fact, it is unclear how this report will ever see the light of day or do anything other than sit on the shelf. Can the minister give us an assurance that this report will be publicly available—for example, published on the department's website—when it is completed?

The Hon. CARMEL ZOLLO: This report is really a positive dialogue between the government and the proponent to maximise the opportunities to minimise both greenhouse gas emissions and the costs of running this mill. What this clause also does is quite consistent with the Climate Change and Greenhouse Emissions Reduction Act 2007. Once operational, the mill will also be required to report under the commonwealth's National Greenhouse and Energy Reporting Act 2007. Obviously, this report will be a fundamental component of that reporting process.

The Hon. M. PARNELL: I take it from the minister's answer that there is no guarantee that we are going to see this report, other than filtered through other documents, but the minister did allude to what was going to be my next question, which is the relationship between not just this report but this project with the new greenhouse legislation that is now in law—how those two interact. I am not so much interested in how the report might feed into some other process, but I am particularly interested in how the government sees this project as assisting it to fulfil its greenhouse gas reduction targets.

I say that in the context of a project that will be responsible for something like 3 per cent of the state's greenhouse emissions. Members might recall that that figure was originally 7 per cent, on the company's website, now reduced to 3 per cent. If we take the minister's figure, it is 52 per cent of the equivalent of the energy used by the household sector in Adelaide, if you take my figures 58 to 59—we are getting closer together—but both of them are more than half. This will use more than half the electricity of the households in Adelaide and yet the minister is saying that it is going to have a positive greenhouse gas effect. My question is: how can that be, and how does this project fit within the government's commitment to reduce our greenhouse gas emissions by 60 per cent by the year 2050?

The Hon. CARMEL ZOLLO: This is a value-adding opportunity which ensures the viability and sustainability of plantation forestry in this state, and we are talking about 150,000 truck movements that would otherwise take place if the chips were sent overseas. There are considerable savings for us and, furthermore, if we look at it globally, the pulp will be better produced here in South Australia rather than China, which has coal-fired power, and the carbon emissions that are, of course, associated with transporting the chips to China.

The Hon. M. PARNELL: I note that there have been reports in the media in the last couple of weeks which indicate that the Penola pulp mill is looking to a hot rock company for its power and, if that were to happen, that may well be a very good thing. I will read a couple of sentences from an ABC online news report, which states:

> The Penola Pulp Mill in South Australia's South-East is looking to hot rocks company Osiris for its power. The mill has struck an agreement with Osiris to buy its geothermal energy if the company can successfully set up a plant in the region. The mill's project director, John Roache, says geothermal energy will not power the entire mill, but will go a long way towards making the mill as carbon neutral as possible. '[It's] obviously a very environmentally friendly way of doing it,' he said. 'Totally carbon neutral, and our agreement with Osiris is if they manage to get the plant up and operational then we'll buy the electricity off them.'

That all sounds very encouraging. My questions are:

1. Is the minister aware of those developments?

2. Have they been factored into the government's thinking about the greenhouse implications of this project?

3. What is the expected time frame for something like hot rocks energy in the South-East to eventuate?

4. If it did eventuate that there was the ability to purchase geothermal energy or, in fact, any other type of renewable energy (maybe from a wind farm), will the government require the mill operator to also purchase the renewable energy certificates (REX), as well as paying for the electricity they consume?

The Hon. CARMEL ZOLLO: Yes, we are aware of the issues the honourable member has raised. However, I stress that where a company purchases its power is a commercial decision. We are unaware of the time frame. We understand that a memorandum of understanding has been signed between both companies. If and when Osiris is successful, consideration will be given to a contract to purchase power from that company. Clearly, one of the positive signs is that the company is thinking about reducing its greenhouse gas emissions. So, it is really all very positive but, again, I have to stress that it is really a commercial decision.

The Hon. M. PARNELL: Mr Chairman, I have now concluded the questions that I have of the minister, but I know that in the excitement of the final stages of a bill we often rush things. I will make a very brief third reading contribution to this bill, but I have no further questions.

Amendment carried; schedule as amended passed.

Title passed.

Bill reported with amendments; committee's report adopted.

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (21:41): I move:

That this bill be now read a third time.

The Hon. M. PARNELL (21:41): I wish to make a few brief observations on the third reading of this bill that relate to the process that we have gone through—the process for the approval of this important project. Members would not be in any doubt that I have been critical of

the process from the start. Right to the end I have not wavered in my view that this is the wrong process to have followed, and that we could have done this much better. One of the consequences of going down the path of legislation rather than doing an environmental impact statement, as I have always called for, is that the information base available to us is very limited. That has meant that we have had to use vehicles such as the Freedom of Information Act to obtain information about this project. I am very disappointed that there is one application that I made back in July to the primary industries department under the Freedom of Information Act and, despite almost daily phone calls, it has still not been determined. I think that that is an outrageous situation, given that as a member of parliament I am one of the decision-makers for this piece of legislation. That the primary industries department can avoid determining my application for several months I think is outrageous.

I have been waiting on important correspondence. We have not yet been told whether we will get that. The correspondence that we have managed to obtain from other sources has been useful in framing our debate around this legislation. In terms of the lack of information, I have sought in my work in this chamber and in the community to draw attention to how poorly served we have been with information. I have used the example consistently of the hydrogen peroxide plant, bigger than the *Titanic*, and described in six lines of text in the report. I ask any honourable members whether they know of any developed country where such a major industrial facility would be approved on such a scant basis. In fact, there was much less information provided for this expanded $1.5 billion pulp mill than there was for the earlier incarnation—the smaller $650 million pulp mill. We had more information about that than we have about this big one.

We have been forced to take on trust the assurances that the proponent has made about the performance of this mill. But the more questions that we ask the more questions that arise. We have been told that there are other equivalent mills that perform well, including Meadow Lake, which we understand from Canadian media reports has been recently sold for much less than it cost to build—not a profitable enterprise at all. We have had the situation where I believe that the proponent has misled the government in relation to its dealings with Victoria. As members would know (and I have referred to this previously in the debate), the proponent wrote to the South Australian government and said, 'We already have assurances and approval from the Victorian government that expansion of the Heywood mill to the larger mill size can proceed.'

The letter went on to say, 'We need special legislation in South Australia.' But when some enterprising journalists actually asked the Victorian government whether it had, in fact, given approval for the larger pulp mill, the answer was: no, it had not. So, the South Australian government has fallen for the oldest trick in the book. It is like turning up to an auction, winning the bid and then putting up your hand again five minutes later and bidding against yourself. That is what appears to have happened here. We have been played for mugs the whole way along by a proponent who has been ping-ponging between Adelaide and Melbourne seeking the lowest common denominator and the best deal it can get.

The process of approving such a large project by way of legislation in this parliament has been quite rapid. People might think that we have spent quite a bit of time in the upper house and that we are doing our job in the upper house, with some two hours of debate in the lower house. Even though there was a select committee, it was, in fact, very selective in the issues it chose to deal with, and such a process can never replace a proper environmental impact statement. I make the point again that one little bit of the project—the hydrogen peroxide plant—was not mentioned even once in the report of the select committee. As we have been quizzing the minister today and previously, we have been told that the detail is being left for later. We are told to leave it to the EPA to set appropriate licence conditions and trust it to intervene if things go wrong. However, as we know, the EPA has never intervened in such a way. It does not deny licences to companies that have built $1.5 billion pulp mills, even if the conditions cannot be met. The EPA has no track record of denying licences and closing down operations that do not need standards.

So, the onus has been on us the whole time. The onus has been on us in parliament to do the best we can to manage this flawed process. In many ways, the debate we have just concluded is really a false one. The real decision making will come in the market and in the financing arrangements. I note that Timbercorp, which is listed as a project partner, has now signalled publicly that it opposes an expanded mill at Penola. We note from the media in recent days that an alternative woodchipping mill has been proposed back in Heywood and that that mill is likely to suck up a considerable amount of the available woodchips. In an article in the *Border Watch* of 11 October, Jason Wallace talks about the proposed mill and states:

Forest industry enterprise Midway's plans for a $30m chipping mill across the Victorian border at Myamyn, northwest of Heywood, has added to already strong competition for the region's plantation resource. The company plans to process around 1.5m tonnes of bluegum annually—a similar amount to what is needed by the pulp mill. Progress on the Myamyn mill has strengthened concerns that a timber supply will not be available to secure the pulp mill.

Even though in parliament the government has insisted that the risk of a white elephant, the risk of constructing something that is not viable, is at the sovereign risk of the proponents, I still beg to differ. I say that, regarding any project which relies on community resources such as water, we do have a right to ensure that it is financially viable before giving it the go ahead. When it comes to pulp mills, we have had protests about the Tasmanian pulp mill but we have had very little concern at the state level about the Penola pulp mill, but it does not mean that this mill is not without its problems.

In conclusion, I say that there is a huge difference between a pulp mill—a pulp mill that is, for example, powered by geothermal or gas co-generation; that transports its pulp by railway; that is a genuine zero liquid waste discharge pulp mill; that uses plantation stock that has no negative impact on groundwater; does not release dioxins; does not have a hydrogen peroxide plant; and does a lot of recycling—compared to what we may end up with at Penola, which is a pulp mill which does have a massive chemical manufacturing plant with no risk assessment, which is powered by fossil fuel from the grid contributing to 3 per cent of the state's greenhouse gas emissions, which uses more than half as much electricity as all the households in Adelaide, which transports mainly by truck rather than by rail; which needs government subsidies to achieve its waste water benchmarks; which has hundreds of trucks going to landfill, possibly large distances, given that the local dumps do not want it; and which uses plantation stock that strips already fragile groundwater stocks. You could have a great pulp mill in the South-East. You could have a zero carbon, low impact pulp mill, or you could get the type of pulp mill that we are now likely to get because we have gone down this inadequate path and we will pass this inadequate legislation.

I have tried my best—and some of my colleagues have supported that endeavour—to get key questions asked. I particularly acknowledge the contribution of the Hon. Sandra Kanck. The Hon. Michelle Lensink asked some telling questions as well. It should not have been our job to go through the detail of this project as we have done but, given that the process forced upon us is that the parliament takes the place of proper planning professionals, we have really had no alternative but to ask the questions that we have asked. It is a very sad end to a very sad process, and I will put on the record one more time that, for the reasons of this poor process, the Greens will not be supporting this bill.

The Hon. SANDRA KANCK (21:52): My view of this bill and the way it has been dealt with by the parliament is that it is a disgrace. In the House of Assembly, once the select committee reported, from that point of its tabling in parliament to the bill going through all its stages, it took less than two hours. I think in the Legislative Council, with the committee stage, plus the second reading stage, we have probably taken about seven hours. Let us put this as a mathematical equation. The government said that this makes up for an EIS. Let me tell members that a select committee, plus two hours of debate in the House of Assembly, plus seven hours in the Legislative Council, does not equal an EIS.

I am still trying to weigh up which two bills have been the worst in the last two years: the Whyalla Indenture Act where, at that stage, parliament took away all the provisions that had been put in place for OneSteel, conditions set by the EPA; or whether it is this one where we have passed a bill that will have huge environmental ramifications without an EIS and before, as we have heard tonight, the EPA even has a proposal before it to consider. I invite others to try to work that one out. I really do not know which of the two is worse. We have had ministerial advisers here. As it is a forestry bill, it has been put forward by the Minister for Forests, and the ministerial advisers who have been here, although they have done their best, are not people from the Department for Environment and Heritage, yet almost all the questions that we were dealing with were about environmental issues. I do not know whether the government was deliberately dudding us by having people from Primary Industries to advise it or whether it suited it to have someone there so that we could not get all the answers.

It is also interesting to reflect on what I said about climate change predictions in my second reading contribution. The predictions to which I referred were made by the CSIRO, I think in 2001. A fortnight ago the CSIRO released its updated predictions which, of course, confirmed increased temperatures, reduced rainfall and general drying in South Australia. What that does, of course, is validate what I said in my second reading contribution, that is, that the South-East needs to become South Australia's food bowl. Instead, what we are doing with a project such as this is to

encourage more forestry. It might be news to the government, so I should tell it, but human beings cannot process gum leaves, nor can we eat pulp. This is hardly the right sort of project to be putting in the South-East at this time in a drying climate. We in South Australia now have the dubious distinction of approving a pulp mill in less than a year, whereas in the rest of the world it takes five years. Protavia has now got itself a gift like no other pulp mill proponent in the world.

It has its own act which it can take and wave in front of an investment banker. Here we have an example of that old saying about laughing all the way to the bank being very true. Certainly, it is a gift from this parliament. It is a get-rich scheme for Protavia. Our Premier, Mike Rann, likes to style himself and his government as environmentally friendly. Let me tell him that, with the passage of this bill, his and his government's environmental credentials have gone out the window, and they are up there with the flying pigs!

The Hon. J.M.A. LENSINK (21:56): I wish to make a brief contribution to the third reading. As previously indicated, the Liberal Party will support this bill, but I would like to echo some of the comments made by previous speakers. It is far from ideal to have required an indenture in order for this to proceed. I will be very impressed if this pulp mill jumps through all the hoops, that is, the schedules and various clauses within the legislation. On behalf of some of the local industries in the South-East, I am very pleased that the water issues have been addressed because, as we know, several parts of the South-East are overallocated. It does not make much sense in my book to provide a set resource to one particular industry when a number of existing industries must comply with what is a variable resource. I congratulate some of the locals in the area with whom I met (in particular members of the No Pulp Mill Alliance, Duan Butler and Ric Paltridge) on their valiant efforts to ensure that members of this parliament were made well aware of all the issues in relation to the South-East. Reluctantly, I support the bill on behalf of the Liberal Party. To those people I have mentioned, and having regard to such a beautiful and lush area where Angus beef and prime lambs are raised for export, as well as the dairies in the area, I completely understand their personal position in opposition to this bill. With those few remarks, I endorse the bill to the council.

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (21:58): This is a significant piece of legislation which has set up a framework of conditions with good community safeguards. It is as a result of a team effort from people across government. It is an excellent example of how the new case management system for supporting complex projects can deliver results through a collaborative effort. I take this opportunity to thank some key people who have helped achieve this outcome: Bob Teague, Phil Smith and Simon Howes from Planning SA; Peter Torr and his team from the EPA; Bob McLennan and his South-East people from DWLBC; Alison Field; Dr Nicholas Manetta and Greg Cox from the Crown Solicitor's Office; Aimee Travers from parliamentary counsel; and Martyn England and Roger Hartley from PIRSA.

The council divided on the third reading:

AYES (13)

Dawkins, J.S.L.	Evans, A.L.	Gazzola, J.M.
Holloway, P.	Hood, D.G.E.	Hunter, I.
Lensink, J.M.A.	Lucas, R.I.	Ridgway, D.W.
Stephens, T.J.	Wade, S.G.	Wortley, R.
Zollo, C. (teller)		

NOES (3)

Bressington, A.	Kanck, S.M.	Parnell, M. (teller)

Majority of 10 for the ayes.

Third reading.

Bill passed.

PREVENTION OF CRUELTY TO ANIMALS (ANIMAL WELFARE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 31 July 2007. Page 550.)

The Hon. A. BRESSINGTON (22:05): I am an animal lover. Believe it or not, I am very fond of my dogs and my birds, and I abhor any act of cruelty that is done to an animal. Like most people in the community, I believe that animal protection is extremely important and I, for one, would like to see this done responsibly and efficiently. I am also aware that many people have spoken of their concerns about the RSPCA, which has attracted a great deal of angst within the community. The Hons. Mark Parnell and Sandra Kanck have highlighted in the past the concern that its critics are given few opportunities to be heard and that its AGMs often attract heated debate.

I acknowledge the concerns expressed by constituents who have contacted my office about a perception that the RSPCA may be operating under a possible conflict of interest (or influence) by the fact that its President's legal firm attracts significant income from the RSPCA for prosecutions—indeed, more than three times that earned by any other firms retained by the RSPCA. I also recognise, on a more personal level, comments by the Hon. Rob Lawson seeking to dispel any adverse suggestions about the integrity or intentions of the RSPCA's President. At the centre of these concerns there appears to be some consensus that there is a deeper conflict between the roles of the RSPCA as a charity and as a law enforcement body. Certainly, many question whether it is going about its business as an enforcement body effectively much less responsibly.

On Tuesday 5 December 2006, the Minister for Environment and Conservation (Hon. Gail Gago) told us that, among other things, these amendments would allow welfare inspectors to enter a property to rescue an animal even if the owner is not present. The minister has misled us into believing that the RSPCA did not previously have such powers. This is a bold-faced untruth, which she must have known to be so. By way of example, I would like to share the story of the scandalous treatment meted out to Glynne Sutcliffe Huilgol, a highly educated and articulate Adelaide woman, whose Australian kelpie dog, Banjo, died when over 16 years of age. On Sunday 17 December 2000, her dog Banjo was seized by the RSPCA while Ms Glynne Sutcliffe was out for a few hours and, subsequently, the dog was euthanased without consultation or her consent. Ms Sutcliffe was charged by the RSPCA for ill-treating an animal, but this was later refined to failure to alleviate distress, in order to avoid the implication that Ms Sutcliffe had actively hurt her dog. However, this did not stop Ms Sutcliffe from being prosecuted, being the subject of a news item in *The Advertiser* of 2 July 2002 and being branded as an animal abuser.

Her dog Banjo was 16 years old, and he was dying. Banjo was originally her daughter's dog, and was given to her as a Christmas present in December 1984. Over the years, Banjo became Ms Sutcliffe's very close companion. Although the dog suffered from arthritis, when he became immobile in that last week of his life he also became incontinent and, at that point, he was placed outside. As he was a heavy dog, Ms Sutcliffe could not lift him. She put him on a blanket and pulled him into the shade under a tree. The dog had access to water, which was close to him, and was given aspirin to relieve his arthritic pain. One such day Ms Sutcliffe left her home to attend a meeting for a few hours. When she arrived home she found an RSPCA notice of seizure on the door and the dog was missing. She immediately rang the number indicated on the note and protested about what had been done, only to learn that her dog, Banjo, had already been put down. Being summer, the days before the RSPCA raid were quite warm, but when the RSPCA arrived the dog was in the afternoon shade of Ms Sutcliffe's veranda.

Grieving for the loss of her dog, Ms Sutcliffe asked for the return of his body so that she could bury him on the property where he had lived his entire life with her family, but the RSPCA told her that was impossible. Presumably, it was impossible because the RSPCA had immediately cremated him. This fact was pertinent to Ms Sutcliffe's defence when later, during her trial, certain errors and inconsistencies emerged in the RSPCA's evidence before the court. Although the RSPCA did not admit to the dog's cremation, it did inform Ms Sutcliffe that, once an animal had gone into the Veterinary Pathology Services building at 33 Flemington Street, Glenside, it could not leave that building.

The RSPCA described Banjo's death, due to old age, as 'hideous' but, as Ms Sutcliffe puts it, 'Death is not ever pretty' and suggests that claims made by the RSPCA that sick, injured or dying animals should be routinely put out of their misery are a specious rationalisation to claim moral virtue for human convenience. The fact of the matter is that Ms Sutcliffe was taking very good care of that dog and was actually trying to make his passing as comfortable as possible with him knowing that he was still part of the family and still greatly appreciated and greatly loved. Regardless of what we individually believe about euthanasing sick, injured or dying animals, Ms Sutcliffe's case raises many moral and philosophical questions than just the desirability and need to protect animals.

First, we are deliberately intending, through this bill, to impose a legal requirement that a dying animal must be put down. As the Sutcliffe case represents, most pet owners are not aware of this compulsory direction of the RSPCA and how it interprets its powers and enforces its legislation. Indeed, many responsible pet lovers would simply never have the heart to destroy their cat or dog if they believed that they could actually make the animal's last days comfortable. Secondly, if the government requires that a dying animal should be put down (apart from the moral and emotional aspects of the situation), is it legitimate to compel families with limited resources to spend large sums of money on getting a pet—admittedly ill or suffering—either killed or placed on long-term and ongoing medications for the term of its life?

There are people who just do not agree with this medical approach to animals. They just want to be with the animal and comfort it. There are enough research studies around now to show that the bond between humans and animals is so strong that it can make sick people well and vice versa. I believe that where we are going with much of this legislation is imposing on people standards that do not suit the average reasonable citizen. We are having moral choices made for us on a number of levels that, whether or not we like them, inflict other people's values on our families and the way that we would choose to live our lives, and now even with our pets. Are we telling families that only affluent households ought to be afforded the right to own a pet, for fear of that pet becoming sick, or their incurring a criminal conviction if they choose not to put the animal down, although they care for and bring that dog comfort?

The RSPCA is becoming better known for killing animals than for protecting them. Stories from several constituents who have contacted my office suggest that the RSPCA is high handed in the extreme, assuming the right to act in a dictatorial fashion and determine arbitrarily what should or should not be done to animals such as Banjo. Meanwhile, when we show sheep on *Today Tonight* that are injured and dying and being treated in an absolutely abhorrent manner, the RSPCA turns a blind eye. Why do we have this inconsistency? What is the benchmark for determining prosecutions against pet owners as opposed to other owners such as farmers, corporate producers of livestock, etc?

Constituents tell me that they are seen as a soft target against whom it is easy to bring a conviction and force payment for legal and other services. For example, at Ms Sutcliffe's trial, the general air of unreality was exacerbated by the discussion of the need to prove, by reference to witness, that a dog was an animal within the meaning of the relevant legislation (i.e. it had vertebrae and was neither a fish nor a human). What a waste of time, energy and taxpayers' money, and what a way for bureaucracies and organisations to flex their muscle and put a person who is grieving through the mill, and what a ridiculous definition of whether or not it is an animal. The comedy in the courtroom did not end there. Two key RSPCA witnesses—Dr Sarah Drysdale, veterinary surgeon, and Dr Julie Lucas, veterinary pathologist—said that they had estimated Banjo's age as 'mature', meaning 'over five'. The other was estimated 'between five and nine or 10 years of age'. Banjo was, in fact, 16 years old. This is just a small example of countless other inaccuracies between the RSPCA's conduct of the prosecution case and the facts of Banjo's medical condition.

However, such unreliable testimony by its own experts and the fact that they could be so much in error suggests that there are wider reaching problems with the manner in which the RSPCA goes about its business generally. Logically, if a steeplechaser breaks an ankle, it is reasonable to conclude that it will never race again. On the other hand, we now know how to mend bones. A horse could be put in a body sling while its leg mends; instead, it is killed because its owner deems it of no commercial value any more. As Ms Sutcliffe's case proves, a natural death is no longer permitted for domestic or companion animals, and it is a situation which I, for one, believe ought to be revisited in view of our inconsistent messages to the community about what constitutes cruelty.

On a final note, the minister tells us that this bill empowers inspectors under the act to undertake routine inspections of animal related industries such as piggeries, dog-breeding kennels and battery hen houses. But this is not entirely true either. The current bill gives the RSPCA the authority to delegate its powers to the Department of Primary Industries and Resources to regulate practices within the livestock and intensive farming industries. In doing so, it releases the RSPCA from any obligation to monitor the cruel treatment of animals within these sectors or to prosecute these industries where animals are maltreated by focusing its energies and resources on companion animals in private homes. For example, while domestic pets may be subjected to multiple and unrestricted inspections, inspections of livestock will only be permitted once a year.

The *Four Corners* program entitled 'A Blind Eye' of 21 June 2004 revealed the South Australian branch of the RSPCA gives notice to intervene for farmers prior to inspections of their properties. Ms Sutcliffe was afforded no such privilege. There was no notice. They arrived while she was out and confiscated the dog and cremated it without ever having to consult her at all. Do we really expect the Department of Primary Industries and Resources to prosecute larger businesses or private corporations when hundreds of thousands (maybe even millions) of dollars worth of state exports may be affected?

As I have stated, I am a lover of animals and I am supportive in principle of legislation that will improve their welfare. However, in its present form, I am unconvinced by this bill. It is important that the government and the minister really care about animal welfare and there are no outside motivations nor are they bowing to the pressure of a radical minority to ban events such as rodeos. As time goes by in this place with legislation that I see passed that affects the average reasonable citizens of this state, it seems to be this government's favourite past-time to put in fines, penalties and whatever else it can in order to money-grab. Really this bill has nothing to do with the welfare of animals at all. It is another way for another body to money grab and, by a third party, collect lots of money from average people through a legal process, as we see with family law and child protection in this state. I link this RSPCA bill to all that because at the end of the day we all end up back in the legal system, back in the cycle and trapped, going round and round, spending thousands of our dollars protecting ourselves and trying to defend ourselves against unrealistic legislation and laws. I am unconvinced by not only this bill but the intention behind it.

Debate adjourned on motion of the Hon. R. Wortley.

COLLECTIONS FOR CHARITABLE PURPOSES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 September 2007. Page 727.)

The Hon. A.L. EVANS (22:22): I support the second reading of the bill, although Family First has some concerns that it would appreciate being addressed. Family First is a strong supporter of the work of charities and our charity workers. Our community would be a poorer place without those who dedicate themselves to the wellbeing of the neediest in our society. In the past volunteers would be responsible for selling badges and collecting money for their charity. However, the number of volunteers available for collection is in decline, with 41.67 per cent of employed males now working over 40 hours a week. As their work obligations increase, fewer people are willing to volunteer.

Family First recently spoke to Wendy Shirley from the South Australia Volunteer Fire Brigades Association, who was concerned for volunteers in that sector as employers put increasing restrictions on CFS volunteers. Our society today, with its focus on the bottom line, is not friendly to the volunteer spirit. In the absence of suitable volunteers many charities employ professional collectors and charity collecting is increasingly seen as another industry. It is hard to criticise a charity that is struggling for survival for using a professional collection service to stay afloat, but it makes us ask whether our society is heading in the right direction.

New section 6C provides that collectors must indicate whether they are being paid or carry a badge which indicates they are paid collectors. Prominently advertising the fact that the person is a paid collector will, no doubt, decrease the donation received. There will most likely be cases where collectors will attempt to hide the badge, print the notification in small font and so on to hide the fact. Regulations concerning the size of font that could be used on the badge may be of assistance, provided the spirit of the legislation is complied with. However, we are likely to see a decreased take in donations for paid collectors. Some charities may stop using such collectors and some may even fail, which is a heavy price.

Nevertheless, Family First believes the community should be informed about where their donations are going. Nothing is more detrimental to a generous society than a creeping sense of scepticism. Nothing is more likely to close people's wallets than a sense that their money is not going where it is promised. That is the current risk. On balance, Family First believes that the disclosure of paid collectors is the best solution for our society and charitable organisations in the long-term. However, we also believe the community must increasingly be encouraged to volunteer. One element of disclosure missing from the badge reference in new section 6C is the name of the organisation being collected for.

I sometimes come across people with buckets in the city asking for donations to feed Adelaide's hungry population. This, of course, seems like a worthwhile cause. These collectors are

actually members of the International Society for Krishna Consciousness. No doubt they are sometimes hungry, but if the fact that this is a religious collection was made more prominent, no doubt people of other religions may refuse to donate to that cause. I have read the current provisions and it appears that the name of the organisation being collected for does not need to appear on the badge. I am also uncertain whether this group would be regarded as a charity or whether their activities would fall just outside that definition.

I keep in mind that the current wording of the bill puts an onus on charitable collectors, which is not matched by those who may be collecting for organisations whose purposes fall outside the definition found in clause 4. That is something of a concern, and it does appear unusual that a group such as a local netball club is exempt from the disclosure requirements while the Salvation Army is not. I would be grateful if the rationale behind this decision could be explained during the committee stage.

With respect to certain charity entertainment events, the bill will also require disclosure to be explained more specifically before the function. I know that past events have included dinners with Cherie Blair and Rudi Giuliani. It is important that people who are outlaying so much money know how much is really going to charity and how much is going to the guest or to the organiser. That seems very sensible to us, and we commend the government for the clearer disclosure provisions in this regard.

Family First also commends the minister for tabling amendments to the bill which resolve some other concerns that we had, including, under the previous version, what would happen with the collection plate at a Salvation Army hall. We therefore indicate support for these amendments. We further sympathise with the concerns of the opposition and note the concerns raised by the now departed Hon. Nick Xenophon. We will consider these concerns during the committee stage. With these comments, I indicate Family First's support for the second reading. We will consider the bill further at the committee stage.

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (22:27): In closing the second reading debate, I point out that this bill clearly proposes a minimum set of disclosure requirements for organisations that collect for charitable purposes, investigative powers and a number of administrative and technical amendments. It is the result of an extended consultation with the charity sector with the objective of achieving a balance between improved disclosure and the cost of administration. We believe that this bill achieves that balance.

The fundamental provisions in the act have been in place for many years. Its purpose is to provide statutory protection to both givers and collectors, which is still relevant today. As clearly stated in the title, the act regulates collection activities for charitable purposes. It does not apply to the commercial activities of the charity; for example, allowing the use of the charity's name on a product in return for a product fee. These circumstances are addressed by laws that apply to businesses generally. In relation to donations, givers want to know that collectors are legitimate and collectors need to protect their name and reputation so as to maximise collections into the future. The act achieves this and should not be abolished, as suggested by the opposition in another place.

However, there appears to be some confusion among the opposition about how the act currently works. The Hon. David Ridgway in his second reading contribution suggested that a local football club collecting for a charitable purpose would need to be licensed by virtue of the amendment bill. That is not true. The licensing and authorisation framework, in essence, remains unchanged. The local football club collecting on behalf of the licensed charity simply needs to contact the charity for authority to collect on their behalf prior to collection. The football club does not need to be licensed. This is an important protection that gives control to the licensed charity about who collects for them from the public and how that is done.

The Hon. David Ridgway, in his second reading contribution, also suggested that the bill makes it a requirement that when a charity sells tickets to an event the advertising and tickets must display the estimated amount and the intended proportion of the sales revenue that will be provided to the charity. That is not so. This was a key issue in the consultation process with the charity sector. The final report released in December 2006 discussed a range of issues relating to events disclosure requirements. It discussed the administrative burden on charity organisations; how disclosure on an event basis, such as networking and profile-raising events, may be misleading and harmful to charity organisations; and difficulties with television and radio advertising to

communicate event financial information. The government (as recorded in the final report) agreed with the charities and, as a result, this bill does not require the disclosure of event financial information of this nature.

During the briefings the Hon. Sandra Kanck raised some concerns about how the technical requirements for authorisation would impact on more spontaneous forms of giving to charitable purposes. The government is sponsoring an amendment that will provide an exemption in circumstances where the collector knows the givers and where all the collection is provided to a licensed organisation. This activity should be encouraged, and it will be by this government's amendment. The Hon. Sandra Kanck also raised the issue of how the new disclosure requirements would be implemented, and I can advise that that is the government's intention for a long lead-in period with the amendments commencing on 1 July 2008.

The Office of the Liquor and Gambling Commissioner will, prior to commencement, notify all the changes with a plain English bulletin, place information on the website, establish an advice telephone and e-mail hotline, prepare update bulletins with answers to frequently asked questions, and offer information sessions. Information sessions and update bulletins will continue after commencement if there is a need. No charity need fear the disclosure requirements. The government will not prosecute organisations for making honest mistakes in complying with these new arrangements; it will offer them help to get it right.

The Hon. Nick Xenophon raised a number of matters that will also be dealt with in an administrative way, and I am happy to confirm that the Minister for Gambling has agreed to implement them. The matters are:

- ensuring that the website referred to in proposed new section 15(6) will not be part of the liquor and gambling website but will have its own web address; and
- that the statement referred to in proposed new section 15(2)(b) will be required to record details of payments to entertainers if they were required to be disclosed during the relevant period under proposed new section 7(3).

Before he resigned from this place the Hon. Nick Xenophon raised a number of questions during his second reading contribution that I will briefly address, for the record. The first question raised by the Hon. Nick Xenophon was in relation to what would be the level of scrutiny and auditing. I am advised that the Office of the Liquor and Gambling Commissioner is responsible for the administration of the regulatory arrangement under the Collections for Charitable Purposes Act. The bill we are currently considering provides powers to the minister to appoint inspectors and provides a range of powers to those inspectors. This will improve the ability of the Office of the Liquor and Gambling Commissioner to undertake its compliance and enforcement role in relation to the Collections for Charitable Purposes Act.

The second question raised was regarding what would be the sanctions if there was no compliance. Sanctions are provided throughout the Collections for Charitable Purposes Act—for example, non-compliance with a requirement to be authorised or licensed under section 6 has a maximum penalty of a division 6 fine, which I am advised is currently $4,000. South Australians' good deeds will not be penalised for simply honest mistakes in compliance with the act. This can be guaranteed, because section 19 of the act states that no prosecution for an offence against the act may be instituted without approval in writing of the minister. If there is non-compliance the Office of the Liquor and Gambling Commissioner will work with the organisation to help achieve compliance. The third question was regarding what regulations were anticipated to deal with the sort of concerns raised by the Leader of the Opposition, and I have already addressed those concerns.

The fourth question was: in terms of the minister exercising his or her power in the past under section 12(2) of the act, to what extent was that enforced? I am advised that, during the financial year 2006-07, the minister has not exercised his power under section 12(2) of the act. The fifth question was: to what extent will this act change things in terms of conditions that are applied and also the resources used to enforce, particularly, the bigger events? As I noted earlier, this bill proposed to implement new disclosure requirements, which have been discussed at length in the final report released in 2006. It does not alter the essence of the licensing and authorisation framework. It does, however, include new powers to appoint inspectors and gives powers to those inspectors that will aid investigations into compliance with the licensing framework and conditions. I am advised that these additional obligations on the Office of the Liquor and Gambling Commissioner will be met from the existing resources of the office.

The Hon. Nick Xenophon had filed two amendments to this bill. The first of the two amendments to be filed was not supported by the government because it was inconsistent with the findings of the final report. The second amendment, however, clarifies and addresses an anomaly in the calculation of the performer's fee for the purpose of disclosure under the proposed new section 7. The second amendment was going to be supported by the government. The government will now advance this amendment as a government amendment, because it improves the drafting of this bill. I thank each of the members for their contribution to this debate, and I especially thank those members who have constructively contributed to improving the regulatory model. I also thank the Hon. Andrew Evans, who made his contribution this evening. I commend the bill to the council.

Bill read a second time.

At 22:38 the council adjourned until Wednesday 17 October 2007 at 14:15.