LEGISLATIVE COUNCIL

Tuesday 26 February 2008

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

ELECTRICITY (FEED-IN SCHEME—RESIDENTIAL SOLAR SYSTEMS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

PAPERS

The following papers were laid on the table:

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

Rules under Acts—

Road Traffic Act 1961—Australian Road Rules—Use of Mobile Phones

Inquiry into the Law and Processes relating to Workplace Injuries and Death in South Australia—Government Response to the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation

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

Regulations under the following Act—

Primary Industry Funding Schemes Act 1998—Clare Valley Wine Industry Fund

By the Minister Assisting the Minister for Multicultural Affairs (Hon. C. Zollo)—

Regulations under the following Act—

Adoption Act 1988—Prospective Adoptive Parents Register

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

Regulations under the following Acts—

National Parks and Wildlife Act 1972—Rare, Vulnerable and Endangered Species

South Australian Health Commission Act 1976—Compensable and Non-Medicare Fees

Environment Protection Act 1993—Environment Protection (National Pollutant Inventory) Policy 2008

ABORIGINAL LANDS PARLIAMENTARY STANDING COMMITTEE

The Hon. J.M. GAZZOLA (14:20): I bring up the report of the committee, being the annual report for 2006-07.

Report received and ordered to be published.

NATURAL RESOURCES COMMITTEE

The Hon. R.P. WORTLEY (14:21): I seek leave to move a motion without notice.

Leave granted.

The Hon. R.P. WORTLEY: I move:

That the members of the Legislative Council appointed to the committee under the Parliamentary Committees Act 1991 have permission to meet during the sitting of the council on Thursday 28 February 2008.

Motion carried.

WATER SECURITY

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:21): During the last sitting week of parliament the Minister for Environment and Conservation tabled a ministerial statement made by the Minister for Water Security on the subject of water security. It has come to my attention that the Premier also made a ministerial statement on the subject of water security on 12 February, which was overlooked. I now table that statement.

WORKCOVER CORPORATION

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:22): I lay on the table a copy of a ministerial statement relating to WorkCover made earlier today in another place by my colleague the Premier.

QUESTION TIME

POLICE RESOURCES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:25): I seek leave to make a brief explanation before asking the Minister for Police a question about police cuts.

Leave granted.

The Hon. D.W. RIDGWAY: During the last sitting week I asked a range of questions on the Productivity Commission's report—

Members interjecting:

The PRESIDENT: Order!

The Hon. D.W. RIDGWAY: —which, as I am sure all members will recall, showed that the number of sworn officers in the South Australia Police had fallen by some 20 over the past 12 months. During the past week or so the minister was on radio making some claims that 'what...the opposition failed to do yesterday was to look at some of the non-operational sworn officers. Now, there's 127 of those...[and] they include people doing forensics, crime prevention work and prosecutions, all important that we have sworn officers doing those.'

I would like to draw members' attention to two press releases issued by the minister. One dated 5 September 2006 reads, in part, 'Mr Holloway says by 2010 South Australia will have more than 4,400 officers on the beat.' In the press release issued on 5 December 2007—a matter of only three months ago—the minister said, 'By 2010 South Australia will have more than 4,400 police officers on the beat.'

An honourable member interjecting:

The Hon. D.W. RIDGWAY: Yes, on the beat, that is, actually out there policing in their communities; not sitting behind desks doing jobs, but actually out on the beat. Last week, and as reported in the media on Thursday 21 February 2008, the office of South Australian Police Commissioner Mal Hyde advised that a project overviewing ways to make budgetary adjustments was being undertaken within SAPOL. Then, on Friday 22 February, *The Advertiser* reported that the adjustments SAPOL was considering 'could amount to a cut of $10 million.' My questions are:

1. Is the minister aware of what adjustments SAPOL is considering to achieve a $10 million cut?

2. Given the minister's response on radio last week, how many sworn officers will SAPOL need by 2010 to achieve 4,400 on the beat?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:27): The shadow minister for police never gives up, does he? He gets it wrong all the time, but he never gives up. The shadow minister for police is obviously forgetting the lead-up to the last election when this government promised that there would be a net increase in the number of police by 400 over the term of the government.

I would have thought that the honourable member's party actually matched that promise during the election campaign, but it also said that it would cut 4,000 out of the Public Service—which, of course, excluded sworn police officers but did not exclude all the public servants who support police. Inevitably, there is only one consequence of that policy. If we had had the misfortune of the opposition being elected the only possible consequence would have been more police officers behind desks, because that important work needs to be done.

Members interjecting:

The Hon. P. HOLLOWAY: I will address that at length. What I am doing is addressing the gross misinformation given in the preamble to the question. There are a number of police officers, for example, who do work in forensics. Now, I do not know what the Hon. David Ridgway believes

those sworn police officers, or those in crime prevention programs, are doing. They may not technically be regarded as operational, which generally relates to carrying firearms, but police officers going around schools trying to work with kids to deal with issues—whether it is driving or other issues—presumably do not need to go armed, and I do not think anyone would suggest that those police officers are not doing worthwhile work for this state. This is similar to police prosecutors. Is the honourable member saying that we should not have any police officers prosecuting people?

Members interjecting:

The Hon. P. HOLLOWAY: Members opposite can go through all the press releases they like, but this government made it quite clear before the election that it would increase the number of sworn police officers in this state by 400 over the course of this government, with a net increase of 100 each year.

The Leader of the Opposition has been playing with the figures. He appears on the Leon Byner program nearly every second day and tries to create all these statistics, and I suppose he will be invited now to appear on the Nicky and Alexander Downer program. He will probably get a gig on that every day and will be heard on all these programs using these statistics, but the reality is that on any given day—

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Wortley and the Hon. Mr Ridgway will come to order.

The Hon. P. HOLLOWAY: The statistics vary from day to day. We have over 160 (I think it is) police cadets at Fort Largs who are due to graduate over the course of the coming months—in fact, I think there is a graduation ceremony tomorrow—and every time we have a graduation ceremony that means we have another 20 or 30 police officers available. We have within the police academy a large number of cadets who have come from the UK and, as the police officers graduate, the numbers will go up.

Of course, at the same time, we do have attrition (in an average year, something like 150 to 160 police officers will retire, but it does vary from year to year), so we need to recruit about 250 or 260 police officers to achieve the target of 100. Of course, the honourable member can always use statistics on any given day where it will fluctuate up and down, but I am advised that we are well on target to achieving that objective.

The honourable member also asked a question about the budget. As he does every year, the Police Commissioner, being a very prudent financial manager, is going through his budget. As is the case with all government agencies and their CEs, they will be going through the budget process, putting forward a case for new projects. In order to gain approval for new projects, they will have to show that they have been looking at areas where they can improve efficiency within government. However, given the fact that police officers are looking at areas where there might be efficiencies and are achieving their targets, that does not mean that the police budget will be cut. In fact, exactly the same thing happened last year. I think the Hon. David Ridgway asked me a very similar question 12 months ago.

Consequently, the police budget went to record levels and increased by well in excess of CPI, and I have no doubt that, when the budget is brought down this year, the police budget will be significantly increased on what it was last year. But, within that budget, the police, like every other government agency, have to do their bit to try to constrain cost pressures going forward, and they have to do an assessment. My advice is that the Police Commissioner's project charter is to identify and critically assess initiatives to meet budget targets, efficiencies and cost pressures going forward from the 2008-09 to 2010-11 financial year.

Now that is prudence, and that is why this government has had the AAA rating restored and we have had a budget surplus every year. However, within that, we have also been able to deliver significant improvements to the police force. We have new aeroplanes, new police stations and a dramatic increase in the number of police officers.

We have also delivered—and this will have to be paid for—a significant increase, which we negotiated successfully under enterprise bargaining with the Police Association. That will give

improved benefits to police officers and help us address the issue of getting police officers into stations that are hard to staff, which is something members opposite have been asking us to do. That has to be paid for, and we do need budget prudence to find additional resources. However, I can assure the honourable member that we will not be cutting the police budget.

POLICE RESOURCES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:34): I have a supplementary question arising out of the minister's reply The minister mentioned the attrition rate. Will he explain why the attrition rate is increasing?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:35): The attrition rate does vary from year to year. If one looks at some years, you might get 160 or 170 police officers retiring; I think it was higher the previous year. I am not sure that it has risen in the past year.

An honourable member interjecting:

The Hon. P. HOLLOWAY: I do not believe that is the case, but I will check the figures. One might suggest that there are several reasons for it, if it is going up—and I do not concede that it is. Given the highly mobile workforce and labour shortages around the country where all workers are in short supply, it would not surprise me in the least if there was more mobility amongst the labour force because of the higher level of employment we have in this country and this state.

We now have record employment in this state. Inevitably, a police officer will have the opportunity to move into other occupations—which might not have been the case some years ago. Also, we have an issue with the ageing of the workforce. I am told the median age of police officers is less than that of people in other sectors of the public sector workforce, but it is an issue with which we will have to deal over the coming decade. Any variation in the attrition rate is accounted for by the Commissioner in setting out recruitment targets for the following year. Our commitment is for a net increase of 100 per year over four years—which is an increase of 400.

ADELAIDE COASTAL WATERS STUDY

The Hon. J.M.A. LENSINK (14:36): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the Adelaide Coastal Waters Study.

Leave granted.

The Hon. J.M.A. LENSINK: The Adelaide Coastal Waters Study, which was commissioned by the former Liberal government in 2001, has been released. The CSIRO date on the report is November 2007. Indeed, the foreword is from Dr Paul Vogel, the former CE of the EPA. This report was released late on Friday afternoon. My questions are:

1. Why did the government choose to release this report late on Friday afternoon when the Clipsal event was taking place?

2. What is the reason for the delay in releasing it?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:37): It never ceases to amaze me. The opposition has been calling for the release of this report and then, when we finally release it, it does not like that day. The government is incredibly influential, but it cannot influence the level of interest and the other competitive attractions that media outlets have. It has a lot of influence and a lot of control, but it cannot control the media and its level of interest in other state events and other matters. Every day in South Australia is a busy day in politics and there are always competing interests. The opposition wants a bet each way. It wanted us to release the report but not on that day—some other day, but not that day.

Indeed, the government is very proud of this report. It contributed $3 million to this thorough and extensive scientific investigation. It took teams of scientists six years to undertake a comprehensive investigation program with the release of 20 separate scientific reports. The report took six years and the government is very proud of it. It provides us with a fine framework to ensure improvement in the quality of water and better management of our coastal waters. This $3 million scientific investigation involved teams of our best scientists and the best minds behind some of this scientific work. The investigation took 12 months longer than we anticipated, due to the fact that

some of these scientific investigations and the analysis around them can take longer than anticipated, as happened in this case.

I received a copy of the report in February of this year, and that went through the cabinet process, as a matter of course. The report was released publicly as soon as reasonably possible after that cabinet process. So, although I know it was frustrating that the report took six years, which is one year longer than anticipated, nevertheless, the 20 scientific reports that underpin the analysis were made available as they came to hand. We were not trying to hide the technical or scientific information that was unfolding.

Those reports were made available: they were put on the website and were there for the public to see. As I said, we were not trying to hide them or prevent the general public from having access to the science as it became available. All those reports were made available in a timely way after the scientific investigations were completed, and all 20 have been available on the website for some time. I can certainly assure members in this chamber that nothing about the timing of the reports delayed any program implementation.

The Hon. C.V. Schaefer: You're not doing anything.

The Hon. G.E. GAGO: I am very pleased to have that interjection about what we are doing, and I would be very pleased to outline how proactive we have been in respect of the findings of the Adelaide Coastal Waters Study, because I am sure members are interested. The report was initiated in response to concerns about seagrass meadows and their deterioration and, as I said, 20 scientific papers were undertaken around particular elements. The report in question found, among a number of other things, that over 5,000 hectares of seagrass meadow had died as a result of a range of impingements reducing the water quality of the gulf, and they included: industrial, stormwater and treated waste water being discharged into the gulf.

It found, basically, that those three problem areas generally resulted in both an increase in particulate matter (sediment) in the gulf that affected marine life (fauna and flora) and also an increase in nitrogen levels that was having a detrimental effect. This study made 14 recommendations, all of which the government has endorsed in principle. The government is establishing a water quality improvement steering committee to address each recommendation and establish a clear action plan, with time frames associated with all 14 recommendations.

Unlike the former Liberal government, we have not been sitting on our hands. There are a number of things we have been doing already in response to those concerns about our seagrass meadows and the quality of water in the gulf. They include a wide range of initiatives, such as the commitment of over $150 million for improving the Christies Beach treatment plant.

That project is not just about improving the quality of discharge water from waste water treatment but reducing the quantity of water discharged from that plant into the gulf. There is the Bolivar waste water treatment plant where large amounts of resources are being committed to extending the pipeline to take up that water. Further, Penrice Soda has been identified as contributing to nitrogen levels in the gulf. The EPA has been working with it and it has committed to a multi-million dollar initiative to reduce its nitrogen emissions by around 70 per cent, so that is well under way.

There are also initiatives like the Adelaide and Mount Lofty Natural Resource Management Board. It has committed over $7 million to improve the management of water runoff in that catchment area, which also includes reducing the sediment discharge from the Adelaide/Mount Lofty catchment area into the gulf.

There are a large number of other stormwater management initiatives and so on that I could speak about at length but will not, but they are some examples of the work that is already well under way and they illustrate our commitment in terms of addressing all 17 recommendations from the Adelaide Coastal Waters Study. This is a very fine piece of work and we welcome it. It is disturbing news but something we clearly need to address. We have undertaken a number of actions already and have a plan of action to continue to improve the water quality of the gulf.

ADELAIDE COASTAL WATERS STUDY

The Hon. M. PARNELL (14:47): By way of supplementary question, in response to the minister's statement that she has had this report only since February, what does the minister say about a government minute dated 27 November 2007 from Mr Peter Pfennig saying that the report had been forwarded to the minister for public release?

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:48): An adviser in my office received a copy of the report, I have been informed. I have been advised that an adviser in my office received a copy of the report late last year, unknown to me.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: The adviser requested particular information in relation to that in terms of the sorts of actions and activities that were currently under way. The adviser—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: It was either late November or December last year. The adviser asked for additional information, which was received. The report was in the office over the Christmas/New Year period and there was annual leave. The additional information was received and given to me in February this year.

ANIMAL WELFARE

The Hon. S.G. WADE (14:49): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about animal welfare.

Leave granted.

The Hon. S.G. WADE: The government has repeatedly expressed its commitment to animal welfare. The Rodeo Association estimates that nationally, from an average of 13,500 animal exposures a year, an average of eight animals are injured. At the same time, in December 2007 fires on Kangaroo Island burnt 75,000 hectares of national parks and led to the deaths of thousands of animals. Islanders have reported how thousands of kangaroos, wallabies and possums were found dead in the sea following the fires. These animals had jumped from 300-foot and 400-foot cliffs to their deaths. Thousands of dead birds were seen on the water.

Concerns have been raised that these animals perished because the fires in the national parks were not prevented and there were no burnt breaks to stop the fires, to slow the fires or to give the animals a chance to go somewhere that had been burnt two or three years previously.

Professional shooters who wanted to shoot koalas humanely in the trees in the line of the fire were ordered not to do so by departmental officers. These animals perished. I am informed that the Department for Environment and Heritage produced a bushfire plan for the island covering the period from 2004 to 2009. The plan failed to provide for protective measures in some areas and the plans made for other areas were not implemented. In the context of the Kangaroo Island fires of December 2007, my questions are:

1. Does the minister consider that her agency's bushfire plans for Kangaroo Island were sufficient and adequately implemented?

2. What policies or procedures does the department have in place to deal with the welfare of native fauna in peril during bushfire events?

3. Will the minister investigate whether her department, having the care and custody of native animals in national parks, effectively discharged its duties under the Prevention of Cruelty to Animals Act 1985 during the fires on Kangaroo Island?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:51): The recent fires on Kangaroo Island, as with any fire anywhere, were of deep concern and I know that the loss of properties, lives and wildlife saddens us all, and my sympathies go to those families who were affected by those fires. In terms of fire management in our parks, the Department for Environment and Heritage has a fire management strategy that includes burning, and that has been part of our strategy for a number of years. Regarding the particular incident on Kangaroo Island, unfortunately, even though we have a fire management strategy that includes prescribed burning, I think something like eight or nine prescribed burns had been planned for Kangaroo Island in the past year and, of those planned prescribed burns, if I recall correctly, I believe we were able to achieve only one of them because of the adverse weather and drought conditions.

These are challenges for us, and we know that climate change also presents us with significant challenges. After every fire, DEH reviews the incident and uses all of that experience and knowledge in future planning. Clearly, the issue of our being able to complete the prescribed burns that we plan each year is important to us, particularly during drought conditions and, as I said, there are also climate change predictions that would suggest that these challenges could continue. So, DEH is looking at a range of alternative options such as winter burns.

Animal welfare is a very sensitive area. It is very disturbing when animals are injured from the effects of fire and smoke inhalation and, for those that survive, the after-effects of changes to their habitat with the subsequent lack of food means that some animals can then be left to starve. This provides particular challenges to us, and DEH worked very hard to manage those three facets of animal welfare post fire.

We cannot just allow people to run around with firearms shooting wild animals; it needs to be done in a well-managed and coordinated way. Although these things are very disturbing for people to see, nevertheless, DEH did have a plan which it enacted through the parks and also—

Members interjecting:

The PRESIDENT: Order! We do not want everybody turned into Wyatt Earps on Kangaroo Island.

The Hon. G.E. GAGO: It is really important that these activities are done in a professional way and are managed well. DEH did send in teams of people to assess the impact on wildlife and to destroy animals that were assessed as being too ill to recover or suffering in any adverse way. They do that in a very humane way. The advice I have been given is that they did that in a very timely way. It is a most unpleasant job but it was carried out particularly well.

I have been informed by the chief executive that, in terms of the allegations regarding professional shooters not being allowed to shoot koalas (the specific term that the member has raised), in fact, that issue has never been raised with him, so I am not too sure where the member received this information. The advice that I have from the chief executive is that the issue of professional shooters has not been raised with him. Perhaps it is a bit like some of the other facts and figures that members opposite ask about, where they make up the facts as they go along.

As I said, it is a very difficult job which is done extremely well and these people are to be congratulated for their efforts. Indeed, they put in a mammoth effort to ensure that the national parks were open at about Christmas time. There was an enormous amount of work that went into it, in order to reduce the impact on tourism over the Christmas and New Year spell. The efforts of the DEH teams, volunteers and the CFS are to be commended and acknowledged. It was a tremendous effort and, as I said, it enabled the opening up of most of the national parks and major tourist attractions prior to the Christmas-New Year season. Indeed, they were challenging times. As I said, the work that the DEH teams did in fighting fires, along with the CFS and other volunteers, is to be commended.

The PRESIDENT: I remind honourable members that we are 33 minutes into question time but we have had only three questions.

Members interjecting:

The PRESIDENT: Order! Those who ask the questions should keep them precise and those answering should get straight to the heart of the question.

MINING SECTOR

The Hon. I.K. HUNTER (14:59): Will the Minister for Mineral Resources Development provide the chamber with an update on grants in the mining sector?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:59): I thank the honourable member for his very concise but appropriate question. Mineral exploration in South Australia has never been so strong. Thanks to the successful plan for accelerating exploration or PACE initiative, it will continue to drive this important sector even further.

Recently I had the pleasure of announcing the highly-anticipated fifth round of funding under the PACE program. PACE drilling grants of $2.3 million have been awarded to 29 mineral, petroleum and geothermal exploration projects. The successful PACE projects were selected from 66 high-calibre applications by an expert panel, including independent geological consultants. In addition to the PACE grants the industry is expected to spend a further $6 million on exploration on

these projects, bringing the total additional mineral exploration expenditure, just on these projects, to an estimated $8.4 million.

The 29 successful proposals comprised 26 mineral projects and three geothermal/petroleum projects in South Australia. Of the approved projects, 14 are within the Gawler Craton, three each within the Curnamona province, the Musgrave province and the Adelaide Geosyncline, two in the Eromanga Basin and one in each of the Arkaringa, Eucla and Lake Eyre Basins.

The latest round of proposals includes new targets in frontier areas, new exploration ideas and interest in a wide range of commodities. The variety of these projects is very encouraging and clearly demonstrates the success of the PACE initiative in generating worldwide interest in prospectivity within South Australia. Many of these projects may not have been realised without the assistance of PACE. Significant discoveries which have previously been made with vital PACE contributions include the RMG Services/Teck Cominco's Carrapateena prospect, Quasar/Alliance Resources' 4 Mile project, Lynch Mining's Bramfield, Malache and Oakdale prospects and Iluka Resources Gulliver's and Dromedary Heavy Mineral Sand's prospects.

Under the PACE program the state government will co-fund up to 50 per cent of approved drilling projects to enhance the level of mineral exploration in the state. As well as encouraging exploration, PACE has had a very successful multiplier effect on investment dollars in South Australia and, of course, that has helped us reach the 12-month total exploration expenditure of $296.9 million to September 2007, compared with a paltry $30 million when this government took office some years ago. So, the latest round of PACE funding is a further example of the Rann government's continued commitment to ensuring future minerals and energy discoveries within the state.

TOURISM ADVERTISING

The Hon. D.G.E. HOOD (15:02): I seek leave to make a brief explanation before asking the Minister for Emergency Services, representing the Minister for Tourism, a question regarding national tourism advertising.

Leave granted.

The Hon. D.G.E. HOOD: Last month Qantas and Tourism Australia together organised an advertising campaign to air on CBS television in the US. It was a half-hour feature of Australian tourist destinations to encourage Americans to holiday in Australia. Indeed, a website was set up for that purpose—www.aussieweek.com—and members might recall that a gala event was organised to mark the event, putting Australian sporting and other icons alongside Hollywood stars. My concern is that the Aussie week and G'day USA promotions featured only Sydney, Melbourne and Brisbane as holiday destinations in Australia.

The Hon. B.V. Finnigan: Where the bloody hell were we?

The Hon. D.G.E. HOOD: That is exactly my question. So, why were we excluded? What representations has the minister made, or will he make, in order to ensure that South Australia does not miss out on future events? I think Mr Finnigan said it well.

The PRESIDENT: Mr Finnigan was out of order.

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:03): Yes, the Hon. Mr Finnigan was out of order but it was well said. I thank the honourable member for his question in relation to national tourism advertising. I will endeavour to bring the question to the attention of the minister in the other place and then bring back a response for the honourable member.

MARATHON RESOURCES

The Hon. M. PARNELL (15:03): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about Marathon Resources.

Leave granted.

The Hon. M. PARNELL: The government has announced an indefinite suspension of the licence held by Marathon Resources to explore the sensitive and iconic Mount Gee area within the Arkaroola Wilderness Sanctuary. This was in response to the confirmation by PIRSA of a significant breach by Marathon of the operating conditions of its licence. In justifying the decision to

suspend rather than cancel the exploration licence, the government has argued that the licence needs to remain in place so that Marathon can be required to undertake rehabilitation at the site. Yet it is clear that the company believes the suspension is only a temporary setback.

The government has failed, in media statements and in answer to my question here two weeks ago, to rule out the option that Marathon Resources will be allowed to resume its operations once the clean-up is complete. My question of the minister is: will you now confirm, once and for all, that when the clean-up by the company is complete its exploration licence will be cancelled? Or, in the alternative, can you guarantee that the suspension of that licence will remain until the exploration licence expires naturally in October 2009?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:05): The investigation in relation to the Marathon company is still ongoing, and until that is completed I am not prepared to make any final statement. This government certainly has no intention of allowing Marathon Resources to resume activities in the foreseeable future; however, any final decision will obviously have to wait until all investigations are complete.

MARATHON RESOURCES

The Hon. M. PARNELL (15:05): I have a supplementary question following that answer. When will that investigation be finalised, and will the minister release the report to the public?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:05): I actually tabled the summary the other week. The department is currently still seeking information from the company in relation to one particular matter. I understand that the drill rigs have now moved off Mount Gee—I think three of them have left the Arkaroola area and the other one is preparing to leave shortly—and that is all stock completed, but there remains the issue of dealing with the disposal of the material. We are also still seeking information from the company in relation to damage to the fluorite vein within the geological monument, and that investigation will continue.

MARATHON RESOURCES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:06): I have a supplementary question. Has Marathon Resources ever received any assistance from the PACE program for its drilling activities?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:06): I would have to look at that; there have been hundreds of these grants and Marathon does have—

An honourable member interjecting:

The PRESIDENT: Order! The minister said he will look at the information.

The Hon. P. HOLLOWAY: Marathon does have a number of operations within various parts of the state, and most of them in much less sensitive areas than Arkaroola. However, I will take that question on notice.

MARATHON RESOURCES

The Hon. R.I. LUCAS (15:07): My question is directed to the Leader of the Government. Prior to announcing the decision to indefinitely suspend the drilling operations of Marathon Resources at Arkaroola, did the minister, or any officer in his office, have any discussions with former Labor senator Chris Schacht?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:07): No. I believe Mr Schacht rang my office seeking a meeting, but that invitation was not taken up. I have not met with anyone representing Marathon subsequent to the investigation beginning into what happened in respect of Marathon Resources. The last meeting I had with Marathon was a visit prior to Christmas when I went up and met with the Spriggs and the officers of Marathon Resources to observe the operations myself. That was the last contact I had with anyone involved with Marathon Resources.

MARATHON RESOURCES

The Hon. R.I. LUCAS (15:08): I have a supplementary question arising out of that answer. Is the minister saying that none of the officers from his ministerial office had any contact with former senator Chris Schacht, either, prior to the decision announced on 12 February?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:08): I indicated that he contacted my office seeking a meeting, so I guess there was that much contact but, as I said, we did not have a meeting with Mr Schacht or with any other officer of Marathon, apart from the on-site inspection prior to Christmas.

STATE EMERGENCY SERVICE

The Hon. B.V. FINNIGAN (15:09): My question is to the Minister for Emergency Services. What program has the State Emergency Service undertaken to train and educate people in the community on disaster management—especially with regard to schoolchildren and ethnic communities?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:09): I thank the honourable member for his important question. The State Emergency Service has been active throughout the past 15 years in the delivery of disaster management and emergency awareness training to the broad range of emergency services, government departments, non-government organisations and other involved agencies. This program has also included the delivery of special interest training and education sessions to school students at all levels of the education system.

The State Emergency Service management training officer, Mr Allan McDougall, is employed by the SES with the specific role of delivering disaster management training. That officer works very closely with all other services and agencies active in the emergency management arena and delivers a very broad range of training to all manner of agencies and groups.

In addition to the existing delivery programs for disaster management training, there is an increased emphasis on engaging culturally and linguistically diverse (CALD) communities, including indigenous communities, in this type of training.

Recent significant projects have included the delivery of awareness and education programs to CALD communities in the flood and bushfire prone Virginia area, where a strong lead has been taken in ensuring that safety information and messages are distributed throughout the community, regardless of the perceived cultural or ethnic barriers. Late last year, awareness and educational material was also presented by the Multicultural Association of South Australia at Murray Bridge to groups of people from Chinese and Philippine ethnic backgrounds.

In concert with the Department of Education and Children's Services, primary schools in high risk areas are being identified, with the aim of delivering education regarding flood and weather hazards. The strategy is to utilise primary schoolchildren as 'Trojan horses' to deliver public safety messages to the rest of their families.

The SES, working in close concert with the South Australian Fire and Emergency Services Commission (SAFECOM) and other emergency services and emergency management agencies, is developing new programs and initiatives in public education and awareness. These new initiatives will ensure that critical information is provided to all South Australians, regardless of cultural and geographic placement differences.

GOULBURN VALLEY WATER

The Hon. A.L. EVANS (15:12): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation, representing the Minister for the River Murray, a question about Goulburn River water allocations.

Leave granted.

The Hon. A.L. EVANS: In my matters of interest speech in October last year I made passing reference to the easing of water restrictions in the Goulburn Valley river system, a tributary of the Murray River feeding in at Echuca in Victoria. A 'Frequently asked questions' document produced in October by Goulburn Valley Water states:

Water restrictions are being eased in Goulburn Valley Water's region because, as outlined in the Customer Charter, the Corporation has obligations to its domestic and business customers to provide water when the resource is available.

Furthermore, after parliament rose on 10 December 2007, Goulburn Valley Water made the following announcement in a media release entitled 'Water restrictions eased to stage 1 for the Murray system':

Goulburn Valley Water has announced that water restrictions for towns supplied from the Murray system...will be eased from stage 4 to stage 1 effective...14 December 2007.

This is not the kind of talk we are hearing in Adelaide, as our parks and gardens dry out and die, our elderly people break their back carrying buckets of water to water their plants, irrigators go into bankruptcy, and our state economy and environment suffer. My questions to the minister are:

1. What is the present state of water allocations in the Goulburn Valley system?

2. How many megalitres of water are these lower allocations costing the Murray-Darling system?

3. Has the minister made any representations to protest (or otherwise) to her counterpart in Victoria concerning the Goulburn Valley allocation situation?

4. Would it be fair to say that the drought leaves nobody out, except in the Goulburn Valley river system?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:14): I will refer the honourable member's question to the Minister for the River Murray in another place and bring back a response.

CORONIAL INQUESTS

The Hon. R.D. LAWSON (15:14): I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question about coronial inquests.

Leave granted.

The Hon. R.D. LAWSON: The Coroner's annual report for 2007 was recently tabled in this council. Somewhat confusingly, the covering letter, signed by the Coroner, is dated October 2006, and the document itself states that the report covers the period up to 30 June 2006. A subsequent erratum has corrected the second error but not the first. My questions relate to recommendations made by the Coroner and referred to in his annual report. I specifically refer to two recommendations, the first of which states:

That a panel of senior psychiatrists be established to undertake a periodic review of the medical files of patients with chronic mental illness whose longitudinal history is deemed to be essential knowledge for those who are required to manage the patients in the future. The periodic reviews should result in the production of a comprehensive summary, made available either electronically or in hard copy, to psychiatric units in public hospitals, as well as community and crisis assessment teams.

A second recommendation from another inquest states:

That provision be made to increase the number of closed ward extended care beds available at Glenside Hospital (or a suitable alternative facility) for persons with chronic mental illness who have not responded sufficiently to treatment in an acute facility and who are deemed unsuited to management in the community.

My questions are:

1. Have each of those recommendations be implemented and, if not, why not?

2. When will they be implemented?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:16): Coronial inquiry reports are valuable documents in terms of the sorts of recommendations that come out of them and the advice and direction they give us in terms of future planning of our health services. I would need to check with the department, but I believe that at this time we are putting together a response to those recommendations and that it will be made available. I would have to double-check on the timing of that response because I am not absolutely sure, but I am happy to bring back that information if it is something other than I have said.

In terms of the increase in the number of mental health beds, I take this opportunity to point out that this government has committed to a reform, a complete overhaul, and a rebuilding and

redesign of our mental health system throughout South Australia, which was left in an appalling state by the former Liberal government. The government has committed $107.9 million to address the issues of concern raised in the Stepping Up report, which was a watershed report completed by Monsignor Cappo and the Social Inclusion Board.

The outcome of that reform agenda will increase by 86 the number of adult mental health beds across the system in South Australia. We have a plan of action and money set aside to increase the number of mental health beds available. In line with the Social Inclusion Board's report, those beds will be allocated in a stepped system. We are reforming and rebuilding our forensic mental health system, and redeveloping secure and intensive beds at the Glenside campus. There is also a range of stepped levels of care and intervention.

The overall net effect will be a much stronger focus on early intervention and prevention. We believe that this reform agenda will deliver an outcome that will help to prevent people from becoming seriously and chronically unwell and needing to be in closed and locked wards. It will enable much earlier intervention and enable us to break the cycle of people having to become seriously unwell before they can access a hospital bed.

As we know, currently in South Australia we have one of the highest proportions of acute mental health beds in the system but inadequate supports for people in the community and rehabilitation. Our reform agenda plans to address and overcome that situation. We will end up with more beds in the system and, as I said, with a mental health system with a much stronger focus on early intervention and prevention, in the hope that we can reduce our reliance on those acute beds.

DUCK HUNTING

The Hon. R.P. WORTLEY (15:20): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about duck hunting.

Leave granted.

The Hon. R.P. WORTLEY: South Australia's many lakes and wetlands are the breeding grounds for a variety of native water fowl. The current drought is clearly having a marked impact on the ability of these wild populations to breed. My question to the minister is: can she inform the council what is being done to protect these wild breeding populations?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:21): I thank the honourable member for his important question and acknowledge the impact the current drought is having on wild bird populations around our lakes and wetlands. For this reason I have taken action to cancel the 2008 duck-hunting season, with restrictions to also be placed on quail hunting.

It is a worrying situation. This is the third successive year the duck-hunting season has been cancelled but, without such action, an unacceptable risk would hang over the stability of our wild bird populations. I am sure anyone who has witnessed the great flocks of birds taking flight over or foraging in our wetlands will want to see these populations preserved for both future biodiversity and also generations of South Australians to enjoy. Inadequate flows in the Murray-Darling and Lake Eyre basins, as well as core refuge areas in Southern Victoria, makes breeding more difficult and, given that situation, the assessment is that allowing hunting to take place this season would impact too greatly on breeding stock.

If these deficiencies continue, South Australia's wetlands, many of which are near the coast, may become increasingly important for the conservation of these populations. Unfortunately, the poor autumn and winter rainfall of last year has ruled out hunting this year. Not permitting hunting this year is not our only approach, obviously, to this problem. We are working on taking pressure off the Murray and restoring flows to some of our state's most important wetlands, including Ramsar-listed Bool Lagoon and the Coorong but, obviously, we still need adequate rainfall to make a real difference.

While wild quail populations are less affected by low flows around our wetlands, restrictions will be placed on the hunting period and also on the number of quail that can be taken so as not to greatly impact on breeding stock. As a result of this decision I have shortened the quail-hunting season from Saturday 5 April to Sunday 27 April, with a reduced bag limit of 15 birds per day to apply. I am pleased to say that banning the hunting season is not without the support and cooperation of duck-hunting organisations, and I acknowledge these groups for their understanding

of the need to conserve these populations, and their responsible actions in the way they have cooperated. Further information for interested parties is available on the DEH website.

POLICE RESOURCES

The Hon. T.J. STEPHENS (15:24): I seek leave to make a brief explanation before asking the Minister for Police—

The Hon. R.P. Wortley interjecting:

The PRESIDENT: Order!

The Hon. T.J. STEPHENS: Since when have you been running the show?

The PRESIDENT: Order! You have 59 seconds left. I suggest you run really fast.

The Hon. T.J. STEPHENS: Thank you, Mr President. I seek leave to make a brief explanation before asking the Minister for Police a question about police resources.

Leave granted.

The Hon. T.J. STEPHENS: Since 2003 there have been 26 patrol vehicles available to South Australian police officers throughout the Adelaide CBD. In five years this number has increased by only one vehicle. Police minister Holloway would have us know that, due to the Rann government's ongoing commitment to increase police numbers to record levels, patrols in the Adelaide CBD have risen by eight since it came to government. However, this is not the point. We are not providing the resources or the vehicles to match that.

The point is that, with gang-related crime and violence increasing in Adelaide city and with the real and not perceived threat of bikie gangs menacing the state and Adelaide city, our front-line officers are being left behind with resources. When will the police minister and the Rann government commit to assisting our front-line officers and providing more resources and thus more confidence in policing the streets of Adelaide and South Australia?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:25): The people of South Australia have great confidence in our police, and that was shown by the recent survey published in the Productivity Commission and on which I answered a question in this parliament in the previous sitting week. The public have confidence because the police of this state have been given record resources under this government. If the honourable member wants us to go back in history, I am happy to refer to the fact that in the mid-1990s police numbers in this state got down to just over 3,400 personnel. That is the history of the matter. If the honourable member wants to go back in history, I am happy to do so. The police have never been as well resourced as they are now, both in numbers and in the facilities available to them.

ANSWERS TO QUESTIONS

AUDITOR-GENERAL'S REPORT

In reply to the **Hon. R.I. LUCAS** (15 November 2006).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): SAPOL is a large agency and is party to many agreements with outside entities. SAPOL constantly undertakes to centrally record and evidence all agreements entered into across the agency.

SAPOL's 'contracts register' policy was approved in July 2003. SAPOL's policy is based on Treasurer's Instruction 27 (now withdrawn and replaced by DPC Circular 27). The policy states:

SAPOL's Procurement and Contract Management Services Branch (PCMS) shall hold the original of all SAPOL contracts for:

- Consultancies with a value greater than $9,900 (including GST); and
- Goods and services with a value greater than $55,000 (including GST).

Contract documents include all formal agreements, memorandums of understanding, inter-agency agreements, supplementary deeds, variations, and extensions to existing contracts.

In December 2004, PCMS compiled a contract register which adheres to this policy.

PCMS use an acquisitions database to record and manage all contracts and tenders with a value greater than $50,000 and consultancies greater than $9,900. Since the report of the Auditor-General for 2005, the acquisitions database is periodically audited against the contracts register to ensure commonality of data. The most recent audits were carried out in May 2005, September 2005 and July 2006. A 100 per cent reconciliation was found on all occasions.

It is noteworthy that of the contracts illustrated by the report of the Auditor-General for 2005 as not being present in SAPOL's contract register:

- The contract for helicopters is administered by Department of Justice;
- 'Crime Stoppers' is an incorporated body, that is, a separate legal entity from SAPOL governed by an independent Board; and
- PCMS has no knowledge of the existence of any contract between CrimTrac and SAPOL.

AUDITOR-GENERAL'S REPORT

In reply to the **Hon. D.W. RIDGWAY (Leader of the Opposition)** (20 November 2007).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): The current policy and procedure requires a senior officer within accounts payable to check all invoices greater than $5,000.00 to ensure that the appropriate delegate has authorised the expenditure and the payment is made to the correct vendor according to the financial authorisation delegation.

ROWAN, MS D.

In reply to the **Hon. M. PARNELL** (1 August 2007).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): The Attorney-General has provided this information:

Ms Rowan issued proceedings against 13 parties, including the state of South Australia, Dr Cornwall and six other individually named defendants. She was ultimately unsuccessful against 11 of those parties, including the state of South Australia, succeeding only against Dr Cornwall and one of the other individually named state defendants.

There were four separate stages to the proceedings: the initial Supreme Court action, an appeal by the defendants and a cross-appeal by Ms Rowan to the Full Supreme Court, an application by Ms Rowan for leave to appeal to the High Court, and a further application by Ms Rowan in the Full Supreme Court arguing that the Full Supreme Court decision should be overturned owing to bias.

Ms Rowan was successful in the first stage to the proceedings only, and then ultimately against only two of the 13 parties.

The bankruptcy proceedings against Ms Rowan were initiated in the Federal Magistrates Court by the commonwealth to recover its costs. The commonwealth's claim for costs amounted to $380,000 and related only to the proceedings in the Supreme Court of South Australia (at first instance and on appeal).

The commonwealth had the carriage of the proceedings in the Federal Magistrates Court as petitioning creditor and obtained a sequestration order against Ms Rowan's estate on 28 September 2007.

That Ms Rowan was partly successful against the state for wrongs done to her, yet has recently been bankrupted, is not the direct result of any action on the part of the state. She has been paid substantial damages by the state and the state has reached agreement and substantially met her claim for costs. Ms Rowan's case has been the subject of a fully transparent trial in the courts including on all cost questions.

The real causes of Ms Rowan's predicament are twofold.

First, Ms Rowan sued defendants against whom she was unsuccessful and who therefore became legitimately entitled to recover their costs from her.

Secondly, Ms Rowan then proceeded with unsuccessful applications, namely, to the High Court and seeking to overturn the Supreme Court decision owing to bias, as a consequence of which she became liable for the further costs of all other parties to those applications.

POLICE EMPLOYEES

In reply to the **Hon. T.J. STEPHENS** (26 September 2007).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): I refer to the question without notice from the Hon. T.J. Stephens on 26 September 2007 regarding the number of operational police officers on 'light duties', the length of time they have been on light duties, the current total cost of accrued work cover payments and the current number of police officers not suitable for patrol duties.

When a police officer sustains a work place injury that restricts their ability to perform their normal duties, they are assigned 'modified duties'. The officer performs the 'modified duties' until such time as they are assessed by a medical practitioner as being fit to return to full duties.

South Australia Police perform a broad range of police duties that are not associated with patrols or investigations. During rehabilitation, police officers performing 'modified duties' are generally placed into the non operational positions and perform meaningful tasks.

As at 30 September 2007, 56 police officers were performing 'modified duties' as a result of being injured at work. Of those 56 police officers identified, 44 are attached to operational postings across South Australia. The postings include general patrols, detectives, traffic and mounted police.

The 'age' of the 56 claims are as follows:

Injury occurred within 1 year	22
Injury occurred between 1-5 years ago	25
Injury occurred more than 5 years ago	9

There are currently 4,100 sworn full time establishment positions in SAPOL. The 56 police officers performing 'modified duties' represents 1.36 per cent of the total police sworn establishment numbers.

The total accrued WorkCover cost for the 56 police officers performing 'modified duties' is $2,483,386. The total cost for this financial year to 30 September 2007 is $281,409. The majority of the costs are incurred through salary and medical treatment expenses.

SAPOL actively works with injured police officers to ensure they return to full operational duties as quickly as possible.

POLICE RECRUITMENT

In reply to the **Hon. T.J. STEPHENS** (21 February 2007).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): SAPOL has recruited 217 officers from the UK with a further 30 due to commence training at the police academy on 5 March 2007.

Of the 217 graduates, 23 (10.6 per cent) are serving in country, rural or remote locations. The disposition of these officers is five at Murray Bridge (Hills Murray Local Service Area (LSA)); one at Berri (Riverland LSA); two at Mt Gambier (South East LSA); two at Peterborough and two at Pt Pirie (North East LSA); three at Pt Augusta (Far North LSA); six at Whyalla (Mid West LSA); one at Pt Lincoln and one at Ceduna (West Coast LSA).

RAINWATER TANKS

In reply to the **Hon. D.G.E. HOOD** (5 June 2007).

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning): Since 2003 the number of new homes constructed in South Australia has been between 8,500 and 8,700 dwellings per year. The new provisions for the installation of rainwater tanks apply to development applications lodged from 1 July 2006. Those development applications needed to be processed and approvals given before construction could commence. The normal construction period for a residential dwelling is 12-16 weeks. Therefore the earliest completion date for these houses would be approximately November to December 2006.

Where building owners arrange with the builder to install the rainwater tank themselves, the obligation then falls upon the building owners to install the tank.

To avoid the potential for any misunderstanding, the development regulations were amended on 29 November 2007 to clarify that the intent of regulation 83A is that the water supply from all sources of water identified in the development approval (i.e. mains water, rainwater and third pipe schemes) must be connected before occupation of the house.

CHILDREN, SMACKING

In reply to the **Hon. A.L. EVANS** (29 May 2007).

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

1. South Australia Police (SAPOL) do not have a specific official policy regarding smacking of children by parents.

2. Police would take action against a parent in those circumstances where they believe that the force applied was or is excessive. Consistent with applicable legislation, SAPOL accept the community standard that on occasion some parents apply minor force to their child as an act of discipline.

Section 20 Criminal Law Consolidation Act—Assault

(1) A person commits an assault if the person, without the consent of another person (the 'victim')

(a) intentionally applies force (directly or indirectly) to the victim;

(2) However—

(a) conduct that lies within limits of what would be generally accepted in the community as normal incidents of social interaction or community life cannot amount to an assault;

and

(b) conduct that is justified or excused by law cannot amount to an assault.

Police would initiate proceedings for aggravated assault against a parent where it was believed that the application of force was more serious than an act of minor discipline.

In addition, the Children's Protection Act provides an 'officer' with the power to remove children from dangerous situations if an officer believes on reasonable grounds that a child is in a situation of serious danger and that it is necessary to remove the child from the situation, in order to protect the child from harm.

3. Police do not maintain records of parents charged with smacking their children as if police believe the application of force was more serious than an act of minor discipline, the parent would be charged with aggravated assault.

AUDITOR-GENERAL'S REPORT

In reply to the **Hon. D.W. RIDGWAY (Leader of the Opposition)** (20 November 2007).

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

1. The Department had no known unauthorised payments over the 2006-07 financial year. Monthly monitoring and scrutiny of financial reports by management did not identify any instances of unauthorised payments and this was confirmed by the Auditor General's Department during their audit.

2. From March 2008, PIRSA will be one of the first agencies to transition its accounts payable function into the Shared Services SA environment and as such, this will result in the further strengthening of preventative controls.

In the short-term, the department proposes to further improve the existing control environment by investigating the interim measure proposed by audit in relation to spot checks on payments prior to disbursement. It should also be noted that complimentary controls including

separation of duties of officers involved in the purchasing/ordering and payments cycles mitigates risk.

3. As I indicated in my answer to question 2, existing controls will be further strengthened and controls including separation of duties of officers involved in the purchasing/ordering and payment cycles, mitigates this risk. In addition, from early 2008 with the transition to Shared Services SA, this will mean that no employee within PIRSA will be processing payments.

SCHACHT, MR C.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:26): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P. HOLLOWAY: During a supplementary question in question time the Hon. Rob Lucas asked me about a meeting with Chris Schacht. I should have also mentioned that at a recent dinner Mr Schacht was at a table adjacent to mine and came over to have a brief conversation with me at that dinner, but he did not lobby me in relation to my decision to suspend mining by Marathon Resources. That is the only and last occasion that I have spoken to Mr Schacht.

The Hon. R.I. Lucas: Did you run into him anywhere else?

The Hon. P. HOLLOWAY: I do not believe so.

CRIMINAL LAW CONSOLIDATION (RAPE AND SEXUAL OFFENCES) AMENDMENT BILL

Second reading.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:28): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill is a result of the Government's review of South Australia's rape and sexual assault laws that began in 2006 with the issue of a discussion paper. An earlier version of the Bill, with the same title, was introduced to Parliament on 8 February, 2007 and allowed to lapse when Parliament prorogued to enable extended consultation.

The Bill amends the Criminal Law Consolidation Act 1935 ('the Act') to—

- reform the offence of persistent sexual abuse;
- reform the offence of rape to include a continuation of sexual intercourse when consent is withdrawn and to include compelled sexual intercourse or bestiality;
- introduce a new offence of compelled sexual activity;
- define reckless indifference to consent to sexual acts;
- define consent to sexual activity and set out the circumstances in which consent is to be taken to have been vitiated;
- reform the offence of unlawful sexual intercourse;
- reform the offence of incest;
- reform offences with animals;
- reform the law on severance of trials for sexual-offence proceedings;
- update references to sexual organs in the Act to include surgically-constructed or altered organs.

It makes related amendments to the Child Sex Offenders Registration Act 2006, the Correctional Services Act 1982, the Criminal Law (Sentencing Act) 1988, the Evidence Act 1929 and the Summary Procedure Act 1921.

The aim of the Bill and parts of the Statutes Amendment (Evidence and Procedure) Bill 2007 is to help reduce sexual violence and encourage victims of sexual violence to report it. Together, these Bills will clearly define the boundaries of lawful and unlawful sexual behaviour, require courts to explain the law to juries in a way that does not reinforce unfounded stereotypical beliefs about the way people respond to sexual violence and the circumstance in which it occurs, make it less frightening for alleged victims of sexual violence to give evidence in court and reduce delays in trials of sexual offending against children.

There are many misconceptions about sexual offending that are brought into the jury room. They can have a devastating and unwarranted effect on the conviction rate.

For example, although many people know that the most likely victims of sexual offences are women, children and physically or mentally vulnerable people, many think a sexual offender will be a stranger to the victim. In fact, the victim will often know the alleged offender.

Similarly, many people think that if there are no signs of physical resistance to sexual activity it must have been consensual. But sexual offending often occurs in situations where there is unlikely to be any physical sign of violence. Obvious examples are when the victim is under threat or duress or is unable to resist because unconscious, asleep or under the influence of alcohol or a drug. Less obvious examples are when the victim consents because confused about the nature of the activity or mistaken about the identity of the other person.

Ignorance of what victims of sexual assault actually experience often makes it difficult for jurors to understand or believe what a victim says. People commonly find it hard to understand why a person did not report a sexual offence immediately and laws on jury directions have traditionally been based on the incorrect premise that the less immediate the reporting, the less likely it was that the sexual offending took place. There are many valid reasons why a person might not report a sexual crime immediately - fear of retribution (particularly in violent family situations), shame, trauma or shock, isolation being just a few of them.

The Government recognises that the incidence of sexual violence in our society is not reflected in the number of sexual offences reported to police or prosecuted in our courts and that inbuilt misconceptions about sexual offending in our laws are partly to blame. These amendments seek to deal with that problem without detracting from fundamental principles of criminal responsibility.

AMENDMENTS TO THE CRIMINAL LAW CONSOLIDATION ACT 1935

Definition of bestiality

The Bill defines bestiality to mean sexual activity between a person and an animal. The definition is in the interpretation section because the new offence of rape is to include compelling an act of bestiality and there is also a new offence of bestiality which replaces the current offence of buggery with an animal.

Definition of sexual intercourse

The current definition of sexual intercourse, which includes the sexual penetration of a person's anus or labia majora, means that people who have had surgery to construct or alter these parts of their body (for example, victims of female genital mutilation or transsexuals) may not be considered to have been raped if a person has sexual intercourse with them against their will.

The Bill redresses this anomaly by providing that references in the Act to sexual organs, including but not limited to these parts, include a reference to surgically-constructed or altered sexual organs.

The Bill also redefines sexual intercourse to include a continuation of sexual intercourse. This supports reforms to the offence of rape.

Consent to sexual activity

The Bill inserts a new provision into Division 11 of the Act (Rape and other sexual offences) to define consent to sexual activity for the purposes of this Division.

The provision aims to clarify the current law. It says that a person is not to be taken to have consented to sexual activity (which includes, but is not confined to, sexual intercourse) unless he or she has freely and voluntarily agreed to the sexual activity.

The Bill lists circumstances where a person's agreement to sexual activity is not to be taken to be free and voluntary and therefore will not be taken to be consent. The list does not define all possible situations when a person, apparently consenting to sexual activity, should not be taken to have given that consent freely or voluntarily. It simply identifies some circumstances that have been identified in court decisions as vitiating consent and requires a court to take them to have vitiated consent. These circumstances are:

- when the person agreed to sexual activity only because force was applied to him or her or to some other person; or because there was an express or implied threat of such force, or because he or she feared the application of such force, or because there was a threat to humiliate, disgrace or physically or mentally harass him or her or some other person;
- when the person was unlawfully detained at the time of the activity;
- if the activity occurred while he or she was asleep or unconscious;
- if the activity occurred while he or she was so intoxicated (whether by alcohol or any other substance or combination of substances) that he or she is incapable of freely and voluntarily agreeing;
- if the activity occurred while he or she was affected by an intellectual, mental or physical condition or impairment of such a nature and degree that he or she is incapable of freely agreeing;
- if the person was unable to understand the nature of the activity (for example, when under a delusion that the activity is not a sexual one but one of an entirely different kind);
- if the person is mistaken about the nature of the activity (mistakenly thinking, for example, that it is necessary for medical diagnosis);

- if the person agreed to the activity with a person under a mistaken belief about the identity of that person.

Other Australian jurisdictions, the UK, Canada and New Zealand have used similar provisions to clarify the bounds of sexual conduct under the law. The approach taken in this Bill, like other recent Australian legislation, is based on a model proposed by the Model Criminal Code Officers Committee.

The Statutes Amendment (Evidence and Procedure) Bill 2007 will set out the kinds of directions a judge must give a jury about consent in sexual offence proceedings.

Reckless indifference

The common law on belief in consent in rape is that a person believes another to have consented to sexual intercourse if that belief was held honestly. It does not matter that the belief was mistaken or unreasonable. This is so because serious criminal offences are generally for intentional wrongdoing. Guilt depends on proof of what the person actually believed.

Many have criticised this subjective approach, saying it is based on outdated and now inappropriate concepts of acceptable sexual behaviour. In some rape cases it is clear that although the accused person honestly (albeit mistakenly) believed that the alleged victim consented to the sexual act, the accused's mistaken but honest belief was quite unreasonable in the circumstances. Also, a belief in consent may be held honestly without the accused having so much as turned his or her mind to whether the other person consented or having taken any reasonable steps towards ascertaining consent. Suggestions for reform include abandoning the subjective approach in favour of an entirely objective one; retaining the subjective approach but allowing a defence of honest and reasonable mistake that must be disproved by the prosecution or allowing a defence of honest mistake that is not allowed in certain circumstances, and must be disproved by the prosecution; or retaining the subjective approach and, rather than retaining a defence of mistake, expanding the meaning of reckless indifference to reflect contemporary standards of acceptable sexual behaviour.

The Bill takes the last-mentioned approach.

In its decision in Banditt v The Queen [2005] HCA 80, the High Court examined the meaning of the expression 'reckless as to whether the other person consents to the sexual intercourse', acknowledging the uncertainty of the law in this area. Callinan J summarised Australian and UK authorities thus:

105...Western Australia, Queensland and Tasmania impose objective tests, so that an honest belief in consent will not negate criminal responsibility unless it be reasonably held. Victoria adopts a statutory test of awareness that the other person 'is not consenting or might not be consenting'. South Australia has enacted a statutory formulation as to the mental element of rape similar to [the NSW] s 61R(1). Section 48 of the Criminal Law Consolidation Act 1935 (SA) as amended by Act No 83 of 1976, provides that the offence is made out by establishing knowledge of absence of consent, or reckless indifference as to whether the other person consents to sexual intercourse with him. In Egan, White J (with whom Zelling and Mohr JJ agreed) said:

'Once it is clearly proved that she might not be consenting, then the man is recklessly indifferent if he presses on with intercourse without clearing up that difficulty of possible non-consent. ...

Upon receiving notice of the possibility of her non-consent, he is put upon inquiry before he proceeds to intercourse.'

The High Court unanimously dismissed the accused's appeal against conviction, holding that the accused was reckless in proceeding to intercourse because he was aware, from the complainant's previous rebuff of his advances, that there was a risk of non-consent. It held that it was not necessary for the prosecution also to establish a determination to proceed with intercourse regardless of lack of consent.

The court disagreed, however, on how the judge should explain 'recklessness to consent' to the jury. The majority thought that:

It may well be said that 'reckless' is an ordinary term and one the meaning of which is not necessarily controlled by particular legal doctrines. However, in its ordinary use, 'reckless' may indicate conduct which is negligent or careless, as well as that which is rash or incautious as to consequences; the former has an 'objective', the latter a 'subjective', hue. These considerations make it inappropriate for charges to juries to do no more than invite the application of an ordinary understanding of 'reckless'...

...In the present case, the trial judge properly emphasised that it was not the reaction of some notional reasonable man but the state of mind of the appellant which the jury was obliged to consider and that this was to be undertaken with regard to the surrounding circumstances, including the past relationship of the parties.

The South Australian law on rape requires proof of the accused's knowledge of lack of consent or of his reckless indifference as to consent. There is nothing wrong with that formulation other than that it leaves unstated the meaning of reckless indifference, which can cause uncertainty.

Although respondents to the Government's discussion paper on reform of the rape and sexual assault laws, published in 2006, were divided on some aspects of consent reform, the majority thought a subjective approach acceptable if reckless indifference were defined more broadly to capture situations where a person is aware that the other person might not consent but goes ahead anyway, or, does not give the slightest thought to whether the other person consents (for any reason, including self-induced intoxication). They suggested that a failure to take reasonable steps, in the circumstances, to ascertain whether the other person was consenting should be taken into account by the court in determining the accused's state of mind.

The Bill achieves this and applies the definition of reckless indifference to all relevant sexual offences in Division 11 of the Act, not just rape.

For these offences, it requires the prosecution to prove that there was a relevant sexual act, that the complainant did not consent to that act, and either that the accused knew the complainant was not consenting to the act or that the accused was recklessly indifferent as to whether the complainant was consenting to the act.

Reckless indifference to the fact that the other person does not consent to an act or has withdrawn consent to an act means one of three things.

It means that the accused person, being aware of the possibility that the other person might not be consenting to an act or might have withdrawn consent to an act, decided to proceed regardless of that possibility. Although aware that the other person might not be consenting, his decision was to ignore it.

It also means that the accused person realised the possibility that the other person might not be consenting to the act or might have withdrawn consent to the act but did not take reasonable steps to ascertain whether the other person did in fact consent or had in fact withdrawn consent to the act before deciding to proceed.

Finally, it means that the accused person did not give any thought as to whether or not the other person was consenting to the act or had withdrawn consent to the act before deciding to proceed.

Self induced intoxication and rape

The Bill also amends the current law on 'the drunk's defence' to ensure that it cannot be used to deny an awareness of the possibility that the other person was not consenting to sexual intercourse. This amendment became necessary after the Bill was introduced when the Supreme Court suggested that the elements of rape be characterised in a way that was not contemplated when the laws of self induced intoxication were enacted.

The common law principle that a defendant can rely on evidence of intoxication to negative any mental element, including voluntariness, intention, knowledge or subjective recklessness applies in South Australia but has been modified for self induced intoxication in response to political disquiet about the effect of the defence. The Criminal Law Consolidation (Intoxication) Amendment Act 1999 preserved the common law principles of self induced intoxication but introduced procedural restrictions on the circumstances in which evidence of intoxication could be left for the consideration of the jury. The Criminal Law Consolidation (Intoxication) Amendment Act 2004 overrode the common law to provide that self induced intoxication is no longer relevant to deny any mental element.

In jurisdictions (like South Australia) in which rape is not based on an objective belief in consent or where, as by this Bill, there is a compromise between a fully objective and a fully subjective approach to rape, self induced intoxication is available as a defence only if rape is classified as an offence of specific intent.

Until the decision of the South Australian Court of Criminal Appeal in R. v B., MA in early November, 2007, rape has been treated as an offence of basic intent, thus denying a defence of self induced intoxication.

The majority in that case, however, suggested that rape is an offence of specific intent because consent to sexual intercourse is a circumstance surrounding the defendant's conduct.

If it is now the law that rape is an offence of specific intent, a person charged with rape could use the drunk's defence to deny that he knew whether the other person consented to sexual intercourse. That would be the case under the current definition of rape or under the definition in the Bill.

The Bill will prevent this by making a special exception to the laws of self induced intoxication as they apply to rape, and for this crime only.

Section 268(2) of the Act stops the drunk's defence being used to deny criminal liability (in the sense of voluntariness and intent) once the objective elements of an offence have been established.

Section 268(3) makes an exception to this. It allows a drunk's defence in limited circumstances that are consistent with fundamental principles of criminal liability. It allows the drunk's defence where foresight of the result of one's conduct is an element of the offence or where awareness of the circumstances surrounding one's conduct is an element of the offence.

If, however, as the courts have now suggested, awareness of consent is a circumstance surrounding the offence of rape, section 268(3)(b) will, if not amended, allow a drunk's defence to rape because it is an offence that requires proof of an awareness of the circumstances surrounding the defendant's conduct (awareness of consent). That would be contrary to the policy behind these reforms and to the policy behind the intoxication laws. By amending section 268(3)(b) the Bill will prevent a person defending a charge of rape on the ground that he did not know whether the other person consented or not because his consciousness was impaired by self induced intoxication.

The offence of rape

The Bill retains the existing elements of rape: having sexual intercourse with another person without their consent and knowing the person was not consenting or being recklessly indifferent as to whether the person was not consenting.

It also includes in the offence of rape the continuation of sexual intercourse when consent is withdrawn and compelling a person to have sexual intercourse with another person, to engage in sexual self-penetration or to engage in an act of bestiality, or to continue to engage in these acts if the other person withdraws initial consent to doing so.

Continuation of sexual intercourse

In consultation on the lapsed Bill, some commentators suggested that the Act should make it clear that to continue with sexual intercourse after consent is withdrawn is rape.

Although it is not mentioned specifically in the offence of rape, the courts have held it to be rape if at any point in sexual intercourse the defendant becomes aware that the other person is not consenting to it or is recklessly indifferent to whether the other person is consenting to it and proceeds with the sexual intercourse regardless.

Rape can therefore be committed in situations where a person who has initially consented to sexual intercourse withdraws that consent and the sexual intercourse continues.

There is, however, authority in South Australia that sexual intercourse, if by sexual penetration, cannot be rape when consent is withdrawn after penetration, the offence then being indecent assault. That authority is based on an interpretation of a definition of carnal knowledge (the equivalent of 'sexual intercourse' in the current offence of rape) that deemed it to be complete upon penetration only. The Privy Council has since pointed out that the purpose of this definition is to identify the minimum physical characteristics of the sexual act upon which the offence is based (i.e. that mere penetration is enough to constitute that act), not to identify a point at which awareness of consent is no longer relevant. That our offence of rape is expressed in terms of 'having' sexual intercourse would tend to confirm this interpretation.

New South Wales, the ACT and Victoria have amended their sexual offence laws to refer to the non-consensual continuation of sexual intercourse, to emphasise that this conduct is criminal.

The Bill amends our laws along similar lines to the laws in Victoria. It defines sexual intercourse to include a continuation of an activity that comprises sexual intercourse. It makes it rape for a person who is engaged in sexual intercourse with another person to refuse or fail to disengage from the sexual intercourse knowing or being recklessly indifferent to the fact that the other person has withdrawn consent.

Compelled sexual intercourse

In consultation on the lapsed Bill, some commentators suggested that it should be a specific crime for a person to compel another person to have sexual intercourse with a third person or to sexually penetrate themselves, citing offences to this effect under Victorian and New South Wales law. Although the 2006 South Australian discussion paper on reform of the rape laws did not refer to this topic, the Government takes the view that offences of this kind will stop a potential gap in the law.

The definitions of rape and sexual intercourse in the current law and in the lapsed Bill are directed at the state of mind of a person who has sexual intercourse, in person, with another person, without that other person's consent. They do not contemplate compelled sexual intercourse.

The laws of aiding and abetting do not clearly cover a person who compels another to have sexual intercourse in this sense. If the person being compelled does not commit an offence (because under duress or being an innocent agent), it may be difficult to convict the person compelling him or her of aiding and abetting an offence. Making this conduct a specific offence will remove that ambiguity.

The Bill makes it rape to compel a person to have or continue to have sexual intercourse with a third person (regardless of whether that third person consents to it or not), knowing that the person being compelled does not consent to it or has withdrawn consent to it or being recklessly indifferent to whether this person consents or has withdrawn consent. It makes it rape to compel a person to sexually-penetrate themselves knowing that the person does not consent to it or has withdrawn consent to it or being recklessly indifferent to whether this person consents or has withdrawn consent. It makes it rape for a person to compel another person to engage in an act of bestiality knowing that the person being compelled does not consent to it or has withdrawn consent to it or being recklessly indifferent to whether this person consents or has withdrawn consent. As rape, this conduct attracts a maximum penalty of life imprisonment.

The common law defence of duress will apply where appropriate to prevent a person who is compelled to perform sexual acts from being convicted of a sexual offence him or herself.

Consequentially, the Bill reconstructs offence with animals (limited at present to 'buggery with an animal') as an offence of bestiality, defined simply and more broadly as sexual activity between a person and an animal.

Compelled sexual manipulation

The Bill makes compelled sexual activity that is not sexually-penetrative or does not involve bestiality a separate crime, because the acts being compelled are less serious than rape, amounting, at most, to indecent assault. The offence has the same elements of knowledge and reckless indifference to consent as compelled rape and includes a continuation of the act. The defence of duress applies in the same was as to compelled rape.

The offence includes, for a prurient purpose, compelling a person, without their consent, to sexually manipulate oneself, to sexually-manipulate someone else, and to sexually-manipulate themselves or to continue to do any of these things when consent is withdrawn, knowing or being recklessly indifferent as to consent or withdrawal of consent.

The new offence of compelled sexual manipulation is more serious than ordinary indecent assault because of the element of compulsion. It therefore carries a maximum penalty, for a basic offence, of imprisonment for 10 years, and, for an aggravated offence, of imprisonment for 15 years. These penalties are greater, by 2 and 3 years respectively, than the maximum penalties for basic and aggravated offences of indecent assault.

Unlawful sexual intercourse

The Bill changes the criteria for what makes sexual intercourse between an adult and a child who is 17 years old unlawful. The need for this change was pointed out in consultation about reforming the offence of persistent sexual abuse of a child. The new criteria proposed by the Bill will apply to both unlawful sexual intercourse and the new offence of persistent sexual exploitation of a child.

The current criteria are too narrow, referring only to guardians, school masters, school mistresses and teachers.

The effect of the Bill will be to make it unlawful for an adult to have sexual intercourse with a child who is 17 years old, even if the child consents to it, if the adult is in a position of authority in relation to the child. The Bill defines a position of authority exhaustively. An adult is in a position of authority for the purposes of this offence if he or she is the child's teacher, the child's step-parent, foster parent or guardian (note that a parent who engages in such conduct is already liable for the offence of incest), a religious official or spiritual leader providing pastoral care or religious instruction to the child, the child's medical practitioner, psychologist or social worker, a person who is holding the child in lawful detention or custody, or the child's employer (whether the work is paid or not).

All these people are, by dint of their position of authority, able to wield considerable influence over a young adult's will. That influence should therefore be exercised with great care and the utmost professionalism, and not to secure consent to sexual activity. By enacting this provision, Parliament is saying that sexual activity between an adult in such a position and a child of 17 years old is inherently reprehensible and should be a criminal offence.

Persistent sexual exploitation of a child

The Bill repeals the offence of persistent sexual abuse of a child and replaces it with a new offence of 'persistent sexual exploitation of a child'.

The current offence of persistent sexual abuse was enacted to overcome problems such as those identified by the High Court in the case of S v the Queen and by the South Australian Court of Criminal Appeal in R v S. In that case multiple offences against the same child were charged as having occurred between two specified dates, each one being part of an alleged continuous course of conduct. Because the evidence given of the alleged course of conduct was not sufficiently related to the particular charges, in that the child could not identify particular occasions and link them with particular counts, an appeal against conviction was allowed and an acquittal entered.

The offence of persistent sexual abuse is rarely charged because it fails to overcome the very problem of particularity that it tried to remedy. Children are still unable to identify precisely each separate incident of abuse that is required to prove the offence.

The new offence has the same aim as the current offence: to punish the persistent sexual abuse of a child, and not just the sexual acts that can be identified with enough particularity to be charged as specific offences in themselves.

Often, children who have been subjected to long-term sexual abuse can remember in some detail when the abuse started and when it ended, so that the first and last alleged acts are often capable of being charged as specific offences, but can't remember the detail of when and where each of the many intervening acts occurred enough to distinguish each one from the other. That is why all these acts cannot be charged as specific offences, and why, when convicted of only the acts that can be so charged, the law fails to recognise or punish the full extent of the abuse. The current offence aims to overcome this but has not worked.

The Bill proposes to replace the current offence with a new one of persistent sexual exploitation of a child. The new offence focuses on acts of sexual exploitation that comprise a course of conduct (persistent sexual exploitation) rather than a series of separately particularised offences.

Under the Bill, an act of sexual exploitation is an act of a kind that could, if it were able to be properly particularised, be the subject of a charge of a specific sexual offence. The kinds of sexual offences to which these acts should approximate are rape, unlawful sexual intercourse, indecent assault, acts of gross indecency, procuring sexual intercourse, procuring a child to commit an indecent act, sexual servitude and related offences, incest and bestiality, including an attempt to commit any of these offences or an assault with intent to commit any of them.

The Bill provides that those parts of the course of conduct that can be charged as specific offences against the Act may be charged on the same information as the charge of persistent sexual exploitation of a child, as alternatives to that charge. Importantly, it prevents a person who is convicted of a charge of persistent sexual exploitation being convicted or punished for the same conduct twice.

As under the current law, the offence applies when the child is of or under the prescribed age.

The Bill uses the same age thresholds as under the current law but redefines the circumstances in which the offence applies to children between the age of 17 and 18 years in the same way as in the offence of unlawful sexual intercourse with a child (already explained).

As under the current law, if the child was at least 16 years of age when the offence was alleged to have been committed, it is a defence to prove that the defendant believed on reasonable grounds that the child was at least the prescribed age. This is the same defence that applies to the charge of unlawful sexual intercourse.

The new offence retains the maximum penalty of life imprisonment.

Joinder of charges against a person accused of sexual offences against more than one alleged victim

Section 278(2) of the Act permits a judge to order a separate trial of any count or counts on an information if of the opinion that the accused person may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same information or that, for any other reason, it is desirable to direct that

an accused person should be tried separately for any one or more offences charged in an information. This provision applies to all kinds of criminal proceedings.

In prosecutions for sexual offences allegedly committed against several different people, courts will often order separate trials even if there is some cross-admissibility of evidence. This means that there will be a different jury hearing the allegations against the defendant that concern each separate alleged victim. None of these juries will hear anything about the allegations against the defendant in respect of the other alleged victims.

Judges make these rulings to prevent unfairness to a defendant when they think there is a risk that, if evidence of the defendant's similar conduct towards people other than the complainant in this case is admitted, the jury will use evidence of that conduct to sustain a finding of guilt on the charge before them even though there is not enough evidence before them to sustain such a finding beyond reasonable doubt.

Some say this demonstrates a lack of faith in the jury. Others say it is reasonable for the court to anticipate and prevent prejudice to a defendant in a system of justice that is based on a presumption of innocence. In sexual cases, however, and particularly those where a person is charged with offences against different children, it often means that a jury may not hear evidence about an alleged offence in its full context.

This Bill makes an exception to the rules of joinder and severance of counts for sexual-offence cases, for which it creates a presumption that counts charging sexual offences by the same person against different alleged victims that are joined in the same information are triable together.

The presumption may be rebutted, so that a separate trial may be ordered for a count relating to a particular alleged victim, only if evidence relating to that count is not admissible in relation to each other count relating to any of the other alleged victims.

In determining the admissibility of evidence supporting a count relating to one victim as to counts relating to another for the purposes of ordering separate trials, the Bill provides that evidence relevant to that count is admissible only if it has a relevance beyond mere propensity, and also, that the judge is not to have regard to whether or not there is a reasonable explanation in relation to the evidence that is consistent with the innocence of the defendant or whether or not the evidence may be the result of collusion or concoction. Both these matters are for the jury to decide; the judge may not prevent the jury hearing this evidence for these reasons alone.

The effect of this amendment will be to limit the circumstances in which the court may sever counts of sexual offences against different alleged victims that are charged against the one defendant so that they are heard by different juries.

In conclusion

This Bill declares and clarifies the legal boundaries of sexual behaviour that were until now to be found in the case law only. It replaces the little-used offence of persistent sexual abuse of a child with a new offence of persistent sexual exploitation of a child, designed to overcome obstacles to the prosecution of people who persistently abuse children. It introduces a presumption that counts of sexual offences in the same information that involve several alleged victims should be heard together in the same trial, and that in determining whether evidence supporting a count relating to one alleged victim is admissible in relation to each other count relating to a different alleged victim (a determination which will dictate whether the trials of different victims can be heard separately or together) the judge may no longer have regard to whether there is a reasonable explanation consistent with the defendant's innocence or whether the evidence may be the result of concoction or collusion. It will update the offence of incest. It will introduce new offences of compelled sexual intercourse (to be a form of rape) and compelled sexual manipulation. It will define reckless indifference to consent or the withdrawal of consent to an act and to allow a court determining whether a person charged with a sexual offence was recklessly indifferent to consent or withdrawal of consent to consider whether the evidence suggests the person did not take reasonable steps, in the circumstances, to ascertain consent. It will change the laws of self induced intoxication to ensure that the drunk's defence cannot be used to deny an awareness that the other person might not be consenting. It will redefine rape to include a continuation of sexual intercourse where consent is withdrawn. It will define consent to sexual activity as free and voluntary agreement to the sexual activity and will set out circumstances when a person is to be taken not to have freely and voluntarily agreed to sexual activity.

The Bill will be complemented by evidential and procedural amendments in the Statutes Amendment (Evidence and Procedure) Amendment Bill 2007 that reform the way judges warn and direct juries in sexual offence proceedings, reform criminal procedures to reduce the impact upon children of delay in giving evidence of sexual abuse, and reform the law on complaint evidence in sexual-assault cases.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Criminal Law Consolidation Act 1935

4—Amendment of section 5—Interpretation

This clause inserts a new definition of bestiality and amends the definition of sexual intercourse in section 5 of the Act to ensure that it includes penetration of the vagina and also that it includes a continuation of any activity constituting sexual intercourse. The clause also inserts a new subsection into section 5 to deal with the issue of surgically constructed or altered breasts and genitalia.

5—Substitution of section 48

This clause repeals the existing provision on rape and substitutes new provisions as follows:

46—Consent to sexual activity

This proposed section provides that a person consents to sexual activity (which expressly includes sexual intercourse) if the person freely and voluntarily agrees to the sexual activity. The provision then gives a list of situations in which a person is taken not to freely and voluntarily agree to sexual activity (although this list does not limit the circumstances in which a person may be found to not freely and voluntarily agree to sexual activity).

47—Reckless indifference

Proposed new sections 48 and 48A both use the concept of a defendant being recklessly indifferent with respect to the issue of consent to a sexual act. This proposed section defines that concept of reckless indifference.

48—Rape

This proposed section enacts 2 rape offences under which—

- a person who engages or continues to engage in sexual intercourse with another person when that other person does not consent to engaging in the sexual intercourse or has withdrawn consent to the sexual intercourse is guilty of the offence of rape if the person knows, or is recklessly indifferent as to, the fact that the other person does not consent or has withdrawn consent;
- a person who compels another person to engage or to continue to engage in sexual intercourse with a third person, an act of sexual self penetration (defined in the section) or an act of bestiality (defined in section 5) when the compelled person does not consent to engaging in the sexual intercourse or act, or has withdrawn consent, is guilty of the offence of rape if the person knows, or is recklessly indifferent to, the fact that the person does not consent or has withdrawn consent.

A person found guilty of rape is liable to life imprisonment.

48A—Compelled sexual manipulation

This proposed section provides that a person who, for a prurient purpose, compels a person to engage or to continue to engage in an act of sexual manipulation (defined in subsection (2)) or an act of sexual self manipulation (defined in subsection (2)) when the compelled person does not consent to engaging in the act, or has withdrawn consent, is guilty of the offence of compelled sexual manipulation if the person knows, or is recklessly indifferent to, the fact that the person does not consent or has withdrawn consent. The maximum penalty for a basic offence against the section is 10 years imprisonment and for an aggravated offence is 15 years imprisonment.

6—Amendment of section 49—Unlawful sexual intercourse

This clause substitutes a new subsection (5) into section 49, so that the provision applies in respect of a person in a position of authority in relation to the child (and defines who is in a position of authority).

7—Insertion of section 50

This clause inserts a new section 50 in the principal Act (to replace the current section 74, which is repealed under clause 12 of the measure) as follows:

50—Persistent sexual exploitation of a child

Under this provision, an adult who engages in persistent sexual exploitation of a child (defined as consisting of more than 1 act of sexual exploitation with the child over a period of not less than 3 days) under the prescribed age is guilty of an offence punishable by life imprisonment. An act of sexual exploitation is an act that constitutes (or would, if it were able to be sufficiently particularised, constitute) an offence against Division 11 (other than sections 59 and 61) or section 63B, 66, 69 or 72 or an attempt or assault with intent to commit, any of those offences. The prescribed age is generally 17, but is 18 if the adult is in a position of authority in relation to the child (which is defined consistently with the new definition proposed to be inserted in section 49).

If the child was at least 16 years of age at the time of any alleged act of sexual exploitation, the act is not taken into account for the purposes of this offence if the defendant proves that he or she believed on reasonable grounds the child was at least the prescribed age.

The prosecution is not required to allege the particulars of the alleged unlawful sexual acts that would be necessary if the acts were charged as separate offences.

A person may be charged on 1 information with an offence against this section and other offences, but cannot be convicted of both this offence and another sexual offence against the same child during the same period alleged for this offence.

The provision applies in relation to acts of sexual exploitation of a child whether committed before or after the commencement of the provision.

8—Amendment of section 57—Consent no defence in certain cases

This clause reflects the changes to section 49, discussed above, and provides that a person under the age of 18 will be taken not to be capable of consenting to an indecent assault committed by a person who is in a position of authority in relation to the person.

9—Substitution of section 69

This clause substitutes a new section 69 (to replace the current offence of buggery with an animal) as follows:

69—Bestiality

It is an offence to commit bestiality (defined in section 5 as sexual activity between a person and an animal) punishable by imprisonment for 10 years.

10—Substitution of section 72—Incest

This clause substitutes a new incest offence into the current Act, making it an offence to have sexual intercourse with a close family member (defined in the section as a parent, child, sibling or half sibling, grandparent or grandchild, other than such a person who is related only by marriage or adoption). The offence is punishable by 10 years imprisonment and it is a defence to a charge of such an offence to prove that the defendant did not know, and could not reasonably have been expected to know, that the person was a close family member.

11—Amendment of section 73—Proof of certain matters

This clause is consequential to proposed new section 47 (dealing with consent).

12—Repeal of section 74

This clause repeals section 74.

13—Amendment of section 75—Alternative verdict on charge of rape etc

This clause makes a consequential amendment to section 75.

14—Amendment of section 76—Corroborative evidence in certain cases

This clause deletes an obsolete reference.

15—Amendment of section 268—Mental element of offence to be presumed in certain cases

This clause amends section 268(3) to specify that paragraph (b) of that subsection does not apply in relation to an alleged offence of rape.

16—Amendment of section 278—Joinder of charges

This clause amends section 278 to provide a presumption that different counts of sexual offences involving different victims that are joined in the 1 information are triable together and to specify the circumstances in which a count may be severed. The proposed amendment also makes provision with respect to determining the admissibility of evidence for the purposes of determining whether severance should occur.

Schedule 1—Related amendments and transitional provision

The Schedule makes consequential amendments to various other Acts and includes a transitional provision relating to the repeal of section 74 of the Criminal Law Consolidation Act 1935.

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

CRIMINAL LAW (SENTENCING) (VICTIMS OF CRIME) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 November 2008. Page 1587.)

The Hon. R.P. WORTLEY (15:29): I support the bill, which seeks to put into effect significant promises made by the government to victims of crime and their families and associates in the lead up to the last election. No person present in this place today is ignorant of the impact of crime on its victims. Many of us have experienced crime. We may have experienced a property crime, such as a car theft or home burglary, or a personal crime, such as an assault, bag snatching or other robbery. Let us take a relatively common crime such as assault: perhaps the victim is subject to a random attack, possibly fuelled by alcohol or drugs; or maybe the victim intervenes in a dispute and is assaulted themselves. In other circumstances the victim may know the assailant, perhaps very well.

As we know, personal responses to a criminal assault can vary widely. Let us leave aside for a moment the physical aspects, such as medical treatment, pain, possible rehabilitation or surgery, though these of course may continue for some time or even indefinitely.

Victim A may feel that the event has had a minor impact but may find that the trauma emerges later when least expected. Victim B may find that the impact of the event, while very real, dissipates over time with the help of family, friends and support services. Victim C may experience

good and bad days, days when he or she feels the fear and shock are receding, and days when the full force of the attack is felt almost as if it is happening again. Sometimes the trigger for a bad day cannot be identified.

Each victim may also have to deal with a range of reactions such as nightmares or other sleep disturbances, a racing heartbeat, headaches, anxiety attacks, the sensation of fear, and so on. The victim may have trouble concentrating, making choices and solving problems. They may find these reactions (many more of which are set out in the literature) debilitating in terms of work or other community involvement. Some victims may need to go into hiding, while others simply feel like hiding much of the time.

The impact of being a victim on men, women, children and the elderly has many similar features but each experience is different—unique to the person—and the expression of that impact is often vital to their recovery. We know, too, that the families, partners, children, extended family and friends experience crime through its impact on their loved ones. They share, to varying degrees, the feelings of hurt and loss. Sometimes they share shock, grief or shame. In some instances, the feeling might be one of absolute despair. They may all experience those emotions to varying degrees for the rest of their lives. One simple example of that is the anniversary of the event.

Crime impacts on our community both directly and indirectly, and its costs are many and manifest. The government's most recent analysis of recorded offences in our state is the Office of Crime Statistics and Research report entitled *Crime and Justice in South Australia 2006*. Offences recorded are those which are reported to police or which come to the attention of police. The report shows that, in 2006, 263,369 offences were recorded (a 3.4 per cent decline from the previous year) and 21,794 victimisations directed against a person were recorded. In considering these statistics, let us not forget that victims must deal not only with the immediacy of the criminal event and its personal aftermath but frequently they become involved in the criminal justice system.

Having reported the event to police, the victim makes a statement, participates in the investigation and engages with the prosecution. Later, the victim attends court and gives evidence. They may need to recount personal and traumatic details. Doubts may be cast on their evidence and he or she is subject to cross-examination. Distress will not deter the court for long. The victim may be subjected to harassment by supporters of the defendant and the matter may attract media attention. The experiences and ensuing civil responsibilities (often thrust on the victim seemingly randomly and without warning) are recognised by the bill before us today.

The bill amends the Criminal Law (Sentencing) Act 1988 to allow a victim impact submission to be furnished at sentencing hearings in indictable and prescribed summary offences. These are defined as offences where the victim has died or become permanently physically or mentally incapable of independent function. As the Premier indicated prior to the last election, this means that victims who no longer have a voice will still be heard in court. The bill also allows the prosecutor or the Commissioner for Victims' Rights to describe in court the effects of the offence on people living or working in its location—for instance, a neighbourhood impact statement—or on a particular section or sections of the community, or the community as a whole, in the form of a social impact statement. It is envisaged that both types of statement may be furnished in the same matter.

The proposed amendments to the act will also allow vulnerable witnesses—for example, children and victims of domestic violence—to read their victim impact statements and have it presented as an audiovisual recording where those facilities exist. The defendant, whether an individual person or company official, should be present in court but, if circumstances do not allow this, he or she is to be shown a recording of the statement. Finally, the bill makes provision for additional remedies to do with the enforcement of restitution orders.

As with the amendments I have already discussed, these expanded avenues towards the return of property or its monetary value both serve in the interests of victims and augment the government's ongoing reforms in the area of victims' rights. The government has listened to victims and has acted to protect their interests. I commend the bill.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:35): I thank honourable members for their contributions to this bill. The Hon. Mr Wade asked how much money is currently allocated to enable victims to appear personally at criminal sentencing hearings. It is impractical to determine exactly how much money is spent each year to enable victims to appear personally at criminal sentencing hearings. Victims who are already present as witnesses would be paid witness

fees but, without reviewing each case, I could not say how much has been paid. Similarly, discretionary payments are reported in general but not the specific purpose for each payment. The records kept by the Commissioner for Victims' Rights shows that the Attorney-General approved several discretionary payments to help cover the costs of victims attending the sentencing stage of their case.

The Attorney-General has, for example, paid about $500 for airfares for two victims of sexual assault, to travel from their Victorian homes and return, to make their impact statements; about $370 for the sister of a murder victim to travel from Queensland and return to attend the court to make an impact statement and listen to the sentencing submissions; almost $2000 for the parents of a manslaughter victim to travel from Queensland and return, to listen to sentencing submissions, including the submission of their impact statements; several hundred dollars for the wife of a person killed, to travel from a regional town in New South Wales and reside in Adelaide for a few days, to give her impact statement and listen to the sentencing submissions; about $960 for the parents of a person killed in Port Lincoln, to attend the district court to make their impact statements and listen to the sentencing submissions—this sum covered the fuel for their motor vehicle to travel from a regional township to Port Augusta and return, as well as accommodation for four people; and about $2500 for the mother whose son was killed in a crash, to reside in Adelaide to make her impact statement and listen to the sentencing submissions. She had sold her family home to move interstate and needed somewhere to live for a couple of weeks.

Michael O'Connor, the Commissioner for Victims' Rights, applies to the Attorney-General for discretionary payments in such cases. There is no intention of changing this practice, so the honourable member can be assured that victims who need financial assistance will get it, if they ask and if it is appropriate, given the scope of the Attorney-General's discretion to pay. The examples I have given indicate the costs that can be involved but do not show the inconvenience and other personal costs that victims endure, which is among the reasons why the Attorney-General and the government are proposing, in this bill, to allow victims to make their impact statements in other ways, such as video recording. We want victims to be able to choose how they present their impact statements.

Also, during the debate, the Hon. Ann Bressington, speaking in support of the bill—or indicating that she supported any legislation strengthening and supporting the rights of victims—mentioned the alleged theft of a video camera from her Parliament House office, and the theft of items from the home of a staff member. Ms Bressington indicated that, in her view, police had not investigated these incidents appropriately. This issue was also raised during a discussion on the Leon Byner talkback radio program.

The Commissioner of Police advises me that the theft of the video camera was reported to SAPOL at 2.50pm on 11 January 2008, and a police incident report was submitted. The camera was reported to have been stolen between 1 October 2007 and 31 October 2007. The theft was reported after the camera was identified at City Cash Pawnbrokers, located at the Adelaide Railway Station Arcade by Ms Bressington's staff member. The staffer had gone to the pawnbroker after apparently locating pawnbroker receipts at her home address. Until this time she had apparently not realised that the property was missing.

The staff member attended at the pawnshop and identified her property, along with Ms Bressington's video camera. The police recovered the video camera from City Cash Pawnbrokers at 3pm the same day, 11 January 2008. Police also recovered some of the items belonging to the staff member and they have been returned to her. There are still some items outstanding and the police have made extensive inquiries to locate the suspect, and a warrant of apprehension has been issued for this person. I think it is important to put on the record that, in fact, it had not been too hot for the police to attend to their duties—as had been suggested.

With those comments, in answering the points raised during the debate, I again thank honourable members for their support of the bill.

Bill read a second time.

HEALTH CARE BILL

In committee.

(Continued from 14 February 2008. Page 1733.)

Clause 1.

The Hon. J.M.A. LENSINK: The Liberal opposition received these amendments only this morning and whilst they do not look particularly complicated I am obliged to consult with my colleagues before we are able to make a contribution of substance and, indeed, form a position on any of these amendments.

The Hon. SANDRA KANCK: I met with the Minister for Health last week to discuss some aspects of this bill and received a letter from the minister yesterday that answered some of the queries I raised in my second reading contribution. However, I would like some answers put on the record so that they are not just answers given to me in writing; I think others in this chamber should also be aware of those answers.

In the first instance, I asked some questions about the application of the Generational Health Review and its recommendations, and how they matched up with this bill. I would appreciate it if the minister could respond to that concern.

The Hon. G.E. GAGO: The report's message about the need for, and direction of, governance reform, particularly in relation to hospital boards, is quite clear. It said that existing legislative protection of individual health unit boards has stood as a clear barrier to health system reform, and that problems associated with individual health unit boards had been identified by Labor and Liberal governments over the past 30 years.

Numerous attempts have been made to reform governance, encourage greater cooperation and coordination, and reduce duplication of services and infrastructure through regionalisation but with little success. The GHR concluded that legislative change was required to substantially reform governance arrangements in South Australia. It strongly supported community participation but did not make a necessary link between participation and ownership; instead, it said it was important not to confuse corporate governance and community participation.

The GHR also proposed that an explicit commitment to the principles of community and consumer participation be made within legislation. The bill does this, in its principles and functions of the minister, the CE and the advisory councils. The GHR recommended the establishment of regional boards to act as a voice for the country region and these were established; however, these boards soon recognised that they duplicated the functions in each region and created seven differing systems of management and administration, creating inefficiencies and extra costs. The boards elected to dissolve themselves and establish a single body, the Country Health SA board, to act as a board of governance for the country region and to advocate and advise on country health issues.

The Hon. SANDRA KANCK: In my second reading speech, I also raised concern about representation of consumers on the health advisory councils. I would appreciate it if the minister can advise us what consumer input there is likely to be.

The Hon. G.E. GAGO: The government is committed to increasing consumer and community input into the delivery of health services, through both legislative and non-legislative means. This bill allows health advisory councils to be established for specific purposes, potentially including consumer HACs at particular metropolitan hospitals and special interest consumer HACs, such as Aboriginal health, or guardian or lesbian health.

Each country area will be able to have a local HAC to provide advice on local needs and service delivery issues. In addition, it will be ensured that there is a consumer representative on the health performance council (HPC) and it will also be ensured that the HPC undertakes the role of monitoring how the health system as a whole engages in a meaningful way with the community and health consumers.

The Hon. SANDRA KANCK: I am not clear whether some other questions I raised in my second reading speech were answered in the last week of sitting when we were, at that stage, discussing clause 1. In particular, I had noted that there would be advisory committees to assist the HPC. What I want to know is whether those advisory committees are a direct replacement for what the Metropolitan Hospital Board's subcommittees are already doing and, if so, will these advisory committees be composed of departmental staff or volunteers, or a mix of the two?

The Hon. G.E. GAGO: My advice is that the old committees can become HAC committees if the hospital so chooses and that the membership will remain pretty much the same as it is currently the case.

The Hon. SANDRA KANCK: In my second reading speech, I also raised the issue of policy development. My understanding is that, particularly for the metropolitan hospitals, a number

of the subcommittees of those boards are involved in policy development. I would like to know whether this will function in the same way as the minister advised in her previous answer, or will it be something that will be taken up within the department?

The Hon. G.E. GAGO: Where the policy relates to the region, the policy will continue to be developed locally (as it is at present); and where the policy relates to a statewide project, it will be developed by the department.

The Hon. SANDRA KANCK: If they are going to be developed in the regions, I assume, then, that that will become part of the role of the HAC, that is, policy development in a particular region.

The Hon. G.E. GAGO: The responsibility will lay with the chief executive officer of that region who would be highly likely to seek advice from HAC.

The Hon. SANDRA KANCK: In relation to an earlier answer about policy development in the metropolitan area, the policy development will be occurring in the department. As I said in my second reading contribution, I do not expect that people in the department currently are sitting around waiting for tasks to be given to them. Does this mean that extra staff will have to be employed in the metropolitan area for policy development work in health?

The Hon. G.E. GAGO: The short answer is no. Currently, there are three metropolitan regions and they will continue to develop their own policy. In relation to policy across the metropolitan area as a whole, that will continue to be done by the department.

The Hon. SANDRA KANCK: I seek a little clarification on that answer. The purpose of this bill, at least in part, was to dissolve the three hospital or health service boards that exist in the metropolitan area. How will they continue to do these tasks if they have been dissolved?

The Hon. G.E. GAGO: The boards as a governance body will be dissolved, but the resources they use for policy development will still be available.

Clause passed.

Clauses 2 to 10 passed.

Progress reported; committee to sit again.

LEGAL PROFESSION BILL

In committee.

Clause 1.

The Hon. A. BRESSINGTON: I have quite a lengthy speech on this particular bill, the reason being that I think it is important that the detail be entered on the public record. It has been a difficult process navigating around this bill, and many agendas appear to have been flushed out in the process. As I understand it, this is a piece of legislation that, if passed in this parliament, will regulate the legal practitioners of this country nationally, so it will fit into a national framework.

The original intention of this bill was to bring state and territory standards and codes of practice into line with each other. I am sure that all the non-legal members here would applaud the regulation of standards and implementation of a code of practice for the legal profession, yet this bill appears to focus more on those who would offer their services and experiences as advocates and/or paralegals than on the legal profession itself. That is perhaps not surprising, given that it is lawyers who have drawn up this legislation in the first place.

I do not want to appear to be too cynical, but the real problems that face the average citizen when engaging with the legal profession on many occasions is that for social issues they rarely receive justice. We seem to have two categories of 'victims' of the legal profession, if I dare put it that way. We have those who need legal aid and those who do not. Those who do, find that the funding they get is rarely enough to get them to trial; and those who do not need legal aid often pay through the nose until their money runs out and they, too, are left high and dry.

I had lunch with a well respected member of the legal profession who shared with me how the majority of lawyers, in his opinion, view clients in what must be considered two of the most vulnerable groups of our society—those involved in probate and those involved in family law. His comments to me were disturbing and, as time goes by, I have seen little evidence to dispute his take on what is fast becoming a despised profession. He said to me:

When lawyers see the clients from probate or family law, they literally rub their hands together because this is easy money. The last thing we want to do is get involved in a trial, so we get together—

that is, the lawyers representing both sides—

and we calculate how much money there is, and then we determine how far that money will get us or how far we want that money to get us.

In fact we structure a management plan of the case to get the case to where we want it to be, that is, pre-trial, for the money to be utilised and expended and then, when there is very little left, we suggest settlement. By that time they will walk away with nothing (the clients), and we have done very little pre-trial preparation and we have made a lot of money in the process.

If any part of this statement is true—and I do not know because I am not a lawyer—I suggest that this national piece of legislation will do nothing to meet the needs of those who engage legal practitioners and will also do little to address the unethical practices this lawyer has described to me. I have serious concerns about the spirit and intent of this bill, such that I believe we ought to follow the direction of other states in at least one very important aspect.

When he spoke to this bill the Hon. Paul Holloway said, amongst other things, that it seeks to deal with the reservation of legal work and legal titles to allow for rebuttable presumption where an advocate could be charged with giving legal advice. In essence this bill insinuates that lay-persons providing advocacy services, personal representation and exchange of public information could be charged with an offence.

During the government briefing provided to my research officer it was clearly stated that, for example, where a person may assist or even represent a family member in a case before, say, the Residential Tenancies Tribunal, the Administrative Appeals Tribunal or similar forums where a legal practitioner is not required, the advocate—in the words of the person who provided the briefing—will not be immune from possibly facing a charge of giving legal advice. Instead, an automatic presumption will be applied against the person to show why they ought not be prosecuted. So this is not 'innocent until proven guilty' but rather 'guilty until proven innocent'. It also means that the person in question will wear the onus of proving that the services they provide do not constitute engaging in legal practice or practising law.

The accused in such matters will not have a presumption of innocence in a matter relating to advocacy because the burden of proof lies with the person to prove that the advocacy provided did not constitute engaging in legal practice or practising law. This would not be so dangerous if the definition of engaging in legal practice included practising law, but the bill has no such definition and I am informed that this will be left to the regulations—a curious direction, I must say, given that the definition of engaging in legal practice or practising law is really essential to determining the intent of the bill. That cannot be debated by members here or in the other place.

The passage of the regulations will depend upon the Legislative Review Committee either allowing or disallowing the regulations, and to my recollection about three out of six members of that committee have a legal background. Perhaps the Hon. John Darley should be alerted to this matter when these regulations come before that committee and, if there is no clear definition of what will constitute engaging in legal practice or practising law, and it is not present, be reminded that advocates and paralegals, who are sometimes the only viable and affordable contacts for many average citizens, may be able to be charged with an offence under this bill.

We were told in a briefing by the Attorney-General that engaging in legal practice or practising law would be determined by fee for service, or if a person is representing himself or herself as a legal practitioner. The explanation was that quite often lawyers who have been disbarred turn to advocacy work and charge for services as a lawyer, and under these circumstances I have absolutely no objection to their being charged under this legislation.

But, what of a person who is assisting another in, say, the Family Law Court? The assisting person is making telephone calls, photocopying documents and travelling to court hearings and being reimbursed for those costs, so will that constitute fee for service? This may be a way of avoiding having that particular debate in the first place because, from a layperson's perspective, it would be a legal minefield because of the difficulty in reaching agreement on that point alone, that is, on the definition of engaging in legal practice or practising law. We have already heard that nationally the consensus is that the definition should not be part of the bill because, as I understand it, it is too complex to determine.

Perhaps this should be an indication that special care needs to be taken in considering the recommendations that will underpin this bill. This is not the only confusing aspect of the bill.

Contrary to the Hon. Paul Holloway's assertions, it is not written in any way that articulates that a rebuttable presumption will apply to the functions of practising law per se. It is written specifically in relation to the concept of rebuttable presumption (as in clause 15, page 32) with respect to the advertising of the practitioner's title only—that is, lawyer, barrister, QC, etc. In other words, the minister's stated intentions for this bill were not clear at all.

It is my concern that not using the term 'legal services' (as at clause 7, page 28) may be the back door for ambiguity needed in this bill to cause sufficient confusion in legal proceedings arising from this bill to have unwitting people successfully prosecuted. For example, the definition of 'legal services' on page 23 states:

> work done, or business transacted, in the ordinary course of engaging in legal practice;

Again, without knowing what the regulations will state regarding the definition of 'legal practice' and 'practising law', this aspect is as clear as mud, and we are unable to have an open debate on this matter of concern. On page 22 a definition of 'engage in legal practice' tells us to 'see section 7' and this brings us back to the lack of clarity that could well secure a prosecution.

Therefore, I would suggest that these clauses of the bill are so ambiguous and unsatisfactory that they require rewriting in plain language that is easily translated from 'legalspeak' to fair legal practice with little room for interpretation in order to safeguard the interests of those who lend themselves to assist others in need. For some who are even more sceptical than I (and there are some) this could also be seen as a measure put in place nationally (with the exception of Western Australia) to discourage advocates and paralegals from stepping on the toes of lawyers.

This council's President (Hon. Bob Sneath) used to be a union advocate and, as such, was responsible for obtaining good outcomes for workers. Under this bill, his work may have been hampered by the uncertainty of a definition of 'engaging in legal practice' or 'practising law', if he represented those workers in the industrial tribunal, for example. If members think that I am drawing a long bow here on the intent and spirit of this bill, I assure them that I have heard of an example of a family law matter where an advocate was banned from attending pre-trial conferences with a constituent. The Legal Services Commission basically declared who could and could not advocate for one of their clients who had difficulty speaking English and who had been associated with the advocate for some 12 months prior to the Legal Services Commission engagement.

The problem seemed to be that the advocate knew all too well the games that are played in the Family Law Court and was banned on the allegation of being belligerent and disruptive. In fact, the lawyer who originally was involved in implementing the ban went on leave and was unable to continue. The lawyer who took over the case was instructed not to engage with the advocate at all. As this case progressed, the lines of communication opened out of necessity and it was soon discovered by the new lawyer that the advocate was in fact not belligerent but well informed, and they have worked well together now for some months.

My point is that some legal professions tend to flex their muscle when they are feeling threatened or when their own inadequacies or inactions may be pointed out. What would stop them, under this bill, from pursuing a conviction of engaging in legal practice or practising law in a matter such as this when the definition of such an offence is left open-ended and when a rebuttable presumption means that the burden of proof lies with the accused to prove his or her innocence rather than the lawyer having to prove guilt? As an example, we could see the Legal Services Commission engage Crown Law to prosecute a person who was doing nothing more than lending a hand and protecting the basic rights of adequate legal representation to a citizen of this state.

In my time in this place, which is limited compared to that of others, I have heard reports of abuses of power that seem incomprehensible and, of course, the usual response to this is 'vexatious litigant—beware'. I do not believe for one minute that everyone is merely disgruntled; indeed, rather than vexatious, they appear to be legitimately vexed.

It is also curious, indeed, that this bill has presented at a time when there is an increasing trend developing, from necessity, where advocates are being engaged, or individuals are self-representing in matters relating to areas such as child protection, disability, WorkCover and other defences because funding through Legal Aid does not quite get them to trial, and they are, literally, left up the creek without a paddle. Some self-represented litigants have, in fact, been very successful in pointing out misrepresentations and poor interpretations of how the law has been applied and there are, as I said, a growing number of people who are becoming more and more self-educated about the law.

Of course, this should be of concern only to legal practitioners if it could be proven that, prior to self-representation, the legal practitioner had not explored all of the appropriate actions to ensure a just outcome for an individual. It could be difficult and embarrassing to explain into the future, perhaps, how an increasing number of average citizens could obtain better outcomes without legal representation.

Sadly, there seems to be a pattern emerging here in South Australia, where advocacy and information services are being dismantled bit by bit. There are many who are feeling that their role in seeking the best possible outcomes for their clients are treated with contempt rather than gratitude for their selfless efforts to assist others to navigate their way through a complex and expensive system that often sees the money run out before an outcome can be achieved.

We know there are people who may simply have no access to qualified legal representation because they are on a low income, they do not qualify for legal aid or they may be better represented or advised through experienced advocates, such as self-represented litigants who may have gone before them. The Workers Compensation Tribunal is a clear example where injured workers report having often been given better information and advice from other injured workers than the lawyers they had previously engaged at great cost with no outcome. Many share amongst themselves the legal precedent set in their own cases, or those of their colleagues—precedents which serve as a beacon for those who would otherwise be fooled into believing that they could achieve a just outcome through expensive legal representation, at least until the money runs out.

It is not only these clients who are affected. This bill has a net that could be cast so wide as to draw in a number of professionals who, by merely undertaking their day-to-day duties, could be seen as committing an offence. Doctors, nurses, teachers, police officers and counsellors could quite easily find themselves in the position of having to prove that they were not engaging in legal practice. For example, it is not unusual for a counsellor to advise a rape victim of her rights and perhaps even inform her of the outcomes of those who went before her. However, under this bill, the counsellor could well be charged with an offence and have to prove the unprovable, because of a lack of definition regarding what is engaging in legal practice or practising law.

I submit that the reason that a rebuttable presumption is a key feature of this bill is to exclusively reserve for the legal profession all aspects of legal work, because it cannot define it at all, least of all in a manner that would be acceptable to the community at large. The danger here is that marginalised sectors of the community may not have the option of engaging with an advocate or, in fact, self-represent for fear of an offence under this legislation.

So, what happens to those seeking justice who can access initial Legal Aid funding but whose funding will not see them get as far as a trial? Sadly, this is more often than not the case. I have referred many constituents to legal practitioners who are unable to see the case through. In fact, many get to the point where their lawyer is able to produce only a chronology of the case to be tried, present this to a preliminary hearing, and then have to pull representation because further funding is not available. In other cases, defence lawyers are unable to call vital witnesses because of the time constraints and the money that that will incur before the court.

These are not isolated examples. So far this has been the outcome for every constituent (being someone dependent on Legal Aid funding) that I have referred to a lawyer. We have, in fact, referred many of those constituents to advocates who have been able to assist them in various ways. Under this legislation, the advocate could be determined to be acting illegally which, in a way, will self-perpetuate what is already a bad merry-go-round—that is, victim seeks justice; victim has no money; victim gets legal aid; victim's funding runs out and further funding is not granted; victim gets no justice. Then, of course, there is the flipside of this: victim seeks justice; victim engages a lawyer; victim spends thousands of dollars on legal representation; victim's money runs out; victim still gets no justice.

In a very recent case there is the example of a family who simply would not be beaten down by the system. I refer now to the Easling family. In their defence of allegations of sexual abuse they spent an estimated $1.2 million over a period of five years to get justice. I would like to know how many people could ever hope to find those sorts of resources. Mr Easling was, indeed, blessed with a family who could and did continue to make sacrifices in order to see justice done, and it paid off in the end—not financially but with a just ruling of innocence that would see a man redeemed of having to wear the label 'child sex abuser' for the rest of his days. This, of course, is the exception to the rule, and we have to wonder how the legal profession believes that it can sustain itself into the future. Perhaps this is where the necessity for this bill originated. Perhaps we

have to wonder whether the average citizen, in the not-too-distant future, will have no access at all to justice if this bill becomes a reality.

I know of people in Queensland, New South Wales, Victoria and, of course, South Australia involved in child protection, family law, and WorkCover disputes, just to mention a few systems that are true thorns in the side of the judiciary, the legal profession and the governments of those states, as well as the federal government. They are a nuisance because they are well-informed and will not play the legal merry-go-round game that is often used to exhaust a person financially, emotionally and psychologically. How will they fare with this bill? Of course, how will we ever know of the adverse effects, if there are any? They will continue to be branded vexatious litigants or disgruntled people and that will be the end of their story, as it so often is now.

I have not attempted to amend this bill because there are enough legal eagles in this place to take up the responsibility for ensuring that the Legal Practitioners Act will be improved upon. There are many in this place who are far more qualified than I am to guarantee that this legislation will be adequately supported by fair and reasonable regulations.

Now we come to what I consider to be a deplorable set of circumstances and ample evidence that an ICAC is an absolute must in this state. I base this on the premise that the amendments to this bill proposed by the opposition are necessary to see that the victims of Magarey Farlam have some recourse and a way of achieving justice.

As is obvious from earlier speakers' comments, the Magarey Farlam matter has been made worse by the strategies used by the Law Society supervising it. The amendments, however, will not stop the rort and so-called slush fund provisions of the act which are replicated in the bill. What may be achieved is that other members of the public will at least be better informed of the risks they take when putting their hard earned money in the hands of lawyers. The amendments will not overcome a system that is riddled with incestuous conflicts of interest that can come into play in the handling of cases of fraud at law firms and subsequent claims. Nor does the bill improve fully enough the existing tortuous compensation claims system, although subject to getting a clear explanation of the latest government amendment which refers to 'ordinarily prudent, self-funded litigants' there may be some improvement.

The Attorney-General's amendments will do little to address the needs of the Magarey Farlam victims but will ensure that future victims will know that to proceed in a litigious manner will, in fact, exclude them from accessing payment of compensation from the guarantee fund: a course of action, I have been informed, was the only option offered to victims of Magarey Farlam by the Law Society—when I say that I mean to litigate. An action that will see them now deemed as not sensible, reasonable or prudent people in the future if others were to take their advice.

I firmly believe that no legislation at all is far better than bad legislation, and any of the proposed amendments, in my humble and non-legal opinion, would seem to make this bill an even greater disaster than the one that already exists for the victims of a badly managed and poorly audited lawyer's trust account. The amendments to this bill create a totally unacceptable situation in which the Law Society has conflicts of interest which give it an excess of power over ordinary citizens.

There is no way that the society should have the responsibility for auditing the trust accounts of lawyers and then when the audit fails have the power to supervise the distribution of remaining funds and the determination of fraud victims' compensation claims. Now, as a result, we have a huge mess where blatant conflict of interest has been an unconscionable level of abuse perpetrated against innocent citizens in this state. The most disturbing thing about this is that the victims of a crime have borne witness to the fact that transparency and accountability are nothing more than a myth, let alone justice.

The Hon. Dennis Hood suggested that the current system could be made more just if the government were to find, from general revenue, about $5 million to replace the amount ripped off clients each year and given to legal aid and community centres, and if the society were to continue its regulation of lawyers' trust accounts and a conflict of interest free separate independent insurance type scheme were established for clients.

I have absolutely no problem with the sentiments of the Hon. Dennis Hood in this matter. With this Magarey Farlam situation there are so many sides to the story, there are so many different opinions and views, that it is really hard to make your way through the mire and get to a reasonable and sensible conclusion and solution for these people.

This matter has hit and hurt people from the small end to the big end of town and the Law Society does not seem to care. The victims were told at a clients' meeting convened by the Law Society in February 2006 that they had been split into two groups: pooling and tracing. This forced the victims into an artificial case against each other. They were advised to get legal representation. They then introduced to the meeting two barristers and five lawyers and were told that this was their legal representation.

The pooling victims, simply stated, are those victims whose trust accounts were defrauded and who could argue that all remaining funds should be pooled and distributed in proportion to the amounts each client should have in their accounts. The tracing victims are those who had nothing stolen and who could argue that they could take what was shown in their reconstructed ledgers, meaning the pooling clients, and would need to try to recover all their losses from other sources, principally the former Magarey Farlam partners.

There have been ample incidents to suggest that a resolution to this could have been reached out of court and through mediation. I have been told by a victim that a small group of tracing and some pooling victims were prepared to discuss settlement with the Attorney-General and the Law Society before the substantive case that decided how the remaining moneys were to be distributed. They had discussed among themselves taking 'haircuts' in concert with the potentially liable parties: the partners, the society, the banks and the partners, former auditors and all the insurers, but the Attorney-General and the Law Society refused to meet them to discuss any settlement.

Instead, the Law Society carried on with litigation, and with the Attorney-General's assistance, it seems, it has continued to drag the matter through the courts, refusing to accept the widespread condemnation of many parties, including the Supreme Court, of the system governing such cases. I repeat part of the damning opinion of Justice Debelle, as quoted by other speakers:

> One has the deplorable state of affairs that costs are continually being incurred to a point where, rather like *Bleak House*, by the time costs are paid, what is going to be left for these people who innocently suffer from the fall of another. There must be a better system.

In August 2006, a supervisor of the fund, an employee of the Law Society, obtained a Queen's Counsel opinion about how the remaining moneys were to be distributed. It favoured pooling victims but also provided for some tracing. However, the Law Society, with all its legal resources, appears not to have bothered to analyse the opinion, or maybe it did and discovered something it preferred to keep to itself. That is, as one victim discovered, that tracing would result in a better outcome for all victims.

In short, there was never a need for a case to be brought before the court. Despite this, a few weeks later, without warning, the Law Society asked the Supreme Court for pooling to be the method of distribution. That led to the pooling victims lodging a similar application, and that meant that the tracing victims had to counterclaim. Having seen battle joined between the two groups the Law Society then stepped away from the action—quite the strategic move by the Law Society, almost warlike. The pity is that the peak organisation of lawyers in this state finds it necessary to wage war against citizens and make them victims of their own legal system.

The Attorney-General's role here is dubious, to say the least, according to victims, and suspect. I cannot make any comment on that because, quite frankly, as I said, this has become so convoluted.

So, an artificial adversarial contest of the victims was created, and there is no doubt in the mind of some victims that this was intended to deflect attention from the society's liability because, again, no option was provided to the victims to consult with the partners or the society. The end result—revealed in the Supreme Court last Thursday 21 February—was more than $1.1 million in fees for lawyers, who are probably all Law Society members.

The only party which has not had to endure any costs associated with this fiasco is, in fact, the Law Society. It simply takes what it needs from the guarantee fund—all expenditure from which has to be authorised by the Attorney General—so money is recycled and regurgitated one way or the other. At least 25 lawyers are believed to have been acting for clients, and I am told that on one day the Supreme Court was populated by about five barristers and nine solicitors, plus a few assistants. It is a disgrace that such a lair of lawyers should be in court on a matter to determine how remaining money in a law firm's defrauded trust account should be distributed.

The victims in this have, of course, borne most of the cost because even if they recover their money from the guarantee fund, as the court has ordered, rejecting the Attorney-General's

objection, they are only getting their own money back. And we call this the justice system; to many it appears to be more like the 'just us' system.

It also seems that the Law Society made a number of attempts to further deflect its part in this litigious affair. On 12 November 2006, an article in the *Sunday Mail* reported that 'there is disagreement between the parties whether they should pool the remaining money for equal distribution or whether each account should be traced to calculate the extent of individual losses.' There was no mention that the society had initiated the court case, forcing the victims to litigate against each other, in the first place. The article said that 'some of Adelaide's wealthiest families' were involved in this dispute, and it is alleged that information of that nature could only have come from someone with access to the Magarey Farlam files—files that should be confidential between practitioner and client.

It has also been put to me that representatives of the Law Society have behaved in a curious and spurious manner, and perhaps the following examples of their actions will validate this victim's statement. It seems that confidential information can be passed to the media, but when victims request the names and addresses of other victims to establish communication—and, I might add, to discuss settlement—they are told that an application should be made to the court for the information. No wonder about 30 lawyers were finally involved in the case on behalf of victims! The victims getting together for a class action, or at least a collective action, was no doubt the last scenario the Law Society wanted; it wanted to divide and conquer the victims. With that attitudinal and behavioural problem shown by the state's peak law organisation, how can anyone now walk through a law firm's door with any confidence?

Next, there is a case of curious and spurious correspondence. In a letter dated 19 December 2006 Margaret Kelly, then president of the Law Society, said to a victim who had sought a meeting between victims to discuss settlement that, because he was not legally represented, the discussions would inevitably lead to her, in effect, giving him legal advice about options, and it would not be proper for her to do so. Curiously, Ms Kelly was contradicting none other than the previous president of the Law Society, Ms Deej Eszenyi, who had stated in a letter to the same client dated less than four months before on 4 October 2006 that she could not provide him with legal advice about what category he might fall under because he was legally represented. One view had to be spurious and both were curious, because in neither case was the victim seeking legal advice; just settlement discussions. Banned if you are and banned if you are not; a sad and sorry reflection on the society's ability to understand a simple request.

The intrigue just continued to spin, and the tangled web woven by those in the upper echelons of the Law Society even spread to misleading the society's own members. Ms Kelly, rather carefully it seemed, edited the actions of the Law Society in a letter to members dated 13 December 2006. She gave limited details about the proceedings and associated matters in providing details of costs excluding, of course, the QC's opinion, at least half a dozen directions hearings, and the costs of proceedings case; and nor did she refer to Justice Debelle's conference suggestion or his *Bleak House* comment. Perhaps Ms Kelly was wary that some members of the Law Society would consider that the actions taken would be less than palatable to those lawyers who still lacked the arrogant, manipulative techniques of some other practitioners.

The Law Society's curious and spurious statements, mentioned earlier, are multiple. At the 17 February 2006 meeting of clients one person asked about the inspector's role in the matter and the then Law Society president, Ms Deej Eszenyi, had a seemingly ready answer. As the minutes of the meeting show, she said:

> ...the audits conducted were systems audits not designed to find fraud. The system audits were there to ensure systems were in place...Unfortunately the defalcations did not arise out of any misuse of the systems. They were carefully hidden forgeries in many cases, undertaken in a way so that they would not be discovered and not be seen in Law Society inspections.

Try running that past any lawyer who has been inspected; the response would be absolute non-acceptance.

I am also told the society refused to make available to victims its trust handbook; however, the victims got a copy anyway and found in chapter 20 that the inspector's or auditor's duties included the detection and prevention of fraud. That again shows that Ms Eszenyi either was not familiar with the handbook—which is a concern—or that she misled the people at the meeting—which would be an even greater concern.

Fast forward to May 2007, when the society promised victims a detailed, formal statement about the matter and promised that it would be distributed in the week beginning 11 June 2007.

Despite several requests, the statement was never provided and, while it is alleged that the society has made no serious attempt to consult, negotiate or mediate settlement for the victims, its representatives appear to have gone out of their way to distort, deflect, divide and conquer while securing and protecting their own flanks.

Even more serious is the action of the Law Society in misrepresenting the views of the Supreme Court. In February 2007, the society's executive officer, Ms Jan Martin, wrote to members about the case and in the note claimed that paragraph 38 of Justice Debelle's judgment in the distribution-of-money case justified the supervisor's actions. It absolutely did not: it was purely descriptive. That false and misleading claim should be further investigated.

This could be made into a movie. This sorry saga of drama and betrayal of citizens would be a classic civil version of the bloodcurdling atrocities committed against citizens by those in power, as seen in the highly acclaimed movie *Braveheart*, starring our very own Mel Gibson. That story was somewhat embellished to ensure its success. The Magarey Farlam-Law Society epic would require no embellishment at all. Perhaps we could invite Franz Kafka back from the dead to write the script!

The victims tell me that individually and collectively they repeatedly asked the Attorney-General from as early as May 2000 to meet, but he refused. The Attorney-General's response is that he did not meet because he was at this point being litigated against and it was not appropriate for him to engage. The Attorney-General also stated that his office then approached the Solicitor-General to intervene. However, I am told by victims that it was the society that suggested to the Solicitor-General that he ask the Attorney-General to convene mediation.

What we have heard is that, after the Attorney-General agreed and after he said that he had received many positive responses to the proposal, the victims were subsequently told that the Attorney-General would not convene mediation until litigation ended, which the Attorney-General states is in line with the responsibilities and obligations of his office. He also said that he would not meet with any party until mediation had run its course.

Of course, what is clear from the information we have received is that the victims of this disaster believe that he (the Attorney-General) was simply not interested in mediation at all. It is the belief of the victims that the Attorney-General was not interested in talking to victims; that he did not care that they were being unwillingly and unnecessarily dragged through the courts at vast expense and involving time and stress. The Attorney-General of South Australia, they say, did not care that he was contributing to the unnecessary clogging of our courts and that he was heaping grievous injustices on the people he should be protecting.

A key overarching point appears to be that the Attorney-General has to authorise all expenditure from the guarantee fund. Because the society's expenses in this matter have come out of the fund, it is a fair perception that he is embroiled in this whole sordid affair. Even worse, he appears to have shown a disturbing indifference to the plight of Magarey Farlam victims. What has not been discussed is the conflict the Attorney-General is faced with. He is the first officer of the law for the state and, as such, I imagine his approach to this matter is one of the 'big picture', about which I hear so much in this job.

Neither the position of Attorney-General nor the vision required will ever be of a concern to me, thank goodness. I will not defend or accuse the Attorney-General of inappropriate conduct, because everyone has a different story, and there is much to be lost by anyone who could be held liable for this massive miscarriage of justice.

If the Attorney-General changes the guarantee fund to a fund of first resort, I understand this will mean that legal aid funding will be diminished and that those who rely on legal aid funding will not receive the same level of funding they receive now. Of course, as I stated previously, I could argue that legal aid funding for the majority is inadequate anyway and that a reduction will not change very much at all the outcome for those people who qualify. I know this is a simplistic conclusion because it would mean that yet another group of victims would be created, and that is not a decision to be taken lightly.

It may also mean that taxpayers will inevitably bear the burden of this action to either replenish the guarantee fund or to fund legal aid. As I understand it, the guarantee fund is part of what is referred to as a 'slush fund', which saves the government about $5 million a year in funding legal aid in community legal centres. Of course, this confirms in my mind that, should this slush fund be diminished and a precedent set for using it as a fund of first resort, taxpayers will indeed bear the burden through a levy or tax.

Is this fair to the 90 per cent of citizens who will probably never use the legal aid system? Some of the victims might respond by saying that they have for many years propped up the legal aid system for others and that, in their time of need, they have been abandoned by the government and the Law Society, so let all taxpayers share the responsibility of assisting the less fortunate and let it be shared equally. Many victims are bitter, disillusioned—and who could blame them after 2½ years of endless litigation—and now find themselves seriously financially compromised.

The Law Society also benefits from this guarantee fund, and it would be of little surprise to hear that the victims' own money is being drawn from the guarantee fund to pay for the litigation costs of this case. What an absolute insult to the victims! I do not care too much at all about any costs that would be incurred by the Law Society: after all, it has not suffered any cost for its obstructive behaviour in this entire matter.

According to information provided to me, if the Law Society shared equally with the clients the funding of the Legal Practitioners Conduct Board, instead of clients contributing an estimated 75 per cent, it would probably need to contribute another estimated $40,000 of its members' funds to the board. Victims may think, 'Who cares? Let them pay [I must admit that I tend to lean in that direction myself] and let the Law Society explain to its members why this particular lurk no longer exists.' This would see justice done because we must remember that the Law Society took the original step to litigate when it was not necessary, almost certainly in a bid to spare its own insurance interests with Law Claims, which is operated by Lawguard Management, a company owned by the Law Society.

An unintended side effect of this could well see insurance companies under no legal obligation to fulfil their contracts under a range of different circumstances. For example, we pay comprehensive car insurance in the expectation that, if we are involved in an accident, our car will be repaired or replaced, as well as the other person's vehicle being taken care of. How would we feel if we were expected to litigate against the insurance company for those repairs or replacement of the vehicle? We would be very peeved, to say the least.

In fact, this is what has happened with Magarey Farlam victims. Magarey Farlam was insured for just this kind of scenario (that is, fraud) and, instead of the Law Society's insurance company compensating the victims, the Law Society told them to fight each other first to retrieve what was left after the crime of fraud had taken place. In other words, the insurance company had no obligation at all to do the right thing. Victims were basically told, 'Suck a sav, and fight until there's nothing left.'

There is also the reality that Magarey Farlam should be held to account for the misappropriation of $4.5 million of client funds embezzled by an employee of that firm. For example, if I owned a business and an employee of mine defrauded a client, the buck would stop with me. Word of mouth may just see that in the future fewer and fewer people will take the risk of putting their money into a lawyer's trust account because it is not worth the risk, and, as far as I am concerned, that would be nothing more than natural justice. But, then, who will pay for the fees mentioned earlier (estimated as being around $400,000 of members' funds) to the Legal Practitioners Conduct Board and the Legal Education and Admissions Council?

Even more scary, who would fund the legal aid system of this state? Sorry, that was a momentary lapse, of course. The already overburdened taxpayers of South Australia will bear that burden and they will naturally pick up that bill. The only satisfaction is that this money will not be recycled over and over again through the coffers of the Law Society. We will see lawyers working for minimal amounts available through the Legal Aid system with absolutely no perks. Needless to say, another outcome may be that lawyers will simply not represent Legal Aid cases; and that scenario seems highly likely given the conduct of the Law Society to date.

An important question needs to be answered. Why did the Law Society become involved in this matter in the first place? I am told that some years ago there was a dispute between the Law Society and Magarey Farlam about the firm's amount of affairs work; that is, looking after client's financial and other affairs. The Law Society is believed to have been concerned that the work was not legal work and, therefore, would not be covered by their insurance. The matter apparently ended abruptly, resulting in the firm carrying on with the work anyway. The Law Society, therefore, may have felt aggrieved enough at losing the battle to have taken a keen interest in being able to take first-hand involvement in the affairs of the firm to which it appointed a manager when it collapsed in January 2006.

The Magarey Farlam affair has exposed a lengthy tally of issues of considerable concern, the least of which is that people suffer just because they are victims of white collar crime resulting

from poor auditing standards, poor management, poor supervision and conflicts of interest; and it does not necessarily mean that victims will be entitled to receive what is legally and rightfully theirs. In fact, they will not even be referred to as victims but, rather, as investors in an effort to create the illusion that the only persons affected are wealthy capitalists.

The truthful picture is that these victims come from all sections of society. Children and youths are blocked from receiving an inheritance of $2,500 from their grandmother on their 18th birthday—a small inheritance in the context of the total amount of a trust, but a very important amount to an 18 year old. A widow who spent many years caring for her mother and then had to care for her clinically depressed husband had her $40,000 inheritance frozen. A post-graduate student whose trust account contains $2,000—a fortune for a student—was frozen. These people had nothing stolen. If the street talk is correct, the range went from those mentioned to others who lost more than $1 million. I wonder how many members of the Law Society would take such a loss, and I also wonder to what extent they would have to go in order to be rightly compensated. Of course, they would have the benefit of being able to self litigate, which is how the victims' money has evaporated while trying to get their assets returned and their losses and costs compensated.

The Law Society appears to have been engaged in numerous actions which seem to lead to the conclusion that it was determined from the outset to protect itself from liability and to maintain this system at the expense of the innocent victims of white collar crime. There is some belief that the Attorney-General is equally culpable and has colluded in this matter, but, as I said previously, I am not sure of this and I know that over time eventually all will be revealed.

I am still not sure how I will vote on this bill or the amendments that will be put before us. I think that a lot of questions need to be asked in the committee stage of the Magarey Farlam section of this bill. I will be listening to the answers, discussion and debate most carefully in the committee stage in order to make my decision on this bill.

The Hon. P. HOLLOWAY: Before we move to discuss the amendments in this bill, I table a response to a letter from the Hon. Mr Lawson to the Attorney-General of Thursday last week. The Hon. Mr Lawson's letter sought specific details of various funding arrangements for the legal profession for the past two financial years and was passed to the Law Society. I now table the Law Society's response to the Attorney-General that was received late yesterday. I understand that the Hon. Mr Lawson has a copy of the letter.

The Hon. Ann Bressington has made a lengthy contribution on clause 1. There are many things one could say about it, but, obviously, it is not a speech which reflected highly on the law profession. The Magarey Farlam case is a significant issue with respect to the fate of this bill. Amendments will be moved later and I think it is preferable that I discuss that matter then. However, I am advised that the person who is allegedly responsible for the defalcations in this fund is facing criminal charges, so I think we should bear that in mind in any comments we make in this chamber in relation to what may or may not have happened, because that matter is part of the legal case.

I think we should be suitably restrained in relation to comments, but it will not prevent our discussing the broad principles dealt with under the amendments. In relation to the particular circumstances about how it happened, I think it would be wise to avoid that particular matter given that it is sub judice.

I will respond to the general thrust of the Hon. Ms Bressington's comments to clause 1. First, why is the definition of 'engage in legal practice' so vague? This definition has been chosen to pick up the existing case law, especially that which has built up in Victoria and New South Wales about what it means to practise law.

A decision was taken nationally that it was better to build on the established law about this rather than to include in the model bill a list of activities that amount to 'practising law'. The bill follows the model. The provision contemplates that regulations can be made; however, that would clearly exclude certain activities from being the practice of law. For example, it is likely that the regulations would make it clear that a trustee company does not breach this prohibition if it draws a will.

There is also the question, I suppose: does this mean that a person who tries to help a family member by standing up in a court or tribunal to speak for that person could be prosecuted? The answer is: it depends. Some tribunals have special rules permitting lay representatives in some circumstances, and it is also possible for a court to make an order permitting a lay representative in some cases. In general, though, where no such rule or permission exists, an

unqualified person who represents others in court may well infringe this prohibition. Again, specific instances where it is thought undesirable to permit an unqualified person to provide a service that a lawyer would normally provide can be considered in framing the regulations. So I trust that has addressed the thrust of the comments, but obviously in relation to Magarey Farlam and other issues there are a number of amendments listed later in the bill which we can deal with.

The Hon. R.D. LAWSON: I have a couple of comments on clause 1 specifically arising out of some of the comments made by the Hon. Ann Bressington. The honourable member suggested motives of the legal profession and activities which were none too complimentary. As a member of the legal profession and the Law Society, I want to say that I certainly do not believe that the legal profession, the Law Society or, indeed, the government have come out of the Magarey Farlam matter at all well. Indeed, I think that unfortunate episode in the history of the legal profession in South Australia is a shame to the Law Society and the legal profession; and also to the government, which provided no leadership.

I think the attitude which the government and the Law Society have shown to the victims of Magarey Farlam has been deplorable. The Legal Practitioners Guarantee Fund, which we will be coming to later in the committee discussion on this bill, is a fund for the benefit of the clients of lawyers but, from the way in which the government and the Law Society have been behaving, one would think that it is a fund from which those bodies can draw funds to avoid dipping into their own pockets. I think the example of Magarey Farlam has clearly demonstrated the deficiencies in the current legislation, and it is a pity that that has not been duly recognised.

I thank the minister for tabling the letter which the Law Society sent to the Attorney-General at my request, and I ask that that be circulated to members before the resumption of the committee stage. I also sought last week from the Law Society a brief report on the status of Magarey Farlam, and I will seek to table and circulate that as well for the benefit of members.

I think it is also important at this very early juncture for members to understand the nature of the Legal Practitioners Guarantee Fund and what has happened to it in recent times. I place on the record now the figures provided in the annual reports tabled in this place concerning claims against the fund. This is a report prepared each year by the Law Society for the Attorney, who is obliged to table it in this council. One must bear in mind, in considering these figures, that the guarantee fund has contained at all times about $20 million—that is its balance. In 2003-04 the amount that went into the fund was $2.8 million and there were no claims at all on the fund and no payments from the fund.

In the following year, 2004-05, $3.2 million was the income of the guarantee fund. There were two claims that year, and they totalled $6,865.61. As members can imagine, you can pay $6,000 out of $20 million. The next year, 2005-06, the income of the guarantee fund was $4.07 million, and there were two claims on the fund; and the total payments out of the $20 million fund were $127,000. In the latest report, which the Attorney-General tabled in this place on 22 November last year, it was indicated that the income of the fund for the 2006-07 year was $5.3 million and the total payments were $347,703. There were five claims in that year, one of which was for $234,000 and the others for substantially less.

I think it is important that we understand the nature and the amounts going into the fund, the balance of the fund which is maintained, and the fierce way in which the Law Society and the Attorney-General are seeking to avoid allowing the fund to be used for its intended purpose, namely, to compensate those who lose moneys as a result of the financial depredations and defalcations of legal practitioners. We will come later to the specific measures which we believe will ensure that the legislation that will continue into the future will not allow the same *Bleak House* farce to prevent victims from receiving due compensation in due time.

Clause passed.

Progress reported; committee to sit again.

PREVENTION OF CRUELTY TO ANIMALS (ANIMAL WELFARE) AMENDMENT BILL

In committee.

Clauses 1 to 5 passed.

Clause 6.

The Hon. D.W. RIDGWAY: Mr Chairman, I draw your attention to the state of the committee.

A quorum having been formed:

The Hon. J.M.A. LENSINK: On behalf of the Hon. Caroline Schaefer, I move:

Page 3, line 9—Delete paragraph (b).

The Hon. G.E. GAGO: This amendment filed by the Hon. Caroline Schaefer would remove electric fences from the definition of 'electrical device designed for the purposes of confining or controlling an animal', which clearly it is. The current act includes electric fences in the section on electrical devices. So, the bill does not represent a change in the conditions.

The provision states that a person must not, for the purposes of confining or controlling an animal, use an electrical device in contravention of the regulations. The standard electric fence is an important animal management tool, and the government has no intention of restricting or prohibiting its use. I cannot give a stronger assurance than I have already given; however, technology is constantly changing and, without knowing what electrical devices may be invented in the future, it is unreasonable to state categorically those which may or may not be restricted or prohibited. If any minister sought to ban any electrical device by regulation, there would have to be extensive consultation and it would be subject to normal parliamentary processes.

If electric fences were to be removed from the definition of 'electric device', it would mean that, if an extreme version of an electric fence were developed in the future, any prosecution relating to its use would have to be undertaken under the provision of section 13 of the act. For these reasons the government does not support this amendment.

The Hon. M. PARNELL: The Greens do not support this amendment, largely for the reasons set out by the minister. Whilst the use of current technology and current practice arrangements might not be regarded as cruel, I think that the subject matter of electric fences needs to stay in there, because part of the issue obviously will be the voltage that is to go through those fences and the strength of shock to be imparted, and I think it makes sense to keep those items on the agenda as a matter to be regulated. As we debate this clause, unless I hear cogent reasons to the contrary, I am not inclined to support the amendment.

The Hon. J.M.A. LENSINK: Could the minister outline what an extreme version of an electric fence might entail?

The Hon. G.E. GAGO: For example, it could be an electric fence that had an extreme voltage level.

The Hon. J.M.A. LENSINK: Would that not fall, therefore, under the definition which is envisaged in this bill that refers to causing unnecessary pain, harm and so forth?

The Hon. G.E. GAGO: As I have already pointed out, but I will repeat it, if electric fences were to be removed from the definition of 'electric device', it would mean that if an extreme version of electric fencing were developed in the future any prosecution relating to its use would have to be undertaken in the provisions of section 13 of the act.

The Hon. C.V. SCHAEFER: Why do we need to leave this in there, if the extreme instances that you speak of, minister, are covered in another section of the bill?

The Hon. G.E. GAGO: As I stated in my opening remarks, technology is constantly changing and we do not know what sort of electrical devices may be invented in the future and, therefore, it is unreasonable to state categorically those which may or may not be restricted or prohibited.

The Hon. C.V. SCHAEFER: Minister, the amendment does not take all types of electrical device out of the definition; it merely takes 'electric fence' out of the definition. I state again that it is unnecessary to leave in 'electric fence' if, in fact, you have no intention of calling an electric fence an electrical device.

The Hon. D.G.E. HOOD: Family First supports the opposition's amendment on this occasion. We are persuaded by the arguments presented by the Hon. Caroline Schaefer and, also, we are not in the business of supporting amendments that are designed for situations that may or may not occur in the future.

The Hon. G.E. GAGO: I have been advised that, if a device is prohibited by regulation, using that device is an offence, whether or not suffering can be proven; if there is suffering, as well, then there are two offences.

The committee divided on the amendment:

AYES (12)

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

NOES (9)

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

Majority of three for the ayes.

Amendment thus carried.

The Hon. M. PARNELL: I move:

Page 4, lines 26 and 27—

Clause 6(7), inserted definition of serious harm, (b)—delete paragraph (b) and substitute:

(b) harm that results in an animal being so severely injured, so diseased or in such physical condition that it would be cruel not to destroy the animal; or

(c) harm that consists of, or results in, serious and protracted impairment of a physical or mental function;

This is the amendment that replaces the definition of 'serious harm'. It is a very difficult issue to deal with because we need to find a form of words that reflect the relative seriousness of different types of suffering that animals might be subject to, and that then flows on to the types of penalties that are appropriate for those who inflict various levels of suffering.

The definition that is in my amendment No. 1 is a definition that we have worked through over a period with the RSPCA. I had tabled some amendments earlier which, on consultation, were not ideal. I put on the record my thanks for the effort of Ben Johns, the chief inspector of the RSPCA, who has gone to some lengths to find appropriate definitions in different pieces of animal welfare legislation around the country (in particular, legislation from New South Wales was influential), and also his work in analysing various judicial interpretations of different forms of words. The words I have come up with which, as I say, are supported by the RSPCA, define 'serious harm' as follows:

(b) harm that results in an animal being so severely injured, so diseased or in such physical condition that it would be cruel not to destroy the animal; or

(c) harm that consists of, or results in, serious and protracted impairment of a physical or mental function.

I believe that those modifications to the definition of 'serious harm' deserve the support of the committee. They are supported by the RSPCA, and I would urge all honourable members to give them their support.

The Hon. G.E. GAGO: This amendment proposed by the Hon. Mark Parnell changes the definition of 'serious harm' in the bill. He has stated that this definition is based in part on the New South Wales model. The government recognises that its definition is somewhat complex and cumbersome and may be open to interpretation and, furthermore, it would require the courts to interpret and create legal definitions for a number of terms when ruling on such a charge. The government, therefore, considers the amended definition to provide greater clarity and, consequently, supports the amendment.

The Hon. C.V. SCHAEFER: This amendment does indeed appear to clarify the definition of 'serious harm'. I have a couple of questions for the Hon. Mr Parnell as to why 'disease' has been added, given that I cannot envisage an act of deliberate cruelty, which is what we are talking about here, which causes serious harm. I can certainly understand harm that results in an animal being so severely injured or in such physical condition which would cover acts of deliberate omission or allowing a diseased animal to go untreated, but I wonder about the addition of the word 'diseased', given that unless we are talking about some sort of animal expectation I cannot conceive of anyone deliberately subjecting an animal to disease. Disease is something which generally spreads from animal to animal or from human to animal, etc.

The Hon. M. PARNELL: I would certainly hope that the Hon. Caroline Schaefer is correct and that we would not have people deliberately seeking to subject animals to diseases. I would imagine that a circumstance might be one that perhaps crosses that border between injury and disease and, in particular, infection might be an example that might flow from perhaps a minor injury that results in a major disease. Anyone who has cut their foot on coral in the tropics would know that what might appear to be a very small injury can result in a very serious infection and disease later on. That is the type of circumstance that I would imagine.

I have been happy to take the advice of professionals in this field and, as I have said, in particular the RSPCA. I note that the New South Wales legislation certainly includes that concept of an animal being so severely injured, so diseased or in such a physical condition that it is cruel to keep it alive. So, I think it is consistent with the approach that has been taken in other jurisdictions. I do agree with the honourable member that it is hard to imagine circumstances where the disease itself was deliberately inflicted, but I think that leaving it out might let some serious cases off the hook.

What we are talking about here is compartmentalising a spectrum of offences, and we want to have it clear as to what we regard as the most serious offences. So, that would be my explanation as to why I think those words are appropriate.

The Hon. D.G.E. HOOD: I have a question for the mover. I do not see how the amendment changes the intention of what is written in the bill itself, when it states:

> 'Serious harm' means—
>
> (a) harm that endangers an animal's life; or
>
> (b) harm that consists of, or results in, severe, protracted, abnormal physiological or behavioural reactions.

Surely an animal with significant disease would fall into that category.

The Hon. M. PARNELL: I guess my response is to say that in this definition we have gone back to first principles and tried to avoid categorising the seriousness of the offence on the basis of those symptoms (if you like) as set out in that legislation. As I said, I am prepared to defer to the greater knowledge of those people who have spent their lives working in this field and who have come across probably every conceivable situation of animal mistreatment and every possible animal welfare case. If they tell me that this is a useful addition that helps to clarify the definition of 'serious harm' then I am more than happy to put that to the council.

If other members have precedents from decided cases in the courts or other good reasons as to why these words may not be appropriate, I would love to hear those. For now it satisfies me and, as I explained to the Hon. Caroline Schaefer before, I think that if we were to leave out the reference to disease we may possibly miss some serious cases that deserve to fall within this definition.

The Hon. G.E. GAGO: I have also had some advice from Ben Johns that might assist with this, as well as hearing some of his concerns about the cumbersome nature of the current definition. In terms of how to approach this moving forward, he suggests replacing the present definition of 'serious' to one that is in line with the New South Wales model. He believes that the current definition is complex and that a court could have a great deal of trouble interpreting and creating legal definitions for words when ruling on this particular definition.

For example, what does the word 'severe' add over and above the word 'serious'? In terms of 'protracted', what if an animal were subjected to intense torture for a period of minutes; would that be protracted enough? With the term 'abnormal', what is normal? Is 'physiological' a reference to anatomy, form or function, or both? In terms of 'behavioural', what if there is severe psychological harm that has minimal behavioural manifestation? In terms of 'reactions', the offence provision relates to harm and not reactions. How do these concepts fit and what useful addition do they make?

So, given the advice from experienced people who have quite a bit of expertise in these areas (he is the operations manager and he has raised some concerns about the current definition), that is why the government supports the proposed amendment.

The Hon. M. PARNELL: I have another very brief addition to the debate. It may help if I read a sentence or two from a note from the RSPCA, which, as the minister said, is focused on the practical application of these words in a court of law. The note the RSPCA has provided talks about the current definition being 'so complicated and compound in its nature. This type of muddled

wording is the lifeblood of lawyers and promotes confusion, loopholes, frustration and wasted time and money.' Lawyers have not had a great rap today in this place as we have been debating the Legal Profession Bill, and I am sure that with earlier legislation in our minds we do not want to promote confusion, loopholes, frustration and wasted time or money.

The note goes on, 'Imagine having to explain and argue this before a jury should someone elect for a District Court trial.' The note goes on to state that it would be particularly hard for magistrates, who are dealing with a great many different areas of law. Basically, the definition I have proposed is one that, according to those who prosecute these cases in the courts, would be easier for them to explain to both a trial and a sentencing judge.

The Hon. C.V. SCHAEFER: In more legal jargon, the opposition will not oppose this amendment. However, I agree with Mr Hood that the original definition of 'serious harm' quite clearly pointed out what 'serious harm' was. In fact, this particular amendment, if we want to be pedantic, is probably less severe than the original definition, in that it describes 'serious harm' as treatment which is so cruel that not to destroy the animal would be cruel in itself, whereas the original definition of 'serious harm' was harm that endangers an animal's life. Conceivably, under the original definition, someone could be prosecuted for endangering an animal's life which may well have been able to be saved, whereas the definition we are now agreeing to means, in my layperson's understanding, that the animal would have to be destroyed before prosecution could be made. However, if that suits the government and the majority of the committee the opposition will not oppose it.

The Hon. D.G.E. HOOD: Likewise, Family First will not oppose it either. Similarly to the Hon. Caroline Shaffer, I do not necessarily see the need for the amendment but, equally, we do not oppose it.

The Hon. A. BRESSINGTON: I also rise to indicate my support for this amendment. I believe the current definition of 'serious harm' (the cornerstone of an aggrieved offence) does not adequately describe what constitutes serious harm, nor does it provide sufficient distinction between 'serious harm' and just 'harm'. I am also apprehensive about the current definitions including 'harm that endangers an animal's life', as a penalty for an aggravated offence should apply only where there is demonstrated neglect, severe injury or impairment of a physical or mental function, as the Hon. Mark Parnell's amendment seeks to establish.

The Hon. G.E. GAGO: Just in case the Hon. Caroline Schaefer is not aware, I draw to her attention that the provision '(a) harm that endangers an animal's life' has been retained.

The Hon. C.V. SCHAEFER: In that case, the amendment is even more pedantic and silly, but I will not oppose it.

Amendment carried; clause as amended passed.

Clause 7 passed.

Clause 8.

The Hon. M. PARNELL: I move:

Page 5, line 20—

Clause 8, inserted section 13(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) in the case of a body corporate—$250,000;

(b) in the case of a natural person—$50,000 or imprisonment for four years.

This amendment, as well as a number of other amendments that follow, seeks to put into this legislation a concept that exists in a great deal of criminal legislation in this state, that is, to provide for different levels of penalties for individual perpetrators and corporate perpetrators. We need only to think of examples such as our pollution laws under the Environment Protection Act to see where there are different levels of penalty for an individual and a company.

It is important in this legislation, because it covers the whole gamut of animal welfare. At one end of the spectrum, we may well have a single individual with a single domestic animal, such as a cat, a dog—a pet—and the act applies to that person. This act also applies to a multinational agribusiness with potentially hundreds of thousands of individual animals under its control.

I think that, where offences occur, most reasonable people would see that a difference in penalty is appropriate not just because of the different scale of the offences but also because of the

means of the perpetrators. It is not a radical position to take to suggest that corporations be treated differently from individuals when it comes to criminal penalties.

Again, the ratio I have included in this amendment (and in other amendments elsewhere in the bill) is five to one. In other words, the maximum corporate penalty is five times the maximum individual penalty. Again, that is a very common ratio to use in legislative drafting when it comes to distinguishing the different penalties.

With those brief words, I will listen to the contributions made by other members to see whether this has the support of the committee. However, I again put on the record that this amendment and all the amendments that relate to corporate penalties are supported by the RSPCA.

The RSPCA, which I am very pleased to belong to, has been around for 100 or so years, and it will be at the coal face when it comes to enforcing this legislation. It will be the RSPCA that investigates offences, and it will be the one that will put together proof of evidence and prosecute these cases in the court. The RSPCA exists to defend those who cannot defend themselves (that is, our animals), and that organisation believes that this is a sensible amendment, and I urge all honourable members to support it.

The Hon. G.E. GAGO: The proposed amendments put forward by the Hon. Mark Parnell impose financial penalties that are five times greater for a corporate body than what would apply to a natural person. This amendment tends to assume that the average body corporate is a large company; however, it may be a very small business partnership between two or three people. Currently, section 38 of the act provides:

> Where a body corporate is guilty of an offence against this act, every member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the member could not by the exercise of reasonable diligence have prevented the commission of that offence.

Hence, if a company breaches the provisions of the act, every member of the governing body corporate is liable to the same penalty as the body corporate. This could include criminal penalties and imprisonment. If these amendments are incorporated into section 38, each member of the governing body of a corporate body could be liable for the significantly higher corporate penalty proposed by my colleague. We believe that this is an unintended consequence but, nevertheless, a consequence which would result in a potentially huge financial impost that would be unreasonable. Therefore, the government does not support this amendment.

The Hon. M. PARNELL: I thank the minister for reminding me about section 38 and also for pointing out that corporations are not all multi-billion dollar multinationals: there are also mum and dad corporations. Yet I think the amendment is still sound and, as I say, it is reflected in a great deal of other legislation in this state which imposes different penalties for corporations and individuals.

The reality is that, if the perpetrator of a criminal offence is a mum or dad or a family company, the maximum penalty on the company will be at that higher rate, but our judicial officers—our magistrates and judges—in their sentencing always take into account the circumstances of the offence. They do not mechanically apply a formula to say, 'This type of offence is half the maximum regardless of other circumstances.' I would be in no doubt that a small company with a small number of individual office holders, while potentially liable for very big fines, in all likelihood would only get the fine they would have got had they been individuals or a farming partnership or, for example, a farming enterprise. I do not think the court would distinguish between a family farm held in the name of a company or partnership or held by a sole trader. I would think our judicial officers could be trusted to know where the penalty should lie in the scheme of things.

My interest in this amendment is not so much at the lower end where we can trust our judicial officers but, rather, at the upper end. If at the upper end we find a massive multinational company worth millions or billions of dollars, and our judiciary is constrained to only impose penalties on them as if they were an individual who had mistreated a domestic animal such as a dog or cat, we are not sending the right message to the community about the importance that we place on protecting animals. The punishment needs to fit the crime. I want to be able to keep the door open for our courts to deal seriously with large corporations with, perhaps, systemic cruelty problems. We need to send a message that their behaviour is not appropriate. That is what the judges will do but, if they are constrained to relatively small penalties (as exist under this bill), I do not think we are doing the best we can.

The Hon. A. BRESSINGTON: I was leaning towards supporting this amendment until I heard the points raised by the minister. I wish that I could share the Hon. Mark Parnell's confidence in the judiciary but, in my opinion, they hardly manage to interpret the law for humans; it seems a great difficulty for them sometimes. In relation to animals and corporate bodies, I do not have the confidence to leave it in their hands. Perhaps before we finish with this bill the Hon. Mark Parnell can come up with a clearer definition of 'body corporate'.

I still reflect on the case I raised in this place about a person who had a dog and who has been dragged through a terrible situation. She knew the dog had arthritis and was caring for it in her own way. The dog was in a loving environment, but the RSPCA inspectors had a different idea of what should happen to the dog and, as a result, this person has had a long time in litigation and suffered a great fine.

Rather than support the amendment, because I do believe it does make people involved in animal husbandry on a larger scale accountable, it makes me nervous that the smaller people can get caught up in this and get a double whammy. As I said, leaving this matter to an interpretation by the judiciary makes me very nervous. As a result of that, I will not be supporting the amendment for that very reason.

The Hon. SANDRA KANCK: I will be supporting the amendment. I think there is a difference between a body corporate and an individual. We have that status in quite a lot of our laws, and it seems strange that we do not in this instance. Bodies corporate have different laws applied to them in terms of taxes and profits, and so on, and the reality is that, when we are talking bodies corporate in this legislation, we are talking about entities that are making a profit out of using animals for entertainment. I know that for some in this chamber that is a sore point because of regulations relating to rodeos, but it could also—in fact would also—apply to circuses. I do not see that one can treat a group that is using animals for profit in this way in the same way as an ordinary person looking after a sick dog—or a well dog, for that matter.

The Hon. C.V. SCHAEFER: The Liberal Party will not be supporting this amendment, for the same reasons as the government is not doing so. I originally had some sympathy for this amendment but, again, when I was reminded of section 38 and the possibility that a board of a corporate body could incur penalties in the millions of dollars, I think the current bill as it stands is more practical.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 5, line 22—

Clause 8, inserted section 13(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) in the case of a body corporate—$250,000

(b) in the case of a natural person—$50,000 or imprisonment for four years.

Amendment negatived.

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

Page 5, line 25—

Clause 8, inserted section 13(3)(a)—before 'causes' insert:

intentionally, unreasonably or recklessly

I have introduced this amendment at the request of the RSPCA. Again, it believes that this more accurately describes the ill-treatment of animals. New section 13(3) provides:

Without limiting the generality of subsection (1) or (2), a person ill-treats an animal if the person—

(a) causes the animal unnecessary harm; or

I seek to include the words 'intentionally, unreasonably or recklessly' (causes unnecessary harm). As I said, the amendment is as a result of lobbying that I received from the RSPCA.

The Hon. G.E. GAGO: This amends new section 13(3)(a) such that a person ill-treats an animal if the person intentionally, unreasonably or recklessly causes the animal unnecessary harm. The phrasing is not dissimilar to the phrasing in the current act, which is 'deliberately or unreasonably causes the animal unnecessary pain'. I believe that the amendment will clarify that the person must have harmed an animal intentionally, unreasonably or recklessly to have

committed an offence, and the government's comments with respect to amendment No. 3 are also relevant to this discussion. If the word 'unreasonably' is re-inserted in new section 13(3)(a), it may allay some of my colleagues' concerns with respect to amendment No. 3 (which is the Hon. Caroline Schaefer's No. 4), and will also clarify this issue. An unreasonableness test would narrow down the mental element of the offence. Given these remarks, the government will be supporting this amendment.

The Hon. D.G.E. HOOD: Family First supports the amendment.

The Hon. A. BRESSINGTON: I support the amendment.

The Hon. M. PARNELL: I support the amendment.

Amendment carried.

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

Page 6, after line 18—

Clause 8, inserted section 13—after subsection (4) insert:

(4a) It is a defence to a charge of an offence against subsection (2) if the defendant proves that the offence did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

This amendment seeks to make accidental harm a defence under the new act. I am advised by parliamentary counsel that this does not apply to the aggravated offence section, so what we are talking about here is a lesser offence. I think I outlined in my second reading speech some of the occasions when accidental harm may occur and, as I said then, if someone has a dog caught in a fence or a mob of sheep run out of water or a horse goes through a fence and is unaware of any of those things happening, there is no doubt that that has caused harm and that the owner is, indeed, the responsible person for that animal but it is not in any way a deliberate act. If those things happen it is, in fact, quite traumatic for the owner of the animal or animals, and this simply again seeks to allay the concerns of many of my wider constituency that, should those tragic events occur, they have a defence if they are charged by an over-zealous inspector.

The Hon. G.E. GAGO: This amendment provides a defence to a charge of an offence of ill-treatment of an animal if the defendant proves that the offence did not result from any failure of the defendant to take reasonable care to avoid the offence. Basically the government believes that this amendment is superfluous considering that the previous amendment has been supported, and 'intentionally, unreasonably or recklessly' has now been inserted in section 13(3)(a). For example, if a person deliberately and intentionally caused a horse to be tangled in a fence and chose to leave it there for two or three days, that person should be charged with ill treatment. If a person did not know the horse was entangled, there is no expectation that the person should alleviate the suffering and thus there is no offence. So the term 'mens rea' applies, meaning the act does not make the person guilty unless the mind is also guilty.

The RSPCA has advised me that one of the key practical threshold tests it uses when evaluating any potential prosecution is: has the person acted reasonably in the care of the animal? This issue can be best left to the discretion of the inspectors, the police or any other prosecuting authority. The RSPCA does not have the resources or inclination to prosecute people frivolously and, if the person's conduct is reasonable, in almost all circumstances it will not constitute an offence. The government considers this amendment is superfluous as the offence would exist anyway, and it would confuse and undermine the longstanding offence provisions already in place. Consequently, the government does not support this amendment.

The Hon. M. PARNELL: I, too, do not support the amendment for the same reasons given by the minister. I point out that the offence under new section 13 is that a person needs to ill-treat an animal. There needs to be some active role, but that can also be through omission as well. The reasonable care defence is implicit in the offence itself. Certainly, a person who was charged and whose defence was that they did everything they possibly could would have that defence available. Setting it out in the way proposed by the honourable member would add to confusion. It would probably suggest to people that there is a level of defence greater than that which is inherent in the definition of the offence. I think that it is more likely that this amendment would cause harm rather than improvement to the legislation, so I will not be supporting it.

The Hon. D.G.E. HOOD: Family First will be supporting the amendment. We take the government's position and accept that, at some level, there may be an element of its being

somewhat superfluous. However, we do feel that it seeks to clarify further someone's position when found in this situation. For that reason, we will be supporting this amendment.

The Hon. A. BRESSINGTON: I will also be supporting this amendment.

The committee divided on the amendment:

AYES (12)

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

NOES (9)

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

Majority of 3 for the ayes.

Amendment thus carried.

Progress reported; committee to sit again.

[Sitting suspended from 18:08 to 19:45]

LAKE EYRE BASIN (INTERGOVERNMENTAL AGREEMENT) (RATIFICATION OF AMENDMENTS) AMENDMENT BILL

Returned from the House of Assembly without any amendment.

SERIOUS AND ORGANISED CRIME (CONTROL) 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) (19:49): I move:

That this bill be now read a second time.

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

Leave granted.

Declared Organisations

The Serious and Organised Crime (Control) Bill 2007 will establish a procedure under which the Attorney-General is authorised to issue a declaration about an organisation on the application of the Commissioner of Police.

Upon receiving an application, the Attorney-General is required to publish a notice in the Gazette and in a newspaper circulating throughout the State. Members of the organisation and other people with a relevant interest will be invited to make submissions on the application. This provides an element of natural justice.

The Attorney-General is authorised to make a declaration about an organisation if satisfied, on reasonable grounds, that:

(a) the members of the organisation associate for the purpose of organising, planning, supporting, facilitating or engaging in serious criminal activity; and

(b) the organisation is a risk to public safety and order.

When determining whether to make a declaration, the Attorney-General will be able to have regard to:

- evidence suggesting that a link exists between the organisation and serious criminal activity;
- the criminal records of members or past members of the organisation;
- evidence that members or past members have been involved (directly or indirectly) in serious criminal activity;
- evidence about offending by members of overseas chapters or branches of the organisation;
- any submission received by the Attorney-General; and
- any other matter the Attorney-General considers relevant.

When considering whether the organisation represents a risk to public safety and order the Attorney-General will be able to have regard to incidents such as the shootings in Wright Street and at the Tonic Club and the bombings of OMCG premises.

Evidence for this purpose will include information certified as 'criminal intelligence' by the Commissioner for Police. Criminal intelligence is information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety.

The declaration process will be aimed primarily at OMCGs, although the Attorney-General may make a declaration about any organisation meeting the criteria. To accommodate this, organisation is defined broadly to include any incorporated body or unincorporated group, however structured. A declaration will be able to be made whether or not all of the members associated for a criminal purpose and whether or not the members associated for other, legitimate purposes.

A declaration will, of itself, impose no direct punishment on an organisation or its members. It will, however, be a used for associated purposes. For example, membership of a declared organisation will be a ground on which a control order will be able to be issued and the new consorting offence will prohibit a person associating or communicating with a member of a declared organisation.

A privative clause will try to protect the Attorney-General's decision from the full rigour of judicial review.

I do not hold out much hope of this preventing all judges substituting their own decisions on declared organisations for those of the elected Government.

Control Orders

The Bill provides for control orders. A control orders is an order, akin to a restraining order, that will, depending upon the terms of the order, prohibit a person from:

- associating or communicating with specified persons or persons of a specified class;
- entering or being in the vicinity of specified premises or premises of a specified class;
- possessing specified articles or articles of a specified kind;
- possessing a dangerous article or prohibited weapon (within the meaning of the Summary Offences (Dangerous Articles and Prohibited Weapons) Regulations 2000).

Applications for control orders will be made by the Commissioner of Police to the Magistrates Court. The Court will be authorised to make an order against these people:

- members of declared organisations;
- former members of a declared organisation or persons who engage in serious criminal activity (as defined) and who regularly associate with members of declared organisations; or
- persons engaged in serious criminal activity who regularly associate with persons who engage in serious criminal activity.

Control orders will used to break up associations that further serious criminal activity. They will be sought to prohibit members of declared organisation from associating and communicating with each other and attending premises associated with the organisation, such as clubhouses. They will also be sought to break up associations between members of declared organisations and others who commit offences with, at the behest of, or for the benefit of, declared organisations and their members. They will, however, have broader application and the Bill allows for orders to be made against people who, although not members or associates of declared organisations, engage in serious offending.

The process for obtaining a control order will follow the process for obtaining a fortification removal order under the Summary Offences Act, being:

- the Commissioner will apply to the Magistrates Court for a control order. The initial application will be heard ex parte;
- if, on the application of the Commissioner, the Court makes a control order, a copy of the order specifying the grounds on which it is made must be served on the defendant. The police will be given special powers to serve orders on unco operative defendants;
- the defendant will have 14 days to lodge a notice of objection disputing the control order. A copy of the notice of objection must be served on the Commissioner;
- on hearing the notice of objection, the Court will be authorised to vary or revoke the order;
- both the defendant and the Commissioner will have a right of appeal to the Supreme Court on a decision by the Magistrates Court on a notice of objection (by right on a question of law or by leave on a question of fact);
- a control order will not become effective until after any notice of objection has been heard and the order confirmed by the Court or, if no notice of objection is lodged, 14 days after the initial order is made;

- an appeal to the Supreme Court by the defendant will not stay the operation of a control order.

A privative clause will try to protect any decision from judicial review.

Again, the Commissioner will be able to rely upon information certified as 'criminal intelligence' for the purpose of an application for a control order. Criminal intelligence will be disclosed to, and be taken into consideration by, the Court but will not be disclosed to the defendant, his legal representatives or any other person during the hearing of a notice of objection.

The offence of contravening or failing to comply with a control order will carry a maximum penalty of five years imprisonment. To take account of the wide range of offending, a discretion will be conferred on the prosecution to proceed summarily, having regard to the seriousness of the offending, if this is appropriate.

Public Safety Orders

The Bill authorises a Senior Police Officer to issue a public safety order for a person or a specified class of persons if satisfied that:

- the presence of the person or members of the specified class at specified premises, a specified event or within a specified area, poses a serious risk to public safety or security, being a risk of death or serious physical harm to a person or serious damage to property; and
- the making of the order is appropriate in the circumstances having regard to the extent to which the order will mitigate the risk to the public and other measures reasonably available to mitigate the risk.

To limit the application of the powers, when determining the risk the officer will be required to have regard to the nature of the group and any history of behaviour that previously gave rise to a serious risk to public safety or property. A public safety order may not be issued to prevent non violent protest, advocacy or dissent.

A public safety order will prohibit the person or persons of the specified class from entering or being on specified premises, attending a specified event or entering or being in a specified area.

'Serious risk to public safety or security' is defined to mean the risk of:

- the death of, or serious physical harm to, a person; or
- serious damage to property.

This is a high threshold test that is intended to restrict the use of public safety orders to appropriate circumstances.

A public safety order will be able to varied or revoked by a Senior Police Officer but will be time limited to either 72 hours or the duration of the event (whichever is the longest). An order will be able to be extended, however:

- any extension beyond 72 hours will be by ex parte order of a court; and
- a person subject to a public safety order will have the right to object to any extension of the order beyond seven days.

In urgent circumstances, a police officer will be able to seek an extension by telephone.

A public safety order and extension will have to be served on the people to whom it applies and will have to be accompanied by a notice setting out the date on which it was made, to whom it applies, its duration, the place, event or areas to which it applies and the penalty for breaching the order. Police will be given the power to serve a notice orally in urgent circumstances and special powers to serve orders on unco-operative people.

The offence of contravention or failure to comply with a public safety order carries a maximum penalty of five years' imprisonment. To take account of the wide range of offences, a discretion will be conferred on the prosecution to proceed summarily where the prosecution considers, having regard to the seriousness of the breach, that this is appropriate.

New offence of criminal association

SAPOL has advised that OMCG members actively recruit the services of members of less known street gangs and use them to do the high risk aspects of their criminal enterprises, including violence, carrying weapons and the manufacture and distribution of illegal drugs.

Currently, the only offence provision that SAPOL can use to break up these criminal associations is the offence of consorting in section 13 of the Summary Offences Act 1953. Section 13 provides:

13—Consorting

A person who habitually consorts with reputed thieves, prostitutes or persons having no lawful visible means of support is guilty of an offence.

Maximum penalty: $2,500 or imprisonment for 6 months.

SAPOL has advised there are problems with the offence of consorting, including the petty nature of the classification of persons (reputed thieves, prostitutes and persons with no visible means of support), the absence of any defence and that consorting does not include modern forms of communication.

SAPOL has recommended that the offence of consorting be replaced with a more modern offence that targets the association and communication between OMCG members and other serious criminals.

The Bill repeals section 13 and replaces it with an offence in a more modern form.

The new offence will prohibit a person from associating or communication (by any means) with:

- members of declared organisations;
- persons who are the subject of control orders.

The new offence will also prohibit persons with convictions for prescribed offences from associating or communicating with other persons with convictions for prescribed offences.

The concept of 'habitually' consorts is replaced with a requirement that the defendant associate or communicate with the person at least six times in 12 months.

An association or communication is to be disregarded if:

- it occurs between close family members, in the course of a lawful occupation, business or profession, in the course of training, education or rehabilitation, in lawful custody or as a result of a court order, or in any prescribed circumstance, unless the prosecution proves the particular association or communication was unreasonable; and
- the defendant proves he had a reasonable excuse for the particular association or communication. This defence will not, however, apply to a member of a declared organisation, a person on a control order or a person with prescribed convictions.

The Bill authorises a police officer to require the personal details of a person where he has reasonable cause to suspect that the person is associating with a member of a declared organisation, a person who is subject to a control order or a person who has a relevant criminal conviction.

The current penalty for consorting is a $2,500 fine or imprisonment for six months. To reflect that the new offence will involve associating or communication with more serious categories of persons, the maximum penalty for the new offence is five years' imprisonment. To take account of the wide range of offending, a discretion will be conferred on the prosecution to proceed summarily, having regard to the seriousness of the offending, if this is appropriate.

Review and Expiry of Act

The Bill provides that, before 1 July each year, the Attorney-General must appoint a retired judicial officer to conduct a review on whether the powers under the Act have been used appropriately having regard to the objects of the legislation. Both the Attorney-General and the Commissioner of Police must provide the person conducting the review with such information as he requires, although confidentiality obligations apply. The person must provide his report by 30 September each year, whereupon the Attorney-General must table a copy of the report in both Houses of Parliament.

The Bill also requires the Attorney-General to conduct a review of the operation and effectiveness of the legislation as soon as practicable after the fifth anniversary of the commencement of the legislation. The Attorney-General must prepare a report based on the review and table a copy of the report in both Houses of Parliament.

The Bill also contains a sunset clause. The Act will expire 10 years after the day on which the clause comes into operation.

Amendment of other Acts

Sections 248 and 250 of the Criminal Law Consolidation Act 1935

Section 248 of the Criminal Law Consolidation Act provides:

248—Threats or reprisals relating to duties or functions in judicial proceedings

(1) A person who causes or procures, or threatens or attempts to cause or procure, any injury or detriment with the intention of inducing a person who is or may be:

(a) a judicial officer or other officer at judicial proceedings (whether proceedings that are in progress or proceedings that are to be or may be instituted at a later time); or

(b) involved in such proceedings as a witness, juror or legal practitioner, to act or not to act in a way that might influence the outcome of the proceedings is guilty of an offence.

(2) A person who causes or procures, or threatens or attempts to cause or procure, any injury or detriment on account of anything said or done by a judicial officer, other officer, witness, juror or legal practitioner in good faith in the discharge or performance or purported discharge or performance of his or her duties or functions in or in relation to judicial proceedings is guilty of an offence.

Section 250 of the Criminal Law Consolidation Act provides:

250—Threats or reprisals against public officers

A person who causes or procures, or threatens or attempts to cause or procure, any physical injury to a person or property:

(a) with the intention of influencing the manner in which a public officer discharges or performs his or her official duties or functions; or

(b) on account of anything said or done by a public officer in good faith in the discharge or performance or purported discharge or performance of his or her official duties or functions,

is guilty of an offence.

The maximum penalty for an offence under bother section 248 and 250 is: imprisonment for 7 years.

SAPOL advises that sections 248 and 250 are, at present, too narrow to catch the type of threatening behaviour engaged in by OMCG members and their associates. This behaviour is often more subtle than the making of overt threats and includes:

- following a person;
- loitering outside a person's home or place of work;
- keeping person under surveillance;
- communicating with a person (by letter, email, telephone etc.).

The more subtle intimidation will, in many cases, amount to unlawful stalking within the meaning of section 19AA of the Criminal Law Consolidation Act. However, the penalty for unlawful stalking is only three years' imprisonment (for the basic offence) and five years' imprisonment (for an aggravated offence).

The Bill amends sections 248 and 250 so that a person who engages in conduct that amounts to stalking within the meaning of 19AA(1)(a) with the intention prescribed in section 248 or 250 will commit an offence under those sections and be liable for the maximum penalty, seven years' imprisonment. Section 248 is also amended to make clear that threats etc., directed at a person who provides assistance to a criminal investigation will also amount to an offence whether or not a complaint or information is laid against the defendant.

Section 10A of the Bail Act 1985

Section 10 creates a statutory presumption in favour of bail where a person is charged with, but not convicted of, an offence. This means that a person should be released on bail unless, having regard to the matters in subsection 10(1), the bail authority believes that bail should be refused.

Section 10A creates exceptions to the general rule in section 10. Section 10A(1) provides, despite section 10, bail is not to be granted to a prescribed applicant unless the applicant establishes the existence of special circumstances justifying the applicant's release on bail.

Section 10A(2) defines a prescribed applicant to mean an applicant taken into custody about certain serious motor vehicle offences where committed, or allegedly committed, by the applicant in the course of attempting to escape pursuit by a police officer or attempting to entice a police officer to engage in a pursuit.

SAPOL advises that intimidation of victims and other witnesses of and to OMCG offending by OMCG members and their associates is a key reason for lack of prosecution success against OMCG members. This is particularly so in cases such as blackmail. SAPOL advises that, since 2003, 47 incidents of blackmail have been identified, with most involving OMCG members or associates. Of the 47 known cases only five proceeded to prosecution.

Intimidation of victims and witnesses by OMCG members and associates harms the Crown's ability to secure convictions.

SAPOL advises that uncertainty about the release of OMCG members and associates on bail contributes to the fear held by victims and witnesses. At present, OMCG members and associates charged with blackmail or offences involving the intimidation of witnesses are subject to a presumption in favour of bail.

The Bill amends section 10A to add to the list of prescribed applicants a person taken into custody for:

- the offence of breach of a control order;
- the offences of breach of a public safety order;
- the offence of blackmail (section 171 of the Criminal Law Consolidation Act);
- offences under section 248 and 250 of the Criminal Law Consolidation Act (as amended).

Part 16 of the Summary Offences Act 1953

Part 16 into the Summary Offences Act 1953 contains the Anti fortification provisions.

Section 74BB(1) authorises the Magistrates Court, on the application of the Commissioner of Police, to issue a fortification removal order where satisfied that the premises are fortified; and

- the fortifications have been created in contravention of the Development Act 1993; or
- there are reasonable grounds to believe the premises are being, have been, or are likely to be, used for or in connection with the commission of a serious criminal offence, to conceal evidence of a serious criminal offence, or to keep the proceeds of a serious criminal offence.

The Bill amends section 74BB(1) to add as a ground on which a court may issue a fortification removal order, that the premises are owned by a member of a declared organisation or occupied or habitually used as a place of resort by members of a declared organisation.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause sets out the meaning of various terms used in the measure. These include such terms as Commissioner which means the Commissioner of Police; criminal intelligence which means information relating to actual or suspected criminal activity that may reasonably be expected to prejudice criminal investigations, reveal a confidential source or to endanger a person's life or physical safety were it to be disclosed; member (in relation to an organisation) includes an associate member or prospective member, someone who identifies themselves as belonging to the organisation or someone who is treated as if he or she belongs to the organisation; organisation means any incorporated or unincorporated body, however structured, that may be based within or outside South Australia and may have members who are not ordinarily resident in this State and may be part of a larger organisation; serious criminal offences which means indictable offences or summary offences prescribed by the regulations.

4—Objects

This clause sets out the objects of the measure and makes it clear that (without derogating from the objects) the measure is not intended to diminish the freedom of persons in the State to participate in advocacy, protest, dissent or industrial action.

5—Burden of proof

This clause provides that where a question of fact is to be decided by a court under this measure (other than in proceedings for an offence against this measure), that question is to be decided on the balance of probabilities.

6—Extra territorial operation

This clause states that this measure is intended to apply within the State and outside the State to the full extent of the extra territorial legislative capacity of the South Australian Parliament.

7—Delegation

This clause provides that a power or function of the Commissioner under this measure must only be delegated (in accordance with the Police Act 1998) to a person who is a senior police officer. However, the function of classifying criminal intelligence under this measure may only be delegated by the Commissioner to a Deputy Commissioner or Assistant Commissioner of Police.

Part 2—Declared organisations

8—Commissioner may apply for declaration

Under this provision, the Commissioner may apply to the Attorney-General for a declaration in relation to a particular organisation. This application must be in writing, identify the organisation, set out the grounds on which the declaration is sought and the supporting information as well as the details and outcome of any previous application for a declaration made in relation to the organisation. The application must also be verified by a statutory declaration or declarations.

9—Publication of notice of application

Notice of an application for a declaration in relation to an organisation must be published in the Gazette and in a newspaper circulating throughout the State. The notice must invite members of the public to make submissions to the Attorney-General within 28 days in relation to the application.

10—Attorney-General may make declaration

Once the period for making submissions has elapsed, the Attorney-General may make a declaration in relation to the organisation if satisfied that some or all of the members of that organisation associate for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity (whether or not the organisation also associates for other purposes), and the organisation also represents a risk to public safety and order. In determining whether to make a declaration, the Attorney-General may take into account such things as any information suggesting a link between the organisation and serious criminal activity; criminal convictions of current and former members or associates of the organisation; any information suggesting that current or former members or associates have been or are involved in serious criminal activity; any information suggesting that members of an interstate or overseas chapter or branch of the organisation associate for the purposes of organising, planning, facilitating, supporting or engaging in serious criminal activity; any submissions received from the public under clause 9 and any other matters the Attorney-General considers relevant.

11—Notice of declaration

The Attorney-General must publish notice of the declaration in the Gazette and in a newspaper circulating throughout the State as soon as practicable after making the declaration.

12—Revocation of declaration

The Attorney-General may revoke a declaration at any time and if so, must publish notice of the revocation in the Gazette and in a newspaper circulating throughout the State as soon as practicable after making the revocation.

13—Disclosure of reasons and criminal intelligence

This clause provides that the Attorney-General is not required to provide any grounds or reasons for a declaration or decision under this Part (other than as may be required for the purposes of a review under Part 6). It also requires that the information that has been provided to the Attorney-General for the purposes of this Part that has been classified as criminal intelligence by the Commissioner, must not be disclosed to any person (except a person conducting a review under Part 6 or a person authorised by the Commissioner).

Part 3—Control orders

14—Court may make control order

This clause provides that the Court must, following an application by the Commissioner, make a control order against a person (the defendant) if the Court is satisfied that the defendant is a member of a declared organisation. The Court may make a control order against a defendant if satisfied that the defendant has been a member of a declared organisation or engages or has engaged in serious criminal activity and regularly associates with members of a declared organisation. The Court may also make a control order against a defendant if satisfied that the defendant engages in or has engaged in serious criminal activity and regularly associates with other persons who engage, or have engaged in serious criminal activity. A control order may be issued on an application made without notice to any person. The grounds of an application for a control order must be verified by affidavit. In considering an application for a control order under this clause, or determining the terms of an order, the Court must consider whether the defendant's behaviour or previous behaviour suggests that there is a risk the defendant may engage in serious criminal activity; the extent an order may help prevent a defendant from engaging in serious criminal activity; the prior record of the defendant and any associates of the defendant; any legitimate reasons a defendant may have for associating with a particular person, and any other matters the Court thinks relevant.

A control order may prohibit the defendant from associating or communicating with specified persons or class of persons, being in or near a specified premises or type of premises or possessing certain articles. A control order in respect of a person who is a member of a declared organisation must prohibit the person from associating with other members of declared organisations and from possessing a dangerous article or prohibited weapon within the meaning of the Summary Offences Act 1953 (except as specified in the order). On making a control order, the Court may also make any ancillary or consequential orders it thinks fit, including, in the case of an order that prohibits possession of an article, orders providing for the confiscation and disposal of such an article or authorising a police officer to enter any premises in which the article is suspected to be and to search and take possession of it.

15—Form of control order

This clause sets out the requirements for a control order. It must be directed at the person specified as the defendant in the application and set out the terms of the order and the provision of this measure under which it has been made. Except in the case of information that is criminal intelligence, the order must also include a statement of the grounds on which the order has been issued and an explanation of the right of objection in clause 17. A copy of the affidavit verifying the grounds on which the application was made must be attached to the control order unless this would cause criminal intelligence to be disclosed in breach of clause 21. In this case, the affidavit may be edited to remove the criminal intelligence information.

16—Service

This clause sets out the requirements for service of the control order, which will not be binding until service has been so effected. The control order must be served on the defendant personally unless the person serving the order has reasonable cause to believe that the defendant is present at a particular premises, but is unable to gain access to him or her, in which case the control order may be served by leaving it at the premises with someone over the age of 16 years or if no such person is accessible, then by fixing it to the premises at a prominent place or near the entrance. The clause provides that a police officer who has reasonable cause to suspect that a control order is required to be served on a person, has the power to require that person to give the officer his or her personal details and require the person to remain at a particular place for a maximum of 2 hours in order to effect service of the order. If the person refuses or fails to comply with the police officer, the officer may arrest and detain the person without a warrant for the maximum period of 2 hours in order to effect service.

17—Right of objection

This clause provides a person on whom a control order has been served with the right to lodge a notice of objection with the Court within 14 days (or such longer period as the Court may allow) of being served with the order. The notice must state the grounds of the objection in detail and a copy of the notice must be served on the Commissioner at least 7 days before the day appointed for hearing the objection.

18—Procedure on hearing of notice of objection

The Court must consider whether there were sufficient grounds for making the control order in light of the evidence presented by the Commissioner and the objector. The Court may, on hearing the notice of objection confirm, vary or revoke the control order and make any other orders that the Court could have made on the making

of the control order. If the defendant is a member of a declared organisation, and the Court is satisfied there is a good reason why he or she should be allowed to associate with a particular member of a declared organisation, the Court may vary the order to specify that the defendant is not prohibited from associating with that member, subject to any conditions that the Court thinks fit.

19—Appeals to Supreme Court

Either the Commissioner or the objector may appeal against a decision of the Court on a notice of objection to the Supreme Court. In regards to an appeal on a question of law, the appeal lies as of right, but only with the permission of the Supreme Court in regards to a question of fact. The procedures and timing of the appeal are to be in accordance with the rules of the Supreme Court. The operation of a control order is not affected by the commencement of an appeal under this clause. On appeal, the Supreme Court may confirm, vary or reverse the decision subject to appeal and make any other consequential or ancillary orders.

20—Variation or revocation of control order

This clause provides that the Court may vary or revoke a control order on application by the Commissioner or the defendant, provided the defendant has been granted permission by the Court. The Court must be satisfied there has been a substantial change in the relevant circumstances of the defendant before granting permission for a defendant to apply. Before varying or revoking a control order, the Court must allow all parties a reasonable opportunity to be heard on the matter and have regard to the same factors the Court must have regard to in considering whether or not to make a control order and its terms. An application for variation or revocation of a control order made by a defendant must be supported by oral evidence given on oath.

21—Criminal intelligence

The effect of this clause is to protect information classified by the Commissioner as criminal intelligence. Under this clause, information that is properly classified as criminal intelligence that is provided by the Commissioner to a court for the purposes of proceedings relating to the making, variation or revocation of a control order must not be disclosed to any person except the Attorney-General, a person conducting a review under Part 6, a court or a person authorised by the Commissioner. A court determining proceedings in relation to the making, variation or revocation of a control order must, on the application of the Commissioner, take steps to maintain the confidentiality of criminal intelligence including receiving evidence and hearing argument about the information in private in the absence of the parties and their representatives. The court may take evidence relating to the criminal intelligence by way of affidavit of a police officer who is at least the rank of superintendent.

22—Offence to contravene or fail to comply with control order

It is an offence for a person to contravene or fail to comply with a control order, with a maximum penalty of 5 years imprisonment. A person will only commit an offence if the person knew he or she was contravening or not complying with the order, or was reckless to that fact.

Part 4—Public safety orders

Division 1—Making of public safety orders

23—Senior police officer may make public safety order

A senior police officer may make a public safety order in respect of a person or a class of persons if he or she is satisfied that the presence of the person or persons at any premises or event, or within an area, poses a serious risk to public safety or security and such an order is appropriate in the circumstances. The clause sets out the sorts of things the senior police officer must consider before making a public safety order. These include whether the person or persons have behaved in a way that posed a serious risk to public safety or security in the past or have a history of engaging in serious criminal activity; whether the person or persons are or have been members of a declared organisation or subject to a control order or associate or have associated with such persons; if advocacy, protest, dissent or industrial action is the likely reason for the person or persons being present at a particular premises or event, or within a particular area, the public interest in maintaining the freedom to participate in such activities; whether the degree of risk justifies the terms of the order, having regard to any legitimate reason the person or persons may have for being present at a particular premises, event or location; the extent to which the making of the order will mitigate any risk to public safety or security; whether there are other measures reasonably available to mitigate the risk; and any other matters the police officer thinks fit. A public safety order may prohibit a person or a specified class of persons from entering or being on specified premises or attending a particular event or entering or being in a particular area.

If a public safety order prohibits attendance at a specified event, the order may include associated events or activities that occur on the same day as the principal event or as part of the principal event. The order must also define the area or areas in which the event takes place and set out when the event is taken to start and finish for the purposes of the order.

Despite any other provision of this clause, a public safety order must not be made by a senior police officer that would prohibit a person or class of persons from being present at any premises, event or within an area if those persons are members of an organisation formed for, or primarily formed for, non violent advocacy, protests, dissent or industrial action and the officer believes that that is the likely reason for those persons to be present at the premises or event or area.

Subject to clause 25, a public safety order operates for the period specified in the order. Although a public safety order may prohibit a person from entering or being on premises, whether or not the person has any legal or equitable interest in them, an order must not prohibit a person from entering or being in premises that are the person's principal place of residence. For the purposes of this clause a serious risk to public safety or security is

where there is a serious risk that the presence of the person at particular premises, event or area might result in the death of, or serious physical harm to, a person or serious damage to property.

24—Variation and revocation of public safety order

A senior police officer may vary or revoke a public safety order at any time and the order must be revoked if the Commissioner is satisfied that the grounds for making the order no longer exist.

25—Certain variations and orders must be authorised by Court

This clause provides that a senior police officer must not make a public safety order in certain circumstances without first obtaining an authorisation order from the Court. These circumstances are where the public safety order is to operate for more than 72 hours or, in the case of an order that relates to a particular event that goes for longer than 72 hours, the order is for longer than the total duration of the event. Nor can a senior police officer vary an order so that it operates longer than 72 hours, or in the case of an order that relates to a particular event that goes for longer than 72 hours, so that it operates for longer than the total duration of the event, without an authorisation order of the Court. The Court is also required to authorise a public safety order that relates to a person who has been subject to another public safety order in the immediately preceding 72 hours (unless the person is a member of a declared organisation). The Court may make an authorisation order on application by a senior police officer without notice to any person. The grounds of an application for an authorisation order must be verified by affidavit.

The clause also sets out the manner in which an application for an authorisation order may be dealt with and made by a Magistrate by telephone. The Magistrate must be satisfied that there is sufficient urgency to justify dealing with the matter by oral questioning of the applicant and any witnesses by telephone, without the personal attendance of the applicant. If the Magistrate is not so satisfied, he or she may adjourn the hearing of the application to another time and place. If the Magistrate is satisfied that it is appropriate to deal with the application without requiring personal attendance, the applicant must inform the Magistrate of the grounds for the proposed order or variation. If satisfied that it is appropriate for the proposed variation or order to be made by the applicant, the Magistrate must inform the applicant of the facts that he or she thinks justify the making of the variation or order and require the applicant to undertake to verify these by affidavit. If the applicant gives such an undertaking, the Magistrate may then make the authorisation order and must note on the order the facts that justify the making of the variation or order and informing the applicant of the terms of the order. A copy must be then forwarded to the applicant as soon as practicable. The affidavit required to verify the facts relied on by the Magistrate must also be forwarded to the Magistrate as soon as practicable by the applicant. A copy of the order and the attached affidavit must be filed by the Magistrate in the Court. An authorisation order must specify the maximum period for which the public safety order may operate.

26—Right of objection

If a public safety order (as made or varied) will operate for more than 7 days, a person bound by the order may lodge a notice of objection with the Court. The notice must be lodged before the end of the period the order operates or within 14 days of the date the order became binding on the person, which ever first occurs. The notice of objection must set out the grounds of objection in detail and a copy of the notice must be served by the objector on the Commissioner at least 2 days before the day appointed for the hearing.

27—Procedure on hearing of notice of objection

The Court must, when determining a notice of objection, consider whether there were sufficient grounds for the making of the public safety order, any variations to the order and any relevant authorisation order, in light of the evidence presented by the Commissioner and the objector. The Court may then confirm, vary, or rescind the public safety order and make any other consequential or ancillary orders.

28—Appeals to Supreme Court

This clause provides that the Commissioner may appeal to the Supreme Court against a decision of the Court on an application under clause 25 (application for an authorisation order). In addition, either the Commissioner or an objector may appeal to the Supreme Court against a decision of the Court on a notice of objection. In regards to an appeal on a question of law, the appeal lies as of right, but only with the permission of the Supreme Court in regards to a question of fact. The procedures and timing of the appeal are to be in accordance with the rules of the Supreme Court. The operation of a public safety order is not affected by the commencement of an appeal against a decision of the Court on a notice of objection. On appeal, the Supreme Court may confirm, vary or reverse the decision under appeal and make consequential or ancillary orders.

29—Disclosure of reasons and criminal intelligence

Subject to clause 30, this clause provides that if a senior police officer decides to make, vary or revoke a public safety order, the officer is not required to provide any grounds or reasons for the decision to a person affected (but is required to provide grounds or reasons to a person conducting a review under Part 6 at the request of the reviewer). If a public safety order has been made, varied or revoked due to information that is properly classified by the Commissioner as criminal intelligence, that information must not be disclosed to any person other than the Attorney-General, a person conducting a review under Part 6, a court or a person authorised by the Commissioner if, at the time at which the question of disclosure is to be determined, the information is properly classified by the Commissioner as criminal intelligence (regardless of whether or not the information was classified as such at the time the public safety order was made, varied or revoked).

Under subclause (3), no information properly classified as criminal intelligence by the Commissioner that is provided to a court by a senior police officer for the purposes of proceedings relating to the making or variation of a

public safety order or the making of an authorisation order, may be disclosed to any person except the Attorney-General, a person conducting a review under Part 6, a court or a person authorised by the Commissioner.

In any proceedings relating to the making or variation of a public safety order or the making of an authorisation order, the court must, on the application of the Commissioner, take steps to maintain the confidentiality of the criminal intelligence including receiving evidence and hearing argument about the information in private in the absence of the parties and their representatives. The court may take evidence relating to the criminal intelligence by way of affidavit of a police officer who is at least the rank of superintendent.

Division 2—Service and notification

30—Service and notification

If a public safety order is made or varied by a senior police officer, the officer must ensure that a copy of the order so made or varied is served personally on each person to whom the order relates along with notification that is in accordance with this clause. The notification that must accompany the order must be in writing and must specify the date on which the order was made or varied. If the order is one to which there is a right of objection under clause 26, the notification must also include a statement of the grounds on which the public safety order was made or varied or the grounds on which any authorisation order was made (unless this would contravene clause 29). The order must also include an explanation of the right of objection under clause 26.

The clause also provides that if a police officer has reasonable cause to suspect that a public safety order and notification are required to be served on a person, the officer may require that person to give his or her personal details and may require the person to remain at a particular place for a maximum of 2 hours in order to effect service of the order and notification. If the person refuses or fails to comply with the police officer, the officer may arrest and detain the person without a warrant for the maximum period of 2 hours in order to effect service. If a person serving an order and notification has reasonable cause to believe that the person is present at a particular premises, but is unable to gain access to him or her, the order and notification may be served by leaving it at the premises with someone over the age of 16 years or if no such person is accessible, then by fixing them to the premises at a prominent place or near the entrance. A public safety order (as made or varied) is not binding on a person to whom it relates unless the order and notification have been served on the person in accordance with this clause (but the order is then binding on that person regardless of whether or not any other person to whom the order relates has been so served).

31—Urgent orders

Despite the provisions of clause 30, if a police officer is satisfied that a public safety order should become binding on a person as a matter of urgency, the officer may verbally communicate the contents of an order to a person to whom it relates and advise the person of the place at which he or she may get a written copy of the order and notification in accordance with this clause. The person will then be bound by the order. The police officer who verbally communicates the order to the person must ensure that a copy of the order and the notification that would ordinarily accompany such an order if served on a person in accordance with clause 30, is available for collection by the person at the place stated on the next business day following the day on which the order was communicated to the person.

Division 3—Enforcement of orders and evidentiary provisions

32—Offence to contravene or fail to comply with public safety order

This clause provides that it is an offence to contravene or fail to comply with a public safety order. The person must have been aware that the act or omission would be a contravention of, or failure to comply with, the order or must have been reckless as to that fact. There is a maximum penalty of 5 years imprisonment. The clause also provides that it is a defence to a prosecution of a breach of an order that prohibits a person from entering or being in a particular area if the person can show he or she had a reasonable excuse for entering or being there.

33—Power to search premises and vehicles

This clause provides the police with the power to search certain premises to which a public safety order relates if there are reasonable grounds to suspect a person to whom the order relates is present in the premises. Similarly, the police may also stop and search a vehicle or anything in a vehicle if an officer suspects on reasonable grounds that a person in the vehicle is a person to whom a public safety order relates and the vehicle is approaching, is in, or has just left any premises, event or area specified in a public safety order. The police officer may detain a vehicle or person in a vehicle as long as is reasonably necessary to conduct the search. It is an offence for a person to fail to comply with a requirement of a police officer made for the purposes of this clause, with a maximum penalty of 5 years imprisonment.

34—Evidentiary

This clause provides that for the purposes of any legal proceedings, an apparently genuine document purporting to be a public safety order will be proof of the order and its terms unless there is proof to the contrary.

Part 5—Offences

35—Criminal associations

This clause provides that it is an offence for a person to associate with a person who is a member of a declared organisation or the subject of a control order on 6 or more occasions in a 12 month period. There is a penalty of 5 years imprisonment for this offence. The person only commits an offence if on each occasion on which it

is alleged that the person associated with another, he or she knew that the person was a member of a declared organisation or the subject of a control order, or was reckless as to that fact.

It is also an offence for a person who has a criminal conviction of a prescribed kind to associate with another person who also has a prescribed criminal conviction on at least 6 or more occasions in a 12 month period. The person only commits an offence if on each occasion on which it is alleged that the person associated with another, he or she knew that the other had the relevant criminal conviction or was reckless as to that fact. There is a maximum penalty of 5 years imprisonment.

A person may be guilty of either of these offences in relation to associations with the same or different people. For the purposes of this offence, a person may associate with another by letter, telephone, fax, email or other electronic means.

Certain types of associations are disregarded for the purposes of this clause (unless the prosecution proves that the association was not reasonable in the circumstances). For example, associations between close family members (including spouse, domestic partner, parent, grandparent, child, or brother or sister), or those occurring in the course of undertaking a lawful occupation, business or profession, while attending a prescribed course of education or training or a session of rehabilitation, counselling or therapy of a prescribed kind or while in lawful custody or complying with a court order. The regulations may also prescribe types of associations for the purposes of this clause. In addition, a court hearing a charge of an offence against this clause may determine to disregard an association if the defendant proves he or she had a reasonable excuse (unless the defendant was, at the time of the association, a member of a declared organisation, subject to a control order or had a prescribed criminal conviction).

The clause makes it clear that it is not necessary to prove that the defendant associated with another person for any particular purpose or that an association would have led to the commission of any offence. This clause also gives a police officer who has reasonable cause to suspect that 2 people are or have been associating with each other and that at least 1 of them is a member of a declared organisation, or the subject of a control order or has a prescribed criminal conviction, to state their personal details.

36—Provision of personal details

A police officer may require a person to provide proof of his or her personal details required to be provided under this measure if the police officer has reasonable cause to believe they are false. It is an offence to fail to provide personal details or fail to provide proof as required under this measure, or to provide details or evidence that is false. There is a penalty of 5 years imprisonment. A police officer making a request for personal details under this measure must produce his or her police identification or state orally or in writing his or her surname, rank, and identification number, if requested by the person.

Part 6—Reviews and expiry of Act

37—Annual review and report as to exercise of powers

This clause requires the Attorney-General to appoint a retired judicial officer to conduct an annual review of the exercise of powers under the measure, to be presented to the Attorney-General by 30 September each year and laid before both Houses of Parliament. The review must include a consideration of whether the powers have been exercised appropriately having regard to the objects of the measure. The Attorney-General and the Commissioner must ensure that the reviewer is provided with such information as he or she requires to conduct the review. Any information that has been classified by the Commissioner as criminal intelligence must be kept confidential.

38—Review of operation of Act

This clause provides that the Attorney-General must, as soon as practicable after the fifth anniversary of the commencement of the clause, conduct a review of the operation and effectiveness of the measure (the report of which must be tabled in both Houses of Parliament). Again, any information that has been classified by the Commissioner as criminal intelligence must be kept confidential.

39—Expiry of Act

The measure will expire 10 years after commencement.

Part 7—Miscellaneous

40—Immunity from liability

This clause provides that no civil or criminal liability attaches to the Attorney-General, the Commissioner, a police officer or any other person exercising powers and functions under this measure, or to the Crown, in relation to an act or omission in good faith in the exercise or discharge of a power, function or duty conferred or imposed by or under this measure.

41—Protection from proceedings

This clause excludes judicial review and all other proceedings and remedies (except as specifically provided in the measure).

42—Prosecution of offence as a summary offence

Under this clause, an indictable offence against this measure may be charged on complaint and be prosecuted and dealt with by the Magistrates Court as a summary offence. However, if the Magistrates Court determines that a person found guilty of such an offence should be sentenced to more than 2 years imprisonment,

the Court must commit the person to the District Court for sentence. Even though a person may have been dealt with summarily, the person will still be taken to be guilty of an indictable offence for the purposes of any Act or law.

43—Regulations

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of this measure.

Schedule 1—Related amendments

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of Bail Act 1985

2—Amendment of section 10A—Presumption against bail in certain cases

This clause amends section 10A of the Bail Act 1985 by substituting a new subsection (2). This has the effect of extending the definition of prescribed applicant in relation to whom there will be a presumption against the grant of bail. The presumption against bail will now extend to an applicant taken into custody in relation to an offence of contravening or failing to comply with a control order or public safety order; and to an applicant taken into custody in relation to an offence against section 172 (Blackmail), section 248 (Threats or reprisals relating to duties or functions in judicial proceedings) or section 250 (Threats or reprisals against public officers) of the Criminal Law Consolidation Act 1935.

Part 3—Amendment of Criminal Law Consolidation Act 1935

3—Substitution of section 248

This clause replaces the current section 248 with the following:

248—Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings

The new clause 248 provides that a person who stalks another or causes or procures, or threatens or attempts to cause or procure, any physical injury to any person or property, with the intention of inducing a person who may be involved in a criminal investigation or judicial proceedings to act or not act in a particular way that might influence the outcome of the investigation or proceedings is guilty of an offence. The maximum penalty is 7 years imprisonment. A person will also be guilty of an offence if the person stalks another person, or causes or procures, or threatens or attempts to cause or procure, any physical injury to a person or property, on account of anything said or done by a person involved in a criminal investigation or judicial proceedings in good faith in the conduct of the investigation or proceedings. The maximum penalty is 7 years imprisonment.

The clause sets out the sorts of conduct that may constitute stalking (similar to those set out in the offence of stalking in section 19AA of the Criminal Law Consolidation Act 1935). This is conduct that could reasonably be expected to arouse the other person's apprehension or fear and includes following the other person, loitering outside the person's home or other place he or she frequents; entering or interfering with the other person's property; giving or sending offensive material or leaving it where it will be found or brought to the other person's attention; publishing or transmitting offensive material by the internet or other form of electronic communication in such a way that it will be found or brought to the attention of the other person; communicating with the other person or to others about the person by mail, telephone, fax etc; keeping the other person under surveillance, or acting in some other way.

4—Substitution of section 250

This clause replaces section 250 with a new clause in the following terms:

250—Threats or reprisals against public officers

The new clause is similar to the original clause, but includes stalking, such that it is an offence for a person to stalk another person, or cause or procure, or threaten or attempt to cause or procure, any physical injury to the person or property with the intention of influencing the way in which a public officer discharges or performs his or her official duties or functions. There is a maximum penalty of 7 years imprisonment. It is also an offence for a person to stalk another person, or cause or procure, or threaten or attempt to cause or procure, any physical injury to a person or property, on account of anything said or done by a public officer in good faith in the discharge or performance of his or her official duties or functions. This offence carries a maximum penalty of 7 years imprisonment.

The clause sets out the sorts of conduct that may constitute stalking (similar to those set out in the offence of stalking in section 19AA of the Criminal Law Consolidation Act 1935). This is conduct that could reasonably be expected to arouse the other person's apprehension or fear and includes following the other person; loitering outside the person's home or other place he or she frequents; entering or interfering with the other person's property; giving or sending offensive material or leaving it where it will be found or brought to the other person's attention; publishing or transmitting offensive material by the internet or other form of electronic communication in such a way that it will be found or brought to the attention of the other person; communicating with the other person or to others about the person by mail, telephone, fax etc; keeping the other person under surveillance, or acting in some other way.

Part 4—Amendment of Freedom of Information Act 1991

5—Amendment of Schedule 1—Exempt documents

This clause amends Schedule 1 of the Freedom of Information Act 1991 to extend the list of exempt documents to include a document created by the South Australian Police that contains information classified by the Commissioner of Police as criminal intelligence in accordance with the provisions of any other Act.

Part 5—Amendment of Summary Offences Act 1953

6—Repeal of section 13

This clause repeals the offence of consorting.

7—Amendment of section 74BB—Fortification removal order

This clause amends section 74BB to extend the premises in relation to which a Court may issue a fortification removal order. This now includes premises owned by a declared organisation or a member of a declared organisation, or that are occupied or habitually used as a place of resort by members of a declared organisation.

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

LEGAL PROFESSION BILL

In committee (resumed on motion).

(Continued from page 1777.)

Clauses 2 to 300 passed.

Clause 301.

The Hon. P. HOLLOWAY: I move:

Page 155, after line 31—

Clause 301(4)—After paragraph (n) insert:

(na) the costs of exercising a right or remedy subrogated to the society under section 322;

The Law Society has requested an amendment to the bill to permit expenditure from the guarantee fund to allow the society to pursue rights subjugated to it upon payment of a claim out of the fund. The government agrees that there is no specific power of funding for the taking of any action for a recovery. The proposed power to fund the cost of processing claims may not be sufficient. Any money recovered as a result of such recovery action is required to be paid to the fund under clause 301(3)(b) of the bill, and it is therefore appropriate for a specific provision to be included in clause 301 to permit expenditure from the fund for this purpose.

The Hon. R.D. LAWSON: I indicate that Liberal members will be supporting this particular government amendment, because amendments that I will move later in relation to the guarantee fund do provide for subrogation. It is our view that the Legal Practitioners Guarantee Fund should not be a fund of last resort, and that the innocent victim of a solicitor's defalcation should not, as will be indicated later, be required to pursue to the end the solicitor involved, or his or her estate, or the legal practitioner company that has been responsible for the defalcation.

It is our view that such a person ought to be able to make a claim on the fund, and provided the claim is verified, the claim will be paid, and the Law Society will be subrogated to the individual and will be able to pursue the individual solicitor through the courts to obtain judgment the Law Society deems fit. That money recovered from the solicitor, or from his or her estate, will then come back into the guarantee fund. We believe that the society will incur costs in relation to exercising its rights of subrogation. Even under our scheme, which is different from the government's scheme, we will be supporting the allowance for payment out of the guarantee fund of those costs incurred by the society.

Amendment carried.

The Hon. R.D. LAWSON: I move:

Page 156, lines 1 and 2—

Clause 301(7)—Delete subclause (7)

The effect of this amendment is to remove subclause (7) of clause 301. As we have just seen, clause 301 deals with the guarantee fund, and that clause authorises the payment out of various forms of costs. We have just included in the bill by the minister's amendment the cost of exercising right of subrogation. However, as a result of an amendment made in another place, the government has insisted that a court may not make an order requiring, or having the effect of requiring, the payment of costs from the guarantee fund.

This amendment has quite a history to it. In relation to the Magarey Farlam matter, about which there has been some reference made already, an application was made by the Law Society to the Supreme Court for directions as to the way in which the claims were to be handled. The matter was heard by Justice Debelle. A number of representatives of various victims appeared before the judge with his leave. They were invited to make submissions and they had various different positions to put to the court.

After having determined the matter, the judge ruled that those victims should be allowed their costs out of the fund, otherwise they would be double victims in the sense that they would be victims because their money had been taken from them by the defalcation and, secondly, they would be victims in having to incur costs in going to the court to have their position put. The judge took the perfectly reasonable view that their costs ought to be paid out of the fund, otherwise they would be out of pocket.

The Attorney did not like that idea, so he appealed to the Full Court of the Supreme Court. The Attorney lost that case, and the full court ruled that the judge had power in circumstances such as this to authorise the payment of their costs out of the fund. This was a very big application, which was quite expensive, because it went for some time; it was complicated and the like. I think the judge's position was perfectly reasonable in his exercising discretion in favour of those claimants; otherwise, as I said, they would be double victims.

The Attorney and the government have adopted a protective attitude to the fund, saying that we must protect this fund so that we can use the interest of it for things that we would otherwise be spending money on like legal aid and the Law Foundation and the like. So, the Attorney in a fit of pique, having lost the case before Justice Debelle, having lost the case in the Full Court of the Supreme Court which said that the money could be paid, he introduced an amendment to this bill to say that in future the court cannot make an order requiring or having the effect of requiring, the payment of costs from the guarantee fund.

I believe that the Attorney's position is indefensible. The protection here is that a judge will not order that the payment of costs be made out of the fund unless the judge in his discretion thinks it was reasonable for those costs to be incurred, because costs are always at the discretion of the court. The court will not order that your costs be paid out of a fund or paid by somebody else unless you have a meritorious position. That is a principle which ought be followed. I think it is inappropriate that the government of the day should come to the parliament and say it wants authorisation to reverse the decision made by four judges of the Supreme Court and to say that victims who are in the situation of the Magarey Farlam claim have to go to court to defend their position and they have to pay for it themselves.

I seek support for the deletion of that subclause. The deletion will mean that it will still be in the discretion of the court. There is no automatic order for costs. This is not an invitation for people to make claims against the fund or seek legal representation. It simply restores the status quo; namely, that the court can, in appropriate circumstances, order costs out of this fund.

The Hon. P. HOLLOWAY: This clause was inserted as a government amendment in another place. It is designed to ensure that a court cannot make a costs order directly against the Legal Practitioners Guarantee Fund. It was in response to a judgment of the Supreme Court under the present law in which it was held that costs incurred in relation to the application for directions by persons other than a supervisor or manager are payable from the Legal Practitioners Guarantee Fund.

It was held that section 40 of the Supreme Court Act 1935 and rule 101 of the Supreme Court Rules 1987 vest the court with discretion to make orders with respect to the cost of an application for directions pursuant to section 47(2) of the Legal Practitioners Act. The court may order that the cost be paid by one or more participants in a directions hearing and, having regard to the terms of section 47(2), may order that the costs be paid out of the guarantee fund. This would remain the case under the opposition's amendment.

It is important to understand what this means. It means that an order could also be made out of the guarantee fund where the clients of a legal practitioner bring a competing claim asserting entitlements to the residue of any trust fund even though an application for directions has not been sought by a supervisor appointed by the Law Society.

Now, that situation would not be acceptable to the government. The government believes that only official administrative costs should come out of the fund; not the costs of potentially spurious arguments between competing creditors. Nor should the fund be managed to an extent by

the Supreme Court when it resources a variety of public purposes that also have a consumer protection aspect.

The Hon. A. Bressington: It has worked well so far.

The Hon. P. HOLLOWAY: Well, there are the conduct board, and the disciplinary tribunal on the supply side and the Legal Services Commission on the demand side. It is important to remember that the fund has those roles as well. Elsewhere the bill provides that the costs of an external intervener are recoverable from the law practice, with the rider that fees, costs and expenses not paid to the external intervener by the law practice are only then payable from the guarantee fund. That is the way it should be and, for those reasons, the amendment is opposed.

The Hon. R.D. LAWSON: The inconsistency of the Law Society's position and the government's position on this is manifest. This clause enables the Law Society to recover its costs of going to court, the costs of the investigation and the audit. I refer to subclause (4)(h). The costs incurred by the Law Society can come out of this fund provided the Supreme Court so orders. However, the poor victim who has to incur costs is not able to get his or her costs out of the fund. The court clearly saw that as an unjust argument which was put on behalf of the government. They ruled against it. I seek support for the proposition that the court should be able to make an order in an appropriate case.

The minister indicated that this might encourage cross-claims and the like that are entirely unmeritorious. If they are unmeritorious, the court will not order that the costs be paid out of the fund. In fact, someone making an unmeritorious claim runs the risk of being ordered to pay the costs. In a sense, this is a little bit of vengeance on the part of the government. It ran an argument before the court: it lost. Now it seeks to reverse the situation.

The Hon. D.G.E. HOOD: I address one of the issues raised by the Hon. Mr Lawson: Family First has no problem at all with the government's proposing to introduce a law that will be contrary to the decision of the courts. That is the role of government and we have no problem with that at all. However, in the case of this clause, Family First believes that it is unfairly stacked and potentially the victims miss out if this clause is not deleted from the bill. For that reason, we will be supporting the amendment.

The Hon. M. PARNELL: The Greens also support this amendment. I make the point that we are not supporting all the Liberal amendments. However, this one makes sense for the reasons explained by the Hon. Robert Lawson. I am very conscious of what the minister put forward in relation to this fund also funding a range of other very useful and important functions within the legal system—as I said in my second reading explanation; the Legal Services Commission, community legal centres and the Law Foundation. However, it seems to me that one of the great injustices of the Magarey Farlam case was the fact that people were out-of-pocket with their legal costs. It seems appropriate to me that the fund should at least be an option for the court when it comes to the reimbursement of those costs. As the honourable mover said, this does not make the guarantee fund an automatic fund for costs, but it does give the judges—who are guided in these matters by matters of equity and fairness—the ability to order costs out of this fund.

It also seems to me that, at the end of the day, with the subjugation rights that are proposed, it may well be that a subsequent insurer will end up picking up the whole of the tab, anyway, and the fund can then be reimbursed. It seems to me that it is adding insult to injury to have the victims not only lose their money but also have no easy way of recovering their legitimate costs, even if that involves going to court seeking declarations of rights. I will be supporting this amendment.

The Hon. P. HOLLOWAY: I put on record what has happened in relation to this case. The government is saying that, if a supervisor is put in to investigate the situation, then I think all of us would agree that it is appropriate that those costs be paid out of the fund, but is it appropriate that a number of people—and we are not talking about the victims—who are joining in this claim should have their claims funded? I draw the committee's attention to clause 319(1) of this bill under 'Costs'. The subclause provides:

> If the Society wholly or partly allows a claim, the Society must order payment of the claimant's reasonable legal costs involved in making and proving the claim, unless the Society considers that special circumstances exist warranting a reduction in the amount of costs or warranting a determination that no amount should be paid for costs.

We will come to this argument later in relation to the Magarey Farlam case; that is, we have money provided in a fund that is for a particular purpose. A number of activities are funded out of this fund and I have mentioned those—the conduct board, the disciplinary tribunal and the Legal Services

Commission are three. There is a finite amount of money available. If we open the door to a number of other claims which may or may not have merit, then we run the risk of depleting the system. I am not surprised that the Supreme Court believes that it should have more power in relation to these things and interpret the law to open up its control over the fund, but is that really in the public interest? I think members should think long and hard about that.

The Hon. R.D. LAWSON: The minister suggests to the committee that clause 319 actually provides another avenue for getting costs. That is entirely misconceived. Clause 319 gives to the Law Society a discretion to give to a victim—if the Law Society in its generosity decides that it will reimburse somebody who has made a claim—that person's costs. We are not talking about that here. What we are talking about is not somebody who has made a claim to the Law Society in the ordinary course but somebody who has had to go to the court in relation to an application and who has the opportunity to obtain an order for costs out of the fund. Clause 319 deals with, I would suggest, an entirely different situation; it is under Division 5, and it deals with the determination of claims by the Law Society. So, I reject the notion that in some way clause 319 provides sufficient protection for a victim.

I think clause 319 highlights one of the real difficulties about this particular scheme; namely, that we are giving the Law Society the power to make a decision when the Law Society itself has an interest in the subject matter of that decision. The Law Society, like the government, says that it is great that we have this fund which is made up of the interest on clients' money; this fund should be available for the government and the Law Society. That is all very well but, in our view, the principal claim upon this interest should be from the general body of clients for whose protection this guarantee fund was established.

The Hon. A. BRESSINGTON: I rise to indicate that I, also, will be supporting this amendment. Just to reiterate the point that the Hon. Rob Lawson has made over and over again, the source of this money (the guarantee fund) comes from people who have trusted lawyers to put their money into trust accounts and trusted that there would be some level of surety in that; and that, in their time of need, they are unable to access any of that fund to assist with their legal claims or to settle the fraud, or whatever it is that has occurred with this particular trust fund, yet the Law Society is able to dip its finger into the fund over and over again to litigate against the clients who have invested this money. So, I will be supporting the Hon. Rob Lawson's amendment.

Amendment carried; clause as amended passed.

Clauses 302 to 312 passed.

Clause 313.

The Hon. R.D. LAWSON: I move:

Page 161, line 10—

Clause 313(1)—Delete 'all claims to which the notice relates is—' and substitute:

any particular claim to which the notice relates is 30 per cent

This is the first of a series of amendments designed to alter the scheme under which the Legal Practitioners Guarantee Fund operates. I think it is important that I mention at the outset some matters of general importance. I did not mention this particular matter in my second reading speech, so I will do it now. This scheme was introduced in 1969 and, in introducing it in this place, the then minister for local government (Hon. Murray Hill) said—and I think this is important:

This bill—

which introduced the guarantee fund—

is designed to make two very important provisions in respect to the practice of the legal profession in South Australia. One is to provide some recourse for members of the public who may suffer by reason of defalcation or negligence.

The negligence provisions are no longer relevant because all practitioners are required to have negligence insurance. However, right at the forefront was the fact that this fund exists to provide recourse for members of the public who may suffer by reason of a defalcation. The minister went on to say:

The other reason is to provide financial support for the increasing burden on the legal profession of the Legal Assistance Scheme, a scheme which has been voluntarily conducted by the profession since 1933 for persons who cannot afford to pay for legal assistance in the normal way.

That is very interesting. Of course, now the Legal Services Commission is the recipient of those funds, but the purpose originally was to relieve the burden that members of the legal profession were suffering by reason of their providing legal assistance. Further in the speech the minister indicated that the Law Society (which then ran what was called the Poor Persons Legal Scheme, by engaging solicitors to undertake work) was paying only 26.25¢ in the dollar for criminal matters and, for civil matters, 19¢ in the dollar.

That was deemed insufficient (as, indeed, it was) by members of the legal profession. Notwithstanding the fact that it was a great public service that members of the legal profession were providing to the public, there was quite a deal of self-interest in having a fund which would enable the Law Society to reimburse its own members for the work they were doing. The minister mentioned that there were a number of similar schemes in other states, as indeed there were. He said:

> Whilst South Australia has been comparatively free of trust account defalcations, the possibility exists, as the profession increases in size in this state, that the risk of defalcations could increase in spite of the rigid precautions taken to obviate this.

He goes on to say:

> The maximum amount of the fund is to be the sum of $2,500 multiplied by the number of practising legal practitioners. At the present time, the limit would be about $1.1 million.

That formula of $2,500 multiplied by the number of practising lawyers still remains applicable today. It led to a cap in the original fund of $1.1 million. The current formula—the same formula, which has never been changed—leads to a current fund, according to the letter which has been circulated to members, of $23.3 million. That is the maximum. The interest over and above the amount required to keep the fund at that level is applied to those other good purposes. He continued:

> It is further provided that there should be some limit on the size of claims in respect of any particular practitioner who makes a defalcation. This is inserted so that the fund is not rapidly reduced by one huge claim to the detriment of others who may have claims in respect of another practitioner. Basically, the South Australian fund is designed to protect the smaller claimant. To ensure the attainting of these objects it is provided that the total amount of claims in respect of the defalcations of any particular practitioner is limited to 5 per cent of the fund at that time.
>
> At present, if the fund was at its limit, this would provide something in excess of $50,000 in respect of such claims. It is stressed that it could take between five and 10 years before the guarantee fund builds up to the desired limits but, of course, such estimate of time must depend on the size of any claims made in the meantime. This is one reason why a limit on the total size of claims in each case is required. When the fund has reached its desired size, it would be possible at a later stage to review the limit on claims.

The limit on claims was never revised or reviewed. It was 5 per cent and it is 5 per cent and, in the very clause we are now concerned with, it is 5 per cent or such other amount as is prescribed by regulation.

I provide that history so that members know the background. It is important to note that, right at the beginning, this was seen as a protection for members of the public. It was seen that the fund would grow. It was seen that, when the fund had reached its desired size (as it has), it would be possible to review the limit on claims. The limit on claims has not been reviewed, and the Magarey Farlam matter highlights exactly the difficulty with this current limitation.

We have been told all along that the defalcations assessed by the Law Society are $4.5 million. If that be the figure (and let us assume that it is, although there is some suggestion in the correspondence that it has increased), it would mean that only 5 per cent of the $20 million fund would be available—namely, something over $1 million—to meet the claims of $4 million. This means that people would be paid 25¢ in the dollar. That is an injustice and a serious injustice, especially when there is a fund that could comfortably accommodate paying all the claimants their losses. I hasten to say not all their losses, but it would enable them to recover their capital that has been lost.

We envisage that, if a claimant wishes to claim something over and above the capital, that is a matter for the claimant to pursue elsewhere. There will be some claimants who will say, 'I'll take the $100,000 that has been taken out of my trust account but, if I had had that $100,000, I would have invested it in BHP shares, and it would now be worth $200,000. I have lost that opportunity, and I want $200,000.'

It is problematic whether that sort of claim would be allowed by a court in any event. Obviously, there are people who will say, 'If you had not stolen that $10 from me, I would have invested it in a lottery ticket and won $25 million; therefore, my loss is $25 million.' Obviously, that is ridiculous, but there will be people who will say, 'I've lost the opportunity costs of my money.' I

want to emphasise that we do not say that the guarantee fund should reimburse people for that sort of loss. It should be for their capital loss.

Because the 5 per cent has not changed, it has meant that we have a large fund ($23 million), and obviously costs are coming out of that. As I illustrated earlier, when you look at the record of the fund, there have been only very small payments out of the fund over recent years. I do not think that the government can point to any larger claim ever being made in the past. It has never jeopardised the fund in any way, so that it would be appropriate to increase the 5 per cent maximum, and what we are saying is 30 per cent. For example, in the Magarey Farlam case, up to $7 million could be paid. That would be far more than is necessary to meet the claims.

As to the specifics of my amendment, I will explain the situation. The scheme of the act requires the society to advertise for claims. So, the process actually begins when they advertise. The society did not advertise for claims until, I think, October or November last year. It said that all claims had to be in by 31 January. A number of claims have been made. There is a time limit for making claims, and there are requirements about the advertising for claims. Clause 313, which is the clause we are dealing with, provides that there is a cap on payment following advertisements. The advertisements have gone out in this claim. So, the clause reads:

> If a notice is published by the society under section 311(1)(c), the maximum amount that may be applied towards satisfaction of all claims to which the notice relates is—
>
> (a) if a percentage is prescribed by regulation—the prescribed percentage; or
>
> (b) if no percentage is prescribed by regulation—5 per cent.

My amendment is to delete the words 'all claims to which the notice relates' and to say 'any particular claim to which the notice relates is 30 per cent' (of the total).

It is a matter of judgment as to what is an appropriate limit. It is presently 5 per cent, as I said. When it was introduced in 1969 it was thought that when the fund had reached a size they would actually make some adjustment. You might say that 5 per cent would be appropriate if it was any one particular claim, but here we have got all of the claims adding up to far more than 5 per cent, and under the scheme of this act all claims are lumped in together. So, I seek support for the amendment as moved.

The Hon. P. HOLLOWAY: As the Hon. Robert Lawson says, this amendment alters the provision that sets a cap on the guarantee fund claims. At present the total of all claims arising from one default, or a series of defaults, is subject to a cap of 5 per cent of the balance of the fund at the last audit. For example, if the fund holds $20 million, the cap on the particular group of claims would be $1 million altogether.

The bill proposes a similar rule, except that the cap applies only if the society advertises that it does. I also note that under clause 313(2) it states:

> ...the society may authorise payment of a larger amount if satisfied that it would be reasonable to do so after taking into account the position of the guarantee fund and the circumstances of the particular case.

This amendment would propose a different rule; that is, that the cap per claim would be 30 per cent of the balance of the fund. Thus, if there were three claims then 90 per cent of the balance of the fund would be available to meet them. If there were more than three claims then the society would need to use its powers under clause 330 to make part payments, postpone payments or impose a levy.

These and the next two amendments moved by the Hon. Mr Lawson are exactly the same as those defeated in another place. If they become law it would mean that a substantial defalcation may wipe out the fund. Substantial defalcations do occur. Not that long ago two partners in a New Zealand law firm were responsible for a $29 million defalcation and practitioners were levied $10,000 each, I understand, over a period of time. That would severely jeopardise the operations of aspects of the legal profession in this state.

Under the bill, as under the present act, there are many other calls on the guarantee fund besides claims arising from defaults. The fund is applied to meet the expenses of regulatory institutions, such as the conduct board, the tribunal and the Legal Practitioners Education and Admissions Council, all of which serve consumer protection functions. The fund is also used to support legal aid and public legal education. That has been the case for many years and the former Liberal government made no attempt to change that.

The government's position is that this amendment will put the funding of those institutions and purposes substantially at risk. For that reason we oppose it and will oppose it very strongly, even if, as I said, it means the end of the bill.

The Hon. R.D. LAWSON: I make a couple of points in relation to the minister's response. First, if there is some calamitous claim, clause 302 of the bill does enable the society to arrange for insurance. It is possible to arrange insurance for claims over a certain amount. They would not insure their liability in respect of up to $24 million, but it would be possible for them—and to use the money in the guarantee fund for this very purpose—to insure their liability for catastrophic claims in the event that they were made. So, that is one alternative that is available.

The guarantee fund itself is not for the provision of legal aid and the like. It is certainly true that when interest on the guarantee fund has reached the maximum that excess provision is available; the other one-half of the interest stream is available for those purposes. Bear in mind that there are two revenue streams. We developed this during the second reading stage of the bill and I will not go back into it—although perhaps I should just reassure members on this particular point.

The interest on the solicitors' trust account goes into what is called the statutory interest account: three-eighths of that is paid into the guarantee fund and I think five-eighths is paid into the Legal Services Commission. So, the statutory interest account—which is not the same as the guarantee fund—is the substantial fund into which the interest is paid. Five-eighths of that already goes to the Legal Services Commission, and that would not be jeopardised by the fund being exhausted.

I want to reassure members that, in our view, the likelihood that the 30 per cent would wipe out the fund is not manifest. The fact that there were was $29 million paid in one catastrophic claim in New Zealand (and I am not entirely sure of the nature of the scheme they had) should not deter us from increasing the miserly 5 per cent to what I regard as a reasonable 30 per cent in respect not of one claim but of a group of claims.

The Hon. P. HOLLOWAY: I want to make one brief point in relation to insurance. Yes of course one can insure, but if the Hon. Robert Lawson's amendment is carried and up to 30 per cent can be wiped out, if the risk is such that the fund could well be wiped out, who will provide insurance and at what premiums?

The point is that the premiums and the ability to get insurance depends on the risk, and what the Hon. Robert Lawson is doing is massively increasing the risk to insure. Even if one could get insurance I would assume, with that there, that the premiums would be massive and therefore unlikely to be taken up.

The Hon. A. BRESSINGTON: Just on the Hon. Paul Holloway's comments just then about the rise in insurance premiums should one of these huge claims need to be paid out of this, we have had a situation in South Australia over probably the past five years where non-government organisations have had to bear that huge rise in insurance premiums, and whatever else. There has been no sympathy from this government for their plight at all, yet we see this concern expressed for the Law Society when, as the Hon. Robert Lawson has just said, one of those funds will not be affected at all by this 30 per cent increase.

I just find it somewhat hypocritical and ironical for this government to be so concerned about the good old Law Society which to date has done pretty well out of this whole Magarey Farlam thing and which raised this issue of increased insurance premiums when, as I said, for the past five or six years now non-government organisations have had to bear huge increases in their insurance premiums for no reason, for no claims being made against them, just because this is the state of public liability now in this state and in this country. I will be supporting the Hon. Rob Lawson's amendment, and good luck to the Law Society.

The Hon. P. HOLLOWAY: I raise a couple of points on which the Hon. Ann Bressington should reflect. First, with respect to the premiums for any insurance they will come out of the fund. There is a risk that they will have to pay a lot more, and presumably that will affect the fund and the capacity to pay, anyway. I cannot accept that comment that this government has done nothing in relation to insurance. We initiated a series of reforms (the Ipp reforms), which we passed through this parliament in an attempt to try to reduce the risk and to try to get those insurance premiums down, and I think we have been successful. In terms of cooperating with the former federal government and other state governments, we have taken a number of decisions to reduce risk to get insurance premiums down.

The Hon. A. Bressington interjecting:

The Hon. P. HOLLOWAY: That was a small part of the suite of reforms. You must cut risks. The insurance aspect is just one part. We should not lose sight of the fundamental issue here, which is that there has been this cap on this fund for many years. As I said, since 1969 the former Liberal government made no attempt to change that, but if we do change that there is no doubt that the solvency of the fund will be more at risk. Again, I make the point that there are a number of other purposes to which that fund is applied.

The Hon. R.D. LAWSON: I should mention for the benefit of some members who were not here in a previous parliament that a similar defalcation occurred in relation to mortgage brokers. The firm Growdens, as a result of defalcations, left some $13 million of claims against the fund that was then under the equivalent of the Land Agents Act. There was, I think, some $26 million in its fund, and I would have to say that governments of both persuasions said, 'Well, no, we can't allow them access to this fund for various technical reasons. However, if we were to wipe out half the fund that would put the whole fund in serious jeopardy and the sky would fall in.' Eventually, because of the political composition of the parliament at the time, there was agreement that we could take some $13 million, halve the fund and pay out those people who had been waiting for years, some of whom had died.

There were tragedies and there were family break-ups and misery for many years (longer than the Magarey Farlam people have had to put up with). The Hon. Iain Evans was responsible for getting through the parliament—because of the situation of the parliament at that time—this particular amendment, and the sky has not fallen in with respect to that fund. It is still there. The $13 million has been able to build up.

I think we ought to be bold in relation to this. As the Attorney mentioned, all sorts of measures can be taken into account. I have mentioned one, that is, insurance. That may not be appropriate, but there are other ways in which, if there is a catastrophic claim, it can be dealt with. Ultimately, it could be dealt with by a levy (as it was in New Zealand) against the legal profession itself. I urge support for this amendment.

The Hon. D.G.E. HOOD: A fundamental principle is at play here with respect to this guarantee fund, that is, the purpose of the fund itself. Whilst it is true that the earnings from it fund a range of worthwhile activities, including legal aid and the like, the reality is that the purpose of the fund is to protect people who essentially are done wrong when their money is held in lawyers' trust accounts. The absolute fundamental question is: if that is the purpose of the fund, why should people not have access to the money when exactly that happens? It begs the question why 30 per cent is not enough; perhaps it should be higher than that. Family First will support the amendment.

The Hon. P. HOLLOWAY: The purpose of the fund is set out in clause 301(4) paragraphs (a) to (p). Other states have funds which are called a public purposes fund. This legislation is not unique to South Australia. Certainly, most other states—probably all other states—have similar legislation, and the funds are used for a range of purposes. I point out that in none of the cases in other states is this a fund of first resort, which is not what this amendment but, rather, the other amendment we will be dealing with shortly—and the government will be opposing—suggests. I wish to make that point.

The Hon. M. PARNELL: When I spoke most recently with government advisers about this bill, I made the point that I thought 5 per cent seemed low. I do not know what a better figure than 5 per cent is because, to a certain extent, it is a circular argument. How much money is in the fund? How many other hands are calling for a piece of that pie? I am nervous about the two impacts of the Hon. Robert Lawson's amendment: first, to increase the amount or cap from 5 per cent to 30 per cent; and, secondly, to make it apply to each claim rather than each event that gives rise to a claim.

I take it that the Hon. Robert Lawson is saying that at present we have five-eighths of the statutory interest account going to the Legal Services Commission and only three-eighths going into the Legal Practitioners Guarantee Fund. His point is that it is only the three-eighths about which we are worried. I am nervous that those proportions are not set in concrete and could change. Therefore, the balancing act of which we are invited to be part is to ask whether the rights of these victims to early compensation are greater than the needs of other parts of the legal system. I have a particular concern about people who cannot afford private legal services and who, therefore, go to Legal Services Commission or community legal centres.

I have a question that the minister or the mover might be able to answer. The Hon. Robert Lawson talked about insurance and said that the Law Society under clause 302 can insure its guarantee fund. The other form of insurance that we have is the professional indemnity insurance

that all lawyers are required to take out, as well. My question is whether or not any part of that insurance comes into play in situations of defalcation. For example, once it is shown that a partner of a law firm was negligent in allowing a staff member to misappropriate money, is that compulsory existing insurance fund able to step in or is the guarantee fund the only avenue by which people can receive compensation for their loss? I would be interested in the answer to that question before I proceed.

The Hon. P. HOLLOWAY: Perhaps I can help by indicating that some of the later amendments the government will be moving (in particular, amendments Nos 2 and 3 to clause 321) will be coming up shortly. I indicate that the claimant has to pursue reasonable avenues first. I think that will be a sensible amendment, so that those claimants do have to at least take that course of action first.

The Hon. M. PARNELL: I might have to pursue that a little further. Maybe this is a very basic point that perhaps I should have got my head around earlier. I do understand the nature of the amendments that the scheme envisages, that is, that a person will pursue these other avenues. I guess my question is quite basic, that is, does the compulsory insurance paid by all lawyers under their professional indemnity policy cover things like theft from trust accounts?

The Hon. R.D. LAWSON: It is my understanding that professional negligence insurance invariably excludes defalcation or fraud of the person insured. There might be a negligence claim against a legal practitioner (for example, for employing an employee who is not properly supervised or the like), but there will always be arguments about that as to whether the claim is covered by professional negligence insurance when what is being dealt with is not negligence but fraud on the part of some person.

Ordinarily, one has to rely on the guarantee fund in relation to defalcations, because it is not possible to insure oneself against one's own fraud. So, the consumer protection that the Legal Practitioners Act offers is that all lawyers must have professional indemnity insurance against negligence, and there is a Legal Practitioners Guarantee Fund to cover defalcations.

The Hon. M. PARNELL: I was just going to say that that is my understanding, that is, that you do not insure against your own crimes. However, it seem to me, if I understand the Magarey Farlam situation, that the allegations are that it was not a partner of the firm—it was not an insured person—but it was someone else (an employee, for example), in which case I would have thought a negligence claim in relation to the level of supervision of the insured partners over how their employees were able to have, for example, unfettered access to trust funds, would be a relevant consideration for that other fund.

What I am trying to work out is whether, when we are talking about the guarantee fund, we are just talking about a question of timing and the location of ultimate liability. If, at the end of the day, all these people are going to get their money from one place or another, some of the things we are talking about, whilst important, are less important than if the conversation is about how much money they will get at the end of the day, full stop.

The Hon. P. HOLLOWAY: In relation to Magarey Farlam, as I understand it, the issue of whether the legal partners are negligent is currently before the courts, as indeed the criminal charges against the alleged defalcation are also before the courts. I suppose, in that sense, as I indicated earlier, we probably have to be a bit careful what we say before we reach any conclusions. I think the point the Hon. Mark Parnell has made is essentially correct. But, no doubt to the frustration and dismay of those people who lost money in the Magarey case, obviously these important legal questions have to be settled first.

The Hon. M. PARNELL: The final point I make is that I note in clause 313 that there is that ability for the society to increase the rate and also to authorise additional payments. However, ultimately, that then puts the society in the difficult position of deciding the relative merits, as I said before, of legal aid recipients or the victims of defalcation. At the end of the day (and maybe it is academic, having heard the other contributions to this debate), I am more worried about the other services losing funding. However, I accept what the Hon. Dennis Hood and others say; that it might not be a logical consequence and that we should be looking at it from a position of principle.

I agree with the minister that we are very hung up on the title of this fund being the guarantee fund, and that has us thinking that that is the only purpose of the fund. I think the point is well made that similar funds derived from similar sources in other states are called multipurpose funds, in recognition of the fact that they serve multiple purposes: they are not just an indemnity for the victims of defalcation. So, on balance, whilst I was prepared to support the opposition's earlier

amendment in relation to the discretion of the court to order costs against the fund, I will not be supporting this amendment.

The Hon. D.G.E. HOOD: Whilst I agree with the Hon. Mark Parnell with respect to the other purposes that are funded from the fund, and that it is not exclusively a guarantee fund, the bottom line for Family First—or for me, if you like—is that, at the end of the day, they are the people who put the money into the fund: why should they not be the people who are able to get their money out of the fund?

The Hon. R.D. LAWSON: I entirely support the Hon. Dennis Hood's argument in relation to this matter. It is called the guarantee fund. Lawyers are able to say to their clients, 'If there is a defalcation here, there is a guarantee fund. It is called the Legal Practitioners Guarantee Fund. It exists for the purpose of ensuring that you will not lose money if you go to a lawyer. If you go to an accountant, you will not get the same protection: there is no thing called the accountant's guarantee fund. If you go to some other professional, you will not get the benefit of this.' So, the legal profession is quite happy to say, 'We have the benefit of a statutory Legal Practitioners Guarantee Fund.'

For the minister to raise the argument that, if you look at the purposes of the fund, it is really not for the benefit of consumers, if you look at the purposes, you cannot make any argument in relation to that. Is the minister trying to suggest that the primary purpose of this fund is the first thing that is mentioned, namely, meeting the expenses incurred by the LPEAC (Legal Practitioners Education and Admission Council) and costs incurred by the society? It is a weakness in the drafting of this section that it does not put the primary purpose of the fund as the protection of the community. Perhaps it should have done so. However, it is rather assumed, because the section begins with, 'The society must continue to maintain the Legal Practitioners Guarantee Fund', which was established in 1969 for the very purposes that were mentioned by the minister, namely, for the protection of clients.

The committee divided on the amendment:

AYES (12)

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

NOES (9)

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

Majority of 3 for the ayes.

Amendment thus carried.

The Hon. R.D. LAWSON: I move:

Page 161—

Lines 11 and 12—Clause 313(1)(a) and (b)—Delete paragraphs (a) and (b)

Line 15—Clause 313(1)—Delete 'claims' and substitute 'claim'

These amendments are both consequential upon the previous amendment which has been carried. The purpose of amendment No. 3 is self-evident, namely, to delete the reference to prescribed percentages and 5 per cent, given that the committee has resolved to adopt 30 per cent. Previously, the language related to all claims. Ours relates now to any particular claim. Accordingly, the word 'claims', the final word in subclause (1), should be in the singular.

The Hon. P. HOLLOWAY: Because they are consequential, the government will not divide.

Amendments carried; clause as amended passed.

Clauses 314 to 318 passed.

Clause 319.

The Hon. R.D. LAWSON: I move:

Page 163, lines 17 to 19—Clause 319(1)—Delete ', unless the Society considers that special circumstances exist warranting a reduction in the amount of costs or warranting a determination that no amount should be paid for costs'.

As I mentioned earlier, this division relates to the way in which the society, having advertised for claims, determines those claims and, in this clause, the costs which the society may allow. The clause presently provides that, if the society does allow wholly or partly a claim, the society must order payment of the claimant's reasonable legal costs involved in making and proving the claim, and it goes on to say:

...unless the society considers that special circumstances exist warranting a reduction in the amount of costs or warranting a determination that no amount should be paid.

We do not believe that the Law Society ought have any discretion to make a judgment in its own interests in relation to costs and say that special circumstances exist and that therefore, although the victim of this claim will get compensation, they will not be paid their reasonable legal costs. I emphasise that the clause as it will stand, if my amendment is successful, limits a claimant to reasonable costs and the determination of whether those costs are reasonable rests with the Law Society.

In our view it simply gives the Law Society too much power in these circumstances to deprive a victim of their reasonable legal costs. In a subsequent amendment the costs will be limited not to what are called solicitor and client costs, which is the most generous scale of costs (one in which a client is reimbursed all the costs they incurred), but on the less generous scale of party and party costs. We are not proposing carte blanche for victims; we believe they should only be entitled to reasonable costs on a lower scale of costs, but we do not believe the Law Society should have the discretion to deprive them of those reasonable costs.

The Hon. P. HOLLOWAY: The government opposes this amendment, which would alter the rule proposed in the bill about the payment of a claimant's costs. The bill proposes that, if the claim is wholly or partly allowed, the society must also order payment of the reasonable legal costs, unless special circumstances exist, warranting a reduction or non-payment of costs.

The amendment proposes that, if the claim is either wholly or partly allowed, the cost must also be paid. In some cases the special circumstance warranting a reduction in or refusal of costs might be that the available funds are sufficient only to pay the claim and not the costs. In that case, the amendment will result in the full payment of costs at the expense of the full payment of the claim. The costs will be payable to the lawyers concerned, so one could argue that the amendment prefers the interests of the lawyers over that of the claimants.

The provision in its current form derives from the national model where the clause is core non-uniform. That means that the substance should be adopted, although the wording may differ. The provision in the form in which it appears in the bill is the same as that adopted in New South Wales, Victoria, Queensland, the Northern Territory and the ACT, and that is yet another reason why we oppose the amendment. Also, the point needs to be made: if the society partly allows a claim, why should it necessarily follow that 100 per cent of the legal costs is paid? Presumably, if it is only partly allowed, it is not 100 per cent meritorious.

The Hon. R.D. LAWSON: The minister has given one example of special circumstances, namely, where there are insufficient funds to pay all the claims and also the costs. I believe that can be covered under the abating clause which appears later on. What other special circumstances does the minister envisage? Frankly, where you have a clause that provides that the society must order the payment of costs unless special circumstances exist, I would like to have some idea of what those circumstances are.

The Law Society is the same judge and jury in this matter; it can determine the special circumstances. We simply have a policy that we want to keep $2 million in the fund; therefore, there is not enough and you are not going to get your costs. It is, in our view, too wide and, given the somewhat conflicted position of the Law Society in relation to these issues, that particular provision ought to be removed.

The Hon. M. PARNELL: To assist the committee, because otherwise we are guaranteed a division without knowing where people stand, my main concern about this clause relates to the prospect of over-servicing and whether or not it is likely that people would use legal services more than necessary on the basis that, if their claim is wholly or partly allowed, they will get those costs back.

It is a difficult position with the words 'special circumstances' in the clause as it is that the opposition's amendment seeks to strike out. As the minister said, the main special circumstance is likely to be that there is not enough money. At the end of the day, I imagine that whether or not costs are awarded the particular clients will still be liable for their lawyers' costs, and whether they will be paying them out of the funds that they receive from the guarantee fund or whether they pay them out of their own pocket, the lawyers will get paid and the clients will get proportionately less. On balance, I am not inclined to support the amendment, but I am inclined to support the foreshadowed amendment in relation to limiting costs to party-party costs.

The Hon. P. HOLLOWAY: To put it on the record, I would like to draw the committee's attention to clause 317(5), which gives three reasons for which the society may reduce the amount otherwise payable on a claim. They are:

(a) if satisfied the claimant assisted in or contributed towards, or was a party or accessory to, the act or omission giving rise to the claim; or

(b) it is satisfied the claimant unreasonably failed to mitigate losses arising from the act or omission giving rise to the claim; or

(c) if satisfied the claimant has unreasonably hindered the investigation of the claim.

I think they are three good reasons why all of the costs may not be allowed.

The Hon. D.G.E. HOOD: Family First will support the amendment. The primary reason, I think, is the argument Mr Lawson outlined very succinctly; that is, in this case we see no reason why the Law Society should be the judge, jury and, dare I say it, the executioner. It has too much of a rein, if you like, in determining the outcome of the situation.

The Hon. P. HOLLOWAY: We do not have the numbers. I will not divide on it; however, I remind the committee that we oppose it. Obviously, this bill will need some further form of negotiation and/or a conference, so this matter will be one that can be considered there.

Amendment carried.

The Hon. R.D. LAWSON: I move:

Page 163, line 23—

Clause 319(3)—After 'guarantee fund' insert:

on a party and party basis

The purpose of this amendment, as previously explained, is to ensure that costs are paid on what is called the party and party, or lower scale of costs, bearing in mind that the costs are being paid from the guarantee fund.

The Hon. P. HOLLOWAY: The government does not support the amendment but, given the other similar amendments, in many ways this is linked to the amendment we had earlier, so I will not divide on it. As I said, we can consider all of these issues when the bill goes back to the other house.

Amendment carried; clause as amended passed.

Clause 320 passed.

Clause 321.

The Hon. R.D. LAWSON: I move:

Page 164, lines 1 to 5—

Clause 321(c) and (d)—Delete paragraphs (c) and (d)

This amendment is the first which deals with the issue of the fund not being (as it is now) a fund of last resort but a fund that is available to be pursued as a fund of first resort. The way in which the fund is established as a fund of last resort is as stated in this clause 321, as follows:

(1) A person is not entitled to recover from the guarantee fund any amount equal to or to the value of other benefits—

(a) that have been paid to or received by the person—

and we certainly agree with that—

(b) that have already been determined and are payable to or receivable—

and we certainly agree that that should stand, but then it goes on to state:

> (c) that (in the opinion of the Society) are likely to be paid or received by the person; or

That is obviously in futurity. The clause continues:

> (d) that (in the opinion of the Society) might, but for neglect or failure on the person's part, have been paid or payable to or received or receivable by the person,
>
> from other sources...

The effect of clause 321 as it stands is that any claimant upon the guarantee fund must first pursue all other avenues that in the opinion of the Law Society the person ought to pursue. This leaves a victim in an invidious position. The victim must obtain legal advice and very often examine whom he will take expensive legal proceedings against; for example, in the Magarey Farlam case, whether it be the solicitors who ran the firm, the auditors who audited the firm's accounts, or whether it be some other person, or the person now charged and said to be responsible for the defalcation.

That is a very difficult and onerous position for any claimant to be in. Under the current scheme, every Magarey Farlam client had to undertake that task; that is, determine whether to sue and who to sue, and you are required to do it unless the Law Society—once again in that conflicted position—says, 'No, don't bother.'

It is a conflicted position because the sort of people who are giving the advice are usually members of the Law Society who it might be said—perhaps unfairly—have a pecuniary interest in whether to pursue one avenue which might lead to greater fees than another. We believe that, given the fact that this is a fund for the benefit of the consumer, it ought to be available to the consumer. An ordinary client should not have cast upon him or her the burden of chasing the defalcator or person responsible: it might be the auditor or some other banker.

We propose that it is the Law Society that will be subrogated to the rights of any person who is paid and the Law Society can make the decision whether it will spend funds—admittedly, it will be money from the guarantee fund—to pursue the person responsible. It is appropriate that the Law Society has that responsibility. It has the resources and the funds. Its members are the experts in these fields. It has committees, for example, that examine law claims.

That is the one organisation in the state that actually has the resources to make decisions about whether or not it is appropriate to pursue particular claims. People tend to forget the personal strain that undertaking legal proceedings has on people and their families: to go to a solicitor; to ask for advice; and to be told you have to put money in the trust account to enable the funds to be pursued. We think it would be better, in the first place, if the solicitor says, 'What you have to do is actually make your claim on the Law Society, provided we can prove that it is a bona fide defalcation.'

They will consider the claim; they will pay it. They will pursue the wrongdoer, rather than 10 or 15 people all going off to their various lawyers, all pursuing every rabbit down every burrow and suffering the very considerable financial strain that involves—bearing in mind that these people have already lost money or might have lost all their money in the defalcation—and the strain of putting their houses on the line to pursue someone.

We think it is only reasonable that that burden ought to be put on the Law Society, bearing in mind that it has got the expertise and it will not be suffering financially because it will be reimbursed out of the fund. Members of the society certainly will not waste money out of the fund because, as we know, they see themselves as the guardian of the fund. In our view, it is an entirely just situation that the society pursues the defalcators, many of whom might have been members of the Law Society, in any event.

We say that the fund should not be a soft touch but a first place to obtain relief. It will be suggested to the committee that a better system is to follow the government's formula, that is, you have to pursue such remedies which, in the opinion of the society, are reasonably available to a litigant. Once again, that puts it back on the opinion of the society. Why should it be at the discretion of the society? In our view, this fund does not exist for its benefit: it exists for the benefit of the client. If you have a client-focused fund it would say, 'The client has an opportunity to put in a claim and, if it is proven, be reimbursed.'

The other factor favouring our proposal is time. Magarey Farlam has illustrated how long it takes to resolve these matters. Under the current system, we have not yet resolved the Magarey Farlam matter, but if the Magarey Farlam claimants are now told, 'Go off and pursue your claims'—

a class action or whatever against people—it will involve further time, further trauma and further distress. As we learnt in Growdens, the stress of litigation can be quite devastating to people. We believe they ought be relieved of it.

The Hon. P. HOLLOWAY: The Hon. Robert Lawson's amendment would make the guarantee fund a first resort for claimants, even though they have some other resource to make good any shortfall, unless they have received or stand to receive funds from that other source. As a result, the cost of pursuing any other entitlements that claimants may have will fall on the fund rather than the claimants. This is a substantial departure both from the present law and the model bill. Under the present law, a person cannot make a valid claim on the fund until other avenues have been exhausted. That is the effect of section 60 of the Legal Practitioners Act which permits a claim only where there is no other reasonable prospect of recovering the full amount of the loss.

In other words, the fund is intended as a backup for claimants who have no enforceable legal entitlements to recover their losses. That has been the law since 1981. The first recourse is the wrongdoer. The fund is the backup for when there is no reasonable prospect of recovering the money from those who should, by rights, pay. The national model takes the same approach. The provisions sought to be amended here are core, non-uniform provisions of the model. They have been adopted in New South Wales, Victoria, Queensland, the Northern Territory and the ACT. If anything, the national model is more generous than the present law because a claim can be made and, in a situation of hardship, be paid, despite the likelihood of recovery from other sources.

The society accepts the claim and then forms a view on whether it is likely that other benefits will be paid or received, or whether, but for the claimant's failure to take action, other payments might be recovered. If the society is persuaded that there is no likelihood of other recovery, then it may pay the claim, but the proposed amendment would go even further. It transfers a substantial new cost to the fund, that is, the cost of litigation to pursue the wrongdoers. Eventually some of that cost will be recoverable from the wrongdoers or their insurers, although it will probably not be recovered in full, and certainly there will be a delay of months or years between the date of payment of the claim and the date of recovery of the costs from litigation on the subrogated rights.

The government is committed to the national model. Where a provision is a core, non-uniform provision, there is room for some change in the wording, but not for a complete reversal of the policy. Having signed the intergovernmental agreement, the Attorney-General is bound to use his best endeavours to see that the substance of the core, non-uniform provisions are retained, even though there may be changes in the detail or the wording. A better solution would be the government's proposed amendments to the ability to claim on the fund. The government should not and does not support this amendment. I move:

Page 164, lines 1 to 5—

Clause 321(1)(c) and (d)—Delete paragraphs (c) and (d) and substitute:

(c) that (in the opinion of the society) are reasonably available to the person,

During the debate in the other place, much attention focused on the guarantee fund provisions. The opposition's amendment seeks to make the fund a fund of first resort, instead of requiring claimants to seek other recourse first.

It also seeks to lift the cap on payments from 5 per cent of the amount in the fund to 30 per cent. They further seek to allow claimants' costs in all successful cases payable on a party-party basis. The member for Davenport and the member for Enfield each suggested a compromise solution would be to include in the bill a method of deciding whether potential claimants should seek other avenues of address before claiming on the fund. This amendment would provide that a person is not entitled to recover amounts that, in the opinion of the Law Society, are reasonably available to the person.

This amendment goes hand in hand with the government's amendment No. 3, which introduced a test as to what 'reasonably available' means. The test would oblige the Law Society, upon receipt of a claim, to consider whether an ordinarily prudent self-funded litigant would pursue a particular course of action to get their money back. If so, he or she should not be able to claim on the fund for the time being and, if not, they should be able to claim. This test is similar to that applied by the Legal Services Commission when deciding on the merit of an application for legal aid.

If a default occurs, the society would apply this test and communicate its reasons for the determination by way of the new information notice that the bill provides for. If the claimant is aggrieved, he may appeal to the Supreme Court to review the determination. This would at least let the claimant know where he or she stands, unlike the present system under which the society declines to accept a claim and formal reasons need not be given. This is the effect of this amendment as well as amendment Nos 3, 4 and 5. They are a package and an improvement on the present situation, and I commend them to the committee.

The Hon. R.D. LAWSON: The minister says that this is a core non-uniform provision and he suggests that we in South Australia are required to follow the national model. The fact is that, when this model was developed, the Magarey Farlam situation was not in the forefront of our minds; we were not aware of it. For years, the law societies in the various states have been going along, adopting the existing system—it is all fine, it has always worked very well, and why should we do anything to change it? But we now know, from our own experience in South Australia, that the system does not work.

The Hon. P. Holloway: There's never been a default before?

The Hon. R.D. LAWSON: Well, there have been defaults before, but perhaps not of this magnitude. Members would be personally aware, I am sure; and most members would have received correspondence from people (families) who have suffered grievously as a result of the way in which this fund has worked in a real-life situation. They are in the middle of it right now.

This having now been brought to the attention of the parliament, I think that we ought to be proactive and ensure that, in future, people are not put through the sorts of hoops they are being put through at the moment under the current scheme. It is incumbent upon us to develop a better scheme, if possible. A better scheme is that we leave all litigation to the Law Society; it is the expert, so it can chase the wrongdoers. But, provided somebody has a valid claim and has actually lost their money as a result of defalcation, their first port of call is to the fund.

This is a concept entirely known to everybody. You would not expect your insurer, when your house has burnt down, to say to you, 'Don't come to us. Chase the arsonist; he is the person who's responsible for this. We are only your fund of last resort. We suggest that you chase the arsonist, and we'll give you his address and help you with a private investigator, or whatever.' It is a well understood concept that, if you have a right of recovery, you ought be able to pursue it rather than be fobbed off and told, 'You chase the wrongdoer; you suffer the inconvenience, the delays and the trauma. We, on the other hand—in the comfort of our offices in the Law Society—will wait until you've done that'; or, as the government is mollifying its position by modifying its position, it says, 'Well, we'll leave the judgment to the Law Society as to whether it is reasonable for you to have to pursue that person.'

We know the attitude of the Law Society and we know the attitude of the government; namely, that this is a multipurpose fund and it is not available. It is not a right that you have; it is some sort of privilege. You are not going to get all your money; it is only to give you a bit of a hand-out. With that attitude, manifested in the way in which the Law Society has resisted the amendments proposed and the way in which the government has backed it up, I think it is entirely appropriate that we adopt our proposal which avoids the pitfalls that have been demonstrated to exist in Magarey Farlam.

The Hon. M. PARNELL: This is probably an appropriate time to talk about the concept of a fund of first resort, compared to the current situation. I enjoyed the honourable member's analogy in relation to insurance. However, I would like to make a couple of points. The first point is that an insurance company is only answerable to two main parties: its customers, clients or policyholders, and it is also answerable to its shareholders to make a profit. It has, at its disposal, a great deal of actuarial knowledge, and also even meteorological knowledge and data if it is insuring against flood and storm risk and things like that. The problem with this situation is that the defalcations are completely unpredictable in timing and in amount, and so I think there is a difference between a regular insurance policy and the fund that we are talking about.

The opposition's amendments calling for this to be a fund of first resort are very attractive because none of us likes to see people who have suffered misfortune be treated other than with fairness and compassion, and preferably receive all their just rewards. We have, for example, schemes of insurance for people who are injured at work and we want to see people compensated and sent back to work. It is a very attractive option to say, 'Leave it to the Law Society and they will fix it up.' I notice that, in clause 322, there are subrogation rights, and they make sense. It does make sense for the Law Society to stand in the shoes of the victim and do the chasing for them.

However, I guess the difference between that as an option and what the honourable member is proposing is that, if it is a fund of first resort, then that subrogation model would occur in all cases, rather than just in some cases.

We have all seen, for example, asbestos victims on television who appear to be led along until their last dying days before, finally, they get their payment. We look at it and think it is terrible that they are being strung along. Perhaps people may want to use that analogy and say, 'Well, we are stringing along the victims. We are making them jump hoops. We are making them sue everyone else and only at the very end will the Law Society come to their aid.' The system in this bill is better than the current system. There is flexibility for the Law Society to step in earlier. The question for us is whether we need to go that one step further and make them step in at a very early stage, or whether the model that is currently proposed, about requiring the victims to pursue their own rights, is the model to be adopted.

At the end of the day, looking at the way all these amendments have been going, the government is on notice that we need to have this system fixed up. It looks as if these amendments are likely to get up and we are going to have to spend some time, perhaps in another forum, trying to sort it out. For the record, I was not inclined to support the amendment making this a fund of first resort, but I guess that what we are collectively doing is putting the government on notice that, unless the whole of the bill is to be lost, we do need to come up with a better system.

The Hon. A. BRESSINGTON: It never ceases to amaze me that the Greens and Democrats come into this place and squawk about the rights of animals and the environment, telling us that we must care about all of this, otherwise, 'What will we be leaving our children?' However, when it comes to bills dealing with humanity they go for the capitalist side of it almost every time. How could the Hon. Mark Parnell possibly sit in his own skin and say that the Law Society's needs and wants somehow take precedence over these victims—250 of them. As I said in my speech, some of them are students with $2,000 locked in, while others may be people who have, say, $40,000 of an inheritance locked away in order to look after a disabled husband.

This is the real face of this issue. I just cannot believe that there are members in here who would dare to preference the Law Society with endless resources and expect these people, who are already under pressure without these circumstances applying, to do as the Hon. Rob Lawson has said—to inspect and investigate every avenue open to them before they can access this fund.

I am shocked, but I suppose that I will get used to it after a while. I indicate that I will be supporting this amendment. I agree with the Hon. Mark Parnell (and it is probably the only thing I agree with him on) that we are putting this government on notice. The system does need a serious overhaul, and just because it is not in line with the other states does not mean that it is not better.

The Hon. P. HOLLOWAY: South Australia has 8 per cent of the population. Again, the Legislative Council is doing its usual trick of saying that everyone else in the country is out of step. At what point do we come to the conclusion that we, in one of the smallest mainland states in the country, can be different from everywhere else? There is actually national legislation everywhere else in the country. Eventually, it will start to cost the state dearly.

Sure, we can be different from everywhere else. We can change our legal system and make it different, but we are suffering and we will suffer. Why is it that every other state has seen fit to do this? Why is it that every other state says that we should not have—

The Hon. S.G. Wade interjecting:

The Hon. P. HOLLOWAY: Of course they happen all the time. Do you think that this is the first? Do you think this will be the last? If you want to make a fund of first resort, why not open up consolidated revenue? Why not open up the entire budget? All sorts of victims are suffering all sorts of things. Why not open up the entire budget and sack ourselves, sack the Public Service and just give all the money to all the victims of the world? Why stop at South Australia? Where do you draw the line?

The fact is that there have to be structures in place. It is all very well to pick one particular case where there are victims. We all feel sorry for them, and their needs must be addressed, and we are seeking to have them addressed. However, there have to be structures. You cannot just have systems that take away all the protections that eventually could put the whole structure in jeopardy. That is what we are saying. With the totality of the amendments that have been moved, there is a risk that ultimately the whole fund might collapse; in which case, where are we then? Where will future victims be then?

All we are saying is that these sorts of funds should not be funds of first resort. They were never intended to be that. It is what every other jurisdiction in the country has done. If we want to make this some sort of victim support fund, there are other ways of doing that. As I indicated in answer to a question yesterday on a different bill, there was a series of instances where ex gratia payments were made to victims of crime.

We are talking here about the guarantee fund for the legal profession that has a number of purposes. Obviously, we will have to iron this out, but one should not brush off the idea that we can afford to be different from the rest of the country on every issue just because we feel like it. You can do that, but you will pay a big price for it in the end.

The Hon. R.D. LAWSON: The minister made a Freudian slip when he said that this is a fund for the legal profession. It is not a guarantee fund for the legal profession: it is actually a guarantee fund for the clients of the legal profession whose moneys provide the income to feed the fund. I do not believe that, given the fact that the Magarey situation has brought this matter to the attention of all of us in South Australia, we should be meek and say that we will simply follow the leader and allow injustice to be done because we want to put uniformity above justice.

We have an issue in South Australia. We have a capacity now to resolve it. Once this bill is passed there will be no capacity at all to resolve this issue. The government will never bring the Legal Profession Bill back into the parliament. This is an opportunity that we have, and it is not irresponsible. It is a fund that is quite substantial. Few claims have been made upon it. The suggestion of the minister that the sky is going to fall in and we are going to bankrupt the state by reason of making this a fund of first resort is, frankly, ridiculous.

The Hon. D.G.E. HOOD: The issue at play here is a very simple one. I put it very simply: should the average person who puts their money into a lawyer's care and then finds that that money has disappeared for whatever reason be able to get it back quickly, reasonably and without incurring extra expense through employing other solicitors to chase their money in every possible way? The simple answer is yes. For that reason we support the amendments.

The Hon. P. HOLLOWAY: I make the point: why don't we just open up the consolidated revenue, because there are a lot of victims out there, there are not just victims of legal firms? I am no champion of the legal profession, as people would know, but it is rather ironic that in this case the allegations relate to, I believe, an accountant. That is now before the courts and that will be determined and whether the legal professionals were negligent will also be determined by the matter before the court. To use one case to determine principle is not necessarily a very sensible thing to do.

The CHAIRMAN: I understand that the Hon. Mr Hood supports the amendments. Is that correct?

The Hon. D.G.E. HOOD: We support the amendments.

The Hon. A. BRESSINGTON: I make the point that the Hon. Paul Holloway said that it is quite ironic that we have members of the legal profession now taking an opposite view to the government on this. I think that is, in itself, an indication that there are, thank God, some within the legal profession who see the inequity in this. I think that is even more of a statement as to why these amendments should be carried, if we have a QC here who is arguing the point in favour of victims having to be less traumatised, having to go through less stress and strain to get their money back from a guarantee fund.

If I put my money into a bank account and the bank gets robbed or whatever, am I actually entitled to claim that money back from the bank? They have an insurance company, I would imagine, or an insurance arrangement that would cover my savings in the bank. I would imagine that most people who have put their money into this trust account have done so with the utmost faith that their money would be managed and looked after well. As I said, because the Hon. Rob Lawson is here arguing this case, and some of it may be party politics, who knows, the fact is that he is making valid points and points that, I think, needed to be made on behalf of the victims.

In the briefing with the Attorney-General, we were told that these victims are not victims: they are investors. They are investors to the point where they invested their money in good faith. They are victims after the fact that their money has disappeared, or been ripped off. That then changes their position in this entirely from investor to victim, and justly so.

The Hon. M. PARNELL: I have one further brief comment in response to the Hon. Ann Bressington's remarks. What I do look forward to from the honourable member is a suite of

legislation so that everyone who ever gives money to a real estate agent, plumber, builder, travel agent—any time anyone else handles someone's money—we must establish a fund where people can, without having to take any other steps other than an application, get their money back.

It is difficult when people find that they have been ripped off or stolen from. The legal profession has in place an imperfect but a partial mechanism for resolving those things; in other areas there is no recourse at all. A lot of the Magarey Farlam victims have written to me; I know their stories and they are terrible ones, as are the stories of people who have put deposits on world trips, or money into real estate, or deposits on goods that have not turned up. Sometimes those sums are much smaller and so the damage may be smaller, but they can be considerable sums as well. I am not defending this system or saying that it is perfect, but I think it is incorrect to say that anyone who supports the government on this particular point lacks compassion for all victims of financial fraud, because I do not think that is the case.

The Hon. P. HOLLOWAY: I thank the Hon. Mark Parnell for putting the point far more elegantly than I tried to do a few minutes ago.

The CHAIRMAN: The first question is: that paragraphs (c) and (d), as proposed to be struck out by the Hon. Mr Lawson and the Minister for Police, stand as printed.

Question negatived.

The CHAIRMAN: The next question is: that new paragraph (c), as proposed to be inserted by the Minister for Police, be so inserted.

The committee divided on the question:

AYES (9)

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

NOES (12)

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

Question thus negatived.

The Hon. R.D. LAWSON: I move:

Page 164, lines 7 to 9—Delete subclause (2)

This amendment is basically consequential. Bear in mind that we have now made the fund a fund of first and not last resort. In those circumstances, it is appropriate that the limitation on the Law Society under the rights of subrogation is removed. That limitation is removed so that the society can proceed against an associate.

The Hon. P. HOLLOWAY: Clause 321(2) was the subject of a government amendment in the other place. It effectively brought the bill back into line with the national model when it comes to hardship payments. It provides that the society may, in its absolute discretion, make a hardship payment from the guarantee fund even though the claimant is not entitled to recover from it because, in the opinion of the society, he is likely to be paid from another source. The government initially changed the model provisions because we thought that the second form of payment is not payment of a claim but prepayment of an amount expected to be recovered from somewhere else and therefore not a payment that the guarantee fund really ought to make.

Instead, we opted subtly to amend the provision dealing with advance payments which are possible where a claim on the guarantee fund is likely to be allowed and provided that they can be made even if there is some prospect of recovery from another source. Bringing the bill back into line with model provisions was a compromise position and would allow the Law Society to make a hardship payment, first, where the claim on the fund is likely to be allowed; and, secondly, at the absolute discretion of the society where the payment is warranted due to circumstances of hardship and the society is of the opinion that the person is likely to receive funds from another source entirely. That gives the society more scope to make hardship payments, not just when there is some prospect of recovery from another source but even when it is likely that a person will

recover it. The opposition's amendments would confine hardship payments to those situations where a claim is likely to be allowed and is opposed.

The Hon. R.D. LAWSON: I regret that I gave an incorrect explanation when moving this amendment. The reason we seek to remove this particular provision is that it is a provision dependent upon subclause (1)(c), which has been removed. Given that it will be a fund of first resort in accordance with previous amendments, it is unnecessary to have this particular provision, which is designed to alleviate a hardship that might be done with a fund of last resort. It is for those reasons that we believe this is unnecessary—not that we believe the Law Society in the case of hardship should pay people, but it will not be necessary in light of the amendments made. That is why we seek its deletion.

The Hon. M. PARNELL: I seek guidance from the minister, but it seems to me that, if this subclause refers to a paragraph that no longer exists, the current wording cannot stand. I would think that either the paragraph has to go or it must be reworded to remove the reference to subclause (1)(c).

The Hon. P. HOLLOWAY: Certainly, the honourable member has moved a package of amendments. I do not intend to divide on this amendment. The bill as it will now come out of this council is not acceptable to the government, so it will either lapse (and we will go back to the old scheme) or another solution will be negotiated between the houses. I guess that can come out in the wash. It is not very profitable to waste too much time on it. We can sort out the technicality of it later. I do not propose to divide on it. It will have to be part of considerations in the future anyway.

Amendment carried; clause as amended passed.

Clause 322.

The Hon. R.D. LAWSON: I move:

Page 164, lines 19 to 21—Delete subclause (3).

This is a consequential amendment upon making the fund a fund of first resort. It removes an impediment by simply deleting the provision which prevents the Law Society from exercising a right of subrogation. I will check that with parliamentary counsel. I am reminded by parliamentary counsel that this amendment will remove a limitation from the Law Society's right of subrogation. Bearing in mind that we have now a fund of first resort, there should not be limitations on the society's rights of subrogation.

The Hon. P. HOLLOWAY: The bill following the model would permit an innocent associate to claim on the fund for the loss of his money and would protect him from a subrogated action by the society. The amendment proposes to remove that provision so that a subrogated right can be exercised against an innocent associate of the practice. Again, this is a departure from the model. The provision as it stands in the bill has been adopted interstate.

The government is bound to oppose any amendment that makes a substantial change to the operation of the core non-uniform provisions of the model, but, given that now, under these amendments, this is now a fund of first resort, it is obvious that the Hon. Robert Lawson's amendment is consistent with that, but it is quite contrary to the government's position. Again, I will not bother to divide on the amendment, but we do strongly oppose it.

Amendment carried; clause as amended passed.

Clauses 323 to 325 passed.

Clause 326.

The Hon. P. HOLLOWAY: Amendments Nos 4, 5 and 6 are essentially consequential to my second amendment, which was lost, so I will not bother to pursue them.

The Hon. R.D. LAWSON: I move:

Page 165, lines 30 to 36—Clause 326(3)—Delete subclause (3)

This is a consequential amendment and consequential upon the amendments to make this a fund of first resort. I mentioned previously that the procedure adopted in relation to claims is that a claimant makes the initial claim to the Law Society. If the society refuses the claim, either wholly or in part, the claimant may appeal to the Supreme Court under this clause.

Subclause (3) reinforces the previous provision that this is a fund of last resort by providing that the claimant who is making the appeal must satisfy the court that other avenues of recourse

are not reasonably available and also gives the court the power, on the application of the society, to stay an appeal pending further action being taken by the claimant against the auditor or whoever. So, it is a consequential amendment to ensure that the fund of first resort status remains through the appeal process.

The Hon. P. HOLLOWAY: Again, this is, I suppose, consequential on the earlier amendments moved by the honourable member to make it a fund of first resort. We oppose the amendment, but we will not waste any further time by dividing on it.

Amendment carried; clause as amended passed.

Clause 327.

The Hon. R.D. LAWSON: I move:

Page 166, lines 17 to 23—Clause 327(3)—Delete subclause (3)

This is a similar provision in relation to an appeal to the Supreme Court against the failure of the Law Society to determine a claim within the 12 month limitation period. Once again, on an appeal of this kind, as the bill currently stands, the appellant would have to satisfy the court that other avenues were not reasonably available, and the court could also stay the appeal to ensure that the claimant pursued other avenues. This provision is inconsistent with the fund of first resort status, and it is really consequential upon the scheme that the committee has already accepted.

The Hon. P. HOLLOWAY: As it is consequential, we will not divide on it, but we again oppose this move to make the fund a fund of first resort.

Amendment carried; clause as amended passed.

Clauses 328 to 330 passed.

Clause 331.

The Hon. P. HOLLOWAY: I move:

Page 168—

Lines 8 to 10—Clause 331(2)—Delete subclause (2) and substitute:

(2) A levy is to be of such amount as the society determines and may differ according to factors determined by the society.

Line 11—Clause 331(3)—Delete 'Attorney-General' and substitute:

society

After line 18—Clause 331—After subclause (4) insert:

(5) However, a levy may not be imposed under this section without the written authorisation of the Attorney-General.

These three amendments give the profession, through the medium of the Law Society, more of a say in how any levy on the profession would be determined. The levy power exists to ensure that the guarantee fund has sufficient resources. All other jurisdictions around the country, except for Tasmania, have similar provisions in their legislation. If the council of the society sees fit to levy practitioners, for example, because there is a collective sense of responsibility in the particular circumstances or a collective compassion for the wrong claimants, why should it not be able to do so? The joint role of the society and the Attorney-General in setting the levy should ensure that it is applied only in appropriate cases and at an appropriate level. The mechanism contains its own checks and balances.

The Hon. R.D. LAWSON: The Liberal opposition will be supporting these amendments. They improve the scheme of levies by requiring that the society makes the initial determination that a levy is required. Given that it is a levy on members of the legal profession, it is appropriate that the society have that initial function, given its extensive responsibilities in relation to the fund. It is also appropriate that the Attorney-General retains a residual right of veto, because a levy cannot be made without his authorisation.

The Hon. M. PARNELL: If the levy is initially to be determined by the Law Society (I note that not all practitioners are members of the Law Society), is there any mechanism for non-members of the Law Society, such as employed solicitors with community legal centres (many of whom did not join the Law Society because they had no appropriate rate that was low enough that those poorly paid lawyers could afford to join), to have input into the question of a levy?

The Hon. P. HOLLOWAY: I do not believe it matters whether or not someone is a member of the Law Society. With the amendment, section 331(3) reads:

(3) Without limiting subsection (2), the society may determine that the amount of the levy is to differ according to whether a practitioner is practising—

(a) on his or her own account or in partnership; or

(b) as an employee of another solicitor; or

(c) as an employee of a person who is not a solicitor, or of a corporation; or

(d) as an employee of the Crown.

So the society may determine it and, of course, then we have the new clause which provides that the levy may not be imposed without the written authorisation of the Attorney-General.

Amendments carried; clause as amended passed.

Clauses 332 to 513 passed.

New clause 513A.

The Hon. P. HOLLOWAY: I move:

Page 249, after line 34—After clause 513 insert:

513A—Rules of Supreme Court may assign functions or powers

(1) The Supreme Court may, by rules of court, assign to a specified person or body, or to a person occupying a specified office or position, any functions or powers conferred on or vested in it under—

(a) Chapter 2 Part 4 or 5; or

(b) Part 1 of this chapter; or

(c) any other provision of this act prescribed by regulation for the purposes of this section.

(2) The rules of the Supreme Court may specify that an assignment of functions or powers under this section is subject to conditions and limitations.

As noted in the second reading explanation, the bill continues the present regulatory framework for the profession. Under that framework the Supreme Court has the ultimate responsibility for the profession in many areas but it delegates some of the day-to-day operations to the Law Society. The society has discovered a technical anomaly in the bill. It is concerned that the Supreme Court's powers of delegation in clause 54 of the bill are not wide enough. It currently reads:

54—Rules of Supreme Court may assign functions or powers

(1) The Supreme Court may, by rules of court, assign any functions or powers conferred on or vested in it under this Part—

(a) to a specified person or body; or

(b) to a person occupying a specified office or position.

The part in question deals only with legal practice by Australian legal practitioners, essentially covering the grant, renewal, amendment, suspension and cancellation of local practising certificates. The clause is not part of the model provisions but is copied from the present act, and the relevant part in the present act deals with the wider field of the practice of law, covering not only practising certificates but also the regulation of company practitioners, trust accounts and the professional indemnity insurance scheme.

Should the wording of the clause stand, the society fears that it will not have the power to perform its current functions such as the regulation of trust accounts and their audit. The society states that it will also result in the denial of power to take action regarding matters new to the regulatory framework, specifically, notifications of interstate and foreign regulatory action and the regulation of the new business structures of incorporated legal practices and multidisciplinary partnerships. The society has also called for the delegation to cover matters dealing with public notaries. This is not presently within the court's power to delegate.

The relevant rule of court assigning functions to the society (rule 14 of the Admission Rules 1999) only speaks to matters dealing with practising certificates, the regulation of company practitioners and the provisions dealing with trust accounts and audit. However, the government believes that the present extent of the court's power to assign functions should be preserved and

expanded to include interstate and foreign regulatory matters, the regulation of the new business structures, and that of public notaries.

The Hon. R.D. LAWSON: Can the minister indicate to whom it is envisaged that those functions will be deputed?

The Hon. P. HOLLOWAY: All this amendment would do is simply give the Supreme Court the power to delegate if the Supreme Court so wishes. It does not require it to delegate.

The Hon. R.D. LAWSON: But is it envisaged that the Supreme Court will exercise these powers in favour of the Law Society, or some other body or bodies?

The Hon. P. HOLLOWAY: The Law Society has proposed it because it has a concern that the power of delegation may not be wide enough. Currently, I understand the Supreme Court, which has ultimate responsibility for the profession, delegates some of its day-to-day operations to the Law Society. I am not sure it would delegate them to anyone else. The Law Society would be the only body, presumably, to which the powers would be delegated so, given that the Law Society has raised these concerns, presumably it would expect that if the Supreme Court so wished they would be delegated to the Law Society.

I am also informed that some power is delegated to the Legal Practitioners Conduct Board, but presumably in relation to matters like foreign regulatory action and the like it will come under the Law Society.

The Hon. R.D. LAWSON: We will support the amendment.

New clause inserted.

Remaining clauses (514 and 515) passed.

Schedule 1.

The Hon. R.D. LAWSON: I move:

Page 253, lines 14 to 17—Schedule 1, clause 13(1)(b)—delete paragraph (b) and substitute:

(b) a claim in respect of a default (within the meaning of that Part) occurring before the commencement of this clause if the claim had not been determined under Part 5 of the repealed Act before the commencement of this clause.

This amendment is to the transitional provisions and is designed to ensure that claims on the guarantee fund, which will be dealt with in accordance with the new scheme, apply to any claims that have not yet been determined. Our purpose in moving this amendment is to ensure that the Magarey Farlam claimants will be entitled to claim under the new regime.

The Hon. P. HOLLOWAY: Essentially Rob Lawson is seeking to bring the Magarey Farlam cases under the first resort provisions. The amendment would alter the transitional provisions so that any pending claims that had not been determined by the time the new law starts will become claims under the new law. Other claimants whose matters have been completed would not have this benefit.

Presumably the claims affected by this provision will need to be started all over again, and any time limits that formally apply to them will be overcome. A fairer approach would be to treat all transitional claimants the same, as the bill aims to do. For that reason we oppose the amendment, but, given that it is tied up with other measures which ultimately will have to be negotiated, I will not call a division at this late hour but simply indicate that we oppose it.

The Hon. M. PARNELL: Does this provision enshrine a stand off where, if the government does not accept the amendments of the Legislative Council and does not pass the bill, the claimants will not want their claims settled? If the bill does not go through there is no great incentive for the claims to settle.

The Hon. R.D. LAWSON: We do not quite see it having that effect. The amendment was originally proposed at a time before the time for the serving of notices. The notices of claim have now been served on the Law Society and it may not be necessary for this claim, which shifts the date from date of service to determination.

We are not moving our amendments with the intention of not having this bill brought forward. We hope the national legal profession is embraced and commences on 1 July. Nothing in our amendments is designed to prevent that occurring. I do not believe the evil to which the

honourable member is referring will be realised. The claims are in and are being pursued, but they can be dealt with more expeditiously under the new scheme than the old.

Amendment carried; schedule as amended passed.

Title passed.

Bill reported with amendments.

Bill read a third time and passed.

At 22:21 the council adjourned until Wednesday 27 February 2008 at 14:15.