LEGISLATIVE COUNCIL

Thursday 28 February 2008

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:01 and read prayers.

STANDING ORDERS SUSPENSION

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (11:01): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15pm.

Motion carried.

INDUSTRIAL RELATIONS COMMISSIONER

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (11:02): I move:

That, pursuant to section 34 of the Fair Work Act 1994, the nominee of this council to the panel to consult with the Minister for Industrial Relations regarding the appointment of a commissioner to the Industrial Relations Commission of South Australia be the Hon. Bernard Finnigan MLC.

This motion relates to the appointment of an additional commissioner to the Industrial Relations Commission. A panel to undertake the task is formed under section 34 of the Fair Work Act 1994. The panel consists of a representative of the Legislative Council and a representative of the House of Assembly. The member for Morphett, who is the shadow spokesperson, is the house representative. Other panel members are SA Unions, Business SA and the Commissioner for Public Employment. I am advised that the minister consults with the panel regarding the appointment, and it is proposed that the Hon. Bernard Finnigan MLC be the representative of this council.

Honourable members: Hear, hear!

The Hon. R.D. LAWSON (11:03): I support the motion that the Hon. Mr Finnigan represent the Legislative Council at this consultation process. In doing so, I should say, however, that it is a matter of some considerable surprise that consideration is now being given to the appointment of an additional commissioner, given the fact that the work of the commission has substantially diminished in recent times, especially as a result of changes to federal legislation. Although the Rudd Labor government has announced that there will be changes to the commonwealth legislation, and that the WorkChoices legislation will be repealed, there has been no indication from the new federal government that it will alter the administrative arrangements concerning the role of federally-appointed commissioners. Therefore, it is with some surprise that we note that it is proposed to make an additional appointment. That is a matter we will be pursuing.

The other matter I want to mention to the chamber (and it is a pity that the Hon. Mr Finnigan is not here at the moment) is that the Legislative Council representative should truly consult with the committee, as envisaged by the legislation. Unfortunately, under the current minister, consultation has been non-existent on these appointments. The minister comes in and says, 'I've chosen so-and-so.' It is take it or leave it. That is not consultation.

Just because the factions of the Australian Labor Party have decided to appoint a particular person to a particular position is clearly in contravention of the spirit of this legislation, which is that there be genuine consultation. I do hope that the Hon. Mr Finnigan, on behalf of the Legislative Council, will be taking an open mind to that consultation process and that he will not simply repeat what he has been told by his minister he should support.

Honourable members: Hear, hear!

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (11:06): If there are no other speakers, I will close the debate. I remind the Hon. Robert Lawson that the House of Assembly has, as I understand it, decided that the member for Morphett, a member of the Liberal Party and the shadow spokesperson, will be the house representative. I think, in the tradition of these things, that will ensure that all major parties are involved in this decision and—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Yes, as they always are, as my colleague points out. Obviously, to suggest that my colleague, the Minister for Industrial Relations, has not consulted with the opposition, given that the House of Assembly has already appointed the shadow spokesperson, is, I think, stretching the truth to the limit. Again, I endorse the selection of the Hon. Bernard Finnigan.

Motion carried.

HEALTH CARE BILL

In committee.

(Continued from 26 February 2008. Page 1765.)

Clause 11.

The Hon. SANDRA KANCK: I move:

Page 14, after line 26—

Insert:

(4a) The minister must establish arrangements to meet with HPC on a regular basis.

I think this amendment is fairly self evident. While we have been told that the minister will consult with this new council, nothing actually requires him to do so. This council is one of the few mechanisms that exist in these new governance arrangements where direct contact is possible for health consumers and health service providers and so on with the minister. So, this puts it in black and white that the minister has to meet with the council on a regular basis.

The Hon. G.E. GAGO: The government understands that this new clause is intended to ensure the HPC has regular meetings with the minister so that it and the minister can be informed regularly of any issues about any work being undertaken by the council. The government recognises that there may be some concern that there should be a commitment by the minister to meet with the HPC. This has always been the intent of the minister; therefore, the government is happy to support this amendment.

The Hon. J.M.A. LENSINK: The Liberal Party also supports this amendment; however, I want to ask a question of the minister about how often it is envisaged that the minister will meet with this group per annum.

The Hon. G.E. GAGO: We have not specified a time as yet, but we imagine it will be something like three or four times a year.

Amendment carried; clause as amended passed.

Clauses 12 to 16 passed.

Clause 17.

The Hon. SANDRA KANCK: I move:

Page 18, after line 26—Insert:

(4a) If a HAC is established in relation to an incorporated hospital established to provide services within the country areas of the state, the constitution or rules of the HAC (as the case may be) must provide that a majority of members of the governing body of the HAC (in the case of an incorporated HAC) or a majority of members of the HAC (in the case of a HAC that is not incorporated) are persons who are selected or appointed on the basis of being members of the local community.

In moving this amendment, I want to repeat a little of what I said in my second reading speech. Although there have been some concerns—and I have to say they are minimal, because only one representative member of a country health board and one local government entity contacted me with any concerns about this bill, so the levels of concern are not high—in deciding whether or not the health advisory committees (HACs) would be an adequate replacement for the hospital boards, I looked at some of the history and determined that, in the end, the boards have basically been following the dictates of what head office has given anyway. So, it did not seem to me an issue that one should die in a ditch over.

However, I was concerned about the potential that was there for a health advisory committee to be constituted with a majority of the membership being appointees of the minister,

and this ensures that the HACs in the country areas will not be able to have membership that is majority dominated by the minister.

The Hon. G.E. GAGO: The government understands that this new clause is intended to ensure that a health advisory council established to replace a board for a health service in the country region of South Australia established under the South Australian Health Commission Act 1976 will have the majority of members being representatives from that local community. The government recognises that some concerns remain regarding the participation of their local community in the country region in relation to health advisory councils. Therefore, it will support this amendment and ensure that local health advisory councils to the various health services sites established under this bill have a majority of members from their local community.

The Hon. J.M.A. LENSINK: The Liberal Party supports this amendment, but we note that the HACs will not have very much to do with the minister at all.

Amendment carried; clause as amended passed.

Clauses 18 to 57 passed.

Clause 58.

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

Page 40, after line 12—After subclause (13) insert:

(13a) The Minister may, by the terms or conditions of a licence, limit the scope of a licence to specified services or classes of services.

Clause 58 enables the minister to approve applications for a restricted ambulance licence and enables the minister to attach conditions to a licence. Proposed new subclause (13a) enables the minister to place conditions on a licence that limits the scope of the restricted ambulance service licence to a specified class of services or activities.

Amendment carried; clause as amended passed.

Remaining clauses (59 to 100) passed.

New clause 101.

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

Page 61, after line 34—

After clause 100 insert:

101—Review of governance arrangements—Country regions of State

(1) HPC must, within a reasonable time after the third anniversary of the commencement of this Act, furnish to the Minister a report on the operations, over the 3-year period from the commencement of this Act, of the HACs established in relation to any incorporated hospital or hospitals established to provide services in the country areas of the State.

(2) The report must—

(a) review the effectiveness of the relevant HACs in promoting the interests of local communities; and

(b) review the level of satisfaction with the governance arrangements between the relevant HACs and any relevant hospital from the perspective of the members of the HACs, the local community, and the hospital; and

(c) identify any other significant issues relating to the operations of the HACs considered relevant by HPC.

(3) The Minister must, within 12 sitting days after receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

(4) The Minister must, within 6 months after receipt of a report under this section, cause a formal response to the report to be laid before both Houses of Parliament.

This is a simple amendment, requiring the minister, who is in agreement with it, to require that a report be produced on the third anniversary of the act coming into effect to look at three key areas, namely: first, the effectiveness of the reforms in terms of the impact on promoting the interests of local communities, which is the whole intention of the bill; secondly, the satisfaction with the governance arrangements within local communities; and, finally, to identify any other significant issues that have resulted from these reforms.

It then requires the minister within 12 sitting days of having received that report to table it before both houses of parliament, and it requires him within six months after that date to cause a formal response to that report to be tabled in parliament. To the health minister's credit, he had no problems with my suggestion of including this in the bill. It is a significant reform.

Initially, when the bill was first floated in the public arena, there was genuine concern in country regions and we had a high level of correspondence and contact with constituents over the issues about which people were genuinely concerned. That has dropped off substantially in the past few months, which all of us would have noticed in our dealings with constituents on this issue. However, it is such a major reform that it should be reviewed formally and that is what this amendment will do.

The Hon. G.E. GAGO: The government recognises that some concerns remain in the country regions in relation to health advisory councils. The government understands that the proposed amendment seeks to address these concerns by ensuring that people in country regions can report on how the establishment of health advisory councils has affected their health services and the level of satisfaction or otherwise with the health advisory councils.

The government sees the health performance council, which is to provide a report on the effectiveness of health advisory councils and related matters, as an independent body and will therefore ensure that the report it provides is independent of the department and the minister. The proposed clause will ensure that the impact of health advisory councils can be assessed, and the government will support it.

The Hon. J.M.A. LENSINK: This is a reasonable clause to include. However, our concerns remain with the new governance arrangements, which we believe take the country out of the hospitals.

New clause inserted.

Schedules 1 to 4 passed.

Bill reported with amendments.

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (11:20): I move:

That this bill be now read a third time.

The council divided on the third reading:

AYES (12)

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

NOES (7)

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

PAIRS (2)

Hunter, I.K.	Lucas, R.I.

Majority of 5 for the ayes.

Bill thus read a third time and passed.

PREVENTION OF CRUELTY TO ANIMALS (ANIMAL WELFARE) AMENDMENT BILL

In committee.

(Continued from 26 February 2008. Page 1783.)

Clause 8 as amended passed.

New clause 8A.

The Hon. M. PARNELL: I move:

Page 7, after line 24—

8A—Amendment of section 19—Conditions of licence.

Section 19(2)—after paragraph (e) insert:

and

(f) requiring the holder of the licence to comply with such provisions of the Code as may be specified in the conditions.

This is a fairly simple amendment which requires that it be a condition of a licence given for teaching and research involving animals that the activity which is the subject of the licence must be carried out in accordance with the relevant research code as set out in the regulations. That is the situation that most people would imagine and expect is already the case. However, currently the code is binding only on the ethics committee that approves the activity rather than the person actually carrying out the activity. The minister has a discretion whether or not to require the involvement of an ethics committee. This could be regarded as a tidying up type of amendment that makes it clear that the relevant research code should apply to research.

The Hon. G.E. GAGO: Whilst I do not believe that this amendment is in fact necessary as it is already dealt with under the act, I appreciate that it will make compliance with the code explicit, so the government will support it.

The Hon. C.V. SCHAEFER: The opposition is opposing this amendment simply because we see it as superfluous. We believe that it is covered.

The Hon. D.G.E. HOOD: Family First supports the amendment. We see no harm in making the requirements explicit.

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

New clause inserted.

Clause 9.

The Hon. C.V. SCHAEFER: I seek some clarification, but my understanding is that this is the amendment that originally proposed to appoint a layperson to the ethics committee. I said in my second reading contribution that, having had the purpose of the ethics committee explained better to me, I am not proceeding with my amendment.

Clause passed.

Clause 10 passed.

Clause 11.

The Hon. C.V. SCHAEFER: I will move and speak to both my amendments Nos 5 and 6 because both are to do with having a suitably qualified person as the inspector under various circumstances. One of my concerns is: who is the inspectorate and what qualifications do they have which enables them to determine whether an action is an act of cruelty? That is the essence of inserting 'qualified' before person in my amendment No. 5 (clause 11, page 8, line 9).

My second amendment is to clause 11, page 8 after line 14, 'qualified person means a person who has successfully completed the training prescribed in the regulations as relevant to their condition of appointment'. This amendment was suggested to me by the minister's office late last night, hence I have not been able to put it on file. It takes up my concern that you may have an inspector who is highly qualified in injuries to dogs, for instance, but who has never seen a pig, a budgie or whatever in their life. It has been pointed out to me that the appointment of a woman in the D & H Animal Welfare Unit is conditional to inspecting laboratories.

Certainly the people I am envisaging who will be inspecting piggeries would have no qualifications suitable to inspecting laboratories, hence, I would, where it is practical to do so, like to move that amended form. I do apologise to the table staff for not giving them any notice but, basically, I did not have any myself.

The Hon. G.E. GAGO: The government supports the Hon. Caroline Schaefer's amendments Nos 5, 6 and 7 in an amended way as indicated.

The Hon. C.V. SCHAEFER: The amended words I would like inserted are in fact to my amendment No. 7 (clause 11, page 8 after line 14). All three of the amendments are consequential and I would like to move them en bloc. I therefore move:

Page 8, line 9—

Clause 11, inserted section 28(1)—before 'person' insert:

qualified

After line 12—

Clause 11, inserted section 28—after subsection (2) insert:

(2a) Without limiting the conditions that may be imposed under subsection (2), the conditions may include the following:

(a) a condition restricting the powers of the inspector;

(b) a condition requiring the inspector to undertake suitable training;

(c) condition requiring compliance with prescribed protocols and operational procedures;

(d) any other condition that the minister thinks fit.

After line 14—

Clause 11, inserted section 28—after subsection (3) insert:

(4) In this section—

qualified person means a person who has successfully completed a prescribed course of training.

The Hon. G.E. GAGO: The government believes that these changes enhance the legislation in a positive way and we will be supporting them.

Amendments carried.

The Hon. M. PARNELL: I move:

Page 8, after line 36—After the penalty provision insert:

Expiation fee: $210.

This is a tidying-up amendment. Currently, if an inspector fails to return an identity card the only option is to initiate an expensive prosecution in court. This amendment provides an option for an expiation for that relatively minor offence.

The Hon. G.E. GAGO: The government will be supporting this amendment.

Amendment carried.

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

Page 11, line 2—Delete 'if' and substitute:

Subject to this section if

I am advised that this is a consequential amendment arising out of the government's amendment No. 3.

Amendment carried.

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

Page 11, line 3—Delete 'an inspection' and substitute:

a routine inspection

I am advised that this is a minor amendment which clarifies that routine inspections, as opposed to all inspections, are the subject of this particular section.

The Hon. C.V. SCHAEFER: The opposition strongly supports this amendment. It was explained to me that this whole section applies to routine inspections, anyway. One of the misconceptions which is being put out amongst the public is that, with all the opposition's amendments with regard to routine inspections, we are trying to apply them to acts of cruelty. Nothing could be further from the case. This is a new section in the act which provides for routine

inspections which have nothing to do with anyone who is under suspicion of an act of cruelty or under an order. This amendment helps to make that clearer and we support it.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 11, lines 2 to 20 (inclusive)—

Delete subsection (1) and substitute:

(1) For the purposes of administering this act, an inspector may, in circumstances where there is no suspicion of an offence, exercise powers under this act to conduct a routine inspection of premises or a vehicle.

(1a) A routine inspection must be carried out during normal business hours and the inspector must—

(a) give the following persons (as required) a reasonable opportunity to accompany the inspector throughout the inspection:

(i) the occupier of the premises or the owner of the vehicle;

(ii) a nominee of the occupier of the premises or the owner of the vehicle;

(iii) the occupier of the premises or the owner of the vehicle and a nominee of the occupier or owner; and

(b) take reasonable steps to minimise any adverse effect of the inspection on the business or activities of the occupier of the premises or the owner of the vehicle.

(1b) The minister must ensure that a routine inspection under this section of premises or a vehicle being used for or in connection with intensive animal husbandry is carried out at least once in each year.

One of the controversial aspects about this bill is the issue of inspection. My understanding is that the RSPCA's membership has supported random inspection, but the powers that be in the RSPCA are not actively promoting that policy. To me, this amendment is, to some extent, a compromise. I know that the government and the opposition will not accept random inspections. So, this amendment is setting out some powers in relation to routine inspections (as we will be calling them), and it sets out effectively, the protections for the property owner, so that there are opportunities for the person who is operating that business to be able to accompany the inspector, and so on.

What is most important for me, however, in this amendment is subclause (1b). This is about intensive animal husbandry—for example, pig farming and chickens that are kept in barns and cages in conditions that many of us do not consider to be particularly humane. This measure requires that, where intensive animal husbandry is involved, once a year the minister will ensure that a routine inspection of those operations takes place. It is not a random inspection, because it will require notification; it will require those things that I have said—that the operator of the business will be able to accompany the inspector. It will all be done within this state of reasonableness, so that there is no surprise.

It is important to me that this inspection occur once a year. I know that the argument will be advanced that we cannot have random inspections because of the issue of biosecurity, which I think is something of a furphy, but I know that it will be used. However, we know that, where intensive animal husbandry is occurring, there are elements of cruelty. The problem that faces us is that it is not like someone mistreating their dog, whereby the next door neighbour sees it and can advise the RSPCA. When these enterprises are located in country areas, often the sheds are set back from the road, and there is no opportunity for a member of the public to see the cruelty and advise the RSPCA.

So, if you are going to rely on someone telling the RSPCA that there is a problem, you might find that an employee from time to time will let the RSPCA know, but mostly that will not happen, because their job depends on a raid not happening. This is effectively the next best thing. Because there is no-one who will be advising the RSPCA that things are not good in these factories, this will put a requirement within that concept of reasonableness that they will be inspected once a year.

It does not mean that cruelty within those practices will necessarily stop, but it means that, for at least one day a year, and probably in the period of time leading up to an inspection, they will have to clean up their act. If they clean it up for at least that short period of time, it is likely to continue for some extended period after the inspection. It is, effectively, the best we can offer, given that we know that the government and the opposition will not agree to random inspections.

The Hon. G.E. GAGO: One part of the amendment filed by the Hon. Sandra Kanck removes the requirement for an inspector to give reasonable notice of a routine inspection but retains the requirement to give the specified persons, as required, a reasonable opportunity to accompany the inspector throughout the inspection. The government does not support no notice of routine inspections.

My colleague's amendment also requires inspections to be carried out in normal business hours. Normal business hours may not be convenient for either the owner or the inspector, or even appropriate for the type of facility to be inspected. The bill, in requiring reasonable notice, gives the inspector and the owner the ability to arrange the inspection for a mutually convenient time and allows both to be accompanied by persons they believe can assist with the inspection.

The last part of the amendment requires the minister to ensure that routine inspection of premises or vehicles being used for or in connection with intensive animal husbandry are carried out at least once in each year. The bill does not specify the number of routine inspections for an individual facility in any given period, nor will there be a restriction on the number of inspections for an individual facility in any given time period. It is important that the timing of routine inspections be genuinely in the hands of the inspectorate, in consultation with the animal owner, with no undue requirements or limitations beyond giving reasonable notice.

Good practice will mean that it is unlikely that animal welfare inspectors will waste their valuable time continuously visiting well performing facilities, and it is important that the inspectorate be able to determine its priorities without undue restrictions through the bill. It may well be that some facilities require more frequent attention, and any requirement that spreads the inspectorate more thinly and evenly across all facilities may actually hamper this concentrated effort where it is most likely to be needed the most.

The MOU I have referred to earlier addresses the desirability of ensuring that all intensive husbandry establishments are regularly audited. Finally, I advise that the government has filed an amendment, which will be debated later, to address victimisation of complainants by persons who have been the subject of a complaint. It is hoped that this will give some reassurance to potential complainants that there are mechanisms to protect their interests and to report cases of ill treatment of animals. Consequently, the government does not support this amendment in its entirety.

The Hon. M. PARNELL: I take this opportunity to seek a little guidance from the chair because, as has been pointed out, four of us have amendments on more or less the same topic, with the threshold question being the amount of notice to be given and some subsidiary questions such as whether or not we should have a guaranteed inspection at least once a year.

I have a number of questions of the minister before we get through to the conclusion of the debate. With the consent of the committee, it might be appropriate for us all to hear some of the answers to those questions rather than taking all of these amendments in a piecemeal fashion, because they may well inform the response that we take to each other's amendments. May I ask specific questions that relate just to the Hon. Sandra Kanck's amendment?

The CHAIRMAN: If you have specific questions that you think are only on the Hon. Sandra Kanck's amendment then, yes, ask them.

The Hon. M. PARNELL: Thank you for your guidance, Mr Chairman. I will ask a question on something that is in the honourable member's amendment that is not in any one else's, and that is this issue of a requirement, if you like, that each intensive animal facility be inspected at least once per year. My question of the minister is: given the resources that are to be committed to the task of inspecting intensive animal facilities, on average, how many times per year does the minister expect the facilities to be visited?

The Hon. G.E. GAGO: Could I just clarify: is the question what we anticipate the average number of inspections per year would be, or what they currently are?

The Hon. M. PARNELL: I will clarify the question. I guess, if we are going to put it in parts, the answer would clearly depend on how many intensive animal facilities there are in South Australia and how many inspectors will be devoted to the task. My understanding is that the answer to that is one, but I would like the minister to clarify that. Bearing in mind that a certain proportion of time will be dealt with dealing with known problems, what proportion of that one person's time might be available to deal with routine inspections? Therefore, on the basis of current resources, or the resources that are anticipated with this new inspector being appointed, how often is it likely that a random inspection would occur?

The Hon. G.E. GAGO: I have been advised that there are approximately 500 intensive animal facilities in South Australia, with approximately 130 significant operations. I have been advised that the RSPCA has seven full-time dedicated inspectors appointed under the act, with an additional 12 staff appointed as inspectors in their roles as shelter managers or rescue officers.

Primary Industries and Resources SA has 37 staff appointed as inspectors under the act. The Department for Environment and Heritage has 12 staff appointed as inspectors under the act. The Department for Water, Land and Biodiversity Conservation has seven staff appointed as inspectors under the act. In addition, all police officers are inspectors under the act. The recent announcement of increased funding to the RSPCA will mean an additional inspector can be appointed in this financial year, and two in the next financial year. It is not the minister's job to require a number of inspections for each facility, but the RSPCA has indicated that several inspections per week will occur.

The Hon. M. PARNELL: I thank the minister for her answer. Of that large number of inspectors working for different agencies, including the seven currently with the RSPCA and the additional one that has been funded, will the minister clarify, on the basis of her understanding, how many of those will be dedicated to the task of inspecting intensive animal facilities?

The Hon. G.E. GAGO: I have been advised that the RSPCA has indicated that several will be trained to do this, in terms of that particular task, rather than simply one being dedicated to the job. However, in terms of the actual numbers, that will be a matter for the inspectorate to assess and monitor to ensure that it meets demand.

The Hon. M. PARNELL: Just to pursue that a little further, it seems that it is a bit like the police force, in that all of them might be able to undertake certain work and all of them might be trained in certain work, but has the RSPCA given any indication to the minister as to the resources that it expects to be applied to intensive animal facilities? I understand that many will be able to do it but, in the conduct of their work, they have a range of functions. I am interested to know the likely resources to be devoted to this task of inspecting intensive animal facilities.

The Hon. G.E. GAGO: The details of that are not known. The inspectorate would have the responsibility of managing its resources and delegating resources to the range of responsibilities that is has. That is not a job for the minister to perform, given that the minister should not be involved in operational matters. It is a matter for the organisation to determine and to monitor, in an ongoing way, to ensure that adequate resources are in place, demands are met and its responsibilities are fulfilled.

The Hon. M. PARNELL: I understand the minister not wanting to get overly involved in operational matters but, as the minister said before, given a decision to increase funding to the RSPCA to allow an additional inspector to be employed, is it the minister's understanding that that is because the RSPCA has not had sufficient resources to deal with, for example, intensive animal facilities and that an inspector is proposed to be devoted to that task?

The Hon. G.E. GAGO: A funding deed is in place with the RSPCA. The funding deed and a memorandum of understanding spell out those things which the government requires of its inspectors and of the RSPCA in its role as the employer. This arrangements has served the people and animals of South Australia very well for many years and will continue to do so, no doubt, for many years to come.

The responsibility for the administration and maintenance of the legislation lies with the minister, and the responsibility for its enforcement lies with the inspectorate that the minister appoints, and the police. If any person considers that either the police or the inspectorate are not performing adequately, there are mechanisms in place by which their allegations can be fairly and impartially investigated. The minister is not and should not be involved in the day-to-day operations and work programs of the inspectorate, whether those inspectors are employees of the RSPCA, PIRSA, DWLBC, or DEH.

The Hon. SANDRA KANCK: The minister has said that she will not accept my amendment and, if I have understood what she has said, her main objection is that I do not have a requirement for reasonable notice of the inspection. I ask the minister: if I amended my amendment to put in what is currently in the bill—1(a) give the occupier of the premises or the owner of the vehicle reasonable notice of the proposed inspection—would my amendment, in its entirety, then be acceptable to her?

The Hon. G.E. GAGO: The short answer is no. As I have outlined in my response to the member's amendment, there is a range of different issues—which I do not need to go through

again because they have been recorded—that I have put on record that are of concern with respect to this particular amendment.

The Hon. SANDRA KANCK: It is fairly clear from the figures that we have heard in response to the Hon. Mark Parnell's questions that it would be unlikely that each of the intensive animal husbandry operations in South Australia would receive an annual routine inspection. I think the minister needs to recognise that, without a requirement like this, she and her government are ensuring that actions of animal groups in raiding such establishments will continue, because they will have no other option if they cannot get into these places in any other way. For instance, if biosecurity is a problem, those animal activists have no other way but to take the risks with biosecurity in order to expose what is happening in some of these animal factories. I, for one, will probably join them, because there is no other way to do it.

The Hon. M. PARNELL: I want to make an observation which is specific to the Hon. Sandra Kanck's amendment and which flows from the answers that the minister has given. We are effectively being asked to make the job fit the resources that have been allocated, when clearly our role as legislators is to determine what the task is that needs doing and how often it needs doing, then it is up to government to apply the resources to the task that we have identified. So, I think we have it the wrong way round.

I am attracted to the Hon. Sandra Kanck's amendment of trying to make sure that these places are visited at least once, and that would be enough for the vast majority of them where there is no problem, no known history and no particular evidence that there is an issue, but I am nervous that our starting point is a limited number of inspectors. Let us craft the law around making sure that we do not overwork those people. The assumption inherent in that is that there is no scope for further inquiries and resources to be devoted to this task. I make that observation which I think will flavour the discussions we are yet to have on inspectors and their powers.

The Hon. C.V. SCHAEFER: The opposition does not support this amendment for many of the reasons that have been outlined by the minister. Almost certainly most of the places which are inspected on a routine basis originally will not necessarily need frequent inspections, and perhaps others will need frequent inspections, but to mandate that every intensive animal husbandry precinct must be inspected at least once a year whether or not we like it is going to tie up resources that could be better used inspecting those who may be recalcitrant. While I am on my feet, and given the complexity of the number of amendments, I will indicate that the Liberal Party will not be proceeding with my amendment No. 9; instead, we will be supporting the Hon. Dennis Hood's amendment.

The Hon. G.E. GAGO: I do not want to repeat what I have already said, but this bill already provides the potential for routine inspections of any and/or all sites, so that provision is already available. If an annual inspection was required, it is important to understand that it could have the adverse effect of luring the owner into a sense of thinking that they have had their annual inspection, therefore they do not have to worry about anything for another year when, in fact, it could have the opposite effect of what the honourable member was intending.

It is also important that the inspectorate can focus its resources on those areas that it deems to be a priority and that it be left to make those assessments according to its own information and understanding of what is going on in the industry. We have a responsibility to ensure that all resources are used wisely to fulfil the purposes of the act rather than to satisfy individual sense of order. So, because our resources are precious we have a responsibility that they be used as wisely as possible.

The Hon. SANDRA KANCK: How many inspections of intensive animal husbandry operations occur on an annual basis at the moment in South Australia?

The Hon. G.E. GAGO: There are no random inspections at the moment because no power currently exists to do this. Random inspections are conducted on a regular and frequent basis by inspectors employed by PIRSA, DEH, DWLBC and the RSPCA. A precise number cannot be provided because they are often conducted as part of normal business, for example, a National Parks and Wildlife warden may conduct a stock check to ensure compliance with the National Parks and Wildlife Act and at the same time check the conditions of the animals being held, using their powers as an inspector. Similarly, PIRSA livestock inspectors routinely attend abattoirs and saleyards and, if they see a breach or marginal incident, can take action using the powers conferred on them by their appointment under the PCA. It is not possible to provide a reliable figure on the number of times these types of inspections occur as it is every day.

The Hon. M. PARNELL: I will pursue the answer the minister has just given and ask: why not in terms of the inspections? Without anticipating the minister's answer (which I would never do), discussions that have been had in animal welfare circles over many years refer to things like the legal advice is that we cannot do it. I remind members that the 1985 act we are amending contains inspection powers. The minister stated, in her second reading explanation, which on the principles of statutory interpretation should be a powerful message as to the intention of the legislature:

> The powers of RSPCA inspectors will change. They will no longer be special constables but will have all the powers normally associated with inspectors appointed under legislation. They will have the power to enter any vehicle or premises where animals are kept for commercial purposes.

That seems a very straight forward explanation of the intention of the current legislation and it surprises me that we have not had these inspections up until now. I would be keen to hear the minister's explanation of why, under current legislation, these inspections have not been taking place.

The Hon. G.E. GAGO: I have been advised that routine inspections can only be conducted in accordance with either this act or another act, for example, the Livestock Act, the National Parks and Wildlife Act, or with reference to the current PCA Act. In the absence of suspicion of an offence inspections may be conducted only in the following circumstances: premises licensed under this act being used by the holder of a licence under this act for the purposes of an activity for which the holder is required to be licensed under this act; being used by the holder of an accreditation under the Meat Hygiene Act for or in connection with meat processing within the meaning of that act; or, at any reasonable time enter any premises or vehicle that is being used for holding or confining animals that have been herded or collected together for sale, transport or any other commercial purposes. That is the purpose and intention of the current bill before us: to enable us to improve our powers in respect of the way we are able to inspect these facilities.

The Hon. M. PARNELL: I appreciate that we are debating changes to the legislation, but it is important to get to the nub of this. The minister referred to animals being herded together for commercial purposes. Does that not include animals kept in intensive facilities, such as piggeries or battery hen farms?

The Hon. G.E. GAGO: The government has been advised that the term 'herded' does not apply to those activities in intensive facilities such as piggeries.

The Hon. M. PARNELL: Will the minister explain further the origin of that advice, and will she release it to the committee?

The Hon. G.E. GAGO: I will need to consider that request and provide that information at a later date.

The Hon. M. PARNELL: I want to go back to the issue in the Hon. Sandra Kanck's amendment that is specific, that is, the frequency of inspections, where the honourable member's amendment is 'at least once per year'. The minister referred earlier to a memorandum of understanding. Will the minister explain to us the status and current content of that memorandum of understanding in relation to this issue?

My reason for asking that question is that there was a reference in the minister's second reading explanation to such a memorandum. The issue as I understand it was that, rather than the Hon. Sandra Kanck's amendment, which is 'at least once a year', the government was committing to farmers that it be no more than once a year, which is entirely, I guess, the flip side of the coin. Do you go into these places at least once a year or, having been once, can you not go back again for more than a year? Will the minister clarify whether that is still the situation in the memorandum of understanding?

The Hon. G.E. GAGO: The MOU that is currently operating was signed in October 2007 by D & H, DWLBC, PIRSA and the RSPCA. To the best of my knowledge, it does not specify a particular number of times that a facility should or should not be visited.

The Hon. M. PARNELL: I thank the minister for her answer. Given what the minister said before about not wanting to be involved in operational matters (and if that was her primary reason for objecting to the Hon. Sandra Kanck's 'at least once per year' amendment), it is good to hear that that provision is no longer in the memorandum of understanding. Is there anything else in that memorandum that might be regarded as fettering the discretion of our inspectors in how they should do their job, when they should it and how frequently they should do it? It is one thing to have

removed a section that provides for inspections no more than once a year, but I want to know what else is in that memorandum that might impact on the discretion of our inspectors.

The Hon. G.E. GAGO: The MOU has a number of pages and quite a lot of detail, as the Hon. Mark Parnell knows. I understand that he has a copy of the document. It is a public document. I invite members to access it and read it if they have any concerns. I am happy to make a copy of it available. However, to the best of my knowledge, I do not believe that there are any provisions that fetter the discretion of inspectors in an unreasonable way.

The Hon. SANDRA KANCK: I have a document here that reads in the present tense—'a memorandum of understanding is being developed between the agencies involved with the animal industries and which the roles and responsibilities of those agencies are stipulated'. The document states:

> The memorandum of understanding further specifies that intensive industries establishment will not be the subject of a routine inspection more than once a year.

Will the minister categorically state that that did not make it into the memorandum of understanding; and, further, will the minister table a copy of that memorandum of understanding so that, when we resume debate later this afternoon, all members will be able to inspect that for themselves?

The Hon. G.E. GAGO: I have already answered that question on both fronts. I have made it clear that, to the best of my knowledge, any limits to the number of inspections does not exist in the current MOU. It is a public document, so it is already accessible to members of the public, including the Hon. Sandra Kanck. I have said that I am more than happy to make a copy available to members now. By all means, come over and have a read.

The Hon. C.V. SCHAEFER: I was unaware that it was a public document, although we have certainly heard a great deal about this MOU. My concern is whether, in fact, the South Australian Farmers Federation and the pork industry—any of the people who will be affected by this routine inspection, which is, as I keep saying, new to the act—were consulted in the construction of the MOU.

The Hon. G.E. GAGO: Given that the agreement is between inspecting bodies, all relevant stakeholders were consulted in terms of those that have responsibility as inspecting bodies. The broader industry was not consulted.

The Hon. C.V. SCHAEFER: At what stage, if any, in the construction of this bill were any primary industry representatives—and I do not mean the department of primary industries but, rather, actual practitioners—consulted? How extensively and over what period were they consulted? Was any agreement reached with them?

The Hon. G.E. GAGO: Indeed, there has been ongoing and extensive consultation throughout the various stages of the development of this bill. It started with the circulation of a discussion paper entitled 'The Review of Prevention to Animal Cruelty Act 1985: Discussion Paper', which is dated 14 April 2005. That was published and circulated and sent out to all the relevant stakeholders quite broadly throughout the industry. A draft bill was then released for public comment and was available on the website. So, that was broadly available, and comment was invited. There also have been meetings with SAFF and the pig industry and, of course, ongoing discussions and consultations with PIRSA.

The Hon. M. PARNELL: I invite the minister to clarify, for the benefit of the committee, the current status of the memorandum of understanding. I thank her for reminding me that I had a copy on my file, and I have asked for it to be brought up to me, but I want to check with the minister whether I have the current version. Mine is dated October 2007, and it is a photocopy bearing the signatures of Greg Leaman, Acting Chief Executive, Department of Environment and Heritage, signed on 25 October last year; Rob Freeman, Chief Executive, Department of Water, Land and Biodiversity Conservation, signed on 24 October; Mark Peters, Executive Director RSPCA SA Inc, signed on 25 October; and Geoff Knight, Chief Executive, Primary Industries and Resources SA, signed on 23 October 2007.

The appendix to that memorandum, under the heading 'desktop audits where quality assurance programs are in use' contains the following words: 'no individual facility will be the subject of a routine on-site inspection more than once annually'. Can I ask the minister to clarify that this is not the current version of the memorandum of understanding? Whilst it was signed, I have a photocopy that is stapled, and I do not have possession of the original document.

The Hon. G.E. GAGO: There obviously has been some confusion. The version of the MOU of 2007 to which the member referred is, in fact, the current version of the MOU. However, the appendix to which he referred is not a current appendix.

The Hon. M. PARNELL: I ask, for the benefit of all members, if the current version of the appendix could be tabled and circulated as soon as possible.

The Hon. G.E. GAGO: I have already indicated that I am happy to do that.

The Hon. SANDRA KANCK: When I asked the question about how many inspections of intensive livestock operations had been occurring—what were the figures for the present time—the minister was unable to give them. One of the reasons she gave was that the inspectors do not have that power. I want to draw to her attention to what section 29 of the current act provides. It states:

> Powers of inspectors
>
> (1) Subject to this section, an inspector may—
>
> (a) at any reasonable time, enter any premises that are—
>
> (i) licensed under this act; or
>
> (ii) being used by the holder of a licence under this act for the purposes of an activity for which the holder is required to be licensed under this act; or
>
> (iii) being used by the holder of an accreditation under the Primary Produce (Food Safety Schemes) Act 2004 for or in connection with meat processing within the meaning of that act;
>
> (b) at any reasonable time, enter any premises or vehicle that is being used for holding or confining animals that have been herded or collected together or sale, transport or any other commercial purposes;

Subsection (c) provides that, where the inspector believes that an offence has occurred, it gives them those extra powers to break and enter. For the minister to say that the inspectors do not have powers and therefore it is difficult to give those figures is an absolute nonsense, when this has been in the act for 30 years.

The Hon. G.E. GAGO: I have already answered in detail the circumstances and provisions around inspections. I have already recorded that into *Hansard* and listed the specific circumstances in which that can occur. So, that is already on the record.

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

> Page 11—
>
> Line 3—Delete 'an inspection' and substitute: a routine inspection.
>
> Lines 6 and 7—Delete paragraph (a) and substitute:
>
> (a) give the occupier of the premises or the owner of the vehicle notice of the proposed inspection as follows:
>
> (a) if the inspector reasonably suspects that there is in or on the premises or vehicle an animal in respect of which an animal welfare notice or animal welfare order is in force—the inspector must give the occupier or owner reasonable notice of the inspection;
>
> (b) in any other case—the inspector must give the occupier or owner at least 24 hours notice of the inspection; and

I think the Hon. Sandra Kanck used the word 'compromise' in introducing her amendment; this is an attempt to do the same. The opposition's position originally was to allow a 72-hour notice period, as I understand it, for inspections. The government's position was substantially less than that. This is an attempt to find a middle ground. The reason for that is that the truth is, and I think it has been acknowledged by all parties in this debate, that the overwhelming majority of sites and individuals that have the responsibility for caring for animals are compliant; in fact, it is in their interests to care for those animals. So, why create a situation where the onus almost appears to assume, in some cases, that people are doing the wrong thing, which is certainly not the case in the absolute overwhelming majority of cases?

This amendment will simply delete the word 'reasonable' in terms of notice for routine inspections only, and introduce the specific requirement of 24 hours. Some may argue that 'reasonable' is a reasonable term to use in this case, but this amendment will just specify exactly

what that time frame should be. Again, in doing so we should acknowledge that the overwhelming majority of sites and people do precisely the right thing.

I should add that I have discussed this at some length with representatives from the RSPCA and they were happy to agree to the 24-hour time frame as being a reasonable length of time. They said that in many cases it would in fact be a greater length of time than that, so 24 hours was quite a good time frame from their perspective. I have also discussed it with a number of people from the various affected industries and they also seem quite happy with this as a good compromise position, again reiterating to me that it was in their interests to look after their livestock or the animals for which they had responsibility.

I thank the opposition for its indication of support for the amendments. I think it is worth noting that this only deals with the issue of routine inspections. Of course, if there has been a history at a site of wrongdoing then, as far as I am concerned, virtually immediate access should be granted, and this amendment will not impede that in any way, shape or form. So, I commend the amendments to members.

The Hon. G.E. GAGO: I have previously set out the government's position in relation to providing reasonable notice for routine inspections. The government does not support that there is no absolute definition of what constitutes a reasonable time period. The definition of reasonable notice will vary with the circumstances of each individual inspection and the government will not legislate more precisely. Anything specified in the act could be inappropriate, depending on the specific circumstances.

It is essential that the public have confidence in the routine inspections, that the public can trust that these inspections truly will expose any cruelty or any breaches in the code. To, in every case, require notice of a set time period may well shake the confidence of the public in the robustness of the routine inspection process, and it is likely that allegations could be made, justly or unjustly, about clean-ups, which will cast an unfair pall over the animal husbandry industries.

Industry benefits from not only following the law but from clearly being seen to follow the law are, obviously, a clear benefit for the industry. Routine inspections can only work to the advantage of industries doing the right thing, particularly in such a sensitive area where community feeling can and has been known to run very high at times. To fetter them is to risk losing public confidence.

The bill also requires reasonable behaviour by inspectors. As inspectors are appointed by the minister, the Public Service Management Act applies, thus ensuring appropriate and lawful behaviour and penalties for inappropriate action. Inspectors would also be required to comply with the code of conduct for public sector employees. The government does not support the amendment, for those reasons outlined.

The Hon. M. PARNELL: We are now getting to the real nitty-gritty of this bill, and I would argue that this clause is the most critical in the whole bill. My view is that the RSPCA needs to have the ability to enter intensive facilities to inspect them at any time. Giving a notice period, such as the honourable member has moved—in fact, a notice period that is any more than a very short one—gives those very few rogue operators in the intensive animal industry a chance to hide evidence of their poor practices. My view is that giving any notice is a massive step back from the current act.

The Hon. Sandra Kanck has read into *Hansard* the provisions of the existing act. For the life of me, I cannot see how anyone—whether it is crown law or someone else—could possibly have reached the conclusion that thousands of animals gathered together in a piggery or a battery hen facility does not constitute animals herded together for a commercial purpose. I just cannot, for the life of me, understand that convenient interpretation. I say 'convenient' because it has let the government off the hook in having to properly fund our animal welfare organisations and, in particular, the RSPCA.

The minister has referred to allegations that are made against intensive animal facilities. I agree with the Hon. Caroline Schaefer that the vast majority of people engaged in the farming industry are doing so according to the law, they are doing so with compassion, and they will require very little attention from inspectors. However, it is more than just allegations. I remind honourable members of a matter that I raised at great length here in the Legislative Council, and that was the case of the Ludvigsen piggery. In that case, it took only 24 hours for the operators of that facility (after a whistleblower had reported it to the RSPCA) to hide the evidence and to bury the pigs—less than 24 hours for the evidence to be hidden.

Many of us will have seen television footage of the pigs being buried. Once the RSPCA was in possession of video evidence—that was obtained, as I understand it, by Animal Liberation—then inspectors did attend the piggery and they had to exhume the carcasses in order to have the evidence to then bring what turned out to be a successful prosecution. It does not take very long: 24 hours is plenty of time to clean up your act and to hide the evidence.

In my previous life as an environmental lawyer, I was asked to help some people in relation to a battery hen issue. Again, it was a situation, as described by the Hon. Sandra Kanck, where people attend these facilities without invitation, usually to take video evidence. My recollection in that case was that a covert operation during the day on that facility, before any inspectors had arrived, showed the overcrowded cages being rapidly emptied of birds, which were being stuffed into sacks and loaded onto trucks and taken away. Twenty-four hours is a long time in which to be able to hide what you are doing.

I do not want to be on the record here saying that I am talking about a majority of South Australia's farmers or a majority of intensive animal facilities. We are talking about a minority of rogue operators.

It is also important to look at this from the perspective of the whistleblowers. These facilities are not open to you and me; they are not available for public inspection, so we cannot just walk into them. There are very good reasons for that, including biosecurity and other reasons why the public should not have routine access to these places. That means that, when things go wrong, it is often left to the employees to alert authorities to the fact that things are wrong and that action needs to be taken.

The beauty of an inspection system that requires no notice is that all operators are on notice that, according to the law of South Australia, inspectors are allowed to turn up. They are allowed to turn up, knock on your door and say, 'We are here to do an inspection', and then a discussion commences on whether there are any particular reasons why that could be inappropriate at that time. That is the notion of reasonable notice—knocking on the door.

We are discussing the Hon. Dennis Hood's amendment, but it is the same as all the others. The options we have before us are: the inclusion of a 24 hour notice period; my amendment which advocates the removal of a notice period; and the government's position in the bill which is one of 'reasonable notice'. I will move my amendment later when it is appropriate, but I want to put on the record now that I appreciate the honourable member's seeking a compromise, which is something that those of us on the cross benches have become quite good at in the past couple of years.

It is an opportunity to look at where the different parties sit and seeing whether we can get a midpoint that might satisfy everyone because, overwhelmingly, I want this legislation to go through. This bill contains some good reforms. I would like to see it come into law. So, I do not criticise the honourable member for seeking a compromise, but I remind him and other members that, whilst 24 hours seems to be a fairly short period, a lot of damage can be done in that time. Given that we are talking about the pointy end when we must deal with rogue operators who require our attention—and although most of them will not, some of them do—even without any specific allegations just turning up puts every one on notice that we all need to obey the law all the time.

Of course, once suspicions have been aroused through evidence, other provisions kick in, as the Hon. Caroline Schaefer said before. But really we run the risk of missing the proper investigation of some of these facilities if we, as a matter of law, say that no inspector is even allowed to attend on a routine basis with other than 24 hours' notice.

The Hon. C.V. SCHAEFER: As I have indicated previously, the Liberal Party will be supporting this amendment. My concern has always been—and the lawyers continue to argue with me—that 'reasonable' is too subjective. My idea of 'reasonable' does not line up with Mr Parnell's idea of 'reasonable'. I have made it quite clear that our original amendment advocating 72 hours was because we had been lobbied specifically by the pig industry under this legislation. An operator may be accompanied by a vet. There is only one specialist pig vet in Australia who would have to fly from Victoria for such an inspection. However, as I have said, there is provision for the owner or operator to be accompanied, so I would assume that, after some negotiation, time to get that vet would be given. As Mr Parnell has rightly pointed out, we have to compromise in this place. At least 24 hours' notice is some notice, rather than the word 'reasonable' which I find to be quite unreasonable.

The Hon. Mark Parnell, in his last contribution, talked about the pointy end when referring to rogue traders, but the minister has an amendment yet to come which inserts that no notice is

required to be given of a routine inspection of premises or a vehicle in or on which an inspector reasonably suspects (and there is that word again) that there is an animal in respect of which an animal welfare notice or animal welfare order is in place.

So, there is an attempt to allow for random inspections of rogue traders. There is nothing in this section to do with routine inspections, and that excludes the option of what would take place now, that is, for a report by staff or whomever, of an act of cruelty to be put forward and for a random inspection process to be put in place.

I remind the committee that this section applies to routine inspections where there is no known cruelty or known harm going on. We are talking about our assumptions of animal husbandry. My assumption is that if people want to make money they will run their stock well. Those of us who know anything about stock know that they do not do well if they are ill treated, unhappy or ill. My assumption is that there are not many rogue traders out there, and those who are, first, will go broke—and the sooner the better as far as I am concerned.

The Hon. M. PARNELL: Just a couple of issues to clarify, and I thank the honourable member for reminding us of other amendments to come. The difficulty has been that the RSPCA historically has been reluctant to form a position based on anonymous tip-offs. On my understanding, the traditional view is that they needed harder evidence than that, which puts the whistleblower in an invidious position.

Another issue the Hon. Dennis Hood mentioned was in relation to the view of the RSPCA in relation to the amendments. One of things I found most curious as a member of the RSPCA and in dealing with it is that its position depends on who you talk to in the organisation. I was at the annual general meeting of the RSPCA and was there during a successful vote on the floor of the AGM by the rank and file membership, which said that unannounced random or routine inspections were what the organisation wanted, and that is a resolution of the organisation at its highest decision making level. I understand the council of the RSPCA—the executive—does not necessarily share that view entirely. The one thing they all have in common is that they want the best regime and a fair regime.

My objection to this amendment is not an objection to 24 hours per se, because that could well be a very appropriate amount of time for the RSPCA to give. For example, if an inspection was to be conducted at a remote country location, it would not, in the absence of any other suspicion, make much sense for a team of people to turn up, only to find that the owner was away and there is no one there to let them in or deal with them. My problem with the amendment is that we are enshrining it in law in all cases; in other words, we are effectively interfering with the day-to-day operations, as the minister said she was reluctant to do.

My view is that I am prepared to trust that the RSPCA inspectors will behave appropriately and fairly. They do not want to waste their time turning up to facilities when there is no one there—although the fact of there being no-one there may give rise to a suspicion of whether the animals are being properly looked after—but they will want to make their work as effective as possible and they will give some notice. It is best to leave the discretion up to the inspectors concerned.

The two ways of leaving it open to their discretion are either to include the word 'reasonable' as exists in the current bill or to require no notice period which, under legal interpretation, effectively means reasonable. We can either state it explicitly or we can imply it in the legislation.

The danger for me with 24 hours is that that becomes the standard in every case other than those cases where a suspicion is formed. I think we need to remember that the amount of times when the inspectors simply knock on the door and say, 'We're here', is likely to be quite small. I do not think there is any intention by the one intensive animal inspector to harass our farmers. We have had the figures before. They will not get out to them very often. There are a lot of facilities but there are not many inspectors. I say that we should leave some discretion to our inspectors as to how best to do their job, and let us not constrain them to always have to give notice because chances are there may be someone who we want to catch who does escape the net because of that regime.

The CHAIRMAN: The Hon. Mr Parnell, without moving it, is speaking to his amendment. Before we break for lunch, I will ask the Hon. Mr Parnell to move his amendment and the Hon. Mrs Schaefer to move her amendment.

The Hon. C.V. SCHAEFER: I have withdrawn it.

The CHAIRMAN: You have withdrawn only amendment No. 9, not your amendment No. 10. I will get both members to move their amendments and then we will adjourn.

The Hon. M. PARNELL: Thank you for your indulgence, Mr Chairman. It is difficult in the debate to separate the issues. I move:

Page 11, lines 6 and 7—

Clause 11, inserted section 31(1)(a)—Delete paragraph (a)

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

Page 11, line 18—

Clause 11, inserted section 31(1)(c)—Delete 'reasonable steps' and substitute:

Such steps as are necessary in the circumstances.

I do see this amendment as slightly different from all the other amendments which refer to the amount of notice that needs to be given.

Progress reported; committee to sit again.

[*Sitting suspended from* 13:02 to 14:17]

HUMAN CLONING

The Hon. A.L. EVANS: Presented a petition signed by 1,664 residents of South Australia, concerning research involving human embryos and human cloning. The petitioners pray that this honourable house will reject proposals to—

(a) reduce prohibitions on human cloning; and

(b) modify regulation or research involving human embryos;

as proposed by the Honourable Minister John Hill in the Statutes Amendment (Prohibition of Human Cloning for Reproduction and Regulation of Research Involving Human Embryos) Bill.

WATER ALLOCATIONS

The Hon. SANDRA KANCK: Presented a petition signed by 300 residents of South Australia, concerning the extraction of water from the River Murray. The petitioners pray that this honourable house will do all in its power to promote the buy-back of water allocations by state and federal governments in order to improve environmental flows and support sustainable agriculture.

ANSWERS TO QUESTIONS

The PRESIDENT: I direct that the written answers to questions on notice No. 526 of last session and the following questions on notice of this session be distributed and printed in *Hansard*: Nos 6, 117, 120 and 135.

FAMILIES AND COMMUNITIES MINISTER, TRAVEL

526 The Hon. R.I. LUCAS (13 March 2007) (First session).

1. How many frequent flyer points has the Minister for Families and Communities accumulated from any taxpayer funded travel?

2. Has the Minister used frequent flyer points accumulated from any taxpayer funded travel for travel by the Minister or any other person?

3. If so, will the minister provide details of any such travel undertaken by:

(a) the minister; and

(b) any other person?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs): The Minister for Families and Communities has provided the following information:

The Minister for Families and Communities has accumulated 376,340 frequent flyer points from both business and private sources as at 6 November 2007.

The Minister for Families and Communities has not used frequent flyer points accumulated from taxpayer funded travel for travel by the minister, or any other person.

CHILD PROTECTION

6 The Hon. D.G.E. HOOD (31 May 2007).

1. Is the Minister for Families and Communities familiar with the program 'Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism', an ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) project funded by UNICEF and supported by the World Tourism Organisation?

2. Will the Minister compel other ministers to implement the principles of the Code?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs): The Minister for Families and Communities has provided the following information:

1. The Minister for Families and Communities is familiar with the program, the 'Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism' ('the Code'). The Code aims to prevent sexual exploitation of children at tourism destinations.

2. Principles consistent with the code have been implemented under the amendments to Section 8C of the Children's Protection Act 1993. This requires government and non-government to establish policies and procedures that promote child safe environments. The Department for Families and Communities (DFC) is currently assisting agencies in this regard.

The policies and procedures must include:

- appropriate standards of conduct for adults in dealing with children; and
- appropriate standards of care for ensuring the safety of children; as defined by the chief executive, DFC.

Under Section 8A of the act, the chief executive, DFC is also obligated to develop codes of conduct and principles of good practice for working with children. Codes of conduct specify guidelines for appropriate and expected practices and behaviours when dealing with children in the organisation's care. Organisations are required to develop and implement codes of conduct that set out professional boundaries, ethical behaviour and unacceptable behaviour. The support and guidance provided by DFC to South Australian organisations will be in line with the principles set out in the 'Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism'.

CHILD PROTECTION

117 The Hon. D.G.E. HOOD (26 September 2007). Will the Minister for Families and Communities advise, by statistics or anecdotal evidence, of the extent to which new subsection (2a) of section 38 of the Children's Protection Act has improved the creation of permanent orders in preference to repeated temporary arrangements for children in foster care, as the one year anniversary of the proclamation approaches on 1 October 2007?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs): The Minister for Families and Communities has provided the following information:

Families SA statistics indicate that the new subsection (2a) of section 38 of the Children's Protection Act has improved the number and percent of children who have been placed on long-term orders.

This is evidenced in an increased number and percentage of children who are placed on a guardianship of the minister to 18 year order, with no prior 12 month orders. For example:

- In 2005-06, 24 per cent of all children placed on guardianship of the minister to 18 year orders had no prior orders.
- In 2006-07, that percentage had increased to 29 per cent.
- During the first quarter of this financial year, 36 per cent of all children placed on guardianship to 18 year orders have had no prior orders.

It is also evidenced in the decrease in the number of children placed on four or more 12 month orders. For example:

- In 2005-06, 4 per cent of children placed on guardianship of the minister to 18 years orders had four prior 12 month orders.
- In 2006-07, no children had four prior orders.
- During the first quarter of this financial year, one child placed on a guardianship of the minister to 18 years order has had four previous orders.

Anecdotal evidence would indicate that the Youth Court is carefully considering the circumstances of each child and family situation. There are occasions where Families SA assessment indicates that a guardianship of the minister to 18 years order is the most appropriate situation for a child, but the Youth Court considers that further effort should be made be return the child to the care of the family. The independent assessment of the Youth Court is critical to ensuring appropriate State intervention in the lives of children.

MINISTERIAL STAFF

120 The Hon. R.I. LUCAS (12 February 2008).

1. Can the minister advise the names of all officers working in the minister's office as at 1 December 2006?

2. What positions were vacant as at 1 December 2006?

3. For each position, was the person employed under ministerial contract, or appointed under the Public Sector Management Act?

4. What was the salary for each position and any other financial benefit included in the remuneration package?

5. (a) What was the total approved budget for the minister's office in 2006-07; and

(b) Can the minister detail any of the salaries paid by a department or agency rather than the Minister's office budget?

6. Can the minister detail any expenditure incurred since 2 December 2005 and up to 1 December 2006 on renovations to the minister's office and the purchase of any new items of furniture with a value greater than $500?

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

PARTS 1, 3 and 4.

Details of ministerial contract staff were printed in the *Government Gazette* dated 5 July 2007.

In addition, details of public servant staff located in the minister's office as at 1 December 2006 were as follows:

1. Position Title	3. Ministerial Contract/PSM Act	4. Salary & Other Benefits
Ministerial Liaison Officer	PSM Act	$73,189.00
Ministerial Liaison Officer	PSM Act	$73,189.00
Ministerial Liaison Officer	PSM Act	$57,233.00
Office Manager	PSM Act	$70,369.00
Parliamentary and Administration Officer	PSM Act	$59,422.00
Personal Assistant to the Chief of Staff	PSM Act	$53,690.00
Parliamentary Assistant	PSM Act	$44,903.00
Administrative Assistant	PSM Act	$41,732.00
Administrative Assistant	PSM Act	$41,732.00
Administrative Assistant	PSM Act	$40,145.00

PART 2.

There were no positions vacant as at 1 December 2006.

PART 5.

(a) $1,631,000

(b)

Ministerial Liaison Officer	Department of Primary Industries and Resources
Ministerial Liaison Officer	Department of Primary Industries and Resources
Ministerial Liaison Officer	Attorney-General's Department
Parliamentary and Administration Officer	Department of Primary Industries and Resources
Parliamentary Assistant	Department of Primary Industries and Resources

PART 6.

No expenditure incurred since 2 December 2005 and up to 1 December 2006 for renovations or purchase of any new items of furniture.

MINISTERIAL STAFF

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(b) Can the minister detail any of the salaries paid by a department or agency rather than the minister's office budget?

6. Can the minister detail any expenditure incurred since 2 December 2006 and up to 1 December 2007 on renovations to the minister's office and the purchase of any new items of furniture with a value greater than $500?

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

PARTS 1, 3 and 4

Details of ministerial contract staff are due to be printed in the *Government Gazette* in July 2008.

In addition, details of public servant staff located in the minister's office as at 1 December 2007 were as follows:

1. Position Title	3. Ministerial Contract/PSM Act	4. Salary & Other Benefits
Ministerial Liaison Officer	PSM Act	$82,227.00
Ministerial Liaison Officer	PSM Act	$77,958.00
Ministerial Liaison Officer	PSM Act	$61,503.00
Office Manager	PSM Act	$72,832.00
Parliamentary and Administration Officer	PSM Act	$63,930.00
Personal Assistant to the Chief of Staff	PSM Act	$55,569.00
Parliamentary Assistant	PSM Act	$46,475.00
Administrative Assistant	PSM Act	$43,193.00
Administrative Assistant	PSM Act	$43,193.00
Administrative Assistant	PSM Act	$39,906.00

PART 2.

There were no positions vacant as at 1 December 2007.

PART 5.

(a) $1,731,000

(b)	Ministerial Liaison Officer	Department of Primary Industries and Resources
	Ministerial Liaison Officer	Department of Primary Industries and Resources
	Ministerial Liaison Officer	Attorney-General's Department
	Parliamentary and Administration Officer	Department of Primary Industries and Resources
	Parliamentary Assistant	Department of Primary Industries and Resources

PART 6.

No expenditure incurred since 2 December 2006 and up to 1 December 2007 for renovations or purchase of any new items of furniture.

GLENSIDE HOSPITAL REDEVELOPMENT

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:19): I seek leave to make a ministerial statement.

Leave granted.

The Hon. G.E. GAGO: When we announced in September last year our plans to redevelop the Glenside site, we did so presenting a broad vision to the community; a concept that was open to the best ideas from interested parties. We have consulted widely since the release of the Glenside master plan and committed to ongoing dialogue with all interested parties. I am pleased to inform the council of what we have achieved. We have listened to the community, professionals, advocates and clinicians and we have struck a balance that we think better serves not only the wider community but also mental health consumers who will continue to seek vital treatment at the new hospital when it is completed.

The most significant changes, in accordance with the community's wishes, are that we have changed the planned location of the $100 million-plus hospital and the residential housing development. The hospital will now be built—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: —on the southern side of the site, with housing to be moved to the north. By moving the hospital to the southern side of the site, services will be more closely integrated into the community, in line with the broad issues of the Stepping Up report, by being located adjacent to retail and commercial precincts. Not only has the location of the hospital changed but also, thanks to the community, we will now see an improved building design which is important to the overall amenity of the area, as well as actual service provision. The move will also ensure that the transition of patients will be simpler and less disruptive.

I am pleased to inform the council that, in addition to the community areas we have already promised to create, this updated plan provides for almost one hectare of additional usable public open space to be made available than was originally envisaged in the original concept master plan, again, thanks to the input of the local community.

I have instructed the Department of Health to continue a dialogue, in particular, with the community reference group. The reference group will be considering design use of open space on the site, such as the wetlands and the community park. The group will also offer me advice on other details to be considered, such as traffic access and heritage considerations. The master plan will be finalised shortly, and the public can comment further on the redevelopment as part of a proposed statutory rezoning exercise later in the year. Further details can be found on the SA Health website, including contact phone number, mailing address and email contact.

QUESTION TIME

WORKCOVER CORPORATION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:22): I seek leave to make a brief explanation before asking the Leader of the Government a question about WorkCover.

Leave granted.

The Hon. D.W. RIDGWAY: The opposition has been reliably informed that yesterday's Labor caucus meeting was addressed by the Treasurer, in relation to the proposed changes to the WorkCover legislation and the very precarious position with respect to the unfunded liability. He

stated to the meeting—which was a very heated meeting—that, unless the unfunded liability was reined in, the state's AAA credit rating would be at serious risk. My question to the minister is: just how secure is the state's AAA credit rating?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:24): As long as this government is in office—and, after all, it was this government that was in office when we restored the AAA credit rating, unlike the previous government. During eight years of Liberal government, from 1994 to 2002, $2 billion of own source debt was added to our state debt. The only reason why the previous Liberal government was able to reduce debt was through massive asset sales, but the accumulated debt on its budgets was something like $2 billion over the course of that eight years. Since this government has been in office it has returned a surplus every year. It was during the period of this government that the AAA credit rating was restored. This government will take action to ensure that that AAA credit rating remains.

WORKCOVER CORPORATION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:25): So, the minister does not agree with the statement made by the Treasurer yesterday in his party room meeting?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:25): It is not a question of whether or not I agree with what the Treasurer said but what the Treasurer is doing. What he has done over the past six years is to restore the AAA credit rating. He has had balanced budgets—or surplus budgets, actually—every year in all six budgets, which is in direct contrast to what happened in the previous government. What this government intends to do in relation to WorkCover is to ensure that the WorkCover system not only provides the appropriate benefits for injured workers but also is a scheme which is sustainable and fully funded. I certainly agree with the Treasurer in his attempts to do that.

WORKCOVER CORPORATION

The Hon. T.J. STEPHENS (14:26): As Leader of the Government and a member of the executive, my supplementary question is: when did the minister work out that the unfunded liability was spiralling out of control? Does he not agree that if he had acted sooner the poor old workers would not have copped the brunt of it all?

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:26): I am not quite sure whether that was a supplementary question. It is not directly my responsibility, but what I can say is that the WorkCover scheme in this state, from the moment this government came to office, did have problems. I do recall that just prior to the 2002 election the board under the previous government had actually cut the WorkCover levy, and clearly that was unsustainable. So, if one wants to look at where the problems began, that is a pretty good position to start. There is a problem out there, and this government is seeking to fix it. I look forward to the contribution from members opposite. I look forward to members opposite supporting the legislation that the government brings forward in relation to addressing the funding liabilities of WorkCover.

WOMADELAIDE

The Hon. J.M.A. LENSINK (14:28): I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question on the subject of WOMADelaide.

Leave granted.

The Hon. J.M.A. LENSINK: WOMADelaide defines itself as smoke free, using the slogan, 'We're smoke free', and says in its guide that, 'If you smoke, respect the crowd around you by doing it away from the defined smoke-free areas.' On the website in the frequently asked questions, in response to, 'Can I smoke?', it says, 'We would prefer that you did not, for the comfort of other patrons.' I have been contacted by a constituent who has attended WOMADelaide in the past. She is an asthma sufferer and she says that the cigarette smoke tends to drift into the non-smoking areas, and she also suspects that there are people attending who smoke cannabis. My questions are:

1. Will there be any health officers to enforce smoking rules?

2. What is the definition of a smoke-free event, in terms of whether there is a designated area for smokers as opposed to designated areas for non-smoking?

3. What penalties apply to people who breach what seems to be a voluntary code of practice for smokers?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:29): The organisers of WOMADelaide have taken it upon themselves to enter into arrangements in relation to smoking at that particular event.

It is a matter for those organisations to determine what behaviours they believe are acceptable or non-acceptable for that event. Similarly, there has been some concern about smoking at Fringe events, particularly in relation to enclosed public spaces. Those sorts of complaints we are able to monitor and enforce because they breach the current laws. In relation to that I have been advised that the tobacco surveillance officers will be conducting random after-hours inspections during the Fringe Festival to ensure compliance with the smoking ban that is in place for enclosed public areas.

Those laws do not cover open spaces, so enforcement is at the discretion of individual organisations. I am not sure what arrangements have been put in place in terms of enforcement; that is up to the organisations. I am unaware as to whether they have requested inspectors to assist them in that or not. It is something that an individual organisation has to determine.

It is similar to smoking on a public beach. Some councils can make determinations in respect of their local area and put local rules in place. In terms of state government legislation, that is outside our provisions. However, our provisions do allow for those organisations to make local determinations in respect of particular places and events.

WOMADELAIDE

The Hon. SANDRA KANCK (14:32): I have a supplementary question: does the government support the 'We're smoke-free' initiative under which WOMAD is badging itself? If so, does the state government provide any money for the 'We're smoke-free' initiative?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:32): The state government supports, in principle, all initiatives that promote anti-smoking and smoke-free venues. We support that in principle. However, clearly I have gone on record to say that, in terms of government policy, we need to ensure that we move forward in developing regulations and legislation and that it is not simply a knee-jerk reaction to popular public opinion but based on clear science.

The science around the impact of outdoor smoking, in terms of passive health effects, is difficult to interpret and unclear. Therefore, the government is proceeding very cautiously and very thoroughly in terms of development of its own policy. In terms of other organisations, if their assessment is that there is strong support for smoke-free environments near their establishments, buildings, areas or events, it is certainly to be encouraged.

WOMADELAIDE

The Hon. J.M.A. LENSINK (14:33): I have a supplementary question: is the minister aware of any conditions that are applied to events if they print the slogan 'We're smoke-free' on their brochures?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:34): I will take that question on notice and bring back a response.

PAYROLL TAX

The Hon. S.G. WADE (14:34): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about payroll tax exemption for emergency services workers.

Leave granted.

The Hon. S.G. WADE: In January the government announced that it intends to exempt employers of emergency service volunteers from payroll tax for the hours that their employees spend attending emergency incidents. The CFS annual report shows that more than half the incidents attended by volunteers occur outside business hours. In addition, many volunteers are self-employed or work for small businesses which do not incur payroll tax. On the opposition's calculations, the initiative will provide a benefit to businesses of less than $6 a year per volunteer on average–that is, $6 a year per volunteer.

A regional employer contacted me recently and told me that he has a standing arrangement with his employees who are CFS volunteers that they will receive full pay for the first four days while they attend emergency incidents. From day five onwards, he and his employees discuss the arrangements. The support of this employer and other similar employers is vital for the effective operation of our emergency services. This employer told me that he had looked at the payroll tax proposal and he thought it was so insignificant that he would not even bother to claim it. My questions are:

1. What is the estimated cost to government of the payroll tax exemption for emergency service volunteers?

2. Does this change merely reflect harmonisation of the payroll tax between the states?

3. When will the government go beyond token gestures and provide significant administrative support to lighten the administrative load on volunteers?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:35): I thank the honourable member for his question.

The Hon. B.V. Finnigan: Does he think we should be doing it or not?

The Hon. CARMEL ZOLLO: Yes, it is a good question: does he think we should not be doing it? As to the figures quoted by the honourable member, clearly I have no way of checking them out, and he has been known to be fairly fanciful in quoting figures. I would like to think that the opposition welcomed the initiative. It will commence on 1 July and will bring us into line with other states. Several other states have already included it. It is a federal initiative. Because it is coming online on 1 July I do not have the kind of statistics that the honourable member is seeking from me today.

Of course, I am sure that employers will welcome this extra incentive. I recognise that our volunteers could not undertake the tremendous service they undertake to the community of South Australia without the support of their employers, and it is precisely for that reason that a number of initiatives are being rolled out in SAFECOM. A number of strategies have been put in place. One of the aspects will be to recognise the very important work and commitment of the employers to our volunteers and—

The Hon. S.G. Wade: Six dollars an hour.

The Hon. CARMEL ZOLLO: That is interesting—$6. Frankly, I do not accept that as I stand here; I have no way of checking it. Clearly, it would depend on the hours—

The Hon. R.P. Wortley interjecting:

The Hon. CARMEL ZOLLO: They probably do make it up as they go along—

The Hon. R.P. Wortley interjecting:

The Hon. CARMEL ZOLLO: Absolutely. I cannot confirm that at this time. The scheme will come online, as I said, on 1 July. The Treasurer is the lead minister in relation to payroll tax exemption but I thought it important to get it out there and to tell the community that we care, that employers also make a sacrifice and, as the honourable member said, many employers have ad hoc arrangements between their employees and themselves. Again, I commend them.

LEUKAEMIA FOUNDATION

The Hon. B.V. FINNIGAN (14:38): Will the Minister for Mineral Resources Development provide the council with details of how the South Australian mining industry is helping to tackle leukaemia and providing support services for those people and their families who have been diagnosed with blood cancers?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:38): I thank the honourable member for his question. It was with great honour that I was recently asked to become the Ambassador for the Leukaemia Foundation's World's Greatest Shave Mining Challenge to be held from 13 to 15 March. As much as it may disappoint members, I will not be shaving my head to raise funds, because I think nature is doing a good enough job; however, I have been encouraging—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: You can dye it as well. I have not decided yet about dyeing it.

An honourable member: I am already leading the charge.

The Hon. P. HOLLOWAY: That is right. I have been encouraging mining sites across the state to take part in this important fund-raising initiative. This is the first time that the Leukaemia Foundation has extended its fund-raising efforts through the Mine Challenge to South Australia after successful campaigns in Queensland and Western Australia. Again, that decision reflects the expansion of the mining sector in this state and the recognition that there are now sufficient resource developments and mine support service companies operating here to warrant a separate fund-raising campaign for South Australia.

The Leukaemia Foundation has a proud Australian history dating back more than 30 years, and it is marking its 10th year here in South Australia. The foundation provides personalised care and support to patients and families who are living with leukaemia, lymphoma, myeloma and related blood disorders. The foundation offers a range of practical assistance to South Australians across the state, including home away from home accommodation, transport to and from hospitals in Adelaide, education support programs and emotional support. All of those are at no cost to these families.

Each week 14 South Australians will be diagnosed with a form of blood cancer. More than 2,500 South Australians are currently living with a blood cancer and, for reasons that are not entirely clear, South Australia has the highest rates of leukaemia and myeloma in Australia. A major source of income for the Leukaemia Foundation's work is through events such as the annual World's Greatest Shave. Celebrating its tenth anniversary in 2008, the World's Greatest Shave is one of Australia's biggest fundraising events and raised $950,000 in South Australia in 2007. This year the foundation expects to pass the $1 million mark for the first time.

An important element of the World's Greatest Shave is the mining challenge. It was with great pleasure that I was able to launch the inaugural mining challenge campaign in South Australia at a boardroom lunch, supported by Price Waterhouse Coopers, a key supporter of the Leukaemia Foundation's fundraising efforts in this country. That lunch was attended by more than 30 representatives of the mining sector in this state, including BHP Billiton and the General Manager of the Leukaemia Foundation, Simon Matthias. I have been informed by the foundation that since the 6 February launch nine mining companies in South Australia have so far signed up to this year's mine challenge, including Australian Zircon, Sandvik Mining and Construction, ESS Worldwide, Southern Uranium, Oxiana Limited, Heathcote Resources, Penrice Mining Operations, PIRSA and Uranium One Australia.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Yes, the minerals division will be sponsoring this. As ambassador for the mine challenge I strongly support this opportunity for the mining and minerals sector to make a positive and real difference to South Australians living with a blood cancer.

As Minister for Mineral Resources Development, I am extremely pleased that the Leukaemia Foundation has decided to extend its fundraising efforts to the state's mining sector at an important time in the industry's history. During the past five years this state has experienced an impressive expansion in the minerals exploration industry. The Leukaemia Foundation's mine challenge is also an opportunity to highlight the human face of Australia's mineral resources industry. As such it is a timely remainder that, amid the ongoing mining boom that has brought so much prosperity to this country, there is still nothing more important than personal health and well-being.

I urge senior managers in mining and mining support services, their families and donors to support the mine challenge on as many levels as possible. By taking part in the World's Greatest Shave mine challenge companies will not only deliver benefits to the South Australian community through fundraising but also provide an opportunity for workforces, particularly in many of the new

projects opening up in this state, to work together and build up a positive internal culture. In the tenth year of the World's Greatest Shave I am sure that with the support of the local industry the inaugural mine challenge in South Australia will be an outstanding success.

CHILD ABUSE LINE

The Hon. D.G.E. HOOD (14:43): I seek leave to make a brief explanation before asking the Minister for Police a question about police involvement in child welfare cases.

Leave granted.

The Hon. D.G.E. HOOD: A constituent who works as a police officer in South Australia recently contacted my office very concerned about the situation that South Australia Police are regularly confronted with when they are called to homes and, in the opinion of the police, the removal of a child is required. The officer, who asked me not to give his name, gave an example of where SAPOL officers were tasked to a house and found a small child in absolute total neglect at the house, and apparently the child was seen by the officer eating dog faeces. The officers obviously did what they could to protect the child immediately, but under the current powers available to them they could not remove the child from the house and had to wait outside whilst they called the child abuse report line, leaving the child inside during that time.

I am told that it is SAPOL policy to only use its powers to remove a child pursuant to section 16 of the Children's Protection Act in extreme cases, such as a hostage or siege situation, otherwise they are required to defer to Families SA's judgment on the matter. However, in this situation SAPOL officers called the child abuse report line, using the police priority number, and could not get someone on that line for over an hour. The same officer explained that, when SAPOL officers routinely call the report line on their priority number, specifically for police, the minimum wait is at least 20 minutes, with the average waiting time about one hour and sometimes as bad as an hour and a half.

The officer says that, once they get through, the process takes only a couple of minutes, yet they have to wait so long to get through to that number. Of course, officers are then delayed from performing other police work while they are on hold, waiting for Families SA to answer the line. My questions are:

1. Does the minister agree that the current situation is untenable and requires immediate decisive action?

2. What will the minister do to ensure that such situations cannot ever recur?

3. Will the minister intervene to cut through this ridiculous red tape and allow police to intervene in order to protect children in such deplorable situations?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:45): As the honourable member suggests in his questions, the police do have powers to intervene. However, I would have thought it very prudent for our police officers to use the experts in this area, in the Department for Families and Communities, before decisions are made.

While the police must have emergency powers, and obviously there will be some cases that will be extreme where the police may exercise those powers, in other cases surely it is appropriate that the experts in that area should be involved in making those decisions. I am sure that most police officers would be the first to suggest that they are not experts in that area.

The questions asked by the honourable member are serious. Unfortunately, we are living in a time, not just in this state but also right around the country, when, for a number of social reasons, there appears to be an increase in child abuse. Clearly, it is putting strain on those government agencies that have to deal with this problem.

I will refer the questions to the Police Commissioner and to my colleague the Minister for Families and Communities. I will seek their view on whether or not there is some crisis in this area and more needs to be done, or whether this is an isolated case of delay being experienced. I will obtain that information. I will also ask the Commissioner and my colleague to consider whether it is appropriate for improvements to be made in the system.

STURT HIGHWAY

The Hon. J.S.L. DAWKINS (14:47): I seek leave to make a brief explanation before asking the Minister for Road Safety a question about road safety on the Sturt Highway.

Leave granted.

The Hon. J.S.L. DAWKINS: The Yamba fruit fly road block was established east of Renmark over 50 years ago for the purpose of inspecting fruit for the Mediterranean fruit fly from Queensland and northern New South Wales. It has now evolved into not only a fruit fly inspection point but also a place for drug and alcohol inspection, and RBT units are placed there at certain times of the year.

The Sturt Highway traffic has grown, and the weight of vehicles has increased, while the levels of grape and wine cartage have also significantly grown over the past five years. For some years, a weighbridge has been proposed to be erected adjacent to the Yamba road block. The need for a weighbridge in that locality is overdue, as the Merbein turnoff in Victoria is the last weighbridge between New South Wales and Adelaide on the southern side of the highway. So, a large gap is there to be filled.

The weighbridges at Spring Cart Gully and Blanchetown are on the opposite side of the highway; in other words, they deal with traffic heading out of the state. As a result, very few trucks heading into Adelaide are pulled over and inspected for weight provisions. There is significant concern in the Riverland, and other communities through which the Sturt Highway traverses, that the lack of an inspection weighbridge on the southern side of the highway is allowing a significant potential threat to local road safety to develop.

My understanding is that Primary Industries and Resources SA, SAPOL and the Department for Transport, Energy and Infrastructure have worked together over a period of several years to facilitate the construction of the weighbridge. However, the funding needed to build the weighbridge has not been forthcoming in several budget periods. My questions to the minister are:

1. What action will she take to ensure that community road safety concerns about overloading are addressed by the construction of the weighbridge at Yamba?

2. Will construction commence this financial year?

3. Will she indicate what sort of protection from the elements will be provided to the staff manning the weighbridge?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:50): I thank the honourable member for his question in relation to the construction of a weighbridge on the Sturt Highway. The responsibility for heavy vehicle maintenance and inspection is that of my colleague the Hon. Patrick Conlon in the other place; but, clearly, we do work very closely together in relation to transport and road safety issues. I will undertake to raise the issue with him and bring back a response for the honourable member.

ROAD SAFETY

The Hon. I.K. HUNTER (14:50): I seek leave to make a brief explanation before asking the Minister for Road Safety a question about car seatbelt laws.

Leave granted.

The Hon. I.K. HUNTER: I understand that in 2007 there were 17 fatalities and 78 people seriously injured in car accidents who were not wearing a seatbelt at the time of the crash. Will the Minister for Road Safety please explain to the council what the state government is doing to further encourage drivers and their passengers to buckle up?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:51): I thank the honourable member for his important question. I am certain that road safety initiatives have the support of all in this chamber. As I look across the chamber, I am reminded that the Hon. Caroline Schaefer met my husband before I did, and she is nodding. My husband was a passenger in a fatal crash more than 35 years ago. He was travelling in country South Australia with a mate to catch up with a relative (by marriage) of the Hon. Caroline Schaefer. The car rolled. My husband survived, essentially with just a few cuts, which needed stitching, and some bruising. He was wearing his seatbelt. The driver, his mate, was not. He was thrown from the vehicle and subsequently died of internal injuries. That was more than 35 years ago.

The statistics for not wearing seatbelts then were high and, sadly, they still are. It is, indeed, a sad reality that too many people are dying on our roads because they are not wearing

seatbelts. Since 2002, 149 people have died on South Australian roads because they were not buckled up. Their complacency and ignorance is no excuse for this high-risk behaviour. This month the state government and the Motor Accident Commission have been warning motorists and passengers of the dangers of not wearing a seatbelt through a new road safety campaign. The campaign's message directly relates to new laws that come into force from 1 March when drivers will be responsible for ensuring that all their adult passengers (that is, those aged 16 and over) are properly restrained, in the same way they are now responsible for passengers aged under 16.

Market research has identified that South Australians tend to believe they will injure only themselves if they choose not to wear a seatbelt. This is a myth. The campaign highlights the serious injury someone can cause to others if they are not wearing a seatbelt. It is a confronting awareness campaign but one with a strong educational message—seatbelts save lives, and all vehicle occupants need to use them.

Research shows that wearing a seatbelt doubles your chances of surviving a serious crash. A study by the Australian Road Research Board found seatbelts to be particularly effective at minimising injury in single-vehicle crashes. On average, between 2002 and 2006, the 30 to 39 year old age group had the highest proportion of non-seatbelt wearing fatalities, 32 per cent; 40 to 49 year olds, 29 per cent; and 20 to 24 year olds, 28 per cent. It is alarming that the proportion of fatalities in the nought to 15-year-olds not restrained was 26 per cent. Of the occupants killed or injured who were not wearing a seat belt most were males (72 per cent), with around 61 per cent of these deaths or injuries occurring on rural roads.

Seatbelts protect everyone in a car. Without a seat belt one is a potential human missile—a missile that could be responsible for killing or seriously injuring other occupants. I urge all road users to heed the message of this new campaign, which is being run right across the state this month. The campaign includes ads on television and radio, on bus shelters, billboards and banners, and online ads.

POLITICAL DONATIONS

The Hon. M. PARNELL (14:55): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about donations to political parties by property developers.

Leave granted.

The Hon. M. PARNELL: Last year, the government moved to extend the urban growth boundary for metropolitan Adelaide, including new land in Blakeview. Unlike most of the areas announced for inclusion in the expanded boundary, this land at Blakeview was set aside for immediate housing development. One of the most active property developers in the Blakeview area is the Pickard Group, which contains Land SA and Fairmont Homes. Fairmont Homes recently spent $20 million to purchase greenfield land in Blakeview for housing development, and it is set to expand further in this area.

According to the Australian Electoral Commission figures, on 1 and 4 June 2007 Land SA gave three separate donations totalling $35,000 to the South Australian branch of the ALP, to add to the $4,900 it had donated already in December 2006. Just one month later in July 2007 minister Holloway announced the urban growth boundary extension. Nationally, property developers are very generous donors to the ALP. In New South Wales well over $2 million was donated to the Labor Party in the past year from some of Australia's biggest property developers—and we read about that daily in the paper—while the Rudd campaign last year benefited by almost $500,000. Former prime minister Paul Keating said:

> I think we would be better off if developers were forbidden from donating election funds to municipal candidates and to political parties.

Major property developers, including Multiplex and Lend Lease, have made donations previously but have now stopped donating to political parties. According to *The Australian* newspaper, at the time of announcing its decision Lend Lease said that it had given to political parties to support the democratic process but that donations were increasingly perceived as buying influence. My questions are:

1. What assurances will the minister give the South Australian public that his decision to expand the urban growth boundary was not related to the fact that property developers, including Land SA, are major donors to the South Australian branch of the Labor Party?

2. Does he accept that a flurry of donations by a land developer just before the government makes a major decision to release new land for development must raise legitimate questions about the level of influence donations to political parties have over discretionary ministerial decisions?

3. Does he agree with former prime minister Paul Keating that property developers should not be able to donate to political parties?

4. What steps will he take to ensure that discretionary decisions made by Labor ministers are not influenced by the amount the ALP receives in political donations?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:58): I resent the implications in that question. The Hon. Mark Parnell has been out peddling this sleaze in the media, and he has a few willing conspiracy theorists in one newspaper who believe that somehow or other these government decisions are related to donations. If the honourable member has any evidence he should go outside and say it. But, of course, he will not find any evidence, because there isn't any. I have no idea who has given donations. Until the honourable member brought it up then in relation to the Blakeview land, I had no idea who owned the land and whether that company—or any other company for that matter—had given donations to the Labor Party.

We had this sort of thing with major projects. I did discover something in relation to Bradken. This government has been strongly criticised in relation to the Bradken decision. It was made a major project. As I understand it, Bradken gave a donation of $12,500 to the New South Wales Liberal Party which then donated a similar sum of $12,500—of course, it could have been completely unrelated—to the Liberal Party here. I understand that no donation was made to the Australian Labor Party.

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: I am sticking to the point all right. The whole collection of members opposite throw around muck. That is a classic example. The decision for me to declare that a major project was based on its merits—as, indeed, are all other decisions that I make as Minister for Urban Development and Planning. I do not know who makes donations to parties. The first I heard of the decision to which I just referred was when it had been in the press, when the Electoral Commission had released those figures—and I do not really care.

In relation to Blakeview, if the honourable member wants to talk about Blakeview, I challenge him to go and have a look at a map of the growth boundary for Adelaide and say where else he believes the boundary should be expanded. Where else does it make sense to grow the boundary of Adelaide? Blakeview is so glaringly obvious, since it is contiguous with current development. We know that the northern suburbs are where there is the most pressure, and Blakeview is an obvious area for Adelaide to grow. If one looks at those areas that have been put in the growth boundary, one will see that they were exhaustively examined by Planning SA over a period of 12 months, and they make sense.

I am happy to debate any of those decisions on their merits, but let us do it on their merits. Let us not have this suggestion that the honourable member is putting forward that it is related to some donation. If he has any evidence of that, let him come forward, but otherwise let us debate all these decisions on their merits. I am quite happy to defend the decision in relation to Blakeview—or, indeed, any of those other decisions in relation to the urban growth boundary. If the honourable member really believes that, I challenge him to tell us, if he had been minister for urban development and had not chosen Blakeview, where else he would have extended the urban growth boundary.

WANGARY FIRES

The Hon. R.D. LAWSON (15:02): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about the Wangary fires.

Leave granted.

The Hon. R.D. LAWSON: The inquest into the Wangary fires was conducted over many months by the Deputy Coroner, Mr Schapel, and he finally handed down his 600-page series of recommendations in December 2007. The CFS was represented by counsel throughout that inquest and made extensive submissions, as were a number of other government agencies and private organisations and individuals.

In the budget papers and in estimates over the past couple of years there have been some statements about expenditure by government agencies—principally, I believe, the Attorney-General's Department—as to the costs of representation at the inquest. However, so far as I am aware, the government has not yet revealed the total cost incurred by the government and government agencies in relation to the inquest. My questions to the minister are: what was the total amount incurred by the CFS in relation to its representation before the coronial inquest and what was the cost incurred by other government agencies (and I appreciate she will have to obtain advice on this) for the same purposes?

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): The honourable member is correct: I do not have all those figures with me in relation to other agencies. Yes, of course, the CFS was represented. Clearly, cabinet has always approved funding to ensure that the CFS was well represented at the inquest—and, in particular, our volunteer representation—because our legislation provides protection for our volunteers. It has been a long-held tradition that volunteers are indemnified from prosecution with respect to any civil or criminal charges when going about their duties honestly, and the government made a commitment to provide legal support to volunteers during the coronial inquest. As I said, representation was provided by the Crown. Every volunteer was offered the opportunity to apply to the Crown for representation during preparation for appearance and whilst appearing before the Coroner. Some volunteers had individual circumstances generally relating to property damage, which meant that other legal representation was more appropriate to best protect their interests.

The South Australia Volunteer Fire Brigades Association (VFBA), as it was then known, was closely involved in determining the most appropriate legal assistance for these individuals, and through the VFBA the government met the costs associated with providing legal assistance to these volunteers in preparation for and during their appearance at the inquest.

Every volunteer who applied to the Crown for representation has been represented, either directly by the Crown or, in the case of individual circumstances, through the association—all funded by the government. I will not discuss any individual legal circumstances of specific people; that would not be appropriate.

Additional funding was also approved to allow for elected officials from the association to be in Port Lincoln to lend moral support to the volunteers involved. I think I have already placed this on the public record, but the government has provided the CFS with additional funding of $517,000 in 2005-06 and $231,000 in 2006-07 to cover inquest costs, including costs associated with attending the inquest and legal representation.

Funding of $196,000 was also provided to the association to cover legal representation, attendance costs and costs incurred in supporting the volunteers involved in the inquest process. If there is any part that I have not covered in my response, particularly in relation to other agencies, I will ensure that I bring back a response to the honourable member.

SOLARIUMS

The Hon. R.P. WORTLEY (15:07): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about solariums.

Leave granted.

The Hon. R.P. WORTLEY: Recently the minister announced to the council plans to introduce tough new regulations for the solarium industry. Will the minister please inform the council of the progress of these tough new regulations?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:07): I thank the honourable member for his important question. I am pleased to inform the council that this government's crackdown on irresponsible solarium practices will come into force on Friday 14 March 2008, following today's gazettal of our tough new regulations.

Unfortunately, solarium tans are still perceived by many in the community as a safe and efficient way of achieving a look that is considered by some to be desirable. In fact, the industry in this state has grown rapidly in recent years, with many salons now operating in the state, as well as tanning beds in some fitness centres and beauty salons. While they are popular, unfortunately solarium tans can also be fatal, as brave Victorian campaigner Clare Oliver, who sadly lost her life late last year, tried to tell us all.

With exposure to ultraviolet radiation in a solarium reaching levels of, in some cases, up to five times that of direct sunlight, not only do operators need to be better educated about the potential danger of the machines they operate, but also the industry needs to be regulated and consumers made aware of the risks of their role in causing deadly skin cancers.

Given the potential danger consumers face from these sun beds, I was not satisfied that the industry had, until now, been governed by a voluntary code of conduct. I certainly was not satisfied with those arrangements, nor was I satisfied that those in the industry were adequately educated on the potential side effects of the machines they were operating. For this reason, I chose to act.

This government is making the previously voluntary code of conduct for the solarium industry mandatory and going even further. It is to be enforced by the Environment Protection Authority through tough penalties for those in the industry who continue to put consumers' health at risk. Those who choose to flout these new regulations face tough fines. These are proof that these laws are a deterrent to rogue operators and were adopted in the interests of saving lives.

In addition to these tough penalties, we are also introducing a set of practical guidelines to safeguard consumers and the industry, including the following: raising the minimum age for solarium clients from 15 to 18; displaying health warnings that solariums can cause skin cancer; prohibiting the use of solariums for people with fair skin; mandatory training for sun bed operators, including skin type assessments; and ensuring that clients are supervised by a trained operator.

In addition to this, people seeking a solarium tan need to give informed consent before submitting to the treatment, and there will be limitations on the frequency with which a customer can visit a solarium. These laws are about creating a better industry and, through TAFE, we are working with the solarium industry to develop appropriate training courses for operators which will be implemented along with a licensing system over the next 12 months. The new regulations will be reviewed after 12 months to ensure that they comply with a proposed national standard.

Melanoma kills at least 79 South Australians each year, with the likelihood of developing the disease increasing by a staggering 75 per cent in people under the age of 35 who use solariums. For this reason—saving lives—this government has chosen to act, and I welcome the new regulations and look forward to working closely with the solarium industry to bring about a safer tanning service.

TIER 3 CHILD PROTECTION

The Hon. A.L. EVANS (15:12): I seek leave to make a brief explanation before asking the Minister for Emergency Services, on behalf of the Minister for Families and Communities, a question about tier 3 child protection investigations.

Leave granted.

The Hon. A.L. EVANS: Tier 3 cases are regarded as minor cases of abuse or neglect, such as a child being sent to school hungry. The 2003 Layton report into child welfare recommended that these cases be investigated more thoroughly as they are often warning signs of more serious abuse. The report noted:

> The current minimal response (to tier 3 cases), that of a letter requesting the family to attend a meeting and stating that the allegations will not be investigated, has serious implications for the agency.

Unlike Queensland, South Australia does not have legislation requiring an investigation into these sorts of concerns. All that Families SA does is invite—not require—the parent to attend a parenting meeting, following a tier 3 abuse finding. There is no usual follow-up if the parent ignores the request.

Freedom of Information data obtained by Family First indicates that 5,178 complaints of child abuse or neglect were classified as tier 3 in 2006-07. The FOI document confirmed that tier 3 does not require an investigation—that is, there has been no change in procedures for dealing with tier 3 complaints since the Layton report. The 5,178 tier 3 complaints is the highest number ever, up from 4,225 in 2005-06 and 2,533 in 2000-01. My questions to the minister are:

1. In the four years since handing down the Layton report, what steps has the minister taken to treat tier 3 complaints more seriously, given that, as the report notes, they are often a warning sign of other abuse or neglect?

2. Given the ever-increasing number of notifications of abuse being made to Families SA, when will the government tie Families SA's funding to the number of complaints in a given year?

3. Alternatively, given their lack of resources, has Families SA decided at any level to transfer some responsibility for investigation of complaints to SAPOL?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:15): I thank the honourable member for his question in relation to tier 3 child protection case investigations. I will undertake to refer his questions to the Minister for Families and Communities in another place and ensure that he has a response.

EQUINE INFLUENZA

The Hon. T.J. STEPHENS (15:15): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Minister for Racing, a question regarding equine flu.

Leave granted.

The Hon. T.J. STEPHENS: I have had a series of meetings with representatives from the Port Lincoln Racing Club and the South Australian Jockey Club regarding the ongoing costs of segregating crowds and horses at race meetings, stemming from the outbreak of equine flu. The ongoing cost of maintaining segregation at race meetings is quite substantial. Given that we are about to head into the highly successful Port Lincoln Cup Carnival and the Adelaide Cup Carnival, what representations has the minister made on behalf of the industry to bring this situation to a conclusion?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:16): I thank the honourable member for his question. I guess it involves not only the Minister for Racing but also the Minister for Primary Industries, who is responsible for the veterinary services. They set the conditions in relation to equine flu. It is an important question as we are about to embark upon a very important part of the racing calendar, and I am sure all of us are looking forward to the Adelaide Cup Carnival. It is one of the highlights on the calendar, particularly since it has been changed to a time of the year when the weather is more likely to be favourable, and I am sure it will be a great meeting. It is a reasonable question, and I will refer it to the relevant minister for his immediate response.

CLELAND WILDLIFE PARK

The Hon. J.M. GAZZOLA (15:17): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about Cleland Wildlife Park.

Leave granted.

The Hon. J.M. GAZZOLA: Cleland Wildlife Park is a much loved tourist attraction as well as a valuable tool for young students and others to learn about and appreciate our natural wildlife, earning many accolades over the years. Will the minister inform the council of any further recognition gained by Cleland Wildlife Park recently?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:17): I thank the honourable member for his question. I am very pleased to inform the council that Cleland Wildlife Park has been nominated for the nation's most outstanding tourist attraction category at the Qantas Australian Tourism Awards to be held in Canberra on Friday night. If Cleland Wildlife Park takes home this award, it would be richly deserved.

Cleland Wildlife Park has continued to enhance its exhibits since it opened in April 1967, and it has become well known across Australia as an iconic nature-based tourism experience. The park offers a stunning bushland setting and provides locals and tourists alike with a unique opportunity to interact with many examples of Australia's most admired fauna, including kangaroos and koalas. Since April last year we have been celebrating the park's 40th anniversary, capped off by November's SA Tourism Awards win (hopefully) for most outstanding tourist attraction.

The award is a credit to the dedicated Department for Environment and Heritage staff who manage the site and, of course, the many volunteers who provide invaluable support. The Qantas

Australian Tourism Awards are the pinnacle for the tourism industry in Australia. The finalists are drawn from the state and territory tourism award winners across 25 categories. Located in the Adelaide Hills just 20 minutes from the city centre, the park attracts more than 100,000 visitors each year.

Cleland Wildlife Park offers responsible, educational and truly rewarding visitor experiences, featuring more than 130 different species of Australian wildlife in an open range environment. The Koalas Close-Ups exhibit is one of only two places in South Australia where visitors can enjoy handling koalas. Visitors can have their koala encounter photographed and take it home as a souvenir within a few minutes of the picture being taken. More information about Cleland Wildlife Park is available on its website and through inquiries to the park itself.

GRAIN HANDLING

The Hon. C.V. SCHAEFER (15:20): I seek leave to make a brief explanation before asking the minister representing the Minister for Agriculture, Food and Fisheries a question about grain handling.

Leave granted.

The Hon. C.V. SCHAEFER: Last week the Minister for Agriculture was quoted in the press as having said, after the ABB (the sole handlers and shippers of grain out of this state) had said that the cost of shipping to farmers will rise due to the ban on GM crops in this state, that the benefits will far outweigh any costed disadvantages. Can he outline to the council what those benefits will be, either in market or in any other terms?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:21): I will refer that question to the Minister for Agriculture, Food and Fisheries in another place and bring back a reply.

MOUNT GAMBIER

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:21): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the Greater Mount Gambier Master Plan.

Leave granted.

The Hon. D.W. RIDGWAY: I have been informed by a number of concerned members of the community in Mount Gambier that the minister today has gazetted the Greater Mount Gambier Master Plan, and of particular interest to people in the Mount Gambier community is the Northern Gateway of that master plan. The understanding of the stakeholders was that the land fronting the Northern Gateway was to be a 500 square metre bulky goods and retail area. In the plan the minister has gazetted, it appears that that is not the case and that 'deferred urban' is now the zone. Will the minister explain why there has been that change in the Greater Mount Gambier Master Plan?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:22): I am pleased to announce that the Greater Mount Gambier Master Plan has been finalised and formally adopted by the government. The Greater Mount Gambier Master Plan identifies where different land uses, such as housing, industry and retail activities, should and should not be located as Mount Gambier grows during the next 20 years. The master plan includes locations and staging for residential development and three distinct commercial and retail locations—the City Centre precinct, a Northern Gateway precinct and a Western Gateway precinct—and each of those precincts has been designated different roles and types of activity to be gradually developed.

The honourable member asked why it has changed. We began this process of developing a master plan for Mount Gambier because, as I am sure the honourable member knows, two councils are involved down there. The City of Mount Gambier is almost an enclave inside the District Council of Grant. The airport and much of the outer fringes of Mount Gambier, with the exception of the northern entrance, are in the District Council of Grant. So we have had problems where councils essentially have been working at cross purposes (the best way to describe it) in relation to their planning and decisions, and that is not in the best interests of the town as a whole.

When a number of concerns were raised with me about the lack of collaboration between the two councils, I brought those councils together to agree on a joint master plan for the entire area. That is the reasoning behind the development of the master plan and I am pleased to say

that the process has been finalised, and today the master plan was gazetted. It ignores those council boundaries and treats the whole of Mount Gambier as a single entity for strategic land planning.

I should mention that the process of developing the master plan has involved the councils and the government in analysing population growth and land availability. In particular, the master plan reflects the wishes of the councils. Given that the two councils had competing views, there was a lot of discussion involved but, in the end, I believe that compromises were made on behalf of both those entities to reflect their wishes to protect prime agricultural land and important environmental assets, such as the Blue Lake, to sustain the viability of existing and future economic activities, to prevent conflict between neighbouring land uses, to provide an unambiguous plan for growth, and to optimise the vibrancy and appeal of Mount Gambier as a regional city.

To answer one of the interjections made by the honourable member, the decision made today gives statutory effect under the Development Act, and it will now guide the councils in reviewing and updating their individual development plans. Development plans must be consistent with the planning strategy. So, having gazetted that today, any individual development plans developed by the two councils must be consistent with that planning strategy.

As an interim step in this process, I have introduced a ministerial development plan amendment with interim effect to rezone land in the Northern Gateway precinct to make sure that there is no conflict with the master plan. I understand that there has been an application for development in that region. The gazetting of the Greater Mount Gambier Master Plan and the interim rezoning for the Northern Gateway will not affect applications that were lodged prior to that coming into effect. They will be assessed under the previous zoning.

The reason we have created this new deferred urban Northern Gateway zone is to ensure that development contrary to the intent of the new Greater Mount Gambier Master Plan does not occur. As I said, we have already had applications under the old zoning that would be contrary to the intention of the master plan. So, this interim zoning will not affect those applications that have already been lodged, but it will mean that, with interim operation, any new applications must comply with the strategy that has been jointly agreed by the two councils after, I should add, some significant amount of effort.

It is intended that the interim zoning in the Northern Gateway be in place until a detailed design framework is completed for that gateway precinct and its findings can be implemented by a further subsequent rezoning. The affected land currently accommodates a number of uses, including a caravan park, a seed-growing farm, primary production and homes, and any uses that are lawfully established will obviously be permitted to continue under that interim zoning.

While existing uses will continue, the rezoning indicates that it is desirable that they are not expanded and that no activities are established or fragmented allotments created that might prejudice the desired orderly development of the land in the future in line with the master plan. A restricted range of rural uses, such as farming, cropping and grazing, are envisaged for the zone until it is rezoned for future urban expansion.

So, that is the reason that the government has adopted this master plan strategy: it is necessary for cities such as Mount Gambier, where you have two competing councils. Incidentally, it would also probably be desirable for places such as Port Lincoln, Gawler, Victor Harbor and a number of other areas, where adjoining councils may have competing interests and may wish to promote development in the interests of the individual council but not necessarily in the interests of the region as a whole.

I hope that in this state we gradually move towards a more regional approach to planning. That is the philosophy behind the specific case of the interim rezoning for the Northern Gateway: to ensure that effect is given to the intention of this master plan strategy developed by the two councils.

PREVENTION OF CRUELTY TO ANIMALS (ANIMAL WELFARE) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 1901.)

Clause 11.

The Hon. G.E. GAGO: I table the MOU between the Department for Environment and Heritage, DWLBC, PIRSA and the RSPCA, as well as the current appendix.

The Hon. M. PARNELL: Mr Acting Chairman, I have a few more things to say, as well as a few remaining questions of the minister which relate to the memorandum of understanding. Before I do that, however, an honourable member at lunchtime queried my championing of the RSPCA in this matter. The honourable member said, 'I thought you didn't like the RSPCA.' I said, 'No, I am a proud member of that organisation; a critical friend.' I have raised in this place the appropriateness of having a private charity effectively doing police work. There is a role for that organisation, but I will continue to advocate for the best possible system that does recognise the important public role that our animal inspectors play.

The minister said before lunch that she is keen not to interfere with operational matters within the RSPCA. We have this memorandum of understanding. Will the minister explain how she relates to the RSPCA? How does that organisation report to her and, in particular, is her relationship with that private organisation through its staff, elected governing council or some other means?

The Hon. G.E. GAGO: The honourable member put some other questions on the record, so I will seek to provide a response to all those concerns. The RSPCA and the government have a contractual arrangement such that the RSPCA will be the primary enforcement agency of the act. It should be noted, however, that the rights and responsibilities are conferred upon inspectors, not the organisation as an entity. The inspectors are appointed by the minister and are subject to scrutiny by the Ombudsman; and they must abide by the Public Sector Management Act and the code of conduct.

The inspectorate is not involved in policy development such as the RSPCA's opposition to live exports, rodeos and caged hens. That is not the role of the inspectors. Their job—which, I might add, they do well—is to ensure that the standards enshrined in law are met. The funding deed and the MOU spell out those things the government requires of the inspectors and the RSPCA in its role as their employer. This arrangement has served us very well for many years. I have said previously in this council—and I say again—that the minister is not and should not be involved in the day-to-day operations and work programs of the inspectorate, whether those inspectors are employees of the RSPCA, DWLBC, DEH or PIRSA.

The funding deed requires that the investigations protocol developed by the RSPCA in consultation with the Crown Solicitor's office will be publicly available through the RSPCA's website. As ministerial appointments, inspectors are subject to the normal expectations and standards of public officers; and the Ombudsman has the authority to investigate allegations concerning the behaviour of any PCA act inspector. There is considerable public scrutiny—which is appropriate, considering the extent of the powers that this act confers on inspectors.

The internal politics of the RSPCA or any other non-government organisation are not the concern of the minister or this parliament. There is a contractual arrangement that the inspectors employed by the RSPCA will provide the government with a service, for which the government will pay a fee, as long as the terms of that agreement and the requirements of the Associations Incorporation Act are met. The government has no interest in the political structure of the society or the dynamics of its membership and the governing council, which at times—

An honourable member interjecting:

The Hon. G.E. GAGO: Very dynamic, indeed. The responsibility for the administration and maintenance of the legislation lies with the minister, as I have said, and the responsibility for enforcement lies with the inspectorate.

The RSPCA provides an annual report and monthly minutes of the council. We have a person who observes at the council meeting, and we also have frequent meetings between the minister's office and the RSPCA's officers. The funding deed sets out, as part of its reporting obligations under the deed, that the RSPCA must: maintain a record of all reports it receives alleging a breach of the act, all actions taken in response to those allegations and any complaints that the RSPCA receives regarding its actions or inaction and its response to those complaints; provide monthly reports to the minister which enable the minister to make an informed assessment of the ongoing financial position of the RSPCA and monitor the RSPCA's compliance with the terms of that deed; and invite the manager of the department's Animal Welfare Unit to attend RSPCA meetings as an observer.

The Hon. M. PARNELL: I thank the minister for those answers, and I also thank her for providing us with the correct copy of the memorandum of understanding and the correct appendix to that memorandum, which is entitled 'Routine inspection of commercial livestock'. This appendix is certainly different from the one that we saw before. However, it still gives rise to a couple of questions that relate to the inspection of large intensive industries. I will read a couple of sentences from the appendix. In point 7, under the heading 'Desktop audits where quality assurance programs are in use', it states:

> It is recognised that large intensive industries' operators are audited as part of their quality assurance programs. In most cases, an on-site inspection would be an unnecessary expenditure of resources. However, there is a public expectation that such inspections will be undertaken. To this end, desktop audits of those establishments which operate under quality assurance programs will be the norm, with on-site inspections undertaken occasionally.

That is certainly different from the previous words that we saw. The question that arises is: how many of these intensive animal industries are, in fact, audited as part of their quality assurance programs? We have been told that there are roughly 500 intensive animal facilities, of which 130 could be regarded as large. First, how many of them have quality assurance programs and, secondly, how many are audited under those programs?

The Hon. G.E. GAGO: The MOU is not between the minister and the RSPCA: it is an agreement between bodies that employ inspectors on the way in which those inspections will take place. The minister is not a signatory and does not represent a requirement by the minister or government. The QA process is a separate process to the inspectorate process; however, once routine inspections are in place, the inspectorate system will be able to actually link in with the QA system.

The Hon. M. PARNELL: I thank the minister for the answer. I take it that she does not have available to her now precisely the number of intensive animal facilities that have quality assurance programs?

The Hon. G.E. GAGO: Yes; those figures are not available to me at present.

The Hon. M. PARNELL: If it is possible to give those figures before we conclude the debate that would be appreciated. Given the clear connection between inspectorate functions and quality assurance programs, I would be interested to know whether the piggery to which I referred earlier, the Ludvigsen piggery, was in fact such a facility that had a quality assurance program, because it has been described to me as 'award winning'. Is that the type of facility that the memorandum of understanding envisages might need to be inspected only occasionally?

The Hon. G.E. Gago interjecting:

The Hon. M. PARNELL: That is all right; I understand. If the minister is able to come up with some statistics while we are debating about how many of these intensive animal facilities do have formal quality assurance programs, that would answer the first question. The second question was whether she could ascertain whether the Ludvigsen piggery, to which I referred earlier, is an example of a piggery that has a quality assurance program, given that it has been described to me as 'award winning'.

The Hon. G.E. GAGO: As I have said, the QA system is separate to that of the inspectorate, so I do not have that information available to me. I can try to ascertain those figures, but it is a separate part of the inspectorate, so that sort of information is not readily available. In the spirit of cooperation, if we are able to get that information I am more than happy to make it available.

The Hon. SANDRA KANCK: This memorandum of understanding is important, because it refers specifically to the inspectorial role that the RSPCA has to play, and as part of that it states:

> The RSPCA will undertake routine inspections of intensive animal industries only in accordance with the appendix to this MOU.

The question that arises for me is: how does one get to know when the appendix has changed? Clearly, there was an appendix at the time of the signing of this memorandum in October 2007. It has changed. When did it change? That is the question that I would really like answered. Who gets to know when it is changed, and who is consulted about those changes?

The Hon. G.E. GAGO: The appendix was not changed per se. The advice I have is that the appendix that the Hon. Mark Parnell had was incorrectly provided to him (a mistake that was rectified straightaway) and it was, in fact, a copy of a draft of the appendix that had been out for consultation. It was part of the consultative process and, as part of that process, it was amended

accordingly. The advice I have is that the appendix was not changed; it is the original part of that particular MOU dated October 2007.

The Hon. SANDRA KANCK: By the way, I should point out that, prior to lunch, the minister said that this was a public document. One of my staff spent 20 minutes on the DEH website trying to find it, so I can assure her that it is not very public.

The Hon. G.E. Gago: It is on the website, though.

The Hon. SANDRA KANCK: I would be very interested to find out where, if the minister—

The Hon. G.E. GAGO: I beg your pardon; it is not on the website. I need to ensure that the record is straight on that. It is not on the website; it is a document which is publicly available. I beg your pardon.

The Hon. SANDRA KANCK: Looking at this appendix, at the present time it has the wording of clause 31 of this bill in it. It assumes, therefore, that clause 31 will be passed intact. If this chamber amends clause 31 and the bill then becomes an act, this appendix will need to be altered. I would like some indication from the minister as to what process is used to alter the appendix and who is consulted, or is it simply something that the minister puts together and then advises the signatories representing the four bodies?

The Hon. G.E. GAGO: The MOU is an agreement between inspectors. The relevant inspectors are consulted in respect of that. If, and when, the appendix is amended, those appropriate bodies, who are signatories to the MOU, will be consulted before it is then amended.

The Hon. SANDRA KANCK: When the appendix does change, will there have to be any initialling of this? Will there be a new MOU? As it says here on page 4 of the MOU, those inspections will be undertaken only in accordance with the appendix to this MOU. So, would it be a different MOU?

The Hon. G.E. GAGO: The advice I have been given is that the MOU will need to be revised accordingly and a new MOU re-signed.

The Hon. SANDRA KANCK: I make a request to the minister: when this occurs, could the appendix be dated and initialled so that people who obtain copies know that they have the correct one?

The Hon. G.E. GAGO: Yes.

The Hon. C.V. SCHAEFER: Without wishing to be critical, since question time we have been discussing almost every line of what appears to me to be an internal procedural document that would not normally be put on the website or anywhere else, and I must say that unlike my colleagues, having seen it, I am somewhat relieved because there appear to be some common sense procedures in place. With due respect to everyone, we have a whole series of quite involved amendments to wade our way through and I would not mind returning to the debate on them.

The CHAIRMAN: The Hon. Mrs Schaefer has a very good point. This internal document has been discussed and it is not that closely related to the bill in that sense. We have a number of amendments and we have had a fairly good discussion on them.

The Hon. M. PARNELL: It is a wonderful coincidence that the patience of the Hon. Caroline Schaefer has worn out at the same time that I have finished my questions on that document. However, I maintain that we are talking about a subsidiary document that would inform the inspectorate function. It is vital for us to understand how inspections will occur. We have been invited to proceed, and far be it for me to hold up the council in its important work, but I was invited to address my amendment briefly. I will be quite brief because most of the things that I want to say about why I believe we should have unannounced random inspections I have said already.

My amendment proposes to remove paragraph (a) of the proposed new section 31. That paragraph provides that the inspector must give the occupier of the premises or the owner of the vehicle reasonable notice of the proposed inspection. I say that removing those words leaves the discretion in the hands of the inspector as to the appropriate amount of notice to give and, in support of that claim, I refer very briefly to something I touched on in my second reading speech, which is the role of inspectors and the role of notice as commented upon by the Coroner of South Australia in the inquiry into the death of Nikki Robinson, the little girl who died in the Garibaldi meat poisoning. To read one sentence from that finding, the Coroner said:

Mr S—

as I will call him—

confirmed that his officers always gave notice of a routine inspection, and he did not seem surprised that this notice would prompt a clean-up at the factory.

We are talking in that case about a factory making food for human consumption, but the principle is exactly the same. If you give notice, you cannot be surprised that action will be taken to make the facility come up to the standard the inspector will want to see. The best course of action is for us to remove those words. I foreshadowed earlier, having discussed the issue with colleagues over the past days, weeks and months as to the possibility that I might not have the support of the council for that position, that in the hierarchy of amendments facing us I see as a preferable outcome going back to the original words of giving 'reasonable notice'. I see that as a preferable outcome to other amendments, such as the requirement for 24 hours, which may be the reasonable notice given in some cases, but I would not like to constrain our inspectors by prescribing that in law.

This is a matter on which I distinguish between the principle and the pragmatics in politics. The principle is that this paragraph should be removed. I say this as a member of the RSPCA, having attended its last annual general meeting and having participated in the democratic vote on the floor of the AGM, where the membership said that it wanted the RSPCA to support unannounced random inspections. I am giving faith to that democratic call and will be pursuing my amendment and urge members to consider it.

The Hon. G.E. GAGO: This amendment removes the requirement for an inspector to give reasonable notice of a routine inspection. I am aware that some animal welfare and rights groups, including the RSPCA, seek inspection with no notice. The animal industries consider this to be unfair and potentially dangerous, due to safety and biosecurity concerns. The provision as it stands is a compromise between these two perspectives. The government supports no absolute definition of what constitutes a reasonable time period. The definition of reasonable notice will vary with the circumstances of each individual inspection, and the government would prefer not to legislate more precisely. There do not seem to be problems interpreting grounds for 'unreasonable' as it is in lots of other legislation and is administered and enforced well through our legislation.

It was determined that anything specified in the act would be inappropriate. Depending on the specific circumstances, and in general, 'reasonable' would mean a time that is mutually convenient to the inspector and the owner or manager of the animals and when the necessary personnel are available, and that would need to be reasonable, as opposed to stalling. It is important to note that if there is any suspicion of an offence or in urgent situations an inspector can enter without a warrant and without notice. These situations are not the purpose of routine inspections, so consequently the government does not support this amendment.

The Hon. SANDRA KANCK: Like the Hon. Mark Parnell, I too am a member of the RSPCA and I will support his amendment as it upholds the view of the members who attended the AGM of the RSPCA.

I should mention also that the Hon. Dennis Hood's amendment is not acceptable, because it is effectively providing 24 hours or more notice, and that is way too much.

The CHAIRMAN: The question is: that all words in subclause (1) down to but excluding paragraph (a), stand as printed. Therefore, if you support the Hon. Sandra Kanck's amendment, you will vote no.

The committee divided on the question:

AYES (16)

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

NOES (3)

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

Majority of 13 for the ayes.

Question thus carried.

The CHAIRMAN: The next amendment is in the name of the Hon. Mr Parnell. The question is: that the words in paragraph (a) down to but excluding the word 'reasonable' in line 7 stand as printed.

The committee divided on the question:

AYES (16)

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

NOES (3)

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

Majority of 13 for the ayes.

Question thus carried.

The committee divided on the Hon. D. Hood's amendment:

AYES (9)

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

NOES (10)

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

PAIRS (2)

Lucas, R.I.	Zollo, C.

Majority of 1 for the noes.

Amendment thus negatived.

The Hon. C.V. SCHAEFER: I have moved my amendment. It deals with my concern that we do not have a definition of 'reasonable'. I am proposing that 'reasonable steps' be substituted with 'such steps as are necessary in the circumstances'. Clearly, with various species of animals the necessary steps will alter from species to species.

The Hon. G.E. GAGO: The government believes this is a reasonable amendment and we will be supporting it.

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

The Hon. D.G.E. HOOD: That is unanimous.

The Hon. C.V. Schaefer's amendment carried.

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

Page 11, after line 20—Insert:

(1a) No notice is required to be given of a routine inspection of premises or a vehicle in or on which an inspector reasonably suspects there is an animal in respect of which an animal welfare notice or animal welfare order is in force.

This amendment removes the requirement for an inspector to give reasonable notice if intending to check on compliance with an animal welfare notice or animal welfare order. The no notice

requirement for monitoring animal welfare notices was considered necessary in most cases. Notifying the person would invalidate the reason for visiting that person and hinder the inspector in determining whether or not the requirements of the notice are being met.

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

Amendment carried.

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

Page 11, after line 22—

After subsection (2) insert:

(3) This section does not entitle inspectors to conduct a routine inspection of premises or a vehicle that is being used for or in connection with intensive animal husbandry if the minister is satisfied that the occupier of the premises or the owner of the vehicle complies with a prescribed code of practice in respect of the particular intensive animal husbandry carried on by the occupier or owner.

This amendment is worded in such a way that I feel there is a need to explain what I aim to do. I must say, having now seen the MOU and the attachment to it, that it is fairly well covered within that. This amendment seeks to give an exemption from regular routine inspections to those animal precincts that are already covered by a nationally registered QA system. The reason for this is that those (and they are relatively few in number) that have gone to the time and expense to be registered on a national scheme, which applies a code of practice and mandatory veterinary inspections, should not be required to have other inspections.

The attachment that we have allows for them, in most cases, to have desktop audits, which would alleviate much of the doubling up and additional expense about which I was concerned. There are not very many piggeries or poultry sheds, as I understand it, which go to the trouble of registering—my guess is that it would be less than 10 per cent, and possibly about 5 per cent. They tend to be, if you like, the big end of town, very professional operations. If they register, they are required to be annually inspected and subject to veterinary inspection, which I believe (I am not sure) is relatively random.

These QA systems came about for people who, I suppose, wanted to lock into contracts that would pay them premiums. They are, for instance, the few big piggeries that are contracted to Woolworths, for example, and they are expected to turn out pigs to a certain size and a certain fat level, under extremely clean and hygienic conditions. This amendment attempts to stop an unnecessary doubling up, because they are already inspected quite rigorously. As I have said, I have fewer concerns, having seen that there is some acknowledgment of the time and expense to which these people go to get QA within that attachment to the MOU.

The Hon. G.E. GAGO: This amendment means that premises or vehicles that are being used for or in connection with intensive animal husbandry would not be subject to routine inspections if the minister is satisfied that the occupier of the premises or owner of the vehicle is complying with the prescribed code of practice.

It is highly inappropriate for a minister to be given such power to exempt a private facility from routine inspection. The minister could not be satisfied that the owner is complying or continues to comply with a code of practice or a QA system, or whatever, unless the minister has access to third party audit documentation and an inspector has visited the premises to determine whether or not practices were, in fact, compliant. So, the minister would not know whether or not this prescribed code was being complied with. Even on one occasion, they would not know whether it continued to do so, without further evidence.

For the minister to be satisfied, an inspection would be required, in any case. Even if there is a quality assurance program in place, a business could still be subject to routine inspection, although (and I generalise here) businesses that participate in quality assurance programs tend to be better managed and more compliant with legislative requirements than those that do not. We recognise that there are some people who, in fact, manage their businesses to very high standards, indeed.

However, the government considers that it is important that the inspectorate is unfettered and makes its own decisions about priorities for routine inspections, and it is not the minister's role to second-guess that. Consequently, the government very strongly opposes this amendment, and we would have significant concerns about the overall integrity of this bill if this amendment was to be endorsed.

The Hon. C.V. SCHAEFER: I think I should probably explain that what I would envisage is that those who believe they have suitable QA registration would apply for the exemption, and a decision would be made under the minister's name (but I do not imagine by the minister) as to whether the specific quality assurance under which that firm is registered would qualify for an exemption. I do not imagine that the minister or her department would have to make that assessment. It would be for the business to prove whether or not they were suitably registered to not be subject to another inspection. That is how I envisage it would work.

The Hon. G.E. GAGO: I do sympathise with the principles that the Hon. Caroline Schaefer is trying to—'enshrine' is not quite the right word—integrate into this process. However, it is fundamentally flawed in its application because, even if they were to register a particular QA system—and the codes and agreements about those systems and standards are still all over the shop—and even if that could be agreed to, which is a problem in itself, applying for an exemption at a given point in time, how would one know whether those quality assurance practices were in fact in place and not just written on a piece of paper?

How would you know, in an ongoing way, that an owner or operator continued to apply those QA standards if there was no ability to have an inspection? No doubt that is not intended by the Hon. Caroline Schaefer, but it is open to possible future abuse by giving the minister what would, in effect, result in an unfettered discretion. I certainly do not believe that is an appropriate responsibility for myself as minister, and I certainly would not like that to be in place for future ministers either.

The Hon. M. PARNELL: I will not be supporting the amendment for the same reasons that the minister has given, yet I am glad that the honourable mover has explained what it is she intended to achieve because, at first blush when reading this amendment, it looks to be a recipe for corruption. It looks to be a recipe for someone within the inspectorate to be able to say, 'Don't go to property X; that's the minister's friend. The minister is satisfied that they are complying with the pig or chicken code of conduct; therefore, they are exempt from inspection.' I would not suggest that that is likely to happen, but it would be open in a regime such as this.

What the Hon. Caroline Schaefer had in mind, I think, was more like the private certification scheme that applies with, say, building inspections, where rather than the council inspector checking the depth of the footings there is a private person who does it. I do not like that model in animal welfare, but I also think the honourable member's amendment does not actually achieve that, because it does refer to prescribed codes of practice, which are different creatures—if I can use that analogy—to quality assurance programs.

The prescribed codes of practice are things like the code agreed by all of the agriculture ministers in relation to things like pigs and chickens, and I think that is a very different creature. Under the codes of practice there are no other inspection regimes attached to that. That is different from a quality assurance program. So, I am pleased that the honourable member has explained what it is she had in mind but, for the reasons that I have just given and for the reasons the minister gave, I cannot support the amendment.

The Hon. A. BRESSINGTON: I also will not be supporting this amendment. As the minister said, it is way too much responsibility for a minister to carry to make sure that people have gone through quality assurance and are still complying with those requirements and those codes of practice. If we look back over history in other areas where quality assurance has been achieved, nursing homes for the elderly, for example, they have been quality assured and all the stuff is on paper, but in some cases it is not being carried out. So, the same thing could apply here, and I think it would undermine the whole bill if this amendment were to go through.

The Hon. D.G.E. HOOD: Whilst Family First are supporting a number of the opposition amendments we will not be supporting this one on this occasion. I think the reasons have been well outlined. The concern is really the system that would have to be in place in order to satisfy this amendment and also in order to satisfy me, I guess, that there was no potential for corruption, as mentioned by the Hon. Mark Parnell. So, for that reason we oppose the amendment.

Amendment negatived.

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

Page 11, line 26—Delete 'will' and substitute: may.

This is a minor amendment to section 31A, Special Powers Relating to Animals, which reduce the level of certainty an inspector must have in order to take action under this section. Instead of suspecting on reasonable grounds that an animal will, if urgent action is not taken, suffer

unnecessary harm, the inspector now only has to suspect on reasonable grounds that the animal may suffer unnecessary harm before he can take specified actions under this section.

Amendment carried.

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

Page 11, after line 30—Insert:

(1a) For the purposes of subsection (1), an inspector has all of the powers conferred on an inspector by section 30.

Again, it is a minor amendment which clarifies the fact that an inspector has the powers conferred on him or her under section 30, General Powers, including the power to enter premises for the purposes of section 31A, Special Powers Relating to Animals.

The Hon. C.V. SCHAEFER: I have a question for the minister: does this then give an inspector the powers to enter a premises—someone's home—to search for records, and so on? If that is the case, it is not consistent with many other laws within this state, where we do still give people some rights. Certainly, they are being eroded, but in most cases people may not enter a home without a warrant.

The Hon. G.E. GAGO: The short answer is no.

The Hon. C.V. SCHAEFER: Then I would like the long answer please; I would like an explanation.

The Hon. G.E. GAGO: The answer is no, because they can only enter and search and use force if they have a warrant—which is in section 30(2)(b).

The Hon. C.V. SCHAEFER: I do not want to prolong this, but it seems very strange to me that this has been put in as an amendment when, to all intents and purposes, it would be a par-for-the-course piece of writing. I came into this thinking that it was a minor amendment but, if I go back to section 30, the first thing it says is:

An inspector may enter and search and, if necessary, use reasonable force to break into or open premises or a vehicle...part of, or anything in or on premises or a vehicle...give directions with respect to stopping or movement of a vehicle...require a person to produce a document...examine, copy or take extracts...take photographs, films or audio...seize and retain any animal...identify—

And so it goes on. We have a number of laws in this state to which Mr Graham Gunn, in another place, always moves an amendment. He is always, as far as I know, successful in preventing that type of authority to enter people's premises and use all these things—reasonable force, break into, open. You are telling me that is not what it means, but my reading of it is that that is exactly what it means, because you are now conferring those powers on an inspector who is there on a routine inspection. It might be different if there is a reasonable suspicion of a particularly cruel act but, to have all of these powers when you are there on a routine inspection, seems to me to be overkill in the extreme.

The Hon. D.G.E. HOOD: I rise to indicate that I can certainly see the point the Hon. Mrs Schaefer is making. On a simple reading of what is proposed it does appear to say that. In fact, it says nothing else other than that. I express Family First's concern about it, as well, and indicate that we will need to be satisfied that it is not saying that in order to support the amendment.

The Hon. C.V. SCHAEFER: I have had explained to me—and I have misread it—that this amendment applies to new section 31A, which refers not to routine inspections but to special powers relating to animals; so, in fact, this gives an inspector powers under reasonable grounds that an animal is suffering. The example that has just been given to me is that of a dog locked in a car. We can argue whether or not that is deliberate, but no-one would want the inspector not to be able to release that dog legally. So, in good faith, I will support the amendment but I hope that I am not inundated with complaints from people where overzealous inspectors have invaded their homes, properties and their privacy.

The Hon. D.G.E. HOOD: I am glad that is cleared up because it settles things from our point of view. We support the amendment.

Amendment carried.

The Hon. M. PARNELL: One of the difficulties is that my amendments were to the bill as published. In other words, my amendments were to the new section 31B, but we now have the

minister's brand new section 31B, which does some of the things that my amendments proposed. With the leave of the council, could the minister explain to us the purport of the new section 31B and I will see whether any of my amendments still have life in them.

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

Clause 11 (new section 31B), page 12, lines 11 to 24 (inclusive)—

Delete these lines and substitute:

(1) If an inspector believes on reasonable grounds that the exercise of powers under this section is warranted because the welfare of an animal is being adversely affected, the inspector may, by written notice (an animal welfare notice) given to the owner of the animal—

(a) direct the owner to provide the animal with such food, water, shelter, rest or treatment as the inspector thinks necessary;

(b) require the owner to ensure the animal is not worked or used for any purpose specified in the notice for such period as is specified in the notice;

(c) require the owner to ensure the animal is exercised in accordance with the stipulations of the notice;

(d) direct or require the owner to take any other action specified in the notice, within the time specified in the notice, that the inspector considers necessary for the improvement of the animal's welfare.

(2) A person to whom an animal welfare notice has been given must not refuse or fail to comply with the direction or requirement set out in the notice.

Maximum penalty: $2,500.

Expiation fee: $210.

This amendment rewrites section 31B regarding animal welfare notices. It has been requested by the RSPCA on the ground that notices are an important proactive tool to ameliorate the conditions in which an animal is kept or its treatment without resorting to impounding the animal and initiating a prosecution. This amendment has removed the need for an inspector to be satisfied on reasonable grounds that a person is contravening this act in a manner that adversely affects the welfare of an animal—that is, that an offence has occurred.

The inspector now has to believe on reasonable grounds that the exercise of powers under this section is warranted because the welfare of the animal is being adversely affected. It brings the application of notices closer to what is in the act currently. The amendment also provides more guidance on directions an inspector can make in the animal welfare notice and the inspector considers necessary for the improvement of the animal's welfare. This includes a broad ability to direct or require the owner to take any other action specified in the notice within the time specified in the notice.

The creation of an expiation fee is a new policy which has not previously existed. It is not allowed elsewhere in the current act, although it appears in one regulation. It will allow enforcement of the notices without the need to take people to court and mount prosecution. Therefore, it is likely to increase compliance and reduce enforcement costs. The amendment also incorporates amendments made by my colleague the Hon. Mark Parnell (his amendments Nos 14 and 15) to introduce specific wording requiring compliance within a time period as specified in the notice.

The Hon. M. PARNELL: I thank the minister for her explanation. My amendments Nos 14 and 15 have been incorporated in the government's amendment, so I do not need to move those. I tabled the amendment because I felt that the standard of proof or satisfaction that the inspector had to have was too high and they had to be satisfied on reasonable grounds that a person was contravening the act. Under the new amendment, if the inspector believes on reasonable grounds that the exercise of powers under the act is warranted and is now the standard, that is, a lower standard, basically it goes to the inspector forming the view that an animal needs some help. Therefore, my amendment No.13 is pretty well redundant. The only other difference was that I was calling for the words 'reasonably suspects' (the word 'suspect' I felt was a better standard, but it relates to a criminal offence and there is no need to suspect that the animal needs help—you form the view that it needs help). On that basis I will not move any of those three amendments.

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

Amendment carried; clause as amended passed.

Clause 12.

The Hon. M. PARNELL: I move:

Page 15, after line 8—Clause 12(1)—After the penalty provision insert: Expiation fee: $315.

This amendment is to include the expiation fee. The particular offence, which ought to be able to be expiated, is the offence under section 33, which relates to the duty of a person in charge of a vehicle in the case of an accident involving animals. The bill proposes to provide for a maximum criminal penalty. My amendment proposes that in appropriate cases—cases of less severity—an expiation would be appropriate.

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

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

Amendment carried; clause as amended passed.

Clause 13 passed.

Clause 14.

The Hon. M. PARNELL: This is another example of differential penalties between corporations and individuals; we have already tested that, so I will not pursue my amendment.

Clause passed.

Clause 15 passed.

Clause 16.

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

Page 16—

Lines 19 and 20—Delete 'an animal that is owned by the person and is the subject of the offence' and substitute: any animal owned by the person (whether or not the subject of the offence)

Line 22—Delete 'the animal' and substitute: any such animal

This amendment allows that, where the owner of an animal is convicted of an offence against this act in respect of an animal, the court may make an order requiring the person to care for an animal owned by the person in accordance with the conditions of the order, that is, the offence may have been against one of a number of animals living with the owner and this amendment allows for all to be subject to the order. For example, in the case of an animal hoarder, some of that person's animals may be in very bad condition and seizure may be required and it would be the subject of a court order. Other animals owned by that person may not be in quite as poor condition and might not be able to be removed. This allows for the court to make an order addressing all of the animals owned by that person rather than simply those animals that are worst affected.

The Hon. C.V. SCHAEFER: I am reluctant to ask this question because I know the minister will have to go and ask, but I would like an example. I think what we have envisaged is, we will say, three horses in a paddock. One is badly enough affected to be subject to an order and the other two are not. The assumption, therefore, is that all three horses should be seized. I am not sure that that is necessarily the case.

The Hon. G.E. GAGO: Using the example the Hon. Mrs Schaefer gave of the three horses, one might be emaciated and the other two thin. The emaciated horse would be able to be seized because certain conditions have been breached but the other two might not be in a condition so bad as to allow seizure. This provision does not extend the ability of seizure: rather, it enables an order to be placed on the owner to require the owner, for instance, to feed the other two horses.

The Hon. C.V. SCHAEFER: I thought we had just provided for that in the minister's previous amendment No. 6—new section 31B. I thought that was what we had just finished doing.

The Hon. G.E. GAGO: This provision relates only to court orders, where someone has actually been prosecuted, whereas the previous amendment applied to animal welfare notices, where prosecutions had not occurred.

Amendments carried; clause as amended passed.

Clause 17.

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

Page 17, after line 8—After inserted section 40 insert:

41—Prosecutions

(1) A prosecution for a summary offence against this act cannot be commenced except by a person who has the consent of the minister to commence the prosecution.

(2) In any proceedings, an apparently genuine document purporting to be a certificate of the minister certifying consent to a prosecution for a summary offence against this act will be accepted, in the absence of proof to the contrary, as proof of the consent.

This amendment attempts to prevent third party prosecutions. The opposition is of the view that third party prosecutions open the door to extremist animal liberation groups or, indeed, malicious neighbours to proceed against their neighbours. This may be purely vexatious.

We believe that there is sufficient authority now for someone to report to the inspectorate and for prosecutions to take place thereon. I add that my amendment is in line with the law as it stands in Victoria. I have not checked with respect to other states, but third party prosecutions are not allowed in Victoria.

The Hon. G.E. GAGO: The amendment proposed by the Hon. Caroline Schaefer means that a prosecution for a summary offence against this act cannot be commenced by a person without the consent of the minister. It means that any person, including an inspector or a police officer, would have to seek ministerial approval in writing before commencing a prosecution if someone has been found to be or is believed to be in breach of the act.

It is completely inappropriate to put a minister in the position of approving the commencement of prosecutions for allegedly breaking the law. The government acknowledges the concern of animal industries regarding third party prosecutions, and we are sympathetic to some of those cases. However, there is no history of an abuse of this provision and no demonstrable problem needing to be addressed through the removal of third party prosecution rights. There is no evidence of history that this current provision has been abused.

There is a public expectation that any person can lay charges. It is a democratic right, if you like. This ability is generally unfettered in South Australian legislation, and it is generally something that South Australians are very proud of. The government considers this to be a very important fundamental democratic principle.

The government also considers it important that the Crown is bound by this legislation to ensure that persons, other than those who serve the Crown, can lay charges. Third party prosecutions have been retained.

The requirement that the consent of the minister is required would be perceived to allow for unwarranted political interference of the minister in a decision on prosecution. The government does not support this amendment, and if it was to be supported, we believe that it would provide a serious problem and fundamentally breach the integrity of this legislation.

The Hon. C.V. SCHAEFER: If that is what this amendment means, I can only say that I am very disappointed in its drafting because my intention is to prevent third party prosecutions. However, the minister knows (and even I know) that she is telling a bit of a porky because it says 'a person who has the consent of the minister'. We all know that an authorised officer under the law in this state has the consent of the minister—and since when has the minister not authorised people to do their work within the parameters of any act, not just this act? What I am attempting to do is—and I have faith that the amendments were correctly drafted—as I have said, prevent malicious prosecution and prosecution by third parties who have probably no business even being on a property.

The Hon. M. PARNELL: I strongly oppose this amendment for the reasons given by the minister. Notwithstanding what the Hon. Caroline Schaefer says was her intention, it is a similar argument to political interference in conducting random inspections about which we talked earlier. This is even worse. This is saying—and I accept that this was not the honourable member's intention—that the minister has the ability to say to inspectors and to prosecutors, 'Leave my mate alone. Don't you prosecute my mate.' It is called corruption in other countries. I am not saying that was the intention of the honourable member. Clearly, it was not. She has explained what she had in mind, but that is the effect.

In other pieces of legislation, we deal with this type of issue by providing that the enforcement function is at arm's length from the minister. For example, when it comes to

prosecuting for pollution offences under the Environment Protection Act, it is written into the legislation that the EPA (in that case) is not bound by any ministerial direction. They are their own people; they are at arm's length. There are other areas where ministers can tell departments what to do. However, when it comes to prosecution, we need to ensure that we do not have political interference.

On the question of the honourable member's real intention, which was to avoid these third parties bringing prosecutions, I endorse what the minister said; that is, it is an important right to retain in our legislation and there is no evidence in South Australia of its being abused. There are many acts but only a small number of examples of which I can think where it has been used. One was a native vegetation clearance dispute on Kangaroo Island. A local group successfully prosecuted their council for breaking the law. I think under the animal welfare laws, a private prosecution was commenced in the Magistrates Court in relation to a chicken shed. It is the only one I can remember. We can count these by the decades without taking our gloves or socks off, they are so rare. However, it is an important principle to retain in legislation.

There are two reasons why this amendment should not be supported, but the most important one for me is the unintended consequence of the honourable member that it would lead to corruption if we were to allow this to go through.

The Hon. C.V. SCHAEFER: I can count and it appears that I will not have any success here. If I thought there was any indication that the committee was not in favour of a third party prosecution, I would suggest that we have a go at redrafting and I would recommit after we have finished this debate. My sense is that there is no support for my intended amendment. I seek the point of view of others. The Hon. Mr Parnell has spoken of unintended consequences and the unintended consequence of my not allowing anyone to be prosecuted other than by the direct permission of the minister. In fact, may I say that I think that an unintended consequence of what is here now is to encourage third party and malicious prosecution.

The Hon. D.G.E. HOOD: Family First is somewhat sympathetic to the intention of the amendment, because we also have concerns about unnecessary litigation in an increasingly litigious society. However, as has been well pointed out, we cannot support the amendment as it stands because there is the potential—as I read it, anyway—for corruption. I think it is highly unlikely but there is that theoretical possibility. The Hon. Mrs Schaefer mentioned the possibility of redrafting; and, certainly, we would not be closed to that possibility.

Amendment negatived; clause passed.

Clause 18 passed.

New clause 18A.

The Hon. M. PARNELL: I move:

Page 17, after line 25—After clause 18 insert:

18A—Insertion of sections 43A and 43B

After section 43 insert:

43A—Reports in respect of alleged contraventions

If a person reports to an inspector an alleged contravention of this act, the inspector must, at the request of the person, inform the person as soon as practicable of the action (if any) taken or proposed to be taken under the act in respect of the allegation.

43B—Victimisation

(1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has made or intends to make an appropriate complaint of an alleged contravention of this act commits an act of victimisation.

(2) An act of victimisation may be dealt with—

(a) as a tort; or

(b) as if it were an act of discrimination under the Equal Opportunity Act 1984,

but, if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently lodge a complaint under the Equal Opportunity Act 1984 and, conversely, if the victim lodges a complaint under that act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.

(3) If a complaint alleging an act of discrimination has been lodged with the Commissioner for Equal Opportunity under subsection (2)(b) and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

(4) In this section—

detriment includes—

(a) injury, damage or loss; or

(b) intimidation or harassment; or

(c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or

(d) threats of reprisal.

Again, this is where we have overlapping amendments. There are two parts to my amendment. One might be most simply described as creating a requirement for inspectors to tell informants what it is they are doing. That is my proposed new section 43A. My proposed new section 43B basically provides protection for whistleblowers, which is very similar to the minister's proposed new section 43A. If we were to debate and decide on my amendments first, we would have to renumber the minister's if that is successful, and vice versa—if the minister's amendment were successful we would have to renumber mine. I will leave that to the table staff and to parliamentary counsel to work out. I will just speak to the amendments.

We may need to split my amendment to make sure that we deal separately with both those proposed two new clauses. I had new section 43A so drafted to reflect some other laws that we have, which basically provide that the publicly motivated people who report wrong-doings to inspectors should not be left entirely in the dark as to what will happen. That person should have some right to at least be told what is going on. However, I have discussed this amendment with the government and, as I understand it, the government is nervous about enshrining in law a guaranteed toing-and-froing between the informant and the inspector.

The inspector has to keep their supervisors and employers informed about what they are doing, but the government is very keen for them not to also have to keep the complainant informed. I would think that good practice would mean that the inspectors would keep informants informed as to what was going on, but the government is nervous about enshrining it to the extent that I have drafted it in law. So, with the indulgence of the committee, my understanding is that, with the deletion of a very few words in my amendment, we can, at least, have the government on side. I withdraw my original amendment and move it in an amended form, as follows:

Page 17, after line 25—Insert:

18A—Insertion of section 43A

After section 43 insert–

43A—Reports in respect of alleged contraventions

If a person reports to an inspector an alleged contravention of this act, the inspector must, at the request of the person, inform the person if practicable of the action proposed to be taken under the act in respect of the allegation.

In speaking to this amended amendment, I re-emphasise the obvious fact that we do not have sufficient inspectors out there witnessing at first-hand every act of cruelty done to animals. For this system to work it requires the goodwill of the community. It is ordinary people out there in the community reporting to the authorities, to the RSPCA, that will make the system work. I think it is appropriate that those reports do not just end up in a black hole, and I want to ensure that there is at least the minimal feedback that I have proposed with these words. So, if the informant requests it, the inspector will be required to tell them of the action they are proposing to take.

I do not believe I said this in my second reading contribution, but the need for this type of amendment came out of a personal experience. I was chased down the road by a dog and, when I rang to complain, the inspector refused to tell me what, if anything, he was going to do about it. I thought that was outrageous; I think I should have at least been told what the process is, whether a person makes a report or they will consider prosecution or whatever. I think it is only right that informants be told what is going on. The government appears to be satisfied with my amended amendment.

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

The Hon. J.M.A. LENSINK: I understand what the Hon. Mark Parnell is attempting to do. We had a briefing from the RSPCA as well as the department, and clearly it is the 80:20 rule—where 80 per cent of these take up 20 per cent of the time, and vice versa.

One of the things about which I would be concerned is busybodies (for want of a better word). I am not suggesting that the Hon. Mr Parnell was a busybody; he certainly did not initiate contact between himself and the large dog. I wonder whether the government has any idea about the impact on the inspectorate's resources of those people who repeatedly report things, given that I understand the inspectorate is already under-resourced.

The Hon. M. PARNELL: As the mover I might answer that question. The way in which I have modified it means that there is a number of reasons why it would not impose an onerous obligation on inspectors. First, there is no obligation on the inspector to inform the complainant about action unless the complainant wants to be informed. Some people will be happy to say, 'I thought you should know this,' and they will ring up with a story of an animal that is being ill-treated; not everyone wants the authorities to get back to them. As the amendment now reads, the inspector has to inform the person 'if practicable'. It may not be practicable, in which case there is no informing to be done.

Secondly, they must inform the person, if practicable, of the action proposed to be taken under the act. That might be as simple as explaining to the complainant how the investigation system works. It might be as simple as the inspector saying to the person, 'Thank you for ringing about the starving horse in the paddock. I will log that with our inspectorate and they will send out someone to investigate it.' I do not want to pre-empt the appropriate response in each situation.

I accept what the Hon. Michelle Lensink says. My original amendment would have required a more onerous duty on the inspectors. It seems to me that this duty may be satisfied in the initial phone call that is made. If the phone call is taken by someone else then it might require one very quick phone call back, but only if the person requires it. I do not think this is an onerous responsibility.

We always have to balance extra administrative load with the big picture. The big picture here is that we know that the public of South Australia is the ears and the eyes of the RSPCA when it comes to investigating animal cruelty. Inspectors are not out there finding things for themselves. They have to be told something is wrong before they can take any action. It seems to me to be commonsense and to be courteous. If we want the RSPCA to keep the faith of the community, then provisions such as this (which require minimal feedback on action to be taken) are not unreasonable.

We want members of the community to take personal responsibility for animal welfare. I think amendments such as this engender that sense of responsibility in the community. When people have the authorities getting back to them, they are more inclined next time to report things. They will say, 'It wasn't a waste of time; I know they investigated it and took action.' I do not think it is an onerous provision.

The Hon. C.V. SCHAEFER: I understand that the Hon. Mark Parnell's amendments and the minister's amendments attempt to do the same thing; that is, protect whistleblowers.

The Hon. M. PARNELL: I am happy to hear any other comments on proposed new section 43A, but I wonder whether it is appropriate to test it now; then we can move to proposed new section 43B, which is the same subject matter as the minister's proposed new section 43A. So, can we deal first with the first part of my amendment No. 19?

The Hon. D.G.E. HOOD: I have not heard the government position on this.

The Hon. G.E. GAGO: We are supporting it.

The Hon. D.G.E. HOOD: You are supporting it. I beg your pardon; sorry.

The CHAIRMAN: The question is that new clause 18A as proposed to be inserted by the Hon. Mr Parnell, down to including proposed and new section 43A, be so inserted

New clause inserted.

New clause 18B.

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

Page 17, after line 25—Insert:

43B—Victimisation

(1) A person commits an act of victimisation against another person (the *victim*) if he or she causes detriment to the victim on the ground, or substantially on the ground, that the victim—

(a) has disclosed or intends to disclose information; or

(b) has made or intends to make an allegation,

that has given rise, or could give rise, to proceedings against the person under this act.

(2) An act of victimisation under this act may be dealt with—

(a) as a tort; or

(b) as if it were an act of victimisation under the Equal Opportunity Act 1984,

but, if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently lodge a complaint under the Equal Opportunity Act 1984 and, conversely, if the victim lodges a complaint under that act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.

(3) Where a complaint alleging an act of victimisation under this act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

(4) In this section—

detriment includes—

(a) injury, damage or loss; or

(b) intimidation or harassment; or

(c) discrimination, disadvantage or adverse treatment in relation to the victim's employment or business; or

(d) threats of reprisal.

The Hon. M. PARNELL: Mr Chair, if the government's amendment to insert new section 43B, entitled 'Victimisation', is supported, I will not move my amendment. However, if the government's amendment is not supported, I will move mine.

The Hon. C.V. SCHAEFER: The opposition supports the government's amendment.

The Hon. A. BRESSINGTON: As do I.

New clause inserted.

Clause 19.

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

Page 17, after line 36—

After subclause (2) insert:

(3) Section 44—After subsection (4) insert:

(5) Despite the previous subsections, no regulation may be made prohibiting an animal of less than, or more than, a specified body weight from being used in a rodeo event.

(6) In this section—*Rodeo event* means any of the following events:

(a) saddle bronc riding;

(b) bareback bronc riding;

(c) bull riding;

(d) steer riding;

(e) roping or tying;

(f) team roping;

(g) steer wrestling.

The shadow minister, who has followed this argument right through, will be speaking to this amendment. I would like to say that I have been very disappointed. I do not know who out of the minister's office decided that this is a matter for *Today Tonight* but, certainly, the image that has been portrayed of me as someone who is cruel to animals is completely incorrect and most upsetting. It is personally quite offensive. I, too, am a member of the RSPCA. I did indeed say that

a calf at a rodeo is statistically safer than a calf in the paddock, and that is statistically quite correct. Over four years, there has been one injury to a calf in a roping event across Australia.

The Hon. G.E. GAGO: The Hon. Caroline Schaefer would not be surprised that the government does not support this amendment. It would remove the weight restriction on animals being used in rodeo events. Last year, the government introduced new regulations to tighten animal welfare standards for rodeos in South Australia. This included a ban on all animals weighing less than 200 kilograms taking part, which effectively prohibits calf roping events at all rodeos held in South Australia.

I took the advice of the RSPCA, which raised with me issues of concern for these juvenile animals. These are very young animals that are in a state of physical under-development, and there is serious concern that these small animals are frightened, lassoed, thrown to the ground and then have their legs tied for the enjoyment of the public.

I have taken the advice of the RSPCA and have said no in respect of those juvenile animals, and that they have to be above a certain weight to be involved in a roping event. I do not resile from that. The RSPCA considers calf roping to be the most unacceptable and highest risk of all rodeo events, because calves are small and potentially prone to injury and distress, and a lot of that cannot be measured. One cannot measure fear, and there is a great deal of soft tissue damage and bruising that also cannot be measured.

I remind the committee that Victoria banned calf roping as an event many years ago, and I am aware that steer roping may be substituted as a roping event. However, steers are larger animals than calves, so they are less sensitive to trauma. In addition, steers are not required to be thrown and tied in a steer roping event, only roped. The RSPCA considers that this results in the potential for less impact on the animals.

As I indicated in this place last year, the bottom line is that what we have here in regard to calf roping are particular points of view that are not shared and, as the minister responsible for animal welfare, I have the responsibility to protect the interests, welfare and safety of animals. The proposed amendment by the Hon. Caroline Schaefer would remove the restriction of weight and allow calf roping. It would also remove the upper weight limit, thus allowing very large animals to be used in rodeo events, which is also a concern to the government. As I said, the government does not support this amendment.

The Hon. J.M.A. LENSINK: As my colleague the Hon. Caroline Schaefer alluded to, I believe that there has been much muddying of the waters by *Today Tonight* on Channel 7 and, unfortunately, FIVEaa has picked up the rather skew-whiff baton as well. Honourable members may have seen a program several weeks ago that related to wild horse riding, an event which took place in Queensland. There were some fairly distressing scenes in which riders were biting the ears of horses and indulging in other cruel practices, which I am sure no-one in this chamber would endorse. Wild horse racing does not take place in South Australia. The body that administers rodeos, the Australian Professional Rodeo Association, opposes wild horse riding, and I believe APRA always seeks to conduct its rodeos in an ethical manner.

I urge all honourable members who supported the disallowance motion last year to support this amendment, because it is consistent with that. There was an error, which may well have been an oversight (I am not quite sure how it came about). The Legislative Council disallowed regulation No. 217, which was tabled on 16 August 2007, which was entitled 'Prevention of cruelty to animals regulations—rodeos'. There was a subsequent regulation, No. 220, on 23 August 2007, which was 'Prevention of cruelty to animals regulations—electrical devices'. I understand that the difference between the two was that there had been some technical omission, and the issue of electrical devices was inserted into the subsequent one. This Legislative Council disallowed the former one, which was superseded and, therefore, the regulations are now in place.

We have the opportunity in this bill to address this matter, which the Legislative Council last year clearly decided that it did not wish to ban. As the minister has stated, that is that we will remove the weight allowances, which will effectively allow events such as calf roping to continue. Interestingly, in defence of her position, the minister stated that to oppose this would enable steers to be used, being heavier than calves. The statistics bear out for themselves that calf roping has a lower injury rate.

I would like to refer to some of the correspondence that has taken place. I received copies of emails from July last year, which came from the Australian Professional Rodeo Association. When it first learned that calf roping was to be banned, the association sought some endorsements

from veterinarians, and so forth, and people who would know what is safe practice. There is an email from a gentleman by the name of Professor Ivan Caple, who is a past chairman of the NCCAW. He is a professor of veterinary medicine at the University of Melbourne. His email states:

Attached is the most recent edition of the NCCAW standards (10 June 2006) for the Care and Treatment of Rodeo Livestock.

The care and attention provided to all animals used at rodeos is the key to ensuring their welfare, and only qualified and trained people should be involved with the animals.

Below is the key section from the NCCAW standard relating to cattle used at rodeos:

I will not read it all, but part of the email states:

Selection of Animal for Rope and Tie

Cattle used in Rope and Tie must be fit, healthy, and without defects. The optimum weight for roping and tying is 115kg with a minimum of 100kg and a maximum of 130kg.

He then refers to animals for use in steer wrestling, and again:

...must be fit, healthy and without defects. The optimum weight for animals is 250kg, with a minimum of 200kg and a maximum of 300kg.

He goes on to say:

The Minister should be informed that cattle are used for different events at rodeos, and the specifications for the cattle differ for particular events.

The NCCAW standard specifies the minimum (and maximum) weights of cattle to be used for particular events.

The NCCAW is the standard by which all events take place in South Australia. There it is outlined very clearly that the optimum weight for rope and tie is 115 kilograms, which is obviously much less than the steer weight

I, too, am a member of the RSPCA, and have been a member of the Animal Welfare League for a number of years. The RSPCA is a well-recognised organisation within our community, but I would have to say that there have been some significant concerns about certain factions, if you like, in the animal welfare-concerned citizens who have sought to take over the RSPCA, and it has had some difficulties, which we hope will be allayed. In fact, I know that the RSPCA is opposed to rodeos full stop, and this particular measure may just be some way for the government to be able to say, 'Well, we banned part of rodeos, whereas in fact the RSPCA would like to close down the lot.'

I think that it would be worthwhile if people who have concerns about legitimate rodeos in South Australia would actually go to meet with and observe for themselves the legitimate rodeos, rather than taking footage of people behaving unethically, and trying to pretend that that is what rodeos are about in South Australia. I think the industry is being singled out quite unfairly. The statistics and endorsements speak for themselves.

There is one other reference here that I should have read out as well, which is from John Cornwall, BVSc, who is a former Labor member. He refers to a gentleman by the name of John Osborne, and he says:

It has been my good fortune to serve with John Osborne on the Australian Animal Welfare Strategy Committee on Animals Used in Work, Recreation and Display. I have been impressed by his sound commonsense and his ability to use his long experience to negotiate sensible solutions to complex issues.

He has asked me to comment on the issue of calf weights in roping events. I have no specific experience or expertise in the area. However, as a veterinarian with almost fifty years' experience in the profession (including ten years in rural practice in Mount Gambier) it seems obvious to me that, given their relative weights and strength, a calf in the weight range 100 to 130kgs would be significantly less stressed in competition than a steer around 200kgs.

With that, I urge all members to support this amendment.

The Hon. A. BRESSINGTON: I will be supporting the Hon. Caroline Schaefer's amendment. Something that we need to get clear in our mind is that, like it or not, rodeos are part of rural life and they are of interest to the rural community. As I understand it, with the weights of the calves, the weights that the minister has suggested for calf roping, the simple phrase is: the bigger they are the harder they fall. There is science to back that up and there are statistics to back it up—one injury in four years; for goodness sake!

As a kid I spent a lot of time on farms and I wonder where this will stop. The minister says that you cannot measure fear and anxiety and all the rest of it. So, let us stop dipping because that actually causes trauma to those animals while they are going through the whole process of being dipped, as they do not understand what is happening to them. They are in a narrow corral, they are being thrown into a pool of water and they do not know why. They are fearful, they are anxious and they are traumatised by that, but we would not suggest that we stop dipping. The other thing is shearing—

The Hon. G.E. Gago interjecting:

The Hon. A. BRESSINGTON: But we city people have understand that the rural community have activities that do not necessarily appeal to us. The same as probably a lot of rural people would not get off on car racing, but we still have the Clipsal. Let us be fair about this. There are different standards, different activities for different areas of our community, which is Australia. We need to give and take a little here. I think we are being just a little precious about this, when there is no science to back up the recommendation that the higher weight of a roping calf will reduce any trauma. As a matter of fact, it will probably increase the trauma, so where is the logic of that?

While we are at it, let us look at the shearing industry. I have been in shearing sheds and I have seen how sheep are treated when they are being sheared. They are fearful, they are anxious and they are being traumatised. That is for industry—

The CHAIRMAN: The shearer as well.

The Hon. A. BRESSINGTON: The shearer as well; yes. So, let us face it, we city people and people who want warm and fuzzy animal rules all over the place are unrealistic when we say that every little animal should be kept nice and safe and warm and cuddly and should never go through any trauma. This is not Utopia and that is not possible in a country like Australia that has a rural community that has its traditions. So, for goodness sake, just get on with protecting the animals that need protection.

The Hon. M. PARNELL: It will come as no surprise to members to know that the Greens will not be supporting this amendment. We support the policy of the RSPCA, which is to be opposed to rodeos full stop. I think that the types of activities that the government has tried to restrict and prohibit through regulation are cruel and demeaning activities and we do not need to engage in them. I think it demeans not just those who are involved but those who watch as well.

As the Hon. Ann Bressington has said, we can focus on the cultural norms of different communities. Do we focus on the alleged cultural norms of the Japanese? They want to eat whales. They say, 'Respect our culture. Let us eat whales.' I have spent a lot of time in South-East Asia in the past few years. The culture of countries like Indonesia and Vietnam is that cock fighting is just fine. Everywhere you go you find these upturned wicker baskets with the roosters underneath just waiting for the next cock fight.

What we are doing in this parliament is we are debating standards that are appropriate to our culture and to our time. We have banned all sorts of cruel activities over the years. We do not allow cock fighting in Australia and we do not have bear baiting. There are plenty of activities that I still think need regulation. I would like to see rodeos gone. There are other activities that cruel that we could look at as well. I will not be supporting this amendment. I would urge all honourable members to do likewise.

The Hon. A. BRESSINGTON: Just one more thing.

The CHAIRMAN: You're not going to say haircuts are cruel too, are you?

The Hon. A. BRESSINGTON: I hope you will partner with me, Mr Chairman, and get your head shaved for the cancer thing. I am looking for a partner.

I would just like to make the point I made the other night as far as the Greens and Democrats go with animal rights. The Hon. Mark Parnell was looking forward to sweeping changes from me for travel insurance; I will be looking forward to sweeping changes from the Hon. Mark Parnell to the Child Protection Act to make sure that our children are as well-protected and as safe as these animals are. I am sick and tired of this.

The Hon. D.G.E. HOOD: I will reveal our position at the end. I will give just a brief summary of where we are at. We have agonised over this. This is a very difficult decision. We have, on the one hand, some people who have some very strong arguments in the case of their

position on animal rights and cruelty to animals. We have listened to them carefully. On the other hand, we have people who have an industry to protect and enjoyment and a way of life that they enjoy very much and have a right to undertake. It is not an illegal activity.

As with all votes for Family First, this is a conscience vote for us. Everything we vote on is a conscience vote. We do not believe that a member of parliament should ever vote against their conscience, and this issue is no exception. We vote as individuals on this particular matter, as we do on all matters. In this case, I am persuaded by the opposition's argument, and indeed by the industry itself. To me as an individual there seems to be more danger for the animals concerned in opposing the amendment than there would be if I were to support the amendment.

I have spoken to perhaps 20 or 30 people involved in the industry and I am impressed by their commitment to care for the animals that are involved in rodeos. They really are genuinely concerned. They tell me that it is in their interests to have the highest possible standards. I have seen footage they have shown me and it presents their product well, if you like. I am persuaded and, for that reason, I will be supporting the amendment.

The CHAIRMAN: The Hon. Mr Evans. Tell us about your conscience.

The Hon. A.L. EVANS: I am exercising my conscience and I will not be thrown out of the party for it. I will be voting with the government.

The committee divided on the amendment:

AYES (8)

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

NOES (9)

Darley, J.A.	Evans, A.L.	Gago, G.E. (teller)
Gazzola, J.M.	Holloway, P.	Hunter, I.K.
Kanck, S.M.	Parnell, M.	Wortley, R.P.

PAIRS (4)

Lucas, R.I.	Zollo, C.
Wade, S.G.	Finnigan, B.V.

Majority of 1 for the noes.

Amendment thus negatived; clause passed.

Title passed.

Bill recommitted.

Clause 17.

The Hon. C.V. SCHAEFER: We have had an exhaustive and exhausting debate, and I have had a new amendment drafted with respect to the prevention of third party prosecutions. I move:

Page 17, after line 8—

(1) A prosecution for a summary offence against this act may only be commenced by—

(a) an inspector; or

(b) a prescribed person or a person of a prescribed class.

(2) In proceedings for any such offence, an allegation in the complaint that a person named in the complaint was, at a specified time—

(a) an inspector; or

(b) a prescribed person or a person of a prescribed class,

is, in the absence of proof to the contrary, proof of the matter alleged.

As I have spoken at some length, my desire is not to make cumbersome legislation, but merely to stop third party and malicious prosecution. I believe prosecution should be in the hands of those who are qualified to do so. In this case, that would be an inspector or someone prescribed by

regulation. So, it may well be a veterinary surgeon, it may be a police officer, and it would most likely be an inspector.

The Hon. G.E. GAGO: I think the Hon. Mark Parnell succinctly summed up that there are two aspects of concern about the original amendment that the Hon. Caroline Schaefer moved. One concerned the problems of the potential for corruption and the second concerned the principle of the rights of third party prosecutions. I think that the amendment that the Hon. Caroline Schaefer has now put before us most likely deals with that first issue in terms of the potential for corruption. It certainly limits that. However, the second principle is still very important to South Australians, and the government will be opposing this amendment on those grounds, and that is that we are opposed to removing third party prosecution rights as part of South Australia's democratic process. It is something that South Australians enjoy and we value it very highly. There is no evidence that this right is abused in any significant way whatsoever. So, in terms of historical evidence, it is very limited, which I think demonstrates the fact that—

The CHAIRMAN: Order! There is too much conversation in the chamber.

The Hon. G.E. GAGO: —the potential for vexatious third party prosecutions is very limited. The legal process is a very expensive one and that, in itself, becomes a self-limiting part of the process in terms of pursuing vexatious claims.

I cannot stress highly enough that the public expectation is that any person can lay charges where they believe there has been a breach and where there appears to be enough evidence for a prosecution to proceed. It is a right that South Australians enjoy, we are proud of it, and it is very clear that we have not abused that privilege in any significant way. So, it is a fundamental, democratic principle that any person has the right to third party prosecution. I strongly uphold that principle and, therefore, the government will be opposing this amendment on those grounds.

The Hon. J.M.A. LENSINK: Can the minister provide details of other fields in which any individual can undertake third party prosecutions? What other parts of our statutes allow for that?

The Hon. G.E. GAGO: The advice I have received is that the general rules of criminal procedure in this state provide that a complaint for a summary offence can be made by any person. This right is occasionally constrained by a particular statute. But I think the real point of this is that this provision has been in place for some time and there is no historical evidence to demonstrate that this privilege is being abused.

The Hon. M. PARNELL: I oppose this amendment. I accept that the first problem that I had with it has been resolved but the second has not. The second problem is, as the minister has said, this fundamental democratic right that we have as citizens to seek to enforce the law. But we have to remember that we are not saying that third parties are going to be judge and jury. Third parties are not the ones who are going to be deciding the guilt or innocence of defendants. We are saying that this right—so seldom exercised that I could only think of two cases over decades in the environment field that I am aware of—is not something that is used.

But we also need to put it in the context of animal welfare laws and, yes, in a perfect world we would like to think that the inspectors at the RSPCA have sufficient resources for every case that deserves to be prosecuted to be so prosecuted. But they are constrained by a budget that does not even allow them to do the job that they do without fund-raising. I have said this before: it is like our police officers having to fund-raise to do their job. The RSPCA does not get sufficient funding from government to undertake the full task of inspecting and prosecuting. As the honourable member said, that is another issue. I would like that situation to be remedied, but it is not remedied yet and it will take some time, I think, before our primary law enforcement body gets sufficient resources or other bodies get resources to do the job.

The prospect of private prosecutions in the animal welfare area is low but, if it were to happen and a person were to be found guilty, we would be saying, 'Well, that's terrific. They have appropriately brought an action to the attention of the authorities and the person has been found guilty.' If the person was found not guilty and if it turned out to be, as it has been described, a malicious prosecution—not that there is any evidence that we have ever seen one—there will be consequences for those who brought the action. There are legal cost consequences that come from pursuing actions such as these, particularly if you are not an authorised officer or an inspector.

One might want to take a pragmatic view and say, 'Okay, the government has said that this is an important principle' so, under the honourable member's amendment, it will prescribe all citizens of South Australia to be prescribed people. But that is not good enough, because it leaves

it open to future governments to then narrow right down the class of persons who can bring a private prosecution.

It is a matter bigger than this legislation. It actually goes, fundamentally I think, to the relationship that we as citizens have with the state and with the legal system. There is no evidence that it has been abused. I do not encourage people to go out there with private prosecutions. I have spent the past 16 years of my life in environmental law encouraging people to put pressure on the proper authorities to do their job.

When it comes to pollution issues, I say, 'Put your energy into getting the EPA to pursue this. Don't try private legal action as it's fraught with danger.' I think it is the same with animals as well: people will be urging the authorities to do the job. But in that very rare, small number of cases where the proper authorities are unable or unwilling for whatever reason to do their job properly, we need that fall-back position of citizens being able to step into the breach. I still strongly oppose the Liberal amendment.

The Hon. A. BRESSINGTON: I will be supporting this amendment of the Hon. Caroline Shaffer. I would just like to remind some members in here that false allegations in our society are becoming more and more of a problem all the time. We see it in family law and in child protection issues; we see it in a lot of issues, where people actually make their way to court on false allegations and, in some cases, have won cases and ruined people's lives. We say that we have no proof that that happens. Well, when they win based on a false allegation, how do you actually prove that?

I have proposed legislation for polygraphing for exactly these reasons. The court makes a determination on the evidence that it is given. If you have a group of people who band together and decide that a certain person, or a certain circumstance, needs to be prosecuted because it does not actually line up with their moral level, it can be a powerful tool. When the minister says that this is our democratic right, let us not forget that, with this amendment, people will still have the power to dob in people who are doing the wrong thing, and inspectors can then follow it up. If a person rings up or writes in, or whatever, and makes a complaint, we now have a provision where inspectors will notify that person of what action is being taken. This particular protection mechanism is necessary not only in this piece of legislation but in many others as well.

The Hon. SANDRA KANCK: The Democrats will not be supporting this amendment. I think that the two cases that the committee has been made aware of—one in the environmental field and one in the animal field—are not showing, by any means, that this is a mechanism that is abused in any way. The one animal case was upheld, so it was clearly quite appropriate for it to be brought to the court.

It is clear—the evidence is there—that the RSPCA has not been able to manage the load that comes its way. To my mind, it is a little like a citizen's arrest. When something is going wrong and the police are not around, people are able to make a citizen's arrest. I think that this is in the same category. When the RSPCA is overloaded and when it has not been able to do enough cake stalls and raffles in order to be able to keep afloat, it will be useful to have another mechanism that will allow cases to be brought to the court.

The Hon. D.G.E. HOOD: There are strong views in the chamber, but on balance we believe there is merit to this amendment. However, there are some fundamental democratic principles that the Hon. Mark Parnell outlined which to me and the Hon. Andrew Evans override this bill. We have no sympathy at all for people who make vexatious claims, extremist claims, against people making an honest, decent living. There are significant principles at stake here, and for that reason we will somewhat reluctantly oppose the amendment.

Amendment negatived.

Bill reported with amendments.

Bill read a third time and passed.

LEGAL PROFESSION BILL

The House of Assembly disagreed to the amendments made by the Legislative Council, as indicated in the following schedule:

No. 1. Clause 301, 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;

No. 2. Clause 301, page 156, lines 1 and 2—

Clause 301(7)—Delete subclause (7)

No. 3. Clause 313, 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 percent

No. 4. Clause 313, page 161, lines 11 and 12—

Clause 313(1)(a) and (b)—Delete paragraphs (a) and (b)

No. 5. Clause 313, page 161, line 15—

Clause 313(1)—Delete 'claims' and substitute:

claim

No. 6. Clause 319, 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'

No. 7. Clause 319, page 163, line 23—

Clause 319(3)—After 'guarantee fund' insert:

on a party and party basis

No. 8. Clause 321, page 164, lines 1 to 5—

Clause 321(c) and (d)—Delete paragraphs (c) and (d)

No. 9. Clause 321, page 164, lines 7 to 9—

Clause 321(2)—Delete subclause (2)

No. 10. Clause 322, page 164, lines 19 to 21—

Clause 322(3)—Delete subclause (3)

No. 11. Clause 326, page 165, lines 30 to 36—

Clause 326(3)—Delete subclause (3)

No. 12. Clause 327, page 166, lines 17 to 23—

Clause 327(3)—Delete subclause (3)

No. 13. Clause 331, 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.

No. 14. Clause 331, page 168, line 11—

Clause 331(3)—Delete 'Attorney General' and substitute:

Society

No. 15. Clause 331, page 168, 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.

No. 16. New clause, 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.

(3) A decision made by a person or body acting in accordance with an assignment of functions or powers under this section may, subject to the rules of the Supreme Court, be appealed against to the Supreme Court by the person in relation to whom the decision was made.

(4) On such an appeal, the Supreme Court—

(a) may confirm, vary or reverse the decision; and

(b) may make any consequential or ancillary order.

(5) If a person or body makes a decision in accordance with an assignment of functions or powers under this section that is adverse to the person in relation to whom the decision was made, the person or body must, as soon as practicable, give an information notice to the person.

No. 17. Schedule 1, 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.

STATUTES AMENDMENT (EVIDENCE AND PROCEDURE) BILL

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

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (18:13): 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 supersedes the Evidence (Miscellaneous) Amendment Bill 2007, which the Government introduced in February 2007 and allowed to lapse when Parliament was prorogued so as to enable wide consultation to take place.

Comments were sought from a wide group of people about that Bill and about its companion Bill (the Criminal Law Consolidation (Rape and Sexual Offences) Amendment Bill 2007), introduced at the same time and allowed to lapse for the same reasons.

As a result, both Bills have been reintroduced in substantially the same form but with some improvements.

The Statutes Amendment (Evidence and Procedure) Bill achieves two main kinds of evidentiary law reform.

It reforms laws governing the way evidence is taken in sexual offence proceedings. This is part of a package of legislative reforms arising from the Government's extensive review of South Australian rape and sexual assault laws in 2006 that also includes the Criminal Law Consolidation (Rape and Sexual Offences) Amendment Bill 2007.

It also reforms laws about the special arrangements that may be made for witnesses giving evidence. In particular, it provides for the way in which evidence is taken from vulnerable witnesses (including children and victims of serious offences), the way witnesses may be questioned and the manner in which judges warn or direct juries about the evidence of children. It also restricts access to sensitive material that is to be used as evidence in proceedings. These reforms are made in response to recommendations of the Child Protection Review (the Layton Report) about children and the courts, and also to remove systemic impediments to the reporting and prosecution of serious crime.

The amendments are to the Evidence Act 1929, the Summary Procedure Act 1921, the Criminal Law (Legal Representation) Act 2001, the Supreme Court Act 1935, the District Court Act 1991 and the Magistrates Court Act 1991.

The Bill also makes an unrelated statute revision to s71B (repositioning the penalty clause) and updates s59IQ so that it uses the same terminology as a consequence of the enactment of the Statutes Amendment (Domestic Partners) Act 2006.

Special arrangements for witnesses

Current section 13 of the Act allows a court to make special arrangements for the taking of any witness's evidence so as to minimise the witness's distress and embarrassment. It also identifies witnesses who are likely to find giving evidence particularly frightening, humiliating or stressful. It calls these witnesses 'vulnerable witnesses' and gives them additional support in criminal proceedings. It does so because it is in the public interest for the

evidence of all witnesses to be of the highest possible quality and for the prospect of giving evidence not to be so daunting that people are deterred from reporting serious crimes or from assisting in the prosecution of crime.

So as to avoid some of the confusion about witness entitlements to special arrangements that became apparent during the period of consultation, and to clarify the different procedures necessary for vulnerable witnesses for criminal proceedings, the Bill separates provisions dealing with special arrangements for witnesses generally from those dealing with special arrangements for vulnerable witnesses in criminal proceedings. The same special arrangements are available for each group of witnesses, and the Bill, like the Act, lists some examples and permits a court to order any combination of them for a witness.

The Bill, like the Act, does not permit an order for special arrangement to be made if this would relieve a witness from the obligation to give sworn evidence or to submit to cross-examination, or to prevent a judge or jury from seeing or hearing the witness while giving evidence. The Bill also provides that such sight or hearing of a witness giving evidence may be indirect - for example, by live television transmission or replay of a recording of the witness's voice and image – so long as the indirect method of transmission also shows any person who may be accompanying the witness to provide the witness with emotional support. It provides further that a special arrangement must not be made if it would prevent a defendant from seeing or hearing the witness while giving evidence.

The Bill retains the requirement for judges, in criminal trials, to warn juries not to draw adverse inferences from the fact that special arrangements have been made or to allow those arrangements to influence the weight to be given to the evidence. This requirement applies whether the witness is a vulnerable witness or not.

One of the examples of a special arrangement is the taking of an electronic recording of a witness's evidence outside the courtroom to be replayed in the courtroom. The Layton Report recommended that it be possible for all (or some) evidence of a child witness to be electronically recorded outside of the courtroom before the trial proceeds and, in place of the child giving evidence in court, for the recording to be replayed to the court during the trial; an arrangement that is especially useful in cases where the trial takes place several years after the alleged offence. Although available to any witness, this kind of special arrangement is likely to be used mainly for children.

The other example added by the Bill, also recommended by the Layton Report, will allow disabled witnesses to give evidence by unconventional means if that would facilitate the taking of that evidence or minimise the witness's embarrassment or distress. Although a court could already use its inherent powers to do this, conferring authority by statute will encourage disabled witnesses to give evidence by removing any doubt about the court's ability to accommodate the disability.

There is nothing in the current law, which is facilitative and not prescriptive, to stop any of these kinds of arrangements or the use of CCTV already being made for witnesses. The real reason they have not so far been used, or have not been used very often, is that not all courts have the necessary facilities. That is not a defect in the legislation but a matter of court resources. The cost of adding CCTV, remote rooms, separate access and waiting rooms for vulnerable witnesses, and audio visual recording and playback facilities to all courts, is high and, in some courts, not cost-effective.

The Government has taken the sensible approach of installing these facilities in the courts where they are most in demand, with a view to extending them to other courts if need be.

The problem with the current legislation is not so much a lack of authority to make these special arrangements but that they may be made at the discretion of the judge even when the witness is a vulnerable witness in a criminal proceeding (albeit that, for such a witness, the court is obliged to determine whether an order for special arrangements should be made before the evidence is taken). In reaching that determination, the judge may examine the vulnerable witness about the disadvantage asserted in giving evidence in open court and allow argument about whether special arrangements will unduly prejudice the defendant's case. Granting a request for special arrangements for a vulnerable witness in a criminal trial is by no means automatic.

It is possible, therefore, under the current Act, for a judge to deny a child victim in a criminal trial the opportunity to give evidence using special arrangements even when the facilities are available. A case in point occurred in Victoria in May 2005. The Age reported that a child who was the alleged victim of incest tried to commit suicide after a Victorian county court judge, acting under laws similar to those in South Australia, ordered her to appear in open court in front of the defendant, her father, to explain why she did not want to give evidence in his presence and would prefer to testify using CCTV The judge questioned the child in detail in front of her father, despite her obvious distress and even though he had accepted expert evidence that she was especially vulnerable and potentially suicidal.

There is nothing to stop this happening in South Australia. Indeed, our law technically requires it. The South Australian Court of Criminal Appeal, in the case of Question of Law Reserved (No 2 of 1997) has said of section 13:

...the court is not to order that special arrangements be made simply because a request is made, even if such a request is made on behalf of a vulnerable witness. If Parliament had intended to give to a witness the right to have special arrangements made, Parliament could easily have said so. It has not said that.

The Bill will require courts in criminal proceedings to make special arrangements for vulnerable witnesses if the party calling the witness applies for them. It allows a court to dispense with such arrangements for adult witnesses when the facilities necessary for the special arrangements are not readily available to the court and (taking into account the cost, inconvenience and delay involved in procuring them or in adjourning to some other place where the facilities are available and the urgency of the proceedings), it is not reasonably practicable to make the facilities

available. The Bill requires the court to give reasons if the court decides to dispense with the making of special arrangements.

The Layton Report recommended that the law:

... allow the court to permit expert opinion evidence to be given in any civil or criminal proceeding in which abuse or neglect of a child is alleged...That such amendment specifically permits evidence to be given regarding any capacity or behavioural characteristics of a child with a mental disability or impairment.

The Bill makes an amendment to this effect that has a wider application than contemplated by the Layton Report. It provides that a court may, if it thinks expert evidence would help the court to determine what special arrangements should be made for taking the evidence of a witness (whether vulnerable or not), receive such evidence in civil or criminal proceedings. It also allows a court in civil or criminal proceedings to receive expert evidence about any additional difficulty that may be caused by a witness (whether vulnerable or not) giving evidence through an interpreter where the witness's native language is not English and the witness is not reasonably fluent in English. Some Aboriginal languages, for example, do not translate easily into English, and vice versa, because they do not describe a concept familiar to the English language. It is important that the court and the jury appreciate this when listening to the witness giving evidence.

This amendment is not designed to allow the admission of expert evidence to challenge the credibility of the witness or to change the law on this topic as expressed by Chief Justice King in the case of R v C in 1993. Nor is it designed to allow or facilitate the admission of expert evidence as to the ultimate issue (for example, of whether a child has been abused or not).

Vulnerable witnesses

Under the current Act, a vulnerable witness includes a witness who is under the age of 16 years, a witness who suffers from an intellectual disability, a witness who is the alleged victim of a sexual offence to which the proceedings relate and witnesses who are, in the opinion of the court, at a special disadvantage because of their circumstances or the circumstances of the case.

The Bill expands the class of vulnerable witness and its entitlements.

In the definition of a vulnerable witness, the offences to which the proceedings relate, and of which, to be a vulnerable witness, a person must be the alleged victim, will no longer be confined to sexual offences. These offences will now be called 'serious offences' and will include offences of abduction, blackmail, stalking, unlawful threats to kill or endanger life, causing serious harm, and attempted murder or attempted manslaughter. A victim of a serious offence will be considered a vulnerable witness in civil as well as criminal proceedings relating to that offence.

A witness who has been subjected to threats of violence or retribution in connection with the proceedings (whether civil or criminal) or who has reasonable grounds to fear violence or retribution in connection with the proceedings will also now be classified as a vulnerable witness, as will a witness who, in the opinion of the court, is at a special disadvantage because of their circumstances or the circumstances of the case, other than those already described.

The Bill provides that if a witness is vulnerable:

- he or she may not be cross-examined in person by an unrepresented defendant in criminal or civil proceedings;
- a criminal court may take an audio visual record of his or her evidence, and must do so, if the vulnerable witness is a child of 16 years or less and has not already had that evidence pre-recorded;
- a civil or criminal court may admit an official audio visual or written record of his or her evidence given in an earlier criminal proceeding and relieve him or her of the obligation to give oral evidence in the current proceedings.

Warnings about the uncorroborated evidence of children

The Layton Report made several recommendations about judicial warnings about the uncorroborated evidence of children.

At present, the Act does not prohibit warnings about lack of corroboration. Instead it says that, except where an Act requires it, the judge is not obliged to warn the jury that it is unsafe to convict the accused on the uncorroborated evidence of the complainant, and, that a judge in a criminal trial is not obliged to warn the jury that it is unsafe to convict on the uncorroborated evidence of a child if the child gave sworn evidence.

One recommendation was for the law to be changed to say that corroboration is never to be required of the evidence of a child witness, whether sworn or unsworn. But that would produce an unacceptable result; it would give greater credibility to the sworn or unsworn evidence of children than to the sworn or unsworn evidence of adults, for which corroboration may sometimes be required.

Instead, the Bill amends the Act to stop judges warning juries that it is unsafe to convict on the uncorroborated sworn evidence of a child except where the warning is warranted in the particular case and a party has asked for the warning to be given.

The Layton Report also suggested that judicial warnings about the reliability of the evidence of a particular child be permitted only under strict conditions, along the lines of a recommendation of the Australian Law Reform Commission Report (No. 84).

The Bill takes this up by providing that, if a judge does warn a jury about the risks of convicting on the uncorroborated evidence of a child, or otherwise comments on the evidence, that warning must be the same as if for evidence given by an adult; that is, the judge must not say or imply that the evidence of the child is inherently less reliable than the evidence of an adult.

Together, these amendments will prevent juries from being warned to scrutinise the evidence of young children generally with special care or from being told that young children generally have tendencies to invention or distortion. The Bill will permit a judge to warn about the reliability of the uncorroborated sworn evidence of a child only where the defendant requests the warning and can show good reason, other than the fact that the witness is a child, why the warning is needed.

Cross-examination of victims of certain offences

A defendant may choose to represent himself or herself at trial, and will then question witnesses in person instead of through counsel. Sometimes unrepresented defendants cross-examine their alleged victims with personal animosity and in a confrontational manner that would not be acceptable if adopted by counsel. Indeed, the opportunity to intimidate a witness may sometimes be the reason for a defendant choosing not to be represented at trial.

In such cases, the court, in allowing cross-examination in person, can appear to be giving the defendant free rein to settle a grudge or gratify a desire to cause or prolong distress, and can seem itself to be an instrument of injustice. Often, a defendant will see a judge's attempts to constrain his or her efforts at cross-examination as compromising judicial neutrality and may appeal the verdict on this ground.

A notorious Australian example is the Skaf case in New South Wales where the defendants in a rape trial discarded counsel so that they could cross-examine the complainant personally, with the aim of humiliating and intimidating her. This resulted in the enactment of laws preventing the cross-examination in person of complainants in sexual cases (section 294A of the New South Wales Criminal Procedure Act 1986, as amended by the Criminal Procedure Amendment (Sexual Offence Evidence) Act 2003).

Since then, Victoria has enacted special rules for the cross-examination of complainants in sexual cases and members of their families or the family of the accused in such cases (section 37CA Evidence Act 1958 (Vic), inserted by the Crimes (Sexual Offences) Act 2006).

Laws in Australia, New Zealand and the United Kingdom restricting or prohibiting the rights of unrepresented defendants to cross-examine in person share many features but are not identical. In the UK, the court must first determine whether denying the right to cross-examination in person will affect the quality of the witness's evidence, while the Australian and New Zealand models assume a positive effect on quality.

This Bill takes the best features of comparable laws elsewhere, conforming with the Australian and New Zealand approaches. In doing so, the Government endorses the reasoning of the Victorian Law Reform Commission, that:

...provided there are other ways in which the complainant's evidence can effectively be tested (as the Commission believes there are), there can be no justifiable reason for subjecting the complainant to cross-examination by the accused. Confrontation with the accused and cross examination are distressful enough without adding the element of direct personal (verbal) attack. Judicial control of cross-examination cannot provide systematic protection because of the inherent nature of the proceedings and the need for judges to remain neutral. And, even where judicial discretion is exercised to prevent abusive or improper questioning, it cannot protect the complainant from the effects of direct confrontation with the alleged offender who wishes to cross-examine personally.

The Bill takes an approach that is similar to the Victorian legislation, although it has a wider application. It will prohibit a defendant from questioning in person a witness who is the alleged victim of an offence to which the proceedings relate. An offence to which the proceedings relate is an offence of contravening or failing to comply with a restraining order or a domestic violence restraining order, or a serious offence against the person. A serious offence against the person is defined as an offence of attempted murder or attempted manslaughter, a sexual offence, an offence of causing serious harm, an offence involving an unlawful threat to kill or endanger life, an offence involving blackmail, an offence involving abduction, an offence of stalking, or an attempt to commit, or assault with intent to commit any of these offences.

The prohibition on cross-examination in person will apply not only in criminal cases but in civil cases related to the offence of which the witness is the victim or alleged victim. Without this extended application, a defendant who has been prevented from cross-examining the alleged victim in person in a criminal trial may cross-examine him or her in person in later civil proceedings, such as criminal injuries compensation proceedings.

An unrepresented defendant who wishes to cross-examine an alleged victim of a relevant offence in a criminal trial must do so through counsel.

An unrepresented defendant who wishes to cross-examine an alleged victim of a relevant offence in a civil proceeding may do so either through counsel or by submitting questions to the judge in writing, after which the judge or the judge's delegate (for example, the judge's associate) will ask the witness those questions that the judge determines are allowable in cross-examination.

In a criminal trial, the court must warn an unrepresented defendant of these limitations on his or her trial entitlements, inform him or her of his or her statutory rights to legal assistance, and ensure that he or she has had a reasonable opportunity to engage counsel before the evidence is taken.

The Bill requires the court, in a criminal trial where an unrepresented defendant obtains the assistance of counsel to cross-examine, to explain the reasons for such assistance and warn the jury not to draw any inferences adverse to the defendant from it.

The Bill also makes related amendments to the Criminal Law (Legal Representation) Act 2001 so that an unrepresented accused who wishes to cross-examine an alleged victim is entitled to legal assistance for counsel, subject to the same conditions and cost-recovery procedures as a person granted assistance under that Act. Importantly, the amendments will ensure that an unrepresented defendant who refuses or declines legal assistance to cross-examine a vulnerable witness cannot later challenge the fairness of the trial for lack of legal representation.

These provisions will not remove a defendant's right to represent himself or herself, nor remove a defendant's right that prosecution witnesses be cross-examined. They simply stop the accused person from conducting such cross-examination in person.

Court's power to make an audio visual record of the evidence of vulnerable witnesses

In South Australia, written transcripts are the only record of a person's evidence in a trial.

Vulnerable witnesses may give evidence remotely by CCTV, but no audio visual record is kept.

A written transcript is not generally as effective a representation of a witness's evidence as an audio visual record. In cases where the witness has given evidence for many days or weeks, the written transcript will run to many hundreds of pages and be difficult for a jury in later proceedings to which that transcript is admitted as evidence to read and assimilate.

Written transcripts can rarely capture a witness's demeanour, and demeanour can be a good indicator of credibility. A court that admits a written transcript as evidence of what a witness said in a previous proceeding may be more inclined to do so if it can also hear a record of the witness saying it. In the Skaf case, where the witness was not prepared to give evidence in person in the retrial, a refusal to admit the written transcript would have destroyed the prosecution case.

Criminal courts need authority to take an audio visual record of evidence in appropriate cases so that this record can form part of the official record, along with the written transcript, that a later court can admit as the evidence of that witness in its proceedings.

The Bill allows a court in the original criminal proceeding, on the application of the prosecutor, to order that an audio visual record be taken of a vulnerable witness's evidence, as well as a written transcript, if it has the facilities available to do so and it is otherwise practicable to do so. The aim is for this contemporaneous record to be available to be used as the witness's evidence in a later related proceeding.

The Bill also obliges a court to take a contemporaneous audio visual or audio record of the evidence of a vulnerable witness if that witness is a child (of or under the age of 16 years) complainant in a sexual offence proceeding and the child's evidence has not already been pre-recorded before trial by special arrangement. This means that there will always be an audio visual or audio record of the evidence of an alleged child victim, whether he or she gives that evidence to the court in a separate hearing before the trial began or whether during the trial itself.

This part of the provision aims to minimise the impact of trial delay on children who are the alleged victims of sexual offences. It is part of a Government initiative under which courts will have two options for managing sexual offence proceedings when the alleged victim is a child: either to fast-track the trial or to pre-record the child's evidence. The Bill also includes provisions that requires the Supreme, District and Magistrates Courts to give priority to criminal trials of sexual offences involving children.

It is expected that courts will deal with applications for taking audio visual records to be made at the same time as applications for special arrangements.

The Government intends to equip selected courts with an audio visual recording capacity both for use during a trial and for pre-recording, depending on demand.

The audio visual record is to be kept in the custody of the court and access to it restricted to the court officials responsible for its custody. Otherwise, the court may authorise a person to take custody of it or have some other form of access to it if they need to use it in a related proceeding that has commenced or is in contemplation.

Access to an audio visual record taken under this section is to be governed by this section alone. The accessibility of evidence provisions in the Supreme Court Act 1935, the District Court Act 1991 and the Magistrates Court Act 1991 do not apply.

Court's power to admit evidence taken in earlier proceedings

The Bill allows a court to admit as evidence an official record of a witness's evidence that has been given in an earlier criminal trial and to allow the court to relieve that witness from the obligation to give evidence in person in the later proceedings. The provision applies only to witnesses who have died, or who have become too ill or infirm to give evidence, or have not, after diligent search, been found, or who are vulnerable witnesses.

This amendment will ensure, among other things, that prosecutions do not fail and that people who have committed crimes do not escape liability because a key witness is not available or prepared to give evidence again at a retrial.

The example of a vulnerable witness was given publicity in the Skaf case in New South Wales. Two brothers successfully appealed a rape conviction on the ground that jurors had acted improperly by independently investigating the scene of the alleged crime. The complainant declined to give evidence again because she had suffered such distress while giving evidence in the original trial. She had every right and reason to decline but,

without her evidence, the case against the accused would have collapsed. The New South Wales Parliament enacted legislation to allow a record of the victim's evidence at the original trial to be substituted for her oral evidence at the retrial. The legislation applied retrospectively to prevent those particular accused from escaping prosecution.

This Bill will let a later court admit as evidence in proceedings before it an official record of any relevant evidence given in an earlier criminal trial by a vulnerable witness or by a witness who, by the time of the later proceedings, has died or become too ill or infirm to give evidence or cannot, after diligent search, be found.

When the later court admits an official record, it may relieve the witness, wholly or in part, of the obligation to give oral evidence.

The later court may be a civil or criminal court. It may be conducting a retrial or proceedings that have no such link to the original proceedings. What is important is that the evidence constituting the official record is relevant to those proceedings.

Before admitting that official record, the later court must have it edited to exclude material that is irrelevant to or is inadmissible in the proceedings before it for some other reason.

These provisions are not restricted to proceedings for sexual offences. A vulnerable witness in other kinds of proceedings may be under extraordinary stress giving evidence at that trial and as disinclined to give that evidence again at a retrial as the alleged victim in a rape trial.

Disallowance of improper questions

The Bill also changes the way courts can protect witnesses from inappropriate questioning by counsel.

At present, a court may disallow or forbid in cross-examination questions that are irrelevant, vexatious and not relevant to the proceeding, or are scandalous or insulting, even though the question may have some bearing on the case before the court. Such questions may not be disallowed or forbidden if they are about facts in issue, or about matters necessary to be known in order to determine whether or not the facts in issue existed. The court may also disallow or forbid questions that are indecent; and questions that are intended to insult or annoy, or are needlessly offensive in form, notwithstanding that the question may be proper in itself. These laws apply to both civil and criminal proceedings.

There is evidence that these laws are not working to protect children and vulnerable witnesses. The Skaf case, in New South Wales, which, at that time, had similar laws to those in South Australia, highlighted this. The Layton Report noted that many of the submissions to it about child witnesses in criminal trials:

...referred to the trauma of cross-examination by defence counsel and made the point that such court processes can result in further abuse, betrayal and powerlessness.

The Layton Report referred to examples in South Australian courts of very young children being cross-examined for up to five hours, and to bullying tactics, trick questions and the deliberate use of legal jargon or language that is too sophisticated for children to understand.

The Attorney-General's Department and the judiciary are working on a program of judicial education about children in court. The problem for judges, however, is not so much a lack of appreciation of the difficulties children experience in giving evidence but a concern that judicial intervention can so easily be the ground for a successful appeal, leading to a mistrial or retrial, which may have even worse consequences for the child than a failure to intervene.

New laws about the kinds of questions counsel may ask in a criminal trial came into effect in New South Wales in June 2005 (in the Criminal Procedure Further Amendment (Evidence) Act 2005) and in Victoria in 2006 (s 41F Evidence Act 1958 (Victoria)). These laws were designed to meet observations by advocates for child witnesses and alleged victims that judges are too often loath to check wayward counsel, and that prosecuting counsel may sometimes decline to object to improper questions for fear that it may, wrongly, give the jury the impression that the prosecution is trying to hide something.

In July 2005, the Australian Law Reform Commission (ALRC) and the Law Reform Commissions in New South Wales and Victoria jointly recommended that the uniform Evidence Acts should set out, as in the New South Wales legislation, a more comprehensive and detailed list of questions that are inappropriate; and that the laws should apply not only to criminal but to civil proceedings; maintain the court's discretion to disallow improper questions when they are asked of ordinary witnesses; and oblige the court to disallow such questions when asked of child witnesses and witnesses with a cognitive impairment and, further, disallow confusing or repetitive questions and questions structured in a misleading or confusing way.

On 17 October, 2007, the model for new uniform evidence laws was introduced to the NSW Parliament as the Evidence (Amendment) Bill 2007 (NSW). It amends the recent NSW laws on improper questions.

This Bill amends our Act in a similar way.

It replaces current section 25 of the Act with a provision that will apply to any court proceeding. It requires a court to disallow an improper question put to a witness in cross-examination and to inform the witness that the question need not be answered. If, however, the court fails to disallow an improper question or tell a witness an improper question need not be answered, and the witness answers the question, the answer may still be admissible.

The Bill defines an improper question as one that is misleading or confusing, or that is apparently based on a stereotype, or that is unnecessarily repetitive, offensive or oppressive, or is one of a series of questions that is unnecessarily repetitive, offensive or oppressive, or one that is put in a humiliating, insulting or otherwise inappropriate manner or tone.

The Bill also includes safeguards against the inhibition of rigorous and relevant cross-examination carried out properly. It provides that a question is not disallowable through impropriety simply because it challenges the truthfulness of the witness or the consistency or accuracy of any statements made by the witness, or because it requires the witness to discuss a subject that he or she considers distasteful or private.

When determining whether a question is improper, the court may take into account not only relevant characteristics of the witness (such as age, personality, education, disability, ethnicity and culture) but the context in which the question is put.

Statement of protected witness

A court will not usually admit evidence from a person of what another person has said out of court as the evidence of that other person if it is possible for that other person to give oral evidence about it directly to the court. What person A says to person B, out of court, is hearsay if the court hears it from person B. A person charged with an offence is entitled to have the charge proved by the best evidence available, and the direct evidence of person A is better than person B's recollection of what person A said.

If a court makes an exception to this rule and allows A's evidence to be given by means of B telling the court what A said to B, it will usually require A to be available to be cross-examined on that statement. The principle is that a defendant should be able to test a witness's evidence through cross-examination however that evidence may have been given.

Some time ago, the Act was amended to codify that exception for complaints of young children about alleged sexual offences. The aim was to facilitate the proof of sexual offences against children. Current section 34CA allows a court hearing a charge of a sexual offence against a young child to admit a record of the child's complaint about the alleged offence to another person, out of court, to prove the truth of the facts stated in the complaint without the child having to give that evidence at trial, so long as the child is available for cross-examination.

Unfortunately, section 34CA is rarely used. The courts have held that if a young child 'cannot remember making [the complaint] or is inarticulate in the witness box', he or she is not, for the purpose of this section, available for cross-examination, and the complaint cannot be admitted into evidence. Without that child's evidence, the charge may be impossible or difficult to prove. By the time of trial, a very young child may have forgotten the incident or, if it was traumatic, have been therapeutically encouraged to forget it. In these cases, although the child's out-of-court statement immediately after the event will be the best record of the child's memory of it, that statement cannot be admitted into evidence, and the very inability to remember the events that prevents the child's out-of-court statement being admitted into evidence will also prevent the child giving evidence directly. In these circumstances, a court determining a charge of abuse of a young child may never hear the child's account of it. Indeed, these cases may not even come to court.

The Bill deletes section 34CA and replaces it with a provision that allows a court to admit evidence of the nature and contents of an out-of-court statement made by a 'protected witness' from the person to whom it was given, so long as the protected witness has been called or is available to be called as a witness and the court will allow him or her to be cross-examined on the matters arising from the evidence. A protected witness is defined as a young child or a person with a mental disability that adversely affects his or her ability to communicate effectively with the court. The court may permit such cross-examination only if satisfied that it would elicit material of substantive probative value or material that would substantially reduce the credibility of the evidence. The new section also clarifies the current position in relation to the use that may be made of such evidence; that is, that the out of court statement may be admitted to establish the truth of the facts contained in it (Corkin (1989) 50 SASR 580) The provision will therefore sometimes allow evidence of what protected witnesses have said out-of-court to be admitted even though the protected witness has not been questioned about it in court. Whenever this happens, the court must warn the jury that this evidence should be scrutinised with particular care because it has not been tested in the usual way.

The aim of this provision is to make section 34CA work as originally intended, so that the court has the best possible available evidence before it, even if that is hearsay evidence. It does not, of course, derogate from any discretion the court may have to exclude evidence that is admissible in this way.

These amendments are needed so that, where possible, people who commit crime do not escape liability simply because the youth or mental disability of the victim or a key witness stops them being available, in the technical sense, to give evidence in person. The ALRC recently identified this topic as needing uniform treatment in Australia. It pointed out that:

...the admission of a child's out-of-court statement can preserve the child's account at an early stage, making it a reliable form of evidence, and could reduce the stress and trauma on the child of testifying in court.

In section 34CA, South Australia had attempted to achieve this. The Bill should remedy the defects in that section.

Direction relating to delay where defendant forensically disadvantaged

When there is a long delay in reporting a sexual offence, and that delay has caused a forensic disadvantage to the defendant, that fact should be pointed out to the jury. However, the current law goes further than that.

In the case of Longman, the High Court held that where delay between an offence and the defendant's awareness of the charge may put the defendant at a forensic disadvantage, the judge should warn the jury to scrutinise the evidence against the defendant with particular care in the light of that disadvantage, to prevent a perceptible miscarriage of justice.

In some sexual cases, judges have used this principle to warn juries to treat the evidence of the complainant with caution when there has been a long delay in reporting a sexual offence, regardless of whether that long delay has caused a forensic disadvantage to the defendant, and regardless of whether in every other respect the evidence of the complainant requires no special scrutiny. In effect, some courts have assumed that a long delay in reporting a sexual offence will have an adverse forensic effect in every case and indicated some unreliability on the part of the complainant.

Whenever a Longman warning is given, the jury hears that it would be unsafe or dangerous to convict the defendant. If a jury hears a warning in those terms it is highly likely to acquit, especially if it follows a Kilby/Crofts warning in a sexual case where no evidence has been given to explain the delay.

There is no settled judicial authority about what constitutes a delay long enough to invoke a Longman warning about the dangers of conviction because each case is different, but the average threshold appears to be about four years.

This Bill abolishes the Longman warning not just as it applies to sexual cases but to any criminal case. In the words of the ALRC and Victorian Law Reform Commission in their report on the Uniform Evidence Laws:

The forensic disadvantage which may be occasioned to an accused by delay arises independently of the nature of the proceedings, and accordingly the courts have held that a Longman warning may be required in any case where the conduct of the defence has been affected by delay. The nature of sexual assault prosecutions is such that delay is more likely to arise in this context, however it is clearly not confined to such cases. Although some of the authorities discussed earlier in this chapter conflate the issue of delay with the reliability or credibility of sexual assault complainants, the ALRC and VLRC are of the view that this is erroneously done.

The Evidence Amendment Bill 2007, introduced in October 2007 to the New South Wales Parliament, applies to any criminal proceeding. The provision in this Bill is along similar lines.

The Bill requires a trial judge, if of the opinion that the period of time that has elapsed between the date of the alleged offending and the date of trial has caused the defendant a significant forensic disadvantage, to explain to the jury the nature or likely nature of that disadvantage and direct the jury to take that disadvantage into account when scrutinising the evidence.

In giving this direction, the trial judge may caution the jury about the specific effects the disadvantage had on the ability of the defendant to mount a defence in this case but must avoid generalised and non-specific warnings and, in particular, must not use the phrase 'dangerous or unsafe to convict'.

The provision does not refer to a delay in complaint, because that is not the proper focus of the jury in these cases. This amendment, together with the amendments as to evidence relating to complaint in sexual cases, will stop the jury being warned that a delay between the offending and trial makes the complainant's evidence inherently unreliable, whether the proceedings are for a sexual offence or any other criminal offence.

Evidence in sexual cases generally

The Bill renames section 34I of the Act, renumbers it to become section 34L, and makes minor revisions to its language. It also deletes subsection (6a) from that section and includes it, in a slightly different form, in new section 34M (Evidence relating to complaint in sexual cases).

Evidence relating to complaint in sexual cases

The hearsay rule is that a court may not admit, as evidence of the truth of what a person said, evidence from someone else about what that person said to them out of court. For sexual offences, however, a court may admit evidence of a person's report of the offence to someone else that was made out of court if that report was made at the first possible opportunity after the alleged offence occurred. This is called evidence of 'recent complaint'.

If admitted, the judge must tell the jury that it may not treat this evidence as bearing on the truth of the matter, but rather as going to the credibility or consistency of conduct of the complainant. This is known as a Crofts direction.

If there was some delay between the alleged offence and when the complainant reported it, and the court may not admit evidence of the complainant's out-of-court report of the offence because it was not sufficiently 'recent', the judge must direct the jury that the delay must be taken into account when they assess the alleged victim's credibility and consistency of conduct. This is known as a Kilby direction.

Also, if there is a long delay in reporting the offence and giving notice of that report to the accused, the judge must warn the jury that is it dangerous to convict the accused on the evidence of the complainant because the delay has put the accused at a forensic disadvantage. This is known as a Longman warning (see the discussion above).

The law of recent complaint, with its implications for a victim's credibility, is based on outdated notions of the behaviour of victims of sexual assault, particularly child victims. The directions that a court is required to give the jury, of themselves and together, can be confusing, may be unrealistic because juries may still treat the evidence as going to the truth of the matter, are applied inconsistently because judges identify delay in different ways, and may encourage juries to acquit.

South Australia tried to overcome problems with warnings about the significance of a delay in reporting a sexual offence by legislating that if, in a trial of a sexual offence, there is a suggestion that the alleged victim failed to report it or delayed reporting it, the judge must warn the jury that that failure or delay does not necessarily mean the

allegation is false, and tell the jury that the alleged victim could have valid reasons for failing to report the offence or delaying reporting it (see current section 34I of the Act).

Section 34I does not stop a judge making a Kilby direction when an alleged victim does not make what is regarded as a 'recent' complaint of a sexual offence. In such cases, the judge must tell the jury that the delay in reporting the offence is a matter to which they can have regard when assessing the alleged victim's credibility.

Because section 34I(6a) of the Act confines the admissibility of out-of-court reports of sexual offences to 'recent' reports, Kilby/Crofts directions are too often given without the jury having heard evidence from the complainant as to why and to whom he or she reported the offence and why he or she reported it at that particular time and not earlier.

The defence may make a tactical decision to ask the complainant when he or she reported the offence but not to ask further questions about it, so that the complainant has no opportunity to explain any delay. That leaves the jury wondering why the prosecution has offered no evidence in explanation when it hears the defence address on delay followed by a warning from the judge that the delay has a significance to the complainant's credibility. The effect must be to encourage a belief that that the prosecution has something to hide and that the complainant should not be believed.

As Ms Chapman pointed out in her discussion paper, section 34I(6a) of the Act does not 'challenge the underlying rationale for the common law approach to complaint evidence in sexual assault cases. Many people, including members of the judiciary, have expressed disquiet about that rationale.'. There is a need for reform of this law.

In October 2006, the Tasmania Law Reform Institute recommended that the law prohibit trial judges from giving a direction that a delay in complaint 'may be indicative of fabrication'. In doing so it referred to a similar approach adopted by the ALRC and the Victorian, New South Wales Law Reform Commissions, and cited the New South Wales Legislative Council Standing Committee on Law and Justice's criticism of the Crofts direction as encouraging 'a stereotypical view that delay is invariably a sign of the falsity of the complaint'.

Australian States and Territories and law reform commissions have recommended various ways of replacing these warnings because, taken one by one or together, they are not achieving their aims. The principle behind those reforms is clear - that it should not be assumed or suggested to a jury that a delay in reporting a sexual offence necessarily means that the complainant is lying, and that, indeed, juries should understand that there are often legitimate reasons for not reporting a sexual offence for some time.

This Bill deletes section 34I of the Act and replaces it with a new provision (section 34M) that expressly abolishes the common law on the admissibility of recent complaint in sexual cases, including the Kilby/Crofts directions. It forbids any suggestion or statement to a jury that the timing of the reporting of a sexual offence has an inherent significance for the complainant's credibility or consistency of conduct. It allows the admission of evidence of a complainant's initial report of a sexual offence, if relevant, whenever that occurred. That evidence may be given by any person about when the report was made and to whom, its content, how the complaint was solicited, why the complainant reported the alleged offence to that person at that time and why the complainant did not report the alleged offence to someone else at an earlier time (if relevant).

When admitting such evidence in a trial before a jury, the judge must give the jury specific directions about how to treat the evidence, but is not bound to use a particular form of words in doing so. The judge must direct the jury that the evidence is admitted to inform the jury as to how the allegation first came to light and to show consistency in the conduct of the alleged victim; that it may not be used as evidence of the truth of what was alleged; that there may be any number of reasons for the alleged victim of a sexual offence reporting the allegation to a particular person at a particular time; but that otherwise it is the jury's job to determine what significance, if any, should be given to the evidence of that report in the circumstances of the particular case.

Directions relating to consent in certain sexual cases

The Criminal Law Consolidation (Rape and Sexual Offences) Amendment Bill 2007 introduces a definition of consent to sexual activity that applies to any sexual offence of which consent is in issue. The definition includes a non-exhaustive list of examples of circumstances in which a person is to be taken not to freely and voluntarily agree to sexual activity; in other words, circumstances in which the victim has apparently consented but the consent is not a proper or real consent.

This Bill complements those provisions by requiring a judge in a jury trial of a sexual offence in which consent is an element, and to the extent that it is relevant to the circumstances of the case, to direct the jury that a person is not to be regarded as having consented to a sexual act just because the person did not say or do anything to indicate that the person did not consent; or the person did not protest or physically resist; or the person did not sustain a physical injury; or on that occasion or an earlier one, the person had consented to engage in a sexual act (whether or not of the same kind) with the accused person or someone else.

By defining consent in this way, and requiring the judge to direct the jury so that it cannot misinterpret evidence about the conduct of the alleged victim to infer consent when there was none, the amendments to the Criminal Law Consolidation Act 1935 and the Evidence Act 1929 send a clear message about the limits of lawful sexual conduct.

Sensitive material

As a general rule, a defendant is entitled to see and have a copy of any material that the prosecution will adduce as evidence in his or her trial, unless the material is pornographic, in which case the defendant may inspect it but may not have a copy of it. In this way defendants can be fully informed of the case against them and in a position to defend it.

Some images that are used as evidence in criminal proceedings, although not pornographic, are highly sensitive, in the sense that their subjects might feel distressed if anyone other than those investigating, prosecuting or trying the case had uncontrolled access to them. An example is a photograph of a sexual assault victim's genitals taken by the sexual assault unit of a hospital for use as prosecution evidence. That is not a pornographic image, but the victim may not want the system to allow or require the prosecuting authority to give the alleged offender a copy of it: that would be to add insult to injury. Other examples are a photograph of a person taken after the person's death, an innocent image of a young child that has been displayed on a pornographic website to lure other pornographers to the site, or a facial photograph of an alleged victim of a stalking or sexual offence.

None of the images described in these examples is pornographic. Under the current law, there is nothing to stop the defendant from obtaining and keeping a copy of that material, from displaying it in his prison cell, from taking further copies or from sending it or showing it to others. Requiring the prosecuting authority to give unrestricted access to this material is a perverse outcome of rules that were designed for fair play.

This Bill applies to any criminal proceeding, not just proceedings for sexual offences, and to all stages of such a proceeding. It restricts access by a defendant, or anyone else, to sensitive material created or obtained as part of a criminal investigation or prosecution. Anything that contains or displays an image of a person is sensitive material if the image is of a person engaged or apparently engaged in a private act, or is of the victim or alleged victim of a sexual offence or an offence of stalking, or the image is taken after the person's death.

A 'private act' means a sexual act or one involving an intimate bodily function, or an activity involving nudity or exposure of sexual organs, pubic area, buttocks or female breasts.

The decision about whether something is sensitive material is made by the prosecuting authority. In criminal proceedings, the prosecuting authority is the Director of Public Prosecutions or delegate, a police officer or anyone acting in a public official capacity who is responsible for commencing and conducting the proceedings. In criminal investigations, the prosecuting authority is a police officer or any other person acting in a public official capacity who is responsible for conducting a criminal investigation.

The prosecuting authority may restrict access to sensitive material. It cannot, however, restrict access to sensitive material by a court or by a public official who reasonably requires access to it for purposes connected with his or her official functions. A public official is a police officer, a public servant or a person classified by regulation as a public official.

When restricting access to sensitive material, the prosecuting authority may set conditions of access. These conditions will let the material be examined under supervision. The Bill establishes notice procedures similar to those in the New South Wales Act. It is an offence to fail to meet those conditions of access.

The Bill provides that the court's decision about access to sensitive material that is in its custody is administrative and final and not subject to any form of review. The court may also charge a fee, fixed by regulation, for inspection or copying of sensitive material. These provisions are identical to those in the Supreme Court Act 1935 regulating public access to evidence.

The Bill also contains consequential amendments to the provisions dealing with access to documents that are in the custody of the court (section 131 Supreme Court Act 1935 and its equivalents in the District Court Act 1991 (section 54) and the Magistrate Court Act 1991 (section 51)) so that there can be no public access to sensitive material under these sections.

The Bill also contains further consequential amendments to the provisions in the Summary Procedure Act 1921 that make an exception to the requirement for full disclosure of material that the prosecution intends to adduce as evidence in cases where that material is pornographic. These amendments replace the references to pornographic material with references to sensitive material, and refer to the sensitive material notice procedures to be established by the insertion of Part 7, Division 10 of the Evidence Act 1929.

In Summary

This Bill reforms the way judges warn and direct juries in sexual offence proceedings, reforms criminal procedures to reduce the impact upon children of delay in giving evidence of sexual abuse, and substantively reforms the law of recent complaint and of the effect of delay in sexual offence cases.

This Bill will protect witnesses, especially children and alleged victims of sexual offences of serious offences of violence, from undue distress when giving evidence in court, and so improve the quality of their evidence. It puts into place some important recommendations about children and the courts by the Layton Child Protection Review. It will ensure that appropriate special arrangements for taking evidence can be made when a witness is vulnerable. It will ensure that evidence is not treated dismissively or differently simply because it comes from a child. It will make it easier for a disabled witness to give evidence. It will let courts hear evidence that is of the best possible quality because it is not contaminated by fear or distress, and, when this is the best evidence available, admit hearsay evidence of what a young child or mentally-disabled person has said about an alleged offence and, sometimes, allow them to be exempted from having to give evidence in person.

The Bill will shield alleged victims from pernicious personal cross-examination by unrepresented defendants and give greater authority to the court to protect witnesses from improper questions by counsel. It will let a court admit as the evidence of a vulnerable witness, without that witness having to give the evidence in person, an official record of the evidence given by that witness in an earlier criminal proceeding in some circumstances. It will let a criminal court take an audio visual record of a vulnerable witness's evidence so that it can be used in later proceedings as an official record of that witness's evidence. It will ensure that access to sensitive prosecution material is restricted to protect the privacy and dignity of the subject of that evidence. The Bill will also preserve the

accused person's right to a fair trial and ensure that these provisions work in a way that will not prejudice a jury against an accused person.

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 (Legal Representation) Act 2001

4—Amendment of section 4—Interpretation

It is proposed to insert a new definition of an assisted person so as to include a person for whom legal assistance is, or has been, provided in connection with the cross-examination of a section 13B witness. A section 13B witness is a witness who is the alleged victim of an offence to which section 13B of the Evidence Act 1929 applies.

5—Amendment of section 6—Entitlement to legal assistance

It is proposed to amend this section of the principal Act to provide that if a defendant who is not legally represented in a trial applies to the Commission for legal assistance for the cross examination of a section 13B witness in the trial, the Commission must (subject to the qualifications listed in the section) grant such legal assistance.

6—Amendment of section 9—Representation of certain defendants

This proposed amendment makes it clear that section 9 of the principal Act does not apply to a defendant in a trial who is only represented by a lawyer for the purposes of the cross-examination of a section 13B witness in the trial.

7—Amendment of section 10—Certain costs may be awarded against defendant personally

Section 10 currently provides that certain costs (such as costs resulting from an adjournment attributed to some failure on the part of a defendant) may be awarded against the defendant personally. The proposed amendment provides that such an order for costs may not be made against the defendant if the adjournment is to allow a defendant who is not legally represented in a trial to obtain legal representation for the purposes of the cross examination of a section 13B witness in the trial.

Part 3—Amendment of District Court Act 1991

8—Insertion of section 50B

It is proposed, by new section 50B (Trials of sexual offences involving children to be given priority) to provide that the District Court will give the necessary directions to ensure that a trial of a sexual offence where the alleged victim of the offence is a child is given priority over any less urgent criminal trial and is dealt with as expeditiously as the proper administration of justice allows. A sexual offence is defined for the purposes of the new section.

9—Amendment of section 54—Accessibility of evidence etc

These proposed amendments are related to the amendments proposed by new Part 7 Division 10 of the Evidence Act 1929 (see clause 20).

Part 4—Amendment of Evidence Act 1929

10—Amendment of section 4—Interpretation

The proposed amendments to this section insert (among others) the following definitions:

- mental disability;
- serious offence against the person;
- vulnerable witness.

11—Amendment of section 9—Unsworn evidence

The proposed amendment deletes the reference to a 'trial by jury' and substitutes 'criminal trial'. The effect of the amendment will mean that the section applies to criminal trials by jury and criminal trials by judge alone.

12—Substitution of sections 12A and 13

12A—Warning relating to uncorroborated evidence of child in criminal proceedings

The substance of current section 12A is restated in new section 12A with a number of additions. The new section provides that, in a criminal trial, a judge must not warn the jury that it is unsafe to convict on a child's uncorroborated evidence unless—

- the warning is warranted because there are, in the circumstances of the particular case, cogent reasons, apart from the fact that the witness is a child, to doubt the reliability of the child's evidence; and
- a party asks that the warning be given.

In giving any such warning, nothing may be said that suggests that the evidence of children is inherently less credible or reliable, or requires more careful scrutiny, than the evidence of adults.

13—Special arrangements for protecting witnesses from embarrassment, distress, etc when giving evidence

New section 13 provides courts with powers to make special arrangements for the taking of evidence of a witness to protect the witness from embarrassment or distress, from being intimidated by courtroom atmosphere or for any other proper reason. The arrangements can be ordered if the necessary resources are readily available and if the arrangements would not cause prejudice to any party to the proceedings.

Subsection (2) lists the sorts of orders that may be made, subsection (3) provides that special arrangements may relate to the whole of the witness's evidence or only to particular aspects of the witness's evidence (such as, cross-examination or re-examination) and subsection (4) sets out when such orders may not be made. They may not be made if the effect of the order would be—

- to relieve a witness from the obligation to give sworn evidence; or
- to relieve a witness from the obligation to submit to cross-examination; or
- to prevent the judge, jury or defendant from observing the witness's demeanour in giving evidence; or
- to prevent the defendant from instructing counsel while the witness is giving evidence.

If, in a criminal trial, special arrangements are made for the taking of evidence, the judge must warn the jury not to draw from that fact any inference adverse to the defendant, and not to allow the special arrangements to influence the weight to be given to the evidence.

13A—Special arrangements for protecting vulnerable witnesses when giving evidence in criminal proceedings

This new section provides for the protection of vulnerable witnesses (as defined in section 4 of the Act). If a vulnerable witness is to give evidence in criminal proceedings, appropriate special arrangements for taking the evidence must, on application by the party calling the witness, be made. The sorts of arrangements that may be made are the same as under proposed section 13.

The section sets out the procedure for the making of the application.

The court may dispense with special arrangements for taking the evidence of a vulnerable witness in criminal proceedings if the witness is an adult and the court is satisfied that—

- the facilities necessary for the special arrangements are not readily available to the court; and
- it is not reasonably practicable in the circumstances of the particular proceedings to make the facilities available.

13B—Cross-examination of victims of certain offences

New section 13B provides that a defendant is not to be permitted to cross-examine a witness who is the alleged victim of an offence to which this section applies—

- in a criminal trial unless the cross-examination is by counsel;
- in civil proceedings relating to the offence unless the cross-examination is by counsel or, if the defendant is unrepresented, the cross-examination is conducted in accordance with proposed subsection (2) of this section.

Subsection (2) provides that, following the submission in writing to the trial judge of proposed questions to be put to the witness in cross-examination, the judge (or the judge's delegate) will ask the witness those of the submitted questions that are determined by the judge to be allowable.

The offences to which this new section applies are—

- a serious offence against the person; or
- an offence of contravening or failing to comply with a domestic violence restraining order under the Domestic Violence Act 1994; or
- an offence of contravening or failing to comply with a restraining order under the Summary Procedure Act 1921.

13C—Court's power to make audio visual record of evidence of vulnerable witnesses in criminal proceedings

New section 13C provides that if a vulnerable witness who is a child of or under the age of 16 years and who is the alleged victim of a sexual offence is to give evidence in criminal proceedings, the court must order that an

audio visual record be made of the witness's evidence before the court (unless an order has already been made in respect of the witness's evidence under section 13A(2)(b)).

For any other vulnerable witness giving evidence in criminal proceedings, the court may, on application by the prosecution, order that an audio visual record be made of the witness's evidence before the court if the facilities necessary for making an audio visual record of the evidence are readily available to the court and it is otherwise practicable to make such a record.

The record is to be kept in the custody of the court and may only be used and accessed as authorised by the court.

13D—Court's power to admit evidence taken in earlier proceedings

This new section provides that, on application by a party to civil or criminal proceedings before a court, the court has discretion to admit an official record of evidence given by a witness in earlier criminal proceedings if satisfied that the witness—

- has died; or
- has become too ill or infirm to give evidence; or
- has not, after diligent search, been found; or
- is a vulnerable witness.

If the court admits an official record into evidence, it may relieve the witness, wholly or in part, from an obligation to give evidence in the later proceedings.

13—Amendment of section 21—Competence and compellability of witnesses

These amendments are consequential.

14—Substitution of section 25

25—Disallowance of improper questions

Proposed substituted section 25 provides that if an improper question is put to a witness in cross-examination, the court must disallow the question and inform the witness that the question need not be answered. A question is improper if—

- it is misleading or confusing; or
- it is apparently based on a stereotype, including a sexual, racial, ethnic or cultural stereotype or a stereotype based on age or physical or mental disability; or
- it is unnecessarily repetitive, offensive or oppressive, or is 1 of a series of questions that is unnecessarily repetitive, offensive or oppressive; or
- it is put in a humiliating, insulting or otherwise inappropriate manner or tone.

15—Insertion of heading to Part 3 Division 1

It is proposed to divide Part 3 into 2 Divisions, the first being headed 'Miscellaneous rules of evidence in general cases'.

16—Substitution of section 34CA

Section 34CA is to be repealed and a new section 34CA substituted.

34CA—Statement of protected witness

New section 34CA provides that a court may admit evidence of the nature and contents of a statement made outside the court by a protected witness from the person to whom the statement was made if the court, having regard to the circumstances in which the statement was made and any other relevant factors, is satisfied that the statement has sufficient probative value to justify its admission and—

- the protected witness has been called, or is available to be called, as a witness in the proceedings; and
- the court gives permission for the protected witness to be cross-examined on matters arising from the evidence.

Any such evidence that is admitted in a trial may be used to prove the truth of the facts asserted in the statement.

In a criminal trial, the judge must, if evidence of the nature and contents of a statement made outside the court by a protected witness has been admitted but the protected person has not, for some reason, been cross-examined on matters arising from the evidence, warn the jury that the evidence should be scrutinised with particular care because it has not been tested in the usual way.

34CB—Warning relating to delay where defendant forensically disadvantaged

This new section abolishes the rule that currently applies in relation to the giving of a Longman warning, and substitutes a statutory scheme in its place. The scheme effectively modifies the Longman warning and replaces it with a requirement that, if a forensic disadvantage caused by a delay in the defendant becoming aware of the

charge of an offence that he or she faces has occurred, the trial judge must give the explanations and directions set out in the provision to the jury. Previously, a Longman warning was required to be in the form of a warning to the jury, warning them of the fact that a conviction based on the relevant evidence alone may be dangerous or unsafe. Those (or similar) words or phrases are no longer to be used in the giving of an explanation or direction under the proposed section, reflecting the fact that those explanations and directions may no longer take the form of a warning.

17—Repeal of section 34I

Section 34I is to be repealed (but see new section 34L).

18—Insertion of Part 3 Division 2

This Division deals with miscellaneous rules of evidence particular to proceedings in which a person is charged with a sexual offence.

Division 2—Miscellaneous rules of evidence in sexual cases

34L—Evidence in sexual cases generally

New section 34L is, in essence, the current section 34I relocated and renumbered and with current subsection (6a) repealed. The proposed section also makes some minor changes to the language used in the section to reflect current drafting practice.

34M—Evidence relating to complaint in sexual cases

New section 34M abolishes the common law relating to recent complaint in sexual cases; that is, the rule that currently applies in relation to the giving of a Kilby or Crofts direction, and substitutes a statutory scheme in its place. The new section forbids the making of a suggestion or statement to the jury that a delay in making a complaint etc is of itself of probative value in relation to the alleged victim's credibility or consistency of conduct. This reflects modern perceptions related to the reasons a complainant may choose not to make a complaint at the earliest opportunity. Consequently, the section provides that evidence related to the making of a complaint is admissible in certain trials. However, certain directions and warnings must be given to juries in relation to such evidence of the kind set out in the provision.

34N—Directions relating to consent in certain sexual cases

This new section reflects proposed amendments to the Criminal Law Consolidation Act 1935 to the rape and sexual assault laws and, in particular, those amendments relating to the issue of consent.

Consequent to those amendments, this proposed section makes provisions related to the type of direction the trial judge must give to the jury in relation to the consent given or not given by the victim of the offence. In particular, the judge must direct the jury that a victim is not to be regarded as having consented to the sexual activity the subject of the charge merely because the victim did, or did not do, the things set out in the provision.

19—Amendment of section 59IQ—Appearance etc by audio visual link or audio link

The amendments proposed to this section are consequential on the enactment of the Statutes Amendment (Domestic Partners) Act 2006.

20—Insertion of Part 7 Division 10

It is proposed to insert a new Division after section 67F of the Act. This new Division will make provision for the manner in which defendants and other persons will have access to sensitive material.

Division 10—Sensitive material

67G—Interpretation and application

New section 67G contains definitions of words and phrases used in this new Division, including the definition of a private act. A private act is defined to mean a sexual act, an act involving an intimate bodily function (such as using a toilet) or an activity involving nudity or exposure or partial exposure of sexual organs, pubic area, buttocks or female breasts.

67H—Meaning of sensitive material

New section 67H provides that, for the purposes of this new Division, anything that contains or displays an image of a person is sensitive material if—

- the image is of the person engaged or apparently engaged in a private act; or
- the image is an image of the victim, or alleged victim, of a sexual offence or the offence of stalking; or
- the image was taken after the person's death.

A reference to sensitive material extends to anything in a prosecuting authority's possession that the prosecuting authority reasonably considers to be sensitive material.

67I—Procedures for giving restricted access to sensitive material

New section 67I provides that if, but for new Division 10, a prosecuting authority would be required to give unrestricted access to sensitive material, the prosecuting authority has a discretion to give either unrestricted or restricted access to the material.

A prosecuting authority cannot, however, restrict access to sensitive material by—

- a court; or
- a public official who reasonably requires access to the sensitive material for purposes connected with his or her official functions.

It is an offence for a person who is given restricted access to sensitive material by a prosecuting authority under this proposed section to contravene a condition of access with a penalty of $8,000 or 2 years imprisonment or both.

67J—Improper dissemination of sensitive material

New section 67J(1) provides that it is an offence for a person who creates sensitive material for a prosecuting authority, or obtains possession of sensitive material from a prosecuting authority, in connection with a criminal investigation, or criminal or civil proceedings, to allow access to the evidence except—

- for the legitimate purposes of the investigation or proceedings; or
- as may be authorised by the prosecuting authority.

Proposed subsection (2) provides that it is an offence if a public official who creates, or obtains possession of, sensitive material in connection with official functions, to allow access to the evidence otherwise than in the course of official functions.

The penalty for an offence against this proposed section is a fine of $8,000 or imprisonment for 2 years or both.

21—Amendment of section 71B—Publishers required to report result of certain proceedings

This proposed amendment moves the penalty provision from subsection (2) to subsection (1) where it rightly belongs.

22—Transitional provision

This clause provides that the amendments made by this measure to the Evidence Act 1929 apply to proceedings commenced after the commencement of that Part.

Part 5—Amendment of Magistrates Court Act 1991

23—Insertion of section 48B

New section 48B (Trials of sexual offences involving children to be given priority) is substantially the same as the amendment proposed to the District Court Act 1991 by clause 8. New section 48B provides that the Magistrates Court will give the necessary directions to ensure that a trial of a sexual offence where the alleged victim of the offence is a child is given priority over any less urgent criminal trial and is dealt with as expeditiously as the proper administration of justice allows. A sexual offence is defined for the purposes of the new section.

24—Amendment of section 51—Accessibility of evidence etc

These proposed amendments are related to the amendments proposed by new Part 7 Division 10 of the Evidence Act 1929 (see clause 20).

Part 6—Amendment of Summary Procedure Act 1921

25—Amendment of section 4—Interpretation

26—Amendment of section 104—Preliminary examination of charges of indictable offences

The proposed amendments to sections 4 and 104 are related to the amendments proposed by new Part 7 Division 10 of the Evidence Act 1929 (see clause 20).

Part 7—Amendment of Supreme Court Act 1935

27—Insertion of section 126A

New section 126A (Trials of sexual offences involving children to be given priority) is substantially the same as the amendments proposed to the District Court Act 1991 and the Magistrates Court Act 1991. This new section proposes to provide that the Supreme Court will give the necessary directions to ensure that a trial of a sexual offence where the alleged victim of the offence is a child is given priority over any less urgent criminal trial and is dealt with as expeditiously as the proper administration of justice allows. A sexual offence is defined for the purposes of the new section.

28—Amendment of section 131—Accessibility of evidence etc

These proposed amendments are related to the amendments proposed by new Part 7 Division 10 of the Evidence Act 1929 (see clause 20).

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

At 18:14 the council adjourned until Tuesday 4 March 2008 at 14:15.