LEGISLATIVE COUNCIL

Wednesday 17 October 2007

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:17 and read prayers.

LEGISLATIVE REVIEW COMMITTEE

The Hon. J.M. GAZZOLA (14:18): I bring up the eighth report of the committee for 2007.

Report received.

DROUGHT

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:18): On behalf of the Premier, I table a ministerial statement made today on the Premier's Special Adviser on Drought.

AUDITOR-GENERAL'S REPORT

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:19): I lay on the table a copy of a ministerial statement relating to the Auditor-General's Report made earlier today in another place by my colleague the Treasurer. The ministerial statement corrects much of the misinformation given by the Leader of the Opposition.

QUESTION TIME

XENOPHON, HON. N.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:19): I seek leave to make a brief explanation before asking the Leader of the Government in this chamber a question about the replacement of the Hon. Nick Xenophon.

Leave granted.

The Hon. D.W. RIDGWAY: As honourable members would be aware, two days ago, on Monday, the Hon. Nick Xenophon formally resigned from his position in this chamber. I thought that possibly the format used yesterday might have been that he formally informed the chamber of his resignation, but maybe that is not a formal procedure; perhaps that is just my understanding of it. However, at the last election some 190,000 South Australians voted for the Hon. Nick Xenophon and, as a result, he was elected, together with Ann Bressington, and Mr John Darley was No. 3 on Mr Xenophon's ticket. It is the usual practice in this place that, if the person is a member of a party, the party nominates a replacement.

I recall that, when the Hon. Diana Laidlaw retired, she announced her retirement, I think, late in the calendar year 2002, or maybe early in 2003, in February, but some months before her retirement, to allow the Liberal Party time to have a preselection when, of course, my colleague the Hon. Michelle Lensink was preselected and subsequently sworn in. What we did not have was the seat left vacant for a number of weeks. We had an indication from the retiring member, and the party went about its process and had a replacement in place. We have had an indication from the Hon. Nick Xenophon and, of course, Mr John Darley that Mr Darley is prepared to accept that position, given that he was on the ticket and part of Nick Xenophon's group. So, we have a situation where, potentially, 190,000 South Australians will not have their voice heard in this parliament.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Xenophon will hear you all if you do not be quiet.

The Hon. D.W. RIDGWAY: Thank you for your protection, Mr President. So, 190,000 South Australians potentially are looking at a number of weeks without having a representative here in this place. We have a number of important pieces of government legislation which I am sure the government would like to pass before the end of the year, and I am sure there are pieces of private members' legislation for which it will be important to have a replacement for the Hon. Nick Xenophon as soon as possible. Also, of course, there are the roles that the Hon. Nick Xenophon played on the Statutory Authorities Review Committee and a number of select committees. So, my question to the Leader of the Government in this place is: when will the government publicly endorse Mr Xenophon's request, and Mr Darley's indication that he is prepared to take that

position? I will add that the Liberal Party last week, I think it was, indicated that it would be happy to support Mr Darley. So, when will the government endorse that, and when are we likely to see Mr Darley sworn in and take his place in this chamber?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:23): There are certain constitutional procedures in this place. I came into this place through a casual vacancy, and I think it was at least a month—

The Hon. T.J. Stephens: And look what a wonderful process it was!

The Hon. P. HOLLOWAY: It was a very good process, actually—an excellent process.

The Hon. T.J. Stephens: Look at the quality of person we have!

The Hon. P. HOLLOWAY: Exactly! But the point I make, seriously, is that it did take some time for that to happen. I think Nick Xenophon resigned only the day before yesterday. It is scarcely the government's fault, and I do not see how the government can be held—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Whether he announced it or not, the fact is that there are certain—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Do you want an answer to the question or not? There are certain procedures we have to go through. As the Leader of the Opposition correctly said, in relation to the choice of people from a political party there are certain procedures which need to be gone through. I am not personally handling this—I imagine it would be done through the Premier's office—but, quite properly, Crown law advice will be sought to ensure that whatever procedure we come up with in fact meets the constitutional requirements. I am sure no-one would want a joint sitting to make an appointment that was subsequently challenged by someone else because the procedures were not adhered to. We will not unnecessarily delay the procedure. It is scarcely the government's fault that the voters are not represented in parliament here today. I do not see that anyone could hold the government responsible for that.

We will ensure that whatever procedure we go through is constitutionally correct, and we certainly will not be seeking to delay it. My experience in the past is that these vacancies normally take a month or so to fill. I can say something about the Liberal Party's great concern for the Hon. Nick Xenophon. Certainly, concern was not apparent during his period in this parliament, nor does it appear to be shared by the Leader of the Government in the Senate, Senator Minchin, who has urged people to not vote for Nick Xenophon. I think the Hon. Sandra Kanck has also been writing to people urging them not to support Nick Xenophon.

Members interjecting:

The Hon. P. HOLLOWAY: We will be supporting the Australian Labor Party candidates: they are excellent candidates who deserve to be elected. In relation to any casual vacancy in this place, the government will ensure that the proper constitutional practice is adhered to. It may be, if I am correct, your responsibility, Mr President (or you have a key role), in relation to the notification of such, and I am sure we all want to ensure the constitutional—

Members interjecting:

The Hon. P. HOLLOWAY: How can anybody be accused of playing politics when the Hon. Nick Xenophon resigned on Monday of this week? Here it is on Wednesday and we are being accused of trying to play politics. This is absurd. On the one hand, at least on the federal level, the Liberal Party is urging people not to vote for Nick Xenophon. On the other hand, the Liberal Party is in here expressing some concern about the votes in this place. The government will deal with the matter properly, correctly and expediently.

XENOPHON, HON. N.

The Hon. R.D. LAWSON (14:27): Is it true that there is absolutely no constitutional impediment to the calling of an assembly next week and the election of a successor to Mr Xenophon?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:28): The question is: how

should one do it? The other point is that members opposite are suggesting that, if you leave this place, you can pick your successor. Does that mean that, if the Hon. Rob Lucas finally retires, although it may not be for another 10 or 20 years, he would have the right to pick his successor and say that somebody next on the list he was elected from should be elected? Will that happen? I do not think so. The only people where the right of succession is determined is the royal family, as I understand it, but as far as this parliament is concerned there are constitutional procedures. This government understands the situation in relation to the Hon. Nick Xenophon, that he was elected on a certain platform with a certain ticket, and obviously those views will be taken into consideration, but it is important that the replacement properly reflects the wishes of the voters of this state and that the provisions of the Constitution reflect that.

The PRESIDENT: Certain things must be agreed upon, done and gazetted. Having received the Hon. Mr Xenophon's resignation only on Monday, which is two days ago—

Members interjecting:

The PRESIDENT: Certain issues must be seen to, and the Clerk of the Legislative Council has been working on some of those matters and consulting with me and will it will take some time, but it will be done as soon as everything is in order.

SUPPORTED RESIDENTIAL FACILITIES

The Hon. J.M.A. LENSINK (14:30): I seek leave to make an explanation before asking the Minister for Mental Health and Substance Abuse a question about supported residential facilities.

Leave granted.

The Hon. J.M.A. LENSINK: Several years ago, when the Hon. Steph Key was minister for housing and disability, from recollection—

An honourable member interjecting:

The Hon. J.M.A. LENSINK: Indeed; it is a shame. She was a very good minister. She established a board and care subsidy for people with complex needs residing in supported residential facilities (SRFs). This client group includes people with psychiatric disabilities. At the time of the implementation of that subsidy, it was expected that, of the some 1,000 residents in SRFs, between 20 and 25 per cent would fall within the client group and be eligible for the subsidy when, in fact, it was some 50 to 55 per cent. That resulted in a rationing of services so that, for example, instead of eight hours a week of care and support, a client might receive two to three hours a week. I have obtained a copy of a joint response prepared by the Supported Residential Facilities Association and non-government community service providers of the support and care referred to in my previous comments. It states:

> ...accommodation and a personal care package will have their rights protected should they move from one establishment to another.

It suggests that that would be a package that would move with the client. The SRF Association and non-government organisations believe that licensing needs to apply to two core services: accommodation provision and personal care and support services. In doing so, it suggests certain legislative amendments to some regime of legislation that would govern the SRF sector. My questions are:

1. Can the minister advise how many people with psychiatric disability are residing in SRFs?

2. Can she confirm that the board and care subsidy will expire in June 2008?

3. Can she provide an update on the current policy provisions to assist this group of people?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:32): I thank the honourable member for her important question. Indeed, stable accommodation is a very important aspect for everyone but particularly for those experiencing mental illness. It is an important ingredient in terms of being able to ensure ongoing wellness and quality of life for the people concerned, and it helps to reduce the number of relapses back into illness they may experience. This government has a number of supported accommodation strategies to support this group in terms of their needs. Currently, we have 36 pension-only supported SRFs, which can accommodate approximately 1,053 people. The vast majority of these are private-for-profit

services, and 53 per cent of residents are identified as having a psychiatric condition or disability. Those figures are from December 2006.

In November 2003, the government introduced a five-year $57.7 million support package to assist residents living in SRFs with additional personal care, health and disability services. This package has improved the health and wellbeing of many residents through improved access to disability support, allied health, dental, optical, podiatry, welfare and other services. However, concerns remain about the ability of the SRF model to meet complex needs. The government has signalled its intention to develop legislation in the accommodation act to better regulate the sector. Of course, minister Weatherill will be responsible for that. I am advised that the legislative framework proposed is a three-tiered licensing regime based on the provision of accommodation, food and personal care that will encompass all forms of congregate care living for vulnerable people.

There is a range of other initiatives, of course. Mr President, you would be well aware that, under the Stepping Up reform agenda of the Rann Labor government, we have identified the need for extra supported accommodation. That was noted in the Social Inclusion Report and it has been integrated into our stepped model of care. As I have reported before, it is a reform system, a more balanced system of mental health care with a broader range of services targeted at earlier phases, so the main focus is on early intervention and prevention. It particularly includes the increase in the number of supported accommodation places. The government has committed $43.6 million into mental health, and that is only part of the package. The total package over the past year has been about $107.9 million to reform and rebuild our mental health system. That will include an additional number of beds across the whole system.

There are other initiatives. The honourable member asked what other strategies we have in place. There are homelessness initiatives that recognise the link between mental illness and homelessness, and that will be targeted to assist chronically homeless people, which also includes people with mental illness. There is the Street to Home program, which is a joint initiative between the Department of Health, the Department for Families and Communities, and the Social Inclusion Unit. That provides an assertive outreach response to inner city homelessness. There are also psychiatric disability support packages and an integrated inner city service system. There is also a range of demonstration projects that involve homelessness which I think have been reported here before. As members can see, it is an area that the government is well aware of in terms of the very sad link between homelessness and people with mental illness. We have put a wide range of strategies in place to assist and meet the needs of this particular group.

FIELD RIVER VALLEY

The Hon. S.G. WADE (14:38): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the Field River.

Leave granted.

The Hon. S.G. WADE: In December 2006, there was a raw sewage spill into the Field River at Hallett Cove resulting from a tree root blockage. In April 2007, in response to my question without notice of 8 February 2007, the minister said:

> The EPA recently prepared in consultation with SA Water, United Water and the Local Government Association a draft code of practice for wastewater overflow management...Wastewater system operators will be obliged to comply with this code once it is implemented...EPA is working with SA Water to ensure overflows of all types are reduced in number and severity.

On 15 March 2007, I asked the minister whether she would ensure that the EPA audits the maintenance regime of the pipe infrastructure of SA Water and United Water. I have not received a response to that question. On Tuesday of last week, 2 October 2007, a wastewater overflow on Osprey Court, Hallett Cove flowed for at least an hour and a half, leading to sewage flowing into the Field River. United Water personnel confirmed that the cause of the overflow was tree roots, and local residents have advised that they have photographic confirmation of that fact. My questions to the minister are:

1. Given that it is 10 months since the last tree root blockage (in December 2006) and six months since she advised the council that the draft code of practice for wastewater overflow management was due to be implemented, has that code been implemented?

2. In relation to the Field River catchment, in particular, what practical steps has the EPA required of SA water or United Water to deal with tree roots and avoid wastewater overflows in the Field River catchment?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:40): I thank the member for his question, which is a repeat of a previous question in this council. In relation to those matters that he has pointed out in terms of there being—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: —no response, I have indicated previously that I will provide a response, and that response will be forthcoming. In relation to any recent events, again, the department works very hard on these issues.

An honourable member: What have they done?

The Hon. G.E. GAGO: My understanding is that they have attempted to address the problem, and I am more than happy to bring back the findings of the report from that incident. I do not have them in front of me but, indeed, the EPA has recently prepared a code in consultation with SA Water and United Water, and that code of practice is about addressing waste water and overflow management. It is about providing guidance and, in some cases, instruction to assist waste water system operators, and that should help address and minimise the frequency and volume of such overflows. I understand that work on that code is still being done, and negotiations are continuing to take place. It is important that we get these things right and, as I said, in relation to those details that I do not have with me here today, I am more than happy to take them on notice and bring back a response.

GOLDEN GROVE EXTRACTIVE INDUSTRIES ZONE

The Hon. J.M. GAZZOLA (14:42): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about the Golden Grove Extractive Industries Zone Management Plan 2006.

Leave granted.

The Hon. J.M. GAZZOLA: The Golden Grove Extractive Industries Zone is known to be an important source of construction material for Adelaide. Will the minister provide an update on the progress made in regard to the Golden Grove Extractive Industries Zone Management Plan 2006?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:43): I thank the honourable member for his question. I am delighted to inform all members of the council that the review of the Golden Grove Extractive Industries Zone (GGEIZ) Management Plan 1993 has been completed. This was undertaken through a joint committee consisting of Cement Concrete and Aggregates Australia (representing the industries operating in the Golden Grove Extractive Industries Zone), Primary Industries and Resources South Australia and the City of Tea Tree Gully. As the Minister for Mineral Resources Development, I endorsed the GGEIZ Management Plan 2006 in September 2007 subsequent to the members of the GGEIZ management plan review committee confirming their commitment by formally endorsing the plan.

Implementation of the plan would involve a number of actions, including the review of statutory mine operation plans (MOPs), for the private mines and mining and rehabilitation programs (MARPs) for the extractive mineral leases. The Golden Grove Extractive Industries Zone, which is located 18 kilometres north-east of Adelaide, contains the state's largest known viable deposits of sand, white plastic clay and weathered shale. As indicated by the honourable member, this area contains one of the most important sources of construction material for metropolitan Adelaide. The existing sand pits at Golden Grove are expected to continue in operation for approximately 35 to 40 years. Estimates indicate that there is well over 100 years' supply of clay and shale materials necessary for brick-making.

The original Golden Grove Extractive Industries Zone Management Plan was issued in 1993 under the authority of the then minister of mineral resources (I think it was Frank Blevins) after extensive consultation with major stakeholders. I think that Frank Blevins showed a great deal of foresight in doing that, and also as mining minister he launched the first collection of pre-competitive geoscientific data. Although Frank Blevins is well known for many roles, his short role as minister for mineral resources led to some very important decisions for the state.

The review of the management plan commenced in early 2003 and involved senior representatives of the mine operators within the zone, the City of Tea Tree Gully and PIRSA's division of Minerals and Energy Resources. The management plan provides a framework for the management of the potential impacts of mining operations on the environment and the amenity of adjacent residential areas whilst maximising the recovery of significant and strategically important resources of construction sand and brick-making clay. The plan provides important information for future land use planning in the area. It will allow mutual coexistence of long-term sand and clay mining in close proximity to residential areas to maximise the recovery of resources while minimising environmental impact. Adequate protection from further sterilisation of resources and consideration of the amenity of neighbouring residences is paramount. The control of silted stormwater and measures to prevent the pollution of water in Cobbler Creek downstream of the Golden Grove extractive industry zone has also been addressed in the plan.

BLACK-FLANKED ROCK WALLABIES

The Hon. A.L. EVANS (14:46): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question regarding the risk of extinction of the black-flanked rock wallaby.

Leave granted.

The Hon. A.L. EVANS: I note the state government's ambitious plan launched in July this year to save all native species in this state from extinction. It is a very fine aspiration which Family First supports. On page 16 of *The Advertiser* dated Monday 1 October it was reported that only 50 black-flanked rock wallabies were left in the wild in South Australia. It was claimed that they are near extinction. The article went on to say that presumably 15 of those 50 have been moved to captivity in Monarto Zoo for their conservation.

When my office researched the conservation status of this animal—known as the warru in the APY lands—I was surprised to learn that the International Union for the Conservation of Nature and Natural Resources (IUCN) in its red list gives this species the lowest level of concern rating. This places the black-flanked rock wallaby on the same conservation status category as a common pigeon. I acknowledge that there can be problems with the IUCN's rating not being comparable with the rating used in Australia, but I note that the IUCN is promoted on the state government's SA Central website as being the world's largest conservation-related organisation. I also know that the University of Queensland published research in April last year finding that the allocation of public funding for the conservation of species related closely to the conservation status of competing species on lists such as the IUCN's red list. My questions to the minister are:

1. Am I wrong about the black-flanked rock wallaby's true conservation status with the IUCN?

2. If I am right, what is the state government doing to increase the conservation status of the species with the IUCN?

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): In relation to the black-flanked rock wallaby, I have been advised that it is indeed a threatened species. The advice is that in some areas it has almost become extinct, and it is an important part of the state's natural wildlife. It is the species that is indeed under significant threat, to the point of almost being extinct in some areas where, at various times, it has been abundant. In terms of the IUCN ratings, I am happy to get further details about that and how it equates with the ratings for threatened and extinct species in the state, and how we prioritise our programs.

It has been a very important program, and I understand that to date it has been quite successful, where the local indigenous groups on the APY lands have worked with the Warru. When the females have become pregnant the young have been removed from their pouch and flown to Monarto zoo, where we have a threatened species program, and those young are implanted into a surrogate wallaby. I think it is the yellow-footed rock wallaby that is used as the surrogate species. If my memory serves me, I understand that they make extremely good surrogate mothers. By removing the young from the mother very early in the pregnancy it means that the female black-flanked rock wallaby will become pregnant again more quickly, and thus we are able to speed up the process of increasing these numbers. As I said, in terms of the ratings and rankings, I am happy to take that part of the question on notice and bring back a response.

POLICE SELECTION

The Hon. T.J. STEPHENS (14:51): I seek leave to make a brief explanation before asking the Minister for Police questions about the police selection process for promotion.

Leave granted.

The Hon. T.J. STEPHENS: A recent industrial report contained in the Police Association's annual report for 2007 highlights that the association is concerned by the incidence of non-selection for promotional positions by selection advisory panels. The report explains that about 500 selections for promotional positions occurred in 2006, but 16.5 per cent of these were no-selection cases. Furthermore, in about 140 sergeant selections, the no-selection percentage increased to about 20.5 per cent. In many cases the selection panel has determined that none of the applicants are suitable. The Police Association holds concerns that under the current act those applicants who are aggrieved by this decision have no system in place to challenge the decision. The decisions evidently cannot be challenged in the Police Review Tribunal. As in any job, such a decision can affect career advancement, status, self-esteem and, of course, salary for the individual, and the association is calling for this current situation to be addressed. My questions are:

1. Has the minister discussed this topic with representatives of the Police Association or with the Police Commissioner?

2. Does the minister agree with the Police Association that the Police Act and regulations should be amended to allow for appeals against non-selection?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:52): The honourable member would be well aware because, unlike the shadow minister for police, he did attend the Police Association conference.

Members interjecting:

The Hon. P. HOLLOWAY: The Hon. Terry Stevens does keep in regular touch. He was representing you. We know where our priorities lie. In relation to matters of police selection, obviously, as minister I have no role in relation to that, and it would be entirely improper if I as minister were to be in any way involved in the promotion and selection process for police officers. I think everyone in this council would understand that it would be quite inappropriate for ministers to be personally involved in that process. As I indicated yesterday, the Police Association is currently having its conference, which concludes today. As is normally the case, I have regular meetings with the Police Association, and there it raises issues with me, and I expect that it would raise any issues that came out of the conference. If it has concerns in relation to the selection process it will raise them with me, and in turn I will discuss those matters with the Police Commissioner. Of course, the act introduced by a former Liberal government and passed by this parliament quite properly puts the onus of administering the SA Police on the Commissioner for Police.

Of course, any directions given to the police in relation to matters quite properly have to be tabled in parliament. So, that is the way the ministerial relationship works with the police; it has been that way ever since the police legislation was first introduced—and it is quite appropriate that that should continue. I will certainly be discussing—and I regularly do have discussions—this matter with members of the Police Association. What I can tell the honourable member is that there have been ongoing discussions for some time between the Police Association and the Commissioner in relation to a number of issues that come under the Police Act. The latest advice I have is that there is certainly substantial agreement in relation to a number of areas where amendments could be made and, at the appropriate time, we will be bringing those forward, but that is a matter that will take its own time. As I have said, I am always happy to discuss issues with the Police Association. As a result of discussions, a number of changes to policy have been made and will continue to be made.

BICYCLE INITIATIVES

The Hon. R. WORTLEY (14:57): I seek leave to make a brief explanation before asking the Minister for Road Safety a question about cycling initiatives.

Leave granted.

The Hon. R. WORTLEY: I understand that more bicycles than cars are sold in South Australia and that there are approximately 450,000 cyclists in the state. Will the minister outline the state government's commitment to safety initiatives?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:57): Today is a particularly important day to highlight the government's involvement in improving cycling conditions. This morning I attended the Ride to Work Day function in Victoria Square, and I was pleased to see the large number of riders embracing the opportunity to leave their car at home. I have to say that I did not ride, but I am pleased to say that the Hon. Mark Parnell did ride his bicycle this morning, representing this chamber. As well as being an affordable and environmentally-friendly mode of transport, cycling is also an excellent way in which to keep fit. For those cyclists who are undecided about making the switch from driving to cycling, the state government has released a new handbook entitled `A simple guide for everyday cycling'.

The Hon. R. Wortley interjecting:

The Hon. CARMEL ZOLLO: The interjection behind me reminds me that Vinnie Ciccarello (the member for Norwood) was there this morning also—and she does ride every day. In fact, even bike riders who consider themselves veterans on two wheels may find some useful information in the simple guide for everyday cycling. I would certainly urge all cyclists to ensure that they are across all safety measures and the responsibilities they have. The handbook includes the road rules plus tips on riding in traffic and on bike paths, along with information about parking and security, bikes on trains and even shopping for a bike.

The state government is committed to improving the safety and convenience of cycling through a constantly evolving cycling network and infrastructure improvements. Since coming to power, the Rann government has committed $1.8 million for improving conditions for cyclists across South Australia, under the State Black Spot Program, which was established for cycling in 2005-06. We have expanded the length of bicycle paths (by 48 kilometres) and bike lanes (by 118 kilometres) in Adelaide's bicycle network Bikedirect. We have funded $1 million worth of projects under the Green Cycle Path initiative, including the Coast to Vine Trail and the Glenelg tramway route, and we have provided councils with access to $2 million for planning and improving cycling networks through the State Bicycle Fund.

The government is also conducting awareness campaigns of how cyclists and drivers can contribute to improving cycling safety, as well as providing bicycle education for schoolchildren through Bike Ed. Bike Ed is a national bicycle education program provided to South Australian primary school students aged nine to 13 years. Recently, the government awarded Bicycle SA the contract to deliver the Bike Ed program over the next two years. The aim is for the Bike Ed program to provide students with opportunities to gain knowledge and understanding of the roads and traffic environment and appropriate road laws; to enable the development of physical and cognitive skills; and enable the development of responsible behaviours, attitudes and decision making. There will be 42 Bike Ed programs delivered over the two years: 30 will be delivered in the metropolitan area and 12 in the rural areas. Of these, 10 will be delivered this school term. The state government takes cycling seriously and has a number of ongoing initiatives and approaches for improving cycling safety. The handbook *A Simple Guide for Everyday Cycling* is available at Service SA centres, and will be at most libraries and bike shops in the coming weeks.

BICYCLE INITIATIVES

The Hon. SANDRA KANCK (15:01): I have a supplementary question. Because it is usually car drivers who drive into cyclists and not the reverse, what education programs is the government targeting at motorists?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:01): Clearly, motorists and cyclists need to share the road, and our advertising campaign clearly promotes that. There will be a new campaign early next year, again, as I said, promoting the sharing philosophy because, clearly, both parties need to take responsibility for their actions. Again, we have to point out that cyclists are more vulnerable by the very fact that they have only a helmet between them and the pavement. But, as a government, we promote road safety for everyone on our roads, and everyone has to obey the same road rules. However, at the end of the day, cyclists need to take special care and ultimately ride defensively in terms of wearing their helmet, ensuring they stay as near as practicable to the left-hand side of the road, staying within bike lanes if they are provided, not riding more than two abreast, wearing bright colours and, particularly in the evening, wearing reflective colours ensuring that they can be seen, as well as ensuring that their bike is in good working condition. I take the honourable member's point that we are all there to share the road and everyone has to take equal responsibility.

LEAD LEVELS

The Hon. SANDRA KANCK (15:03): I seek leave to make a brief explanation before asking the Minister for Environment a question about lead levels.

Leave granted.

The Hon. SANDRA KANCK: I have been approached by a small business that is suffering the effects of pollution from a neighbouring and much larger firm. The owner has informed me that the EPA has conducted tests that show that lead levels are far above the allowable limits but the EPA has refused to give him a copy of that report. The business owner in question does not want to be named or have the location given, for fear that legal action will be taken against him. As members can appreciate, this is an extremely serious situation for the health of the employees of that business and other businesses in the area. My questions are:

1. Is the minister aware of air quality testing conducted by the EPA showing unacceptably high levels of lead in any location in metropolitan Adelaide?

2. Do third parties with a legitimate interest, such as businesses in the vicinity of a polluting neighbour, have a right to copies of the results of tests conducted by the EPA?

3. Does the business that is the likely source of the pollution have access to the results of tests conducted by the EPA?

4. Is it government policy not to provide the party affected, other than the polluter, with the results of tests conducted by the EPA?

5. Will the minister undertake to provide me with copies of any EPA air quality testing that shows high levels of lead and, when air quality tests show high lead levels, indicate what action would normally be taken?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:05): I thank the honourable member for her important questions. The EPA is a regulatory body whose role it is to ensure that appropriate standards are upheld. There are standards in relation to a wide range of pollutants, and that includes lead, and I know there are some areas where lead monitoring is done constantly, such as around Port Pirie and such places. I am also aware that, if a complaint is made, the EPA would respond to that if it believes it is a legitimate complaint. It would monitor and assess the level of contamination and work with the business operator or whoever is the polluter to put in place a strategy and plan to ensure they address any practices leading to contamination to ensure that that business is operating in a safe way, with emissions at a safe level. There are laws in place that require adherence to that and, if companies breach them, fines can be put in place. I believe licences can be taken away from companies to the point where they are not able to operate, being the worst case scenario. There are also conditions the EPA can put in place as well. A wide range of actions can be taken.

The Hon. Sandra Kanck has not provided me with any details of this instance. She has raised it for the first time that I am aware of with me and my office today on the floor of the chamber. She could easily have come to my office and we could have looked at the details of that example and seen what we were able to do to assist her in helping this business owner. Anyway, she did not afford us the opportunity to do that. I am more than happy, if she wants to provide me with those details, to follow up that instance. The EPA has a legislative framework that it uses to regulate and enforce certain standards to ensure protection for the health and safety of people and the environment. More importantly, the EPA works cooperatively with businesses because voluntary compliance is a very important way forward. When businesses understand that they are causing problems, they work with the EPA to understand what levels they need to reach to ensure safety. We often find that businesses are prepared to go way beyond what is required by regulation and are prepared to do much more and put a wide range of things in place to improve the way they do business and to improve their emissions and the impact they have. The EPA tries to work not only with the big stick but also with the carrot to work cooperatively with businesses to maximise voluntary compliance.

LEAD LEVELS

The Hon. M. PARNELL (15:09): By way of supplementary question, if pollution monitoring is required of a licence holder as a condition of its EPA licence, will the minister confirm that such monitoring information will be made available to the public, particularly in light of the fact that I have a 1997 letter from the EPA telling me that that is its policy? Is that still the EPA's policy?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:10): In terms of reports done by the EPA, I understand a range of different reporting levels and status of reporting occurs. I am not aware of any impediment to making at least some of those reports available, but there are also commercially confidential provisions. I am not aware of impediments, and I am happy to look into that matter and bring back a response.

FREQUENT FLYER POINTS

The Hon. R.I. LUCAS (15:10): I seek leave to make an explanation before asking the Leader of the Government a question about frequent flyer points.

Leave granted.

The Hon. R.I. LUCAS: In February this year, I put a question on notice to the Leader of the Government in relation to his own travel. In essence, I asked the minister to indicate how many frequent flyer points he had personally accumulated from any taxpayer-funded travel and whether he, as minister, had used those frequent flyer points he had accumulated from such travel undertaken by him or any other person. Eight months later, there is still no answer from the Leader of the Government in relation to that issue or, indeed, from the Premier, the Treasurer, or most other Rann government ministers. I note that in June this year an annual report was tabled in federal parliament in which all federal members were required to provide details of all frequent flyer points collected on official travel and indicate whether any of those points had been redeemed for official travel purposes.

I also note that, certainly in 2004, 2005 and 2006 (and I do not yet have the answers to questions about travel in 2007), the Leader of the Government undertook approximately eight overseas trips—to Hong Kong, China, Malaysia, Thailand, Singapore, Canada, the USA, Japan, Vietnam, India, United Arab Emirates, the UK and also a number of other countries. As I said, this does not include any travel undertaken in 2007. In those three years, the total cost of those trips, including other staff, to the taxpayer was almost $250,000. My questions are:

1. Why is the Leader of the Government, after eight months, refusing to answer questions about frequent flyer points accumulated on his overseas travel paid for by the taxpayers of South Australia?

2. What is the minister hiding in relation to this issue, given that he has refused to answer these questions?

3. Given that he knows the answers, will he provide those answers to those questions today in the parliament, and will he also ensure that other ministers—in particular, the Premier and the Treasurer—also provide answers to those questions in relation to taxpayer-funded travel?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:13): Frequent flyer points accumulate and one cannot opt out of any scheme. In fact, if one tries to use frequent flyer points for government travel—as I have tried to do on a number of occasions—invariably it is almost impossible to get the required flight one wishes to travel on. I think that at present my account is somewhere around 400,000 points, but I accumulate points through my credit card, as I have done for at least 10 or 15 years. Any frequent flyer points I have cashed in have been on points accumulated through my credit card. The problem with sorting those out is that it is not an easy exercise to determine their source.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, it is not, because, as I said, there are credit cards. I was accumulating frequent flyer points long before I became a minister. What I can say unequivocally is that I have not used frequent flyer points accumulated on government travel.

FREQUENT FLYER POINTS

The Hon. R.I. LUCAS (15:14): Will the minister provide an answer to the question on notice from February this year in relation not to frequent flyer points from his credit card use (I am not interested in those) but to any taxpayer-funded travel?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:15): As I said, when one

gets a statement from Qantas the points are accumulated and all grouped together, whether it is for private travel or personal—

The Hon. R.I. Lucas: No, they are not.

The Hon. P. HOLLOWAY: I am sorry, they are. They are in my case because the frequent flyer points accumulate from both my credit card and from private travel. What I said was that I am very careful to ensure that I have not used any. On the few occasions that I have used frequent flyer points—

The Hon. R.I. Lucas: You are misleading the council.

The Hon. P. HOLLOWAY: I am not misleading the council. On the very few occasions that I have used frequent flyer points—

The PRESIDENT: Order! It is obvious that opposition members, when they are given an honest answer, do not like it.

Members interjecting:

The Hon. P. HOLLOWAY: Every time the member makes accusations, his technique is to continually interject so that one can never answer the question. He then takes a partially answered question and distorts it. I am just not going to have that, Mr President; it has happened too often in this council. As I said, in relation to frequent flyer points, I know what has been accumulated on my credit card, and any frequent flyer points that I have used have been within that total. I have somewhere in excess of 400,000 points accumulated, which includes the residual of private frequent flyer points that I have had for many years.

An honourable member interjecting:

The Hon. P. HOLLOWAY: I get a total each month that tells me how many points I have. Quite frankly, I have better things to do than go back through 10 years of records trying to sort out the difference between what frequent flyer points I get on private travel, plus credit card combined, and government travel. I know that I am very careful of what points I earn privately, and I have only cashed in those frequent flyer points. Quite frankly, I wish we did not get them. If there was some way I could opt out of getting frequent flyer points life would be so much easier because all it does is provide material for bored people, like the Hon. Rob Lucas, who have nothing better to do with their time.

RIVERLAND PARKS

The Hon. I. HUNTER (15:17): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the management of Riverland parks.

Leave granted.

The Hon. I. HUNTER: Properly managing remnant vegetation is a pressing priority for all parks. It is important as an end in itself but also because it provides shelter for native fauna. The fragile regions of the Murray-Mallee and Murray Plains are a particularly good example of the dual purpose for vegetation management. Will the minister inform the council about the management of the Mowantjie Willauwar and Punthie Ruwi-Riverdale conservations parks in the Riverland?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:18): I thank the honourable member for his very important question (and for his pronunciation of these most difficult names). I am very pleased to announce that a draft combined management plan for these two significant conservation parks (near Tailem Bend, for those opposite who do not know where they are) is now available for public comment. These conservation parks are home to some of the region's most important remnant vegetation and threatened fauna. Only 27 per cent of the native vegetation remains in the Murray-Mallee, Murray Plains regional ecological area where these parks are located. It is important to ensure conservation efforts in this particular area are well targeted and sustainable. Protection is being afforded to species such as the southern cypress pine forest that is home to two nationally threatened orchid species—the vulnerable sandhill greenhood orchid and the endangered metallic sun orchid. Also protected is the largest known area of intact centred iron grass and spear grass tussock grassland. Of course, members would be well aware that South Australia's native grasslands are particularly under threat and must be better protected because of the shelter that they provide to native birds, reptiles and insects.

The parks are given Ngarrindjeri names because of their significance to local people. These parks are relatively recent additions to the South Australian protected areas system, both having been proclaimed since this government came into office. The management plan covers important strategies on soil stabilisation, native vegetation, fauna monitoring and protection, and control of introduced plants and animals. There are also strategies on fire management, tourism and recognition of cultural heritage, both indigenous and non-indigenous, within the parks.

The draft management plan for both parks is available for public consultation for the next three months, and copies may be viewed at and downloaded from the DEH website. I encourage people involved with these parks, whether as visitors or volunteers or neighbours, to have a look at this draft management plan, review the proposed management strategies and give feedback to the Department for Environment and Heritage so that this plan best serves the protection and management of these important conservation parks.

ANSWERS TO QUESTIONS

BICYCLE SAFETY INITIATIVES

In reply to the **Hon. SANDRA KANCK** (7 June 2007).

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:

A number of cities throughout the world use coloured pavement to highlight bicycle lanes, particularly through intersections. In Denmark, blue pavement is used, in the Netherlands its green. Australian Road Authorities have agreed to adopt green as the colour for bicycle lanes.

Green bicycle lanes are used to improve the visibility of a bicycle lane and therefore increase driver and cyclist awareness of the lane. Green bicycle lanes are intended to discourage motor vehicle drivers from encroaching into a bicycle lane and reduce the potential for conflict between motor vehicles and bicycles, particularly where an intersection or road environment is busy or complex. There is good evidence internationally to suggest that coloured bicycle lane treatments improve cycling safety, reducing the number of crashes and serious injuries involving cyclists. Green bicycle lanes are currently being trialled in a number of locations in Adelaide including intersections along Frome Road Adelaide, and at the intersection of Joslin Street and Davenport Terrace Wayville.

This year, with the assistance of the Department for Transport, Energy and Infrastructure's (DTEI's) State Bicycle Fund, Mitcham Council is installing bicycle lanes along Sussex Terrace and green pavement will be used to highlight the bicycle lane where the road bends sharply at an intersection. The City of Unley also plans to utilise green bicycle lanes as part of the upgrade of the northern end of Duthy Street in Parkside.

There are a number of technical issues to consider when installing green bicycle lanes. These include:

- ensuring the coloured surface bonds with the existing surface and can be seen in wet conditions;
- providing a surface texture with suitable skid resistance for safe bicycle use including in wet conditions;
- limiting the differential skid resistance between the bicycle lane and the adjacent surface, and
- ensuring the surface has adequate lifespan and can be easily maintained.

DTEI supports the use of green bicycle lanes and is investigating their use. The technical issues contribute to the relatively high cost of green bicycle lanes and it is appropriate to use them selectively in order to maximise their impact. In this regard DTEI is considering installing them cost effectively at strategic locations on the arterial road network.

SPEED CAMERAS

In reply to the **Hon. D.G.E. HOOD** (24 July 2007).

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:

The process that is used is based on analysing crash data, with a careful assessment of crash types that could suggest a red light violation, for example right angle, right turn, head on, sideswipe and hit pedestrian collisions. Comparative crash rates are derived based on each location's average annual daily traffic (AADT) count, and intersections are ranked accordingly.

The list of proposed sites is forwarded to the Metropolitan Region of DTEI (and SAPOL) for comment. In particular, the Metropolitan Region will check if a listed site has undergone or will undergo remedial treatment that removes the need for a red light/speed camera. A new list of sites is then prepared that takes this feedback into account. The highest ranked crash sites are then assessed to determine if a red light/speed camera can actually be installed, and a list is finally produced of sites suitable for red light/speed cameras. Factors preventing installation are footpath width, services in the area, line of sight issues, and curvature of the road. Consideration is also given to the fact that generally, most crashes occur between 4pm and 8pm, and are on the outbound arterial routes from the Adelaide CBD.

EMERGENCY SERVICES COMMUNICATIONS

In reply to the **Hon. N. XENOPHON** (25 July 2007).

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

The CFS has GPS technology in approximately 70 per cent of its vehicles, in the form of stand-alone GPS Units. There is, however, a clear difference between a stand-alone GPS unit and an Automatic Vehicle Locating (AVL) system. A stand-alone GPS Unit does not generally communicate electronically with any other device, either in the vehicle or remotely. An AVL device uses a GPS to relay information back to a central location via some form of electronic communication (either via radio or telephone). This information may then be used in systems such as Computer Aided Dispatch (CAD) to remotely track vehicles and to respond the closest resource at that time.

The CFS and SAFECOM are currently considering the operational requirements for and benefits of a SACAD compatible AVL system. This work is expected to be finished within 12 months. In the mean time, the GPS units already fitted in CFS vehicles will continue to be operational for many years.

MATTERS OF INTEREST

WALK TO CURE DIABETES

The Hon. R. WORTLEY (15:21): Politics were put aside last Sunday 14 October when South Australian members of parliament, both state and federal, came together for a five-kilometre beach walk to help find a cure for type 1 juvenile diabetes. The South Australian pollies team included Mr Tom Kenyon, Ms Lindsay Simmons, Mrs Isabel Redmond, the Hon. John Dawkins, Ms Chloe Fox, the Hon. Stephen Wade, Kate Ellis, Steve Georganas, Senator Anne McEwen, Senator Annette Hurley, Senator Dana Wortley and myself. The South Australian pollies team was fortunate enough to be accompanied by the Adelaide Crow Nathan Bassett, who also suffers from type 1 diabetes.

The Walk to Cure Diabetes brings together over 80,000 people at locations across Australia. Over 6,000 people participated in Adelaide's walk from Glenelg to Brighton and back. It was a great opportunity for each member to catch up with and support the children from their electorates who suffer from diabetes and whom they met during Kids in the House back in July. The Walk to Cure Diabetes is one of many fund-raising events organised by the Juvenile Diabetes Research Foundation (JDRF), which is the world's largest not-for-profit supporter of diabetes research, investing over $1 billion in the search to find a cure for type 1 diabetes. JDRF was founded in the US in 1970 by parents of children with type 1 diabetes and it has been supporting families in Australia since 1984.

Members interjecting:

The Hon. R. WORTLEY: Mr President, I can hardly hear myself speak. Perhaps if members can whisper.

The PRESIDENT: Order!

The Hon. G.E. Gago: They are very rude, aren't they, Russell?

The Hon. R. WORTLEY: No, they are just a little over-excited, but it would be appreciated if I could hear myself speak. Since its inception, JDRF has invested almost $40 million in Australian diabetes research, with over $10 million invested across 30 research projects in 2006-07. Funds are raised through the annual Walk to Cure Diabetes, Ride to Cure Diabetes, gala dinners, community events and major donors. JDRF supports over 30 research projects in Australia, including the groundbreaking islet cell transplantation program. The mission of JDRF is constant, and that is to find a cure for type 1 diabetes and the associated health problems. JDRF has a track record of finding and funding the best research in the most efficient and effective ways possible. JDRF has been heavily involved in every major scientific breakthrough in type 1 diabetes research since 1970. In the past year alone exciting progress has been made in the areas of:

- transplanting insulin producing islet cells through a global research effort and a groundbreaking islet transplantation program in Australia;
- developing an artificial pancreas that delivers insulin into the body just like a healthy pancreas; and
- developing vaccines for relatives of people with type 1 diabetes who are most at risk of developing the disease.

I thank all members for their support and generous donations. It was a great bipartisan effort. JDRF is one of the most efficient charities in the country, so you can be confident that every dollar donated is making a difference. We have also had a very generous donation by Mr Gordon Pickard of the Pickard Foundation. He has pledged to match every dollar raised by the SA pollies team. As a result of Mr Pickard's donation, and other generous donations, SA pollies have raised close to $9,000 for the Juvenile Diabetes Research Foundation. I would once again like to thank everyone for their support, and I look forward to supporting JDRF and the Walk to Cure Diabetes next year. Research is the only hope for a world free of diabetes.

REAL ESTATE INDUSTRY

The Hon. T.J. STEPHENS (15:25): I wish to use my time today to reflect on the arrogance and bullying tactics of the Rann government regarding upper house amendments to the recent real estate industry—

The Hon. S.G. Wade interjecting:

The Hon. T.J. STEPHENS: Thank you. The Hon. Mr Wade is pulling me out of it again. I am very keen to put on the record my thoughts on how the government handled this bill at that time. We had a very lively and detailed debate during the committee stage of the bill. I can best describe it as democracy at work, just as the committee stage of the Statutes Amendment (Affordable Housing) Bill was also handled. I would like to quote my colleague The Hon. Sandra Kanck. who, at the completion of a particular debate, said:

> I think it epitomises what the Legislative Council stands for. Whereas in the lower house a bill can be rammed through and it does not matter what anyone other than the government thinks, what we have done here is to take issues of quite deep social consequence and discuss them and tease them out. We have all been acting from a position of principle and cooperation and it really has been the Legislative Council producing the best results it can.

I think the Hon. Sandra Kanck's words about how effective the Legislative Council can be were absolutely spot on. In this place, we have a vital role to play in the legislative process. That is why it was disappointing to read in the media at that time that the Minister for Consumer Affairs had attacked members of the Legislative Council for simply standing up for what they felt was right. While I did not agree with everything the Hon. Nick Xenophon said—and I am sure he did not always agree with all that I had to say—he was slammed by the Minister for Consumer Affairs for having the courage to make amendments to the government's real estate legislation. Perhaps minister Rankine's treatment of the Hon. Nick Xenophon was part of the reason why he has decided to leave us—who knows?

The Hon Nick Xenophon cooperated with and assisted the Liberal party and, quite rightly, had concerns at that time for the small operators in the real estate industry. He moved sensible amendments regarding this legislation, sensible amendments that the Liberal party was happy and very keen to support. The minister had unfairly targeted our colleague, stating to the media:

I would have thought that those who commonly portrayed themselves as sticking up for the underdogs in society would want to stop people being ripped off by money hungry real estate agents.

It was a wonder that she did not say 'burglars'. The minister also came out punching about the role that Family First had played in this legislation, and she reserved her best criticism for the Liberal Party which had evidently 'tried to tamper' with the legislation, to borrow the minister's very own words. However, I think we all know this issue was about much more than the legislation. This was just another chance for Rann government ministers to question the role of this place as part of their agenda to have us shut down.

The Attorney-General's media release in March, which accused the upper house 'meddling' as jeopardising real estate reform, was the first attack when this arrogant Rann government saw the writing on the wall that it may not get its own way with this legislation. This is a government that is accustomed to getting its own way and plays nasty or ignores you when it does not. One need only look at the refusal of the Premier and the Treasurer to go on the morning program with David Bevan and Matthew Abraham on ABC Radio. Something these presenters have said must have sorely upset the Premier and the Treasurer, and it appears that they plan to never head back into the studio again. Only an arrogant government—a government full of its own self-importance—conducts itself in this way.

In the meantime, we had the Leader of the Government in this place accusing non-government members of breaching the council's conventions and of holding up government legislation by introducing private members' legislation. As I just mentioned, this is an arrogant government that likes getting its own way and spits the dummy when it does not. So, I use my limited time today to say to this government: get a thicker skin, focus on your job and get on with it. As I said before, at the last election the public voted for a number of Independent members of this place, and these members have the right to introduce bills they believe are helpful to the state. We also have a right in this council to review government legislation and make the amendments we see fit to improve it when we believe the government has not got it quite right. The real estate legislation was a perfect example of this. The Rann Labor government may not always appreciate our help, Mr President, but I am sure the good people of South Australia do.

LIBERAL PARTY FEDERAL LEADERSHIP

The Hon. J.M. GAZZOLA (15:30): The Prime Minister has declared that leadership is at the heart of this election and that, love him or loathe him, an objective test of his government's 11 year tenure is to evaluate his government's character, right and capacity to lead again by what he terms 'right leadership'. There are, though, a number of meanings of leadership. A narrow meaning defines leadership as the ability to lead and the guidance of a leader. We know that throughout history there have been many leaders who have fulfilled these requirements but who have come up short.

A broader definition of leadership is required, as suggested by the panic generated within the Liberal Coalition by a confidential leaked report of Coalition consultants Crosby Texter, if the Prime Minister is claiming to be the embodiment of, and natural heir to, leadership. I will refer to this later. Prime ministerial leadership involves more than just ability, competence and authority. It also involves honesty, the recognition of fair play as fundamental to the rights of the battlers and those who do not have a voice—it is called equity—and a vision that embraces and does not divide a country. To surrender to political opportunism and cunning is not leadership: it is arrogance and pretence to leadership.

This opinion comes not only from outside the Liberal Coalition ranks; it is in the very heart of their party. Look at the Crosby Texter conclusions on the foundation of Coalition right leadership aspirations. There is, as pointed out in the media, significant disillusionment within the Liberals on the issues of broken promises and dishonesty. If opposition members delude themselves with the notion of misguided public perceptions, then who do they have to blame? Some 70 per cent of the Coalition did not support the Prime Minister to lead the party at the election. On any definition of leadership, this is a fail. But let us go outside internal polling and look at some of the policy litmus tests of leadership: the unanswered questions on the callous children overboard fiction; the Iraq wheat scandal, with Australian soldiers gallantly defending an unsanctioned war; the Prime Minister's recent Damascus conversion on climate change; the belated attempts to rescue the Murray-Darling Basin; his sudden realisation of the plight of indigenous people; and the so-called education debate; and his government's arrogant and disregarding use of Senate power.

The public are not green and they are not cabbages. The trend in the polls has been consistent; as they have seen through the sham they have stopped listening to the cant and the

dishonesty. The warm glow that the Coalition expected on tax relief announcements is already dissipating. We see another splurge on buying votes through dubious spending on economic programs by the Coalition over a generation that has wasted a chance for genuine tax and economic reform. It has had 10 years to institute real reform on tax and tax dependent social security payments, and now it appears to act. Is this right leadership? This is the stuff of panic, while the public sweats on a possible fifth increase in interest rates.

Let us not forget the masterpiece of industrial relations reform: the jewel in the crown of leadership. The legislation is practically unwieldy, while the administration of the fairness test sees, according to a report in the *Financial Review*, a backlog of about 123,000 cases awaiting adjudication. When the HR Nicholls society starts complaining, calling the WorkChoices and the fairness test 'nonsense' and 'nonsense on stilts, 'the results of rushed and premature legislation', 'guillotined through the Senate' and 'a mess for employers and employees', are we really asked to believe the Coalition claims of right leadership? These facts, I contend, are the basis for public judgment on the performance of the Coalition on election day, not the fictions of a desperate Prime Minister clinging to power and the past.

WOOL, WINE AND WHEAT COUNTRY EDUCATION FUND

The Hon. C.V. SCHAEFER (15:34): We all know of the great sadness and human suffering that are part of the drought that encompasses not only South Australia but also almost all of rural Australia. I was inspired a couple of days ago when speaking to a friend of mine who is very badly affected by drought, when he said that the best drought assistance we could have is education for our children and science for our crops. So, I determined that today I would speak about something that I see as a positive move of self-help within South Australia, that is, the Wine, Wool and Wheat Country Education Fund. Wool, Wine and Wheat is an organisation that was established in the Clare Valley in 2005. It was designed to promote the region's wine and food tourism industry. Despite having a world-acclaimed wine industry and an ever-expanding number of food businesses, it was felt that the region lacked large-scale promotional events. In an effort to promote the region and in the belief that the future will depend on the region's youth, Wool, Wine and Wheat established a youth education fund based on the already established Country Education Foundation, which is based interstate.

The vision of the Wool, Wine and Wheat Country Education Fund is to foster further education, career and personal development opportunities for rural youth by providing material assistance and also through instilling regional pride, encouraging new industries, promoting tourism and encouraging community involvement. In partnership with the Country Education Foundation of Australia, the Wool, Wine and Wheat Country Education Fund has been established to focus on youth, schools, the community and business, with an underlying theme of the wool, wine and wheat industries. It is hoped that this initiative will encourage young people to remain in the region and to build a successful future based on primary industry.

The Wool, Wine and Wheat Country Education Fund will assist the local communities, schools and businesses of Clare, Burra, Balaklava, Riverton and Snowtown. The fund is committed to the future success and prosperity of the region. The Wool, Wine and Wheat Committee is the brainchild of Jane Wilson of Neagles Rock Wines, and it now comprises a group of dedicated people who believe in the future success and sustainability of the region in which they live. They believe that, with the right training and educational opportunities, youth in the region who may not otherwise be in a position to be able to pursue their passions will be able to remain and find jobs and positions in the region.

Wool, Wine and Wheat's hard work will help to lift the region's profile and, in doing so, provide important tourism and business opportunities. This in turn will ensure that young people will have an opportunity to remain in their local area. At a time when our country communities are facing unprecedented hardship and, as a result, young people are leaving the land and rural communities in droves, this initiative is extremely welcome. Funds for the Wool, Wine and Wheat Country Education Fund will come from its membership base; corporate, business and individual donations; community group support; sponsored events; and local festivals. Funds raised will provide scholarships or other financial assistance to improve educational and career opportunities for local youth. The Wool, Wine and Wheat Country Education Fund will launch grant opportunities to local schools later this year, with the initial round of grants awarded to young people in 2008. Throughout 2008, wool, wine and wheat products will be showcased, and a weekend festival is planned.

As a resident of Clare, I fully support this initiative and, indeed, this country education fund, which I hope will be taken up by other regions throughout South Australia. I am proud to be associated with an organisation which seeks to ensure a prosperous future for the region. The communities of Clare, Balaklava, Riverton and Snowtown are, like much of the country, suffering enormous hardship. I see this as a shining light for these communities, and I have no doubt that it will make a considerable contribution to ensuring a bright future for the region. I applaud those involved for their hard work in promoting and developing the region and, indeed, for the inception of this education fund. Next year, a series of social events will be held, and I will take pleasure in inviting all members to buy a ticket and attend.

Time expired.

JUDICIAL SENTENCING

The Hon. D.G.E. HOOD (15:39): I will use my five minutes today to draw to the attention of the chamber the stance Family First has taken in relation to sentencing in this state's court system, specifically with respect to criminal offences. Whilst I acknowledge there are some exceptions, Family First believes that, on the whole, the general level of sentencing is grossly inadequate. We see that violent crime is committed on a regular basis and nothing more than a slap on the wrist is the penalty given by our judicial system. Further, we see, in the case of drug-related offences, very serious large quantities—indeed, major indictable quantities—of drugs being trafficked, sold and produced by individuals, and in many cases those individuals receive a penalty that is not even a slap on the wrist: we are talking about $500 good behaviour bonds and the like.

We are disturbed by this trend. I think there has been a long-term understanding that it is not appropriate for politicians to criticise the judicial system because it is seen as independent, and we often hear the term 'separation of powers' used, but I advise that we do not see that as an appropriate response because effectively it translates to no response, and no response effectively translates into weaker and weaker sentences that are far out of touch with community expectation. There comes a point where something has to be done, and we are very happy to take a lead on that (and I encourage other members to do the same). Our judiciary is weak. In general, it does not impose the sentences that victims expect to be imposed.

Only today there was another example, concerning a couple of criminals who were connected with armed holdups relating to six bank robberies. They held a loaded shotgun to the head of several tellers in several cases, and this occurred on six separate occasions. They stole seven vehicles as their getaway vehicles for these robberies. The non-parole period in the sentence handed down this morning was discounted by 50 per cent from the head sentence. What possible justification can there be for that, Mr Acting President? What possible justification can there be for a 50 per cent discount on such a serious and violent crime? The only logical and reasonable answer is there is simply no justification. The judges are out of touch, and it is not acceptable. We had a situation where many lives were in danger, and in very serious danger. I see some of the victims of those crimes quoted on the Adelaide Now website today as saying they feel their lives have been damaged for the long term. The penalties on the whole are simply inadequate, and that seems to be the latest case in point.

So, it seems to me that, whilst the parliament has taken the time to carefully pass legislation which allows sentences that are in many cases very severe indeed—in the case of major indictable quantities of drugs penalties are in the order of 20 years and/or (that is, could be both) a $200,000 fine. That is a very severe penalty, but the problem is no-one ever gets that penalty. What people get is a $500 fine for, in many cases, $20,000, $30,000 or $40,000 worth of illicit substances. They make an absolute killing out of it, and I use that word specifically because people do die from using these substances. Not only that, but offenders do very well financially. It is a very lucrative business, and they get a $500 slap on the wrist. How is that justice? What can we possibly say to the parents of the children who die from these substances when we see the people who make a profit and a living out of it get something like a $500 fine and walk free from court? It is an absolute disgrace. I want to put that on the record today. I appeal to fellow members in this place to make a stand on this issue. I think together we can see some change and we can say to the judiciary that they simply are not doing their job, they are not doing it well enough, and the public expects better of them.

Time expired.

ATKINSON, HON. M.J.

The Hon. R.D. LAWSON (15:44): I wish to inform the parliament of the rudeness and disrespect shown by the Attorney-General towards the judiciary of this state. Briefings by the

judiciary for the benefit of members of parliament are an initiative of the Chief Justice, and I know that he was very keen to provide members of parliament with a better understanding of the operation of the courts. As a result, annual or nearly annual briefings are conducted by the judiciary. They provide a tremendous opportunity for members of parliament to speak to members of the judiciary, to raise the sort of points the Hon. Dennis Hood was making a moment ago and to enable people who have concerns of that kind to speak face to face with the judiciary. This year's annual briefing was held on 27 September and was attended by the Chief Justice, the Chief Judge of the District Court, the Judge of the Planning Court, the Judge of the Youth Court, the Chief Magistrate, the State Coroner, the Courts Administrator and the Deputy Chief Magistrate, who all gave well prepared presentations. The great tragedy was that the invitation to this function was faxed to members the day before the event and on the day of the event—a couple of hours before the event—a beautifully presented invitation was placed in members' boxes. The tragedy was that, with notice of that kind, few members could attend. At least half the audience were members of the staff of the Attorney-General's office, who he had rounded up quickly to come down to make up the numbers.

The Hon. R.I. Lucas: How many members?

The Hon. R.D. LAWSON: There were some members there, but not many—a handful. I was able to be present for only a short time and there were fewer than half a dozen members, one of whom was the Hon. Stephen Wade. I was told by a person in the judicial party that they had been aware of this event and had placed great emphasis on it since February this year. All had prepared speeches that were short and to the point, and they were available for questioning. It is appalling that the first law officer of this state should be so disrespectful not only to those who came to this place to present a briefing but to all members of parliament, many of whom already had engagements. There was, for example, an annual dinner of members of parliament that had been organised quite some time before, and quite a number of members of both houses, including I imagine the Hon. Dennis Hood, were at that meeting. They simply could not have broken that appointment without disrespecting those guests.

It is appalling that we should treat members of the judiciary in this way. They prepared pertinent and helpful presentations and were available to discuss any issue. This Attorney-General is often referred to as beleaguered, ill-starred, incompetent and error prone. However, the epithets rude, ill mannered and ignorant should be added to that list.

PRINCE ALFRED COLLEGE INCORPORATION (CONSTITUTION OF COUNCIL) AMENDMENT BILL

In committee.

The Hon. J.M. GAZZOLA: Mr Chairman, I draw your attention to the state of the committee.

A quorum having been formed:

Clause 1.

The Hon. R.I. LUCAS: I rise briefly to reaffirm Liberal Party support for the passage of this legislation. The committee met and took evidence from the chair of the school governing council, the school council or the board, whatever is the correct phrase—

The Hon. J.S.L. Dawkins: The school council.

The Hon. R.I. LUCAS: —my colleague the Hon. Mr Dawkins informs me that it is the school council—and also the Moderator of the Uniting Church. It was a relatively brief meeting. Advertising having been conducted in the normal way for a select committee, no other person came forward to present evidence. From my viewpoint, it was useful to have the hearing of the select committee, albeit brief, as it clarified one particular issue which, whilst it was not significant enough for the Liberal Party to oppose, was nevertheless one we wanted to pursue or at least have clarified; that is, in briefing notes provided to opposition members by the government in support of the legislation, there was reference to this legislation having retrospective effect in some aspect to September last year when, on one reading of the briefing notes, the school council had adopted a new constitution.

Some members, myself included, wanted to know why the school council had proceeded on that particular reading of the briefing note with an amendment to the constitution without waiting for the passage of the legislation. I am pleased to inform the council that the hearing of the select

committee clarified that issue and that the school council chair, in particular, confirmed that, in essence, the amendments to the constitution for the school council had been adopted in principle but that the school had continued to operate under the terms of the old constitution and that the school had appropriately, in my view, waited for the passage of the legislation through the state parliament.

Whilst it was not sufficiently an issue for the Liberal Party to flag opposition to the legislation, it was an issue that one or two of us had raised in our joint party room debates and I had intended to ask some questions because I could not see a logical reason as to why the school needed to proceed down a particular path. I thought that what might have happened is that they amended the constitution and just did not realise that it was in contravention of the state legislation. That was a possible explanation but, in the end, that was not the case. The school did clarify the issue for me and for any other member who might have had that particular concern about the legislation.

The only other issue (which I think is important to raise with these hybrid bills) is that we took evidence and asked whether or not there were any dissident elements of the school community or the church community that were strongly opposed to what might have been the majority view of the school and the church. It is entirely possible for a school community and a church community to come to a majority view but that there be dissident minority elements who are passionately opposed to what the majority might have been doing. Through the good offices of the Hon. Mr Dawkins and others we were not aware of those prior to the select committee but, nevertheless, we were able to take evidence formally and on the record. The representatives of the church and the school indicated that they were not aware of any opposition to the proposition that was before the parliament. Again, I think that is important.

Whilst they are not completely analogous to this situation, there were some passionately different views in relation to previous issues this parliament has addressed in relation to the Netherby Kindergarten and the Waite Trust (the arboretum and related issues) where there were majority views but, nevertheless, there were passionate minority views being expressed by people on the Adelaide University Council and others in relation to what the majority wanted to do. It is appropriate, with these hybrid bills, that the parliament is fully informed through this select committee process. On this occasion, there was no dissident minority view that needed to be aired but, for future reference (and for members who will be in this chamber longer than I will), there may well be occasions in the future where a majority interest comes to the parliament wanting to push a particular line and there might be a minority or dissident view that is not being reflected. The parliament may still agree with the majority view, but the hybrid bill select committee process is there to allow the minority or dissident view to at least be aired, to be expressed and to be considered and possibly, in the end, disagreed with by the majority and the parliament. That, of course, is our democratic process.

With that, I have no further questions of the minister in relation to the bill and, as we flagged in another place, we are pleased to support it. I am also pleased to acknowledge the role of the President of the Legislative Council, the Hon. Mr Sneath. Based on the appropriate advice of the clerk, I believe the President behaved appropriately in relation to this in terms of ruling that it was a hybrid bill and needed to be referred to a select committee. I am pleased to see that all of the chamber, I think, eventually accepted that ruling.

The Hon. CARMEL ZOLLO: As I say, I will make a short contribution as the chairperson of the select committee. As has already been noted, the committee met on two occasions; an advertisement was inserted in *The Advertiser* inviting evidence from interested persons and organisations and, in addition, an invitation to provide oral evidence was made to the chairperson of the Prince Alfred College Council and the Moderator of the Uniting Church in Australia, the SA Synod. The committee heard evidence from Mr Bruce Spangler, the chairperson of the Prince Alfred College Council, and the Reverend Graham Vawser, Moderator of the Uniting Church in Australia (SA Synod). The purpose of the bill is to remove some prescriptive detail relating to the composition of the school council from the legislation in order to modernise the school's incorporating legislation and enable the school community to make changes to the composition of its council without reference to parliament in the future.

As we have heard, while no objections to the bill were received, the committee considered the issue of retrospectivity and whether the bill gives retrospective effect to changes made to the school council constitution on 24 September 2006. I understand that some members opposite may have been of the view or misunderstanding that that was going to be the case, and that may have arisen from a briefing note that was provided to the opposition. That is actually not the case. As we

heard, the chairperson of the council advised the committee that, while changes to the constitution were approved in principle by the council and the South Australian Synod of the Uniting Church, the council has been operating under the existing constitution and those changes would not take effect until the provisions in this bill are enacted. I take this opportunity to thank the two witnesses who appeared before the committee, placing on record some good history of the school. The committee is of the opinion that the bill is an appropriate measure and recommends that the bill be passed without amendment.

Clause passed.

Remaining clauses (2 to 6), schedule and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

SUMMARY OFFENCES (DRUG PARAPHERNALIA) AMENDMENT BILL

The Hon. A. BRESSINGTON (16:03): Obtained leave and introduced a bill for an act to amend the Summary Offences Act 1953; and to make related amendments to the Controlled Substances Act 1984. Read a first time.

The Hon. A. BRESSINGTON (16:05): I move

This bill is part of the bill that dropped off the *Notice Paper* after the proroguing of parliament. I actually allowed the bill to lapse, because the Attorney-General offered to assist with the drafting of a bill relating to drug paraphernalia and the sale of such equipment. In return, I offered to discontinue a bill relating to hydroponics, because the government already has that on the go. The Attorney-General kindly allowed me to use his parliamentary counsel to draft this bill. It is a very simple bill, and most of the comments that I would make are available in the *Hansard* from last year when I first introduced this legislation. I extend my thanks to the Attorney-General for his assistance, and also for showing a little bit of courage, if you like, because he is also the Minister for Multicultural Affairs. There was bit of humbug about hookahs and other devices that could be used for smoking tobacco. I was quite happy for this bill to just include pipes, bongs, cocaine kits and drugs that are known to be used for illicit substances, but the Attorney-General has taken it a step further. I commend him and his staff for their assistance to me.

This bill is really about banning drug using paraphernalia and, hopefully, limiting the stock carried by some of these shops around town, such as tobacconists and, of course, the two shops in Hindley Street that are less than 50 metres from the police station. The reason shops have been able to sell this equipment has been identified by a leading police officer as a legislative glitch, so I have worked to close that glitch by now defining utensils that are used to consume illicit drugs. The police do not now have to prove that they are being bought for that purpose, which is why these shops could continue in their trade.

I also make the point that, in this place, we have debated and passed legislation about the point of sale for tobacco products. We have heard quite legitimate arguments for that and for restricting particular shops or shopfronts displaying tobacco products, because the organisation, ASH, has said that the point of sale is influential in assisting our teenagers to decide what brand of cigarettes they buy and whether they will actually buy cigarettes at all. My argument the last time this bill was introduced was in fact that if that applies to tobacco products then surely commonsense will tell us that it should also apply to shops that have these ornate utensils on display in their windows, in glass cabinets and whatever else.

In my last speech I mentioned some research that I undertook myself. A young person who looked about 12 went into the shop Off Ya Tree, walked around and made inquiries about purchasing a bong. This young person was given a very in-depth demonstration of how it would be used, how to pull it apart, how to put it back together again, what illicit substances could be used with this particular utensil, and at no time was she asked to produce any sort of identification to prove that she was over 18. The guy behind the counter was very obliging indeed to make sure that, if she was going to purchase this object, she would know exactly how to use it.

I also note that the Hon. Sandra Kanck mentioned in her response to this bill that pipes and bongs are harm minimisation equipment. No matter how we look at that statement, it is drawing a pretty long bow to call utensils that are used to consume illicit drugs harm minimisation utensils. Perhaps it is statements and logic like that that have got so many people up in arms about our harm minimisation policy. I have talked on many occasions about the harm minimisation policy

being implemented in the way it was intended. I have pulled out transcripts from *Hansard* from this parliament in 1984 that outlined that the intention of the Controlled Substances Act was actually to get drug users into rehabilitation, get them well and take every initiative we could to limit the sale and uptake of illicit drugs. It is all there in *Hansard* to read from the introduction of the Controlled Substances Act, yet we have people in this place who argue now that utensils that can be used to consume illicit drugs are part of that initiative. I find that very hard to believe.

I would also stress that the research and medical evidence is actually now starting to show that smoking marijuana through water pipes or bongs or whatever we want to call them is causing the early onset of emphysema in very young people. In fact, it is occurring some 20 years earlier among those who are smoking cannabis but particularly when they are using water pipes. I will quote one piece of research where Adam Cresswell, a health editor of *The Australian*, stated that Australian researchers have found that cannabis smokers risked developing emphysema 20 years before it tends to strike tobacco smokers. Experts say the findings suggest that the potentially serious lung condition could be more widespread in cannabis smokers than first thought.

I make the point that I have tried to research and put in FOIs about how many cannabis smokers alone have contracted emphysema, and in fact we do not collect those statistics, because they do not stand in favour of the harm minimisation argument that tobacco and alcohol are the most dangerous drugs. Nobody would argue that tobacco and alcohol are harmful, but it is a fact that the harms of alcohol and tobacco are far more recorded and that far more data is collected about alcohol and tobacco than there is about cannabis and other illicit drugs. It is not that the research is lacking: it is because this is exactly the road that the Netherlands went down to justify the continuation of its disgraceful drug policy.

That comes from professionals in the Netherlands, such as Dr Franz Koopsman for a start, who says they made a terrible mistake. He also outlined to me that the reason they were allowed to persist with this for so long was that they made a conscious effort to collect the minimum amount of data that could actually prove beyond a doubt that the harm minimisation policy was failing badly in the Netherlands. Now, of course, in the Netherlands they are trying to wind back their drug policy and they are looking a bit silly, because they are now collecting those statistics and it is backfiring on them badly. We also see a tendency in the Netherlands to start to wind back on the infamous coffee shops they have, because now in the Netherlands they are starting to realise the health and mental health effects of the very drug that comes from that country and floods the streets of Australia, namely, Nederwiet or mad weed. I will add just a thought on that. There are many in this chamber who say, 'Let's look to the Netherlands for its drug policy.' Well, even the Netherlands is not looking to the Netherlands any more.

The high temperature of cannabis smoke in different inhalation behaviour may explain the greater risk posed to cannabis smokers. An article quoting Mathew Naughton, the head of General Respiratory and Sleep Medicine at Alfred Hospital, states:

> '...the research began after a 40 year old patient came in with a severe chest infection and was found to have large cysts, or holes, throughout the lungs. The patient was a heavy cannabis user, who smoked through a water pipe. The pattern we are seeing with marijuana smoking was different to that seen in tobacco smoking,' Mr Naughton said. 'A tobacco smoker generally has smaller holes in the top of the lungs. What we are seeing (in marijuana smokers) was larger holes in the top and mid part of the chest. Dr Naughton concurred that emphysema was occurring 20 years earlier and is more advanced. Factors accelerating the emphysema include the 'incredible hot' smoke from cannabis, particularly when smoked through waterpipes, compared with the smoke from filtered cigarettes,' he said. Cannabis smokers also tended to inhale more deeply and hold the smoke for longer, and marijuana may also contain other chemicals that worsened the lung damage.

Our very own Dr Robert Ali, then head of Policy and Research for the South Australian Drug and Alcohol Services Council, said on ABC Radio National on 28 November 1999:

> There is now good data to show that cannabis in isolation can cause problems with paranoid thoughts…It can also cause depression and neuroses like anxiety. The respiratory problems are underestimated by people. There is data now to show that it's a precursor to chronic obstructive airways disease. Most people who smoke cannabis don't think in terms of disease that can occur in 20 years, but the respiratory burdens are there. And there's also animal data to show that it's potentially a cancerous causing substance, so the risk of tumours of the lung and also of the oropharynx or the upper airways is a potential. We can anticipate future health problems amongst cannabis users on the basis of new knowledge.

We cannot—and we would not—dismiss evidence by the eminent Dr Robert Ali. I would be very surprised if Sandra Kanck could refute his findings, given that Dr Ali and Dr Alex Wodak often share research projects—and I know just how fond the Hon. Mark Parnell and the Hon. Sandra Kanck are of research done by Dr Alex Wodak and, of course, people associated with him.

We must take into consideration now that we have been led down the wrong path. We now have enough science and enough evidence to show that cannabis is not the benign soft drug we thought it was. As responsible legislators, we need to be able to move with the times, and we need to be able to adjust what our opinions or policy positions should be, given new science and new medications. If we are not able to do that, I question our right to sit in this place—and I am talking not just about the drug issue but also about any issue. Way too much personal opinion comes into this drug debate, I believe that, as legislators, personal opinion has no place in this chamber; we must rely on the science and the evidence in order to make sure that our legislative and social policies fit the situation of the day.

I also want to talk briefly about the cocaine kits—and ice pipes are included in this bill. I am well aware that the argument will be that anyone can go out and buy a mirror, a razor blade and a plastic straw and still snort cocaine and that there is absolutely nothing we can do about that situation. However, we do not have to glamorise or glorify the use of cocaine with these kits, which are now available in all of these shops. In one particular shop, this kit was on display in a very appealing glass cabinet. As I said when I last spoke on this bill, white power was sprinkled in a line across the mirror, with the razor blade sitting there all nicely in position, and the stainless steel straw sitting across it. Tell me that that is not point of sale. Tell me that that is not advertising and glorifying drug use.

Quite frankly, if you can prove it to me, I will eat my hat. We need to get real on what we are doing about tobacco, and we need to apply that exact same strategy to illicit drugs. The Hon. Gail Gago made the point that we have seen a 20 per cent drop in the uptake of tobacco. We cannot argue that governments all around this country are taking a hard line as far as tobacco and tobacco use is concerned. If the legislation and the restrictions that are being placed on smokers are responsible for that 20 per cent drop, it is not only illogical but it is incredible that we could not believe we could translate that particular approach and those particular policies to illicit drugs and have some sort of reasonable impact on the uptake of those drugs.

We are also seeing that our children are indulging, if you like, at a younger age. I remember 11 years ago, when I became involved in all of this, that the national average for the uptake of illicit drugs by our children was about 15 years old. We now know—and there is enough evidence and research to show—that the national average has actually dropped to 12 years old. So, it is not getting better; it is getting worse. As I have said, as responsible legislators we must move with the times, and we must adjust the social policies, the legislation and the beliefs we had in 1984, when the Controlled Substance Act was implemented, and we must move with the times for the safety and wellbeing of our children, the parents of those children, and families in general. I believe that there is an indication that the only parties in this house who will oppose this bill, based on what happened on the last occasion, will be the Democrats and the Greens, and I lament that that is the case and will grieve for them when it is known in the public arena that they opposed this legislation, which has been needed for a very long time. I commend this bill to the council and look forward to the coming debate. I hope that we can progress this bill reasonably quickly, bearing in mind, as I have said, that it has been presented previously, there have been discussions and the resistance to the measure is minimal.

Debate adjourned on motion of the Hon. J. Gazzola.

NATIONAL PARKS AND WILDLIFE (MINING IN SANCTUARIES) AMENDMENT BILL

The Hon. M. PARNELL (16:24): Obtained leave and introduced a bill for an act to amend the National Parks and Wildlife Act 1972. Read a first time.

The Hon. M. PARNELL (16:24): I move

That this bill be now read a second time.

It seeks to protect some of the most important environments in South Australia, and they are sanctuaries under the National Parks and Wildlife Act. Sanctuaries under this legislation are a little known but very important part of our conservation estate. Sanctuaries are created by ministerial declaration under section 44 of the National Parks and Wildlife Act. Section 44 provides that, if the minister is of the opinion that it is desirable to conserve the animals or plants for which any land is a natural habitat or environment, then the minister may, by notice in the *Gazette*, declare the land to be a sanctuary. The pre-conditions for declaration are that either the land is already reserved or dedicated for a public purpose and the person to whom the care, control and management of that land has been committed has consented to the declaration or, if it is privately owned land, then the owner or occupier of the land must consent to the declaration. The protection of animals and plants

in the sanctuaries is provided for by section 45 of the act, whereby a person must not take the eggs of an animal or a native plant other than in pursuance of this section. So, sanctuaries provide a level of protection.

My bill seeks to amend the sanctuary provisions of the National Parks and Wildlife Act in two key areas. The first of those areas is that a sanctuary can only be de-proclaimed—or undone, if you like—by a resolution of both houses of parliament which have been given 14 sitting days' notice. This brings sanctuaries into line with other parts of the conservation estate, such as national parks, conservation parks and, very shortly, given that we passed the bill yesterday, marine parks. At present, the minister can simply revoke the sanctuary declaration at any time. Also, if the landowner requests revocation, the minister must revoke the sanctuary status.

The problem with the current arrangements is that the wishes of those who seek to protect important habitat can be undone easily by either the minister or future owners, and it may well be that someone who inherits through a deceased estate an area of land subject to a sanctuary might seek to undo that when, clearly, the intention of the parties who first sought and obtained sanctuary status was a level of protection in perpetuity. The principle, stated very simply, when it comes to the conservation state is one of 'easy in and hard out'. In other words, it should be relatively simple to add to the conservation estate. It should be more difficult, but not impossible, to remove such areas.

I now come to the second part of my bill, and there are really only the two operative provisions. The second part is to prohibit mineral exploration and mineral extraction (or mining) in sanctuaries. At present, there is no legal impediment to mining in declared sanctuaries. This situation is at odds with other parts of the conservation estate such as national parks and other reserves under the National Parks and Wildlife Act where mining is not allowed other than in regional reserves or areas subject to joint proclamation.

It will come as no surprise to honourable members that the motivation for my bringing this bill to parliament today is the proposal for uranium mining in the Mount Gee area of the Arkaroola wilderness sanctuary in the northern Flinders Ranges. For those who are not familiar with this area, Arkaroola is 600 kilometres north of Adelaide. It covers an area of 610 square kilometres. The wilderness sanctuary features rugged mountains with towering granite peaks, magnificent gorges, ancient seabeds and life-sustaining waterholes. The sanctuary is home to rare and endangered species, including the yellow-footed rock wallaby and the short-tailed grass wren. Arkaroola has become a leading ecotourism destination, and offers more than a dozen Advanced Ecotourism accredited tours, including the famous Ridgetop Tour that thrills patrons with its four-wheel drive trek through steep and spectacular scenery.

The Arkaroola wilderness sanctuary, as members may know, was the winner of the 2005 and 2006 South Australian Tourism Awards for Ecotourism, and also the 2006 award for sustainable tourism. Arkaroola Wilderness Sanctuary is undoubtedly South Australia's premier eco-tourism destination. What is the proposal that has so concerned conservationists in relation to Arkaroola? The proposal for uranium mining is at the behest of Marathon Resources. According to its website, Marathon Resources is an exploration company with projects located in South Australia and Victoria; in particular it is interested in copper, gold, base metals and uranium. The company says that its focus is on the Paralana mineral system that includes Mount Gee, which it describes as one of Australia's largest undeveloped uranium deposits. Marathon Resources was listed on the Australian Stock Exchange on 17 March 2005.

In terms of the company's plans for this area, it announced in August 2006 an inferred resource of 45.6 million tonnes of uranium 308 at Mount Gee and it undertook a 77-hole drilling program, which it completed in March 2007 and which produced results that give it some hope that it will eventually be able to mine commercially. The company says that it has commenced discussions with both state and federal government departments and that it hopes to be ready to start mining in late 2009.

The Arkaroola sanctuary has a real history in South Australia. Members will be aware of the heritage of the Sprigg family, who have been responsible for that area. The current owners and operators, Margaret and Douglas Sprigg, say on their website that they are deeply disturbed by the Marathon proposal. They say that they do not want a mine of any description on Arkaroola. Their father, prominent South Australian geologist and conservationist Reg Sprigg, purchased Arkaroola in 1967 and, with his wife Griselda, transformed the former sheep station into the multi-award winning wilderness sanctuary that has become an outback tourist destination icon. The Spriggs say—and I agree with them:

While we are not against mining per se, the thought of the uranium mine right in the heartland of this fragile but spectacular landscape is abhorrent to us.

They note on their website that, because the land is a pastoral lease and only has sanctuary status, they do not see that there are any legal grounds, or that it is difficult for them, to prevent uranium mining. That begs the question: what is the value of sanctuary status if it cannot be used to preserve these important areas as sanctuaries? That is not the only status this land has. It is also part of Australia's national heritage: Mount Gee is on the Register of the National Estate. It is also a class A conservation environment under South Australia's development system. That begs the question of how we properly manage and protect this area.

One group that has weighed into the debate is the Australian Conservation Foundation, and it has called on the South Australian government, Premier Rann and environment minister Gago to rule out the proposed uranium mine, just as the Premier ruled out uranium exploration and mining proposed by the same company, Marathon, near Myponga on Fleurieu Peninsula in November 2006. I was pleased to go down to Yankalilla and be part of the community meeting there expressing concerns about the prospect of uranium mining on Fleurieu Peninsula. The ACF goes on to say:

The Premier should equally respect and act on community interest in protecting the high conservation Mount Gee area in the northern Flinders ranges from mining impacts, as he did in recognising and protecting the Fleurieu.

The people down there were very appreciative of the Premier's intervention and they want the Premier to intervene again. The Arkaroola managers, the Spriggs, make the point that this land was set aside by their father, they had hoped, in perpetuity as a sanctuary. The Sprigg family say that through sensitive management by the family they have conserved this unique part of the world for more than 40 years. They say:

Over four decades our late parents developed this remote sanctuary at huge financial and personal cost. Their life's passion was devoted to conserving a very special part of our land for everyone—Australians and overseas alike. Our parents understood that controlling access and restricting all development, including the road network, to the periphery of the property, was necessary to effectively conserve its rich ecological assets. We deeply respect their vision and their achievement, and we are committed to maintaining Arkaroola's integrity.

That is why this bill is needed: to give genuine protection to not just Arkaroola but to the other sanctuaries that have been declared under the National Parks and Wildlife Act. At the heart of my bill is the question: is any place in South Australia sacred? Is there any place in South Australia where we are prepared to say that mining is inappropriate? If members want to add some colour and movement to my bill, I suggest they go down to the video library and rent a copy of the Rolf De Heer film *The Tracker*. That film was made entirely in the Arkaroola sanctuary. That is the area that Marathon Resources wants to mine, the area that my legislation seeks to protect.

Debate adjourned on motion of the Hon. I. Hunter.

WORKCOVER CORPORATION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (16:37): I move:

1. That pursuant to section 16(1)(a) of the Parliamentary Committees Act 1991, the Statutory Authorities Review Committee inquire into and report on the WorkCover Corporation of South Australia (WorkCover), having regard to the extraordinary blow-out in the unfunded liability of WorkCover from $86 million in 2002 to $843 million in 2007, the failure of the Government to properly and adequately monitor and manage the unfunded liability of WorkCover, and the claim by WorkCover in January 2006 that the sole claims manager would achieve necessary liability reduction to deliver a fully funded scheme by 2012-13, with particular regard to—-

(a) the deteriorating financial position of WorkCover;

(b) the effectiveness of outsourcing the claims management to a sole claims manager;

(c) the tender process and the probity of that process, leading to the appointment of the sole claims manager;

(d) the exposure of WorkCover to the subprime financial market;

(e) the 2007 actuarial report submitted to the WorkCover Board in September 2007; and

(f) any other matters.

2. And that WorkCover provides copies of the following documents by 21 November 2007:

(a) any material provided to WorkCover by WorkCover's Claims Management Agent of—

i. organisational charts;

ii. resources of the agent which are applied in the performance of the agent's functions, including employee resource plans;

iii. resources provided by any other organisation or entity to the agent in or in connection with the performance of the agent's functions; and

iv. commercial arrangements for the supply of the resources referred to in (ii) including details of any charges which the agent is obliged to pay in respect of the supply of those resources, as required by clause 4.5 of the Claims Management Agreement (the Agreement), dated 26 February 2007;

(b) organisational charts provided to WorkCover of all significant positions within the Claims Management Agent's personnel, as required by clause 4.6 of the Agreement;

(c) any documents and correspondence relating to WorkCover's approval of persons to occupy the positions to be designated to be held by key agent personnel, as required by clause 4.6 of the Agreement;

(d) the Agent Performance Evaluation Program and any documents promulgated pursuant to clause 7.1 of WorkCover's Claims Management Agreement;

(e) any reports provided to WorkCover by the Claims Management Agent, outlining the outcomes of its internal audit and quality assurance programs, as required by clause 7.4 of the Agreement;

(f) any reports relating to general or selective audits of the Claims Management Agent, undertaken by WorkCover, as required by clause 7.5 of the Agreement;

(g) a list of all unauthorised payments or any documents evidencing unauthorised payments made by the Claims Management Agent, as required by clause 9.3 of the Agreement;

(h) the 'Certificate of Readiness' of the Claims Management Agent, as required by clause 13.2 of the Agreement;

(i) the transition-in plan of the Claims Management Agent, as required by clause 13.3 of the Agreement;

(j) a copy of the complete and current WorkCover Claims Management Agreement, including all schedules annexed thereto;

(k) all tender documents relating to the outsourcing of WorkCover SA's claims management, for the period 28 February 2005 to 30 February 2006;

(l) all recommendations made to the WorkCover Board, concerning assessment of all tenders for the outsourcing of the WorkCover claims management;

(m) the WorkCover actuarial report for the financial year ending 30 June 2006;

(n) the WorkCover actuarial report for the financial year ending 30 June 2007; and

(o) correspondence (including emails) between the WorkCover actuary and the WorkCover Board, for the period 30 June 2006 to 30 June 2007.

I rise to speak to my notice of motion in relation to the referral of an inquiry to the Statutory Authorities Review Committee and, in particular, the aspects I want to cover today in urging honourable members to support this motion. By way of introduction, and as a matter of urgency, I will request that this motion be voted upon on the next Wednesday of sitting. Some members may laugh, but this is a particularly important matter for the future of South Australia.

The Hon. Carmel Zollo interjecting:

The Hon. D.W. RIDGWAY: The minister interjects that she is not laughing.

The Hon. Carmel Zollo interjecting:

The Hon. D.W. RIDGWAY: 'Many may laugh.' Hopefully, when members consider the implications of the seriousness of some of the issues faced by WorkCover, they will support this motion next week. In particular, we want the Statutory Authorities Review Committee to inquire into: the WorkCover Corporation of South Australia having regard to the extraordinary blow-out of the unfunded liability from $86 million in 2002 to some $843 million, as announced just a couple of weeks ago by the board and by the minister; the failure of the government to properly and adequately monitor and manage the unfunded liability of WorkCover; and the claim by WorkCover in January 2006 (almost two years ago) that the sole claims manager would achieve the necessary liability reduction to deliver a fully funded scheme by 2012-13.

If one looks at that statement alone, one sees a scheme operating with $843 million of unfunded liability. We are all aware of a report that has been commissioned and will be tabled some time after the federal election, I suspect. Some legislative changes will be proposed, but I still find it very hard to believe that we will see a turnaround of nearly $1 billion in the figures we are

being presented with merely because of some legislative changes without a significant—and I mean significant—impact on the workers of South Australia and certainly their entitlements. I also want to cover a number of points, including the deterioration of the financial position of WorkCover and the effectiveness of the outsourcing of the claims management to a sole claims manager. This is very much a privatisation of significant magnitude; there is actually no public accountability and audit function being performed as, of course, the Auditor-General does not have any role to play in WorkCover. As to the tender process, and the probity of that process leading to the appointment of a single claims manager, a lot of evidence and leaks are coming from within the organisation relating to a range of issues that question the probity of that process.

In relation to the exposure of WorkCover to the sub-prime financial market, we know that WorkCover has a number of overseas investments and quite a large investment portfolio. I believe that it is certainly appropriate for the WorkCover Corporation to address that question. Of course, the community does not get to see any of the detail of the actuarial report submitted to the WorkCover Board in 2007. As I will explain shortly, there are a whole range of audit risks that the Auditor-General outlined some two years ago; in fact, I think the report that outlined this was tabled exactly two years ago today. In my motion I have listed a number of documents that the Legislative Council will request be made available to the Statutory Authorities Review Committee by 21 November 2007. That is why, in fairness to the organisation, I would like members to vote on this motion next week, as it will give WorkCover roughly a month to deliver those documents to the committee.

On 27 September 2007, WorkCover confirmed that its unfunded liability was now $843 million. WorkCover's financial position deteriorated by some $149 million in the last financial period, yet we heard WorkCover's claim that, by having a single claims manager, it would deliver a fully funded scheme by 2012-13; however, we are now seeing the scheme deteriorate even further. On that day, by way of ministerial statement, minister Wright stated that an independent review into the scheme was likely to be reported on by November this year, with the necessary legislative changes to be implemented by July 2008. Action taken in response to the review may include cuts to workers' entitlements. It would be a tragedy to think that, after five years of a Labor government, the only solution was to attack workers' entitlements. It seems like the easy option.

On coming to government, the minister criticised the former minister and the former government. He criticised the board, and a new board was appointed. It was then the claims manager's fault, so a single claims manager was appointed. Now, of course, the unfunded liability is still blowing out, so it appears that we have to blame the workers of South Australia and attack their entitlements. It is clear that WorkCover cannot maintain a healthy annual surplus, or even any surplus, at the same time as reducing the unfunded liability. Of course, we know the projected cost of claims measured actuarially over the next 40-odd years. The government has constantly criticised the Liberal Party for lowering the WorkCover levy rate during its last couple of years in office. It claimed that the unfunded liability would diminish if levy rates were higher.

However, with Labor's increase of levy rates (within a year or so of coming to office, it increased the levy rates) the argument has fallen flat as the liability continues to soar. I think there are some policy issues here that, if the Labor government had revised its policy on redemptions earlier on, it may have been possible to overcome the unfunded liability (which, at the time, was only around some $50 million) and avoid the cash flow problems which then forced it to minimise its redemptions. We see now that, of course, with some $843 million of unfunded liability, it raises a number of questions about the financial security of WorkCover, the financial security of South Australia and, in fact, the audit process itself. I refer to the Auditor-General's Report, which I indicated was tabled here two years ago this very day. Page 22 of Part A of the audit overview states:

> In May 2003 the minister tabled a Statutes Amendment WorkCover Governance Reform Bill. Included in that bill was a provision that would have resulted in the Auditor-General having an ongoing role in reviewing WorkCover, as opposed to the existing audit arrangements that provided that the corporation must, within three months of each financial year, appoint two or more auditors of the corporation for the financial year.

It goes on:

> As the parliament will record, this arrangement is similar to that which applied with respect to the former State Bank of South Australia. As Auditor-General I advised the then Public Accounts Committee of my concern that the State Bank was not subject to audit by the Auditor-General and I hold a similar view with respect to WorkCover. In my opinion, the legislation removed the audit responsibility of WorkCover from the legislative audit mandate and created an audit risk that, in the light of the former State Bank of South Australia experience, it should not continue.

He then states in this same report that he received advice from the Under Treasurer. It is following advice dated 5 August 2005 to the Auditor-General from the Under Treasurer, Department of Treasury and Finance, it should be noted. He states in one part:

> The new board has recognised there is a major issue for WorkCover in its claims management in implementing a range of measures designed to improve the corporation's performance in this area.

This is over two years ago. Again, we have seen WorkCover's insistence on having a single claims manager and yet this unfunded liability continues to balloon out of control. In one of his final comments he states:

> The experience of the State Bank has indicated the necessity, in public interest terms, that there be adequate audit powers to ensure the integrity of all information associated with the liability position of WorkCover.

It is interesting that the Auditor-General at the time raised those very important concerns about a number of audit risks within WorkCover. I am sure you are aware of this and the comments made in evidence to the Statutory Authorities Review Committee at the time that you chaired it, Mr President. I will quote from this particular segment of the report, as follows:

> WorkCover is not required, from a regulatory perspective, to comply with APRA guidelines as it is solely an accident compensation authority. In fact, conforming to APRA guidelines would render WorkCover currently insolvent, as it does not meet the capital adequacy requirements. If WorkCover decided or was compelled to comply with the full set of APRA guidelines, a significant injection of capital would be required.

In the same inquiry the Under Treasurer (Jim Wright) gave evidence to the committee that the Department of Treasury and Finance was not happy with the lack of prudential aspects that were being applied to WorkCover's outstanding claims estimates. He goes on to say:

> I think it is worth adding that also the estimates of solvency that they were calculating were not ones that we would have been happy with in a prudential sense because it did not have any prudential margin in it. They were using a central estimate and, because of the nature of the liabilities you have got out there, a central estimate is a risky estimate to use. So one of our recommendations was to build in a prudential margin.

He goes on to say:

> The other issue that we were concerned about was the discount rate used to value liabilities. Logically, it should have been a risk-free discount rate but it was not at that stage required by accounting rules to be a risk-free discount rate and now they are moving to make it obligatory. But good prudential management would have required the use of a risk-free discount rate and a prudential margin when they calculate those funding ratios. So the ones that they were operating on were very generous.

I will now quote from WorkCover's actuarial certificate where it talks about discount rates and some of the discounts mentioned by the Under Treasurer (Mr Wright) in the Statutory Authorities Committee, and the basis of the actuarial estimates as of 30 June last year. It states:

> We have made a central estimate of outstanding claims liabilities, meaning that our assumptions have been selected to yield estimates which are not knowingly above or below the ultimate liabilities.

We do not know what the liability is: it could be higher; it could be lower—I suspect that it is probably higher. It goes on:

> Our estimates are discounted—i.e., they would allow for future income investment, they include allowance for future expenses incurred in the management of outstanding claims, and they are net of expected recoveries in relation to outstanding claims.

In particular, in the same actuarial report, it goes on to talk about some uncertainty aspects in respect of the report. It states:

> In particular, our valuations of liabilities anticipates improvements in the discontinuance of the tail of claims compared with the recent scheme experience as a result of initiatives being developed by the corporation to reduce the cost of long-terms claims, with a reduced emphasis on redemptions. Should the improved discontinuance not eventuate the scheme liability will increase substantially from our current valuation estimate.

One might read into that that the actuary has taken into consideration the initiatives being developed by the corporation to reduce the number of long-term claims, etc. As the corporation has publicly detailed all the likely legislative changes on its website, what we could actually see is the actuary taking into account those particular legislative changes in estimating the $843 million of unfunded liability without actually having those legislative changes in place. So, the unfunded liability position could be significantly worse than has been published.

I will move on to the effectiveness of the outsourcing of the claims management to a sole claims manager. As part of a freedom of information application, I received a copy of the claims management agreement. Page seven of that agreement states that WorkCover is responsible for the efficient and economic operation of the WorkCover workers rehabilitation and compensation

scheme. It will be interesting to hear the minister define what is efficient and economic in terms of the unfunded liability and the proposed legislative changes.

It is interesting to look at this matter in purely a numbers sense. If it is a contract for five years with the right of another five years, and if it is a $10 million a year expense, that is a $100 million privatisation or outsourcing of government activities, but it could easily amount to $50 million a year. We are uncertain as to the amount of income that a single claims manager gets from WorkCover. In fact, that is one of the documents that we are requesting to be provided to the parliament. Because of that uncertainty, we do not know whether this is a $100 million or $500 million outsourcing contract; in fact, it could be more. That is the concern that we, as an opposition—and the community—have: not being informed of the financial arrangements and the audit risks that the arrangement in place at the moment poses to the state.

The agreement goes on to state that WorkCover will discharge that responsibility in part by entering into a contract with private sector bodies to manage and determine claims. First, the responsibility of efficient and economic operation of the scheme has clearly not been achieved under WorkCover's current contractual arrangements. Secondly, as I pointed out before, the Auditor-General has no oversight of WorkCover. In his report for the year ended 30 June 2005, he stated that the minister had commissioned a report on certain practices which would be critical to the financial management of WorkCover. The response to this was the Statutes Amendment (WorkCover Governance Reform) Bill, which included a provision that would have legislated that the Auditor-General had an ongoing role in reviewing WorkCover's finances, but the bill lapsed and was never reintroduced.

The financial sustainability of WorkCover is in serious question, and it is doubtful that the sole claims manager—an approach that WorkCover has adopted—will achieve the fully funded scheme by 2012, as WorkCover has claimed. The handing of a monopoly contract to Employers Mutual Ltd occurred, despite the fact that Allianz continued to perform the claims management function for the Motor Accident Commission, which the Treasurer himself has noted as performing better than WorkCover. Employers Mutual Ltd (EML) is a New South Wales group which, at that point, had no experience in operating in the South Australian market. Further to the dwindling success of WorkCover and EML's partnership, employers in South Australia are more reluctant to fill 'light duties' with people on WorkCover, which has a further negative impact on the return to work rate. Around 86 per cent of South Australian businesses are classed as small businesses and simply do not have the flexibility to employ recovering people. Research has consistently revealed that the longer injured employees are absent from work the more likely it is that they will not return.

The Campbell Research & Consulting Return to Work Monitor 2005-06 pointed out that 35 per cent of South Australian injured workers are classified as non-durable return to work or no return to work compared with a national average of 20 per cent, so we are nearly twice as bad as the national average under this current WorkCover arrangement. WorkCover cannot seem to work through why they have so many long-term cases. This situation led to a circumstance—alleged by one of our former colleagues the Hon. Angus Redford back in 2005, along with a reporter at the *Independent Weekly*—where WorkCover had contacted its four claims agents, who were told to redeem 10 specified or nominated claims amounting to more than $100,000 each—a total of $4 million. I think the Hon Angus Redford speculated on that and called them the Lucky 40—a collection of the longest 10 claimants of each claims management agent. It was further speculated that, through WorkCover taking files from the agents to handle itself and offering redemptions exceeding the amount which agents were allowed to offer, it would focus the blame on the agents rather than WorkCover.

The claims management agreement also states on page 15 that WorkCover may give Employers Mutual notice of its intention to extend the term of contract, depending on a satisfactory level of performance. There is no measure of how a satisfactory level of performance will be determined, and does Employers Mutual have any appeal rights in the circumstances where a level is not achieved in WorkCover's view? In respect of an agent's key personnel, WorkCover may make certain requests if they determine the turnover of personnel to be unacceptable (clause 4.6(n) of the agreement). We are asking for that information to be provided to this parliament. What data concerning the turnover rate is the agent expected to supply in this circumstance? This is a question that I think will be pursued by the Statutory Authorities Review Committee. I note that the agent may also be required to meet with WorkCover to discuss the reasons for the turnover rate. Have any circumstances occurred when this has been necessary, and what were the specific reasons in those cases? Again, this would be a good line of questioning for the committee.

Apart from the financial crisis of WorkCover, a serious problem existing in WorkCover is this culture of blame. As reported in the *Independent Weekly* of 6 March 2005, 'WorkCover is known to handle external relationships poorly with an adversarial culture'. The culture within WorkCover is the probable reason that such a great deal of information is leaked to the opposition. It is also reported that claims agents had commented on the lack of communication from WorkCover and had, in the past, heard of happenings within WorkCover through public statements.

Clause 4.6(n) provides that WorkCover may require drug screening for the agent's personnel. Again, that raises a whole number of questions: has this ever occurred before, and have any suggestions been documented about the relationship between any positive drug tests and the alleged low morale within WorkCover and its agent? Under the agent's performance evaluation program in clause 7.1 of the agreement, the performance of the agent will be measured by APEP. Has WorkCover published this document and, if so, when will it be available in the public domain? We have heard that this single claims manager is WorkCover's solution to driving down the unfunded liability, yet all the performance appraisals that are built into this agreement have not seen the light of day, so that is a document we will be pursuing. Clause 7.3 provides that the agent may provide other reports from time to time on matters notified in writing by WorkCover. Given the significance of the unfunded liability and the position we see WorkCover in, again, these are reports which, if they have been requested, we would like provided to the committee and the parliament.

A number of internal audits are required in clause 7.4 of the agreement, and we want to know: what have the outcomes been of required annual reports under the agent's internal audit and quality assurance program, and have any recommendations been made to the WorkCover board in response to these reports? Again, you can see that a range of reports is required by this agreement in a whole range of areas and, given the audit risk and the risk it poses to the state of South Australia and potentially our AAA credit rating, these again are important documents that need to be provided to the committee. The same questions may also be asked about audits of the agent instigated by WorkCover.

I will now move on to the tender process and the probity of that process leading to the appointment of a sole claims manager. A number of reports have been provided to the opposition about the WorkCover board appointing a subcommittee of the board after it called for tenders, and our understanding was that that would be to have multiple claims managers—two, three or possibly four but I think it was two or three. Our understanding is that that subcommittee conducted the tender process and provided a recommendation to the board, and companies tendered on the basis that they would be in a competitive environment with one or two other claims managers. We understand that a report was provided by this committee to the board, yet in the end the board did not accept the advice of that committee, and our understanding is that it did not refer its decision to appoint just a single claims manager back to that subcommittee.

The claims managers agreement between WorkCover and Employers Mutual had been obtained through freedom of information. The majority of documents called for in this motion are mentioned in that agreement and would most likely indicate the probity of the tender process. It is very clear why we want a number of these documents provided to the committee; it is because of questions about the probity of the tender process and particularly how well it was handled by WorkCover itself.

In the *Sunday Mail* of 13 February 2005 an article written by Mr Kevin Naughton claimed that 220 complex claims were taken back by WorkCover to be managed in-house by Jardine Lloyd Thompson, which was engaged to advise on the resolution of these claims. Angus Redford stated in *Hansard* that he had been told that the existing claims management agents were not consulted at all on the contract that went to Jardine Lloyd Thompson and that the contract did not go to tender. This indicates that WorkCover has a history of a lack of probity in its tender process.

Another case for the opposition's interest in these documents concerns page 7 of the agreement, where an expression of interest was requested or published. We do not know what the time frame was. It then goes on to state that Employers Mutual was invited to place a bid. We do not know how many other invitations were called for and whether this was a standard invitation or whether there were variations of the invitation for bids to be received. We also do not know what the process was for determining the successful bidder or who audited the probity of this process. Again, it comes back to the advice we have received that a subcommittee of the WorkCover board was set up, it was given the tender to evaluate on certain criteria and then the board changed its mind.

This WorkCover claims management agreement is quite interesting when you look at it. After the claims manager is appointed and has signed the agreement, when I look at some of the details of the agreement—I am not an auditor at all—they beg some questions. At page 12 the agreement states, '...a reference to this agreement is a reference to this Agreement as amended, varied, novated, supplemented or replaced from time to time'. Schedule P on page 164 of the claims management agreement states, '...the contents of this Schedule will be substantially reviewed and revised before the Commencement Date'.

In signing this agreement the single claims manager has agreed to its being changed substantially. As I said a moment ago, I am not an auditor and I do not know whether this is a normal practice, but it seems rather strange to me that you can go to tender to provide a service (and my understanding was that the tender was for multiple claims managers), and end up with a single claims manager and then the court says you can substantially change everything. So, in signing it, both parties agreed to substantially change it. It seems to me that there is huge uncertainty surrounding this agreement.

Another area of uncertainty is the process WorkCover uses to designate key personnel within its Employers Mutual organisation. Under clause 4.6 of the agreement, WorkCover has a particular role in dealing with the key personnel in this document. Clause 4.6 states:

> Key Personnel: Prior to the commencement date, the agents will provide an organisational chart of all significant positions within the agent's personnel. WorkCover shall, in consultation with the agent, designate up to seven personnel in such positions to be held by key agent personnel. Key agent personnel must have skills, qualifications, experience and other attributes. WorkCover, in consultation with the agent, acting reasonably, determines what attributes such personnel should have for each of the desired positions. The agent shall identify and obtain WorkCover's approval of the persons to occupy these positions designated to be held by the key personnel prior to the commencement date.

As I have said, I am not certain of the arrangements for private outsourcing of government responsibilities like this, but it raises questions, such as: is this process consistent with other government outsourcing practices? What are the `requirements' for the relevant positions? Again, it is internal information that I think the South Australian public, the parliament and our Statutory Authorities Review Committee need to have. Did the agent offer any key personnel under this clause and were they rejected? We do not know. Has WorkCover requested that any matters relating to the performance of the agent's functions or any agent's personnel be investigated under clause 4.6j of this agreement? It goes on to say:

> ...if WorkCover has requested any matters relating to the performance of the agent's functions or if any of the agent's personnel have been investigated under 4.6j of this agreement. If in the event that WorkCover determines in good faith that continued assignment to the performance of the agent's functions of any of the agent's personnel, including key personnel, is not in the best interests of WorkCover, then WorkCover shall give the agent notice to that effect, requesting that the matters stated be investigated.

Have we actually seen WorkCover, having appointed this single claims manager, reject the personnel? As I have said, I am not an auditor, so I do not know whether these practices are consistent with normal outsourcing conventions, but it seems to lack the robustness and transparency the community deserves today.

I will now quickly touch on WorkCover's exposure to the subprime financial market. WorkCover's financial deterioration has occurred despite reasonable returns on investments and a favourable external and economic environment. Considering that WorkCover's return on investments has been reasonable, there is the potential that its unfunded liability will heavily increase with less success or a downturn in the market.

Page 71 of WorkCover's 2005-06 annual report includes a note to the financial statements, which lists securities on overseas stock exchanges as being almost $255 million. The next line under that note talks about unit trusts, unlisted property and debt security assets of $157 million. So, slightly over $400 million is invested overseas, and we have seen a significant downturn in the US market, particularly in the subprime mortgage market. Because of the lack of audit, we are not sure what those investments are or whether there is any great exposure. I know this government claims the AAA credit is due to all its hard work but, as all good commentators know, it was the hard work of the former Liberal government, and the diligent work of my colleague sitting behind me, the Hon. Rob Lucas, when he was treasurer, that laid the foundations and the groundwork for this state's AAA credit rating.

If there is a hiccup in the financial investments of WorkCover, it could have an impact almost overnight on WorkCover's unfunded liability, and we could see WorkCover in a worse situation than it is in today, and that could put our AAA rating at risk. If you look at the ratio of

government debt to equity, South Australia's AAA credit rating is the most tenuous of all the mainland states (I think Tasmania now has a AA-plus credit rating). That is one of the triggers for this motion: with WorkCover having substantial overseas equities, we as the opposition want to achieve greater transparency in relation to WorkCover's exposure to this overseas financial crisis. Whether or not there is an exposure, we think that, certainly in the first instance, the parliament and the Statutory Authorities Review Committee should know.

Also, in relation to the actuarial report that was submitted to WorkCover in September, it has become government practice to consistently release quarterly and annual reports at the latest possible date and at the most inopportune times. I am sure we see a whole range of information (to name one, mid-year budget reviews) being dropped out just before Christmas. That is often a tactic used by this government to mask bad news. This timing has also been similar with estimate committee questioning on WorkCover, with a mere 45 minute allocation being consistently provided at times when it is less likely to receive media attention.

A document found on the WorkCover site lists a summary of recommendations that the WorkCover board has made for changes to the Workers Rehabilitation and Compensation Act 1986. These recommendations are primarily in response to WorkCover's financial crisis. It would be fair to assume that these changes would have a significant financial effect on WorkCover. That is a list that is a bit like a sheet of information on what the legislative changes will do to WorkCover and how they will affect it. It is a like a summary of the legislative changes. It would be interesting to know whether the actuary has considered these significant legislative changes in calculating that unfunded liability which, as I mentioned earlier, is calculated over a 40 year period. Hopefully, the 2007 actuarial report will shed some light on that, because we are not sure whether the legislative changes have been factored in. I indicated that, in the actuarial statement, changes and future changes are often taken into account, but we can see that the unfunded liability is significantly higher than the figure that has been published. That is why we seek those documents for the committee—we believe it is of the utmost importance to have this potential disaster addressed as soon as possible.

Finally, there are a couple of interesting issues that arise in relation to this claims management agreement. On page 30 it states that WorkCover shall pay the agent a remuneration calculated in the manner specified in schedule D of the agreement. We have applied to have schedule D released under freedom of information but, unfortunately, our request has been rejected. Further down the page it states that in certain circumstances, which are listed later, an agent's remuneration will be adjusted if a particular circumstance causes the financial consequences of the agent to exceed a financial threshold. One of the circumstances listed is a change to the relevant law. It is difficult to know the full implications of this clause because, as I said, schedule D is one of the documents that we have been unsuccessful in obtaining a copy of through FOI.

However, it is possible, because parliament decides on the changes to workers' entitlements, and this change would constitute a change to the relevant law, a decision made by parliament could potentially amount to a windfall being gained by the single claims agent. So, this motion seeks to have those documents supplied to the Statutory Authorities Review Committee, and a number of others listed in the original motion, which are likely to provide evidence of WorkCover's actual financial position, along with the probity of the tender process which led to Employers Mutual being engaged as WorkCover's sole claims manager, and its success in providing services to WorkCover. As I indicated earlier when I started my contribution, I ask members to give this matter priority so we can vote on it next week, Wednesday 24 October, because we would like to give the WorkCover Corporation a reasonable amount of time to address the request and provide those documents to the Statutory Authorities Review Committee and parliament on 21 November. I commend the motion to the council.

Debate adjourned on motion of the Hon. I.K. Hunter.

The Hon. P. HOLLOWAY: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

PREVENTION OF CRUELTY TO ANIMALS ACT

Adjourned debate on motion of Hon. J.M.A. Lensink:

That the regulations made under the Prevention of Cruelty to Animals Act 1985, concerning rodeos, made on 16 August 2007 and laid on the table of this council on 11 September 2007, be disallowed.

(Continued from 12 September 2007. Page 675.)

The Hon. M. PARNELL (17:22): This is a motion to disallow the regulations under the Prevention of Cruelty to Animals Act 1985 concerning rodeos. The Greens oppose this motion. We support the government regulations that amend the rules covering rodeos to protect animals under 200 kilograms, and that effectively bans calf roping, plus a ban on concealable small cattle prods, and we congratulate the minister for bringing these regulations into force. The Hon. Michelle Lensink expressed concern that the industry apparently was not consulted about these regulations. That does concern me. The government should, wherever possible, seek to consult those to be regulated or other stakeholders before bringing in regulations, so I have some sympathy with that complaint. However, it does not alter my view on the merits of the regulations. Even if the rodeo industry was not directly consulted, it has known this was coming for some time. Similar provisions have been introduced elsewhere, such as Victoria, and given the rodeo industry's history of permit violations spanning more than a decade, it is inconceivable that it did not foresee this coming. However, I agree with the Hon. Michelle Lensink that formal consultation would have been desirable.

I will speak briefly and specifically about the issue of calf roping. One of the points made by the Hon. Michelle Lensink was to question whether these smaller animals under 200 kilograms are subject to greater injury. The honourable member referred to statistics provided by the rodeo industry that suggested that no harm was being done to the animals involved. My response would be that the minister is right to be suspicious, if in fact she is, of industry figures, which I understand have only been collected for the past couple of years.

It may be akin to asking the fox how many chickens it had killed. I understand that the primary injury sustained by animals subjected to calf roping is internal haemorrhaging, which is not evident without an autopsy. This means that the calf can be haemorrhaging in the thymus gland and the trachea, but not show any outward signs. Research provided to me from the United States, undertaken for the Humane Society, indicates that those types of injuries are present in animals that have been subjected to calf roping. I refer members to the Kritzberg Report, 'Potential Abuses in Rodeo Calf Roping', that goes all the way back to 1972, a report based in the US state of Colorado.

The Hon. Michelle Lensink complains that this is additional regulation and points out that this industry is already regulated through federal codes. I do not accept that, because the standards in those codes are only voluntary and in any event they are inadequate in many areas. As I understand it, there is not even a requirement for a vet to be present at these types of event. As a member of the RSPCA in South Australia—although I might also be regarded as a critical friend of that organisation—I note that it is the policy of the society, not just in South Australia but nationally, of being unequivocally in opposition to rodeos. The RSPCA nationally opposes rodeos, and I fully support that policy and urge all members to reject this disallowance motion and enable these regulations to continue to prevent unnecessary cruelty to animals. In conclusion, calf roping cannot be allowed to continue if animal welfare within the rodeo industry is to be improved.

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (17:27): The government has made great strides in animal welfare reform and more is yet to come with the bill before the house amending the Prevention of Cruelty to Animals Act. The community expects that animals will be treated humanely, whether they be companion animals or animals used by industry for food, materials or even entertainment. While there is often a particular focus on the animals that people have in their homes, and a justifiable intolerance of cruelty or misuse of dogs or cats, increasing attention is being paid to livestock and standards imposed on industries responsible for them. These are industries where, if things go wrong, animals may suffer injury, distress or painful death. It is the government's challenge to ensure that community standards and expectations are met by industry in ways that are reasonable and practical, and it is a responsibility that I as minister take very seriously.

Rodeos use animals for competition and entertainment and in so doing not only provide a competition circuit for participants but also often provide much needed income for rural communities. Nationally there is a code of practice agreed to be the binding rules for competition, and in South Australia since 2005 until 1 September this year that code of practice was appended to the regulations of the Prevention of Cruelty to Animals Act, along with many other codes of practice guiding industry in the treatment of animals. This meant that a proven breach of the code of practice constituted a breach of the regulations and, in effect, was an offence. This position put South Australia at the forefront of rodeo regulation in Australia, along with our permit condition that a vet attend all rodeos.

While the concept of having the agreed code of practice in force by the Prevention of Cruelty to Animals Act was a good one, it was a concern to me that the wording of the code did not lend itself to being a document able to guide whether or not an activity was prosecutable. I therefore requested that the Department for Environment and Heritage work to turn that national code of practice into a regulation that would enable participants and animal welfare inspectors to be very clear about what was and what was not allowed. This move has been supported by the rodeo clubs. As one member said to me in a discussion about this regulation, 'I don't believe in shoulds and should nots but in musts and must nots.'

In the course of developing the regulation, the rodeo clubs made many suggestions for the practical application of the clauses, and nearly all those were incorporated into the regulation. I am very proud that the government has been able to take this step forward so that the public can be confident that, if the regulation is breached, a prosecution can occur. In the course of working on this regulation, I took note of two reforms that were recommended to me by the RSPCA, including a ban on the use of small electric prods (those that are easily concealed), which was already a condition of the permit, in order to ensure that the use of prods could be clearly seen by observers and therefore demonstrably in accord with the regulations.

The second was to follow in Victoria's footsteps and ban the roping of calves on the basis that young animals are distressed by being chased by men on horses, lassoed, pulled onto their backs and their legs tied together. Common sense dictates that an animal that is not fully developed is much more vulnerable than a fully developed animal to the adverse effects of this treatment. On the whole, the general public do not like to see grown men on large horses chasing down and tossing baby animals; quite frankly, I do not blame them. I was advised that not only was this an event that the RSPCA regarded as the least acceptable event at rodeos but also that precluding that event did not mean that rodeos were unable to proceed. As I have said many times, this government has absolutely no intention of banning rodeos.

I take representations made to me by the RSPCA very seriously. The society is the pre-eminent animal welfare group in South Australia. It enjoys very high credibility amongst the community and is entrusted by the government with the enforcement of the Prevention of Cruelty to Animals Act. Thousands of Australians donate to the society and leave bequests, call when they are concerned about the treatment of an animal and often visit the society's shelters to offer new homes for abandoned companion animals. On 4 July this year, I announced not only that I planned to make a regulation for rodeos, as I have described, but also that I intended to introduce these two reforms. Both the Hon. Michelle Lensink and the Hon. Caroline Schaefer have tried to make much of the consultation process I used for this regulation.

I cannot work out whether they have been deliberately misleading, lack understanding or are just plain lazy. I cannot understand a member of the Hon. Caroline Schaefer's experience coming into this chamber and being so inaccurate about something as important as the regulation of animal welfare. Similarly, the shadow spokesperson for the environment needs to be careful when she makes statements that are so wrong and inaccurate about the consultation process undertaken in respect of this regulation to this act. Coming in here and making claims that are wrong is quite simply unhelpful.

I will take some time to go through the extent of the consultation we undertook and also the manner whereby we ensured that clubs were aware of the final content of the regulation prior to the rodeo season commencing. On 8 July this year, staff from my department and from the RSPCA met for several hours with the rodeo club organisers and participants to go through what I proposed to do with the regulation. The two individuals mentioned by the Hon. Michelle Lensink were at that meeting. While the clubs were clear that they did not support the banning of calf roping, people there had many other positive contributions to make to the regulation itself.

As I said earlier, nearly all those suggestions were agreed to and have been incorporated into the regulation. Following this meeting, on 17 July I met with a number of rodeo club members to discuss my intention to ban calf roping, to create a regulation and to ban small prods at rodeos. The meeting was expressly called to hear their views on this, and not only did I indicate that I welcomed written submissions but I also extended the time the department had given originally for them to provide me with comments. So, I adjusted the time frame they felt could accommodate their input. Some individuals and associations chose to take up the offer.

Finally, at my request, my office sent out the new final draft of the regulation to all those who attended the meeting, and who had left their contact details, so that they were aware of what the regulation was likely to look like and could make any last changes. This included all those who attended the meeting with me. Three changes were made as a result of this last step in the

consultation process. How the opposition can therefore claim that the regulation was 'sprung on the rodeo operators without any consultation' is quite simply misleading. This was not the last step.

An honourable member interjecting:

The Hon. G.E. GAGO: You should check your facts. They are very clear, and I have outlined them before you today. This was not the last step in the communication process, however, as, after the government had endorsed the regulation, it was placed on the—

An honourable member interjecting:

The Hon. G.E. GAGO: Yes; and more—the DEH animal welfare website and it was posted to rodeo clubs. The first rodeo this season was to be held on the last weekend of September; however, the outbreak of horse flu led to its cancellation. When the DEH next receives an application for a permit to hold a rodeo, along with a permit the organisers will be sent the new regulation to ensure that there is no uncertainty about the law as it applies to rodeos. So the opposition has failed to substantiate why the government should ignore the RSPCA's advice on an animal welfare matter that is so important, and it has quite simply made some false allegations about the lack of consultation when, in fact, there was substantial discussion and input with the clubs, as I have outlined. Yes; rodeo clubs would like to continue to rope calves; but, no, I will not allow that event to continue in South Australia—so we will disagree. I will not ban rodeos in this state but I will reserve the right to listen to the RSPCA when it raises concerns about animal welfare. I am proud that we now have a regulation that is unambiguous about what is and is not acceptable treatment of animals at rodeos.

The Hon. A. BRESSINGTON (17:38): As I have indicated in my speech on prevention of cruelty to animals in the Animal Welfare Amendment Bill, there is no credible evidence to support many of the government's proposed changes under this bill and, due to this fact, I will be supporting the motion of the Hon. Michelle Lensink that they be disallowed. I am concerned about animal welfare as much as anybody else. However, I also have concerns about ill-informed critics who set out to make disparaging comments about hard-working volunteers in our regional communities; people in the community raising money for important organisations such as the Royal Flying Doctor Service. These critics with their scaremongering tactics are threatening the livelihood of our country South Australians.

As I said earlier, many constituents have contacted my office because they are concerned that there is no credible evidence to support many of the proposed changes. For example, the Australian Professional Rodeo Association believes that many of these changes have been arbitrarily set in contrast with professional opinion. I have to say that it is a claim of many people (who are facing regulation under this government) that the consultation process is nothing more than a smoke and mirrors show, if you like. Yes, the government may arrange meetings, people may attend, they may give their views and their opinions but, at the end of the day, they walk away knowing full well that what they have brought to the attention of a particular minister or minister's advisers has fallen on deaf ears and it has basically been a waste of time to even participate in the consultation process.

I have to say this relates to a number of issues (not just animal welfare) that have been coming before my office relating to legislation and regulation that this government is trying to put in place. I refer to regulation 13H(1)(a), which stipulates that an animal must have a body weight of at least 200 kilograms. The association believes that the existing weight of 100 to 130 kilograms (with the optimum weight of about 115) has been proven by the testing of cattle of different weights, which led to the approved roping device developed in the 1980s. The injury rate at this level is minuscule, with only two injuries in over 7,000 calves roped in a 10-year period.

One really has to wonder why injury to two calves in a 10-year period has received such attention to animal welfare rights from the minister. What is the government doing about the live shipment of animals for food? The minister mentioned that that is a major problem. How many thousands of animals are being transported in the most uncomfortable and inhumane conditions, and yet we have this statement about two calves in 10 years. All of a sudden, we have to be amending legislation and regulating rodeos. Rodeos are a part of Australian outback life. Perhaps city folk do not get it, but country folk certainly do—they love their rodeos. There is absolutely no logic in thinking that country folk would, for the sake of one rodeo, put in danger animals (for which they have paid a lot of money, especially now with the drought) that they have paid for, bred, spent a lot of time and energy in obtaining and looking after. If they thought that it was going to be dangerous to their animals, I guarantee that they would be the first to regulate their own industry.

The Hon. J.M. Gazzola interjecting:

The Hon. A. BRESSINGTON: Obviously this government does not believe that anybody is capable of self-regulating; this government has to stand over and regulate everybody and everything in order to get people to comply with the image of the model citizen. The association believes that it has been singled out unfairly, especially in South Australia. APRA has a widely-held reputation of being extremely proactive in addressing issues of animal welfare. Amongst those who have supported the association is one of Australia's leading veterinarian consultants, John Cornwall, AAWS member, a veterinarian with 50 years' experience and a former Labor minister in South Australia; and Rick Symonds, Department of Primary Industries, in Queensland, NCCAW member and chair of the Australian Animal Welfare Strategy Committee (who, with Warren Lehmann, is currently revamping the code in Queensland). It appears that there has not been adequate consultation or feedback in the drafting of this bill. The Rodeo Association informed me that it received no response when it contacted minister Gago's office to ask about the basis behind regulation 13H(14), which requires that any horse to be used in a rodeo event that invokes bucking must be at least three years of age. I remain unconvinced by the minister's response in the council today and on Tuesday 16 October and, as I said, I will be supporting the motion of the Hon. Michelle Lensink that these regulations be disallowed.

The Hon. I. Hunter: You're disgraceful.

The Hon. A. Bressington: I am a disgraceful person. I am heartless.

The Hon. I. Hunter: Pathetic as well.

The Hon. A. Bressington: I actually care more about people.

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order!

Debate adjourned on motion of the Hon. J.M.A. Lensink.

NUCLEAR WASTE STORAGE FACILITY (PROHIBITION) (PROHIBITION OF OTHER NUCLEAR FACILITIES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 1 August 2007. Page 587.)

The Hon. SANDRA KANCK (17:45): I have a feeling that, when the Hon. Mark Parnell said that he fully expects the Rann government to support this bill, he had his tongue firmly planted in his cheek. There is no doubt that the Rann Labor government is pro-nuclear. Mike Rann led the successful push earlier this year for the ALP to drop its three mines policy on uranium, and this was a move that was clearly aimed at opening up the uranium mining industry in South Australia. Occasionally, this government appears to be pro-environment, such as when it introduced legislation to prevent a national nuclear waste dump being foisted on South Australia by the federal government. It suited Mike Rann at the time because it allowed him to play wedge politics with the Liberal Party in the lead up to a federal election. I do not think it showed that there had been any latter-day conversion.

Sadly, and against my better judgment and efforts, I think it is just a question of time before South Australia gets a uranium enrichment plant because that is part of the agenda of the mining industry, and this government finds it almost impossible to resist its lobbying and, no doubt, donations to the ALP. I remind members, because it is 11 years ago, that in 1996 when the Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Bill was dealt with by this parliament I moved an amendment to prohibit the enrichment of uranium or the reprocessing of nuclear waste in the Stuart shelf area, which is where the Roxby Downs mine is located. I could not get support for that amendment from the Labor Party (then in opposition) or the Liberal Party government. So, if I was not able to get that sort of prohibition of those activities in a much smaller area 11 years ago when there was less uranium mining on the horizon, I would be absolutely bowled over if the Labor Party in government was prepared to accept a similar proposition involving the whole of the state.

Also, for the record, because not everyone will go back to look at the *Hansard* of 1996, the amendment that I moved back then also included the following clause:

Nothing in this act or the Indenture prevents the imposition of rates or charges to discourage excessive depletion of artesian water supplies.

That did not get support either, and I think that, looking at it now with the number of mines that are likely to be opening up and the demands that are going to be there on artesian basin water, it would have been a very sensible amendment to adopt. I hope that the Hon. Mark Parnell is right about the government, but he should not be disappointed if it does not support the bill because, after all, it is a pro-nuclear government. I think that all we can do is wish him luck. I indicate Democrat support for the bill.

Debate adjourned on motion of the Hon. I. Hunter.

CRIMINAL LAW CONSOLIDATION (REASONABLE CHASTISEMENT OF CHILDREN) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 July 2007. Page 480.)

The Hon. SANDRA KANCK (17:49): The Democrats think this is a totally unnecessary and totally unjustified bill. I recognise that parents smack their children and, on a few occasions, I confess I did the same with my son, and I regret those moments. They are not moments that I would treasure in my relationship with my son. But recognising that smacking happens from time to time does not justify giving it any credibility in law. A short time after the Hon. Dennis Hood of Family First introduced the bill, there was a comment about it in *The Advertiser* in the religious affairs section from the Reverend Peter McDonald from Uniting Care Wesley on 30 July this year. He wrote:

We are extremely disappointed to hear Family First promote the smacking of children. Their proposal to put into law a parent's right to hit their child promotes the use of violence as a way of resolving conflict. Research shows spanking is an ineffective way of changing behaviour. Positive parenting makes a lasting difference to a child and the ability to deal with life. It works at developing a relationship of love and respect rather than one shaped by fear.

Dr Jane Nelsen, who is a highly respected marriage, child and family counsellor and author of books about child discipline, asks, 'Where did we ever get the crazy idea that, in order to make children do better, first we have to make them feel worse? Think of the last time you felt humiliated or treated unfairly. Did you feel like cooperating or doing better?' That, for me, is not a rhetorical question. Having been on the receiving end of a fair amount of parental rage as a child, I know how fear-inducing it is, and I can answer that question of Dr Nelsen's with a resounding 'no'. As I view Family First as essentially a religious party, I quote Proverbs 22:15, which may be the source of the Hon. Mr Hood's argument—if not his it certainly will be that of some of his supporters:

Foolishness is bound up in the heart of a child, but the rod of correction will drive it far from him.

My parents paraphrased this as, 'Spare the rod and spoil the child'. So you can be sure that I was not spoilt. It is a shocking way to raise a child, and I fear this bill is predicated on a similar world view. The reality is that there is a huge power imbalance between a parent and a child. There is also a weight and a size imbalance that actually adds to that. The child is dependent on its parent or parents for survival, and well knows it, even if she or he cannot put that understanding into words.

In considering this bill, I ask members to think about how they would feel right now if someone took to them physically to chastise them. They would be extremely angry and probably hit back, or at least they would want to. It would not be considered appropriate to be treated in this way. So, if it is not appropriate for one adult to hit another—and we have a whole series of statutes that deal with that issue—how much more inappropriate is it for an adult to hit a mere child who has no recourse to defend himself or herself? I cannot understand why we would want to physically hurt our children. From the website scandaniva.com I have taken down the following:

Corporal punishment of children by their parents is not legal in the Nordic countries. Nordic society is commonly agreed that children are better educated with words than with violence. Teaching through beating and pain is just not part of our values as a society. I decided after I returned from a week's holiday abroad that the social achievement was worth being remembered.

I had never seen anyone hitting or smacking children before. I was shocked to see a father shouting and smacking his little boy in public. No-one in the street stopped to prevent this or to say something. I found that very disturbing and have thought many times about what I saw there. Would that same father who slapped his little boy dare to turn next to his elder grandmother or to his wife? Can you hit a child because he does something you don't like?

While I agree with the Hon. Dennis Hood about Families SA sometimes overstepping the mark in terms of how it defines child abuse, the example he quoted from the Rex Jory article—while showing up how silly Families SA can sometimes be—does not justify those parents hitting their child. In the example of the five year old child who went missing in a large shopping centre, surely hitting him after he was found was not the solution. Rather, those parents should have hugged the child and let him know how worried they had been and why they were worried.

I am aware of parents who are struggling with disciplining their children, particularly single parents who sometimes find themselves at the end of their tether with no-one else to share the load. In that regard, parents will justify hitting in terms of the child's safety. They cite examples for the need to be allowed to hit children, such as when they are about to touch a power point. But we are the protectors of our children; surely we have a responsibility to reduce the hazards. Rather than enshrining a right to smack, we should be providing support for parents.

Privately funded programs are available which are not accessible to many people because of the cost. During National Child Protection Week this year, the National Association for Prevention of Child Abuse and Neglect (of which I am a member) ran a free lecture series about disciplining unruly children. I passed on the information to one single mum I know who has been having problems with one of her children, and she was bitterly disappointed to find that these workshops had been very quickly booked out. Clearly, the demand is there. We should be providing more access to parenting courses, leaflets and pamphlets, advice helplines and other community supports, not passing legislation such as this. Article 19 of the UN Convention on the Rights of the Child makes for interesting reading:

> 1. State parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child.
>
> 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

So, if you read the UN Convention on the Rights of the Child, it would actually say that we ought not pass legislation such as this envisaged by Family First but, instead, put in the support mechanisms so it will not happen in the first instance. The bill's title refers to 'reasonable chastisement', but how does one define 'reasonable'? It is defined within the bill in vague and circular terms in clause 4 as follows:

> conduct that lies within the limits of what would be generally accepted in the community as reasonable chastisement or correction of a child by a parent of the child, or a person in loco parentis of the child.

I wonder which community this is referring to. It may be that there is a fundamentalist Christian sect where there is agreement that hitting a child with a cane is reasonable. This is such a grey area, and the definition does nothing to assuage my fears about the bill and how it could be used to justify the unjustifiable. I indicate strong disapproval for the second reading of this bill, and it pains me that the Family First party has placed us in a position of even having to consider it.

I finish with what amounts to a meditation from Michael Leunig's book *A Common Prayer*, and he has titled this 'Love and Fear'. I invite members to consider the impact of smacking a defenceless child. Will it induce love in that child or fear and, if fear, what are the consequences of the emotional damage that results?

> There are only two feelings. Love and fear.
>
> There are only two languages. Love and fear.
>
> There are only two activities. Love and fear.
>
> There are only two motives, two procedures, two frameworks, two results.
>
> Love and fear.
>
> Love and fear.

Debate adjourned on motion of the Hon. I. Hunter.

[Sitting suspended from 18:01 to 19:45]

NATURAL RESOURCES COMMITTEE: ANNUAL REPORT

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

That the annual report of the committee 2006-07 be noted.

(Continued from 26 September 2007. Page 759.)

The Hon. C.V. SCHAEFER (19:47): I want to make a few comments about the annual report of the Natural Resources Committee and to put on record my appreciation for the work of the staff and, indeed, the other members of the committee. It is a very good committee. We have all worked very well together and, to this stage, we have always managed to reach consensus resolutions. The committee made three field trips during the financial year: one attached to the investigation into natural resource management as applies to mining; one to Deep Creek; and a trip to Kangaroo Island. Each of those trips was very valuable. Unfortunately, I was unable to go on the Kangaroo Island trip but, again, each of those trips taught members who had not been into those areas a great deal about some of the issues that are part of natural resources management, particularly under the new act as it applies.

A number of members also went to the annual conference last year, which was partly in Brisbane and partly in Cairns. While we were there, many of us took the opportunity to visit the Great Barrier Reef and have a look at marine parks management as it applies there. That is why I have some of the concerns that I have about the current act in South Australia. The Natural Resources Committee also has the duty to look at natural resource management plans as they apply if there is a proposal to alter the levy. I will speak to the investigations into a number of those natural resource management board plans next. However, and again, we spent quite some time looking not only at Kangaroo Island but also at the South-East management plan, the Northern and Yorke natural resources management plan and the Eyre Peninsula natural resources management plan. We also looked at water-affecting activities as they are prescribed by regulation. I look forward to the investigation that this committee will take into the Murray-Darling Basin, again, as it applies to natural resources management.

I spoke mainly to thank the staff for their efforts (and it has been a very pleasant group with which to work) and also to commend the presiding member, John Rau. As I said, he has always managed to get a consensus of views from those of us with many differing opinions.

Motion carried.

NATURAL RESOURCES COMMITTEE: KANGAROO ISLAND NATURAL RESOURCES MANAGEMENT BOARD

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

That the report of the committee on the Kangaroo Island Natural Resources Management Board levy proposal 2007-08 be noted.

(Continued from 26 September. Page 760.)

The Hon. C.V. SCHAEFER (19:51): I do not intend to take a great deal of time tonight to address these various reports; however, I did want to make some general comments with regard to natural resources management boards as they operate in regional South Australia. I have made these comments on a number of previous occasions, and I continue to maintain that this government has cost-shifted to such an extent that general ratepayers are being asked to bear a considerably higher burden for natural resources management than they should. That has been done within the letter of the law but, in my view, the government has not performed as was understood by those people who so adamantly supported the natural resources management boards being set up.

As I have said on a number of occasions, what we have actually done is replace volunteers with not just one but two, and sometimes three, layers of bureaucracy. To date there is very little—and I repeat, very little—that is actually being done in the way of works-on-ground in any of the natural resources management regions. They have spent the past 2½ to three years developing plans, to the extent that they cannot afford what they are now being asked to do and what their plans suggest they must. As a result, they have had to put up the levies beyond what is reasonable. At this stage the government is not even covering the administrative costs of the natural resources management boards, either as individual resources management boards or as a whole.

It has been very disappointing for me. It is easy to cane local government, the natural resources management boards and various others, but I want to speak tonight because my complaint is not with the natural resources management boards—most of whom are very well-meaning people very much committed to their regions and to the management of natural resources

in those regions. However, they have effectively had their hands tied behind their backs financially, and are finding it increasingly difficult to fund any meaningful works. I will just spend a little time reading summaries of some of the submissions that we had. First, I refer to the Northern and Yorke Natural Resources Management Board levy proposal and some of the submissions that we were sent. There was a submission from the Flinders Ranges Council saying:

> ...concern over inconsistencies between the Natural Resource Management Act and the Local Government Act with regards to the consultation processes applicable to councils and the budget/business plan setting processes.

In a letter dated 19 March 2007, the council stated that it believed that unnecessary costs could be incurred, as 'the collection method adopted by a board may not fit with council rating administration policies, system and procedures'. The council went on to advise:

> Councils set rates and charges as determined by the needs and best fit with the council's community. If councils are to continue to collect the levy the relevant Natural Resource Management board should advise council of the quantum to be collected and leave it to the council to determine the collective methodology.

The District Council of Mount Remarkable opposed the proposals of the board on two main points: the proposed increase in the quantum of the levy and the proposed change in the basis of the levy. It wrote:

> Following a presentation from the local board, considerable discussion ensued regarding both the proposed levy increase and the change to its distribution basis (fixed rate). Significant opposition to the latter was expressed by member councils.... The single biggest concern with the proposed increase in the levy is the adverse impact that this will have on our rural communities. These communities are severely affected by the drought and even if this year produces a return, economic improvements cannot realistically be expected to flow into our communities until later in the calendar year or early next.

That is a letter dated 28 March 2007. As with the Flinders Ranges Council, the District Council of Mount Remarkable also called for the NRM levy to be administered at a state-based level calling attention to the emergency services levy and the River Murray levy. The council felt that this would allow for greater acceptance of the redistribution of funds across boards and ensure a more equitable outcome for all regions. Then we come to the District Council of Barunga West—and when we talk about concern being shown I think this probably sums it up.

The District Council of Barunga West drew attention to the fact that within their region council contributions toward resource management schemes have risen from $22,000 in 2004-05 to the proposed NRM contribution of $145,000 to $150,000 for 2007-08, an increase of over 600 per cent. The council sees this as an insult to its ratepayers and perceives the process as a cost shifting exercise by the government. The council also fears that it will experience serious financial strain attempting to pay NRM contributions to the board regardless of whether or not ratepayers are able to pay, especially as the council currently offers many rural landholders flexibility in their rate payment agreements due to the drought conditions.

There was also a submission by Jamie Botten and Associates on behalf of the Clare Valley Wine Growers Association, which I will not go into in any detail except to use a quote from the *Hansard* report when they appeared, as follows:

> ...there doesn't appear to be any basis for the number, but that rationale itself, using a levy to highlight the importance of managing the resource effectively, is, in my respectful submission, not what levies—certainly water-based levies under the NRM Act—are there for. They are to raise funds for a certain set of works or natural resource management.

After consideration of these submissions the committee made a recommendation that a water-based levy not be applied. I think the issue is actually greater than that. The report goes on to state:

> The Northern and Yorke NRM Board's financial plan for the year 2007-08 as set out in the board's report to the Minister for Environment and Conservation included a regional division 1 levy quantum of $2,532,000, an increase of $1,771,598 relative to the 2006-07 quantum of $760,400. This increase in quantum will see the average levy per rateable property rise about 333%...to an average of approximately $37...

An amount of $37 does not seem much, but that is an average, so it is indeed a huge rise. The argument for is it a reduction in both state and commonwealth government funding. The minister has said on a number of occasions that she made a special grant of $1 million for the introduction of this plan. If the board were able to carry on, perhaps it would not matter. However, what we are talking about is a series of boards which are run by people with the best intentions and the best plans but which have been dudded by the government. Cost shifting has taken place, perhaps not by the letter of the law but certainly by the intent and the understanding of both the people in the regions and, indeed, the boards as they were set up.

As I have said, the committee made the recommendation that a water-based levy not apply in the Clare Valley, and I am pleased to say that the minister acceded to that request. However, it does not alleviate the concerns of the people on the ground and, indeed, of local government, which is left with the unenviable task of increasing what people see as their rates purely to cover these huge leaps in levies as they are imposed. We also took evidence from the Eyre Peninsula Natural Resources Management Board, which also applied for a large increase. The division levy under the amended proposal for the Eyre Peninsula NRM region resulted in an quantum increase of $424,000 from $972,000 in 2006-07 to $1,396,000 in 2007-08, an increase of what seems to be a minimal amount but it is an increase of 44 per cent in one year.

As well as that, the contribution of each of the district councils does not relate in any way to the population who must pay those levies. For instance, the average levy of the City of Port Lincoln under the amended proposal will be $37; the City of Whyalla, $37; and the District Council of Ceduna, $60. I do not know what the population of Cleve is at the moment, but I would think the population of the entire district would be no more than 5,000, and their average payment is $80, as it is for the District Council of Elliston, which would have an even lower base.

Again, we as a committee—and I was part of that committee—criticised the boards for not consulting properly and for not being transparent enough and, in the case of Northern and Yorke, calling advertisements in the newspaper, consultation and all of those things. However, in the end, I defend their efforts to continue to operate and to continue to develop resource management strategies and plans in their district when the government is quite cynically, in my view, and in a sinister fashion, starving them of a proper funding framework. Regarding Eyre Peninsula, the committee stated:

> The committee found that investigation into the Eyre Peninsula NRM board has highlighted certain shortcomings of the NRM legislative framework. Although dissatisfied with the level of public consultation and consideration shown by the board, the committee was sympathetic to the board due to its exceptional geographic and demographic characteristics. The committee was also encouraged by the board's commitment to overcoming its funding problems and its attitude towards reducing administration costs.
>
> The committee felt strongly that the experience of the Eyre Peninsula board presented a strong case for the introduction of some form of statewide cross-subsidy scheme whereby highly populated regions which are able to sustain relatively good services at a small cost to ratepayers contribute an amount towards the maintenance of lowly populated rural areas.

This is an admirable sentiment, but I reminded the committee at the time that the City of Adelaide is likely to have a double slug when it comes to managing stormwater some time within the next few years. It seems, then, that the ratepayers concerned with the waterways and stormwaters of Adelaide will be less than enthusiastic about subsidising natural resource management on the Eyre Peninsula or in the pastoral lands.

Again, my plea is that, in spite of the faults, if you like, of the natural resource management boards, the real fault is indeed with the government. If we are going to introduce these natural resource management plans, if we are going to expect people to be properly remunerated for their efforts, if we are going to expect eventually to see some sort of on-ground works, the levy on the ratepayers in those regions must be met virtually on a dollar for dollar basis, in my view, by the government of the day. I had this argument yesterday with regard to marine parks; I have this argument often with regard to natural resource management and environmental preservation. If the taxpayers of Australia want these works to take place, they as general taxpayers must be prepared, and their governments must be prepared, to pay for at the very least the administration costs involved. That has not happened, and this has clearly been a cost shifting exercise. However, I commend again the work of the committee and the various regional reports that have been submitted.

Motion carried.

NATURAL RESOURCES COMMITTEE: NORTHERN AND YORKE NATURAL RESOURCES MANAGEMENT BOARD

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

That the report of the committee on Kangaroo Island Natural Resources Management Board levy proposal 2007-08 be noted.

(Continued from 26 September 2007. Page 760.)

Motion carried.

NATURAL RESOURCES COMMITTEE: SOUTH-EAST NATURAL RESOURCES MANAGEMENT BOARD

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

That the report of the committee on South-East Natural Resource Management Board levy proposal 2007-08 be noted.

(Continued from 26 September 2007. Page 761.)

Motion carried.

NATURAL RESOURCES COMMITTEE: EYRE PENINSULA NATURAL RESOURCES MANAGEMENT BOARD

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

That the report of the committee on Eyre Peninsula Natural Resources Management Board levy proposal 2007-07 be noted.

(Continued from 26 September 2007. Page 761.)

Motion carried.

COLLECTIONS FOR CHARITABLE PURPOSES (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. CARMEL ZOLLO: I will respond to some issues raised by the Hon. Andrew Evans. He suggested that charities that use pay collectors may be tempted to make disclosures as discreet as possible on badges when indicating that a collector has been paid. It was also suggested that the regulations could be used to ensure minimum font size on badges to ensure that the spirit of the legislation is complied with. I advise that the government will monitor this issue and, if there is a problem, it can be addressed through the issue of a code of practice or other licence condition under proposed section 12.

The Hon. Andrew Evans was also concerned that the legislation does not have a requirement for the badge to contain the name of the organisation. Under the proposed bill a collector is required to disclose his or her name or unique identifier each time the person seeks to collect from a person, whether the collector is paid each time the collector seeks to collect from a person, the name of the section 6 licensee on request, contact details on request, and details of a website where financial statements (section 15(2(b)) can be found on request. Section 6C is drafted in such a way that it applies to both telephone collections and face-to-face collections. The option of the badge addresses the badge day scenario. It would be very difficult for a badge day collector to disclose his or her name or unique identifier each time a person popped a $1 coin in the tin.

Being able to identify the collector is important. It allows the charity and/or the regulator to address complaints people may have about the behaviour of a collector. What has been proposed in the bill is a minimum set of requirements and there is nothing that prevents a charity from providing greater disclosure. Undoubtedly, those who provide more information will develop greater trust with donors than those who do not. It is very unlikely that a charity organisation would seek to conceal its identity when collecting. If it does, the bill makes it an obligation on the collector to provide the name of the charity organisation and its contact details.

In relation to the scope of the organisation, the Hon. Andrew Evans also requested clarification on why the new disclosure requirements do not apply to a sporting club but do for a charity. The proposed bill does not alter which collection activities are subject to regulation. The relevant issue to determine whether an activity should be regulated is its purpose. If goods or money are being collected for an organisation for the purpose of assisting others, the donor would be concerned that as much as possible of the donation collected should go to assisting others. After all, that is the reason they gave. In this circumstance, it would be appropriate to regulate and provide for disclosure so that donors can make a sound judgment. If goods or money are being collected by an organisation specifically to assist in the administration of that organisation (for example, a sporting club), then the donor would expect all of that money to be applied to the administration of that organisation. Disclosure about the application of funds and other aspects of the act do not readily apply in this scenario. Accountability of the organisation is obtained through its governance arrangements, that is, the Associations Incorporation Act.

The Hon. D.W. RIDGWAY: In summing up this debate last night, the minister referred to a comment that I had made some weeks ago in my second reading contribution in relation to the local football club. The minister said last night that, in my second reading contribution, I suggested that a local football club collecting for a charitable purpose would need to be licensed by virtue of this bill. She then said that it is not true. She went on to say that a football club collecting on behalf of a licensed charity simply needs to contact the charity for authority to collect on its behalf prior to collection. The definition of a charitable purpose in section 4 of the act is as follows:

(a) the affording of relief to diseased, disabled, sick, infirm, incurable, poor, destitute, helpless, or unemployed persons, or to the dependents of any such persons;

(b) the relief of distress occasioned by war, whether occasioned in South Australia or elsewhere;

(e) the affording of relief, assistance or support to persons who are or have been members of the armed forces of Australia or the dependents of any such persons;

(f) the provision of welfare services for animals.

As an example, I will refer to unemployed persons. If a business in a town was destroyed by fire or closed as a result of bankruptcy and a number of families found themselves unemployed, and the local footy club thought that it would run a couple of fundraisers to help this group of unemployed people, they are not collecting money on behalf of a recognised charity, they are supporting people in their local community as defined in the bill. That is to what I was referring when I was talking about the local football club raising money for charitable purposes as defined in this bill.

The Hon. CARMEL ZOLLO: My advice is that, if they are collecting directly for people, they need to be licensed. If they are collecting for a charity, they only need to be authorised.

The Hon. D.W. RIDGWAY: In the event of that example where the local footy club just wants to raise some money to help a group of disadvantaged people in their community or a neighbouring community, they would then have to have a licence for that purpose.

The Hon. CARMEL ZOLLO: Again, if they are collecting for an individual, they do not have to be licensed, but if they are collecting for a group of people, then they do need to be licensed. However, providing all the money goes to the people for whom they are collecting, then they do not have to be licensed.

The CHAIRMAN: A good example would be the motorbike rider from Keith.

The Hon. D.W. RIDGWAY: The Chairman just reminded me of the Andy Caldicott trust which has been set up to support Andy's wife and children at Keith. A whole range of organisations supported that fundraising. I am not sure whether Tracey Caldicott would want to be included in the definition—'affording of relief to diseased, disabled, sick, infirm, incurable, poor, destitute, helpless, or unemployed persons'. The opposition's concern from day one is that this is setting up a licensing regime that will be cumbersome and over regulating what is normal country community behaviour and activities.

The Hon. CARMEL ZOLLO: This has been in place for many years; we are not introducing anything new.

The Hon. D.W. RIDGWAY: I understand that the definition has been in place for many years, but I question the need to have the local footy club licensed to do good in its own town, which is generally what the footy club, the cricket club, Apex, Rotary, and Lions do in their local communities, as all members would be aware. It is crazy that we would expect them to be licensed to assist in the community, as they have done for the past 100 years.

The Hon. CARMEL ZOLLO: If they are currently not required to have a licence then we are not changing that. A person collecting for a sporting club, school or church is not currently covered by the act, and the bill does not increase the scope. The amendments are about increasing disclosure, transparency and accountability. The licensing and authorisation framework in essence remains unchanged.

Clause passed.

Clauses 2 to 4 passed.

Clause 5.

The Hon. CARMEL ZOLLO: I move:

Page 4, lines 6 to 9—Delete subsection (2) and substitute:

(2) Subsection (1) does not apply if—

(a) the person—

(i) only collects or attempts to collect money or property from persons known to the person or with whom the person regularly associates; and

(ii) provides all of the money or property so collected to the holder of a section 6 licence; and

(iii) is not a paid collector; or

(b) the person—

(i) only collects or attempts to collect property for the purpose of affording relief to a particular person or to the dependants of a particular person; and

(ii) provides all of the property so collected to that person or to those dependants; and

(iii) is not a paid collector.

This simple amendment protects well intentioned South Australians who collect from people and give all donations to a section 6 licence holder. As the act currently stands, if a person is collecting for a charitable purpose they must be either licensed or authorised by a licence holder. The government thanks the Hon. Sandra Kanck for her contribution to this amendment, which arose out of a discussion about the operation of the act and the common occurrence of spontaneous collections among concerned individuals for a range of charitable purposes. The Hon. Sandra Kanck was concerned that these well intentioned activities could conceivably be illegal. Such a provision could work against South Australians' natural instincts to give to those less well off.

It is not uncommon for a group of friends or work colleagues to agree to give to a charitable purpose. Further, I am sure that one member of this group would volunteer to collect the donations with the intention of providing them to a section 6 licence holder. This well intentioned activity is currently in breach of section 6 of the Collections for Charitable Purposes Act if the licence holder has not been informed and authorised by the collector. Of course, no government would seek to prosecute a person who volunteered to collect on behalf of a group of friends or work colleagues and give all the money to a charitable purpose. Section 19 of the act provides this discretion to the minister to determine whether or not to prosecute. Nevertheless, it is wrong to consider this well intentioned activity to be illegal. The purpose of this amendment is to no longer treat this sort of collection as illegal on the proviso that the collector collects from persons known to the person or with whom the person regularly associates and all the money or property collected is provided to a person licensed under the Collections for Charitable Purposes Act and is not a paid collector. I commend the amendment to the committee.

The Hon. D.W. RIDGWAY: The opposition does not support the amendment.

Amendment carried.

The Hon. CARMEL ZOLLO: I move:

Page 6, lines 29 to 40—

Delete proposed subsection (3) and substitute:

(3) If any speaker or other performer at an entertainment to which this section applies is to be paid a fee or commission of an amount that exceeds, or is likely to exceed, the prescribed amount, the holder of the section 7 licence under which a person is authorised to conduct the entertainment must, at the request of any person, tell the person the amount, or likely amount, of any such fee or commission.

Maximum penalty: Division 6 fine.

(3a) For the purposes of subsection (3), the value of any non-monetary consideration to be provided to a person (including the value of any travel or accommodation costs to be paid in respect of the person's attendance at the relevant entertainment) must be taken into account in determining the amount of the fee or commission that is to be paid to the person.

This second amendment moved by the government clarifies what is to be included in the calculation of the fee or commission paid to an entertainer for the purposes of disclosure under new section 7. Further, the amendment corrects an anomaly that exists in the bill where monetary payments and other considerations are treated separately. I would like to acknowledge that this amendment was originally tabled by the Hon. Nick Xenophon before his decision to run for the Senate. The government decided to progress this amendment because it is consistent with the government's policy position and it improves on the drafting of the bill. I am advised that, if it is passed, the Minister for Gambling will monitor the implementation of this revised provision to

determine whether the prescribed disclosure amount currently set at $5,000 is too low. If this is the case, the government will consider increasing the prescribed amount.

The Hon. D.W. RIDGWAY: I will make a comment before I indicate which way the opposition will be voting. I think that we had a 2005 version of this bill. The government consulted widely (so it claims) and has redrafted the bill. The Hon. Nick Xenophon had an amendment drafted which, says the minister, improved the drafting of the bill. With all the resources of the government over 2½ years or more, I find it a little baffling that these things were not thrashed out earlier. In fact, is the amendment improving the drafting of the bill or are they just some of the words the minister has chosen to use? In any case, the opposition will not be supporting the amendment.

Amendment carried; clause as amended passed.

Remaining clauses (6 to 8) passed; schedule and title passed.

Bill reported with amendments; committee's report adopted.

The council divided on the third reading:

AYES (10)

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

NOES (8)

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

PAIRS (2)

Finnigan, B.V.	Lensink, J.M.A.

Majority of 2 for the ayes.

Third reading thus carried.

Bill passed.

VICTIMS OF CRIME (COMMISSIONER FOR VICTIMS' RIGHTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 September 2007. Page 685.)

The Hon. S.G. WADE (20:33): On behalf of the opposition, I rise to support this bill. The opposition supports the establishment of the commissioner for victims rights. The opposition considers that the legislation is an appropriate development of legislation to support victims. The 1985 United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power identified 17 rights which should be granted to victims. South Australia became one of the first jurisdictions in the world to recognise these 17 basic rights of victims. The Liberal Party introduced the Victims of Crime Act in 2001 which made some of these rights statutory rights under South Australian law. We believe that it is essential that the needs of victims are taken into account in the criminal justice system. While the criminal law involves the state prosecuting crimes on behalf of society as a whole, to the extent that the criminal justice system neglects the impact that a crime has on a victim or victim's family it dehumanises the law and devalues the victims.

In the other place the opposition identified its concerns with new section 16E of the bill which relates to the independence of the commissioner. New subsection (2) provides:

> (2) The Attorney-General may, after consultation with the commissioner, give directions and furnish guidelines to the commissioner in relation to the carrying out of his or her functions.

This provision could undermine the independence of the commissioner. If the Attorney-General is able to direct the commissioner in the carrying out of his or her functions it raises the perception at least that the commissioner is not entirely independent. That is not a reflection on the commissioner, merely the legislated role. However, the opposition will not be seeking to amend this section, given the requirement on the Attorney-General to gazette any directions or guidelines he

gives to the commissioner and to table them in parliament. We propose to use this parliament to hold the government accountable.

I take this opportunity to express the concern of the opposition in relation to how long it has taken for the government to introduce this bill. The commissioner for victims' rights was first announced by the Premier as an election promise on 16 March 2006—the final week of the 2006 election campaign. The Premier's press release told us, 'Victims are not bystanders to the crime, so they should not be bystanders to the justice process.' Since March 2006, the government has reannounced the commissioner for victims' rights no fewer than four times, but unfortunately, as is often the way with this government, there was no action, just reannouncement after reannouncement. Despite the role of the commissioner being promised in March 2006, it has taken over a year and a half for the government actually to introduce the legislation. In this context, I am reminded of comments earlier this month by Mr O'Connell, the commissioner, in relation to rape law reform. An article in *The Advertiser* of 3 October states:

> Victims' Rights Commissioner Michael O'Connell said the government should not delay the implementation of the legislation. 'I am concerned whenever promises are made to victims, their expectations are raised and then action is delayed.'

This is a comment by Mr O'Connell in relation to rape law reform, but it also applies to the legislation to establish his post. The government has let victims down again by making promises time and again and yet delaying the implementation of those promises. I also do not think that it is good practice to start using the title of an anticipated statutory position. Mr O'Connell was appointed to the non-statutory public office of interim commissioner for victims' rights in October 2006—almost 12 months ago. The appointment was made under section 68 of the Constitution Act. His appointment was gazetted. In government statements, Mr O'Connell was referred to on different occasions as both the commissioner for victims' rights and the interim commissioner for victims' rights. In my view, using the title in anticipation of legislation inappropriately presumes on the judgment of this parliament.

Further, it is unhelpful in that it creates a perception in the wider community that the position has actually been created and that the commissioner is acting under legislation to provide the services anticipated in the government's statements when, in actual fact, the commissioner has no additional power beyond what he or she already had under the 2001 act. This government needs to realise that a press release, or even a barrage of press releases, is not a substitute for action. In conclusion, I reiterate the opposition's support for the bill and express our hope that this bill, and the work of Mr O'Connell in this role, will see real improvements in the circumstances for victims in South Australia.

Debate adjourned on motion of the Hon. R. Wortley.

STATUTES AMENDMENT (VICTIMS OF CRIME) BILL

Adjourned debate on second reading.

(Continued from 25 September 2007. Page 739.)

The Hon. S.G. WADE (20:39): This is a companion bill to the Victims of Crime (Commissioner for Victims' Rights) Amendment Bill and is in furtherance of the government's 2006 election commitment to strengthen the rights of victims in the criminal justice system. It builds on the landmark Liberal legislation, the Victims of Crime Act 2001, and on the benefit of six years of practical application. Rather than going through the bill clause by clause, I take the opportunity to identify what I see as the streams of victims' rights recognised in the bill, the higher level rights—higher than those codified in the Victims of Crime Act 2001. First, the bill recognises that the victims have a right to respect.

The act requires officials who deal with victims to treat them with courtesy, respect and sympathy, whether those officers are within the criminal justice system or in the wider Public Service. Secondly, the bill recognises that victims have a right to consultation. For example, victims of some serious crimes will have the right to be consulted before the DPP enters into a charge bargain with the accused or decides to modify and not proceed with prosecutions. Thirdly, the bill recognises that victims have a right to information and, in this respect, the bill, for example, recognises the right of victims to receive information about mentally incompetent offenders, and in relation to the details of any supervision order imposed on the offender and the outcome of any proceedings to vary, revoke or review that order.

Fourthly, the bill recognises that victims have the right to be notified. The bill provides that reasonable efforts must be made to notify victims who express safety concerns to police about any

bail conditions imposed to protect them. Fifthly, the bill recognises that victims have the right to be compensated. A number of changes are made to the bill in relation to compensatory payments, such as payments for grief and funeral expenses. Sixthly, the bill recognises the rights of victims to participate in the judicial proceedings. Amendments to the Youth Court Act 1993, for example, will make it clear that victims can attend court proceedings, even when the proceedings deal with offences against more than one victim.

Seventhly, the bill recognises the right of a victim to have an optional factor considered in the decision-making of a public official. Victims of crime will have the right to ask the prosecuting authority to consider an appeal; the final decision, of course, about whether or not to institute an appeal will continue to rest with the Director of Public Prosecutions. I understand that this clause reflects the DPP's policy and practice with respect to consulting victims. Eighthly, the bill recognises the right of victims to security. Section 7 of the Victims of Crime Act recognises the specific right of victims to have their perceived need for protection taken into account in bail proceedings.

The perceived need for physical protection of the victim is a primary consideration under section 10(4) of the Bail Act 1984. This bill extends the presumption against bail created by section 10A of the Bail Act 1984 to apply to people who are charged with breaching bail conditions imposed for the principal protection of victims. This concern of victims is personal and must be respected. I think we should also give respect to a more generalised concern amongst victims for security for their community. Victims want to know that the offender's criminal behaviour has been dealt with so that others will not need to go through the trauma they themselves have gone through. I think the bill reflects that concern when it provides victims of crime with the right of information about an offender's compliance with a community service order or a good behaviour bond.

In this context I am reminded of the judicial officers briefing that was provided to members of parliament last month, which the Hon. Robert Lawson referred to earlier this afternoon. At that briefing, Justice McEwan of the Youth Court mentioned that some of the victims involved in family conferencing are concerned to know that the offender engages in a relevant treatment program. Depending on the nature of the crime and their relationship to the offender, the victim may well not have a concern that they will again be a direct victim of the offender, but they often remain concerned that others do not become victims, or generally for their community to have a higher level of security.

As shadow minister for correctional services I am aware that this is an area where the government is letting victims down. Under the Rann Labor government prisoners are more likely to be released from prison and go out and commit more crime. Since the Rann government came to power in 2002, re-imprisonment rates after two years have increased from 36.4 per cent to 41.4 per cent. Prisoners are being released from our gaols with an increased likelihood of reoffending. Of course, therefore, our community is not as safe. During the same period re-imprisonment rates nationally have decreased from 40.1 per cent to 38.3 per cent. South Australia has gone from having the second-lowest rate of any state to the second-highest rate of any state in Australia. South Australia is going against the trend. Rehabilitation is not something that will be solved by simply building a new prison. It needs a serious commitment to correctional services, good prison management and effective community corrections. In conclusion, I reaffirm that the opposition supports this bill but insists the government lifts its performance across the justice system, from policing right through to corrections.

Debate adjourned on motion of the Hon. R.P. Wortley.

MOTOR VEHICLES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 September 2007. Page 782.)

The Hon. S.G. WADE (20:45): On behalf of the opposition, I rise to support the bill. The opposition has some amendments, which we hope will enhance the effectiveness of the bill. This bill aims to close several administrative loopholes identified by a driver penalty enforcement taskforce, with representatives from SAPOL, the Courts Administration Authority, the Attorney-General's Department, the Department for Transport, Energy and Infrastructure and the Motor Accident Commission. The task force was charged with identifying loopholes in the current driver licensing law, which currently allows drivers to avoid that law. The bill reflects the recommendations that relate to the Motor Vehicles Act 1959.

By far the most significant aspects, in my view, are the matters dealing with the notices of disqualification of drivers' licences. Under the current act, when a notice of disqualification is issued it is sent to the licence holder by ordinary post. The licence holder is assumed to have received the notice. Many drivers continue to drive after being disqualified. If they are apprehended by the police or appear before court for driving without a licence, they can claim that they did not receive the notice of disqualification and, thereby, try to avoid prosecution or conviction. At the briefing provided by government officers, the officers suggested that the number of people who may make such a claim may be in the order of 2,000 a year. The cases where the police decide not to prosecute are in addition to these cases.

Registered post is not considered to be a viable alternative, as drivers are likely to decline registered items if they suspect that they may be disqualification notices. The bill proposes to force licence holders to take notice of disqualification through a three-stage process. A letter is to be sent requiring the licence holder to surrender their licence to a specified location, provide proof of identification and pay a fee, which we are advised is expected to be $24. If the licence holder does not respond to this letter, the notice of disqualification will be served on them personally—for example, by a process server—and they will be liable to a fee, which we are advised is expected to be $60. If personally serving the disqualification is unsuccessful, the licence holder's licence will still be disqualified, and the Registrar of Motor Vehicles has the power to refuse to enter into transactions with the licence holder. If the person comes into contact with the police, they will also be able to serve the notice on them immediately. The government has assured the opposition that the fees to be set by regulation will be set and maintained on a cost recovery basis.

The opposition proposes two amendments that relate to this element of the bill. First, we propose that we amend the legislation to define the specified location, in the first step, to be any of a post office, a police station or other specified location. In the briefing from officers on this bill, I was advised that the specified location would be a department of transport customer service centre. I understand that there are 20 such centres in South Australia, but many South Australians in regional areas would find it difficult to get to such a centre within seven days. I understand that the most northerly customer service centre is in Port Augusta, and many South Australians live some distance north of Port Augusta.

The opposition proposes that we increase the range of venues—for example, police stations. There are 136 police stations throughout South Australia, which would be in addition to the 20 customer service centres. The post offices would add, I understand, in the order of another 350 outlets, which we believe would provide a much greater spread of locations to which South Australian drivers could surrender their licence in the event of disqualification. Secondly, we propose to require that the initial letter to be given to the offender identify the actual amount that they will be required to pay if they fail to act on the letter. As I said, the opposition supports this element of the bill. It is important to avoid wasting police and court time in enforcing road safety, and we will be supporting it. The second area that the bill deals with is the issue of the timing and enforcement of demerit points. The bill seeks to change the accrual of the demerit points to the time at which the offence was committed to avoid drivers manipulating the system where they have licences or conditions limited by time. Thirdly, the bill addresses an anomaly which has arisen as a result of the introduction of the graduated licensing regime by bringing the provisions into line with the standard disqualification provisions which prevent disqualification periods being served concurrently.

Fourthly, the government asserts that the bill changes the act to deal with offences committed outside South Australia so that action in South Australia reflects the administrative actions taken in other jurisdictions. I propose to explore this aspect in committee. Fifthly, the bill changes the provision for foreign licence holders to ensure that a holder of a foreign drivers licence is allowed to continue driving on their foreign licence for three months after they arrive in Australia. The opposition will also be proposing two other technical amendments in our view to improve the effectiveness of the bill. In conclusion, I stress that the opposition supports this bill and, in committee, we will be proposing amendments to promote its objects.

Debate adjourned on motion of the Hon. R. Wortley.

PENOLA PULP MILL AUTHORISATION BILL

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

LEGAL PROFESSION 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) (20:51): 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.

As the principal source of legal assistance, the legal profession plays an important role in the way that justice and the rule of law are delivered and perceived. The freedom in the profession to advise and represent its clients is a bulwark to the independence of the courts and is essential for a fair and effective legal system.

The Legal Profession Bill repeals and replaces the Legal Practitioners Act 1981. It represents a major milestone in achieving consistency and uniformity in regulating the legal profession in Australia. The Bill is part of a national scheme to assist lawyers and law practices to practise across State and Territory borders, and to encourage efficient business practices that will ultimately serve the interests of consumers. The mosaic of State and Territory based regulatory regimes has, until now, led to anti competitive practices and disincentives affecting both practitioners and consumers alike. This Bill will modernise the legal profession and make it more accountable to consumers.

This timely initiative has been driven by the continuing evolution of a national and international legal services market. It will establish a regulatory framework that removes State and Territory barriers while meeting the needs of the profession and protecting the interests of consumers through disclosures and oversight. The Bill deals with:

- reservation of legal work and legal titles;
- admission of legal practitioners;
- legal practice requirements;
- inter jurisdictional issues;
- incorporated legal practices and multi disciplinary partnerships;
- requirements for foreign lawyers;
- community legal centres;
- trust money and trust accounts;
- costs disclosure and review;
- other prudential requirements;
- complaints and discipline; and
- external intervention, investigation and examination.

This proposal arises from the decision taken by the Standing Committee of Attorneys General (SCAG) in July 2001 to devise national uniform laws regulating the legal profession to remove or reduce barriers to national practice (the model provisions). SCAG worked closely with the Law Council of Australia in developing the model legal profession provisions, and I wish to thank the Law Council and the Law Society of South Australia for their comprehensive and well organised contributions, which have made the task that much easier.

A consultation version of the model provisions drafted mainly by New South Wales officers was released in 2003 to more than 100 stakeholders. These included professional associations for legal practitioners, regulatory authorities, consumer organisations, and heads of courts and tribunals. A first iteration of the model provisions was endorsed by the Standing Committee in August, 2003 and in July 2004 all Australian Attorneys General signed the Legal Profession Memorandum of Understanding. Under the Memorandum each State and Territory agreed to use its best endeavours to implement legislation to give effect to the model provisions on a continuing basis.

'A number of iterations of the model provisions have since been produced. South Australia has waited until the model was effectively settled by all jurisdictions before introducing our Bill,

because other States that introduced their equivalent legislation early have had to go back to Parliament on a number of occasions to amend the legislation to align with changes to the model.

This Bill is the culmination of many years of hard work and co-operation across all the Australian jurisdictions. In preparing this Bill, which implements the national model provisions for South Australia, the Government has consulted a wide range of stakeholders in this State including the senior judicial officers, the Law Society, the SA Bar Association, the Legal Practitioners Conduct Board, the Legal Practitioners Disciplinary Tribunal, the Legal Services Commission, the SA Council of Community Legal Services, and the Aboriginal Legal Rights Movement, among others.

I will first turn to the South Australian regulatory framework before moving on to the national reforms.

The regulatory framework

The Bill retains the current regulatory framework as far as possible. This Government has chosen not to overhaul the framework as some jurisdictions have, primarily because it is working perfectly well even though it is complex. Many of the provisions in Chapter 7 of the Bill simply replicate the equivalent provisions of the Legal Practitioners Act 1981.

The Supreme Court will continue to be the ultimate regulatory authority for lawyers and law practices under the Bill, while the Law Society will continue to administer the day to day requirements of the profession and its clients. The Legal Practitioners Education and Admission Council will continue to have the important role of developing uniform national standards for qualifications necessary to practice in Australia. The opportunity to update some matters has been taken, such as including the Dean of the new law school in the University of South Australia as an ex officio member of the Admission Council. The Board of Examiners will continue to report to the Supreme Court on potential admissions. The Legal Practitioners Conduct Board and the Legal Practitioners Disciplinary Tribunal will also continue with their present structures and with similar powers.

Funding arrangements will continue as at present. The combined trust account and the statutory interest account will operate as they do now, as will the Litigation Assistance Fund, the professional indemnity insurance scheme and the legal practitioners' guarantee fund.

The national reforms

A number of earlier reforms to the traditional regulatory approaches in the various jurisdictions, such as mutual recognition, have already made some progress toward overcoming barriers to national legal practice. Both governments and the legal profession have driven these reforms.

The Standing Committee's national legal profession project has considered how improvements could be made to harmonise the regulation of the legal profession and further reduce barriers to national practice. The focus of the project has been on the administrative aspect of regulating the legal profession–setting the operational obligations of lawyers–rather than mandating local regulatory structures or funding arrangements.

This is why the Standing Committee agreed that there would be categories of provisions: core provisions that must be textually uniform; core provisions not necessarily textually uniform; and non core provisions. The national model provisions represent the bulk of this Bill and I will address each of these topics in turn as I provide an overview of the Bill.

Reservation of legal work and legal titles

Part 1 of Chapter 2 of the Bill deals with the reservation of particular titles to legal practitioners and the reservation of legal work in favour of legal practitioners.

Why is reservation of titles and legal work important? Because consumers must be able to identify whether the person who is providing them with legal services is entitled to do so. Consumers place great trust in legal practitioners and must be able to identify, by reference to a shared jurisprudence of the common law, which areas of work can only be performed by a practitioner.

This Part contains a blanket prohibition on engaging in legal practice unless the person has relevant academic qualifications and legal training, including the requirements that the person be admitted to legal practice in Australia and hold a practising certificate. It is intended that the general

standard across jurisdictions will give rise to a common jurisprudence on what it means to engage in legal practice.

There will also be a general prohibition on an unqualified person representing him or herself to be entitled to engage in legal practice. This broad approach is considered better than simply prohibiting specific titles, although there are some exemptions to this rule.

Admission of legal practitioners

The objective of Part 2 of Chapter 2 of the Bill is to allow for recognition of academic courses and practical legal training before admission, including those that have been approved for another jurisdiction. The Bill preserves the current regulatory structure involving the Supreme Court, the Legal Practitioners' Education and Admissions Council, and the Board of Examiners.

The model provisions and the Bill introduce the concept of suitability matters which are taken into account in the decision to admit to the profession and to hold a practising certificate. Clause 9 of the Bill provides that matters going to suitability include a person's reputation and character, whether he has been convicted of any offences, been subject to complaints or disciplinary action, whether he has been insolvent or is otherwise incapable or disqualified from various positions, etc.

Legal practice requirements

Part 3 of Chapter 2 of the Bill introduces the ground breaking concept of the national practising certificate. It will mean that a legal practitioner who is required to hold a practising certificate will be required to hold a practising certificate from his or her principal place of practice. However, once this requirement is satisfied, the practitioner will be entitled to practise across jurisdictions provided they meet any requirements imposed by the other regulatory bodies.

A person's fitness and propriety to hold a practising certificate is measured on the suitability matters and other matters such as whether they obtained a practising certificate using incorrect information or contravened an order of the Disciplinary Tribunal, etc.

At this stage it is worth outlining a taxonomy of lawyers under the model regime:

A lawyer is a person who has been admitted to the legal profession (that is, the Supreme Court); the person may be a local lawyer and admitted to the Supreme Court of South Australia or an interstate lawyer admitted under a corresponding law; however, they are both Australian lawyers.

A legal practitioner is an Australian lawyer who holds a current practising certificate; the lawyer may be a local legal practitioner or an interstate legal practitioner; but they are both Australian legal practitioners.

One must be a legal practitioner to be a legal practitioner associate of a law practice; otherwise, he will be a lay associate. Employees of the law practice and lay associates cannot be a principal–that is reserved for sole practitioners, partners, and directors of law practices.

Foreign lawyers will be able to register in one Australian jurisdiction and this will entitle them to practise foreign law anywhere in Australia. If registered in South Australia they will be locally registered foreign lawyers practising foreign law; if not, they will be interstate registered foreign lawyers; either way, they will be Australian registered foreign lawyers. Foreign lawyers cannot practice Australian law but practise the law of their home jurisdictions.

The Bill makes it clear that the legal profession should continue to be a fused profession of barristers and solicitors. It also preserves the current system for the Supreme Court to appoint public notaries.

When combined with the reforms allowing for multi-disciplinary firms, which I will come to later, the national practising certificate is designed to promote competition in the legal services market and, ultimately, achieve better results for consumers. One way is by allowing firms to take advantage of skill efficiencies and build markets in other jurisdictions, possibly based on their local practice. It is likely that the national practising certificate will also benefit remote communities as legal practitioners will able to move freely about the country and sell their services, again promoting competition.

Practitioners who hold interstate practising certificates will have to comply with a smaller administrative burden upon practising in South Australia, which will encourage practitioners to establish an office here. However, the Supreme Court will continue to oversee a strict system of

issue and renewal of practising certificates and regulation of interstate practitioners. Where decisions about a practitioner's right to practise are made, the practitioner will be given the opportunity to respond to action being proposed against them–a "show cause" opportunity which affords natural justice. Again, it is expected that a common national jurisprudence will develop around what is a "show cause" event and the fitness and propriety required to be a legal practitioner.

Inter-jurisdictional issues

Part 6 of Chapter 2 facilitates the sharing of information between regulatory bodies in each jurisdiction regarding applications for admission to practise, removals from the roll of practitioners and decisions affecting practising certificates.

The Part also places positive obligations on practitioners to notify the Supreme Court of matters that affect their right to practise, whether in another Australian jurisdiction or a foreign country. Once notified, the provisions enable the Supreme Court and the Law Society to take action to limit a practitioner's ability to practise in accordance with the action taken in the original jurisdiction.

Incorporated legal practices and multi disciplinary partnerships

The Bill adopts the textually uniform core provisions allowing for incorporated legal practices (ILPs) and multi disciplinary partnerships (MDPs). When combined with the national practising certificate reforms, the provisions allowing for ILPs and MDPs are designed to promote mobility and competition in the legal services market and, ultimately, better results for consumers. I turn first to ILPs.

Incorporated legal practices (ILPs)

Law firms in South Australia are presently constituted either as a partnership, a corporate practitioner, or a sole practitioner. For corporate practitioners, the sole object under the corporation's constitution must be the practice of the profession of the law. The corporation must hold a practising certificate, as must all the directors.

It is worthwhile setting out clause 70(1) of the Bill here:

70—Nature of incorporated legal practice

1 An incorporated legal practice is a corporation that engages in legal practice in this jurisdiction, whether or not it also provides services that are not legal services.

Under the Bill, all current corporate practitioners will automatically become ILPs because it is assumed that they are engaging in legal practice. The only change will be that the corporation will not be required to hold a practising certificate–it is not required to do so under the model provisions. The corporation or its constitution need not be changed in any way, and it need not change its name to include the initials 'ILP'. Interstate ILPs must give the Supreme Court notice that they intend to engage in legal practice in this jurisdiction, but current local corporate practitioners will be deemed to have given that notice in the transition. What it means to engage in legal practice (which applies to the whole profession) has deliberately not been defined to allow the existing common law to be called upon in a dispute. Again, it is hoped that a common national jurisprudence will develop around what the phrase means.

The provision also heralds a significant reform to the potential scope of service provision by legal practitioners. It means that law practices will be able to offer legal and non legal services. All States and Territories, either presently or previously, restricted the ability of legal practitioners to share profits with non practitioners. The rationale was to help protect the integrity of the professional obligations that lawyers owe to the courts and their clients to be impartial and fair. This reform represents a significant departure from traditional modes of legal practice in South Australia. Removing restrictions on ownership and profit sharing is a key means of enabling legal practices to raise capital for expansion to facilitate competition in domestic and international markets. In addition, it will allow legal practitioners to compete with other service providers, such as banks and retailers.

Multi-disciplinary partnerships (MDPs)

A similar business opportunity is also afforded to partnerships. Law firms presently constituted as partnerships may continue to operate exactly as they do now. However, they could

opt to become an MDP by entering into partnership with a person who is not an Australian legal practitioner, because the ancient ban on sharing profits with a non-lawyer will be lifted.

Safeguards for the role of the profession

In its place is a modern regulatory environment with consumer benefit being one of the drivers, and consumer protection being another. The model must, and does, come with numerous safeguards to ensure that a lawyer's commitment to his or her ethical obligations is not diluted by the reforms (nor does it introduce a disincentive to do so).

Initially the Government had concerns about the potential for lawyers' ethical obligations to be compromised by the decision to allow profit sharing with non practitioners. Two basic duties of lawyers are to provide impartial advice to a client and to assist the court in reaching a just and correct decision whilst representing the client. These duties potentially conflict with shareholder profit motives and the provision of non legal services by people that are not bound by the various duties but working for the same practice and the same client.

However, these concerns have been eased given the support for the reforms from the Law Society and many others consulted during the development of the Bill. The present regulatory framework is restrictive and the safeguards I will outline shortly are adequate to deal with any anticipated problems in the legal services marketplace.

Every ILP and MDP must have at least one legal practitioner director or partner respectively. That person must hold an unrestricted practising certificate and he must ensure that appropriate management systems are implemented and maintained so that the legal services are provided in accordance with professional obligations. There will be regulatory compliance audits for ILPs and the Law Society and the Attorney General have the power to apply to the Supreme Court to ban a corporation from providing legal services or a person from being a director.

Directors and partners must take responsibility for their practitioners and their fellow non-practitioner directors or partners. Legal practitioner employees of the practice cannot use the corporation to shield them from any failure to meet their professional obligations.

Consumers will have access to standard information about costs and the law practice generally. If some of the services to be provided will not be provided by an Australian legal practitioner, those services must be identified and the consumer told of the qualifications or status of the person who will provide the services. Consumers will also have access to easy to read information about making a complaint and other rights they have such as questioning bills from practitioners. Many prudent firms do this already but, as with much of this Bill, the intention is to standardise and formalise these practices–in a sense codifying the existing law and practice of the profession.

The Bill does not set out the Professional Conduct Rules–they remain for the profession, and particularly the Law Society, to formulate against the background of the common law; but the Bill does make them binding on practitioners and failure to comply is capable of constituting unsatisfactory professional conduct or even professional misconduct. The Professional Conduct Rules are another important consumer protection tool and even experienced practitioners would do well to read them every so often. I cannot overstate the importance of ethical practices when engaging in legal practice–while they are mysterious to some they give the law its integrity and thus its legitimacy.

Requirements for foreign lawyers

The Bill will also allow for the limited recognition of foreign lawyers practising foreign law. The aim of this Part is to facilitate the globalisation of the legal services market. Foreign lawyers will be required to register in one Australian jurisdiction and this will entitle them to practise foreign law anywhere in Australia. This Part provides that the ethical and professional standards which apply to Australian legal practitioners also apply to foreign lawyers, as well as the trust account obligations. Again the Bill encourages transactional transparency because foreign lawyers must identify on their letterhead and other identifying documents that they practise foreign law only.

Community Legal Centres (CLCs)

Part 7 of Chapter 2 of the Bill deals specifically with community legal centres (CLCs) and includes the Aboriginal Legal Rights Movement because they provide legal services to the public on a not for profit basis. The Bill provides that practitioners employed by CLCs are still subject to

the Professional Conduct Rules, and that client legal privilege is preserved even if the practitioner discloses a matter to the non practitioner officers of the centre for any proper purpose.

Community Legal Centres will be law practices and will be able to hold trust monies just like any other law practice. Elsewhere the Bill provides that any money granted to a CLC is deemed not to be trust money or controlled money.

Trust money and trust accounts

I turn now to Chapter 3 of the Bill, which deals with conduct of business rules and prudential requirements. As noted above, it preserves the role of the Law Society in setting the Professional Conduct Rules and also gives the Society power to make specific rules for aspects of legal service delivery by ILPs and MDPs.

A legal practitioner will be required to open a trust account in each jurisdiction in which he or she has an office and receives trust money.

The requirements for the external examination of trust accounts and investigations are based on the current arrangements in place under the Legal Practitioners Act 1981. The model requires the adoption of about sixty offences relating to the trust money and trust account requirements. The approach taken by the model, and reflected in the Bill, can be characterised as prevention and compliance.

The Bill continues the present funding arrangements for the combined trust account and the statutory interest account. It also preserves the funding arrangements for the Legal Services Commission, CLCs, the guarantee fund, and research functions such as the Law Foundation.

Costs disclosure and review

Part 3 of Chapter 3 of the Bill deals with disclosures to clients and their ability to challenge a bill of costs, and are largely core provisions requiring textual uniformity under the model. Many firms already have good practices when it comes to communicating with their clients about costs. These provisions standardise and formalise best practice and preserve the rights of consumers to various avenues of redress.

Costs agreements that are conditional on the successful outcome of a matter will be allowed under the Bill, except for criminal, family law and migration matters. Uplift fees up to a maximum of 25% for litigious matters will be allowed if the risk of the claim failing, and of the client having to meet his or her own costs, is significant. However, costs that are contingent upon and calculated by reference to the amount of any award, settlement or the value of any property recovered in the proceedings will not be allowed.

Other prudential requirements

The Bill does not substantially alter the current arrangements for professional indemnity insurance. Local practitioners will continue to be insured partly under a master policy negotiated between the Law Society and insurers participating in the scheme.

The Bill does not disturb the operation of the legal practitioners' guarantee fund, and it preserves the current exclusion for claims based on the mismanagement of a managed investment scheme or mortgage financing activities conducted by a law practice.

A local legal practitioner will contribute to the local guarantee fund only, and will be covered only by that fund, regardless of where a default may occur. The only exception to this will be where the practitioner is authorised to draw trust money from an account in another jurisdiction. In that case, to allow each fund to ensure it is able to meet its liabilities, the practitioner can be required to contribute to the fidelity fund in that other jurisdiction (as determined by that fund), and will be covered by that other jurisdiction's fidelity fund. Under the model provisions, the consumer benefits delivered by the fund and the process of claim will be harmonised so that clients do not have different rights in different jurisdictions.

Complaints and discipline

The Bill largely preserves the current arrangements regarding complaints and the discipline of lawyers. The Legal Practitioners Conduct Board will continue to arrange to conciliate complaints and the Legal Practitioners Disciplinary Tribunal will continue in its present role but be given powers to order a fine of up to $50,000. The Supreme Court will continue to have ultimate oversight of the profession.

The model provisions on which this Bill is based follow our current law and set up a simple, graduated system of two levels of seriousness of conduct. Unsatisfactory professional conduct includes conduct that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent practitioner. Professional misconduct includes substantial or consistent unsatisfactory professional conduct as well as conduct that would justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

The latter phrase preserves the current grounds for disciplinary action against practitioners. The Bill goes on to specify that suitability matters may be assessed along with other matters such as whether the practitioner has disobeyed an order of the Tribunal or contravened the requirements for handling trust money, etc. Once again it is hoped that a common jurisprudence will coalesce around these provisions.

The new regime will continue to allow the Board to deal with the more serious category of professional misconduct if the practitioner consents. The Board will be able to reprimand, impose conditions on the practitioner's certificate, or order a specified payment instead of laying a complaint before the Tribunal.

For the first time there will be a Register of Disciplinary Action which will be made available to the public on the internet. Anyone will be able to inspect the Register which must include particulars of the disciplinary action taken for professional misconduct. Other jurisdictions will have similar registers also available on the internet.

External intervention, investigation and examination

The national model and the Bill require the adoption of uniform provisions in relation to the appointment of supervisors, managers and receivers of the business and professional affairs of legal practices in order to protect the public and the practice's clients. Chapter 5 of the Bill sets out the circumstances in which external intervention is warranted, how external interveners may be appointed and the different roles and responsibilities of supervisors, managers and receivers.

It is the Law Society that is responsible for determining that a form of external intervention is warranted. The Society may determine to appoint a supervisor, a manager, or to apply to the Supreme Court for the appointment of a receiver.

A supervisor of trust money for a law practice is appointed where there are problems with the practice's trust accounts but it is not appropriate that the practice be wound up. The supervisor can open trust accounts, receive trust money and keep records relating to the trust account. A supervisor's appointment terminates when a receiver or manager is appointed, when all trust funds are distributed or when the Law Society determines that the appointment should cease.

A manager may be appointed where winding up is not justified but a person needs to be appointed to take over professional and operational responsibility for the practice. For instance, a manager may be appointed where the principal is sick or cannot otherwise run the practice. The manager may transact any urgent business, operate the trust account, accept instructions from clients, and wind up the affairs of the practice. The manager's role ceases when a receiver is appointed with the powers of the manager, when the practice has been wound up or when the Society has determined that the appointment should cease.

The Society can apply to the Supreme Court for a receiver to be appointed if it believes the appointment is necessary to protect clients' trust money and that it may be appropriate for the practice to be wound up and terminated.

External interveners must be Australian legal practitioners holding unrestricted practising certificates as they must deal with trust money in the same way as a law practice must deal with trust money. However, a person holding accounting qualifications with experience in law practices' trust accounts may be a supervisor or receiver.

The Bill also provides for both specific and general reporting requirements for external interveners. These mechanisms provide further protection for trust money during an intervention.

Elsewhere the Bill provides for investigations and external examinations. This will allow the programme of audits of trust accounts conducted by the Law Society and its agents to continue. The Bill frees up the requirements to be an investigator or external examiner because the of the difficulty in securing approved auditors as required under the present Legal Practitioners Act 1981, which is a particular problem in the regions. In future, the audit period will be 1 April to 31 March to align with other jurisdictions.

In conclusion, the Bill recognises that the legal profession is an indispensable part of our legal system and should be regulated accordingly. However, it imposes few new requirements, especially for prudent practitioners who respect that their clients, and the law itself, are the ultimate beneficiaries of their hard work. The regulatory framework is complex because it provides checks, balances and protections of many sorts so that no one individual or body has ultimate influence in all areas–not even the Supreme Court. Aristotle wrote that "it is more proper that law should govern than any one of the citizens" and the Bill recognises and secures exactly that.

The legal profession is not simply another economic activity. Some of its activities have a profound impact on the self image of society, on its standards of justice and civilisation and on its commitment to the rule of law and the defence of rights. The abiding challenge facing the Australian legal profession as it enters a new millennium is one of preserving the idealism and professionalism of a potentially noble calling dedicated to the attainment of justice whilst paying more attention to the realities of delivering that same justice to ordinary people.

I commend the Bill to Members.

Explanation of Clauses

Chapter 1—Introduction

Part 1—Preliminary

This Part includes formal clauses relating to the short title and commencement of the Act. The date on which the Act is to come into operation will be fixed by proclamation.

Part 2—Interpretation

The provisions of Part 2 deal with preliminary matters, including definitions. There are some changes to terms used in the current Act, developed to facilitate national practice. A person admitted to the legal profession under this Act or a corresponding law of another State or Territory is an Australian lawyer. A local lawyer is a person admitted to the legal profession under the South Australian Act. A person admitted to the legal profession under a corresponding law who is not also admitted under the South Australian Act is an interstate lawyer.

An Australian lawyer who holds a current local practising certificate or a current interstate practising certificate is an Australian legal practitioner. If an Australian lawyer holds a current local practising certificate, he or she is a local legal practitioner. An Australian lawyer who holds a current interstate practising certificate but not a local practising certificate is an interstate legal practitioner.

This Part also includes defined terms relating to associates and principals of law practices.

The term engaging in legal practice includes practising law. Clause 7 provides that the regulations may make further provision in relation to the meaning of engaging in legal practice.

Clause 12 provides that it is Parliament's intention that the legal profession of South Australia should continue to be a fused profession of barristers and solicitors.

Other terms defined in this Part include home jurisdiction, suitability matter and information notice.

Chapter 2—General requirements for engaging in legal practice

Part 1—Reservation of legal work and legal titles

Chapter 2 deals with general requirements for engaging in legal practice.

Clause 13 prohibits a person from engaging in legal practice unless he or she is an Australian legal practitioner. This Part also makes it an offence for a person to advertise that he or she is entitled to engage in legal practice in South Australia unless he or she is an Australian legal practitioner.

Clause 18 makes it an offence for an Australian legal practitioner to be a party to an agreement or arrangement to employ or engage a disqualified person or a person who has been convicted of a serious offence. However, the Legal Practitioners Disciplinary Tribunal may authorise an Australian legal practitioner to be a party to such an agreement or arrangement. The Tribunal's authorisation may be subject to conditions.

Disqualified person is defined in Chapter 1 Part 2 as—

- a person whose name has been removed from an Australian roll and who has not subsequently been admitted or re-admitted to the legal profession;
- a person whose Australian practising certificate has been suspended or cancelled and who, because of the cancellation, is not an Australian legal practitioner or in relation to whom that suspension has not finished;
- a person who has been refused a renewal of an Australian practising certificate, and to whom an Australian practising certificate has not been granted at a later time;
- a person who is the subject of an order prohibiting a law practice from employing or paying the person in connection with the relevant practice;
- a person who is the subject of an order prohibiting an Australian legal practitioner from being a partner of the person in a business that includes the practitioner's practice.

A serious offence is—

- an indictable offence against a law of the Commonwealth or any jurisdiction (whether or not the offence is or may be dealt with summarily); or
- an offence against a law of another jurisdiction that would be an indictable offence against a law of South Australia if committed in this State (whether or not the offence could be dealt with summarily if committed in this State); or
- an offence against a law of a foreign country that would be an indictable offence against a law of the Commonwealth or South Australia if committed in this State (whether or not the offence could be dealt with summarily if committed in this State).

Part 2—Admission of local lawyers

Division 1—Admission to the legal profession

This Part sets out the process and requirements for admitting people to the legal profession.

Under Division 1, the Supreme Court is to maintain a roll of persons admitted to the legal profession under the Act. This is the local roll. On being admitted to the profession, a person becomes an officer of the Supreme Court.

Division 2—Eligibility and suitability for admission

Under the provisions of this Division, a natural person is entitled to be admitted to the legal profession if he or she satisfies the Supreme Court that he or she is of good reputation and character and that he or she has complied with the admission rules and rules made by Legal Practitioners Education and Admission Council. When determining an application, the Court is required to consider, in relation to the person, each of the suitability matters set out in Chapter 1 Part 2.

Part 3—Legal practice—Australian legal practitioners

Division 1—Legal practice in this jurisdiction by Australian legal practitioners

This Division provides that an Australian legal practitioner is entitled to engage in legal practice in South Australia (subject to other provisions of the Act).

Division 2—Local practising certificates generally

Practising certificates are to be granted by the Supreme Court. In considering whether or not a person is a fit and proper person to hold a practising certificate, the Court is to take into account any suitability matter relating to the person and any of a number of additional listed matters.

There is a requirement under this Division for a local legal practitioner to be insured against liabilities that may arise in the course of, or in relation to, legal practice if such a scheme is in force under Chapter 3 Part 4.

Division 3—Grant or renewal of local practising certificates

The provisions of this Division prescribe procedures for the grant or renewal of local practising certificates. An Australian lawyer may apply to the Supreme Court for the grant or renewal of a local practising certificate if he or she is eligible to do so under the Division. The Court is required to consider an application unless it is not made in accordance with the Act or the admission rules or is not accompanied by the prescribed fee. The Court is also authorised to amend or cancel a practising certificate if requested to do so by the holder.

Division 4—Conditions on local practising certificates

This Division deals with conditions on local practising certificates. Conditions can be imposed by the Court or are imposed by the Act. For example, it is a statutory condition of a local practising certificate that the holder of the certificate—

- must notify the Supreme Court that the holder has been convicted of an offence that would have to be disclosed under the admission rules in relation to an application for admission to the legal profession under the Act, or charged with a serious offence; and
- must do so within seven days of the event and by a written notice.

A local practising certificate may also be issued or renewed subject to conditions determined by the Legal Practitioners Education and Admission Council (LPEAC)—

- requiring the holder of the certificate to undertake or obtain further education, training and experience required or determined under the legal profession rules; and
- limiting the rights of practice of the holder of the certificate until that further education, training and experience is completed or obtained.

Division 5—Amendment, suspension or cancellation of local practising certificates

This Division sets out grounds for amending, suspending or cancelling a local practising certificate and authorises the Supreme Court to amend, suspend or cancel a certificate where the Court believes a ground exists. Those grounds are as follows:

- the holder of the certificate is no longer a fit and proper person to hold the certificate;
- the holder of the certificate does not have, or no longer has, professional indemnity insurance that complies with the Act in relation to the certificate;
- if a condition of the certificate is that the holder is or has been limited to legal practice specified in the certificate—the holder is engaging in legal practice that the holder is not entitled to engage in under this Act.

The Court is required to give the holder of the certificate notice of its proposed action and then consider any written representations made by the practitioner.

Division 6—Special powers in relation to local practising certificates—show cause events

This Division deals with show cause events. A legal practitioner who becomes bankrupt or is convicted of a serious offence or a tax offence is required to provide the Court with relevant details. The person must explain why, despite the show cause event, he or she is a fit and proper person to hold a practising certificate. The Court is authorised to refuse to grant or renew, or to amend, suspend or cancel, a local practising certificate if the applicant or holder fails to provide a written statement relating to a show cause event or, having provided a required written statement, fails to satisfy the Court that he or she is a fit and proper person to hold a local practising certificate.

Division 7—Further provisions relating to local practising certificates

The holder of a local practising certificate may, under this Division, surrender the certificate to the Supreme Court. The Court may cancel the certificate.

The Court is authorised under this Division to immediately suspend a practising certificate if the Court considers it necessary to do so in the public interest. The holder of the suspended certificate may make written representations to the Court about the suspension, and the Court must consider the representations.

Division 8—Interstate legal practitioners

This Division deals with interstate practitioners practising in South Australia.

An interstate legal practitioner is prohibited from engaging in legal practice, or representing or advertising that he or she is entitled to engage in legal practice, in South Australia unless he or she is covered by the required level of professional indemnity insurance. An interstate legal practitioner is not authorised to engage in legal practice in South Australia to a greater extent than a local legal practitioner could be authorised under a local practising certificate. The Supreme Court may impose additional conditions on an interstate legal practitioner's practice if those conditions could be imposed on a local practising certificate.

An interstate legal practitioner engaged in legal practice in this jurisdiction has all the duties and obligations of an officer of the Supreme Court, and is subject to the jurisdiction and powers of the Supreme Court in respect of those duties and obligations.

Division 9—Miscellaneous

This Division deals with miscellaneous matters. The Supreme Court is authorised under this Division to—

- assign functions or powers conferred on or vested in it under Part 3 to a specified body or person, or to a person occupying a specified office or position; and
- require an applicant in relation to, or the holder of, a local practising certificate to provide specified information or documents or to cooperate with the Court's inquiries.

The Court is required under the Division to keep a register of the names of local legal practitioners. This Division also authorises the Law Society to enter into certain arrangements with regulatory authorities of other jurisdictions and provides that government lawyers of other jurisdictions are not subject to any prohibition under the Act about engaging in legal practice in South Australia.

Part 4—Inter-jurisdictional provisions regarding admission and practising certificates

Division 1—Preliminary

Part 4 sets out inter jurisdictional provisions regarding admission and practising certificates.

Division 2—Notifications to be given by local authorities to interstate authorities

This Division authorises the Supreme Court to notify the corresponding authority for another jurisdiction of the making or withdrawal of an application for admission to the legal profession or the refusal of the Court to admit an applicant. The Division also requires the Court (or some other South Australian regulatory authority) to notify relevant authorities of other jurisdictions of the removal of the name of a practitioner from the local roll or

Division 3—Notifications to be given by lawyers to local authorities

The provisions of this Division require a local lawyer or local legal practitioner to give the Supreme Court written notice if his or her name is removed from an interstate roll or if an order is made under a corresponding law recommending that his or her name be removed from a local roll. Written notification is also to be given by a local legal practitioner if his or her certificate is suspended or cancelled or conditions are imposed on the certificate.

Division 4—Taking of action by local authorities in response to notifications received

If a local lawyer's name is removed from an interstate roll, the Registrar of the Supreme Court must remove the lawyer's name from the local roll. If the lawyer is the holder of a local practising certificate, the certificate must be cancelled.

This Division also prescribes "show cause" procedures for removal of a lawyer's name from the local roll, or cancellation of a local practising certificate, following the removal of a person's name from a foreign roll for disciplinary reasons or the suspension or cancellation of, or refusal to renew, a person's right to engage in legal practice in a foreign country.

Part 5—Incorporated legal practices and multi disciplinary partnerships

Division 1—Preliminary

Part 5 adopts the national model provisions relating to incorporated legal practices and multi disciplinary partnerships. The objective of the model provisions is to establish

uniform provisions in all jurisdictions, ensuring that incorporated legal practices and multi disciplinary partnerships can practise across State and Territory borders with ease.

Division 2—Incorporated legal practices

An incorporated legal practice is a corporation that engages in legal practice in South Australia, whether or not it also provides services that are not legal services. An incorporated legal practice must have at least one director who is a legal practitioner. Before carrying on business, the corporation must notify the Supreme Court that it intends to provide legal services.

As corporations are separate legal entities at law, this Division includes provisions that ensure that legal practitioner employees of the practice cannot use the corporation to shield themselves from liability. Any breach by them of a professional obligation can amount to unsatisfactory professional conduct or professional misconduct. The provisions of the Act relating to insurance apply with any necessary changes to incorporated legal practices in relation to the provision of legal services. An obligation of an Australian legal practitioner who is an officer or employee of an incorporated legal practice must comply with the provisions of the Act relating to insurance.

An incorporated legal practice that provides legal and non-legal services must inform its clients which services are being provided by legal practitioners, and which are not. This is to ensure that clients are fully informed and not acting under a misapprehension about who is providing the services.

The Legal Practitioners Conduct Board, the Attorney General or the Law Society may apply to the Supreme Court to ban a corporation from providing legal services. Directors can be banned from managing incorporated legal practices.

Division 3—Multi-disciplinary partnerships

Multi-disciplinary partnerships are partnerships that provide legal and non legal services. Similar to an incorporated legal practice, a multi disciplinary partnership must give the Law Society notice of its intention to provide legal services.

If a partnership has legal and non legal partners, the legal partners are responsible under this Division for the management of the legal services provided. A legal practitioner employee in a multi disciplinary partnership must maintain professional standards that apply to other practitioners.

Division 4—Miscellaneous

This Division provides for the making of regulations about—

- the legal services provided by incorporated legal practices or legal practitioner partners or employees of multi disciplinary partnerships; or
- other services provided by incorporated legal practices or legal practitioner partners or employees of multi disciplinary partnerships in circumstances where a conflict of interest relating to the provision of legal services may arise.

A regulation prevails over any inconsistent provision of the legal profession rules.

Part 6—Legal practice—foreign lawyers

Division 1—Preliminary

This Part adapts the national model provisions relating to legal practice by foreign lawyers.

Division 2—Practice of foreign law

A person must not practise the law of a foreign country in South Australia unless the person is an Australian registered foreign lawyer or an Australian legal practitioner.

Division 3—Local registration of foreign lawyers generally

This Division provides for the registration of foreign lawyers.

Division 4—Applications for grant or renewal of local registration

Under this Division, an overseas-registered foreign lawyer may apply to the Society for the grant or renewal of registration as a foreign lawyer under the Act. The provisions of this Division regulate the manner in which an application is to be made.

Division 5—Grant or renewal of registration

The Law Society is required to consider an application made for the grant or renewal of registration as a foreign lawyer unless the application is not made in accordance with the Act. The Society may grant or refuse to grant, or renew or refuse to renew, an application.

Division 6—Amendment, suspension or cancellation of local registration

This Division sets out grounds for the Society to amend, suspend or cancel a person's registration as a foreign lawyer, as follows:

- the registration was obtained because of incorrect or misleading information;
- the person fails to comply with a requirement of Part 6;
- the person fails to comply with a condition imposed on the person's registration;
- the person becomes the subject of disciplinary proceedings in Australia or a foreign country (including any preliminary investigations or action that might lead to disciplinary proceedings) in his or her capacity as—
  - an overseas-registered foreign lawyer; or
  - an Australian-registered foreign lawyer; or
  - an Australian lawyer;
- the person has been convicted of an offence in Australia or a foreign country;
- the person's registration is cancelled or currently suspended in any place as a result of any disciplinary action taken in Australia or a foreign country;
- the person does not meet the requirements of the Act relating to professional indemnity insurance;
- another ground the Society considers sufficient.

Division 7—Special powers in relation to local registration—show cause events

This Division deals with procedures in respect of applications where a show cause event happened in relation to an applicant for registration as a foreign lawyer. (See note on Part 3 Division 6, above.)

Division 8—Further provisions relating to local registration

If the Law Society considers it necessary in the public interest to immediately suspend a person's registration as a foreign lawyer, it may do so by giving written notice to the person. The notice must state the reasons for the suspension. The notice must also inform the person that he or she may make written representations to the Society about the suspension. The Society must consider any written representations.

A person registered as a foreign lawyer may surrender the local registration certificate to the Society, and the Society may cancel the registration.

If a person registered as a foreign lawyer becomes an Australian legal practitioner, the registration is taken to be cancelled. When a person’s registration certificate under this Part as a foreign lawyer is amended, suspended or cancelled, the Society may require the person to return the certificate to the Society.

Division 9—Conditions on registration

This Division sets out conditions to which registration as a foreign lawyer is subject. These conditions include statutory conditions and conditions imposed by the Society.

Division 10—Interstate-registered foreign lawyers

An interstate registered foreign lawyer is not authorised to practise foreign law in this jurisdiction to a greater extent than a locally registered foreign lawyer could be authorised under a local registration certificate.

The Society may, by written notice to an interstate-registered foreign lawyer practising foreign law in this jurisdiction, impose any condition on the interstate-registered foreign lawyer's practice that it may impose under this Act in relation to a locally registered foreign lawyer.

Division 11—Miscellaneous

The Law Society is required to keep a register of the names of locally registered foreign lawyers. The Society may publish the names of persons registered by it as foreign lawyers and any relevant particulars concerning those persons.

The Society is authorised to exempt Australian registered foreign lawyers or classes of Australian registered foreign lawyers from compliance with specified provisions of the Act or the regulations, or from compliance with specified rules that would otherwise apply to the foreign lawyers or classes of foreign lawyers.

Part 7—Community legal centres

This Part regulates the provision of legal services by community legal centres. A community legal centre does not contravene the Act merely because of the employment, or use of the services of, Australian legal practitioners to provide legal services. Nor does a community legal centre breach the Act because of a contractual relationship with a person to whom legal services are provided.

Regulations under the Act may modify or exclude the application of provisions of the Act to community legal centres or Australian legal practitioners employed by community legal centres.

This Part includes provisions dealing with the obligations and privileges of Australian legal practitioners who provide legal services on behalf of community legal centres as officers or employees. These practitioners are not excused from compliance with professional or other obligations of Australian legal practitioners and are subject to the legal profession rules.

Chapter 3—Conduct of legal practice

Part 1—Manner of legal practice

Division 1—Rules for Australian legal practitioners and locally registered foreign lawyers

This Part deals with the making of legal profession rules by the Law Society.

Division 2—Rules for incorporated legal practices and multi disciplinary partnerships

Legal profession rules may relate to the provision of legal services by incorporated legal practices or multi-disciplinary partnerships.

Division 3—General provisions for legal profession rules

Legal profession rules are binding on Australian legal practitioners and locally registered foreign lawyers to whom they apply, and a failure to comply with a rule is capable of constituting unsatisfactory professional conduct or professional misconduct.

Part 2—Trust money and trust accounts

Division 1—Preliminary

This Part sets out requirements and procedures for legal practitioner trust accounts.

Division 2—Trust accounts and trust money

This Division sets out requirements for trust accounts and trust money and includes definitions of new terms such as controlled money and transit money. Other provisions deal with protection of trust money, prohibition on intermixing, prohibition on deficiencies, reporting irregularities, keeping trust records and prohibition on receiving trust money under false names.

Division 3—Investigations and external examinations

Division 3 deals with investigations and external examinations of law practices. These provisions replace the provisions of the current Act that require audits. The Law Society may appoint an investigator to investigate the affairs, or a specified affair, of a law practice. The investigator may be authorised to conduct routine investigations on a regular or other basis, or he or she may be authorised to conduct investigations in relation to particular allegations or suspicions.

The Society may also designate persons as being eligible to be appointed as external examiners. Law practices must have their trust records externally examined at least once in each financial year by an external examiner appointed in accordance with the regulations. If the Society is not satisfied that this has occurred, it can appoint an external examiner to examine a law practice's trust records.

Division 4—Provisions relating to ADIs and statutory deposits

The provisions of this Division relate to authorised deposit taking institutions (ADIs).

The Law Society may approve ADIs at which trust accounts to hold trust money may be maintained.

Under provisions taken from the current Act, law practices are required to deposit money in the combined trust account, and the Society has an ongoing obligation to maintain the statutory interest account. The Society is required to pay into the statutory interest account all interest earned from deposits in the combined trust account.

Division 5—Miscellaneous

This Division includes provisions relating to various matters including protection from liability, restrictions on receipt of trust money by incorporated legal practices and multi disciplinary partnerships, disclosures to clients about money received by a law practice that is not trust money and the making of regulations for or with respect to trust money and trust accounts.

Part 3—Costs disclosure and adjudication

Division 1—Preliminary

This Part deals with the requirements in relation to costs disclosure and adjudication of costs by the Supreme Court.

Division 2—Application of Part

Under this Division, the Part will, as a general rule, apply to a matter if the client first instructs the law practice in relation to the matter in South Australia.

Division 3—Costs disclosure

When a client first instructs a law practice, the practice must disclose to the client—

- the basis on which legal costs will be calculated; and
- the client's right to—
    - negotiate a costs agreement with the law practice; and
    - receive a bill from the law practice; and
    - request an itemised bill after receipt of a lump sum bill; and
    - be notified of any substantial change to the matters disclosed under this section; and
- an estimate of the total legal costs, if reasonably practicable or, if that is not reasonably practicable, a range of estimates of the total legal costs and an explanation of the major variables that will affect the calculation of those costs; and
- details of the intervals (if any) at which the client will be billed; and
- the rate of interest (if any) that the law practice charges on overdue legal costs, whether that rate is a specific rate of interest or is a benchmark rate of interest; and

- if the matter is a litigious matter, an estimate of—
  - the range of costs that may be recovered if the client is successful in the litigation; and
  - the range of costs the client may be ordered to pay if the client is unsuccessful; and
- the client's right to progress reports; and
- details of the person whom the client may contact to discuss the legal costs; and
- the avenues that are open to the client in the event of a dispute in relation to legal costs; and
- any time limits that apply to the taking of any action; and
- the law of South Australia applies to legal costs in relation to the matter; and
- information about the client's right—
- to accept under a corresponding law a written offer to enter into an agreement with the law practice that the corresponding provisions of the corresponding law apply to the matter; or
- to notify under a corresponding law (and within the time allowed by the corresponding law) the law practice in writing that the client requires the corresponding provisions of the corresponding law to apply to the matter.

There are certain exceptions to the requirement to disclose. These include, for example, where the total legal costs are not likely to exceed $1 500 (or such higher amount as might be prescribed); where the client has agreed in writing to waive the right to disclosure; and where the client is a law practice or an Australian legal practitioner.

Division 4—Legal costs generally

The provisions of this Division deal with the basis on which legal costs are recoverable, security for legal costs and interest on unpaid legal costs.

Division 5—Costs agreements

A law practice can enter into a costs agreement with a client under this Division. A costs agreement may be made—

- between a client and a law practice retained by the client; or
- between a client and a law practice retained on behalf of the client by another law practice; or
- between a law practice and another law practice that retained that law practice on behalf of a client; or
- between a law practice and an associated third party payer.

A costs agreement must be written or evidenced in writing and may provide that the payment of some or all of the legal costs is conditional on the successful outcome of the matter to which the costs relate (though there are certain types of matter to which a conditional costs agreement may not relate). A conditional costs agreement may provide for the payment of an uplift fee. Law practices are prohibited from entering into costs agreements where the amount payable is calculated by reference to the amount of any award or settlement or the value of any property that may be recovered in proceedings to which the agreement relates.

A costs agreement may be enforced in the same way as any other contract. (This is subject to Division 7, which deals with the adjudication of disputes about costs.)

Division 6—Billing

This Division prohibits a law practice from commencing legal proceedings to recover legal costs from a person until at least 30 days after the practice has given a bill to the person in accordance with the provisions of the Division. A bill may be in the form of a

lump sum bill or an itemised bill. A law practice must comply with any request for an itemised bill by a person who has received a lump sum bill.

Division 7—Adjudication of costs

The Supreme Court is authorised under this Division to adjudicate and settle a bill for costs on the application of a client or a third party payer. A law practice that retains another law practice may also apply to the Court for an adjudication of a bill for legal costs.

The Court's power to adjudicate and settle a bill of costs may be exercised by the Registrar of the Court. The Registrar's decision on an adjudication is subject to appeal. Following an adjudication, the Court may order the refund of any amount overpaid or payment of legal costs in accordance with the adjudicated bill.

The Board may institute proceedings for the adjudication of legal costs on behalf of a person who is liable to pay, or has paid, the legal costs. The Board must institute such proceedings if ordered to do so by the Tribunal.

Division 8—Miscellaneous

The regulations may modify the application of Part 3 to incorporated legal practices or multi disciplinary partnerships, or both.

Part 4—Professional indemnity insurance

Under this Part, which is taken from the current Act, the Law Society may establish a scheme providing professional indemnity insurance for the benefit of local legal practitioners.

Part 5—The legal practitioners' guarantee fund

Division 1—Preliminary

This Part deals with the legal practitioners' guarantee fund.

Division 2—Guarantee fund

The Law Society is required under this Division to continue to maintain the fund, which consists of—

- the money paid into it from the statutory interest account; and
- all money recovered by the Society under Part 5; and
- a prescribed proportion of the fees paid in respect of the issue or renewal of local practising certificates; and
- costs recovered by the Attorney General, the Board or the Society in disciplinary proceedings against Australian legal practitioners or former Australian legal practitioners; and
- any fee paid to the Board; and
- any other money required to be paid into the fund under the Act; and
- any money that the Society thinks fit to include in the guarantee fund; and
- the income and accretions arising from the investment of the money constituting the guarantee fund.

The purposes for which the guarantee fund may be applied are listed in this Division.

Division 3—Defaults to which this Part applies

This Division sets out the procedures for determining when the Part applies to a default. The Part applies to a default arising from, or constituted by, an act or omission of one or more associates of a law practice, where South Australia is the relevant jurisdiction for the only associate or one or more of associates involved.

It is immaterial where the default occurs, and it is immaterial that the act or omission giving rise to or constituting a default does not constitute a crime or other offence under the law of South Australia or any other jurisdiction or of the Commonwealth.

Division 4—Claims about defaults

This Division deals with claims against the guarantee fund about defaults. If a person suffers pecuniary loss because of a default to which Part 5 applies, he or she may make a claim about the default against the guarantee fund to the Law Society. The Division includes provisions dealing with the time limit for making claims against the fund, the capping of payments after the Society has published a notice stating that a cap applies in relation to a particular default, investigation of claims by the Society and the making of payments from the fund to a claimant in advance of the determination of a claim.

Division 5—Determination of claims

Under this Division, the Law Society may determine a claim by wholly or partly allowing or disallowing it. The Society may disallow a claim to the extent that the claim does not relate to a default for which the guarantee fund is liable, and may wholly or partially disallow a claim, or reduce a claim, to the extent that—

- the claimant knowingly assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or
- the negligence of the claimant contributed to the loss; or
- the conduct of the transaction with the law practice in relation to which the claim is made was illegal, and the claimant knew or ought reasonably to have known of that illegality; or
- proper and usual records were not brought into existence during the conduct of the transaction, or were destroyed, and the claimant knew or ought reasonably to have known that records of that kind would not be kept or would be destroyed; or
- the claimant has unreasonably refused to disclose information or documents to or co operate with—
    - the Society; or
    - any other authority (including, for example, an investigative or prosecuting authority),

in the investigation of the claim.

Other provisions in this Division deal with—

- the maximum amount payable in respect of a default, which must not exceed the pecuniary loss resulting from the default;
- payment of a claimant's costs;
- the addition of interest on the amount of a pecuniary loss;
- the right of a claimant to appeal to the Supreme Court against a decision of the Society or a failure by the Society to determine a claim.

Division 6—Payments from guarantee fund for defaults

It is provided under this Division that the guarantee fund is to be applied by the Society for the purpose of compensating claimants in respect of claims allowed under the Part in respect of defaults to which the Part applies.

If the Society is of the opinion that the guarantee fund is likely to be insufficient to meet the fund’s ascertained and contingent liabilities, the Society may do any or all of the following:

- postpone all payments relating to all or any class of claims out of the fund;
- impose a levy on local legal practitioners (see below);
- make partial payments of the amounts of one or more allowed claims out of the fund with payment of the balance being a charge on the fund;
- make partial payments of the amounts of two or more allowed claims out of the fund on a pro rata basis, with payment of the balance ceasing to be a liability of the fund.

Where the Society is of the opinion that the guarantee fund is likely to be insufficient to meet its liabilities, the Society may (by resolution of the Council) impose a levy on each local legal practitioner, payable to the Society on account of the guarantee fund.

Division 7—Claims by law practices or associates

This Division deals with a claim by a law practice or associate in respect of a default arising from or constituted by an act or omission of an associate of the practice.

Division 8—Defaults involving interstate elements

This Division includes provisions giving the Society certain powers in relation to interstate defaults.

Division 9—Inter-jurisdictional provisions

The Law Society is authorised under this Division to enter into arrangements ('protocols') with corresponding authorities in other States or Territories for or with respect to matters to which Part 5 relates. This Division facilitates the investigation by the Society or a corresponding authority of another State or Territory of defaults that appear to the Society to have—

- occurred solely in another jurisdiction; or
- occurred in more than one jurisdiction; or
- occurred in circumstances in which it cannot be determined precisely in which jurisdiction the default occurred.

Division 10—Miscellaneous

The provisions of this Division deal with—

- regulation in respect of interstate practitioners who become authorised to withdraw money from a local trust account; and
- the application of Part 5 to incorporated legal practices and multi disciplinary partnerships and sole practitioners.

Chapter 4—Complaints and discipline

Part 1—Introduction and application

Division 1—Preliminary

Chapter 4 adopts many of the national model provisions relating to complaints and discipline. Many provisions of the Legal Practitioners Act 1981 relating to complaint and discipline are also carried over into Chapter 4. The adoption of the model provisions will achieve greater uniformity in standards applied by regulators and courts across Australia to determine when a practitioner's right to practise should be removed or restricted. They will also ensure that the rights afforded to complainants are broadly comparable across jurisdictions. In particular, the bill adopts the definitions of unsatisfactory professional conduct and professional misconduct from the national model provisions, ensuring that this will be the same across Australia.

The Chapter applies to Australian lawyers and former Australian lawyers in the same way that it applies to Australian legal practitioners and former Australian legal practitioners. It applies to former Australian legal practitioners in relation to conduct occurring while they were Australian legal practitioners in the same way that it applies to Australian legal practitioners.

Division 2—Key concepts

Professional misconduct is defined in this Division as conduct that involves a substantial or consistent failure to reach or maintain a reasonable standard of competence or diligence occurring in the practice of law.

Unsatisfactory professional conduct is the lesser offence, and is defined as conduct occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the profession is entitled to expect from a reasonably competent legal practitioner.

Certain types of conduct that are capable of being unsatisfactory professional conduct or professional misconduct are set out, and these include serious offences, tax offences and offences involving dishonesty.

Division 3—Application of Chapter

Chapter 4 applies to an Australian legal practitioner in respect of conduct to which the Chapter applies. It applies—

- whether or not the practitioner is a local lawyer; and
- whether or not the practitioner holds a local practising certificate; and
- whether or not the practitioner holds an interstate practising certificate; and
- whether or not the practitioner resides or has an office in this jurisdiction; and
- whether or not the person making a complaint about the conduct resides, works or has an office in this jurisdiction.

Part 2—Complaints and discipline

Division 1—Investigations by Legal Practitioners Conduct Board

This Division deals with investigations by the Legal Practitioners Conduct Board and provides that the Board may, on its own initiative, make an investigation into the conduct of an Australian legal practitioner if the Board has reasonable cause to suspect that the practitioner has been guilty of unsatisfactory professional conduct or professional misconduct.

The Board is required to investigate the conduct of a practitioner if directed to do so by the Attorney General or the Law Society, or if the Board receives a complaint about the conduct of the practitioner.

If the Board is satisfied that an investigation has revealed evidence of professional misconduct by an Australian legal practitioner, the Board is required to make a report on the matter to the Attorney General and the Law Society. The Board must also report suspected professional misconduct that would constitute an offence to all relevant law enforcement and prosecution authorities.

The Board is authorised to exercise certain powers in relation to a practitioner, instead of laying a complaint, if the Board is satisfied that there is evidence of unsatisfactory professional conduct or professional misconduct by the practitioner that can be adequately dealt with by the exercise of the power. The Board may only take this course of action with the consent of the practitioner. If taking this course of action, the Board may—

- reprimand the practitioner; or
- make an order imposing specified conditions on the practitioner's local practising certificate or recommending that specified conditions be imposed on the practitioner's interstate practising certificate—
- relating to the manner or circumstances in which the practitioner engages in legal practice; or
- requiring that the practitioner, within a specified time, to complete further education or training, or receive counselling, of a type specified by the Board; or
- make an order requiring that the practitioner make a specified payment (whether to a client of the practitioner or to any other person) or do or refrain from doing a specified act in connection with engaging in legal practice.

Complaints of overcharging by a law practice must be investigated by the Board unless considered to be frivolous or vexatious.

The Board may arrange for a conciliation to be conducted in relation to a complaint

Division 2—Proceedings before Legal Practitioners Disciplinary Tribunal

This Division deals with proceedings in the Legal Practitioners Disciplinary Tribunal. A complaint alleging professional misconduct or unsatisfactory professional

misconduct by a practitioner may be laid by the Attorney General, the Board, the Society or a person claiming to be aggrieved by reason of the alleged professional misconduct or unsatisfactory professional conduct.

If the Tribunal is satisfied, following a hearing in relation to a complaint, that a practitioner is guilty of professional misconduct or unsatisfactory professional conduct, the Tribunal may make such orders as it thinks fit, including the following:

- an order that the practitioner's local practising certificate be suspended for a specified period (not exceeding 6 months);
- an order that a local practising certificate not be granted to the practitioner before the end of a specified period;
- an order that—
    - specified conditions be imposed on the practitioner's practising certificate; and
    - the conditions be imposed for a specified period; and
    - specifies the time (if any) after which the practitioner may apply to the Tribunal for the conditions to be amended or removed;
- an order reprimanding the practitioner;
- an order with respect to the examination of the Australian legal practitioner's files and records by a person approved by the Tribunal (at the expense of the practitioner) at the intervals, and for the period, specified in the order;
- an order recommending that disciplinary proceedings be commenced against the practitioner in the Supreme Court;
- an order recommending that the name of the practitioner be removed from an interstate roll;
- an order recommending that the practitioner's interstate practising certificate be suspended for a specified period or cancelled;
- an order recommending that an interstate practising certificate not be granted to the practitioner before the end of a specified period;
- an order recommending—
    - that specified conditions be imposed on the practitioner's interstate practising certificate; and
    - that the conditions be imposed for a specified period; and
    - a specified time (if any) after which the practitioner may apply to the Tribunal for the conditions to
- an order that the practitioner pay a fine of a specified amount, not exceeding $50 000;
- an order that the practitioner undertake and complete a specified course of further legal education;
- an order that the practitioner undertake a specified period of practice under specified supervision;
- an order that the practitioner do or refrain from doing something in connection with the practice of law;
- an order that the practitioner cease to accept instructions as a public notary in relation to notarial services;
- an order that the practitioner's practice be managed for a specified period in a specified way or subject to specified conditions;
- an order that the practitioner's practice be subject to periodic inspection by a specified person for a specified period;

- an order that the practitioner seek advice in relation to the management of the practitioner's practice from a specified person;
- an order that the practitioner not apply for a local practising certificate before the end of a specified period.

Division 3—Disciplinary proceedings before the Supreme Court

If the Tribunal recommends that disciplinary proceedings be commenced against an Australian legal practitioner in the Supreme Court, the Board, the Attorney General or the Society may institute disciplinary proceedings in the Supreme Court against the practitioner. This Division includes provisions relating to the Court's jurisdiction and its power to order interim suspension of an Australian legal practitioner or to impose interim conditions on his or her practising certificate.

Division 4—Provisions relating to interstate legal practice

It is provided under this Division that if conduct by an Australian legal practitioner has been the subject of disciplinary proceedings in another State that have been finally determined, no proceedings are to be commenced or continued under this Chapter in relation to that conduct.

Division 5—Publicising disciplinary action

This Division provides for the keeping by the Law Society of a Register of Disciplinary Action. The Register is to record—

- disciplinary action taken under this Act against Australian legal practitioners; and
- disciplinary action taken under a corresponding law against Australian legal practitioners who are or were enrolled or engaging in legal practice in this jurisdiction when the conduct that is the subject of the disciplinary action occurred.

Disciplinary action means—

- the making of an order by a court or tribunal for or following a finding of professional misconduct by an Australian legal practitioner; or
- the exercise by the Board or a corresponding authority of a power where the Board or corresponding authority is satisfied that there is evidence of professional misconduct by an Australian legal practitioner; or
- any of the following actions taken following a finding by a court or tribunal of professional misconduct by an Australian legal practitioner:
- removal of the name of the practitioner from an Australian roll;
- the suspension or cancellation of the Australian practising certificate of the practitioner;
- the refusal to grant or renew an Australian practising certificate to the practitioner;
- the appointment of—
    - a supervisor of trust money of the practitioner's practice; or
    - a receiver for the practitioner's practice; or
    - a manager for the practitioner's practice.

Division 6—Inter-jurisdictional provisions

The Board is authorised under this Division to enter into arrangements with corresponding authorities for or with respect to investigating and dealing with conduct that appears to have occurred in another jurisdiction or more than one jurisdiction. The Board may request a corresponding authority of another State or Territory to arrange for the investigation of a complaint being dealt with by the Board and to provide a report on the result of the investigation.

This Division also includes provisions relating to investigation of any aspect of a complaint being dealt with under a corresponding law and the sharing of information by the Board with corresponding authorities.

Division 7—Miscellaneous

This Division provides a protection from liability for various bodies and also deals with claims for privilege in investigations or proceedings under the Chapter and the waiver of privilege or duty of confidentiality.

Chapter 5—External intervention

Part 1—Preliminary

Chapter 5 provides for intervention in the business and professional affairs of law practices in certain circumstances in order to protect the interests of the general public and clients of the legal practice. An external intervener is a supervisor for the trust account of a law practice, a manager for a law practice or a receiver for a law practice.

Part 2—Initiation of external intervention

External intervention can take place in a range of circumstances set out in this Division, including where the practitioner has died, ceased to be a legal practitioner, or has become insolvent under administration.

Part 3—Supervisors of trust money

The Law Society may appoint a supervisor of trust money for a law practice where there are issues relating to the practice's trust account and it is not appropriate that the practice be wound up and terminated. The supervisor is responsible for the trust money and accounts of the practice. The supervisor has power to open trust accounts, receive trust money and keep records relating to the trust account. A supervisor's appointment terminates when a receiver or manger is appointed, when all trust funds are distributed or where the Law Society determines that the appointment should cease.

Part 4—Managers

The Law Society may appoint a manager for a law practice if the Society is of the opinion—

- that external intervention is required because of issues relating to the practice's trust records; or
- that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
- that there is a need for an independent person to be appointed to take over professional and operational responsibility for the practice.

The provisions of this Part deal with the appointment of a manager, the contents of a notice of appointment, the effect of service of a notice of appointment, the role of a manager and the termination of an appointment.

Part 5—Receivers

The Law Society may determine to apply to the Supreme Court for the appointment of a receiver for a law practice if of the opinion—

- that the appointment is necessary to protect the interests of clients in relation to trust money or trust property; or
- that it may be appropriate that the provision of legal services by the practice be wound up and terminated.

The provisions of this Part deal with the appointment of a person as the receiver for a law practice by the Supreme Court, the contents of a notice of appointment, the effect of service of a notice of appointment, the role of a receiver, the termination of a receiver's appointment and various additional matters.

Part 6—General

This Division includes general provisions relating to external interveners, including a provision that provides a right of appeal to the Supreme Court against the appointment of an external intervener in relation to a law practice. Other provisions of this Division relate to matters such as confidentiality, protection from liability and the offence of obstructing an external intervener.

Chapter 6—Investigatory powers

Part 1—Preliminary

This Chapter sets out the powers that can be exercised in trust account investigations, trust account examinations, complaint investigations and ILP compliance audits (that is, an audit in relation to an incorporated legal practice).

Part 2—Requirements relating to documents, information and other assistance

Part 2 sets out requirements that may be imposed for trust account investigations and trust account examinations. A person may be required to provide an investigator with—

- access to the documents relating to the affairs of a law practice the investigator reasonably requires; or
- information relating to the affairs of a law practice the investigator reasonably requires.

In relation to a complaint investigation, an Australian lawyer may be required to do any one or more of the following:

- to produce, at or before a specified time and at a specified place, any specified document (or a copy of the document);
- to provide written information on or before a specified date;
- to otherwise assist in, or co operate with, the investigation of the complaint in a specified manner.

Part 3—Entry and search of premises

The provisions of this Part authorise the entry and search of premises by investigators in relation to trust account investigations and complaint investigations. An investigator may, for the purposes of carrying out an investigation, enter and remain on premises to exercise his or her powers of investigation. An investigator who enters premises in accordance with the Part may—

- search the premises and examine anything on the premises;
- search for any information, document or other material relating to the matter to which the investigation relates;
- operate equipment or facilities on the premises for a purpose relevant to the investigation;
- take possession of any relevant material and retain it for as long as may be necessary to examine it to determine its evidentiary value;
- make copies of any relevant material or any part of any relevant material;
- seize and take away any relevant material or any part of any relevant material;
- use (free of charge) photocopying equipment on the premises for the purpose of copying any relevant material;
- with respect to any computer or other equipment that the investigator suspects on reasonable grounds may contain any relevant material—
    - inspect and gain access to a computer or equipment;
    - download or otherwise obtain any documents or information;
    - make copies of any documents or information held in it;
    - seize and take away any computer or equipment or any part of it;
- if any relevant material found on the premises cannot be conveniently removed—secure it against interference;
- request any person who is on the premises to do any of the following:
    - to answer (orally or in writing) questions asked by the investigator relevant to the investigation;

- to produce relevant material;
- to operate equipment or facilities on the premises for a purpose relevant to the investigation;
- to provide access (free of charge) to photocopying equipment on the premises the investigator reasonably requires to enable the copying of any relevant material;
- to give other assistance the investigator reasonably requires to carry out the investigation;

- do anything else reasonably necessary to obtain information or evidence for the purposes of the investigation.

The power to enter and remain on premises is subject to various provisions set out in the Part.

Part 4—Additional powers in relation to incorporated legal practices

This Part authorises the exercise of certain additional powers by investigators in respect of trust account investigations, complaint investigations and ILP compliance audits conducted in relation to incorporated legal practices.

Part 5—Miscellaneous

It is an offence under this Part for a person, without reasonable excuse, to obstruct an investigator exercising a power under the Act. The maximum penalty is a fine of $50,000 or imprisonment for 1 year.

Other provisions of this Part deal with various matters, including the protection from liability for investigators and the permitted disclosure of confidential information.

Chapter 7—Regulatory bodies and funding

Part 1—The Law Society of South Australia

This Division provides that the Law Society of South Australia is to continue in existence and includes provisions relating to the administration of the Society, the Council of the Society, the Litigation Assistance Fund (which the Society is to continue to maintain) and matters to be reported by the Society.

Part 2—The Legal Practitioners Education and Admission Council and the Board of Examiners

Division 1—The Legal Practitioners Education and Admission Council

The Legal Practitioners Education and Admission Council is continued in existence under this Division. The Council has the following functions:

- to make rules prescribing—
  - the qualifications for admission to the legal profession; and
  - the qualifications for the issue and renewal of local practising certificates, including requirements for post admission education, training or experience;
- to participate in the development of uniform national standards relating to the qualifications necessary for persons engaging in legal practice;
- to keep the effectiveness of legal education and training courses and post admission experience under review so far as is relevant to qualifications for engaging in legal practice;
- to perform any other functions assigned to the Council by the Act.

Division 2—The Board of Examiners

This Division provides for the continuing existence of the Board of Examiners, which has functions conferred on it by the Legal Practitioners Education and Admission Council or under the Act.

Part 3—The Legal Practitioners Conduct Board

The Legal Practitioners Conduct Board continues in existence. This Part includes provisions dealing with the composition of the Board, the conditions on which Board members hold office, the Director and staff of the Board and the functions of the Board, which are as follows:

- to investigate suspected professional misconduct or unsatisfactory professional conduct by Australian legal practitioners;
- following an investigation, to take action authorised under Chapter 4 or to lay a complaint before the Tribunal;
- to receive and deal with complaints of overcharging in accordance with Chapter 4;
- to arrange for the conciliation of complaints;
- to commence disciplinary proceedings against Australian legal practitioners in the Supreme Court on the recommendation of the Tribunal.

The Board is authorised to delegate any of its powers or functions under the Act to any person, but cannot delegate the making of a determination as to—

- whether evidence exists of professional misconduct or unsatisfactory professional conduct by an Australian legal practitioner; or
- whether professional misconduct or unsatisfactory professional conduct by an Australian legal practitioner should be dealt with by the exercise of the Boards powers with the consent of the practitioner; or
- whether to recommend that an Australian legal practitioner reduce or refund an amount charged by the practitioner; or
- whether to lay a complaint before the Tribunal.

The Board may delegate the making of a determination that no evidence exists of professional misconduct or unsatisfactory professional conduct by an Australian legal practitioner.

Part 4—The Legal Practitioners Disciplinary Tribunal

This Division provides for the continuation of the Legal Practitioners Disciplinary Tribunal and includes provisions relating to the conditions of membership of the Tribunal, the constitution and proceedings of the Tribunal and the making of Tribunal rules.

Part 5—Lay observers

The Attorney General may, under this Part, appoint suitable persons to be lay observers for the purposes of this Chapter and Chapter 4. A lay observer is entitled to be present at any proceedings of the Board or the Tribunal and may report to the Attorney General on any aspect of the proceedings of the Board or the Tribunal.

Part 6—Annual reports

The Board and the Tribunal are each required to prepare and present to the Attorney General and the Chief Justice a report on their proceedings for the last financial year.

Chapter 8—General

Part 1—Public notaries

The provisions of this Part, which are carried over from the Legal Practitioners Act 1981, regulate the admission of public notaries. If the Supreme Court is satisfied that the name of a public notary should be struck from the roll of public notaries, the Court may, on its own initiative, or on the application of the Attorney General or the Law Society, strike the name of the public notary from the roll of public notaries.

Part 2—Miscellaneous

This Part includes miscellaneous provisions relating to the liability of principals of law practices, the disclosure of information by regulatory authorities, confidentiality of personal information, service of documents, approved forms, inspection of documents, the making of necessary or expedient regulations and various other matters.

Schedule 1—Repeal and transitional provisions

Part 1—Repeal of Act

1—Repeal of Legal Practitioners Act 1981

This clause repeals the Legal Practitioners Act 1981.

Part 2—Transitional provisions

The clauses of this Part provide for transitional arrangements in connection with the repeal of the Legal Partitioners Act 1981 and the enactment of the new Act.

Debate adjourned on motion of the Hon. S.G. Wade.

At 20:53 the council adjourned until Thursday 18 October 2007 at 11:00.