LEGISLATIVE COUNCIL

Tuesday 23 October 2007

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

PAPERS

The following papers were laid on the table:

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

Reports, 2006-07—
- Code Registrar for the National Third Party Access Code for Natural Gas Pipeline Systems
- Construction Industry Long Service Leave Board
- The Institution of Surveyors Australia—South Australian Division Inc

2007 Ports Pricing and Access Review prepared by the Essential Services Commission of South Australia (September 2007)

Actuarial Investigation of the State and Sufficiency of the Construction Industry Fund—prepared for the Construction Industry Long Service Leave Board as at 30 June 2007

Regulations under the following Acts—
- Child Sex Offenders Registration Act 2006—General
- Fair Work Act, 1994—Clothing Outworkers
- Maritime Services (Access) Act 2000—Continuation

South Australian Ports (Disposal of Maritime Assets) Act 2000—Panel Membership

Return of Authorisations issued to Enter Premises pursuant to Section 83C(1) of the Summary Offences Act 1953—1 July 2006 to 30 June 2007

Return of Authorisations issued to Enter Premises pursuant to Section 83C(3) of the Summary Offences Act 1953—1 July 2006 to 30 June 2007

Return pursuant to Section 74B of the Summary Offences Act 1953—Road Block Establishment Authorisations—April 2007 to 30 June 2007

Return pursuant to Section 83B of the Summary Offences Act 1953—Dangerous Area Declarations—1 April 2007 to 30 June 2007

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

Reports, 2006-07—
- Animal Welfare Advisory Committee
- Coast Protection Board
- Department for Environment and Heritage
- Environment Protection Authority
- General Reserves Trust
- Land Board
- Radiation Protection and Control Act 1982
- South Australian Heritage Council
- Wilderness Protection Act 1992—South Australia

Regulations under the following Acts—
- Fair Trading Act 1987—Residential Parks
- Liquor Licensing Act 1997—Dry Zones—Salisbury

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

Regulation under the following Act—
- Controlled Substances Act 1984—Optometrists

XENOPHON, HON. N.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:21): I lay on the table a copy of a ministerial statement relating to the resignation of the Hon. Nick Xenophon and the Legislative Council casual vacancy made earlier today in another place by my colleague the Premier.

WATER INCENTIVES PACKAGE

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:21): I lay on the table a copy of a ministerial statement relating to water incentive packages made earlier today in another place by my colleague the Hon. Karlene Maywald.

QUESTION TIME

BRADKEN FOUNDRY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:21): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the Bradken Foundry expansion.

Leave granted.

The Hon. D.W. RIDGWAY: As honourable members would know, the expansion of the Bradken Foundry was declared a major development by this government on 25 January 2006. It has gone through a whole range of processes. I think the declaration was amended on 13 April 2006, and the issues paper was then issued by the Major Developments Panel on 26 April 2006. That particular paper was open for public comment from 26 April to 23 May 2006. The guidelines for the public environmental report (PER) level of the assessment to be determined was released by the Major Developments Panel on Wednesday 28 February 2007, and public comment was extended until 30 April 2007.

There was then a response by the proponent, Bradken, to the public and agency comment on the public environmental report, and that response document was released on Wednesday 18 July 2007. Members would know that this development is an important industrial development in Adelaide's northern suburbs and, in fact, Bradken themselves are now some 10 months behind schedule and are desperately awaiting the government's announcement on this project. My questions to the minister are:

1. When will the final announcement be made?

2. Is the final announcement being delayed until after the federal election?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:23): In relation to the latter point: if anyone has been playing politics with this, it is, of course, the Liberal Party, with a very misleading and dishonest article that was put out by that candidate recently, saying that the government had made a decision but was holding off. That, of course, is not true. As with all major projects, the decision is made by the Governor, and the Governor, of course, will be advised by the government in due course in relation to that matter. I have received a preliminary draft version of the assessment report, which is prepared by Planning SA, which assesses the proposal, including all issues raised during the public consultation period and the proponent's response to the submissions which are raised during the consultation period.

A couple of issues need to be further clarified, and Planning SA has been working on these matters. I understand that I will be having a meeting with Bradken shortly to discuss several of those issues. Once that work is concluded, I will then be in a position to finalise the report and submit it, via cabinet, for the Governor's consideration of the proposal. Along with the Governor's decision the assessment report will, of course, when it is finalised, be publicly released, but I do not intend to pre-empt the decision of the Governor on this matter.

BRADKEN FOUNDRY

The Hon. J.M.A. LENSINK (14:25): I have a supplementary question. The minister referred to outstanding issues and cited planning. Will the minister advise as to whether any of those outstanding issues are limited just to planning or do they include environmental issues, as well?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:25): I do not really think it is appropriate that I comment on it but, essentially, they are planning issues.

NATIVE VEGETATION COUNCIL

The Hon. J.M.A. LENSINK (14:25): I seek leave to make a brief explanation before asking the Minister for Environment and Heritage a question about Native Vegetation Council membership.

Leave granted.

The Hon. J.M.A. LENSINK: The previous membership of the Native Vegetation Council, which I believe expired around 30 June this year, has largely been dumped, apart from a couple of members who have been retained, and the new membership does not appear to have its full complement. I am advised that the Local Government Association has submitted three names to the minister, but each has been rejected for some reason or other and that the Native Vegetation Council has at least had one meeting since the new membership was established. Will the minister advise why this is so?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:26): I thank the honourable member for her important question. Recently, of course, I made some very important changes to the Native Vegetation Council. This was done to strengthen the integrity of the principles that are required to be achieved in terms of protecting and enhancing our native vegetation reserves, but also in addressing some of the issues that were put forward about streamlining the processes for approvals for clearances in a timely way. One of the things that I sought to do was to create a much stronger link between the natural resources management boards and the Native Vegetation Council.

What I have done, with the agreement of Mr Dennis Mutton, is appoint a new presiding member of the Native Vegetation Council, who is the same presiding member of the current Natural Resources Management Council. This was done to try to achieve better integration and consistency between natural resource management and the native vegetation agenda. I have also appointed a number of other mainly deputy members from the natural resources management boards to be deputy members of the council in an effort to, again, have better integrated and closer communication between the two areas.

In respect of the local council, the legislation requires that the various representative bodies nominate three different names to be put forward for my consideration. If my memory serves me correctly, local government put forward only two names and so it was not complying with the legislation. I understand that this was brought to its attention and it was then requested to put forward three names. It has informed us that it is currently considering putting forward a third name. Currently, it is really a matter of local government not fulfilling the legislative requirements. I am sure the Hon. Michelle Lensink is not suggesting that I do anything that would be in breach of the legislation. This matter will be addressed and, when three names are put forward, one will be nominated in accordance with the act.

I stress that a great deal of work has gone into enhancing and improving what we are doing in relation to native vegetation; it is not just better coordination between natural resource management and native vegetation. I have also reported in this chamber that I have split the responsibilities of policy and clearance approvals so that both policy development and concentration on that most important work can be done more efficiently and effectively, whilst setting up a panel of experts to expedite the clearance applications; and we know that there has been some concern about the timeliness of taking those applications through.

I am also committed to working with the Minister for Urban Development and Planning (Hon. Paul Holloway) on ensuring that we better coordinate native vegetation considerations earlier in the planning process. Currently, they are done predominantly at the end of the planning process and, of course, often the proponent has ticked off on a whole range of requirements. We know that particularly large and complex developments can be very time consuming and expensive. So, they tick off on all their other requirements but, in relation to native vegetation, they have not been able, in a realistic way, to consider the requirements under the legislation. We believe that building a pathway of consideration, where native vegetation requirements are articulated and dealt with much earlier in the planning process, will be very worth while and useful. As you can see, Mr President, a lot of good work has been done in developing and enhancing the processes involving native vegetation.

OMBUDSMAN

The Hon. R.D. LAWSON (14:32): I seek leave to make a brief explanation before asking the Leader of the Government a question about the Ombudsman.

Leave granted.

The Hon. R.D. LAWSON: The former South Australian ombudsman, Eugene Biganovsky, resigned on 22 June this year. The Ombudsman Act provides:

> On a vacancy occurring in the office of the ombudsman, the matter of inquiring into and reporting on a suitable person for appointment to the vacant office is referred by force of this subsection to the Statutory Officers Committee...

a committee of which the minister is chair and I am honoured to be a member, especially as it is an unpaid committee. The Parliamentary Committees Act provides that the functions of the Statutory Officers Committee are to inquire into, consider and report on a suitable person for appointment to offices such as that of the ombudsman. Without in any way mentioning the deliberations of the committee, I assure you, Mr President, I indicate that the committee last met on 23 July this year.

Bearing in mind that there are only eight scheduled sitting days before the Christmas break and that the Statutory Officers Committee has not deliberated on this matter and would have to undertake to do so, prepare a report and present it to both houses for its consideration, and bearing in mind the importance of the office of Ombudsman and the fact that it has been vacant for a number of months, I ask the minister: does the government intend to recommend a prompt appointment of a new ombudsman, and will the minister convene a meeting of the Statutory Officers Committee to further consider the question of a replacement for Mr Biganovsky; if so, when?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:34): The Hon. Robert Lawson is a member of the committee and well knows the procedure established by the committee for appointing an ombudsman: it is the same procedure as was used for appointing the State Electoral Commissioner last year. Without going too far into the proceedings of the committee, obviously, applications were called for the position and a preliminary assessment of those applications will be undertaken by a panel. I have just this moment checked with the secretary of the committee who informs me that later this week that panel will be interviewing the applicants.

Then, as was done with the State Electoral Commissioner, a short list will be presented to the Statutory Officers Committee; and as soon as I get that information I will be calling the committee together. The reason the committee has not been convened since its previous meeting is simply that it was waiting for the processes—which were established by the committee—to come into effect. Once I have the information that the short list has been selected by the panel appointed by the Statutory Officers Committee the committee will meet to complete the deliberations which, as I said, I hope will be fairly soon.

STANSBURY MARINA

The Hon. J.M. GAZZOLA (14:36): Will the Minister for Urban Development and Planning provide the council with an update on the planning assessment process for the proposed marina development at Stansbury on the beautiful Yorke Peninsula?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:36): Of course, the honourable member is quite right: Yorke Peninsula is a particularly attractive part of our coastline, and boating activities play a significant part in the lives of those who not only live there but who also recreate there. The Stansbury Marina Development Company is proposing to construct a marina basin and moorings for some 100 recreational boats and a residential subdivision of 113 waterfront allotments and waterways on southern Yorke Peninsula. This development is being promoted by Dr Satish Gupta of Gupta Environmental and Planning Consultants and Rob Gabb and David Lucas of Lucas Earthmovers, a firm that is also involved in the marina project proposed by the Cape Jaffa Development Company on the Limestone Coast in the South-East of the state. The proposed location of the Stansbury marina complex is immediately north of the existing jetty at Stansbury on land located to the north of the township.

This proposed marina and waterfront development was declared in March this year under the state government's major development assessment process, and an amended development application was received in September based on the developer's original concept lodged in June.

The proponents of this marina development have been asked by the Development Assessment Commission to produce an environmental impact statement (EIS) that will examine in detail the likely effects of the construction on the coastline and surrounding areas; and, just as importantly, ways that these issues will be managed if the project is approved.

The Development Assessment Commission (the independent agency that oversees this consultation process) has provided the proponents with formal guidelines that outline exactly what issues the studies should address. These guidelines cover more than 100 separate environmental, social and economic issues arising from the marina and associated developments at Stansbury, and include:

- the potential impact of climate change, including sea level rise and water availability;
- the visual and environmental impacts of the construction of breakwaters and other elements of the marina development;
- the effects of any increased boating and other transport movements associated with the development;
- potential impacts on the coast and coastal waters and the plants, life and industry supported there;
- infrastructure issues, such as water, sewerage, gas, electricity, stormwater and transport; and
- water issues, such as supply, water reuse and harvesting, as well as grey water disposal.

The proponents must also explain the likely economic and social impacts on Stansbury.

The requirement for an EIS for the marina project is part of a rigorous assessment process imposed in this state—a process set out under the major development provisions of the Development Act. Consideration of the development application by the independent Development Assessment Commission is just the first stage of a detailed major development assessment process carried out at arm's length from the government. Once the group proposing this marina produces an EIS, the study will be made available for at least six weeks of public and agency consultation, including a public meeting. At the end of that minimum six-week period of consultation the Stansbury Marina Development Company must then respond to all issues raised in submissions. These issues and the company's responses are then published in a comprehensive formal response document. The state government will then assess the entire proposal and the final decision will be made by the Governor on whether the project can proceed and on what conditions.

POLICE ARREST WARRANTS

The Hon. D.G.E. HOOD (14:39): I seek leave to make a brief explanation before asking the Minister for Police a question about outstanding arrest warrants.

Leave granted.

The Hon. D.G.E. HOOD: Family First recently obtained data through the Freedom of Information Act from the Courts Administration Authority, which indicated that a staggering 30,498 court issued warrants are currently outstanding and active in South Australia, which is potentially one active warrant for every 50th South Australian on average. Family First has been advised by a SAPOL officer that the vast majority of active arrest warrants are not pursued. Most warrants are simply recorded and filed, due to a lack of resources. Police are generally waiting for an offender with a warrant to either hand themselves in or to be discovered by a routine traffic stop, or otherwise for the offender to be arrested on unrelated future charges. My questions are:

1. Is the minister concerned that there are so many potentially dangerous fugitives in the community or outstanding arrest warrants relating to them?

2. What percentage of the total number of outstanding arrest warrants is being actively pursued by SAPOL?

3. Of the percentage of those not being actively pursued, how do the police propose to apprehend those who do not drive and are therefore unlikely to be either pulled over by police on unrelated matters or impacted by a restriction of trade with Transport SA?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:41): I understand there are a number of reasons why arrest warrants may be outstanding. Obviously those warrants remain in

force until they are exercised, and in some cases it could be many years. Some warrants may go back many years and the person may have gone overseas, died or whatever. More important is the number of those warrants that can be exercised. It is my understanding (and I will have to get information as I do not have the statistics with me) that what is important is the number of warrants we have now compared with what we had in the past, and whether this number, taken in absolute terms, is significant or otherwise. That depends on how many of these go back for many years. I will obtain that information for the honourable member and provide him with a response from the police as to their assessment of the significance of the particular number to which he refers.

ST DIMITRIOS CHURCH

The Hon. R.I. LUCAS (14:43): I seek leave to make a brief explanation prior to asking the Leader of the Government a question about pork barrel payments made out of political slush funds.

Leave granted.

The Hon. R.I. LUCAS: On 26 June last year the Greek Orthodox Church in Mr Rann's electorate wrote a letter to Mr Rann asking for a grant towards a building and carpark project costing $430,000. I note that the copy of the letter sent is dated 26 June but, interestingly, has no stamp from the Premier's office which would normally indicate the date on which it was received. On the same day, 26 June, Mr Rann approved the grant and sent a memo to the acting treasurer, the Hon. Mr Holloway. On the very same day, 26 June 2006, the acting treasurer, Mr Holloway, approved the transfer of additional appropriation of $430,000. The note signed by the acting treasurer on the same day, 26 June, has the acting treasurer approving additional appropriation of $430,500 from the government's appropriation fund to be paid to the St Dimitrios Greek Orthodox Parish at Salisbury. He noted that a new line in the administered items of the Department of Treasury and Finance may need to be established, not surprisingly, and approved the additional payment of $430,500 in 2005-06 from administered items for the Department of Treasury and Finance.

The actual grant was paid to the church out of the Premier's special appeal, minor grants and community grants fund, which according to a senior manager in the Premier's Department usually pays grants of only up to about $3,000. I note also in the morning newspaper that the Parish Reverend Christos Tsoraklidis told *The Advertiser* 'he had not discussed the plan with Mr Rann and the funding was approved solely on a three-page submission outlining the project'. I assume that was the three-page letter received on 26 June 2006. As I have said to the media, we make no criticism of the church involved. If it can get the money, good luck to it. Our concerns are with the Premier and his processes.

A number of commentators have said to me that they are concerned about and critical of the Premier's actions in relation to this matter, which they describe as pork-barrelling from the Premier's own political slush fund for a church within his own electorate. My question is directed to the Leader of the Government, who had the critical role of approving this grant on the same day he received it. My questions are:

1. How did the acting treasurer satisfy himself in less than a few hours, possibly minutes, that it was appropriate and in the public interest for him to make a special grant of $430,500 to the Premier so that he could pass on a payment to the church within the Premier's own electorate?

2. What advice did he take to satisfy himself as acting treasurer that it was appropriate and in the public interest that he should make that particular grant?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:46): I assume that the Hon. Rob Lucas is acting in concert with Mr Hamilton-Smith, Leader of the Opposition, in attacking this particular grant. I do not know what it is with members of the Liberal Party opposite, why they so dislike it. Is it the Greek community or is it this particular institution they are attacking? That is all it can be. It is quite disgraceful. What gross hypocrisy from the Liberal Party. This grant was made last year—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: I will answer it in full detail. In fact, I will go through a lot of detail about the processes used by the Liberal Party of Australia. We know that the Hon. Rob Lucas lives in the eastern suburbs in Mr Christopher Pyne's electorate. It was $430,000 to a community that is doing work. It was a grant which came from a program that was established

when Mr Lucas himself was treasurer. It was established by a Liberal leader, his former colleague. That is how the grant scheme was established. It was established to make grants—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Here we go again. The honourable member does not like it but he will have to cop it. His hypocrisy and dishonesty will be exposed in great detail, so members should just sit and wait. He was there as treasurer when this fund was established. The honourable member used the word 'pork-barrelling'. If a government was going to pork-barrel, why would it do it in 2006 just after an election? I contrast that with what is happening now with the federal Liberal government—his colleagues. He lives in the eastern suburbs. Mr Christopher Pyne recently gave $1 million—not $430,000—to 400 junior soccer players at Campbelltown. Some $100 million was spent on the Regional Partnership Program, at least $40 million of which was allocated during the previous federal election campaign. That is pork-barrelling. How dare Rob Lucas talk about it. He can certainly speak with expertise on pork-barrelling, because he comes from a party that is totally engrossed with it. In this morning's paper—

Members interjecting:

The Hon. P. HOLLOWAY: Gee, they do not like it. In an article in *The Australian*, under the headline 'Pork-barrel', it states, 'Turnbull floods his electorate with grants'. What is rotten about this is that this is an example of Liberal Party standards. This is the calibre and standard set by the person who asked the question. This is the sort of person he is. He has been here for 25 years and in 25 years he has soaked up this Liberal culture. The article states, 'Turnbull floods his electorate with grants'. We are in a federal election campaign and the government is in caretaker mode, yet a federal minister is giving 13 grants out of a total $174 million to his own electorate.

I contrast that with what happened last year when the Premier used a fund—which was established by the honourable member's former leader when the honourable member was treasurer—to give $430,000 to a deserving body. If the body is not deserving, let us hear the person opposite, Martin Hamilton-Smith and others have the guts to come out and attack the body. If they do not think they are worthy of getting this money, let them have the guts to say it. Instead, they just carry on, making these accusations.

As was said on the radio this morning, the Hon. Rob Lucas talked about this issue. Of course, we all know the cosy relationship he has with the Greg Kelton of *The Advertiser*. Whatever he does in his committee, Greg Kelton publishes it. We also know there is Bevan and Abraham in the morning. What was said this morning by the Hon. Rob Lucas—

Members interjecting:

The Hon. P. HOLLOWAY: What I do not like is dishonesty, Liberal hypocrites and the sort of sleazy accusation that is made by the Hon. Rob Lucas. After 25 years in this parliament that is all he can come up with; the only questions he ever asks are all about making accusations. He and his leader, Mr Hamilton-Smith, whom presumably he is in bed with over this issue, do not have the guts to come out and attack the organisation that gets the money. Notice how no-one has ever said it is not deserving. Notice how these people never face the question: is this grant deserving or not?

I tell you what: you can ask that question about some of the grants currently going around under the federal Liberal government, even though it is supposed to be in caretaker mode. You can certainly ask that question about that, but you will not hear an answer. Let one of these Liberals stand up and say that this was not a deserving cause; that this St Dimitrios cultural learning centre is not deserving of the money. They will not; you will not hear that, and I think that says a lot.

In relation to the question about myself, as the Hon. Rob Lucas said himself, the acting treasurer approved the transfer of almost $500,000 across to the Premier's department to pay for it. It was a transfer from a contingency, which I did on the recommendation of Treasury.

ST DIMITRIOS CHURCH

The Hon. R.I. LUCAS (14:51): As a supplementary question arising out of the answer, will the former acting treasurer in relation to this transaction confirm that he took no independent advice from any body, individual or organisation that knew anything about this grant before he threw $430,500 at them for this grant?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:52): Again we hear about 'throwing money'. Let the Hon. Rob Lucas and his leader in another place come up and have the

guts to talk about this organisation. In answer to the question, what I did was approve on advice of the Office of the Treasurer a transfer of money. It was not the role of the Treasurer to assess the application per se: it was—

The Hon. R.I. Lucas: It was your decision.

The Hon. P. HOLLOWAY: The Hon. Rob Lucas believes that this group is not deserving. If he believes that I have acted in some way improperly, let him and his federal leader come up with—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Come on; I'll stop.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: If you are going to talk about the Auditor-General, we know what the Hon. Rob Lucas did. I think you will find that he is the only treasurer in the history of this state who would come out and attack the then auditor-general of this state. The auditor-general was so critical of some of the things that he did, that he was attacked. I am happy to face the scrutiny of any investigation. My role was simply to approve a transfer of funds, which I did on the advice that I was provided.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I know the Hon. Rob Lucas does this all the time. He is a great one at making accusations. He spends his entire time when not sitting in parliament wallowing around in the political sewer. When he comes up, this is the only product. Just imagine: 25 years in parliament and this is the outcome; this is what you come to. The only questions you ever ask are questions making false accusations under parliamentary privilege. If the Hon. Rob Lucas believes the grant to the St Dimitrios cultural learning centre is undeserved, let he and the leader in the other place have the courage to stand up and say this grant should not have been made Let them say that this is not a deserving cause. They cannot, and they will not: they cannot do that. The Hon. Rob Lucas is interjecting so much now because he knows that, if it comes to the substance of this grant, there is nothing there—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Sleazy accusations. Yes, he is a master of that; we know he is unparalleled in the South Australian parliament. He will set a reputation After 160 years of this Legislative Council, he has gained a reputation that will probably never be bettered in terms of the number of accusations he has made under parliamentary privilege. Let him come up with just one thing of substance that indicates that this particular grant is not justified. But he cannot.

The PRESIDENT: The Hon. Mr Wortley.

Members interjecting:

COUNTRY FIRE SERVICE, NARACOORTE

The Hon. R. WORTLEY (14:55): I was so captivated by the integrity of the opposition, I did not hear the call. I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about the Naracoorte country fire brigade.

Leave granted.

The Hon. R. WORTLEY: The South-East is a vibrant and important South Australian regional centre. The Country Fire Service has a long and proud history in that region, including in and around Naracoorte. Is the minister able to provide any information about what I understand is a recent milestone for the Naracoorte brigade?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:56): I thank the honourable member for his important question. I was delighted to be invited to a dinner last Saturday evening, 20 October, to commemorate the sixtieth anniversary of the Naracoorte CFS brigade. The Naracoorte CFS brigade is a great example of the history and tradition of emergency services volunteering in South Australia. The brigade was formed because the community needed protection. As so often happened in the early days of the fire service, ordinary South Australians, in collaboration with local government, volunteered their services.

The brigade has been a leader in the CFS; it was the first brigade to have a stand-alone rescue appliance, which was commissioned in 1981. It now has three very modern fire and rescue appliances. It is a very healthy brigade, with 35 operational members, who are strongly supported by a further 15 auxiliary members. Importantly for the next generation, the brigade has a very healthy cadet group of 12 young future firefighters, and I will continue to promote at every opportunity the development opportunities our emergency services provide for young people.

I understand that the success of the brigade is due in no small part to the fact that the brigade is a very social and active one that supports its volunteers and their families. Brigade members also undertake, aside from incident responses, other community programs, and this is a further example of the commitment by volunteers to their community. The support by local employers in releasing their employees to respond in a volunteer role to emergencies is also to be commended and acknowledged. Our emergency services family is bigger than just our volunteers: it is a partnership with families and the employers that support them. I note that the regional press in the South-East has been very community minded in publicising prevention and preparedness activities by local communities in preparation for the bushfire season. It is a further indication of just how cohesive this community is when it comes to community safety.

The evening was another opportunity to meet with and to listen to the views of volunteers, and it was also a wonderful opportunity to recognise individual achievements, with a presentation of 10 and 15-year service awards, national medals, and brigade, cadet and fireman of the year awards. As well as Chief Officer Euan Ferguson, the Deputy Chief Officer of the CFS, Andrew Lawson (who I understand is an adopted local) was involved in the presentation of some of those awards, which is particularly fitting. As I have said, Andrew himself is viewed as a local lad and was warmly welcomed. The success of the brigade is also due to Mr Rex Hall, a key member, who is known across our state for his long involvement with the CFS, particularly in support of volunteers. Rex's contribution to documenting the history of the CFS in his book *Forty Flaming Years*—

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

The Hon. CARMEL ZOLLO: Is he? Mr Dawkins interjects to say that he is from One Tree Hill.

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

The Hon. CARMEL ZOLLO: Closer to your home—and the recent history of the CFS, *Smoke in your eyes,* should be required reading for anyone involved in the CFS or, indeed, emergency services. Looking back at the photos and reading some of the stories, one sees that the CFS really has come a long way. One thing does remain constant, and it is probably the most important thing: the willingness of CFS members to dedicate their time to protecting life and property, saving lives and helping out their neighbours is truly extraordinary. I have been asked questions in this chamber about paying our Country Fire Service volunteers, and I think those people clearly need to get out and meet members, such as those who volunteer for the Naracoorte CFS. They do not think of the cost; they volunteer for their area to see a safer community, for the camaraderie and for the training and skills that come with being a CFS volunteer. We will always be indebted to them.

I would like to thank all those involved in organising this very fitting recognition of the success of the brigade. In August last year I met many volunteers and community leaders and employers at an Emergency Services evening at Naracoorte and at a breakfast the next morning. It really was a pleasure to catch up with many of those whom I met then. Also, I wish Darren Murray, the captain of the brigade, and his team a safe fire danger season and every success for the next 60 years of the brigade.

PARRAKIE WETLANDS

The Hon. SANDRA KANCK (15:01): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the environmental impact of the proposed Kingston coal mine on the Parrakie wetlands.

Leave granted.

The Hon. SANDRA KANCK: Last week a company called Hybrid Energy announced a proposal to develop a coal mine near Kingston in the South-East of the state. Almost immediately the government and the opposition announced unqualified support for the project, clearly without having done any homework about the environmental implications. It is almost 25 years since the Western Mining Corporation investigated this deposit and decided against it because of the

problem of what is rather quaintly called de-watering, which is a process of sucking out all the moisture from the coal deposits and, of course, in the soil above it. This mine, if it goes ahead—and this has not been publicly recognised by anyone yet, it seems—will be directly underneath the Parrakie wetlands, with the de-watering resulting in the destruction of those wetlands.

The West Avenue watercourse, of which the Parrakie wetlands is a part, has been described by the minister's own department as 'arguably the largest and most pristine area of watercourse in the upper South-East. It is home to several species that are classified as nationally threatened and nationally vulnerable'. My questions are:

1. Does the minister agree with her department's description of the environmental values of the West Avenue watercourse?

2. Was the minister given any notice of this project prior to the public announcement?

3. Does the minister consider that the Parrakie wetlands would be placed under threat by any de-watering for the coal mine?

4. Will the minister direct her department to investigate this proposal in terms of the drying impact on the Parrakie wetlands, including extinction of the Southern Bell Frog in South Australia, and will she table any report arising from that investigation?

5. If that report advises of environmental concern, will the minister recommend to her colleagues that the project proponents be required to prepare an environmental impact statement?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:04): I thank the honourable member for her important questions. At this stage, I am not aware of the status of this particular project and where it is up to in terms of the planning process.

The Hon. P. Holloway interjecting:

The Hon. G.E. GAGO: I was not aware that any plan for this project had been put forward at all. Clearly, if a plan was to be put forward there is a range of requirements (environmental, social and economic) that such plans are required to satisfy before they are approved. No planning approval has even been put forward, so all I can do is reassure the member that if it was to be put forward (and there is no guarantee that it will) then all environmental impacts will have to be satisfied, full EIS would need to be completed and, as I said, environmental, economic and social impacts would need to be considered.

NATURAL RESOURCES MANAGEMENT

The Hon. C.V. SCHAEFER (15:05): I seek leave to make a brief explanation before asking the Minister for Environment a question about the Auditor-General's Report.

Leave granted.

The Hon. C.V. SCHAEFER: In his report, the Auditor-General was critical of the financial reporting and accountability of NRM boards and the tardiness, on the part of the government, in assisting the boards to meet the required standards. Given that the boards have been obliged to report under these guidelines since 2005-06, but in many cases were still unable to comply for the 2006-07 report, what procedures has the government put in place to assist the boards to meet these requirements?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:06): I thank the member for her important question. The Auditor-General's Report for the 2006-07 financial year, the independent audit report signed by the Auditor-General, was issued in relation to the Department of Water, Land and Biodiversity Conservation; a financial report that was unqualified. In relation to the document as an overview, the view was that the financial practices were in order. In relation to the annual reports, in particular, I am aware that there have been issues of concern about their timeliness due to the processes involved with the boards. I understand that it has been looked into and a number of measures have been put in place to assist the boards to be able to process that in a more timely way. I am happy to take on notice the details of that and bring back a response.

CONSERVATION PARKS

The Hon. I. HUNTER (15:07): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about conservation parks.

Leave granted.

The Hon. I. HUNTER: South Australia's many conservation parks not only conserve our native flora and fauna but also the cultural connections of our traditional owners to their lands, as well as honouring the role of early Europeans in South Australia. They are important to our state's cultural history and provide a valuable connection to our past. Will the minister inform the council of the latest moves to better recognise the cultural heritage of our parks and of early Europeans in South Australia?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:08): I thank the honourable member for his most important question. I am pleased to inform the chamber that today I announced that the state government has renamed part of the Horsnell Gully Conservation Park to recognise the land acquired from its original owners, the Giles family. Horsnell Gully Conservation Park (for those in this chamber who have not had a chance to visit it) is about 10 kilometres east of Adelaide in the Mount Lofty Ranges, between Greenhill Road and Norton Summit. The process of recognising the contribution of the Giles family to this park has, indeed, been long and very drawn out, but today's announcement honours an undertaking given when the State Planning Authority purchased the land at the eastern end of the park from the Giles family in 1979.

Until now this section of land has not been properly recognised, merely incorporated into the 125-hectare Horsnell Gully Park. This was a matter that the government was keen to correct, given the Giles family's important connection to this section of land, so I am pleased to be making this announcement today.

Charles Giles was a pioneer of the horticultural and floricultural industries in this state. I am told he purchased the land while living on a South Road property and walked to the summit every Monday with a week's provisions, returning home on Saturday—hard lives, indeed, in those times.

There was no road up the valley to Third Creek, which meant that expeditions such as these were the only option. Visitors to the site may still see the ruins of the workers' huts, which were part of the extensive nursery founded by Mr Giles in that particularly fertile gully. It is therefore important that we reflect the history of this land and recognise Mr Giles's role in the conservation park we enjoy today. The Giles section of Horsnell Gully Conservation Park may already be known to those who visit the area below Norton Summit. However, proclamation of its own entity provides the status deserved by the park that is part of the greater Mount Lofty parklands.

The Giles Conservation Park is not only an important reminder of one of our pioneering Europeans but it is also home to some very rare native flora and fauna. The creeks and rocky areas are home to the bush rat and elusive yellow-footed antechinus, while the upper slopes of the valley remain home to some fantastic examples of native plant life, including brown and messmate stringy bark forests. Of course, there are also some great bushwalking trails and, with the warmer weather already upon us, it is a great opportunity for everyone to get up there and experience the heritage of this park.

The Giles Conservation Park will continue to be managed by the Department for Environment and Heritage in accordance with the objectives of management under the National Parks and Wildlife Act. A management plan will be prepared outlining the specific objectives and strategies for management of its assets. The government's move to rename the park has been supported by the Surveyor-General and the Adelaide Hills Council, and I am pleased to have their support on this matter. It is a long overdue but fitting recognition of the Giles family and, in particular, Charles Giles.

STRIKE OIL LIMITED

The Hon. M. PARNELL (15:12): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about a proposed coal-fired power station north of Kingston.

Leave granted.

The Hon. M. PARNELL: Members would be aware, both from the media and the question asked earlier today by the Hon. Sandra Kanck, of an announcement by Strike Oil Limited that it is forming a company (Hybrid Energy SA Pty Ltd) to build a coal-fired power station north of Kingston in the South-East. According to the Stock Exchange announcement, Strike Oil says:

> The proposed FuturGas Project will apply the latest combustion gasification and carbon capture and storage (including geosequestration) technologies to a large lignite—

which, to you and me, Mr President, is brown coal—

> resource (578 million tonnes)...to produce low greenhouse emissions power, gas, transport fuels and other products in a sustainable manner. As a first step it is proposed that the FuturGas Project will provide 150 to 300MW of base-load electric power to the South Australian market by 2015.

I note that energy minister Conlon is reported in the media as wishing the company 'all the best', but he says it is 'a long way from the idea stage to market'. My questions are:

1. Does the government support new coal-fired power stations in South Australia?

2. How would this project impact on South Australia's legislated greenhouse gas reduction target of reducing our emissions by 60 per cent by the year 2050?

3. Can the minister point to any other coal-fired power station in Australia that uses carbon capture and storage technology to eliminate its greenhouse gas emissions?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:15): In relation to the latter amount, probably there are not any just yet, but I am sure there will be in the very near future. I understand that both major parties have been talking about the need for clean coal technology. I am sure that there will be a significant investment on that under way in this country; but, really, that is perhaps more a matter for my colleague the Minister For Energy than me.

In relation to the proposal for a coal-fired power station at Kingston, as the Hon. Sandra Kanck mentioned earlier, there had been a proposal by Western Mining some years ago. That proposal was discontinued. There were a number of issues with that. Strike Oil, which reinvestigated the proposal, significantly changed the proposal to address some of those issues that were raised. At this stage, and as my colleague has said, it is very much in the conceptual stage. I am not aware of anything being lodged in relation to that proposal as yet. However, as with all proposals, this government will consider it.

Obviously, in relation to the amount of greenhouse gases and other questions asked by the honourable member, we would have to see the particular proposal and the scale of it before commenting. At this stage, as I said, the company has approached the government (and, as I understand it, the opposition) as a courtesy to inform it that it is looking at the proposal. As I said, the next step will be to formalise that. When that formalisation comes about, as indicated by my colleague the Minister for Environment, it will have to go through all the proper stages. At this stage it really is premature to comment because as I said the formal application has not been lodged—or if it has been lodged it is so recent that I am not aware of it. I will get more information about that, but I suspect it will be some time before any detail will become available so that we can answer those sorts of questions.

REGIONAL DEVELOPMENT BOARDS

The Hon. J.S.L. DAWKINS (15:17): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation, representing the Minister for Regional Development, a question about the Regional Development Board resource agreements.

Leave granted.

The Hon. J.S.L. DAWKINS: I advise the council that seven of the 13 regional development boards (RDBs) in this state will have their current five year resource agreements expire on 30 June 2008. In addition, the other six RDBs, the resource agreements of which were to expire on 30 June 2007 but which were given a 12-month extension, will also have their agreements expire at the end of this financial year. I understand that the minister took this decision so that all boards would be in funding alignment and to allow for the implementation of new key performance indicators and closer integration with the economic targets under South Australia's Strategic Plan.

All 13 RDBs do excellent work for the widely varying regions they represent. This work can only happen due to the efforts of many loyal and dedicated staff, as well as the voluntary board

members. Indeed, the deterioration in seasonal conditions following last year's drought will only place increased importance on the work of the RDBs. It is vitally important that the boards and their staff are provided with certainty about the future of funding and contracts as soon as possible. This is needed to ensure that we keep the skills of these people in the regions where they are highly valued. My questions to the minister are:

1. Will she indicate what progress is being made in developing the resource agreements for all the RDBs, particularly with the local government sector which provides equal funding to that of the state government?

2. Will she also indicate when an announcement of the new resource agreements is expected to be made?

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 important questions pertaining to RDBs. I am happy to refer those questions to the appropriate minister in another place and bring back a response.

SPORTING FACILITIES

The Hon. T.J. STEPHENS (15:19): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Minister for Recreation, Sport and Racing, a question about sporting facilities.

Leave granted.

The Hon. T.J. STEPHENS: Recently the Chief Executive of Sport SA, Ms Jan Sutherland, highlighted that our current sporting facilities barely coped with the recent Masters Games (and, indeed, the World Fire and Police Games) and detailed the need for new developments specifically within the western suburbs. The idea was raised that an icon multi-use sports stadium could be built in the West Parklands, a stadium that could host a wide range of sport and entertainment events. Will the minister detail the government's view on such a proposal, given that the government's sporting strategic plan 2007-17 stated the need to develop facilities that will provide for international competition standards?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:20): I will get a response from my colleague in another place. I make the general comment that, if we are looking at significantly more money being spent on sport, members opposite apparently have a tax review at present, with the Leader of the Opposition in another place raising expectations that a future Liberal government would slash tax. We have requirements every day for more money to be spent in virtually every area of government. It will be interesting, when the shadow treasurer—who is also the Leader of the Opposition in another place—comes to pulling all this strategy together next year, to see how he will pay for all the promises he has been offering. We even had the interjection earlier today by the shadow minister for police saying that the police need more resources, notwithstanding the fact that they have had record resources under the current government.

We have all these calls for more resources, which simply means more taxpayers' money going into all these areas, while at the same time members opposite are saying that we should have a tax review, cutting payroll and land tax and the few sources of revenue that we have. I will get the detail from my colleague the minister for sport in another place, but members opposite will have to come clean over the next two years as to where their priorities lie and how they will afford the promises they have made to the people of South Australia. You cannot promise more money in every area of government activity whilst at the same time cutting taxes—it does not add up.

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (PENALTIES) AMENDMENT BILL

In committee.

Clauses 1 to 4 passed.

Clause 5.

The Hon. SANDRA KANCK: I move:

Page 3, lines 5 to 12—

Delete subsection (1) and substitute:

(1) If—

(a) a person contravenes a provision of Part 3; and

(b) the contravention causes serious harm to another; and

(c) the person—

(i) knew that the contravention was likely to cause serious harm to another; or

(ii) was recklessly indifferent about whether the contravention was likely to cause serious harm to another,

the person is guilty of an aggravated offence.

Maximum penalty:

(a) in the case of a natural person—imprisonment for 5 years or double the Division 1 fine;

(b) in the case of a body corporate or an administrative unit in the Public Service of the State—double the Division 1 fine.

This has come about because of representations I had from a number of employer groups, being the Motor Trade Association, the Printing Industries Association and the Engineering Employers Association. Effectively, they were saying that the bill with its current wording casts the net too wide and places all the onus or responsibility when something goes wrong on the employer.

My feeling is that the wording as it stands is likely to result in a lot of legal cases, and that is something we certainly do not want to see. What I have moved here replaces the words, and this is along the lines of what the ACT government has, which the various employer organisations that have consulted with me find preferable.

The Hon. P. HOLLOWAY: The government opposes the amendment. The honourable member proposes to amend section 59(1) offences set out in the government bill and to make a consequent change. The government opposes the amendment for a number of reasons. These include that it seeks to reintroduce the concept of it being an aggravated offence and actually creates a prerequisite that the death or other serious harm has been caused before the offence could even be considered. To create a prerequisite that actual death or serious harm take place in order to underpin an offence under the Occupational Health, Safety and Welfare Act would be inconsistent with the entire approach to prevention and risk management evident within the legislation.

The fundamental OHS principles are based on the concept of exposure to risk regardless of whether the risk resulted in actual harm. The amendment proposed by the honourable member is clearly based upon the consequences of an action rather than upon the concept of risk or danger. This is similar in nature to introducing an industrial manslaughter offence, and employers, unions and the SafeWork SA advisory committee have opposed this concept. The proposed reintroduction of the concept of this being an aggravated offence is also a regrettable return to the past. The existing provision has proven to be unsatisfactory for its intended purpose, and that element is part of the reason.

The alleged concerns apparently underpinning the proposed amendment are also misplaced. The present bill does not allow for near-miss events to be prosecuted; however, there are a range of factors that will ensure that only serious cases of misconduct are considered for the section 59(1) offence. Those factors include the very nature of the offence as a minor indictable, which establishes it as a major and significant offence; and the requirement for the prosecution to demonstrate each element of the offence to the criminal standard. This includes the requirement to prove that the defendant knowingly or recklessly undertook conduct that may seriously endanger others in a workplace. This requires that the subjective element of the defendant's conduct and the likelihood of serious endangerment arising as a consequence must be proven beyond a reasonable doubt.

This is already a significant legal burden for the prosecution to carry. Further, history would suggest that the regulator does not launch unmeritorious actions and that proceedings of this nature would be contemplated only in the most serious of circumstances.

The Hon. C.V. SCHAEFER: The opposition does not support the Hon. Ms Kanck's amendment, which is basically along the same lines as the amendment I will be proposing myself.

The Hon. SANDRA KANCK: I put on the record the letter from Business SA about this matter. The letter states:

One specific concern arises from the proposed wording of the revision of section 59 of the act, which seeks to create a new reckless endangerment offence that will completely replace the act's section 59 aggravated offence. However, section 59 of the government's bill carries extremely serious implications for any person convicted under it, significant monetary penalties and possible imprisonment for up to five years. The offence is serious enough to be categorised as a minor indictable offence, meaning tried before a judge and jury. The proposed section 59 is only meant to apply to those rogue employers that commit the most heinous offences that are committed in the workplace. On the government's own admission, this is a restricted category and not meant to apply in circumstances that might ordinarily result in a prosecution to section 19(1). However, the revised section 59 does not say or intimate any such restriction on the offending. Given the seriousness of the consequences, Business SA believes that section 59 must clearly indicate that it is for only the most heinous offences.

It is very obvious that my amendment is not going to get up but, clearly, employers have a lot of concerns about the bill in its current state. However, as the numbers are against me, I indicate that I will support the opposition amendment as an alternative.

The Hon. C.V. SCHAEFER: I seek leave to move my amendment in an amended form.

Leave granted.

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

Page 3, lines 5 to 13—Delete proposed subsections (1) and (2) and substitute:

(1) A person is guilty of an offence if—

(a) the person, without lawful excuse, acts in a manner that creates a substantial risk of death or serious harm to another who is in a workplace; and

(b) the person—

(i) knew that his or her act or acts would create that risk; or

(ii) was recklessly indifferent about whether his or her act or acts would create that risk.

Maximum penalty:

(a) in the case of a natural person—imprisonment for five years or double the Division 1 fine;

(b) in the case of a body corporate or an administrative unit in the public service of the state—double the Division 1 fine.

This amendment is much along the same lines of the Hon. Sandra Kanck's amendment. Her amendment is based on the ACT clause; our amendment is based on the clause as amended in Victoria. Our amendment seeks to do what the government said in the second reading explanation it wished to do, that is, to catch rogue employers who habitually put their workers at risk but not to place in jeopardy the livelihood of employers who may by some tragic accident cause serious harm to a worker.

My amendment provides that a person is guilty of an offence if the person, without lawful excuse, acts in a manner that creates a substantial risk. Unlike the Hon. Sandra Kanck's amendment, it does not require that there be a death before prosecution, but they must create a substantial risk of death or serious harm (not just harm) to another who is in a workplace, and the person knew that his or her act would create that risk. Therefore, they have to know that they are putting their workers at risk, or were recklessly indifferent. In other words, we, too, want to punish someone who could not care less and who is prepared to knowingly put their workers at risk. However, we do not believe that someone who, by dint of an accident, causes risk to their workers should be prosecuted. Our amendment, as I say, is based on the Victorian legislation, which appears to be very successful and, again, is the result of lobbying by a number of different organisations.

The Hon. P. HOLLOWAY: The Hon. Caroline Schaefer proposes to amend the section 59(1) offence set out in the government's bill. Whilst the government recognises that the amendment is clearly preferable to the one we have just dealt with from the Hon. Sandra Kanck, we still do not support this amendment for a number of reasons. Principally, we consider that the inclusion of the term 'creates a substantial risk of death or serious harm' establishes an onus that is too high. Secondly, the maximum penalties, as proposed, originally did not adequately capture administrative units in the Public Service, but I understand that the honourable member has corrected that and is moving it in an amended form. So, I guess that that matter, at least, has been addressed.

The amendment does preserve the bill's coverage of both knowing and reckless behaviour and it does not expressly require that a person is actually killed or seriously injured at work before the conduct can be dealt with under this offence. That much is consistent with the intention of the

existing bill. However, the obligation to prove beyond reasonable doubt that the conduct actually created a substantial risk of death or serious harm would, in effect, dictate that such harm actually took place; that is, it is likely that the prosecution would need to demonstrate the inevitability of the consequences and that, in practice, this could be done only where the actual death or serious harm occurred.

To create a prerequisite that actual harm take place in order to underpin an offence under the Occupational Health, Safety and Welfare Act would be inconsistent with the entire approach to prevention and risk management evident within the legislation. The alleged concerns apparently underpinning the proposed amendment are also misplaced. The present bill does clearly allow for near-miss events to be prosecuted. However, there is a range of factors that will ensure that only serious cases of misconduct are considered for the section 59(1) offence.

I have just mentioned this in relation to the Hon. Sandra Kanck's amendment, but I will put it on the record again: those factors include the very nature of the offence as minor indictable, which establishes it as a major and significant offence, and the requirement for the prosecution to demonstrate each element of the offence to the criminal standard. This includes the requirement to prove that the defendant knowingly or recklessly undertook conduct that may seriously endanger others in a workplace. This requires that the subject element of a defendant's conduct and the likelihood of serious endangerment arising as a consequence must be proven beyond a reasonable doubt. This is already a significant legal burden for the prosecution to carry and, further, history would suggest that the regulator does not launch unmeritorious actions and that proceedings of this nature would be contemplated only in the most serious of circumstances. So, for those reasons we oppose the amendment.

The Hon. D.G.E. HOOD: Family First supports the amendment. We believe it strikes the right balance in the competing interests of employers and employees in the workplace. We have thought about this long and hard but in the end we have decided to support it, mainly because, as I say, it strikes the right balance but, secondly, because obviously no employer sets out to have their employees injured at work, and we think that there should be a tough burden of proof or a tough onus, if you like, of proof in terms of actual penalties being imposed. So, we commend the Hon. Caroline Schaefer's amendment and we support it.

The Hon. P. HOLLOWAY: It is obvious that the government does not have the numbers but, nonetheless, we think this is important enough to test. I will just read from a letter which was sent to all members of parliament by the Voice of Industrial Death (VOID). I will read the concluding paragraphs of this lengthy five-page letter. It is from Andrea Madeley, the President and founder of VOID, as follows:

> The sad reality is that we need this legislation—the tougher penalties and scope for addressing serious disregard for safety, in order to protect the welfare and lives of our workers. We'd all like to believe it's not necessary and that all employers will always have the welfare of their workers at heart but I would beg your indulgence in the possibility that rogue employers do exist. I would not be writing this letter to you asking you to support this legislation if that were not the case. It just seems so very wrong to tolerate the concept that the illegal poaching of a shellfish holds higher consequences than causing the death of a worker through cost cutting/ignorance/apathy/negligence—it really does not matter which one, it's a current reality no matter which way we look at it.

The Hon. SANDRA KANCK: I also received that letter and I want to put it on record that I agree with that group (VOID) about what it says. However, the amendments that we are dealing with, I think, are looking at this issue as to whether or not employers are effectively always in the wrong, and it is clear to me that they are not always in the wrong. We have certainly got to do whatever we can to reduce the number of industrial deaths that we have in this state. Supporting this provision of the opposition's, as I will now, will not in any way lead to an increase in deaths.

The Hon. Sandra Kanck's amendment negatived.

The committee divided on the Hon. C.V. Schaefer's amendment:

AYES (10)

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

NOES (6)

Finnigan, B.V.	Gago, G.E.	Gazzola, J.M.

Holloway, P. (teller) Parnell, M. Wortley, R.

PAIRS (4)

Bressington, A. Hunter, I.
Wade, S.G. Zollo, C.

Majority of 4 for the ayes.

Amendment thus carried; clause as amended passed.

Title passed.

Bill reported with an amendment; committee's report adopted.

Bill read a third time and passed.

CRIMINAL ASSETS CONFISCATION (SERIOUS OFFENCES) AMENDMENT BILL

In committee.

(Continued from 25 July 2007. Page 492.)

Clause 1.

The Hon. P. HOLLOWAY: Essentially, of course, this bill was designed to deal with cases where persons could—

The Hon. Sandra Kanck interjecting:

The Hon. P. HOLLOWAY: That is right. The bill was specifically designed for cases where someone, such as David Hicks, could find themselves profiting from their actions through being able to publish their version of events, and the government sought to ensure that that did not happen. The Hon. Robert Lawson moved an amendment to clause 1, which is really not related to the Hicks' case in any way, shape or form or any like cases, but it was to do with unexplained wealth.

As I indicated when we last dealt with this bill some months ago now (I think it was before the winter adjournment), the government has already announced that it supports unexplained wealth provisions, but it did not necessarily want to adopt the particular model which was based on the Western Australian act and which the Hon. Robert Lawson introduced in just the last day or so before the winter adjournment. The opposition has moved the first of a series of amendments designed to put in the Criminal Assets Confiscation Act provisions on unexplained wealth declarations taken from the Western Australian act.

The position of the government on this question is that it does not oppose the concept of unexplained wealth declarations but it opposes the amendments being made at this time and in this way. It is conceded by all participants in the debate that these amendments bear no relationship to anything that is contained in the bill before the chamber except the act amended. They bear no relationship whatsoever to the bill on the same subject moved by the Leader of the Opposition in another place. One can therefore only speculate on the motives of the mover of the amendment. It may be that unexplained wealth orders or some variation on that system is the way we should go in South Australia, but it does not necessarily follow that we should adopt the provisions suggested by the opposition. Both lawyers and police officers in the legislation and the Legal Policy Section of the Attorney-General's Department are working on this kind of provision as part of a package aimed at disrupting and attacking the activities of criminal motorcycle gangs in South Australia.

The government does not want to pre-empt the work of those senior officers nor be in a position where the provisions would have to be amended again. It may well be that mere transcription of the Western Australian provisions is not the way to go. Indeed, should the committee pass the amendments placed on file by the opposition, it may well be that they would not be proclaimed until the government had finalised its own version of the provisions anyway. That would make this set of amendments debated in this place an exercise in legislative futility.

It has been conceded by the Hon. Mr Lawson that there has been no consultation with the Law Society on the precise form of these amendments proposed or indeed anyone else. He is very keen for that to be done when government action is up for debate in this place. Oddly enough it seems from the debate that he does not want to do this at all for himself and for his own amendments: he wants the government to do it for him and for his amendments, and that, to say the least, I would suggest is inconsistent.

I know that other models of unexplained wealth have been raised, as have issues as to whether the amendments would adequately cover corporate wealth as opposed to individual wealth, and these matters are being addressed actively by senior police officers and officers within the Attorney-General's Department who are working on these provisions. It is the government's view that, rather than just tacking these on to the bill, which is essentially to do with the question of David Hicks and like situations, we should not support the amendments at this stage. The government has already indicated that we will introduce our own package of measures that look at issues such as that.

The Hon. R.D. LAWSON: The minister's bringing this bill on today raises an important fundamental question. I remind the committee that on the last occasion we met in relation to this bill the Hon. Nick Xenophon stood and said that he was attracted to the proposition being advanced in our amendments, as did a number of other speakers. Immediately after the Hon. Mr Xenophon completed his remarks, in which he indicated support in principle for what the opposition amendments were doing, the minister said:

> As the numbers are now it is obvious that if we were to vote on this it will be carried. I think the most sensible thing is to report progress.

The minister said, after the Hon. Mr Xenophon had indicated support, that it would be wise for us to—

The Hon. P. Holloway: There was also the Hon. Mr Parnell. Do you recall his comments?

The Hon. R.D. LAWSON: There were a number of members. The point is that this bill is brought in when the Hon. Nick Xenophon has resigned; the government is refusing to appoint a replacement and is now seeking political advantage from the fact that the Hon. Mr Xenophon is no longer here. We object in the strongest possible terms to the subterfuge being engaged in by the government.

This bill was last in committee on 25 July—weeks ago. The government has not, at any time while the Hon. Mr Xenophon was here, sought to bring the bill back on and not accorded it priority in any of its various communications. The Leader did not have the numbers and reported progress; and now, opportunistically, he thinks he has the numbers because Mr Xenophon is not here, so let us strike while we can before we appoint a replacement and while the numbers in this place are changed—let us sneak this through. There is an important point of principle. It is our belief that when someone dies or resigns they ought to be promptly replaced so that no government, opposition or Independent can seek political advantage from the fact that the council does not have a full complement.

The CHAIRMAN: Order! The Hon. Mr Lawson should keep his remarks to the bill, as this has absolutely nothing to do with it.

The Hon. R.D. LAWSON: It has everything to do with the bill, with respect.

The CHAIRMAN: Are you presuming that the government knew the Hon. Mr Xenophon would retire?

The Hon. P. Holloway: If the Liberal Party wants to do it, let them do it. It will be your decision.

The Hon. R.D. LAWSON: If the government had been motivated by those considerations it would have brought this bill back on during all the weeks of sitting we have had since that time. It has now had ample opportunity to investigate the matter. The minister says that lawyers and police are investigating this very issue at the moment. We have heard all this before. This government has announced that it will be tough in relation to bikies and organised crime and, when the opportunity arose in relation to the confiscation legislation, it wimped out. We are giving it the opportunity to embrace criminal assets confiscation, which is effective and has been proven in Western Australia. The government is still seeking to avoid the issue because it wants to take credit for doing that which it has been promising to do for months and which it has not done.

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: Minister, you might care to move further amendments if you think my amendments are not adequate.

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: The minister has indicated 'we want to bring in our own bill'. It is as simple as that. We do not seek to get particular credit for this. When the opportunity arises, when matters come before the council and a bill is open for discussion and debate, we seek to put forward effective proposals to improve the measure, rather than wait around until the government at some time in the future introduces some other bill. Our first objection to this bill coming on is that the government is opportunistically endeavouring to take advantage of the absence from this chamber of Mr Xenophon, more particularly the absence of a replacement for Mr Xenophon.

The Hon. P. HOLLOWAY: I think I should say something about that outrageous statement. It is only a week ago that Mr Xenophon resigned. I do not think any member can produce a case where the vacancy has been filled within a week of someone resigning. A ministerial statement in relation to Mr Xenophon's replacement was made by the Premier in the other place and it has been tabled in here today. It has nothing to do with it. The timeliness of this measure is indicated by Mr Hicks' release. Obviously, it is one of the cases that would be covered by this bill, if it is enacted. We can either deal with it or not deal with it.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: There are a couple of weeks to go. If it is to be proclaimed in time it is appropriate that we deal with it. If Mr Hamilton-Smith has no control over his members in the upper house, let that be demonstrated.

The Hon. R.D. LAWSON: The amendment presently before the committee is consequential. I ought to put to the committee what it seeks to do. It seeks merely to insert a changed definition, which will be part of a series of amendments to allow courts in South Australia to make unexplained wealth declarations. I should explain precisely what is encompassed because that was not done on the previous occasion.

It is important to emphasise that these are declarations that will be made by a court. As I previously mentioned, the scheme which has been adopted in our amendments is based upon almost precisely that which has been adopted successfully in Western Australia where unexplained wealth declarations have been made. The essence of the scheme is that an onus is cast upon a person who has unexplained wealth to satisfy a court that it was gained by legal means. The declarations under this scheme will be made by the Supreme Court.

Clause 5 provides for those declarations to be made, and also for the manner in which the court will calculate the unexplained wealth, being the difference between the legitimately or lawfully gained wealth and the value of the respondent's gains for which he has no explanation. Funds obtained from an unexplained wealth declaration will be paid to the crown. There are due legal protections, the principal one of which is that the declaration is made by a court so that usual legal process will apply.

We know that some members of the legal profession—certainly, the members of the Criminal Law Committee—do not favour our existing criminal assets confiscation regime, and there is no doubt that they do not favour extending that scheme to these declarations. That is a perfectly reasonable position that they put, mainly on the grounds that this is not part of the common law. We take a different view in relation to this matter and, in answer to that criticism, ours is that, given the growth of the power of organised crime and the sophisticated methods used by criminals to have the benefit of their ill gotten gains but disguise the source of them, new law enforcement techniques are required.

Given the fact that these have already been introduced in Western Australia and are, according to the reports of the DPP in that state and the government of that state, working satisfactorily, we believe that they ought to be adopted here. We believe that this chamber has an opportunity to present to the government and to the other place a scheme which ought to be debated there, and we will see whether or not the government is prepared to support it. I seek support from members for these amendments.

The Hon. P. HOLLOWAY: I again make the point that this bill was introduced to deal with the Hicks case and like cases. The government does not dispute what the Hon. Robert Lawson is saying in relation to unexplained wealth; however, it does have enormous implications to introduce something as significant as an unexplained wealth provision, with all the implications that has for civil liberties and everything else. To make such a major legislative change on the back of a simple bill dealing with David Hicks is not, in our view, the way that we should proceed.

Again, I remind members that, whenever we introduce government legislation, the Hon. Robert Lawson wants to know whether we have consulted with the Law Society and whether

there is judicial comment and so on, and that is fair enough. When governments introduce bills, unless there is an emergency—which occasionally there is—by and large there should be broad consultation about it. Again I make the point about introducing such a major and significant amendment: the government has been looking at this and other models. It is not just the Western Australia model: there is a Northern Territory model which, according to at least some views I have heard from police, is superior because it looks at corporate wealth, where this model does not.

The Hon. Mr Lawson's suggestion that we should try to amend his amendment on a bill that is essentially about David Hicks is not really the way we believe we should be proceeding on such a major issue as an unexplained wealth provision. We do not dispute the need for it, but we need to look at it very carefully as a piece of legislation that has been broadly consulted on. That will happen in the future, but this is not the way to do it, and that is why we are opposing the amendment; it is not that we disagree with it in principle. Again, I make the point that at least some preliminary advice I have had is that there may well be better models for doing it, and they are actively being looked at by the SA Police and the Attorney-General's Department.

The Hon. D.G.E. HOOD: Members will recall, no doubt, that last time we discussed this matter Family First indicated its opposition to the amendments and our support for the bill in principle. We feel very strongly that we certainly do not want David Hicks making any profit from telling his story, and for that reason we think the bill is appropriate, but we do strongly support the idea of unexplained wealth provisions existing in South Australian law, and indeed we are impatient to see them introduced. I have a question of the minister. Will he indicate to the chamber in what time frame he would expect government legislation to be presented to the chamber which would deal with unexplained wealth provisions?

The Hon. P. HOLLOWAY: We were hoping to have a package of legislation, and I am sure we will get some of it in before the end of this year, but there are a number of aspects to it. Certainly, if it is not in by the end of this year, we would hope that it would be in very early in 2008.

The committee divided on the amendment:

AYES (9)

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

NOES (9)

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

The CHAIRMAN: There being nine ayes and nine noes, I give my casting vote for the noes.

Amendment thus negatived; clause passed.

Clause 2 passed.

Clause 3.

The Hon. R.D. LAWSON: I will not be moving this or subsequent amendments, all of which are consequential upon the initial amendment, which was lost.

The Hon. M. PARNELL: I note that this clause involves the insertion of the concept of a foreign offence. I note in the report accompanying the bill that it states:

> A regulation will be drafted declaring that any offence triable by the United States Military Commission constituted under...

After which the formal reference is inserted. Can the minister advise whether it is sufficient that an offence be triable rather than a person be found guilty of any offence?

The Hon. P. HOLLOWAY: My advise is that that is correct, that is, they do not have to be found guilty.

The Hon. SANDRA KANCK: That is quite extraordinary: we have a situation where this bill, although it is being targeted at David Hicks, is open to being used against any Australian citizen. They do not even have to have been tried, let alone found guilty. All that matters is if there is an offence that is triable. That is appalling.

The Hon. P. HOLLOWAY: I have just had some other advice. Clause 4 says 'whether or not a person is convicted of the offence'. So, the issue is not whether you are actually tried but whether you are found guilty or not.

The Hon. M. PARNELL: My question for the minister is: does the government believe that trials under United States military commission processes are fair trials? Are they fair enough to include into South Australian law? If they are fair enough to be included in South Australian law, is the government contemplating any such trials to be enshrined in state law?

The Hon. P. HOLLOWAY: It is not really a question of what I think. There is all sorts of interesting information. If one believes what the media have been saying recently, apparently the transfer of David Hicks to prison here, and the time, is all due to some deal that was done between Dick Cheney and John Howard. Obviously, that was a report from some military observer. Whether or not it is true, I do not know, but I think it says a lot about the whole process. It is not really up to me to speculate on those issues. The fact is that the government has put forward this bill because we support the merits of it.

The Hon. SANDRA KANCK: As the minister's government supports the merits of it, as he puts it, in relation to David Hicks, does the government have any intention of it applying to any other Australian citizens at any other time in the future?

The Hon. P. HOLLOWAY: Clearly, if similar cases arise then I suppose the legislation would have application. This is not the David Hicks bill but, clearly, the circumstances that have arisen out of the David Hicks case give rise, in the government's view, to the need for such a bill. I guess there may well be other similar cases, but that is really speculation.

The Hon. SANDRA KANCK: In terms of the wording of this, we are including 'foreign offences' under 'serious offences'. As the act stands, does it mean that once we add in section 4 it could apply to any South Australian at any time, whether or not they are convicted of an offence?

The Hon. P. HOLLOWAY: The point is that a person has to be found guilty of the serious offence, as it is defined and as it will be declared by the regulation. The first part is that you have to be convicted of it and then the foreign offence has to be declared by the regulations to be within the ambit of the definition. So, there are two steps.

The Hon. SANDRA KANCK: I am trying to read clause 3 in relation to clause 4, and the end of clause 4 says 'whether or not a person is convicted of the offence'. So, I am just seeking further clarification.

The Hon. P. HOLLOWAY: I think that part of clause 4 is to distinguish between guilt and conviction. A person can be found guilty but not necessarily convicted. I am advised that the reason for the reference in clause 4 as to whether or not a person is convicted of the offence is really to make that distinction between both the finding of guilt and whether you are convicted or not. In other words, I suppose someone can be found guilty but not have a conviction recorded.

The Hon. SANDRA KANCK: So, the difference is between guilt and being convicted, and it is very obvious that from time to time we do have someone who is found not guilty and there is evidence that shows that they are and everyone believes they are and so on; but is this not setting a new precedent—let us say that someone has been found not guilty, or they are not convicted of the particular offence—where the executive will effectively determine guilt? Is that not what is happening? I would appreciate it if the Hon. Robert Lawson, with his extensive legal experience, would comment on that.

The Hon. P. HOLLOWAY: The point here is that the honourable member seems to be suggesting retrospectivity. The retrospectivity, if you could call it that, would apply only if the person was convicted before the foreign offence was declared to be a serious offence under this act. So, the key issue there is whether or not the foreign offence is declared to apply to the act. If you had been convicted previously, then in that sense it would be retrospective. The issue is not whether or not you are convicted: the issue is the declaration. The only executive power, if you like, that the honourable member appears to be referring to is the declaration that the foreign offence comes within the ambit of the definition. That is the executive power which, presumably, could be disallowed by this parliament.

The Hon. R.D. LAWSON: Following up on the Hon. Sandra Kanck's question, I should ask the minister this: given that the serious offence that will trigger the operation of the confiscation legislation is one that must be committed irrespective of whether or not the person was subsequently convicted of having committed that offence, how will that operate in practice? Will

there have to be a criminal trial here? Will proof have to be beyond reasonable doubt before this principle can be adopted? It is clear that the definition includes whether or not the person was convicted at the earlier stage of that offence but, in order to trigger the operation of this, will it be necessary to have another criminal trial here to establish that the serious offence was actually committed?

The Hon. P. HOLLOWAY: The answer to that is no. Obviously, it will depend on the country in which the offence was committed, but the answer is no; it will not be necessary to have another trial in Australia.

The Hon. M. PARNELL: Again, clause 3 refers to foreign offences being declared by regulation. Will the minister explain what policy or what guidelines exist that will help the executive to determine the types of offences that will be included in regulations? Is it only terrorism offences? Could it be potential offences against property or offences against a person? Do any guidelines exist, or will the executive be making random decisions (if I can call them that) on a case-by-case basis?

The Hon. P. HOLLOWAY: Ultimately, given that it is being done by regulation, it is the parliament that will determine the validity of the regulations. It is not correct to say that it is the executive; the parliament itself will determine whether regulations are ultimately allowed or not.

The Hon. M. PARNELL: I understand that the parliament will determine whether or not to disallow. My question is: what guidance can the minister give us so that we know what types of regulations will be included? Are there any guidelines at all about the types of foreign offences that are proposed to be caught by this legislation?

The Hon. P. HOLLOWAY: The bill itself contains the answer. The definition of 'serious offence' in the act means an indictable offence, or a serious drug offence, or an offence against section 83(3) of the Criminal Law Consolidation Act, or sections 34 or 44 of the Fisheries Act, or section 99 of the Liquor Licensing Act, or a provision of the Lottery and Gaming Act, or sections 47, 48, 48A, 51 or 60 of the National Parks and Wildlife Act, or section 28(1) Part A or 41 of the Summary Offences Act.

What we are doing here is adding a new section; it will be a foreign offence declared by the regulations to be within the ambit of the definition, so it will lie within that framework. This bill has been drafted to deal with the issues raised by the Hicks case but, in relation to others, obviously we are in new territory in relation to this.

Clause passed.

Clause 4.

The Hon. SANDRA KANCK: I have some questions on clause 4 (which is the application of the act) which follow on from some of the questions I asked in the second reading. Given that ostensibly this is about David Hicks, although we now know it could apply to some unknown person in the future, I am still going to apply my questions with respect to Mr David Hicks. The minister did answer some of the questions I asked, but not all of them. One of the questions I asked was whether or not the government will have access to Mr Hicks' bank account in order to check what money is going into it and the source of that money.

The Hon. P. HOLLOWAY: The answer to that lies within the provisions of the Criminal Assets Confiscation Act itself. What we are doing here is amending the core act. There are clauses there in part 2 about freezing orders. There is notice of a freezing order to be given to financial institutions in clause 20 of that act. There are provisions about the duration of those freezing orders. There is provision for urgent applications. I think the general answer is that the access that one would have in relation to the Hicks case would be the same as would apply to any other individual subject to this act; it would not be different.

The Hon. SANDRA KANCK: The question then arises about people who give gifts to Mr Hicks. How will the government ascertain the source of money going into his account? During the second reading debate I referred to a situation where David Hicks gives an interview for a documentary and, although he cannot in any way make any money from that, the documentary maker decides to send David Hicks a $50 Christmas present. Will that be deemed, under this legislation, to be a payment and, in that case, will it be seized?

The Hon. P. HOLLOWAY: Again, the answer is that it would lie under the provisions of the Criminal Assets Confiscation Act 2005 and not under the provisions of this bill. The relevant section is section 7, Meaning of Proceeds and Instrument of an Offence, which provides:

> (1) For the purposes of this Act, the following rules apply when determining whether property is proceeds or an instrument of an offence:
>
> (a) property is proceeds of an offence if it is—
>
> (i) wholly derived or realised, whether directly or indirectly, from the commission of the offence; or
>
> (ii) partly derived or realised, whether directly or indirectly, from the commission of the offence,
>
> whether the property is situated within or outside the State;

Ultimately, it would be up to a court to determine whether that provision applied. Subsection (1) provides:

> (b) property is an instrument of an offence if it is—
>
> (i) used in, or in connection with, the commission of an offence; or
>
> (ii) intended to be used in, or in connection with, the commission of an offence,

In the case of the honourable member's question, subsection (1) would be the relevant provision.

The Hon. SANDRA KANCK: I am not sure whether or not I have an answer. So, any time any money goes into Mr Hicks' account, is it likely to be challenged in court?

The Hon. P. HOLLOWAY: That would obviously be up to the authorities—presumably the police. If they believed or had good reason for believing that a large sum of money had gone in, and that subsection of the act applied, presumably they would take action. Obviously, they would make the judgment in the first instance as to whether action would be taken under the act.

The Hon. SANDRA KANCK: Another question I asked in my second reading contribution that did not get an answer was about Mr Hicks' experiences in Serbia. When he went there, he was fighting for the side Australia was supporting. So, if he writes a book about his experiences in Serbia, will any profits from that be confiscated?

The Hon. P. HOLLOWAY: In the case of Mr Hicks, if he were gaining from the proceeds of a story, the reason he would do so would be his notoriety and not anything he might have done in Serbia, where he was not convicted of an offence. I guess that is the judgment that would be applied and, ultimately, up to the court to determine. The police would take action and prosecute and, ultimately, the court would determine whether or not it was a fair interpretation of the act. It would be the government's view that it would be covered in that sense—that, if he were profiting, he would be profiting because of his notoriety in relation to the foreign conviction, rather than other actions. Ultimately, a court would determine that.

The Hon. SANDRA KANCK: If I read that interpretation correctly, it seems to me that it could be possible that, if he writes about his life prior to going there and makes a profit on that, he could find the assets confiscated. In relation to that, he was charged with providing material support to the Taliban; in particular, it was about guarding a tank. Again, I asked about his experiences in Serbia. He spent five years in a US prison. He was not charged with being in a US prison; that is not the crime—being in prison. If he writes a book about his experiences in prison (which have nothing to do with what he was charged with), would any profits from that also be seized?

The Hon. P. HOLLOWAY: Again, if it were judged to be as a result of the notoriety of the case that he were profiting, ultimately a court would determine that. He could be charged with that but a court would determine the core issue—whether the source of that income (and remember that we are talking about the Criminal Assets Confiscation Act: the assets, if you like), was the result of the crime being committed. It is how the court interprets this act that will determine those sorts of cases. It would have to make the judgment as to whether the profit, through selling the story, was the result of his notoriety as a result of the crime or whether that could be divorced from the crime itself. Ultimately, that is something that the court would assess.

The Hon. SANDRA KANCK: Could the minister explain where notoriety comes into it? I have a copy of the act beside me, so can he explain where notoriety comes into it? Notoriety does not seem to be mentioned in the bill as one of the reasons whereby the profits could be taken.

The Hon. P. HOLLOWAY: No, but it does appear under the Criminal Assets Confiscation Act, division 2, section 110, subdivision 1, Literary Proceeds Order. Section 110, Meaning of Literary Proceeds, provides:

> (1) Literary proceeds are any benefit that a person derives from the commercial exploitation of—
>
> (a) the person's notoriety resulting from the person committing a serious offence; or
>
> (b) the notoriety of another person involved in the commission of the serious offence resulting from the first-mentioned person committing the offence.

Notoriety comes in under Literary Proceeds Order, section 110 of the principal act.

The Hon. SANDRA KANCK: It refers to 'the person's notoriety resulting from the person committing a serious offence'. There was no serious offence committed by David Hicks in being held in Guantanamo Bay for five years, so why would a book about his experience of being there be held to be covered by this legislation we are passing?

The Hon. P. HOLLOWAY: I suppose the argument would be that his notoriety resulted from (and this is what the subsection provides) 'notoriety resulting from the person committing a serious offence'. I guess, ultimately, the court would make that judgment about whether the notoriety resulted from the person committing a serious offence, and this particular bill brings the foreign offence under that definition of 'serious offence'. He committed the serious offence before he was gaoled.

The Hon. M. PARNELL: I find the minister's answers quite remarkable. Effectively, the minister is saying that Mr Hicks has forfeited the right to profit from any literary endeavour, because the argument goes that his notoriety flows from the fact that he was in Guantanamo Bay and ultimately pleaded guilty to an offence. It seems to me, therefore, that if Mr Hicks were to write a book of poems, a religious work or a book of children's stories—or, indeed, any time that Mr Hicks puts pen to paper in future—it will always be open to the government to say, 'It's only because of his notoriety that people are interested in buying his book, therefore we will not let him profit from it.' I would like the minister to confirm whether my interpretation is correct that if in fact that is the source of his notoriety we are effectively prohibiting him from ever putting pen to paper and profiting from it?

The Hon. P. HOLLOWAY: Not necessarily—

The CHAIRMAN: I thought the minister had explained that that was up to a court to determine, not the minister.

The Hon. P. HOLLOWAY: You are quite correct, as always, Mr Chairman. There must be a causal connection between the profiting and the notoriety. I suppose that if David Hicks or someone else in this situation did write a book of poems, and if the author was promoted because of his notoriety, one could argue it, but a court would have to determine whether or not there was a causal relationship. However, if he had published them in a literary review under a pseudonym, or something like that, you would probably argue that there was not a connection. Ultimately that is up to the court to determine. I think that the moral and legal principle here is fairly straight forward. Remember that literary proceed orders are not new. They are not being introduced for the benefit of David Hicks. This bill will cover the Hicks' case. It might have been inspired by the Hicks' case but only because of the foreign connection, and that is how the bill amends the Criminal Assets Confiscation Act.

The original provisions in relation to literary proceed orders or profiting from writing stories about crime were around before the Hicks' case came to notice. Clearly, the legislation is designed for other people who might be convicted of a series of drug crimes, murder or other things and who are writing stories about a particular crime. I do not think there is anything particularly new in relation to the principles of literary proceed orders that the Hicks' case is doing other than that we are bringing in the foreign aspect under the serious offences provision.

The Hon. R.D. LAWSON: The Hon. Ms Kanck brought me into the debate in relation to the effect of acquittals and the quashing of convictions. I omitted to mention to her that section 63 of the act states that a forfeiture order under the existing regime against a person in relation to a serious offence is not affected if the person having been charged with the offence is acquitted or the conviction is quashed. As the minister has been explaining, that particular aspect is not new, nor is it new to say that, for example, if Martin Bryant were to publish a book of children's stories or a text book on psychology or arithmetic—which would be successful only by reason of his notoriety as a mass murderer—he would be subject to these provisions. Section 112 of the existing act does

list the matters a court must take into account in deciding whether or not to make an order. So, there is a discretion that one would hope would be exercised judicially.

Clause passed.

Title passed.

Bill reported without amendment; committee's report adopted.

The council divided on the third reading:

AYES (15)

Dawkins, J.S.L.	Evans, A.L.	Finnigan, B.V.
Gazzola, J.M.	Holloway, P. (teller)	Hood, D.G.E.
Hunter, I.	Lawson, R.D.	Lensink, J.M.A.
Lucas, R.I.	Ridgway, D.W.	Schaefer, C.V.
Stephens, T.J.	Wortley, R.	Zollo, C.

NOES (2)

Kanck, S.M. (teller)	Parnell, M.

PAIRS (2)

Wade, S.G.	Bressington, A.

Majority of 13 for the ayes.

Third reading thus carried.

Bill passed.

STATUTES AMENDMENT (INVESTIGATION AND REGULATION OF GAMBLING LICENSEES) BILL

In committee.

(Continued from 1 August 2007. Page 623.)

Clause 1.

The Hon. CARMEL ZOLLO: A number of questions about this bill were placed on the record as part of the second reading and I would like to take this opportunity to answer those questions. In his second reading contribution, the Hon. David Ridgway said:

> The Hon. Iain Evans in another place has asked the Commissioner for the document which outlines how these costs are established. As yet he has not received any such document.

I am advised that the Hon. Iain Evans was provided with a summary of the costs expected to be recovered. They were calculated as part of the typical budget process. Good public administration mandates a solid and justifiable process for the calculation of these types of costs. The main thrust of this bill is the incorporation into the act of a process which is robust and transparent and which provides fairness for the private businesses involved and, very importantly, for the taxpayers of South Australia. Such a process for determining recoverable administration costs is important in underpinning the public's confidence in the conduct of these private businesses. I am advised that the Minister for Gambling is planning to implement an eight-step process as follows:

Step 1—The Liquor and Gambling Commissioner assesses and allocates budget costs. This ordinarily forms part of the budget process.

Step 2—The Liquor and Gambling Commissioner would recommend an amount for recoverable administration costs to the minister. This recommendation is to be accompanied by an explanation, including activities planned, and the assumptions underlying the allocation of costs.

Step 3—The Minister for Gambling would seek advice from the Department of Treasury and Finance.

Step 4—The Department of Treasury and Finance would inform SkyCity Adelaide and SA TAB of the proposed amounts for recoverable administration costs and seek their representations.

Step 5—SA TAB and SkyCity Adelaide could then make representations to the Department of Treasury and Finance and the Minister for Gambling.

Step 6—DTF would then prepare draft advice on the recommended amounts for recoverable administration costs and provide a copy to the Liquor and Gambling Commissioner for comment.

Step 7—DTF would receive comments from the Liquor and Gambling Commissioner and provide final advice to the minister.

Step 8—The Minister for Gambling would fix amounts for recoverable administration costs under the Authorised Betting Operations Act and the Casino Act.

The Hon. Ann Bressington also stated that 'both businesses between them pay a combined sum of $79 million, and the changes proposed by this legislation will bring the government a total increase of $1.5 million, but there have been no attempts to negotiate, and I for one ask the question: why?'

It is accurate that in total the expected recoverable administration costs were $1.5 million. The costs were incurred by the Office of the Liquor and Gambling Commissioner in the current financial year. About $1.1 million of those costs, however, has already been recovered through voluntary arrangements with SA TAB and SkyCity Adelaide. The net impact of this bill, therefore, would be an increase of about $400,000.

The preferred method of achieving cost recovery is through legislation. This provides a fair outcome for the taxpayers of South Australia, who should not be expected to pay for the regulatory costs associated with SkyCity Adelaide and SA TAB being able to run profitable private businesses. It is the government's view that this could not be achieved through negotiation. The current arrangements for SA TAB and SkyCity Adelaide to pay partial costs were forthcoming only after the government had previously attempted to legislate for full cost recovery.

The Hon. Ann Bressington further asked why the government had made such long term contracts with the TAB and SkyCity if, in fact, the arrangements in the contract were not suitable. The term of the approved licensing agreements and the duty agreements were determined by the previous Liberal government at the time of sale. They have not been altered by the amendments to the SA TAB duty agreement for partial cost recovery. Partial cost recovery was appropriate, given the circumstance of the time. The amendments of the SA TAB duty agreement do not include a provision that prohibits the government seeking further amendments in the act to achieve full cost recovery.

The Hon. Ann Bressington asked a couple of questions about the confidence of investors in this state if this bill were to be enacted. This bill, if passed, would not adversely affect the confidence of future investors in South Australia, because it does not, according to the Crown Solicitor's Office, override the TAB duty agreement or constitute an event under the approved licensing agreement. What gives businesses confidence is having in place a rigorous and transparent process for determining recoverable administration costs that allows for their participation in that process.

The Hon. Ann Bressington then asked: 'If this bill is passed, how much will it cost the taxpayers of South Australia to pay both the TAB and Skycity compensation to which the agreement states they are both entitled?' Again, the consistent and repeated advice from the Crown Solicitor's Office indicates that this outcome is unlikely.

The Hon. M. PARNELL: Along with other cross bench members, I am in receipt of a letter from the TAB and Skycity from 20 July this year, and it includes a paragraph which I will read out:

> Both SATAB and Skycity have obtained legal advice on our respective rights. If the Government passes this legislation, we consider we will be entitled to compensation for resultant losses. Both companies intend to pursue their legal rights in this event. If the Government becomes involved in costly and unsuccessful litigation with our organisations, there is likely to be a net loss to government revenue.

I am mindful of a couple of things. I am mindful of what the minister has said: that the Crown Solicitor's advice is to the contrary and that it is unlikely that a compensation claim would succeed. I make the point that, along with I am not sure how many other members, I am in possession of two confidential legal advices: one arguing the casino's and TAB's case and one arguing the government's case, and they are difficult to reconcile. One says black and the other says white.

Notwithstanding the fact that advice might be that the likely success of a compensation claim is low, three things are always certain: death, taxes and lawyers' fees. The letter from the TAB and Skycity indicates that they will pursue what they say are their rights, so there will be legal expenses incurred all round, notwithstanding the usual rule that the loser in court cases pays the

winner's costs. There are always costs that have to be paid out of pocket. Given the relatively small amounts involved, has the government determined what the cost might be to the taxpayers, win or lose such a court challenge?

The Hon. CARMEL ZOLLO: As the honourable member mentioned earlier, I had already placed on record that our consistent advice was that it would not be likely to succeed. That legal advice was obtained in 2003 and 2007 and was provided in respect of this bill. I could perhaps make the further point that any costs associated with administration could be claimed back from both; if SkyCity or the TAB were unsuccessful, the government could actually claim back those associated costs.

The Hon. D.W. RIDGWAY: I have a couple of questions, the first one being by way of clarification. It is my understanding that, when SkyCity and TAB purchased businesses in South Australia, they entered into commercial agreements with the government that stated that there would be no increase in duties. The government claims that the bill will not breach existing commercial agreements because the amount sought in the bill is not a duty. The further agreement with the TAB in 2004 imposes a fee on the TAB to pay for the administration costs of the Office of the Liquor and Gambling Commission. In this agreement, the new fee is described as additional duty. This agreement was drafted by crown law and signed by Treasurer Foley. The bill now before this committee purports to increase the same Office of the Liquor and Gambling Commission fee for both SkyCity and TAB. How can the government claim that the amount sought in the bill is not a duty when the 2004 agreement describes the same fee as an additional duty?

The Hon. CARMEL ZOLLO: The advice from the Crown Solicitor's Office specifically addressed the 2004 TAB amendment. That advice was that the proposed bill does not cause an event under the approved licensing agreement.

The Hon. D.W. RIDGWAY: I ask the minister or her adviser to provide some clarification. The opposition has been informed that the advice the government sought from crown law about the casino was wrong or was not the advice the government wanted and that it has been reversed on at least four occasions in the last year or so. Will the minister advise whether that information is accurate?

The Hon. CARMEL ZOLLO: As noted earlier, advice on this matter has been sought on four occasions, in 2003 and 2007. Each time the advice has been consistent; indeed, the 2007 advice confirmed the earlier advice that was sought. All questions have been answered and the information provided has confirmed that this does not cause an event. As a result, my advice is that we are very confident in the legal advice received from the Crown Solicitor's Office.

The Hon. M. PARNELL: One piece of correspondence I received from Iain Evans in another place included the comment that the government has admitted publicly that it does not need this bill. The Hon. Iain Evans has provided us with a transcript of an ABC 891 7.45 news broadcast of 1 August, which includes the following:

> A government source says if the bill is rejected, the government will find another way to increase the charges.

My question is: if this bill is defeated, is there another way to impose these charges?

The Hon. CARMEL ZOLLO: My advice is that there are two ways in which we can achieve the outcome: the first way would be through legislation, which is what we are doing now; the alternative way would be through voluntary agreement with SkyCity and the TAB. It is our view that it is unlikely, given the current position, that they would agree to full cost recovery.

The Hon. R.I. LUCAS: I want to talk briefly on this issue, because at the time of the original agreement I held the position of treasurer and was a member of the cabinet that entered into some of the original arrangements which, I understand from the debate, preceded the most recent 2004 agreements. The government says (on its advice) that it is very confident that, if it gets to a court of law, it would win. I am not sure; I am not a lawyer. Certainly, should I be called as a witness, and I am not sure whether I would be, my recollection of the events are reasonable and it is possible that I may well still have the leaked copies of some of the discussions that went on at the time in relation to this agreement.

My recollection is quite clear that potential purchasers of the casino—rather than the TAB; I did not have responsibility for the TAB—wanted clear indications of what the government might screw them for soon after they purchased the assets. That is not an unreasonable question to be putting to the owner of an asset like the casino; that is, that if on day one they were to purchase the asset and a particular regime of tax duties, levies, fees or charges applied, and they paid a certain

amount for that on the understanding that that is what it was going to be and then the next week the government said, 'Thank you very much for your money. We are now going to jam up the taxes, fees, charges, levies or duties', whatever you want to call them, then as a prospective purchaser talking to your shareholders you would have some concerns, I would have thought. That is why there was an intense period of negotiation, on my recollection, in relation to this issue.

I will leave it to the lawyers to argue the toss as to whether or not there seems to be conflicting legal advice, from what the Hon. Mr Parnell was saying, in relation to this issue, but I can certainly indicate what the intention was at the time, and that was that the purchaser was indicating, 'We want to know what it is that we are purchasing and what the tax, levy, duty, fee or charge is going to be.' So, whilst the minister might indicate that the advice is that they are very confident if they get to a court of law, they would need to be a little bit cautious, I think, because in relation to another case which involves the government, which I think has now been settled, I was queried by lawyers in relation to what knowledge I had of the situation, what documents I might either recall seeing or have in my possession, for example, and, as I said, that did not end up finally having to go to court as there was a settlement.

In relation to this one, as I said, it is entirely possible that I still have leaked copies of documents that relate to this case, and I may well be called as a witness. As I said, all I can say, on my recollection at the moment, is that I know what the intention was in relation to this set of circumstances, and it was not to screw the potential purchasers of the casino with whatever you want to call it afterwards; that is, there was to be a regime of duties, taxes, charges, etc., and as a purchaser they were aware of that and bid accordingly. I do not want to add anything more than that. I obviously support the position of my colleague the Hon. Mr Ridgway but, as I said, given what I have just heard of how confident the government is of winning a case if it goes to court, I can only share a little bit of the knowledge that I have of the circumstances at the time.

The Hon. T.J. STEPHENS: I am listening to the debate with great interest. The minister mentioned that full cost recovery is their goal. Given that the TAB and the SkyCity casino are both currently paying more than $90 million a year in tax, would we not already have more than full cost recovery for any programs you would want to run?

The Hon. CARMEL ZOLLO: First, I make the point that it is certainly not the intention of this government to put a burden on taxpayers. I also would like to place on record some information in relation to the level of taxation that SkyCity casino faces in South Australia. I understand that what is clear is that the taxation regimes that apply to casinos across Australia are different. They are different because the circumstances are different. At the time the Adelaide casino was bought by SkyCity as a going concern, the duty rates were set at 0.91 per cent of net gambling revenue for table gains, and 34.41 per cent of net gambling revenue from gaming machines. SkyCity agreed to those rates as part of the sale transaction.

In the South Australian context, 34.41 per cent at the time of the sale in 1999 was generous. It equated to the second tier of tax applied to hotel net gambling revenue from gaming machines. At the time, some hotels paid a marginal tax rate of 40.91 per cent. Since that time the tax rates that apply to hotels and clubs have increased. The top marginal rate for hotels is now 65 per cent of net gambling revenue and 55 per cent for clubs. The casino duty has remained constant at 34.41 per cent. So, in the South Australian context, SkyCity casino has a significant competitive advantage, which has been protected by the approved licensing agreement.

This demonstrates that the South Australian government does take seriously its contractual obligations. In relation to this bill, the government has sought and carefully considered legal advice and, again, this advice has been consistently stated, that cost recovery like that contemplated in this bill does not constitute an event under the approved licensing agreement.

The Hon. D.W. RIDGWAY: The Hon. Nick Xenophon's position is vacant, and there are some amendments that he put on file that are unlikely to be moved. However, everybody in this place (including the government and government advisers, the opposition and all cross-bench members) knew that Mr Xenophon's position was that he would not support this piece of legislation unless he could get these amendments, which he saw as being an improvement to this legislation. He agreed with the argument that we had been putting, that this was a breach of promise and a breach of commitment that the government had given to both SkyCity and the TAB.

With Mr Xenophon's replacement not here, we see an opportunity being taken by the government for this piece of legislation now to be pushed through. It was the last one on the government's list of priorities, as we were advised today. I know the argument will be that it has been on the *Notice Paper* for some months and we should process it. However, the fact that it has

been there for some months means that it is not an urgent bill, having sat there for probably the past six weeks because the government clearly did not have the numbers. Today, what they are doing is taking a political opportunity and making the most of the fact that the Hon. Nick Xenophon is not in this place.

An honourable member interjecting:

The CHAIRMAN: Order! I think the Hon. Mr Ridgway is taking a political opportunity. I do not know whether the Hon. Mr Ridgway is aware, but the Hon. Mr Xenophon is not in a party and there is nothing to say that his replacement would vote along the same lines or agree with the same amendments that the Hon. Mr Xenophon has put up. In fact, the Hon. Ms Bressington and the Hon. Mr Xenophon have not always voted the same in this chamber. I think the Hon. Mr Ridgway might be on some political manoeuvres, so he might like to get to the point.

The Hon. D.W. RIDGWAY: Thank you for your guidance, Mr Chairman. The point I make is that the South Australian community have elected 22 members of the Legislative Council and we have only 21 of them here today. This is a clear example of this government manipulating the circumstances to suit its own political agenda.

An honourable member interjecting:

The CHAIRMAN: Order! I remind the Hon. Mr Ridgway that it is not the government's fault, my fault, or your fault that the Hon. Mr Xenophon has chosen to leave and pursue a position in the Senate.

The Hon. D.W. RIDGWAY: I will not labour the point any longer. I understand it was Mr Xenophon's choice to leave, but the government chose not to progress this legislation whilst he was here (perhaps even not expecting that he would leave) but the fact that he has now left sees the government progressing this rapidly and using it as a political advantage. There is no need to progress it today any further. I move:

That progress be reported.

The Hon. CARMEL ZOLLO: I would like to respond to that. I am sure that the honourable member would not attribute such cynicism to me.

The CHAIRMAN: However, he has just moved that we report progress.

The committee divided on the motion:

AYES (7)

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

NOES (10)

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

PAIRS (2)

Wade, S.G.	Hunter, I.

Majority of 3 for the noes; motion thus negatived.

The Hon. CARMEL ZOLLO: For the record, in relation to the amendments of the Hon. Nick Xenophon, had he stayed here and not elected to resign in the middle of a session to stand as a candidate elsewhere, the government's response would have been, as follows. The amendments seek to introduce a number of additional reporting requirements in relation to costs recovered by the Independent Gambling Authority and the Liquor and Gambling Commission from the casino and the SA TAB. They impose additional requirements in relation to surveillance systems at the casino. The government considers the proposed amendments to be redundant and, as a result, would not support them.

The South Australian parliament has already established an extensive set of checks and balances on the operation of executive government. Obviously, these will apply to the mechanism

of cost recovery from the casino and SA TAB. Checks and balances that already operate include: the state budget papers, estimates, parliamentary questions, annual reporting and audit requirements under the Public Finance and Audit Act 1987, freedom of information and judicial review.

In relation to surveillance tapes, the Casino Act 1997 already has sufficient requirements in relation to the systems and procedures for surveillance and security. The arrangements implemented by SkyCity Adelaide are subject to the approval of the Liquor and Gambling Commissioner. If SkyCity Adelaide fails to comply with the approval, it could result in statutory default and disciplinary procedures. Implementing this arbitrary measure through legislation would impose additional costs on the casino. SkyCity Adelaide has estimated this cost to be in the order of $1.4 million to $1.7 million.

I am advised that, whenever SkyCity Adelaide is aware of an incident from its own surveillance or through notification of the Office of the Liquor and Gambling Commissioner, or SA Police, surveillance footage of the incident is retained for as long as it is required. My advice is that little benefit is associated with the additional cost that would be imposed on SkyCity Adelaide by this amendment. For this reason, the government would not support the amendments of the Hon. Nick Xenophon.

The Hon. D.W. RIDGWAY: The minister, by her own admission, saying that the government would not support the amendments of the Hon. Nick Xenophon, clearly demonstrates that that is why we have not debated the bill over the past few weeks—they did not have the numbers. I also place on the record that I am disappointed that members on the cross benches have been happy to support the government with this sneaky method of getting some of its legislation through. While we have only 21 members, in my understanding of the history of this place this is the first time we have passed legislation when we have not had all members duly elected and present in this place.

The Hon. CARMEL ZOLLO: The government has a number of bills, some of which are priority bills and which need to be passed in this place. We are going about the business of government, as indeed we should.

The Hon. R.I. LUCAS: I support my leader in relation to this issue. I think that this is one of the more disgraceful things I have seen in this chamber. The leader has indicated quite clearly that this is the first time that any government—Liberal or Labor—has sought to take advantage of a situation in which a member, who is not here and who will be replaced, will not be given the opportunity to express his or her view on this piece of legislation. This measure places significant additional onerous costs on two business in South Australia. We are not talking about some Mickey mouse piece of legislation. As the Hon. Mr Ridgway and other members have highlighted, we are talking about a government that wants to increase the costs of a couple of businesses in South Australia by a significant amount.

We are not talking about inconsequential legislation. We are not talking about Mickey mouse legislation. We are talking about a very significant issue for the commercial interests of a couple of businesses here in South Australia. One of those, of course, as the financial pages would indicate, is currently going through some discussions in relation to its ownership and structure. Clearly, the decisions that are being taken here have a potential impact on those circumstances as we speak. As the leader, the Hon. Mr Ridgway, has highlighted, the people of South Australia elected 22 members to represent them in this chamber. We have a particular circumstance which the Leader of the Government has indicated and which I have acknowledged is not of the government's choosing.

A member has left but there have been other examples where members left not through the choice of the government of the day. I refer in particular to the Hon. Frank Potter who died in office. Within a week that honourable member was replaced so that the voting—and I think it might have even been SANTOS and other legislation at the time—could involve all members. This government—and sadly for you Mr Chairman, your government—is, as the leader indicated, being sneaky, manipulative and deceitful in terms of trying to sneak legislation through the back door and to whack—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No; you should get on with it and appoint someone, like any normal or reasonable government would. You know what you should do. The leader is a disgrace and so are his ministers and the Premier in relation to this issue. I will not be diverted by their out-

of-order interjections in relation to this issue. There is an easy way for this issue to be resolved, namely, that someone is appointed through an assembly of members. Mr Chairman, you know that is the process. Every other government—Labor and Liberal—has respected those conventions and has not sought to take advantage of the situation by trying to whack through legislation which will disadvantage a couple of businesses in South Australia. In a sneaky, manipulative and deceitful way it is trying to whack a couple of businesses in South Australia. This will be a long process because, obviously, this government will seek to take advantage for as long as it can. It will stretch out for as long as it can this situation so that it can take advantage of whatever legislation it wants or it thinks it can get through.

The business circles of South Australia, whether they are for or against gambling as an industry or as a particular pastime, will hear about the circumstances of this legislation if it is jammed through. The Hon. Mr Rann portrays himself as a friend of business, the Hon. Mr Foley says that he is a friend of business and the Hon. Mr Holloway sidles up to business people in the minerals and resources area. When the circumstances arise, businesses need to be warned that, if they can, those three will take advantage of sneaking legislation through while that chair is vacant because that person may or may not, as you rightly point out, Mr Chairman, influence this decision. They may or may not. First, we do not know who the replacement will be; and, secondly, we do not know how that person will vote. But, good heavens, certainly from our side of the political fence over here, we are at least prepared to say that that person is entitled to vote on this legislation and, if that person votes with the government on this legislation, so be it. But, let the government be warned that it is taking this decision.

It rests with the Leader of the Government and, if he is going to abuse every convention we have ever seen in this chamber, for the first time ever he will be the leader of a government abusing a convention that has been cherished, supported and respected by governments and oppositions—Liberal and Labor—for decades, as the Hon. Robert Lawson indicated by way of his question last week. Let it rest on the shoulders of the Leader of the Government in this chamber and on the shoulders of the Premier. They will be the people who have abused this convention. I will conclude by saying that the Premier today said that he was not going to be a Joh Bjelke-Peterson. Well, he is already being called Joh Bjelke-Rann, because he is like Joh Bjelke-Peterson abusing the privileges of the parliament to try to get his legislation through to whack a couple of businesses over the head with extra taxes, charges and duties in South Australia. So, look out!

Members interjecting:

The CHAIRMAN: Order!

The Hon. P. HOLLOWAY: I believe that I should respond to that nonsense we have just heard from the Hon. Rob Lucas. The first point that needs to be made is that we can really see where the leadership—if you can call it that—of the Liberal opposition in this place is coming from. It is not from the Hon. David Ridgway. The Hon. Rob Lucas is running the show. He is playing games with it. This parliament is at grave risk of becoming the Rob Lucas toy, the Rob Lucas plaything, because that is exactly what is happening here. If the Hon. Nick Xenophon wishes to run for the Senate, that is his business. But if we take the logical conclusion from what the Hon. Rob Lucas said, we should be adjourning the parliament. Apparently nothing can happen because the Hon. Nick Xenophon has gone.

If the Hon. Nick Xenophon chooses to run for the Senate, that is fine. He resigned on a Monday a week back, and, in due course, the government will replace him. We know it is an issue. The Hon. Sandra Kanck has already written to the Premier saying that, if it is a count-back system, it will be someone else. There could be a challenge in relation to the position, so it is important that the government gets this right. But to try to suggest that this legislation, which has been announced for months—

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

The Hon. P. HOLLOWAY: Why have we been adjourning for weeks? Because members opposite are never ready. It is the Independent members who are never ready to deal with legislation. Time and again we want to deal with legislation but they are not ready. Somewhere along the line this Legislative Council must take responsibility for passing legislation, for allowing the government of the day to govern. It should not be a plaything for people such as the Hon. Rob Lucas, the Independents and others to try to play games. This is serious business. Legislation is here, and we will deal with it in accordance with the Constitution. Really, if people decide to leave to do other things, okay, that is their business. Where is the Hon. Ann Bressington? She is the

representative of the Hon. Nick Xenophon. She has gone off for a week somewhere. Now, where are people's priorities?

An honourable member interjecting:

The Hon. P. HOLLOWAY: Okay, she has at least said which way she is voting. Where are we going?

The Hon. T.J. Stephens interjecting:

The Hon. P. HOLLOWAY: Yes, she is being been paired, because she agreed to.

The Hon. T.J. Stephens interjecting:

The CHAIRMAN: Order!

The Hon. P. HOLLOWAY: I have not been absent a day since I have been in this place—nearly 13 years. The first time I have ever requested a pair from this parliament is for a couple of weeks when there is an important police ministers conference in New Zealand, where this state is presenting a paper in relation to bikies. If I have to miss it, okay, I will miss it. Meanwhile we have people going off on all sorts of business. Where are the priorities? It is about time this Legislative Council got serious. If we cannot debate government legislation, what are we doing?

Members interjecting:

The CHAIRMAN: I noticed in my mailbox this week a number of memos from Independents and one from the Hon. Mr Ridgway wanting their business dealt with tomorrow, and I would not think that was because they want to rush it through because Mr Xenophon is missing.

The Hon. M. PARNELL: I want to respond briefly to a number of things. The Hon. David Ridgway expressed his disappointment that some crossbench members, including myself, did not support his call to report progress. I wish the record to show that one of the reasons I did not support that call was that this legislation has been on the books for some considerable time. I am also very nervous of the fact that it would be possible for a devious government to take advantage of the absent seat in this chamber to push through legislation. I am prepared to accept for now that it is a coincidence that a bill that has been on the *Notice Paper* for some time is now being brought forward.

The important thing for me is that as members of this chamber we need to take a number of things seriously. Those of us in opposition and on the crossbenches need to give credence to the government's legislative agenda and not unnecessarily delay it, but we need sufficient time to consider it, which is why I appreciated one of the government's priority business items being adjourned so that I have a chance to talk to members about my amendments, and that is an appropriate course of action to take. I took some objection to the minister's comments that the crossbenches are never ready.

I would have thought that we are like the battery whereby we are ever ready to debate government bills, within our resources. As the Greens shadow minister for health, education, transport, mining, police and so on, we have a considerable workload and for this place to work properly we need everyone to be considerate of the fact that it takes us some time to get our heads around the whole legislative agenda. I note the Premier's statement this morning where he said:

> I hope to be in a position to inform the house further on this matter [being the replacement of the Hon. Nick Xenophon] over the next few days.

My patience is not limitless and, if it were to drag on for too long and we are to form the view that the government was deliberately delaying the appointment of a successor, perhaps if there were further motions to report progress I might be more sympathetically inclined. I urge the government to get on with it. I know there are some legal issues, but we have had a little while to sort them out and I look forward to the Premier's announcement of a joint sitting.

Getting back to the subject of this bill, and having asked a few questions, I will put my position on the clauses we are dealing with in the bill itself. I will be extremely cross if the government has got this wrong and if its legal advice turns ought to be incorrect and in fact the TAB and SkyCity take the government to the cleaners in court. I will be very disappointed that it has pushed us down this path. It will show to me that it was incompetent in negotiating the first arrangements and in trying to fix it through legislation. Having said that, I am prepared to give the government the benefit of the doubt. I have read the confidential legal opinions of both sides and I hope to goodness the Crown Solicitor's office has got it right and that this is an appropriate

legislative measure that does not infringe the commercial agreements put in place. At this juncture I will support the government's bill.

The Hon. CARMEL ZOLLO: As the Hon. Mark Parnell has said, we are getting on with it and I will respond quickly in relation to some of the comments made on this bill by the Hon. Rob Lucas. The Hon. Paul Holloway has adequately responded to the other rantings and ravings. Rather than whacking businesses in this state, this bill is about the mechanism. It is not about the cost, which is estimated to be around an additional $400,000. I reiterate that the main thrust of the bill is incorporation into the legislation of a process that is robust and transparent and provides fairness for the private businesses involved and, importantly, for the taxpayers of South Australia. Such a process for determining recoverable administration costs is important in under-pinning the public's confidence in the conduct of these private businesses.

Clause passed.

Remaining clauses (2 to 12), schedule and title passed.

Bill reported without amendment; committee's report adopted.

The council divided on the third reading:

AYES (7)

Evans, A.L.	Finnigan, B.V.	Gazzola, J.M.
Hood, D.G.E.	Parnell, M.	Wortley, R.
Zollo, C. (teller)		

NOES (7)

Dawkins, J.S.L.	Kanck, S.M.	Lawson, R.D.
Lensink, J.M.A.	Ridgway, D.W. (teller)	Schaefer, C.V.
Stephens, T.J.		

PAIRS (6)

Holloway, P.	Wade, S.G.
Gago, G.E.	Bressington, A.
Hunter, I.	Lucas, R.I.

The PRESIDENT: There being seven ayes and seven noes, I give my casting vote for the ayes.

Third reading thus carried.

Bill passed.

ENVIRONMENT PROTECTION (SITE CONTAMINATION) AMENDMENT BILL

The House of Assembly agreed to the bill with the amendment indicated by the following schedule, to which amendment the House of Assembly desires the concurrence of the Legislative Council:

No. 1. Page 5, lines 28 to 37—Delete subsection (1) and substitute:

(1) For the purposes of this Act, site contamination exists at a site if—

(a) chemical substances are present on or below the surface of the site in concentrations above the background concentrations (if any); and

(b) the chemical substances have, at least in part, come to be present there as a result of an activity at the site or elsewhere; and

(c) the presence of the chemical substances in those concentrations has resulted in—

(i) actual or potential harm to the health or safety of human beings that is not trivial, taking into account current or proposed land uses; or

(ii) actual or potential harm to water that is not trivial; or

(iii) other actual or potential environmental harm that is not trivial, taking into account current or proposed land uses.

COLLECTIONS FOR CHARITABLE PURPOSES (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

SENIOR SECONDARY ASSESSMENT BOARD OF SOUTH AUSTRALIA (REVIEW) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (17:59): I move:

That this bill be now read a second time.

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

Leave granted.

The Senior Secondary Assessment Board of South Australia (Review) Amendment Bill 2007 will provide necessary amendments to the Senior Secondary Assessment Board of South Australia Act 1983, allowing for a modern board and enhanced systems to enable the introduction of the future South Australian Certificate of Education (SACE).

This Bill is the next step in the Rann Government's measures to reform and revitalise education and children's services across the State and the legislation that underpins those services.

The reforms stem from research and extensive consultation undertaken as part of the review of the SACE and an independent examination of the current Act. This independent review of the Act considered the relevant issues raised in the SACE review report and examined comparable legislation in other Australian jurisdictions.

The formation of a SACE Board within a new legislative framework will be the key driver in the reinvigoration of the South Australian Certificate of Education, to which the State Government has committed $54.5m.

This Bill provides further evidence of this Government's continued commitment to strengthening the opportunities, skills, knowledge and values of every child through the provision of quality services. We need a firm legislative base, which is relevant for today and flexible enough to provide for the future needs of South Australia's young people.

The Bill adds to the list of improvements to education and care instituted by the Rann Government—we established the Teachers Registration and Standards Act 2004, we are again increasing the leaving age and over the next eighteen months will be consulting on, and introducing, further legislation which will enable and sustain a high quality education and care system.

The implementation of the provisions within this Bill, together with the future SACE, will build on the best of the current certificate and the outstanding contribution of the Senior Secondary Assessment Board of South Australia (SSABSA).

The Act, when amended, will consolidate and make clear the vital partnership between the Board that oversees the SACE, the education sectors that deliver it and the responsible Minister. This Bill articulates our mutual responsibilities and our commitment to the community and our senior secondary students.

This Bill will underpin a new SACE which will be more responsive to the learning needs of all young people while maintaining high standards expected by the community.

The future SACE, underpinned by this Bill, will give formal recognition to a wider range of learning achievements than has hitherto been possible, and provide a greater level of flexibility so that schools can better respond to the learning needs of all students.

The future SACE will equip students with a solid foundation in literacy and numeracy, provide a plan for future career development and participation and allow all students an opportunity to gain the knowledge and capabilities they will require to contribute as citizens of South Australia.

This legislation embeds these ideals in its Principles and will ensure they are given effect, to the benefit of all young people in South Australia, through the establishment of an expert SACE Board with enhanced functions and responsibilities.

The planned reforms will also support the Government's aim of seeing all 17 year olds achieving to their full potential through full-time education, training or work.

The new SACE Board appointed under this legislation will be charged with overseeing the accreditation of the future SACE and ensuring its continued international and national credibility, its relevance and rigor. The Board will make sure that the right systems are in place and the principals of equity and excellence are followed so that completion of the SACE or an equivalent qualification will give all young people a passport to achieve their potential and create a sustainable future for South Australia.

The proposed changes to the Act take into account not only a wide range of views from teachers, parents, young people and the business community, gathered during the SACE review and subsequent review of the Act, but also the views of the community and key stakeholders sought through the release of the discussion paper for public comment and targeted consultations on the draft Bill.

Valuable input has been received from educators, community members, Parent and Professional Associations, the Catholic and Independent schooling sectors, the Independent Education Union, the Australian Education Union, South Australian Universities and the SSABSA Board in shaping this legislation.

Key features of the Bill include:

- the inclusion of core principles which underpin the operation of the Act and the Board;
- renaming the Board as the SACE Board of South Australia, which reflects the new focus of the Board;
- nomination by the Minister of a strategic expert Board of 11 members who together have relevant abilities, knowledge, skills and experience to carry out the functions required, while seeking to achieve a gender balance;
- a requirement that at least four Board members have specific knowledge and expertise in relation to the provision of senior secondary education, one of whom is currently or recently engaged in provision of senior secondary education;
- a requirement that the Minister call for expressions of interest and canvas the views of listed key stakeholders in nominating Board members;
- sharpening and strengthening the Board's powers and functions to accredit a wide range of learning achievements toward the SACE, consistent with the principles of the Act and the Government's directions for the education of all young people, as outlined earlier;
- provisions that require and enable the SACE Board to work collaboratively and cooperatively with the schooling sectors and the responsible Minister, including a limited power of direction;
- enhanced accountability requirements concerning the Board's strategic directions, targets and reporting, particularly in relation to consultation processes;
- transitional provisions that support smooth implementation of the changes while preserving employment entitlements for the existing SSABSA Chief Executive Officer and staff.

The Government has made a public commitment that the proposed changes will be implemented with minimal disruption to students and staff. Parliamentary consideration and passage of the Bill at this time will enable the smooth transition. This will allow the new SACE Board to be appointed and take and promulgate important decisions around requirements of the future SACE, in time for its introduction from the beginning of 2009.

As Members would be aware, this timeframe also coincides with the operation of amendments to the Education Act 1972 which will ensure that all 16 year olds are participating in full-time education or training until they turn 17.

I am confident that the education and wider community want strong and sound governance for the future SACE and this Bill, which I commend to Members, delivers just that.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of Senior Secondary Assessment Board of South Australia Act 1983

4—Amendment of long title

The name of the body corporate known as the Senior Secondary Assessment Board of South Australia is to be altered. This is a consequential amendment.

5—Amendment of section 1—Short title

The short title of the Act is to be amended in a manner consistent with the proposed change of name of the Board.

6—Amendment of section 4—Interpretation

Most of these amendments relate to substantive changes to be made to the Act by other provisions of the Bill.

One substantive change under this clause is that the employing authority will be designated, at first instance, by the Act and the person so designated is to be the Chief Executive Officer of the Board.

Another amendment will make specific provision for references to the South Australian Certificate of Education.

7—Insertion of section 5

It is proposed to incorporate a number of principles that are to be applied in connection with the operation of the Act. These principles are proposed to be as follows:

(a) all young people are to be encouraged to obtain a formal education qualification that helps them to live and participate successfully in the world as it constantly changes, after taking into account their goals and abilities;

(b) it is recognised—

(i) that young people acquire skills, values and knowledge associated with their education through their individual endeavours and through a range of learning experiences and in a variety of situations that may include, as well as schools, workplaces and training and community organisations; and

(ii) that young people require a range of skills and knowledge, including literacy and numeracy skills, to assist them to succeed in the wider community;

(c) the qualification that is awarded by the Board should—

(i) acknowledge the skills and knowledge that have been acquired through formal education and training and other learning processes; and

(ii) reflect rigorous standards and community expectations; and

(iii) be consistent with an appropriate Australian qualification framework;

(d) cooperation and collaboration between the Board, the school education sectors and the Minister are to be recognised as fundamental elements to achieving the best outcomes for students seeking to qualify for the SACE.

8—Substitution of heading to Part 2

This clause is consequential.

9—Amendment of section 7—The Board

The body corporate known as the Senior Secondary Assessment Board of South Australia is to continue in existence as the SACE Board of South Australia.

10—Substitution of sections 8 and 9

The membership of the Board is to consist of the Chief Executive Officer (ex officio) and 11 other members appointed by the Governor on the nomination of the Minister. The Minister will be required to seek to ensure that the membership of the Board comprises persons who—

(a) together provide a broad range of backgrounds that are relevant to the activities and interests of the Board; and

(b) together have the abilities, knowledge and experience necessary to enable the Board to carry out its functions effectively.

In addition—

(a) at least 4 of the appointed members of the Board must have specific knowledge and expertise in relation to the provision of senior secondary education and, of these members, at least 1 must be a person who is currently engaged, or who has recently been engaged, in the provision of senior secondary education; and

(b) the Minister must seek to achieve a reasonable gender balance in the membership of the Board.

11—Amendment of section 9A—Chief Executive Officer

The position of Chief Executive Officer of the Board is to continue. The Chief Executive Officer is now to be appointed by the Governor on the recommendation of the Minister on terms and conditions approved by the Premier.

12—Amendment of section 10—Procedures etc of Board

The Chief Executive Officer will be a non voting member of the Board. It will now be possible for the members of the Board to meet by a conference conducted by telephone or other electronic means, and to make resolutions by decisions communicated in various ways, including e mail.

13—Amendment of section 12—Delegation

The Board is to be given greater flexibility in making delegations.

14—Amendment of section 15—Functions of Board

The functions of the Board are to be revised. A key function will be to establish the SACE qualification to be awarded by the Board under the Act. The Board will be expressly required to consult with the Minister and the school sectors on the development and review of courses and subjects.

15—Amendment of section 16—Powers of Board

This amendment will make it clear that the Board can act outside the State.

16—Insertion of section 17A

It is proposed to make provision for the ability of the Minister to give a direction to the Board about a matter relevant to the performance or exercise of a function or power of the Board. However, the Minister will not be able to give a direction—

(a) in relation to the content or accreditation of any subject or course under the Act; or

(b) in relation to the assessment of, or recording the results of, a student's achievements or learning.

A direction will be in writing and a report on any direction will need to be tabled in Parliament.

17—Substitution of section 19

The Minister will be able to request the Board to provide a statement setting out the Board's strategic directions and targets, and to provide its budget.

18—Amendment of section 20—Report

The Board's annual report will be required to include a specific report on the consultation processes established or used by the Board in connection with the performance of its functions under the Act.

19—Amendment of section 23—Regulations

It will be important to be able to have a mechanism to ensure that transitional issues associated with amendments to the Act can be addressed. Such mechanisms will be set out in the regulations.

20—Insertion of Schedule 1

This amendment will establish the designated entities for the purposes of the Act.

Schedule 1—Transitional provisions

This Schedule makes specific provision on account of changes to the composition of the Board, and to guarantee continuity of employment for the Chief Executive Officer and the staff of the Board.

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

[Sitting suspended from 18:00 to 19:47]

PREVENTION OF CRUELTY TO ANIMALS (ANIMAL WELFARE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 October 2007. Page 963.)

The Hon. SANDRA KANCK (19:47): The Democrats believe that animals are sentient beings, which means that they are much more than commodities, and they are much more than something we use for food or fibre, medical research or entertainment. They have a value that is completely separate to our use of them and, as such, they are deserving of respect and protection from inhumane treatment.

Members interjecting:

The PRESIDENT: Order!

The Hon. SANDRA KANCK: We are not in a position to know exactly what thought processes animals have, but anyone who has ever had pets knows how each one has its own distinct personality, and it is clear that they experience joy, distress, satisfaction and pain. Although this bill is not a complete rewrite of the current act, it will certainly be an improvement, with the renaming from the Prevention of Cruelty to Animals Act to the Animal Welfare Act. Through this bill, the purpose of the act will also be changed.

Members interjecting:

The PRESIDENT: Order! I am sure that the Hon. Ms Kanck is not talking about the animal behaviour in here.

The Hon. SANDRA KANCK: Yes—it probably says something about what these people think about it, too.

The PRESIDENT: The Hon. Ms Kanck has the call, and honourable members will have the decency to listen, or—

The Hon. SANDRA KANCK: Get out. Through this bill, the purpose of the act will also be changed from that of merely discouraging cruelty to animals to promoting animal welfare, and some offences will attract increased penalties. All these moves are very welcome. However, I will be moving an amendment, which I think will be an improvement.

In relation to clause 14, which talks about organised animal fights, subclause (3) provides that people cannot have implements or articles that could be used for this purpose. The peculiar thing is that it states that a person cannot have these implements without the approval of the minister. So, I have only one question about the bill at this stage (there may be others in committee). I would like the minister to clarify, when she sums up the second reading, what are the circumstances in which the minister would approve anyone having such implements or articles. If she cannot give a good reason, I will move another amendment to remove this provision. However, as I said, this bill certainly improves the situation for animals in this state, and it has the support of the Democrats.

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

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

Adjourned debate on second reading.

(Continued from 17 October 2007. Page 973.)

The Hon. M. PARNELL (19:51): The Greens support this important legislation because we believe that victims of crime do need to have assistance in negotiating their way through the system. Most of us in our lives do not have contact with the criminal justice system. Hopefully, we do not have contact as an offender and, hopefully, we do not have contact as a victim either. However, when those circumstances do arise where we are the victim of crime, collectively we do not have much understanding of the criminal justice system and we do not know what our rights are, so it is important to have an officer (in the case of this bill, a commissioner) whose job it is to help us negotiate our way through the system.

I was pleased to meet with Mr Michael O'Connell, the current Commissioner for Victims' Rights, and appreciated the briefing that he was able to give us about the current arrangements for assisting victims of crime, together with the proposals under this legislation. I think an important feature of this bill is that the Commissioner for Victims' Rights will have a degree of independence, in particular they will be independent of general direction or control by the crown or any minister of the crown. I think that is important, because when people are in a vulnerable situation, having been a victim of crime, they want to know that the person who is helping them is on their side, or at least impartially advocating on their behalf, helping them work their way through the system. I do not believe this legislation should be too controversial. It builds on existing mechanisms that we have in this state. In fact, another bill before us further builds on the system. The creation of this position of commissioner is a positive move forward and the Greens are happy to support it.

The Hon. D.G.E. HOOD (19:53): Family First strongly supports this bill. We think it is an excellent move and we certainly indicate our full support for the thrust and, indeed, the final form of this legislation. Family First is a strong supporter of the rights of victims of crime in South Australia. On a personal note, I acknowledge the excellent work done in this area by the Hon. Nick Xenophon. I take the opportunity to wish him the best for his future, although he seems to have been mentioned a lot today.

There is an opportunity to pursue the rights of victim in this place, and this bill certainly takes a step in that direction. I also pay tribute to our interim Commissioner for Victims' Rights, Michael O'Connell (previously the victims of crime coordinator). As I understand it, he was the first commissioner to be appointed in Australia and has been working tirelessly in that role for almost a year now. I support the Premier's comments that Michael O'Connell has been a tireless fighter for victims' rights and has stood up for victims time and again. Parliament can sometimes be a place abounding with negative comments, but I know few who would give anything but praise for the work the interim commissioner is doing and we thank him for his briefing on this bill. The Liberal Party also deserves credit for introducing the original Victims of Crime Bill in 2001.

The bill before us today formally establishes the position of the Commissioner for Victims' Rights, a position which greatly expands on the original role. I note the previous role only allowed a coordinator to provide advice on the marshalling of resources to the Attorney-General. This new position, which is based on the Equal Opportunity Commissioner model, has expanded powers, which we fully support.

Mr O'Connell has stated in the press that one of his primary roles will be `holding the government accountable to the promise it has made to victims'. The position is independent, as noted in clause 16(e) of this bill. The commissioner will also assist victims of crime in their dealings with the Director of Public Prosecutions, the police and other agencies; monitor and review the effect of court practices and procedures on victims; monitor and review the effect of the law on victims and victims' families; carry out other functions related to the objects of the Victims of Crime Act assigned by the Attorney-General; and carry out the functions assigned to the commissioner under other acts.

The review of court practices is an important field. I have been concerned for several years about the treatment of rape and sexual assault victims in the court, particularly in cases where the defendant is unrepresented; I am following recent developments in this area closely. Indeed, the last thing Family First wants is to see repeated cases where victims are made victims again by the court process itself. Clause 16(a) of the bill gives the commissioner the power to recommend that a public agency apologise to a victim. It appears there are also powers in that section for the commissioner to discuss plea bargaining arrangements with the DPP, and these provisions are

quite appropriate and are fully supported by Family First. In short, Family First thinks this is an excellent step in the right direction, and we support it wholeheartedly.

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

TOBACCO PRODUCTS REGULATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 18 October 2007. Page 1008.)

The Hon. A.L. EVANS (19:57): I rise to support the second reading of this bill. The bill makes miscellaneous amendments to the Tobacco Products Regulation Act to clear up a loophole where a commonwealth situation has over-ruled state law, as well as regulate the placement of cigarette vending machines. We are asked to ensure that minors are not sneaking into pokie venues and using the machines without supervision. The bill also asks the parliament to rule out the earning of rewards by buying cigarettes at, say, a Coles or Woolworths store to get a discount on petrol.

I will not go into the third issue of closing the loophole regarding health advisory warnings on cigarette packets, but it is an interesting example of further encroachment by the commonwealth over state rights. Having said that, I think that, if the states are inactive or tardy on this issue, perhaps the commonwealth government's actions are justified, as we have seen, for instance, with television advertising being used to convince people not to try, or to give up on using, other drugs, such as ice.

I appreciate that, from time to time, ministers, in their portfolios, need to put bills before us more or less for housekeeping purposes, as it seems to be in the case of this bill. Sitting back after looking at this bill, I could not help but think, `Is this the best we can do?' Family First has a bill on foot to ban smoking in outdoor eating areas. Surely, banning smoking in public places, where people work and are trying to enjoy a meal, is a stronger reform. Surely, copying Queensland's fine agenda, which I understand includes one of this bill's reforms, would be commendable. We have to get serious about dealing with a smoking habit that puts a huge burden on our public health system.

In speaking on my bill, the Hon. Dennis Hood mentioned Western Australian research that shows that in 2004 smoking cost $1.6 billion, which equates to one half of the cost of running the health system in that state, and that is a staggering situation. I do not think the overwhelming majority of people who do not smoke would tolerate a government allowing that minority of people to put such a heavy burden on the health system and, ultimately, on public revenue. Family First supports this bill, but we will be looking to the government for tougher reforms to deter smoking and to help people to kick the habit.

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

STATUTES AMENDMENT (VICTIMS OF CRIME) BILL

Adjourned debate on second reading.

(Continued from 18 October 2007. Page 1041.)

The Hon. M. PARNELL (20:00): As with the previous bill dealing with victims of crime, the Greens are happy to support this bill and, again, I appreciate the briefing I was given by the government on this measure. This bill raises interesting questions about the appropriate role in the criminal justice system of the state through its agencies—be it the DPP, police, or prisons authorities—on the one hand and the appropriate role and rights of victims of crime on the other. It is a question of striking the right balance because the agendas of the various players are quite different. From a community point of view, as reflected in our state agencies, we want to be protected from criminals and from future criminal acts, and we also want those who have been convicted of criminal offences to be rehabilitated. As a community we also want criminals to be punished.

On the other hand, the interests of victims of crime can be very different. Often the driving force is that victims want to receive justice: they may want some retribution or even restitution for the wrong done to them. So, we need to get the balance right in terms of the individual's desire to see wrongdoers dealt with appropriately yet also maintain the primacy of the state in making those important decisions. It should be the role of the state, through our agencies, to decide important questions such as charges to be laid but that does not mean there is no role for victims, and what I

like about this legislation is that it extends and expands upon the existing declaration of principles in the Victims of Crime Act. It extends those rights, in particular, in relation to the right to know, to be informed, to have the authorities tell you what is going on in relation either to forthcoming trials at one end of the process or to bail or parole conditions at the other end of the process.

I think this bill does strike the right balance. It would have gone too far had it given supremacy to the victims to determine what happens, but it does not do that. It actually engages victims in the process in an appropriate way. In conjunction with the bill before us relating to the Commissioner for Victims' Rights, I think it does strike the appropriate balance, and for that reason the Greens are very pleased to support the second reading.

The Hon. D.G.E. HOOD (20:03): I rise to support the second reading of this bill on behalf of Family First. The bill introduces a range of reforms to improve victims' rights in the criminal justice system, and I think it is quite fair to say that not all the reforms embodied in this bill necessarily have their genesis on the government side. On that note I think the contents of this bill are an acknowledgment of the fine thinking and value-adding that the Legislative Council provides to the work of parliament. Of course, having said that, I believe that the government is to be commended for introducing such a bill, and Family First certainly supports it.

Generally speaking, the reforms contained in this bill give victims not only a great deal of information about the workings of the case of the person accused of hurting them: it also gives them more information about and say in how the criminal justice system handles that person once they are found guilty. The bill was introduced on 25 September 2007 and, given that the median age of bills since my election is 57 days (by my count), we are in something of a rush on this bill. I mention this as I have received no submissions from the bodies representing victims of crime, the Director of Public Prosecutions, or any representatives of SA Police concerning these reforms.

It may be the government's position that these stakeholders have been consulted by the government, but at this stage we have not had the opportunity to consult them, and I would put that on the record. Perhaps the government will note that in future that would be appreciated, where possible. Certainly, the Acting Commissioner for Victims' Rights, Mr O'Connell, will have his work cut out for him. I say this because some victims will need to be given counselling to maintain a reasonable position in criminal law matters, such as those outlined in this bill.

Do not misunderstand me; I am not expressing a concern about the rights that we are handing victims: in fact, I fully support the rights that victims will be able to access as a result of this bill. However, it does seem to me a sad day for South Australia when the court system is so bankrupt of justice, if I can use that expression, that we must hand rights to victims to satisfy the community that justice is being done. In short, it should be self-evident that justice is being done, and it is a poor reflection on our courts in general that such a bill is even required.

Currently, it is quite open to judges to make orders, to conduct court hearings and proceedings and enforce the law in such a way that victims are appeased. I think it is factual to say that victims, at present, are most unhappy with the kind of justice they are receiving in the courts. Indeed, in my view, I think it is fair to say that the community as a whole thinks that, by and large, sentencing is inadequate in our court system and that in many cases justice is not seen to be done or that the sentences issued on particular cases are not adequate, in the eyes of large samples of the community. I would like to list a few examples of that.

Again, this is not necessarily a criticism of this parliament or the laws of this parliament. By and large, the laws passed are adequate and, in some cases, more than adequate. It is more a criticism of our courts and the sentences they choose to issue.

The Hon. R. Wortley interjecting:

The Hon. D.G.E. HOOD: Indeed. Since August I have been monitoring the sentencing of hard core drug offenders. I have discovered that somewhere in the region of 30 to 35 per cent of all offenders who are either selling or manufacturing ecstasy, heroin, methamphetamines and the like are actually going to gaol; that means the rest are not. So, in other words, 65 to 70 per cent of these drug dealers are actually getting suspended sentences and walking free, effectively. Meanwhile, South Australian families are victims of the associated crime, such as theft, home invasions and the like, that comes with drug dealing, and they are victims in the sense that they lose their belongings and, in some cases, in one sense of the word, they lose their children, if their children are addicted to drugs.

Another example is that last week we saw an appalling sentence handed down to the bank robbers known colloquially as 'the overall bandits'. The case involved two co-accused young men

who pointed a shotgun at tellers during seven armed hold-ups over a nine-month period from December 2005 to August 2006. They escaped with more than $100,000, yet the sentence for each of them was 16 years gaol as the head sentence, which actually sounds adequate, but that was reduced to an eight-year non-parole period. The valid question must be: why can a sentence be reduced by half in the case of such violent and dangerous crime?

This represents just slightly more than one year of gaol time likely to be served for each robbery. Meanwhile, those bank tellers and customers who were in the bank at the time of the robbery have to live with the nightmares and the general scarring that such an event would cause. In this case, I think it is fair to argue that the victims came last; their rights were not represented adequately, and that is certainly why this bill is positive, because it will address that situation once and for all.

Another example is that my preliminary research into last year's sentences for sexual offences left me somewhat angry, and no doubt victims are far more so. In the District Court in 2006, cases of rape and unlawful sexual intercourse saw an incredible number of acquittals and failures to proceed. There were some 72 rape cases, of which only 20 offenders were sentenced to a term of imprisonment. There were 23 acquittals and 28 cases of the prosecution essentially giving up, and in the final case the accused actually died before the case was finished. In unlawful sexual intercourse cases there were 86 cases, with 20 acquittals, 22 cases where the prosecution simply gave up, two findings of guilt, but no convictions recorded, and 10 receiving suspended sentences. The remaining 26 went to gaol.

That is 26 out of 86 cases that actually went to gaol. In amongst the data, one particular judge—and this is fascinating when one takes the time to look at the data—had 12 cases with six acquittals and six prosecution withdrawals in the one calendar year of 2006. Put simply, that judge did not send a single person to gaol for that entire year for such a serious offence.

The Hon. R. Wortley interjecting:

The Hon. D.G.E. HOOD: I cannot. I do not know the colloquial term for the opposite of a hanging judge, but this certainly fits the bill. Like the victims, Family First is very concerned about this trend. Indeed, where are the rape law reforms that the state government has promised? We encourage the government to introduce those laws as soon as possible.

Victims are right to be offended by these court outcomes, if I can even call them outcomes. However, it is a sad day when we need to legislate to provide better justice for victims. Why on earth do we need victims effectively monitoring the parole or community service performance of offenders? I can tell you why, Mr President. It is because the criminal justice system simply is not performing to expectations. Victims actually care whether or not offenders are contrite or do their time, whereas it seems that the criminal justice system in many ways does not.

Bail breaches, failure to complete community service, failure to attend court and failure to answer warrants for arrest are all dealt with by no more than slaps on the wrist by the criminal justice system at the current time. Let me make it clear: Family First blames the courts, wholly and absolutely, for failing victims and, therefore, making the reforms in this bill absolutely necessary.

I cannot help but think that elements of this bill are an admission that, for reasons that may be their own fault or may be beyond their control, the courts and the corrections systems are failing victims. Family First thinks that many of these reforms would be common sense and should be happening anyway in the system. The fact that we need legislated rights, if I can use that term, to ensure these things happen is an admission that the system is operating below acceptable levels.

I want to turn now to the compensation payment for victims contained in this bill. Victims of crime compensation levels are currently very low, in the view of Family First. Indeed, the maximum level of compensation is $50,000 and that is simply too low. Injuries sustained as the result of a crime can be life changing and, indeed, almost always life changing for the worse. Generally speaking, the offender has no financial means by which they can meet a more appropriate civil claim for compensation or injury. In other words, despite the sometimes diligent efforts of the crown in pursuing assets of offenders, in a great majority of cases, there are no assets to pursue and offenders simply get away with their actions. Victims are sometimes left with horrific injuries and no means of compensation for their injuries. The message the government sends to families by maintaining this compensation is that, on some level, they need to grin and bear it. We urge the government to consider raising these amounts.

There is a competing and strange balance between the punitive aspect of the criminal law and the compensatory aspect of victims of crime legislation. It is similar to the tension between

workers compensation and punishment for failing to protect workers that the Hon. Ms Bressington has highlighted in her amendments to the Occupational Health, Safety and Welfare (Penalties) Amendment Bill, as also has the Hon. Caroline Schaefer with her amendment. In other words, having a compensation scheme overlapping with criminal penalties creates a situation where an offender could in theory be punished twice for their actions.

It may be time for courts to take a more active role in merging these two functions in the one proceeding. In other words, why doesn't a court that finds an offender guilty then take an active and keen interest in working out whether compensation can be paid to a victim, pursuing that to a financial outcome for the victim, and measuring the criminal penalty having regard to the compensation that has been done wrong to the victim?

Surely, this is better justice than what is occurring currently. Now one court finds a victim guilty, gives them a fine or, on embarrassingly rare occasions, sends them to gaol and then sends them away. Then it is up to the victim to pursue compensation in a separate proceeding after the conviction is recorded and the offender has been dealt with. The rogue offender will make sure they disappear before compensation can be pursued, as happens in many cases. Why does the court sign off its sentencing and leave the victim to chase the compensation? Surely the court should take an interest in seeing justice done to the victim.

Why doesn't an offender on bail continue to bail, ensure that they front the court when there is a hearing as to how they will pay the victim for their actions? Let me clarify that. I am quite aware that at present the victim of crime proceedings is an action against the crown, which then recovers that compensation from the victim. Surely, however, when you have an offender in front of a court on bail, it is a perfect time to quiz them about the question of compensation, rather than setting them loose and then trying to find them years after the event to try to make them pay compensation; that is a much more difficult task.

Victims of crime express surprise to their lawyers as to why they need to chase compensation when the criminal case is concluded. The average man or woman on the street expects compensation to be a normal part of the criminal proceedings, and Family First has the same view. It is time we wrested control from lawyers and their semantic lines of inquiries and various disputes they may have, and got the balance right for victims. In short, the priority must be the victims themselves and not satisfying the legal system. The legal system comes second; the victims come first.

It is, therefore, regrettable that the only reforms in this bill to victims of crime compensation are some increases in circumstances where there is death of a victim and improving the amounts payable for the family's funeral expenses and their grief at the loss of a father, mother, son or daughter. This increase is welcome but, as I have set out already, I think it represents a limited way of thinking about how we can fix the justice system to improve outcomes and to work along the lines of reasonable expectations of victims: victims expect more and, indeed, they deserve more.

I might add that a situation where, as we have seen in this bill, we have the first increase in compensation payable for offences in some 19 years represents, in my view, a failing in the way that we legislate in this place. Surely it is high time that we had an indexation on compensation sums and criminal penalties. I can only think that the merit in not doing so is to give a government of any colour (whatever persuasion it may be) an opportunity for another media release saying it is increasing penalties or increasing payouts.

The cost of living, represented by the consumer price index, would surely be an appropriate index to allow the periodic increases of penalties and compensation payments to match community standards. I think it is fair to say that other states and territories in Australia have done this, so it is not radical thinking. I return to my original point on this: it is farcical to have to improve a particular compensation payment since 1988. The present maximum of $4,200 compensated for a lot more in 1988 than it does in 2007. The government is to be commended for lifting this to $10,000, but we feel that it could go further and link it to the CPI, as I said.

Finally, I turn now from the pro-victim reforms to the creation of sentencing guidelines. It is entirely appropriate but, again, an indictment of the failings of the system that we now need victims to be represented in the changing of sentencing guidelines. It is a very welcome reform but one about which I am not very optimistic, to be honest. I am of the view that, rather than sentencing guidelines, we need to start thinking about mandatory minimum sentencing, particularly for violent crimes. I know that might raise some people's eyebrows, but I think such people (and judges) might find themselves in good company, as being soft on criminals and pathetic in upholding victims' rights. The government has talked of mandatory minimum sentencing for drug offences but, as yet,

we have not seen that legislation. However, I can say to the government that, when we do see that legislation, Family First will look upon it favourably indeed.

For some reason drink-driving and the way that it can hurt people is considered serious enough for mandatory minimum sentencing, but other crimes that can actually kill or hurt people significantly are not considered appropriate for such legislation. Indeed, for an even stranger reason, there are minimum penalties for using a motor vehicle without permission, whereas, in most cases, the loss of property (which is often insured) is the only harm to a victim. Family First simply does not understand this arbitrary ad hoc approach within the same justice system. The pro-victim reforms contained in this bill, to enable victims to participate in the creation of sentencing guidelines, had better work and have better sentencing outcomes because Family First is quite ready and willing to have a debate on mandatory minimum sentencing. Indeed, we are likely to support such a measure should it be presented in this place.

Before I leave sentencing guidelines, it is here that I think it is appropriate to mention supposedly victimless crimes. I mentioned earlier my concern about soft penalties for drug offenders. No right presently exists for the families of victims of drug overdose or crime arising from drug dealing (such as home invasions and theft) to appear in the sentencing of drug dealers. I can understand why, but I muse as to whether instead the government ought to be allowing the Commissioner for Victims' Rights, or his representative, to appear and be heard in such proceedings, to give the judiciary notice as to the impact the drug dealing and its manufacturing has upon such victims

I mention this in the context of sentencing guidelines, as one would think that, in consulting with victims' representatives in establishing guidelines, one would not need such a presence as I propose in the sentencing event. However, if slack and inadequate sentencing of drug dealers continues, perhaps it is because there is no human face for the court to look into when it considers what is, in reality, a human tragedy of illicit drug use and the profit that people make from it. I again flag Family First's interest in this kind of reform in the future, and I indicate to the government that it is highly likely to have Family First's support, subject to seeing the bill itself.

I conclude Family First's contribution on this bill by expressing support for the second reading, and the bill itself, with a tinge of sadness and anger that we have to legislate for victims rather than accommodate them better via hospitality, participation and sentencing that matches community standards, as a matter of courtesy and common sense, not law, in the criminal justice system. This is a good bill and we support it; however, we wish it was unnecessary.

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

MOTOR VEHICLES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 October 2007. Page 975.)

The Hon. D.G.E. HOOD (20:21): As with the other bills I have spoken on this evening, we support the second reading of this bill. Indeed, there is little doubt that the most significant aspect of this bill is found in clause 15, which contains the provisions for service of licence disqualification notices. The bill removes a loophole where drivers who have been disqualified via demerit points can avoid conviction by claiming that the notice was not received. Family First has raised concerns regarding this loophole on a number of occasions.

Indeed, I asked a question without notice about this very issue on 28 September last year in this place where I referred to the loophole and also to *The Advertiser* article of 1 January 2006, which reported that almost one-third of motorists responsible for fatal car crashes in 2005 were—or previously had been—disqualified from driving. In essence, these people are poor drivers. They are responsible for disproportional levels of injury and death on our roads, and there definitely should not be any loopholes to give them an excuse if they are found behind the wheel.

I think that this bill will increase safety on South Australia's roads, and I commend the minister for introducing it. I think that even non-Labor members acknowledge that the minister is quite determined to improve road safety. She has been responsive to the concerns raised by Family First on this issue in the past and, as I said, we commend her for that. We support this bill.

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (20:23): I would like to thank honourable members for their contribution and

acknowledge the concerns of members in relation to seeing recidivist drivers off our roads. I thank the Hon. Dennis Hood for his comments. As we have heard, the bill will close licensing loopholes and correct administrative anomalies in the legislation. It is estimated that there are probably around 1,500 to 2,000 recidivist or repeat offenders who continue to drive while disqualified. This bill will allow steps to be taken to address this. At present, these loopholes reduce the deterrent effect of licence disqualifications under the demerit points and the graduated licensing scheme, as repeat offenders are able to use these loopholes to avoid the imposition of sanctions that were originally intended by the parliament. It certainly was never the intention of the parliament for these loopholes to exist. This bill closes off these avenues for offenders to avoid the intended penalties.

I understand that the opposition has a number of amendments that the government will respond to during the committee stage next time we deal with this legislation. At this stage, the government opposes all but one of the amendments proposed by the opposition. Again, I thank honourable members for their contributions.

Bill read a second time.

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

Adjourned debate on second reading.

(Continued from 16 October 2007. Page 903.)

The Hon. R.I. LUCAS (20:25): I am in the delightful position that, if I do not speak for some time this evening, we will not justify having dragged everyone back after dinner for the evening session. So, in the interests of justifying sitting this evening, I will make a lengthier contribution on this legislation than I might otherwise have done.

Members who have been here some time will know that, on every other occasion we have amended the national electricity law in this house and in the other place, there have been lengthy debates about the changes to the legislation: first, because we are the lead legislator—that is, with the passage of this legislation, South Australia sets the pattern for the other states as part of the national electricity market; and, secondly, because electricity, for some reason, has been a controversial issue in South Australia for almost the last 10 years or so.

In my opening remarks on this legislation, I went back not only to our last debate in 2005 (only two years ago for those who were members of this chamber) but also to some of the debate at the time of the privatisation of the electricity industry and the period leading into the 2002 election. The reason for doing so was a continuing series of extraordinary statements made by the government and its ministers, particularly minister Conlon, during debate on this legislation and also in recent times, during the estimates committees of June this year. Given that I do not have responsibility on behalf the party to respond on a daily basis to the Hon. Mr Conlon's outpourings on electricity, I take the opportunity this evening to comment on some of the claims, statements, misstatements and untruths uttered by the minister on this issue.

As we look back (on another occasion I think it would be useful for the parliament if I were to provide more detail, but I will summarise now), much was made of the entry into the national electricity market and of the privatisation. To refresh the memory of those members who were not here at the time, it was originally a decision of the former federal Labor government and a state government to put in place the original structures for the national electricity market.

It was then followed through by a federal Liberal government and a state Liberal government in South Australia and then, of course, a decision was taken in the late 1990s for the privatisation of our electricity industry. This was done for a couple of reasons and, again, I will not repeat all the arguments. Clearly, debt repayment for the State Bank was an important issue. However, another important issue at the time (and one needs to bear it in mind even more now) was the whole argument on whether it would be possible to continue to operate government controlled and owned businesses in a largely private sector driven national electricity market.

It is fair to say that the Labor Party and the Liberal Party in South Australia had different views, or at least different views publicly expressed. A number of prominent members of the Labor Party said then, and even now say privately, 'Thank goodness' that the Liberal Party took the decision they were unable to take or would have been unable to take because of their ideology.

They have had the convenience and pleasure of seeing the hard decisions taken and their endeavours to leverage political advantage out of that—and on occasions successfully—but they saw that, ultimately, there was really no other option. As I said, it is not just the issue of money and

debt which has been the major focus of the debate. At the moment we are seeing in Queensland and New South Wales Labor administrations struggling with the same ideology as state Labor claimed in South Australia, that is, how to maintain government-owned and operated businesses in the competitive national electricity market.

In the past few years we have seen the first manifestations of privatisation in Queensland electricity businesses. The retail businesses are being privatised. We are also seeing the second round of attempts by the New South Wales Labor government. If you remember, Bob Carr and Michael Egan understood what had to be done a number of years ago but were defeated by the union leaders at the time. They have now commissioned a review—I will not go through the details—received the advice they knew that they had received that it just does not make any sense, and are now heading down the path of starting to privatise their electricity businesses. One of the essential pieces of advice with which they have been provided is that which many have given to anyone interested in the national electricity market for quite some time.

The New South Wales Labor government had a proper position for some time, saying, 'We'd like private businesses to come in and invest billions of dollars in a new generator to increase electricity supply in New South Wales.' The New South Wales government kept scratching its head and asking, 'Well, why aren't these businesses jumping at the opportunity to invest?' One of the simple explanations is that they were not prepared to spend billions of dollars of their shareholders' money on building a generation plant which then had to compete with government-owned and operated electricity businesses.

Again, I will not go through the details, but we have seen a number of examples where the New South Wales government-owned generators have gained the market and played the market. I am not saying that they are the only ones, because those in the private sector have also been a part of this process, but the government ones have been in a dominant position in New South Wales. The private sector operators were asking, 'Hey; why would we come in here and try to compete to sell electricity into a market when the big ugly brother or sister is there dominating the electricity market with government-owned, operated and controlled electricity generators?' That is one of the reasons why the New South Wales government is now having another look at privatising the retail and generation companies in New South Wales.

We are seeing a privatised industry in Victoria and South Australia, and that will never change no matter how long the state Labor government stays in power. We are seeing the first signs of privatisation in Queensland and more significant signs of privatisation in New South Wales. In those cases, particularly Queensland, it has nothing to do with debt repayment: it is all about whether it makes any sense if you have a national electricity market to have government-owned and operated businesses taking a punt in that market. In both cases, the governments have received advice on the considerable tens of millions of dollars at risk on a daily basis as government-operated businesses, particularly retailers, compete in the national electricity market. They are gambling with taxpayers' funds and taxpayers' money in the national electricity market.

As I said, even the most senior Labor people in South Australia will concede now (and even conceded at the time) that once the decision was taken for a national electricity market essentially the die was cast. There might have been an argument about the time and the nature of the implementation of privatisation, but inevitably those who are still in the parliament in 10 or 20 years (and that will not be the Leader of the Government or a number of us, but it might be the Hon. Mr Finnigan and the Hon. Ms Lensink in the chamber at the moment) will look back and see an inexorable movement towards privatisation through the national electricity market because there really is no other option. It was really only ideology which prevented some Labor leaders and government leaders from recognising that, once they had made the decision (supported by the Liberal Party) for a national electricity market, it made no sense to have government-operated businesses within the market.

As one looks at the situation in South Australia now, one should recall the insightful report from the Independent Regulator, the Essential Services Commission. Either late last year or early this year he was quoted in the *Sunday Mail* indicating that, in terms of prices for households (residential mums and dads) in South Australia's electricity market in 2007, compared to the start of competition prices were essentially the same in real terms. Yes, there had been an increase in the initial 12-month period after competition was introduced but, as had been predicted all along, that settled with the market. I know the new minister seeks to claim credit for the changes, but he opposed all the initial changes, and he knows that. He did introduce policies for door snakes and a few other things like that, which he likes to claim have significantly increased competition in the

South Australian marketplace. I think he knows that only he and his rusted-on supporters would believe that his actions with the door snakes were of any value at all.

However, to be fair, and as there would have been after 2002 which ever party was in power, there were refinements of the national market as it operated in South Australia which the Labor government took and of which, certainly, I was supportive and of which I am sure the Liberal Party was supportive. They were actions taken that would have been taken by a Liberal administration as well to encourage a further development of what the Liberal Party had put in place, which was a competitive electricity market. In relation to standards, I do not think that, when one looks at the reports of the Independent Regulator, anyone can make a claim that the system has been run to rack and ruin by the private operator.

In fact, the standards are the same if not better. That was written into the legislation as one of the protections. Again, the minister does not like to acknowledge that, but that was written into the legislation as one of the protections. I think the very first comprehensive performance management scheme was introduced by the Liberal administration to encourage further improvement of standards; and, as I understand it, that has now been built on at the national level. All sorts of dire claims were made about the standards of the distribution and transmission system in South Australia. Again, whilst there will always be problems, no-one is able to produce evidence from the Independent Regulator or anyone else to demonstrate that they have deteriorated under privatisation.

The third area relates to jobs. There were lots of claims that the new operators would decimate the workforce of ETSA; that they would not take on apprentices and trainees. I do not have the figures with me at the moment, but figures I recall reading sometime last year from ETSA indicated that, under private ownership, the number of apprentices taken on within ETSA had significantly increased. The total number of jobs was either around the same or marginally higher in ETSA, bearing in mind that under government ownership it had been slashed over a period under Labor and Liberal governments through the decade of the 1990s, with big cuts in job numbers in the early 1990s under Lynn Arnold and John Bannon and significant cuts under the Liberal governments of Dean Brown and John Olsen.

There are a number of other areas where one can judge the health or otherwise of the electricity market: prices, standards and jobs are probably the three big categories, and in all those areas I challenge the government or anyone to argue, as we now with the benefit of hindsight look back on the first five years of a privatised market in South Australia, that a lot of claims made by ministers Conlon and Foley and Mr Rann have not come to fruition.

It is also a joy to go back and look at some of the wonderfully naive views Messrs Foley and Conlon put to the South Australian electorate in 2002 under the heading of `Labor's nine point power plan' and `Labor's plan to protect electricity consumers'. We pointed out at the time the many flaws within some of the policies announced by the Labor Party at the time. Labor made a number of claims in relation to what it would do about South Australia being able to sell power back to Victoria or the eastern states at times when the South Australian Labor Party believed it should not be and would take action in some way to prevent or modify that. It was a cute line for talk-back radio and the media, but anyone with an understanding of the market knew that Messrs Foley and Conlon had no idea what they were talking about in relation to saying they would take action to fix that issue.

They made many claims in relation to rebidding but, whilst there has been some action in relation to rebidding (I will not bore the council with details of all the many claims they made in the media and claims about rebidding, as many did not come true), they also promised to build Riverlink or SNI, but everyone knew, other than the Labor Party and those they could delude, that that would not be possible, given the nature of the market.

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

The Hon. R.I. LUCAS: Yes, and the route. They wanted to take it through the Riverland. Sadly, it was not just the Labor Party as we had Dick Blandy, Mr Booth and others who were fellow travellers with the Labor Party, at least on that aspect.

The government was to give the Essential Services Commission emergency reserve powers to cap retail prices if it found that tariffs were unjustifiable and excessive. I would like the minister's response on what the government has done to implement that promise. It said that it would give the commission power to investigate and, if necessary, prosecute electricity companies if they failed to meet reliability and maintenance standards, with tough new penalties up to $1 million. I refer to maintenance standards and ask the government what action it took to give the

Essential Services Commission the power to impose penalties of up to $1 million on ETSA Utilities if it was not able to keep up maintenance standards to whatever standard the government had indicated it wanted.

There are many other promises, but in particular I ask the minister, when he responds, to address the fact that the Labor Party had a wonderful idea to introduce a prices justification system for all parts of the electricity industry, particularly the generators and retailers. This would be done by amending the Independent Industry Regulator Act. I ask the minister to indicate what the government did to introduce a prices justification system for all parts of the electricity industry, particularly the generators and retailers.

So, I particularly want to know where the prices justification system was for the generators. They were going to amend the legislation to achieve that, and I question whether or not hidden away in the legislation we have before us the government is arguing that it seeks to implement that policy. There are many other aspects of those policy documents and I do not intend to go through all of the documents this evening but, as I said, some of them are deliciously naive. We knew at the time that in many cases they were impossible to implement, but they sounded good and Messrs Conlon, Foley and Rann at the time were able to generate media publicity for those supposed policy options.

The other claims that I want to refer to tonight were some made by minister Conlon during the debate and also during the estimates committees in the House of Assembly. The minister indicated one of the reasons that private sector operators were not putting money into generation was the absence of a greenhouse policy. He then went on to argue, `What they do not know is what that cost will be and when it will be incurred; you would have to build $2 billion worth of plant not knowing over the lifetime of the plant what the significant increased cost would be and when you would incur it. That means that no-one is building new coal-burning plants, except possibly the Queensland government, which has the benefit of owning its assets and can take the risk that a business would not.'

There, in one sentence, is exactly the reason you would never leave someone such as minister Conlon, or any Labor minister, in charge of electricity businesses, because what minister Conlon was arguing in his wonderfully naive, or stupid (take your choice), way is that it makes no sense for anyone to invest $1 billion or $2 billion in a generating plant over the past few years if you do not know what the national greenhouse policy will be. He is saying: why would you spend $2 billion if you do not know what your returns are going to be? And that is a very sensible point of view. But he then argues, and this is where the left ideology of the Labor Party comes in, of which Mr Conlon is captive, that really the only one who can is the Queensland government, which has the benefit of owning its assets and can take a risk that a business would not.

So, there it is. What minister Conlon is saying is that government-run businesses in Queensland, if he had his way in South Australia, would be taking the risk with taxpayers' money, because it is not your own, to build plants when, he says, it makes no sense to do it because you do not know what your returns are going to be. There, in one sentence, is summarised the foolishness of the Labor position and the foolishness of minister Conlon's position. I invite a reply from the minister. I am sure I will not get it, because there really is no response to that sort of foolishness from minister Conlon.

Minister Conlon was then tackled about the higher electricity price level in South Australia. He then makes a couple of points with which I would have to agree. He says the regulator sets the prices—that is right—and they are higher here for a number of reasons. One is that 60 per cent of our in-store capacity is natural gas, which is obviously very environmentally friendly compared to coal, but it is much more expensive. Then he says we also have a very peaky demand—which, again, is true—and we have to over-build transmission distribution systems so we have higher network costs than most other states.

Those particular statements are, indeed, correct, and of course that is what the Liberal Party was saying prior to 2002. But minister Conlon has been saying during estimates committees and everywhere else that the Liberal Party in some way set higher transmission and distribution pricing systems because it was just trying to ratchet up the sales price of the assets.

When it suits him, he immediately uses the logic and rational response that South Australia's system is different. One might be able to argue the margin and that maybe we should not be so much higher than the other states. He acknowledges the essential truth of the argument that we are a peaky system and that we are spread very thinly over a big state. Our distribution and transmission network has few people and is spread over the whole of South Australia. These are

not the words of the Liberal Party. These are the words of minister Conlon who says that the reason we have higher prices is that the independent regulator sets it and 60 per cent of our capacity is natural gas (which has always been the case). It has always been high. It is good in one way but it also expensive. Secondly, we have to overbuild our transmission distribution systems so we have higher network costs than most other states.

The minister loses track of his arguments in relation to this matter. In that argument, and also that which I highlighted earlier, we have exactly the points the Liberal Party has been making. Minister Conlon by accident or by default has agreed, in essence, with points the Liberal Party was making in 2002—and has made ever since then. One of the minister's favourite points—he always uses it on radio (and it is wrong) and he uses it in the parliament (and it is wrong)—is that the Liberal Party sold a monopoly government-owned retailer to a monopoly private sector-owned retailer. Minister Conlon knows that is untrue; and it has been pointed out to him on a number of occasions. What occurred was that the market was progressively opened up to private sector retailers.

From the first opening of the market—and I do not have the exact dates with me this evening—the very big business customers were opened up to any retailer. I think six or 10 retailers opened up in South Australia from the first day of the market. Then we had the next size of businesses—and at that stage we had at least 10 retailers—and eventually the home owners market was opened up—and certainly we had more than 10 retailers. I think at one stage up to 15 or 20 potential retailers were in the marketplace. It is untrue (as the minister has claimed) to say that we went from one monopoly government-owned retailer to one monopoly private sector-owned retailer. He knows that that is untrue.

We opened up the market from day one. This occurred nationally, not just in South Australia, and it occurred at different times. It was opened up on a gradual basis so that any retailer could come in and compete. If the minister was to change his language and say, 'Obviously, there would be a dominant retailer,' that is, the person who bought the retail business, then one can argue that was the case initially. It was always going to be a number of years, as competition was introduced into the marketplace, before we would see a more competitive marketplace in South Australia.

The other untruth that the minister continues to perpetuate has its genesis on a little bit of fact, and then he perpetuates an untruth based on that. When the government was looking originally at the privatisation of its businesses, a paper was circulated at the time that talked about how the government was going to sell the retail businesses. The option that was being actively canvassed at the time was to split up the South Australian marketplace into a number of different distribution and retail companies. One of the options that was considered was, in essence, to put a spoke in a wheel from Adelaide through to the borders, where, for example, ETSA—the distribution company and the retail company—was divided up into three, with bits of the metropolitan area and bits of the country. Other options included two in the city and perhaps one or two in the country. Various models were canvassed but, in essence, the distribution and retail company was to be divided up into a number of participants.

Mr Conlon's claim is that, to maximise the price of the sale of the retail business, the government changed that policy to sell it as a whole for the whole of the South Australian marketplace. That is just untrue and, as the minister who was there at the time, I can for the first time put on the record some of the detail of the reasons why one approach was changed to the other.

The principal reason was that I visited Victoria and spoke with Victorian ministers and senior bureaucrats and advisers in relation to what they had done with respect to their privatisation. Victoria had divided its state market up into four or five distribution retail companies (and I am going on memory now); that is, the state was divided into four or five, and there was a distribution and a retail company in each. What I found in Victoria was that, because of the way in which it had done that, there were differing prices in country regions as compared to the metropolitan area, and there were differing prices in some country regions compared to other country regions. The reason for this was that there were four or five separate companies, all with the capacity to manage their business within their particular part of Victoria.

One of the essential elements of the privatisation debate in South Australia had been, first, to try to get the legislation through both houses of parliament, obviously, and, secondly, we were strongly committed to being able to do what we currently do with water pricing; to postage stamp electricity—that is, to be able to say to the regional communities, 'We have potentially taken a hit in

terms of what our sale price might have been, but we are postage stamping the electricity price for country customers.'

There are many things which we could have done to maximise our sale prices (and I will not go through all of them tonight) in relation to generation and which we did not do, because we took decisions in the public interest, in our view, that there was a balance between what we would get—and, clearly, we wanted to get as much money as we could from the sale to repay the Labor Party's State Bank debt, but we also knew that there was a balancing of the public interest.

This was a perfect example, where we said, 'Okay; we probably would get more money if we were to have a situation where we allowed electricity companies to charge country consumers higher prices for electricity, much more on a user pays basis', that is, 'It costs more to send the electricity to the South-East, the West Coast or to the Mallee; therefore, we will charge them more.' That is a whole debate that I am sure we will see in coming years with respect to the water industry. Having gone to Victoria and seen and spoken to members of parliament from country areas who were furious that their constituents' prices there were higher than in some other areas, we took the view (certainly, I took the view) that we did not want to go down that particular path.

So, it is untrue, as the minister has claimed, that this decision to change the nature of how we would break up retail and distribution was done on the grounds of maximising the sale price and to sell to a monopoly retailer. Both of those claims were wrong, and I am pleased to be able to put that on the public record this evening. As I said, I have not provided some of that detail before.

The minister, in his claims in the estimates committee, went on to say that we set different time lines for gas competition and electricity and that it was almost unspeakably stupid. A number of those decisions were taken as a result of national discussions that had gone on. In terms of the claims that the current minister has made about the time lines for introducing changes, competition or legislation, in many cases they have been wildly inaccurate when one compares the actual performance with the promise made by minister Conlon. Many other claims were made during the estimates committee and during the minister's debate which lacked substance. I cannot respond to all those this evening, but they were some of the more important ones that I wanted to at least rebut on the public record.

In concluding this section of my contribution, I ask the minister to provide to the council the additional increments to the generation capacity in the South Australian market since the Labor government took power in March 2002. I do so because, in the four or five years prior to 2002, under the former Liberal administration, there was a very significant increase in electricity generating capacity in South Australia of almost 40 per cent. I will not bore the council with the details of each of those additional increments, but certainly there was the building of Pelican Point, a number of the peaking power stations around the state and also the new interconnector coming into South Australia.

Whilst there has been significant activity since 2002 in relation to wind energy and wind turbines, what I am seeking from the minister—and I guess this information will be provided by the Electricity Industry Supply Planning Council—concerns the additional increments to capacity which NEMMCO is able to take into its calculations in terms of available supply. The minister may well indicate that so many megawatts of capacity in terms of wind energy have been built in South Australia, but only a relatively small percentage of that can be assumed for dispatch by NEMMCO in terms of the operation of the national electricity market. I seek that information because I think members ought to know. We know what occurred in the four years prior to 2002. We need to know what has occurred in the five years since 2002 in terms of additional capacity.

A statement made by the minister in the house in which I think he indicated that peak capacity in South Australia was a bit over 3,000 megawatts certainly did not fill me with too much joy, because the peak capacity on the change of government in about 2002 was not too far away from 3,000 megawatts. Of course, with the growth of the national economy and the growth in demand that we have seen, there is significant growth in potential peak capacity demand which will need to be met by peak supply over this summer and coming summers as well.

The last debate we had on the national electricity law was in 2005. A number of issues were raised then and I seek some responses from the minister as to what has occurred since then. That particular change in the law gave the Ministerial Council on Energy the power to direct the Australian Energy Market Commission to carry out a review and report to the Ministerial Council on Energy. I am wondering whether the minister, first, can provide information on the number of occasions when the ministerial council has directed the Australian Energy Market Commission to

carry out reviews and to provide reports to the Ministerial Council on Energy and on what particular issues were those reviews to be conducted.

Secondly, the minister indicated during that last debate that, under that legislation, the ministerial council would be able to initiate rule change proposals. On how many occasions—and the details of those—has the Ministerial Council on Energy initiated rule change proposals under the current rules that have prevailed for the past two years? This is an issue I want to raise later on, but the minister said last time:

> Placing these principles in the law rather than in the rules ensures that they cannot be changed by the normal rule change process and instead must be changed by legislation, thereby providing greater certainty for the industry and consumers on the regulatory practice of the Australian Energy Regulator.

That was the claim made in the debate in 2005. Will the minister clarify whether, in this piece of legislation we have before us in 2007, there are any changes to that thinking, or are the changes we are looking at in 2007 consistent with that statement made by the minister in 2005? In particular, I am wondering whether there are changes, which we are being asked to look at on this occasion which have been taken out of the law and been placed in the rules.

I am not sure how complicated a process this would be, but I assume the minister is in a position to be able to provide us with a copy, draft copy or otherwise, of the proposed rules once this legislation is passed. As I have said, I seek a copy or draft copy of those proposed rules but, in particular, I would like the committee's attention to be drawn to whether or not there are examples of issues that are currently being canvassed or covered in the national electricity law but are being taken out of the law and are being placed in the rules.

There may well be examples vice versa, where things have been taken out of the rules and placed in the national electricity law and, if that is the case, I would be similarly interested in that as well. I repeat again that the minister said last time that it was important to put these things in the law because it provided 'greater certainty to the industry and consumers on the regulatory practice of the Australian Energy Regulator'. So, if something is being taken out of the law and put in the rules, clearly, that would provide less certainty, using the minister's own words, for participants in the industry.

On the last occasion, the minister indicated that the law allowed ministers of participating jurisdictions to initiate a jurisdictional derogation as a rule change proposal. On that occasion, the minister indicated the derogations South Australia either had sought or was seeking. What I am seeking is advice from the minister as to whether, since 2005, there have been any further derogations sought by the South Australian minister or, in this particular legislative change, are we seeing or about to see further derogations in relation to South Australia's position? I have also asked the minister for a copy of the new rules.

I note in the 2005 debate that the minister said, 'It is important to note that this initial rule-making power can only be exercised once.' What the minister was saying there is that we were being asked to pass the law in 2005 and that we were giving the power to the ministers on a once-only basis to establish the national electricity rules and that after that they would not have that power and they would have to go through the rule change process. We were told that that would be on a once-only basis and that every other rule change would have to go through this transparent process.

As I read the 2007 legislation, it appears that the commitment given by minister Holloway on behalf of minister Conlon in 2005 is not being adhered to. If I am wrong I will be pleased to have that corrected but, on my reading of it, it appears that ministers Holloway and Conlon are saying, 'Okay, we said in 2005 that it would be a once-only use of this power, but we are now going to have another lick of the lollipop and are going to give the ministers the power to make another set of rules without parliament having any say in them.' After that they will then go through this transparent process again.

That is why I come back to the question I asked a few moments ago, because it is important for us in this parliament to know what the rules will be and, in particular, what the changes to the rules will be, as well as what issues have been taken out of the national electricity law and are now being incorporated into the rules. With the national electricity law, at least members of parliament and parliaments themselves have some say; with the national electricity rules we have no say—essentially, it is just an executive decision of ministers in the national electricity market meeting deciding what they believe best suits them and the market.

In 2005 the government said that the ministerial council was to reconsider the issue of merits review for electricity, and I note that in the second reading explanation there is an explanation of a limited form of merits review. I flag to the minister that I will need to take advice from him, and perhaps also from my colleague the Hon. Mr Lawson, regarding exactly what this particular form of merits review will mean in practice. I would also appreciate it if the minister could provide any greater detail or explanation to a non-lawyer in relation to that.

My colleague the member for MacKillop indicated to me that there was a June 2006 amendment to the Australian Energy Market Agreement. If that is in fact the case (I think we had a stoush about the version of the Australian Energy Market Agreement during the last debate in 2005, or it may have been the previous change to the law in 2004), and if there is a more recent form of the Australian Energy Market Agreement than the one I have, which is 2004, would the minister or his officers provide a copy to me and to those members of the committee who may be interested in having a look at it?

This has the potential to be a complicated committee stage debate and I do not intend to go through all the individual sections of the clauses tonight in the second reading; I will leave that to the committee stage. However, I will to flag three areas about which I want to ask questions. One is the issue of the timing of legislation. Those who have been in this chamber for a while know that at various times we have had a gun held to our head in terms of having to pass legislation for the national market. I recall that in June 2004 (I think) the state minister (and, to be fair, the federal minister) jumped up and down on their hind legs insisting that the legislation had to go through to help the establishment of the Australian Energy Market Commission and the Australian Energy Market Regulator. As we know, that was just a façade; all that was established at that time was a shell so that the ministers, both state and federal, could claim that they had met the time-line involved. Those bodies existed in name only for a number of months; they did nothing, and the existing regulators in the states and the other national bodies continued to operate.

Then, of course, we had the legislation in 2005 to which I have been referring and, again, there was pressure on us to get that legislation through, although it was not as bad as 2004. I will remind the Hon. Mr Holloway of his answers during the committee stage of that debate in 2005. He outlined that there would be a time-line, and this particular legislation was, I think, originally meant to be have been seen back in 2005-06. We are now seeing it in 2007. So, we are about 12 to 18 months, I suspect, behind time in terms of getting this legislation through, and this only relates to the distribution sector of the electricity industry.

My understanding is that there is another tranche of legislation which relates to the retail sector, which we will see, I assume, in 2008. Originally, we were meant to see that some time in about 2006-07. Then, as I understand it, if the government adopts the position that it is not going to hand over the power of retail pricing then there might be a third tranche of legislation when, and if, the government eventually decides to do what minister Conlon told the *Sunday Mail* in an exclusive interview a number of years ago, that he had agreed to hand over retail pricing powers to the commonwealth regulator. I want to confirm whether that is correct, that we potentially see another three tranches of legislation in implementing further stages of the national electricity market and, in particular, whether the minister can indicate when he and the ministerial council expect the parliament to see those pieces of legislation.

I seek advice from the minister also on the operation of the Australian Energy Regulator. Minister Conlon found himself in some hot water a couple of years ago when this was being debated, when a number of people made the suggestion, including myself, that the Australian Energy Regulator would be making critical decisions on the South Australian market from somewhere in Melbourne and would be out of touch with the South Australian electricity market. The minister's response to that was to say: 'Well, we need a branch office of the Australian Energy Regulator in South Australia.' I asked the minister—and the Hon. Mr Xenophon interjected at the time—exactly what is the shape, structure and substance of the Adelaide office of the Australian Energy Regulator as we debate this legislation?

Earlier in the year I met with the Australian Energy Regulator representatives in Melbourne and they indicated to me, at that stage, that they were having discussions about potential staff from ESCOSA coming across to the Australian Energy Regulator. I asked the minister to indicate: what is the staffing complement? What is the status of the most senior position with the Australian Energy Regulator in Adelaide? How many staff came across from ESCOSA to the Australian Energy Regulator in South Australia?

I flag the issue of retail pricing. As I said, minister Conlon let the cat out of the bag a couple of years ago in an interview with the *Sunday Mail*, where he gave an exclusive that he was going to transfer the power over retail pricing to Canberra. Since then he has come back to the position where he has not made that decision yet, and neither has the South Australian government, and he has various versions of the policy. I would like the minister to put on the record what the latest version is. One version was that he would not transfer the powers to the Australian Energy Regulator until we had a local office of the Australian Energy Regulator in South Australia.

I am asking for the minister to indicate exactly what he has agreed to in relation to a transfer of retail pricing powers to the Australian Energy Regulator, because certainly people at the national level believe that all of the states, and in particular, I think, the premiers at COAG have agreed that there will be a review of competition in the marketplace. I think that will be done by the AEMC, although I stand to be corrected on that. That has just been completed in Victoria and, surprise, surprise, that review says: 'Yes, there is competition'. There is to be a review, I think, next year in South Australia about our marketplace and, surprise, surprise, it will say: yes, there is competition.

My understanding from people at the national level is that the Premier supposedly agreed that, if this independent review shows that there is a competitive market, then the jurisdictions will hand over power to the Australian Energy Regulator. That is why I want to have a look at a copy of the national agreement, because that is the claim that is being made about South Australia's and Victoria's position, so I would like to see a copy of the agreement. If the South Australian government, through its Premier or minister, argues differently, then it ought to be put on the record what its position is, particularly if that independent review next year concludes that there is a competitive market in electricity pricing here in South Australia.

I flag that that is a critical issue in terms of this parliament's understanding of the legislation; that is, what deals, if any, has the South Australian government done to hand over the critical power of retail pricing of electricity to an Australian energy regulator? Mr Acting President—

The Hon. B.V. Finnigan: Mr President.

The Hon. R.I. LUCAS: Mr President; well they change so quickly here. I flag that, during the committee stage of the debate, that will be a critical issue, and it would certainly expedite the discussions if the minister could (a) provide the information that is sought before we commence the committee stage and (b) have a clear, concise and understandable explanation of what the government's position currently is and what the parameters of its decision-making process will be in the future.

I said earlier that I would flag two other issues which I did not, so I will quickly flag them now. In this legislation, in 2002, the Labor Party and others talked a lot about tougher penalties and major changes in relation to rebidding. I want the minister to summarise exactly what the government has achieved in relation to tougher penalties. I highlighted earlier the issues in relation to maintenance standards, and I do not think there have been any changes there, although there may have been tougher penalties in relation to generators' bidding practices, but that was not the issue that I raised. As to the issue of rebidding, what (if any) changes have been achieved in the past few years on that or are being incorporated in the changes to the National Electricity Law that we see before us this evening?

As I indicated, potentially, it could be a complicated committee stage. I do not intend to raise all of the minor issues during the second reading; I will raise those issues when we get to the committee stage.

Debate adjourned on motion of the Hon. B.V. Finnigan.

At 21:23 the council adjourned until Wednesday 24 October 2007 at 14:15.