LEGISLATIVE COUNCIL

Thursday 10 April 2008

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:16 and read prayers.

LEGAL PROFESSION BILL

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:16): I seek leave to move a motion without notice concerning the conference on the bill.

Leave granted.

The Hon. P. HOLLOWAY: I move:

That the sitting of the council be not suspended during the continuation of the conference on the bill.

Motion carried.

MURRAY RIVER

The Hon. SANDRA KANCK: Presented a petition signed by 74 residents of South Australia, concerning the extraction of water from the River Murray. The petitioners pray that the council 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.

URBAN TREES

The Hon. SANDRA KANCK: Presented a petition signed by 16 residents of South Australia, concerning South Australia's urban trees. The petitioners pray that the council will either reject the government's Development (Regulated Trees) Amendment Bill, or amend it sufficiently to ensure it protects our urban trees.

PAPERS

The following papers were laid on the table:

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

Department of Further Education, Employment, Science and Technology—Report, 2007

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

Metropolitan Domiciliary Care—Report, 2006-2007.
South Australian Council on Reproductive Technology—Report, 2007
Harms Associated with the Practice of Hypnosis and the Possibility of Developing a Code of Conduct for Registered and Unregistered Health Practitioners—Report, April 2008
Environment, Resources and Development Committee Coastal Development Inquiry Report—Whole of Government Response

DANGEROUS OFFENDERS

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:17): I lay on the table a copy of a ministerial statement relating to dangerous offenders made earlier today in another place by my colleague the Premier.

ALEXANDER, MR P.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:18) I seek leave to make a ministerial statement.

Leave granted.

The Hon. P. HOLLOWAY: Today we see the end of an era with the retirement of the President of the Police Association, Peter Alexander. Peter Alexander's service started back in 1967 when he joined SAPOL as a 20 year old. He spent the majority of his 24 year police career in the CIB. After stints in the old General Squad, Elizabeth CIB and the Drug Squad he was posted to

the Major Crime Investigation Branch, in which he worked as a detective sergeant on many high-profile murder cases.

Peter's service to the Police Association began with two terms as a delegate in the 1980s, and it continued with his election as a committee member in 1987. He became vice president in 1989 and the first full-time president in 1991. For 10 of his 17 years as head of the Police Association of South Australia, he also served as President of the Police Federation of Australia. Peter retires not only as the longest serving president in the 97 year history of the Police Association but also as the longest serving president of the Police Federation of Australia. During his 17 years at the helm of the association, Peter worked with five premiers, nine police ministers and two commissioners of police.

For me, what stands out the most about Peter is his ability to foster good relations with all political parties and how he created a positive public image for the policing profession and police unionism. His dedication, professionalism and engaging manner have gained him enormous respect from not only both sides of politics but also, I believe, the wider community.

During his career, Peter has been an outstanding operational police officer, a skilled investigator and someone who has tirelessly served the police, his members and the people of South Australia. We have one of the best, if not the best, police services in the country, and it is the integrity and reliability of people like Peter Alexander that have helped set the high standard of professionalism that exists in the police service in our state. Peter has given his valuable expertise to police unionism at not only local and interstate levels but also on the global scene through his participation on the International Law Enforcement Council. He was also the uniting force that rallied other police union leaders to form the Police Federation of Australia.

He has fought for and won significant improvements in police wages and conditions over the period of his tenure. This includes last year's EB agreement, which delivered an average wage increase of 16 per cent during the three year life of the enterprise agreement, backdated to 1 July 2007.

He helped influence many new laws, including tougher laws for those who assault our police, changes to DNA laws, and the list goes on. These improvements are a testament to the hard work of Peter Alexander. His departure will take place at the declaration of the poll to elect his successor, occurring later today. This will bring about the first change in the association presidency in more than 17 years.

On behalf of the state government, I extend my gratitude to Peter Alexander for his 41 years of dedication to public service and police unionism. I wish him and Joan all the very best for the future and a long and happy retirement.

CHILDREN IN STATE CARE INQUIRY

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:23): I refer to a ministerial statement regarding Mother Goose made by the Attorney-General in another place. It states:

On 8 April 2008, the member for Bragg made allegations that South Australia Police has refused to investigate allegations referred to the Commissioner of Police by Commissioner Mullighan that a person known as Mother Goose has raped and indecently assaulted young boys.

The Commissioner of Police has provided the Minister for Police with information about the handling of Commissioner Mullighan's referral and Brad Shannon's allegations against the police. The information provided by the Commissioner of Police establishes that Brad Shannon's complaints about the police handling of this matter are without foundation.

The Deputy Leader of the Opposition [in another place] has repeated Brad Shannon's baseless allegations against the police in parliament without first inquiring whether there was any substance to it. The Deputy Leader of the Opposition [in another place] has recklessly published spurious claims of police mishandling of a serious criminal matter. The Deputy Leader of the Opposition [in another place] has been completely indifferent to the unjustified harm to the reputation of the Commissioner of Police and his officers.

The information provided by the Commissioner of Police shows that the allegations made by Brad Shannon concerning historical child sexual offences were referred to SAPOL by the Children in State Care Commission of Inquiry (the commission) in March 2005.

Brad Shannon was subsequently interviewed by investigators on 22 April 2005 in relation to a number of child sexual abuse allegations, including those involving a person known as Mother Goose. During this interview, Brad Shannon stated that he did not wish to provide police with a signed statement regarding these allegations.

On 4 May 2005, Brad Shannon attended the Whyalla Police Station and signed a report requesting that police take no further action in relation to his allegations against the man known as Mother Goose. Mr Shannon stated in this report that he wished no further police action be taken because 'that was the basis of me providing information to both the Mullighan Inquiry and SAPOL'. As a result of subsequent correspondence between the Mullighan commission and the Acting Police Commissioner, Mr John White, a review was conducted by SAPOL of the allegation that undue pressure was placed on Brad Shannon by investigators to request no police action.

In a letter dated 23 August 2005, Mr White advised the Mullighan commission that the SAPOL review did not support the allegation that undue pressure was placed on Brad Shannon.

During this review, Brad Shannon was contacted by an investigator from the Paedophile Task Force and declined the offer of making a formal police complaint. Mr White also advised the Mullighan commission at this time that Brad Shannon 'again confirmed his position that he desired no further police action in respect of allegations surrounding the person known as "Mother Goose".'

In June 2007, an officer of the Paedophile Task Force contacted Brad Shannon per telephone. During this telephone conversation Mr Shannon confirmed that he still did not wish to take any action against the man known as 'Mother Goose'. Brad Shannon did, however, state that he was willing to provide a statement and appear in court to corroborate other victims who may have come forward.

The officer indicated that he was willing to attend in Whyalla to speak further about these issues. Brad Shannon responded that he would contact the officer in the future when he travelled to Adelaide. He failed to make any further contact with the officer.

I am advised that investigators from the Paedophile Task Force will again contact Mr Shannon to ascertain if he is now willing to provide a statement to police regarding his allegations. If he does provide a statement, his allegations will be fully investigated. As recently as this morning on radio the Commissioner of Police invited Brad Shannon to give a statement, if he is willing to do so.

Day in, day out the state's police force works hard to keep the people of South Australia safe. They carry out their work with integrity and great professionalism. This government has full confidence in our police force and will expose the opposition's game of using this parliament to run down our police.

The PRESIDENT: I remind ministers that, when they do make a ministerial statement, they should seek leave prior to each individual statement.

An honourable member interjecting:

The PRESIDENT: Order! I am sure the minister did not do it on purpose.

QUESTION TIME

LABOR PARTY POLICY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:27): I seek leave to make a brief explanation before asking the Minister for Police, the Leader of the Government in this place, a question about Labor Party policy.

Leave granted.

The Hon. D.W. RIDGWAY: In the Premier's 2006 election policy on health, he stated, 'I commit Labor to the redevelopment of the Royal Adelaide Hospital.' Then again, in a media release dated 12 March 2006, he said, 'I promise to redevelop the Royal Adelaide Hospital.' Yesterday at a media conference, the Premier said that he had a mandate to bulldoze the Royal Adelaide Hospital and commit taxpayers to a multi-billion-dollar new private hospital built by a private consortium under ongoing finance arrangements to be funded from the health budget through to 2046; but that decision has never been put to the people of South Australia. My questions are:

1. Why has the government abandoned its promise made to South Australians during the 2002 and 2006 election campaigns to redevelop the Royal Adelaide Hospital, and why won't the government take the promise of the new Marjorie Jackson-Nelson hospital to the 2010 election?

2. Which decisions of parliament will be required to enable this multibillion dollar financing deal for the hospital at City West to proceed and, if decisions need to be made, what form will they take and when will they be brought to parliament?

3. Will the government need to change the Parklands Act to ensure the building of the Marjorie Jackson-Nelson hospital and, if so, when does the minister intend to bring that legislation to the parliament?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:29): In relation to the latter question, the answer is no. Now that the master plan has been released, as Minister for Urban Development and Planning I will consider proceeding with the ministerial development plan

amendment for the site of the new hospital. In relation to the first question, it is not extraordinary that the Labor Party said that it will redevelop the Royal Adelaide Hospital because it is, quite frankly, passed it. You only have to go down there and have a look at it.

So, what the government has done following the election, having looked at the options, is come up with a brand new site just a few hundred metres down the road from the old RAH. We have a brand new site for a new hospital for Adelaide; if that is not redevelopment, I do not know what is. I am sure that the people of South Australia fully understand it, even if the opposition does not.

JAMES NASH HOUSE

The Hon. J.M.A. LENSINK (14:30): I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question about James Nash House.

Leave granted.

The Hon. J.M.A. LENSINK: During our record heatwave in March, my office was contacted by a nurse who works at James Nash House and who was very concerned for the residents because the air conditioning system was not working and was, in fact, pumping out hot air. For the benefit of members who have not visited James Nash House, it is a secure unit, there are no windows in the bedrooms and residents are locked in their rooms from 10.30pm until 7.30am with no air circulation.

In terms of possible options, putting fans in the rooms could not be considered because of the high possibility of self-harm. Some of the residents had to be moved to other places within James Nash House, including the time-out room. There were also concerns for the occupational health and safety of nursing staff. There are 10 overflow beds from James Nash House that are currently located at Grove Closed in Glenside. My questions are:

1. When does the government intend relocating those 10 beds to James Nash House?

2. Will the minister guarantee that the air conditioning is adequate for all the people who reside at James Nash House?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:32): I thank the honourable member for her important question, even though obviously her information is four weeks or so out of date, given that she is referring to an alleged incident that occurred during the heatwave. She obviously needs a more contemporary source of information, as it is a bit out of date—but not to worry. I am not aware of any adverse event that occurred during the heatwave, and this is the first I have heard of it, even though, as I said, it is four weeks or so out of date.

Members interjecting:

The Hon. G.E. GAGO: Yes—four weeks later! It is a bit late now that the temperature has dropped, but not to worry. It is better late than never.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: It is so good to see that the honourable member is right on the ball! I am happy to investigate the matter thoroughly and find out what happened, if anything, because we know how the facts never get in the way of a good story for the opposition. We know how often the information they bring into this chamber is inaccurate, so I do not accept at face value really anything that is presented by those opposite. However, I will investigate the matter and find out what happened, what measures were put in place and what plans we have in future.

Of course, this highlights this government's commitment to overhauling forensic mental health services. We have accepted that the James Nash House facility is out of date. It is based on a correctional model of service, and it is completely outdated and outmoded. This government is committed to rebuilding it to become a state-of-the-art mental health facility. It will be based on a recovery model of care and on contemporary best practice. We have our best clinicians working on the most appropriate and most contemporary model of care for that facility.

It will be a state-of-the-art mental health facility run by some of our very best psychiatrists and mental health nurses and other staff. We are prepared to put our money where our mouth is.

We accept that the James Nash facility is outdated and that it needs an overhaul and, in light of that, we are committed to rebuilding a brand new state-of-the-art, best practice facility at Mobilong.

WORKCOVER CORPORATION

The Hon. R.D. LAWSON (14:35): I seek leave to make a brief explanation before asking the Minister for Emergency Services questions about occupational health, safety and welfare.

Members interjecting:

The Hon. Carmel Zollo: I can't hear, Mr President.

The PRESIDENT: Order!

The Hon. R.D. LAWSON: My questions are about occupational health, safety and welfare. It will be under O in your folder, minister.

Leave granted.

The Hon. R.D. LAWSON: The minister frequently expresses her appreciation of the work of emergency services in South Australia and she keeps the council very well informed of the number of certificates and awards that she presents—

An honourable member: And the functions.

The Hon. R.D. LAWSON: —and the functions she attends in this portfolio. I note that in the latest report of the South Australian Ambulance Service, the occupational health and safety record of that service is admirable. That record is conducted under the existing provisions of the WorkCover legislation in South Australia.

I note that the service has reduced its workers compensation expenditure over its total salary from 4.3 per cent in 2005 to 2 per cent in the latest year. The cost of workers compensation has been reduced in successive years, and the number of amounts paid by way of lump-sum payments to injured ambulance workers has been a significant proportion of that expenditure. The service has been able to reduce its budget allocation for workers compensation under the existing law for each of the past three years. My questions are:

1. Can the minister explain to injured ambulance officers and their families why she is supporting a change to the workplace scheme which will slash the benefits of injured ambulance officers?

2. Can the minister explain what she has done in relation to workers compensation since 2003 when the unfunded liability of that organisation first became a serious problem?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:38): I said before to the honourable member that I was glad he has woken up today. I am actually not the minister responsible for ambulances in this government; it is the Minister for Health, so it is about time he caught up with that because that was changed at least four years ago.

My response is not going to be any different from yesterday's. Clearly, the legislation was passed in the other place late last night. We obviously have a message for the legislation to come to this chamber, and I am sure we will see a robust debate within this place. I said yesterday that we are a responsible government. The most important thing we want to see is our injured workers get back to work. That is our first premise. Secondly, we do not want to see a scheme that is unfunded. As I said to the honourable member, I am glad he has woken up, but I am not the minister responsible for ambulance workers.

WORKCOVER CORPORATION

The Hon. R.D. LAWSON (14:39): I have a supplementary question. I am well aware that another, more competent minister has responsibility—

The PRESIDENT: Order!

The Hon. R.D. LAWSON: —for the Ambulance Service, but my question is: why is this minister supporting changes which will deprive injured ambulance officers of their entitlements?

The PRESIDENT: Order! That was part of the original question. I think the minister answered it.

BEULAH PARK FIRE STATION

The Hon. R.P. WORTLEY (14:40): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about the new Beulah Park Metropolitan Fire Service Station.

Members interjecting:

The Hon. R.P. WORTLEY: You never like good news. You must go to bed at night gritting your teeth thinking, 'Another good day for the Labor government. They make us look so incompetent.' It must frustrate you to do death. From this side you look like a mob of incompetent yobbos.

Leave granted.

The Hon. R.P. WORTLEY: This morning the minister opened another—

Members interjecting:

The Hon. R.P. WORTLEY: You do not like good news. Once again—

The Hon. T.J. Stephens interjecting:

The Hon. R.P. WORTLEY: You ought to hear what your own party says about you out in the corridors. They call you a goose.

The PRESIDENT: Order! There will be no gooses here.

The Hon. R.P. WORTLEY: Thank you, Mr President. This morning the minister opened another new MFS station. As part of the ongoing program of improving resourcing—

Members interjecting:

The Hon. R.P. WORTLEY: Beulah Park—is that all too much for you in the eastern suburbs? Is this the best you can do? You wonder why you look like such losers.

The PRESIDENT: Order! The Hon. Mr Wortley will disregard the interjections from the opposition.

The Hon. J.M.A. LENSINK: Mr President, I rise on a point of order. This is supposed to be part of an explanation, not an excuse for the honourable member to throw insults across the chamber while on his feet.

The PRESIDENT: The Hon. Ms Lensink does not have a point of order because her colleagues behind her were as much to blame as the Hon. Mr Wortley.

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:42): If members opposite are so excited because someone makes a slip of the tongue, they must lead very boring lives—very sad. This morning I was—

Members interjecting:

The PRESIDENT: Order!

The Hon. CARMEL ZOLLO: This morning I was delighted to open the new $3.9 million station on The Parade at Beulah Park. The station will replace the ageing Glynde station. This project finished on time and on budget. We are getting very good at bringing new stations on line, which is good as construction is soon to start on the $4.4 million station at Paradise, due for completion next year. Those two projects alone represent an $8 million commitment to the MFS and community safety in our north-eastern suburbs.

The local member, the member for Norwood (Ms Vini Ciccarello), championed very strongly for this project. This morning I was joined by Vini and other members of parliament, chief officers and representatives from local government and, of course, most importantly, the firefighters themselves who use this wonderful facility. I also acknowledge that the Hon. Stephen Wade was present in his capacity as spokesperson for emergency services. I am glad that he joined me in the good news. A project such as this requires the willingness of all parties, and I would like to thank the United Firefighters Union, its state council and its secretary, Mr Greg Northcott, for their cooperation. The station itself is state-of-the-art.

Its design has the latest environmentally sustainable design features, including 71 grid-connected solar panels on the roof and water recycling systems, including a 20,000 litre underground storage tank which can be used for firefighter training and more general purpose use. The construction of the station was achieved with environmentally sustainable building material, such as a polished block internal wall finish which has a high thermal rating and which requires minimal maintenance. As I said, the MFS and SAFECOM project team is getting very good at station construction on time and on budget. We have new stations at Renmark, Elizabeth and Golden Grove. Further new stations are to be built at Paradise, Seaford and Port Lincoln.

Last week I also sought approval to bring forward a budget announcement to fund 22 additional firefighters for the north eastern suburbs, with funding committed for 22 additional firefighters for the Seaford station when that station is constructed. I would like to thank all involved in bringing this project to fruition, and I wish the firefighters who serve in it safe service.

HIV RATES

The Hon. D.G.E. HOOD (14:46): I seek leave to make a brief explanation before asking a question of the Minister for Mental Health and Substance Abuse representing the Minister for Health.

Leave granted.

The Hon. D.G.E. HOOD: The University of New South Wales has warned that HIV rates are again dramatically rising after a decline in the 1990s. The university has predicted that HIV rates could rise by as much as 75 per cent in some parts of Australia over the next seven years unless more is done to reverse the trend—a very concerning statistic. The most recently available HIV/AIDS statistics for South Australia from the Royal Adelaide Hospital note that some 1,097 individuals have now been diagnosed with an HIV infection in this state. It is substantially up each year from the year 2000. A recently obtained independent report, prepared by the Allen Consulting Group for the federal government, found that the HIV/AIDS programs across Australia are flawed and may have contributed to a recent rise in HIV infections across the country. The report concluded by noting:

> The incidence of HIV diagnosis is increasing after a long decline that began in the mid 1980s.

It has blamed the trend on duplication of resources, accountability issues and a general lack of flexibility in organisations tasked with dealing with HIV/AIDS.

In South Australia, the AIDS Council has accumulated a lengthy list of accusations against it, suggesting inappropriate use of funds, including articles published in *The Advertiser* of 15 September 2006, 25 June 2007, 19 October 2007 and 17 November 2007. In addition, I recently learned that the AIDS Council has been funded tens of thousands of dollars for an anti-smoking program for its members which, I would submit, has little to do with HIV prevention. Despite this very large amount of money, only one person attended the program. My questions to the minister are:

1. Does he believe that the AIDS Council of South Australia is appropriately using the resources granted to it by the people of this state; and, if so, how does he explain the fact that HIV statistics are again on the rise in South Australia despite constantly increasing funding levels?

2. Why was an anti-smoking program funded to the tune of tens of thousands of dollars by the AIDS Council, and does the minister consider that one attendee at this program is value for money for South Australian taxpayers?

The Hon. Sandra Kanck interjecting:

The Hon. D.G.E. HOOD: It certainly is not.

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:49): I thank the honourable member for his question, and I am pleased to pass on those questions to the appropriate minister in another place and bring back a response. However, as I have done before in this place, I would like to take this opportunity to talk about the importance of a number of our programs, including our Clean Needle Program which is a very important public health initiative and which is aimed at helping to reduce the spread of blood-borne viruses—HIV as well as hepatitis C.

In Australia the Clean Needle Program is estimated to have saved something like between $2.4 billion and $7.7 billion in downstream health care costs in a 10 year period between 1991 and 2000, and the cost savings include the prevention of an estimated 25,000 HIV infections, 21,000

Hep C infections, and 4,500 deaths attributed to HIV. That is from the commonwealth Department of Health and Ageing (2002). The work that they do is, indeed, very important. Many of their programs obviously save lives and a great deal of family and community heartache as well.

In terms of the smoking project that the member refers to, I would need more details about that to answer the question. I do not have any information about a program where only one person attended. I know that there have been a number of really important projects run, including a tobacco project for gay men. I am not too sure whether that is the project that he is referring to.

The Hon. D.G.E. Hood interjecting:

The Hon. G.E. GAGO: No, it is not, but that was, indeed, a very successful anti-smoking program that ran over a couple of different phases. I would need more detail on the smoking program to be able to respond to the question and I would be happy, if the member provided me with those details, to bring back a response to that aspect of the question.

HIV RATES

The Hon. I.K. HUNTER (14:51): I would appreciate the minister also passing this question on to the Minister for Health: does the minister have any concerns that there has been no new general advertising campaign across the general community since the 1980s and 1990s—I refer to the very successful Grim Reaper campaign; and could this also have something to do with the increasing rate of HIV infections?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:52): I am happy to pass that question on to the relevant member in another place and bring back a response.

POLICE PRISONS

The Hon. S.G. WADE (14:52): I seek leave to make a brief explanation before asking the Minister for Police a question relating to police cells.

Leave granted.

The Hon. S.G. WADE: Since February 2007, the Adelaide City Watchhouse, a police facility, has been used to house prisoners for up to 15 days to cope with the increase in prison numbers and South Australia's drastically overcrowded prisons. Our prisons are now 22 per cent over capacity and the most overcrowded prisons in the nation. In the *Government Gazette* of 29 November 2007, the government declared 19 police stations to be police prisons under the Correctional Services Act. As a result, South Australian police officers will be off the beat, diverted to manage Correctional Services prisoners. My questions to the minister are:

1. Have the police been given any additional resources to take on this expanded custodial role?

2. Were SA Police and the Police Association consulted about this declaration before its gazettal in November?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:53): The reason I am responding to this question is that it was gazetted and proclaimed pursuant to the Correctional Services Act.

I can advise the chamber, as the honourable member would have as well, that a review was undertaken by SAPOL in relation to police cell facilities. A number of police prisons were revoked because they were no longer needed, for obvious reasons, and some were proclaimed pursuant to the Correctional Services Act 1982.

It is simply a matter of a good government's planning and an integrated criminal justice system. It is about ensuring that there were no administrative impediments to using these cells should the criminal justice need arise.

POLICE PRISONS

The Hon. S.G. WADE (14:54): I ask a supplementary question. Can the minister advise how many police prisons were revoked and how many were added? **The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:55):** I will have to bring back a response. As I said, some of them are simply not suitable to be used any more;

millions were spent on new ones but some were simply not suitable. I will bring back a full list for the honourable member.

NARACOORTE CAVES

The Hon. B.V. FINNIGAN (14:56): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the Naracoorte Caves.

Leave granted.

The Hon. B.V. FINNIGAN: The caves of South Australia's South-East, especially those at Naracoorte, are some of the most spectacular tourist attractions the state has to offer. They are a vital part of the natural heritage of our ancient land—

Members interjecting:

The Hon. B.V. FINNIGAN: I would have thought that withering fossils would be of particular interest to the opposition, Mr President. The caves are a vital part of the natural heritage of our state and offer a rare opportunity for South Australians and visitors from all over the world to enjoy this magnificent site.

An honourable member interjecting:

The Hon. B.V. FINNIGAN: Of course I have. Will the minister inform the council of the latest initiatives taken to attract visitors to these fantastic caves?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:58): I thank the honourable member for his question and for his ongoing interest in these important policy matters. Indeed, the Naracoorte Caves are a theatre for the beauty of the natural world, and I am pleased to inform the council that this weekend the caves will become a theatre of a different kind, with a special performance of William Shakespeare's greatest play, *Macbeth*, by Ozact, one of Australia's leading outdoor Shakespearian companies.

Macbeth is one of Shakespeare's most popular and well-known plays, a classic tale of political intrigue, greed and murder. It is a play that has been open to many interpretations over the years, and seeing it rewritten for modern times—

The Hon. B.V. Finnigan: In the modern setting of a Liberal Party preselection.

The Hon. G.E. GAGO: With all those other fossils. A recent Australian film adaptation saw the story unfold in Melbourne's underworld, instead of medieval Scotland. I think lovers of Shakespeare's plays would be excited at the prospect of this great work being told in this incredibly haunting and magical environment, and I am sure it will be a special experience for seasoned theatregoers as well as those who have yet to experience the small stage set.

The Ozact theatre company is well-known throughout Victoria and South Australia for its excellent outdoor Shakespearian productions in environmentally significant settings, and the company has performed in the Naracoorte Caves previously. I urge all those who can attend to be there. There will be four performances at this world heritage-listed site, and further information can be obtained through Ozact.

PUBLIC TRANSPORT

The Hon. M. PARNELL (14:59): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question on the issue of public transport planning for a future sports stadium in Adelaide.

Leave granted.

The Hon. M. PARNELL: The future location of a premier football stadium in Adelaide is being hotly debated. Many people contrast the ease of access by patrons to the Docklands Stadium in Melbourne with the car-choked roads around AAMI Stadium in Adelaide. This ease of access comes primarily through the location of the stadium in a central location next to major fixed line public transport infrastructure—both train and tram.

According to sports minister Michael Wright, over 1 million patrons attend AAMI Stadium each year, with the vast majority of these travelling by car, despite the footy express bus service. In the face of the twin challenges of climate change and peak oil, not to mention the massive traffic snarls and delays on game days, the potential to influence the movement of 1 million South Australians per year should be of critical concern to the state government. To put this in

perspective, patronage on the Belair line is not much more than 1 million per year, and any fixed rail service to West Lakes could also pick up more patronage from the shopping centre and people commuting from adjacent suburbs.

Currently, the Grange train line is only about 2 kilometres away from AAMI Stadium, and members might recall that the old Hendon branch line was, in fact, ripped up to make way for a road to West Lakes in only 1980. My questions are:

1. Will the government commit to ensuring that any future sports stadium built in Adelaide is located next to pre-existing fixed-rail public transport?

2. If West Lakes remains the home of AFL games into the future, will the government commit to extending a fast and efficient fixed-rail public transport service to the revamped stadium?

3. Should it be left to a private body to decide the location of a major piece of public infrastructure that influences the travel of 1 million South Australians each year, or will the government actively intervene to ensure that a major sports stadium is in a location that enables the majority of footy lovers to get there via public transport?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:01): In relation to the last question, is the Hon. Mark Parnell suggesting that taxpayers should fund the billion-dollar cost of any new sports stadium? If that is what he is suggesting, I think I can tell him that he is dreaming. Otherwise, I would have thought that it was a decision for those sporting codes, such as the SANFL, which developed Football Park back in the 1970s, as to whether they want to play their sport at a particular stadium.

It is interesting that the honourable member mentioned Docklands in Victoria. Of course, he is someone who has been going around opposing, first of all, some of the high rise developments like those at Docklands. He does not like those, and of course he omitted from his question that they are part of the attractiveness of Docklands. Of course, you could not have that.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Of course, he would. He would probably have had those rusty tin sheds on the heritage list, as he would probably want down at Port Adelaide. I think we could say that that would be his view.

The point I want to make about Docklands is about the extension of the tramline into that region in Melbourne. Anyone who has used the old City Circle in Melbourne would know that it used to go down Spencer Street. It has now been extended out through Docklands. I think that shows how the extension of the transport system can promote urban redevelopment, and that is something that is dear to the heart of this government. When we release our planning strategy fairly soon, clearly those philosophies will be central to that document. I would welcome the Hon. Mark Parnell's support for that but, I guess, like all Greens, while he will be—

An honourable member interjecting:

The Hon. P. HOLLOWAY: It is the policies. I am not getting personal at all. I respect the Hon. Mark Parnell as a dedicated member of the parliament, but we know that the Greens' philosophy is to essentially oppose all development. You cannot have it both ways if you are going to have urban development—and this is a challenge for members opposite as well. Maybe, with the future debate we will be having on planning, the opposition can work out what its own views are. First of all, does the opposition want Adelaide to grow and, if it does, does it want it through high rise, through urban growth expansion, through infill or through some combination of each and, if so, what is the combination the opposition would suggest?

The government is happy to answer those questions, but I suggest that opposition members will not, because we know what a disorganised rabble they are. We know what the politics are like. We have some members of the opposition running around opposing any development whatsoever, and then we have other members running around suggesting that we should have development everywhere else.

I am sure the Hon. Mark Parnell would be pleased by the broad direction of this government in relation to ensuring that we do have a better public transport system. If the opposition had had its way, we would still be using 1929 trams terminating at Victoria Square.

SOCCER

The Hon. T.J. STEPHENS (15:05): I seek leave to make a brief explanation before asking the Minister for Police, representing the Minster for Recreation, Sport and Racing, questions about youth participation in soccer.

Leave granted.

The Hon. T.J. STEPHENS: It has been reported that hundreds of young soccer hopefuls are being turned away from local soccer clubs in the North-Eastern suburbs. A figure recently reported in *The Messenger* newspaper is that as many as 150 players have been turned away in this season alone from North-Eastern suburbs' clubs such as Para Hills, Modbury Vista, Modbury Jets and Tea Tree Gully junior soccer clubs. Para Hills Knights, for example, have created a new team, allowing 14 more young children to join their club, but they have reportedly had to turn away almost 100 young players.

The club chairman was quoted as saying that parents are desperate to get their kids in, and they call up and say that every club they have called is full. In addition, most of these clubs need support to expand their facilities to accommodate this massive influx of young players. Some clubs, such as Modbury Vista, are currently leasing the nearby Wynn Vale Primary School soccer pitch so that its young players can have somewhere to train. Alarmingly, people to whom I speak who are involved in junior soccer also report club membership fees to try to cover costs have skyrocketed in recent times. My questions are:

1. Will the minister acknowledge that the grants programs such as Active Club Move It and community recreation and sports facility grants are too difficult to access and are, in fact, inadequate?

2. Will the minister commit extra funds to ensure that we make appropriate amounts available for our children to make sure they can play sport?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:06): I will pass those questions on to the Minister for Recreation and Sport in another place and bring back a reply.

NGAUT NGAUT CONSERVATION PARK

The Hon. J.M. GAZZOLA (15:06): I seek leave to make a brief explanation before asking the Minister for Environment a question about Ngaut Ngaut Conservation Park.

Leave granted.

The Hon. J.M. GAZZOLA: South Australia's extensive network of conservation parks and reserves are an important part of the government's commitment to conservation. While the philosophy behind the conservation efforts is the same across the board, as you know, Mr President, each park requires a different strategy to manage its unique environment. A case in point is the Ngaut Ngaut Conservation Park, which is located on the east bank of the River Murray about 15 kilometres south of Swan Reach. Will the minister update the council on the latest efforts to manage this conservation park?

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 members that a draft management plan for this park was released today, and we are now seeking public comment on that plan. The aim of the plan is to help conserve and protect the Aboriginal heritage found in the park as well as remnant native vegetation that provides a habitat for native animals.

Ngaut Ngaut Conservation Park was first proclaimed in 1976, with a small area of river frontage added in 2005. At the same time, this government recognised that the local Aboriginal people were obviously the best people to administer the protection of their own cultural heritage. In 2005, I signed a co-management agreement with the local Aboriginal communities, represented by the Mannum Aboriginal Community Association.

Aboriginal heritage is vitally important to this state's history and must be conserved for future generations, particularly for cultural use and the important business of local Aboriginal people. This agreement has enabled the local Aboriginal people to have a more active role in managing their cultural heritage, which includes ancient rock art engraved on the cliff faces, as well as nearby archaeological sites, which are indicative of prior habitation, such as smoke stained rock shelters, old hearths, middens and canoe trees.

This agreement, signed in 2005, required a new management plan to be developed for the park, reflecting the change in the management structure. The draft management plan was prepared in consultation with the co-management committee and is now available for public comment until Friday 11 July 2008.

The draft management plan addresses the following issues: conservation and restoration of remnant native vegetation; conservation and restoration of the park's natural hydrological systems; control and eradication of introduced plants and animals; protection and preservation of Aboriginal sites, objects and remains; providing visitors with safe access to the park; and opportunities to enjoy the park's natural and cultural values without disturbing ecologically or culturally sensitive areas.

Comments on the draft plan should be addressed to Jason Irving, Manager of Policy and Planning at DEH. The draft plan is available from the DEH information line. As I said, submissions close on 11 July.

MENTAL HEALTH BEDS

The Hon. A.L. EVANS (15:10): I seek leave to make a brief explanation before asking the Minister for Mental Health a question about the safety and privacy of women in mixed sex psychiatric wards.

Leave granted.

The Hon. A.L. EVANS: Several weeks ago, the Victorian Women and Mental Health Network released a report, entitled 'Safety and Privacy for Women in Mixed Sexed Psychiatric Wards', detailing the results of a survey of female consumers of mental health services in that state. Of great concern was the fact that two-thirds (66 per cent) of female inpatients confirmed that they had witnessed or experienced harassment or assault. These figures were confirmed, with approximately 70 per cent of the staff indicating that they had also noticed harassment, intimidation or abuse.

The interim report recognises that new mental health facilities should be designed with gender sensitivity in mind, with separate bedrooms, lounge rooms and bathroom facilities for each sex. Family spaces to accommodate children's visits to parents are also recommended. My questions are:

1. Do any South Australian hospitals operate mixed gender psychiatric wards and, if so, which hospitals?

2. Will the minister ensure that any plans to redevelop the Glenside site incorporate gender-sensitive wards?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:12): I thank the honourable member for his most important question and his interest in this area. There are many areas in our health system, including both general and mental health, where mixed sex wards occur. We attempt to avoid it wherever we can, but of course the health of patients comes first.

A number of protocols, policies and procedures are in place to assist and protect the rights and safety of patients and also in relation to the duty of care of professionals caring for clients within their facility. The tendency in the design of modern buildings has been to move more towards the cluster-type of room arrangement, and single and two-room facilities are more common. A number of measures are in place to ensure the safety and protection of patients, and these sorts of things are considered in the design of new buildings.

A great deal of public consultation, including clinical consultation, is going into the redevelopment of the Glenside campus, including with respect to the models of care for the facility being developed by clinicians and other appropriate stakeholders. These models will then inform the design of the facility. I am quite confident that the sorts of issues raised by the honourable member will come through that very extensive consultative process.

CHILDREN IN STATE CARE INQUIRY

The Hon. R.I. LUCAS (15:14): I seek leave to make a brief explanation before asking the Minister for Police a question about the Mullighan report.

Leave granted.

The Hon. R.I. LUCAS: On Tuesday, I asked a question of the minister in relation to recommendation 48 of the Mullighan report which, in summary, recommends that South Australia Police undertake an operation in relation to Veale Gardens and other known beats to detect sexual crimes against children and young persons in state care. In the course of his response, the minister referred to two previous operations: Operation Cradle, commenced in April 2005, and Operation Fawn, conducted between 2004 and 2007 in the summer months under the auspices of the Adelaide local service area of SAPOL. In the explanation it would appear that both of those operations (Cradle and Fawn) had concluded their operations.

The minister also indicated by way of answer to a supplementary question on Tuesday that he had already met with the Police Commissioner or the appropriate assistant commissioner in relation to recommendation 48 of the Mullighan report. I note that *The Australian* reports today that the minister met yesterday (Wednesday) with the Police Commissioner in relation to the report. Of course, that does not preclude the fact that the minister may have met on another occasion prior to answering questions on Tuesday. He might like to correct the record on that. My questions are:

1. Is it correct that both Operation Fawn and Operation Cradle have been concluded and that there is no current police operation in Veale Gardens and other known beats along the lines recommended by the Mullighan report, particularly recommendation 48?

2. Does the minister agree with recommendation 48 of the Mullighan report—that is, that there should be a current and ongoing operation in Veale Gardens and other known beats along the lines recommended by Mr Mullighan?

3. Has he expressed that view to the Commissioner of Police in the meeting (whenever it occurred) on this issue?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:17): In relation to my discussions with the Police Commissioner, yes, I did meet with the Police Commissioner yesterday. I meet with him every week, and I had met with the Deputy Police Commissioner the week before, following the release of the Mullighan report. But I also had raised the matter with the Deputy Police Commissioner (who I think was acting at the time) prior to the release of the Mullighan report. I raised the broad issues that were likely to be discussed in that meeting with him, so I have actually raised these issues on a number of occasions.

I refer to page 459 of Commissioner Mullighan's report—4.2 Children in State care to run away—as follows:

> Evidence to the Inquiry indicates that the sexual exploitation of children in State care is still a serious problem. A police operation ('operation C')—

I think we can take it that Commissioner Mullighan is referring to Operation Cradle—

> that started in 2005 and continued for 18 months was established as a result of the concern about particular children in State care absconding from residential care facilities and being sexually exploited at Veale Gardens or in hotel rooms. It focused on children who were recent absconders from such facilities and were being sexually exploited. Because this is recent intelligence, it is not in the public interest to publish further details. The Guardian for Children and Young People provided information from residential care staff that of the 55 young residents in community residential care facilities at June 2007, 16 (29 per cent) abscond frequently (more than five times in three months) and all are at high risk.

So, at page 459, Commissioner Mullighan indicates his knowledge of Operation Cradle which, as he said, was specifically designed for dealing with children being sexually exploited at Veale Gardens or in hotel rooms. They are the comments from Commissioner Mullighan himself.

Certainly advice which I have from police and which I gave to the chamber the other day is indicating that, yes, in fact there have been operations such as Operation Cradle and Operation Fawn that deal with this question and specifically at Veale Gardens. Yes, I have discussed the issues with the Police Commissioner and, as I said, the police have had a number of operations specifically dealing with this problem. The police operations do tend to have a finite life—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: As it says here, the police Operation C (Operation Cradle) continued for 18 months from 2005. As I said, they do have operations that go for a period and then there are other operations. You do tend to have—and I am sure it is as true when dealing with the activities of paedophiles as it is with other criminals—a shifting focus in relation to crime. The police will develop new programs and retailor old programs to deal with the shifting nature of crime.

As I said, Commissioner Mullighan's words indicate that there have been operations at Veale Gardens. The police—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: That is just outrageous. It is absolutely outrageous. I will not have that sort of nonsense.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I will put the record straight in relation to this matter. The South Australian police have been diligent, absolutely diligent. Let me read something else Commissioner Mullighan said:

> The inquiry has been impressed by the dedicated work of a number of police officers during the past 20 years in regard to the investigation of child sexual abuse generally.

Members of the opposition continually try to denigrate our dedicated police officers who have been doing their best to deal with a range of criminal activities. Our police officers are not lacking in any way in support from the government of this state—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: The Hon. Mr Lucas will cease interjecting.

The Hon. P. HOLLOWAY: However, they are lacking in support from the opposition. Instead of attacking them at every opportunity and raising doubts about what the police are doing, as they seem to do, members of the opposition of this state should be supporting them on the very good job they do.

OPERATION STREAMBANK

The Hon. I.K. HUNTER (15:22): I seek leave to make a brief explanation before asking the Minister for Police a question about a joint SAPOL and AFP operation known as Operation Streambank.

Leave granted.

The Hon. I.K. HUNTER: On 27 July 2007, a South Australian farmer was kidnapped by an organised scam gang, beaten, stripped, had his cash and credit cards taken and was held hostage in Bamako, the capital of the West African country of Mali. Will the minister provide the chamber with information on how a joint operation between South Australian police and the Australian Federal Police saw the safe return of the man to South Australia?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:23): I thank the honourable member for his question. I am pleased that at least members of the government side do recognise and want to highlight the good work that our police in South Australia do. Just like Operation Cradle, Operation Fawn and all the other successful operations, this is yet another successful operation in which our police have been involved. In mid-January 2007—

Members interjecting:

The PRESIDENT: Order! The council will come to order. We were late starting today. Obviously the Adelaide Club has shifted a kilometre down the road. We have been interrupted throughout question time with interjections. Members are about to get a nice break, so sit there in silence.

The Hon. P. HOLLOWAY: In mid-January 2007, a 56 year old farmer from the state's Mid North began communicating with a person known as Natacha by email. Over the following weeks, he began building a 'trusting and caring relationship'. Natacha's demoralising life story appealed to the victim's compassionate side. Through ensuing email correspondence, Natacha attempted to extort money from him with compelling tales of tribulation and desperation. The emails continued for several months, along with requests for money. The victim sent thousands of dollars overseas in an attempt to help her through her troubled situation. However, after receiving the money, she became greedy and the figure grew to $30,000.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: The victim decided that it was time to meet Natacha with the intention of bringing her and her younger brother, Peter, back to Australia. He boarded an international flight destined for Mali. He was greeted by several men at the Bamako Airport and was then driven to a house in Mali, supposedly to meet Natacha. Instead, he was met by a group of men armed with machetes and guns, and he was held captive in a tiny cell for a ransom of $100,000. The STAR Operations Negotiator Coordinations Section first heard of the victim's ordeal through an Australian Federal Police (AFP) counterpart who requested SAPOL assistance.

Certain that the victim was in trouble, a worried family member had contacted the AFP and the Department of Foreign Affairs and Trade reporting his situation. The victim had made repeated calls to family and friends asking for large amounts of money which was very unusual and out of character. He seemed to be in a desperate state so, naturally, family and friends were concerned for his welfare. After several discreet inquiries to determine the extent of the situation, a specialist team of SAPOL and AFP negotiators was assembled to work on the victim's safe release. Operation Streambank was launched, with AFP managing the investigation from a major incident room, while 18 SAPOL and three AFP negotiators established a communication control centre and worked in teams from a covert city location.

It was absolutely vital that the captors and the victim remained unaware of any police involvement. To help divert suspicion, the victim's brother played a pivotal role in the negotiation team, becoming the liaison between police negotiators and captors. It became a waiting game, preparing for the next phone call or email. The operation was carefully planned to cover all possible scenarios that could happen, based on the information provided. The conversations had to remain as natural as possible to ensure that the captors felt like they were liaising solely with the family.

Operation members continually mentored and supported the victim's brother throughout negotiations while also trying to lead Mali police to his brother's location. During the operation, the offenders introduced other fictitious characters, including Natacha's brother, Peter, and a so-called Reverend Mark. Each time they were spoken to their voices and vocabulary differed from the previous occasion. Throughout the next 10 exhausting days, negotiators and AFP investigators meticulously recorded every conversation, they researched every avenue and they strategically planned the victim's safe release. The breakthrough came when officers successfully persuaded the captors to reduce the ransom amount from $100,000 to $30,000, and then established a scenario whereby the rest of the money could be collected from the capital, Bamako.

When one of the captors finally agreed and drove the victim to the embassy to collect the money, he was met by an AFP liaison officer and Mali police officers. The victim was returned to Adelaide accompanied by an AFP member on 12 August 2007. Unfortunately, Mali police have still not been able to capture the offenders, and investigations in Mali are still continuing. Although the offenders were not captured, it was a great outcome for the victim, his family and investigators who had worked tirelessly over 10 days to negotiate the release from over 15,800 kilometres away in Adelaide. The knowledge, expertise and professionalism shared between SAPOL and AFP negotiators during the investigation was invaluable, and the whole team should be proud of their contribution to this successful tactical and calculated operation, the details of which we can now release.

Operation Streambank also worked in close cooperation with the Department of Foreign Affairs and Trade, the Canadian Embassy in Mali (which provides consular assistance to Australians in Mali) and Mali's national police to bring the man home safely. This man's experience provides an extreme example of what can happen with internet scams and serves as a warning to South Australians to protect themselves from these types of criminals. The operation also highlights the importance that, if people become aware of a scam or suspect a scam, they should immediately contact either the Office of Consumer and Business Affairs or South Australia Police.

I think the details that I have released show just how complex and resource intensive these operations sometimes are and that the police must adapt to resolve situations such as this, particularly when they are many thousands of kilometres away. Again, I think it illustrates the great work performed by the South Australia Police.

CONTROLLED SUBSTANCES (DRUG DETECTION POWERS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. SANDRA KANCK: This bill was put into committee on Tuesday. The minister approached me. I had already indicated, via my office, that I would speak to it today, but for some unknown reason he wanted to get it into committee.

I do want to put on record my concern about this as a process because I note, for instance, that the Hon. Mark Parnell made his second reading speech and immediately the minister responded, but he responded only to the comments that the Hon. Mr Ridgway had made a couple of weeks earlier. So it means that this process does not allow, for instance, for the Hon. Mr Parnell's comments to be responded to with any degree of research. And, for that matter, it also means that the minister is not going to be able to get back with a response that has any degree of research involved in it to any comments I make. He might be able to do it off-the-cuff, but it does concern me because I have not understood what the sense of urgency is.

Effectively, from the point at which the bill was introduced to the day it was put into committee I think was either five or six sitting days and there has not been an argument given for this sort of urgency.

The Hon. R.I. Lucas: It has taken two years to get here.

The Hon. SANDRA KANCK: I appreciate that the Hon. Mr Lucas thinks this should have been here earlier, and I know this has been one of his crusades, but I do not agree with him. In fact, I think that we now have a situation in South Australia where the government is whipping up public fervour again and again so that we can get ever-greater police powers, and that is now what is driving public policy in this state.

I briefly remind members of the sorts of laws that are passing through the council. First, there is secret evidence, now called 'criminal intelligence', which is the backbone of a number of bills; secondly, we have the ability to outlaw groups and pursue their members, even if they have not been found to break any laws; thirdly, we have guilt by association, where you can go to gaol for five years just for associating with someone who is subject to a control order; and, fourthly, as I will mention when we are dealing with the firearms bill, we now have another new form of guilt, which is guilt by proximity.

I object to all these developments because they are undermining some of our basic values, and I believe that this and other pieces of legislation are eroding our culture of freedom. That may be the right to peaceful assembly or the right to freedom of association. We are changing from a society where governments have previously had to justify their intrusions on our rights to a point where it is now the other way around, and it seems that everyone could be under suspicion.

It is important to stress that principles such as freedom, due process and transparency are not abstract academic ideals; they are the distilled wisdom of centuries of experience by practical revolutionaries and nation-builders. The ideals of freedom, transparency and due process were forged by people who lived through the English, French and American revolutions. They often saw their societies under threat but still retained a commitment to freedom and due process. I believe this government's rush to play on our fears and diminish our freedoms is culpable, and the willingness of elected members of both the major parties (and some of the minor parties) to surrender these freedoms which have been fought for so hard really verges on the cowardly.

My second objection to this sort of legislation is that we have no evidence that it makes us any safer. The government has still not made a case for the Serious and Organised Crime (Control) Bill, for instance; it has not demonstrated to us that serious and organised crime is increasing, that bikie gangs are a growing part of the problem, or that the measures it is proposing will work.

In relation to the specific legislation, I note that in the minister's explanation he said, 'In preparing the legislation the government has drawn on the experience from the trials conducted in New South Wales.' Well, if the government is indeed drawing on that experience it would not be introducing this bill, and the Hon. Mark Parnell referred to that on Tuesday in his speech when he referred to the report from the New South Wales Ombudsman regarding that state's legislation, the Controlled Substances (Drug Detection Powers) Amendment Bill. Let us look at what that report said. It said that 99 per cent of people tested did not have drugs, and that there were only 19 successful prosecutions out of about 10,000 incidents where dogs stood passively by someone to indicate that the person had drugs.

There was also no evidence that the use of drug detection dogs disrupted low-level street dealing. Unfortunately, the dogs can deter people from using needle exchanges or cause people to bolt down their drugs to avoid detection, and I have previously argued against these dogs being

used in relation to the Big Day Out for precisely that reason: that young people, if they see a dog coming, will take all the drugs they have on them at the one time. So, rather than reducing harm we increase harm.

Another of the problems in the New South Wales' situation (and I do not see why the dogs in South Australia will be different) is that the dogs pick out people who are carrying prescription drugs—much to their embarrassment. As the Hon. Mark Parnell pointed out yesterday, Sudafed (which is a precursor for amphetamines) is something that many people use. As he said, he has it in a drawer of his desk here—and by having something there for bad hay fever, he is hardly someone who is dealing in drugs.

The Ombudsman said that in New South Wales these powers cause humiliation and embarrassment because people are sniffed and possibly searched in public—and the dogs got it wrong 74 per cent of the time! And we are to unleash this technology in South Australia! We would not allow a doctor to operate if he got things wrong 74 per cent of the time. I found another example, although it was not in New South Wales or even Australia. In the US, the Nine Mile Falls School District uses sniffer dogs to search its middle and high school students. The American Civil Liberties Union took that to court to stop that. In that particular case, the dogs were getting it wrong 85 per cent of the time. So, this sounds to me to be an extremely bad form of technology to try to get a right answer.

Where the dogs do get it wrong, it is interesting to see the impact. Yesterday, the Hon. Mark Parnell talked about the embarrassment this would cause to people—and remember that 74 per cent of the people who were detected by these dogs did not have drugs.

The following are some of the comments made by some of these innocent people who were held up by these dogs. The first is from a health education officer who specialises in drug and alcohol problems. He was searched at 11 o'clock at night in King Street, Newtown and, of course, nothing was found. His complaint states:

> This action ruined my night. I felt intimidation and embarrassment in front of strangers and friends, as well as people I work with or who work with organisations which dealt with my workplace. The personal cost to my reputation and the trauma of such a severely intimidating and unjustified interruption to the simple pleasure of enjoying an evening out relaxing from work and socialising led me to feel this action was completely unwarranted in the circumstances.

I am really disturbed that the Hon. Paul Holloway is reading something else while I am putting this on the record. This is legislation that is based on New South Wales legislation where the drug dogs got it wrong 74 per cent of the time and where people were innocently held up and searched as a consequence. He ought to be listening carefully. The health education officer continues:

> They took me outside and asked me to step over to the wall and raise my arms and they then patted down my body and went through my wallet and asked me to empty all my pockets. All those inside the moderately filled venue, along with the staff, watched me led outside. After the search was over and nothing was found, I returned to the bar and was refused service.

Members should think about that. Here we have a health education officer working in the drug and alcohol area and, for this period of time, looking as if he is actually someone who used the same substances he was apparently working to stop other people using. Imagine the impact on his reputation. The second one was a laboratory manager from an electronics R&D company who was searched at 8.30pm at Blacktown station while returning from work. They said:

> All this took place on the main concourse of the station, in full view of other people using the station. I felt extremely embarrassed by the whole incident. I do not accept [sniffer dogs] can be used to randomly identify persons, who are innocently going about their business, as possible felons. I asked what if I refused to turn out my pockets or allow the officers to search my briefcase. The reply was that I would have been arrested for suspected possession of drugs. I consider this to be a violation of my basic human right to be able to go about my affairs, unmolested.

But it seems that here in South Australia we do not think that that is a basic human right. We are going to allow somewhere between 75 and 86 per cent of people to be innocently apprehended and searched as if they were criminals. A father of a 15 year old girl searched at Eastwood station lodged a complaint. He said:

> My girl was shocked and embarrassed in public, in front of her school friends. I believe that any measure of public benefit is far outweighed by the oppressive police state atmosphere created by the warrantless searches.

Another parent of a 15 year old who was approached but not searched by police at Hornsby station after school, said:

My 14 year old was harassed and threatened with fines 2 days in a row by members of the police force who were present in intimidating numbers with sniffer dogs, for what appeared to be nothing more than talking to friends in a stationary position. She was informed that she was 'obstructing' before being threatened with a fine if she did not move.

My daughter has been profoundly affected by her experience and now has a totally different perception of the police, the law, and the state we live in.

Again, I remind members that when he was introducing the bill the minister said that the government has drawn on the experiences of the New South Wales legislation.

A man who was drinking with two managers from work and who was searched at a bar in Surrey Hills stated:

He (the police) returned my bag saying he thinks I have used it to carry marijuana. This is absolute rubbish! He said he was suspicious of me and took my name and address.

I felt totally humiliated in front of my managers and the onlookers in the pub.

I cannot believe I was treated like a criminal just because a dog decides it likes me.

My managers now suspect that I deal or take drugs, and I am too embarrassed to return [to that hotel].

Imagine what the impact will be for that person back in the workplace when these dogs get it wrong 74 per cent of the time. A visiting DJ at the Berlin Nightclub was searched while he was in the DJ booth, and nothing was found. He states:

I was told I was quarantined from the DJ booth and that I would have to be searched before I could do anything. This caused great dilemma to the club.

I asked the police could they talk to me in the back room or something of that nature. She (the police) ignored me and continued with the search.

I did not appreciate being harassed by them in the club, especially in the VIP section where everyone could see me.

While talking to me, he was flashing his flashlight in my eyes. As he did that, I asked him many times to move the light from my eyes. He said he could not see me.

Since they did not find anything on me they told me they would be back.

In the end, I felt alienated due to the fact that I was the only person in the club who got searched and, ironically, I was the only black person in the club that night.

The final two sentences of the report summary of the New South Wales Ombudsman's report state:

These findings have led us to question whether the Drug Dogs Act will ever provide a fair, efficacious and cost-effective tool to target drug supply. Given this, we have recommended that the starting point when considering this report is to review whether the Drug Dogs Act should be retained at all.

And here we have legislation that is based on this, when the New South Wales Ombudsman is questioning whether or not the legislation should even be allowed to exist.

The Hon. Mark Parnell said that he intends to amend the legislation to give the Police Complaints Authority the role of scrutinising the exercise of powers under the bill. I intend to go much further. I hope to have those amendments on file before the end of the afternoon so that others can look at them. One question that I would like to ask the minister, given that the bill targets what it, I think, calls drug transit routes (or something of that nature) is whether or not the road transport industry has been consulted by the government in the preparation of this legislation.

I indicate to members that the amendments that I will move are taken from the Terrorism (Police Powers) Act 2005. That might sound surprising. Given that that act is there to deal with suicide bombers and terrorists, I am taking this course of action because the Terrorism (Police Powers) Act has greater protection for people's civil liberties and their dignity than exists in this bill before us.

Before anyone from either the government or the opposition attempts to suggest that the amendments that I will be tabling are an indication that I am soft on crime, be assured that they are coming from a very powerful piece of legislation. I indicate my outright opposition to this bill. It is unfortunate that I am making this speech on clause 1; otherwise, I would have been calling for a division on the second reading.

The Hon. P. HOLLOWAY: I should at least make some comments in view of what the Hon. Sandra Kanck said.

The Hon. Sandra Kanck: It's shameless.

The Hon. P. HOLLOWAY: She is still going on, saying how shameless it is. How extraordinary from someone who is saying that we should have an ICAC. This is a body which can tap phones, with someone who is totally unaccountable to anybody—not an elected official—not someone like the Police Commissioner who is subject to checks and balances.

She wants an ICAC that can tap phones and do all sorts of damage to people, as we have seen before, yet she talks about civil liberties because a dog sits still next to someone. A person can then be searched and, if they do not have drugs on them at the time (incidentally, it does not necessarily mean that they have not had drugs on them before), of course that is the end of the matter.

What is the difference between that and going through an airport and being picked out at random to be checked for explosives? Does that mean that you should feel guilty that somehow or other you are carrying explosives? I am sure that all of us at one time or another have been through an airport and have been randomly selected for an explosives check. Why should that make us greatly worried? From my point of view, it makes me feel a lot more secure that, when I travel on an aircraft, action has been taken, through random checks (you cannot check everybody), to do what can be done to ensure that travel is as safe as possible.

So, when the honourable member says that dogs get it wrong 74 per cent of the time, I think that that really does not tell the whole story. The Hon. Sandra Kanck talked about someone who may have worked as a person dealing with drug dealers. Clearly, these dogs have a very strong sense of smell, and it could well be that some of those odours remain. All this power seeks to do is allow people to be searched if the dogs detect an odour. If the person does not have drugs on them, that is the end of the matter. It is the same as all other random checks.

The Hon. Sandra Kanck: Except that the person is humiliated and embarrassed.

The Hon. P. HOLLOWAY: Does the honourable member feel humiliated and embarrassed if she is picked out for an explosives check at the airport?

The Hon. Sandra Kanck: I feel angered every time it happens, actually.

The Hon. P. HOLLOWAY: As I said, I have to differ with the honourable member. I am happy that we have these checks, particularly given the high risk at times. I think it is good that we have these random checks, which must (in the case of airport checks) act as a deterrent to people carrying explosives. However, in relation to these drug dogs, people should have the knowledge that, if they are not in possession of drugs, they have nothing to fear. I agree with the honourable member that these dogs ought to be used intelligently by the police, and I am sure that they will be. At the right sorts of venues, I think that they will act as a deterrent.

The honourable member talked about intimidation. Yesterday, she was the person who asked me about the Gypsy Jokers, suggesting that the police were intimidating these poor old Gypsy Jokers. If you have ever seen one of these motorcycle runs, when hundreds of motorcycles go through red lights, ignore traffic and do that sort of thing, I think a lot of people would find that intimidating. However, apparently Sandra Kanck thinks that that is police harassment, but she is concerned about these dogs that simply sit down and wag their tail if they detect the smell of drugs nearby.

People are presumed innocent in the sense that they must actually have drugs on them. The dog smelling and stopping might give the police relevant legal cause to check the person, but it does not of itself lead to a conviction—nor should it.

Another matter raised by the Hon. Sandra Kanck related to transit routes. I know that police have regular contact with transport operators. However, in relation to this bill, I will answer that question specifically when we get to it. I know that, from time to time, the police discuss with transport operators the matter of drug carrying in particular.

They are obviously significant issues, but I do not know that the existence of these dogs really changes the situation much. I do not see how in any way it profoundly changes the issues in relation to drugs being used by long distance operators other than what already happens. I would have thought that the use of these dogs in such situations would be a fairly marginal increase in the activities that police employ, but I will get a specific response this week. I understand that the Hon. Sandra Kanck is preparing amendments, so I guess we will have no option but to adjourn the debate at this stage and come back to it at some other time.

The Hon. R.I. LUCAS: Just before the leader reports progress, I want to make some brief comments because the minister responded at the end of the second reading to some of the issues

I raised, and we will be able to pursue some of those under the respective clauses. Given the comments of the Hon. Sandra Kanck, I wanted to urge the minister to take advantage of the time between now and when we sit next to clarify a number of issues.

One of the questions I raised was the issue of whether or not the passive alert drug detection dogs (sniffer dogs) would be able to operate within schools, TAFE colleges and tertiary institutions. I advise those members interested in this issue to look at the *Hansard* response from the minister. In essence, it would appear that the minister's advice is: in a number of respects the answer would be yes, and in other respects it might be no, but it is not entirely clear. Certainly, it hinges on whether or not it is a public place and whether or not there is free access of the public to those areas. It would appear to be the government's advice that, if one looks at the University of Adelaide campus, for example, where there is free and public access to most of the open areas, that would be deemed to be a public place and the passive alert drug detection dogs could be freely able to canvass drug detection issues on our university campuses here in South Australia. Similarly, I would think on the basis of that advice it would apply to our TAFE institutes or colleges.

I think the interesting issue is then in relation to buildings on the university campuses. I suspect it is unlikely that the administration of the university would ask the police to enter particular buildings, but an interesting question would be to consider what might be the case at the various indoor venues on university campuses where concerts are held or entertainment venues on the university campus, such as the old uni refec or the various other sections of the respective university campuses. I think that is one issue that ought to be clarified.

Moving on to the more vexed area of schools, the advice seems to be more complicated. The advice seems to be that certainly there is public access to most school grounds at various hours through the day—perhaps not during school hours, but certainly after hours and on weekends—and it is possible (maybe probable; I am not sure) that that would be deemed to be a public place and, therefore, the sniffer dogs could be used. The more interesting and important question is: if a school, with the agreement of the school administrators, asked for the use of the sniffer dogs—and this might be a non-government school, because it may well be the government has a policy that will not allow drug sniffer dogs within government schools—would these dogs under this legislation be able to be used within school buildings?

I do not think that this chamber ought to allow the passage of the legislation until we have definitive legal advice from the government on what this bill means. As the minister will know, I will be the last person in the world acting to delay the passage of the legislation, but, if this legislation passes in the form that it is, sooner or later someone will test the legislation and there will need to be crown law advice on what the law actually means. I am saying to the Minister for Police that, at this stage, he ought to be pro-active (to use that terrible word) and say, 'Okay, crown law, if this legislation passes in the way it is and someone comes to me or someone else—one of the schools or whatever—and says, "We want to use these dogs within school buildings and school lockers", does it or does it not permit it?'

There ought to be an answer to that because the issue of the use of sniffer dogs in schools has been around for 20 years. As minister for education I personally supported the use of sniffer dogs in schools, if the school administrator wanted it, but crown law at the time expressed concerns about the current state of the legislation and whether or not it would be supported. Subsequently, other ministers and other chief executives have not been supportive of the use of sniffer dogs within schools. It is an ongoing issue. Other members in this chamber have pieces of legislation that cross over in relation to drug detection in schools—not necessarily by sniffer dogs but through other means—but detecting the presence of drugs within schools is a live issue.

It is imperative that the Minister for Police, who is responsible for the legislation, ought to be able to say to this committee when we come back in two weeks that he has sought crown law advice and this is it: if the legislation passes in this form it will not be allowed or it will be allowed in relation to the use within the circumstances that I have outlined. I will not delay the committee for much longer, other than to say that, over the past couple of years, the minister and I have been engaged in an ongoing battle over this matter. The minister and I vigorously disagree in relation to the reasons for his tardiness. He understands my view and I understand his, but we disagree.

All I can say is that I did put a question to the minister, asking him when he was first advised. I advise members that the minister has not responded. He refers to when he received his first written advice, which was in February 2007, but that is the minister's clever way of not answering the question. He knows and I know that he was advised verbally well prior to that. He has not responded to that. If he wants to respond to that when he comes back, then I invite him to

do so. He cleverly slips through the side door, if I can put it that way. He talked about when he receives his first written advice, which he says was in February 2007. This minister knew much earlier than that. He knew in or around the middle of 2006 that the legislation needed to be changed, because he received advice from various persons within SAPOL that that would be required.

As I said, the minister does not agree with my position and, at this stage, it is largely academic, other than, if my view is correct, the minister has misled this chamber. Obviously, I am not in a position at this stage, anyway, to be able to prove it. We have seen in another jurisdiction where a minister misled the house. He lost his position as minister and as deputy premier in the Tasmanian parliament. Maybe at some stage something will turn up to be able to prove the point of view that I have put and disprove the position that the minister has put.

The Hon. M. PARNELL: I have a number of observations and some questions of both a general nature and a technical nature. I want to be assured that we will not be closing off clause 1 because I do not believe that the minister necessarily will be able to answer some of my technical questions. However, I am happy to put the questions of a general nature now; but, Mr Acting Chairman, I will take your guidance on that later. My first observation with respect to clause 1 is that the minister drew a parallel between this regime and the universal checking at airports for metal objects.

He made the point, 'Well, we've just come to accept that, and this drug testing regime will become the same.' I make the point that they are entirely different situations for a number of very important reasons. The first reason is that the airport situation is universal. No-one gets into an airport without going through that regime. There is no attempt to target some individuals over others. There is no randomness about it. Everyone goes through it. Secondly, I think that there is a culture of acceptance at airports. It is a culture of reluctant acceptance, and the reason we reluctantly accept it is that the consequences of something dangerous getting through are absolutely catastrophic. None of us wants a gun, a knife, a bomb or anything to get onto an aeroplane.

The consequence in relation to this is that a person might have a small amount of an illicit drug in their pocket. Clearly, the two situations are not comparable at all. One is that the life and limb of hundreds or even thousands of people is at risk in a universal detection regime; the other is that it is a very smaller, lower key issue. In terms of the culture and how we feel, the minister said, 'Well, you don't feel embarrassed if you get pulled to one side.' The culture is such that, if you see an elderly woman, for example, pulled to one side at the airport, you can sort of take bets: 'I bet it's a nail file'; 'I bet it's some small metal item—a knitting needle—that has been inadvertently left in a bag.' You do not take a step away from that person, skirt around them, thinking, 'Well, here's a vicious criminal. I' m glad they've caught this person.'

The culture is very different. The minister also said that if, no drugs are found, well, that is the end of it. We have heard that three quarters of the time the dog gets it wrong. Those three quarters of innocent people could have been embarrassed in front of work colleagues, social friends at an evening out or in front of complete strangers, and the Hon. Sandra Kanck referred to a couple of examples. Another example could be a person who has just moved into a new flat and they were embarrassed in front of their new neighbours. What a first impression to create—subject to a drug search on your very first day moving into a new flat!

What response mechanism is the government proposing to deal with this embarrassment, to deal with these three quarters of innocent people who are embarrassed in public? Will there be an apology regime? Will they be issued with a little note saying, 'Thank you for cooperating in this important scheme but you are completely innocent. We are sorry that we took up your time'? Or will the response be, as the Hon. Sandra Kanck says, snide remarks, saying, 'Ha, ha, they probably did have drugs in that bag. Now they don't anymore', or some such? What system of reparation is embodied in this legislation to minimise or overcome the embarrassment that three quarters of the people subjected to these tests will face?

The Hon. P. HOLLOWAY: I will quickly answer a couple of points and then report progress. I used the example earlier about explosive testing at airports. Perhaps a more appropriate example might have been breath testing for alcohol. We now have random breath testing, but, of course, a random breath test can be done anywhere. We had a regime for many years whereby the police had to have reasonable cause to require someone to have a breath test. It could have been if someone was driving out of a hotel and did not use their indicator, or something like that. They could be pulled over and given a breath test. Of course, if they did not

have the required level of blood alcohol content, that was the end of the matter; and if they did they were charged. There are a number of ways in which police make a preliminary assessment.

In that case, during that era when we had those breath-tests, I am sure that, if you like, the police might have got it wrong on a number of occasions, but they also got it right on a lot of occasions. Even if that figure of 74 per cent is correct—I think we need to understand exactly what the statistics are—and even if 26 per cent of people have drugs on them when the sniffer dogs suggest that they do, that is a lot higher than one would get in the general population, where it is probably only 1 or 2 per cent, one would hope, of people who may be in possession of drugs. So it may not be a perfect test, but it is certainly a pretty good filter for working that out.

In terms of what one should do about the embarrassment of people, obviously the police have an obligation to do this testing in a professional way. Of course, if they do embarrass people, that is the sort of reason that we have the Police Complaints Authority for. If police officers do not treat people with dignity and professionalism, of course, they should be appropriately admonished for doing that.

The Hon. Rob Lucas asked some questions about schools. Of course, that is a fairly complicated matter. It is not just a question about what the law says about buildings but also a question of the policy for use. It is really the interaction of those two. I know there was an issue some years ago, and I suspect this was what Rob Lucas had in mind when he asked these questions which I think were to do with checking bags and things at schools, on buses and that sort of thing.

The Hon. R.I. Lucas: Lockers.

The Hon. P. HOLLOWAY: Lockers. There are some policy issues. It is one thing for the law to say the circumstances in which drug dogs can be used; it is quite another to say, in a policy sense, when they ought to be used. There are really two issues there, but perhaps we can discuss those in more detail when we resume debate on the bill. I will also try to get some more information in relation to that debate on the schools, because I know it is a very complicated but important area. Perhaps we can take up that debate when we resume.

The Hon. SANDRA KANCK: I have another question on clause 1. I know that the minister is probably going to see this as disingenuous, seeing as I have indicated my very strong opposition to the bill, but I come back to the statement in the explanation that the government has drawn on the experience of the New South Wales legislation.

Given the figures that I have put on record—more than 10,000 incidents where the dogs stood beside people; only 19 successful prosecutions; the dogs getting it wrong three-quarters of the time, and so on—what was the basis of the information that the South Australian government got from New South Wales to indicate that this was successful legislation and that we should, therefore, mirror it? The minister may not be able to answer it today—I understand that he may need to get advice—but it really has me quite perplexed.

The Hon. P. HOLLOWAY: I will answer that in full next time. Clearly, the government made a decision. We have these dogs and they are trained to do certain things. It is a matter of employing them in a manner which can best serve the public interest, and that means trying to deter the use of drugs within our community. In particular, of course, we would like these PAD dogs to be most effective in detecting dealers and those profiting from drugs, but sometimes you need to catch the users of drugs to be able to catch the dealers.

New South Wales has had this legislation and, essentially, this legislation is modelled on that, but obviously we take into consideration the effectiveness or otherwise of that legislation. Again, I make the point—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: The Hon. Rob Lucas goes on about why we have not given this legislation priority, but, in fact, the government's priorities were for some of the outlaw motorcycle gang legislation, DNA, and a whole lot of other legislation. Whilst we think this legislation will provide a valuable addition to police powers in terms of detecting and deterring the use of drugs, at the same time I would not claim that it is the most significant piece of legislation that we will pass this year. However, we would not put it up if we did not think it added a useful contribution.

Progress reported; committee to sit again.

FIREARMS (FIREARMS PROHIBITION ORDERS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: The Hon. David Ridgway asked a number of questions when he spoke on this bill over two separate days. I provided an answer to some of those questions but there were some others that remained unanswered and I would like to put those on the record now.

The Hon. David Ridgway first asked how the firearms clubs would be notified of firearm protection orders. Clause 6A(3) of the bill provides that the register of firearm prohibition orders must be made available to the public by electronic or other means. It is proposed to place this information on the firearms website for access by clubs, and the information will be updated by the firearms branch every morning. Clubs can access this information at any time. If the person is not listed when the club has any interaction with them, then they will have a defence to a breach of a firearms prohibition order. The emphasis is on communication with clubs to prevent people with FPOs accessing firearms. Prior to implementation of the legislation the firearms branch will consult with the firearms industry to discuss the best method of communication. So, I stress that there will be (as there ought to be) some consultation with the clubs, the operators of shooting galleries, and the like, to ensure that that communication is effective.

The second question was regarding the impact of introducing the term 'found guilty'. This proposal allows the registrar to take into account matters where the court has exercised its discretion not to record a conviction. If the person is found guilty, the court has determined that, based on the facts, the person has committed the offence. The registrar may take the proven facts of this matter into account in determining the fitness of a person. The decision of the court not to record a conviction against a person will not be altered. This allows the registrar to consider the facts of a case as opposed to the requirement for a conviction. Registrars look at all facts and intelligence regarding a person as opposed to only one incident.

A proposal to change regulations will provide a list of offences that the parliament has deemed would render a person unfit to possess firearms. This list is being developed and may include such items as people who are found guilty of selling or growing drugs (due to the link with illegal firearms use), or paedophiles, who may be deemed unfit because of the nature of their behaviour and risk to society. The regulations are being developed and will reduce the uncertainty regarding the term 'unfit'.

Regarding proceedings for offences, this bill proposes removal of section 38 of the Firearms Act. Section 38 provides:

> Proceedings for an offence against this act may be commenced at any time within 12 months after the date of the alleged offence.

By removing this provision the limitation of time to commence offences is stipulated by the Summary Procedures Act 1921, which will apply. This provides for a two-year limitation of time for summary offences and no time limit for indictable offences. The section limits police action to a 12 month period of time in which to commence proceedings. Numerous offences detected by police have been withdrawn because of this time frame. The 12 month time limitation does not provide police with enough time to investigate the movement of firearms between people to prove offences. This can be a time-consuming activity that involves interaction with other police jurisdictions and, on some occasions, federal and international law enforcement.

The next matter raised by the Hon. David Ridgway was that the Firearms Traders Council has argued that, where people's livelihood is affected, police should investigate matters within two months. The investigation of firearms offences can take a considerable period of time, as it often involves tracing firearms ownership as part of the process. The movement of firearms is part of a global economy, and police may be required to conduct interstate, intrastate and international inquiries during the investigation. This is a time-consuming task that cannot be completed within two months.

The Hon. David Ridgway then asked why the function of the Firearms Consultative Committee, the FCC, should be abolished. The function of the FCC has not been abolished; it has been modified to independently review decisions of the registrar to either affirm or refer the matter back to the registrar with advice to reconsider his decision. The registrar does not have discretion to refuse a request for review of his decisions. Clause 26B(8) provides that the registrar must refer the request to the Firearms Review Committee. The appeals process has been strengthened by providing people with the opportunity to take their matters to the expertise of the administrative

division of the District Court if they are unhappy with the decision of the registrar or with the review by the Firearms Review Committee. Appeals to the District Court will provide people opposing decisions of the registrar with access to the expertise of the administrative division of the District Court, which is the expert in the field of administrative law and the interpretation of 'unfit' provisions.

The Hon. David Ridgway then asked what argument there was to have the registrar approve this referral, when it is the registrar's decision that is being questioned. The registrar does not have a discretion to refuse a request for a review of his decisions by the Firearms Review Committee. Section 26B(8) provides that the registrar must refer the request to the Firearms Review Committee.

Would people spotlighting be subject to a firearms prohibition order? People will be issued with an interim FPO only if the police suspect on reasonable grounds that they are an undue risk to people or property or they are unfit. Prior to issuing any interim order, police officers must provide the grounds for seeking to issue an interim FPO to their supervisor. The order will be issued only if the supervisor is satisfied that the issue of an interim FPO is justified. The grounds and statement of facts regarding the issue of an interim firearms prohibition order are then forwarded to the Registrar of Firearms who may either affirm or revoke the order.

Spotlighting itself is not likely to result in the issue of a firearms prohibition order unless the behaviour and circumstances result in a risk to public safety. I would not like to see some spotlighting in the Parklands, for example.

Members interjecting:

The Hon. P. HOLLOWAY: Yes, that, too. The question then is: why is the interim firearms prohibition order power required? Police do not have the ability to prohibit a person from accessing firearms at the time of an incident being detected. For example, if police attend a high risk incident where a person has threatened others with firearms, the person may be arrested but, if bailed, they may attend at a commercial firing range and hire a firearm without prohibition. I think one can take from that and, extending the example, see the risk that might follow from that if the person is agitated.

The Hon. David Ridgway then asked, 'Why are young people under 18 excluded?' In fact, firearms prohibition orders apply to all people regardless of age. He also asked, 'Will firearms owners be required to report any modifications to their firearms?' Section 25 of the existing Firearms Act requires a person to notify the registrar if they alter their firearm and the firearms becomes a firearm of a different class. Minor modifications to sights for sporting shooting requirements is not an alteration to a firearm, as it does not change the classification of the firearm.

Proposed section 27(3), regarding the manufacture of firearms, provides a defence for a registered owner to prove that the firearm part was manufactured for a registered firearm in their name. So, it is just not the case that it applies to changing the sights for a shooting competition or something. It would only be if someone was actually changing the class of a firearm that there would be a breach of the legislation.

The next question was, 'Why are people who already have a licence required to wait 28 days before they can purchase a firearm of the same class?' This was a requirement of the National Firearms Agreement established in the mid 1990s, which probably followed on from Port Arthur. In the consultation process, this was the most common proposal for change by firearms owners. This legislation removes that requirement. If this legislation is approved, people may now acquire a firearm of the same class without waiting 28 days.

The honourable member then asked for clarification regarding the need for an invasive medical procedure. Section 6B(1) of the bill provides for the registrar to require a person to submit to an examination by a health professional, or by a health professional of a class specified by the registrar, to provide a medical report from a health professional or a health professional of a class specified by the registrar, including an examination or report that will require the person to undergo some form of medically invasive procedure.

This power would allow the registrar to require a person to obtain a blood sample to determine whether they had been using drugs that affected their fitness to possess firearms. The term 'medically invasive procedure' is used in health professionals legislation. That is the origin of that term.

The Hon. Dennis Hood also asked some questions. He asked, 'Is the registrar given too much power?' The registrar is the administrator of the Firearms Act and requires some discretion to

make decisions regarding the fitness of people to possess firearms. In the existing legislation, the Firearms Consultative Committee (FCC) must agree with the decision of the registrar. This is the only model of this type in Australia. Other states provide the registrar with the ability to make decisions and then for people to access natural justice through the appeal process.

The current model places significant administrative burdens on this role to justify administrative decisions that are made. This diverts resources away from focusing on illegal behaviour and requires them to justify the decisions of the registrar. For example, in the 2007-08 financial year, 96 per cent of decisions by the registrar have been approved by the FCC. The provision of appeal rights to the Administrative Division of the District Court enhances the ability of people to seek natural justice through the expertise of the District Court.

The Hon. Dennis Hood also made the point that this bill will require that people found guilty of minor offences will have a conviction recorded against them. The bill does not change the court's discretion to find a person guilty on the facts without recording a conviction. This change merely allows the registrar to access the finding of guilt. This stipulates that the facts alleged were found proven in the court, even though a conviction was not recorded. In other words, someone may have been found guilty and the conviction not recorded, but it does mean that the registrar is then able to at least access the facts or ascertain that the facts alleged were proven. The registrar can base his decision on that matter.

Finally, SAPOL is committed to managing the proposed legislation within the provisions of the law and in accordance with the aim to target the illegal firearms market, as opposed to legitimate firearms owners. This includes the enforcement of this legislation against people engaged in organised crime, gangs and criminal behaviour and where people are an undue risk to another person, themselves or property.

In relation to some of those administrative matters, that is where it is important that, within the firearms section, the more energy and the more effort the firearms branch can direct towards illegal firearms, the safer the community will be, rather than have those police officers engaged in, if you like, bureaucratic-type management of legitimate firearms owners.

The Hon. SANDRA KANCK: I would like to make a few comments on clause 1. In the rush to get things into committee, we again have a bill which was with us for five sitting days before we went into committee, and it does make it difficult to do the needed consultation. I think most members would be aware that the Democrats have had a very long tradition of seeking to limit the availability of firearms in our society. Around the time of the Port Arthur massacre, I belonged to the gun control lobby (I think it was so called). After the Port Arthur massacre, I was a fierce supporter of the legislation that went through to further restrict the ownership of firearms. I have some sympathy with the view that has been expressed by the DPP that we should be a gun free society, but I think that is an ideal that we are unlikely to ever attain.

As well as supporting the limitations of firearms in our society, side by side, the Democrats have a commitment to the basic principles of justice, proportionality and transparency. One of the things that I note about this bill is that, along with other legislation that we have with us at the present, it has been built by association, but in this bill we now have guilt by proximity. I also believe that this bill is more problematic for rural people than metropolitan people. I am a little surprised that the government is so out of touch with rural South Australia that it has not seen this.

As a consequence of those concerns, I have had amendments prepared, and they have been tabled. When we resume in about a fortnight, I will deal with them in a way that I hope will bring back some of that proportionality that I think is really important to legislation.

Progress reported; committee to sit again.

STATUTES AMENDMENT (POLICE SUPERANNUATION) BILL

In committee.

Clause 1.

The Hon. M. PARNELL: With the indulgence of the committee, I would like to make a brief contribution, which consists primarily of a personal explanation. The reason for doing so is that I said some things on the topic of superannuation last week in parliament that were incorrect. I will take a very brief opportunity to correct the record.

Members might recall that on Wednesday last week I introduced a bill to provide an ethical superannuation choice for public servants. I mentioned at that time that I included in my bill

provisions that relate to this bill—police superannuation; however, I withdrew the provisions from my private member's bill, knowing that we would be debating them today. The amendments to which you referred, Mr Chairman, are mine, and they provide an ethical superannuation choice for police officers.

The explanation that I feel I need to give is that, on Wednesday last week, I outlined how I had been to the Super SA and Funds SA website and found that one of the large companies in which the funds invested in the international stream was Altria, the parent company of tobacco giant Philip Morris. I spoke about the hypocrisy of the government in allowing public servants' superannuation funds to be invested in a tobacco company. Last Wednesday, I said the following:

> It amazed me that some time around August last year Super SA quietly disinvested itself in Altria shares. When we looked, they had gone; the shares had been sold.

I had a conversation this week with Mr John O'Flaherty, the General Manager of Super SA, and he pointed out to me that I was wrong. In fact, we have not disinvested ourselves of these tobacco shares; the tobacco shares are still owned by Funds SA.

Apparently, the parent company underwent some restructuring and, as a result, it no longer appeared on the website in the form that it had. My understanding is that it may now be broken into some smaller parcels. So, I apologise to Super SA for suggesting that it had sold the tobacco shares. The tobacco shares are still there. Last Wednesday in parliament, I said:

> Clearly, some sort of ethical screen is being applied. My feeling is that it was too embarrassing for the government to keep on investing in Marlboro. Clearly, if a test has been applied, I want to know what the test is, and if we are going to put one in place, let us put one in place to give public servants, politicians, and the police and others a chance to have an ethical choice.

Again, I was wrong: there is no ethical test in place. I apologise to Super SA for suggesting that it applies ethics in its investment and that there is some hidden test of which I am not aware; that is clearly not the case. So, the mistake was mine, and it resulted inadvertently from a restructure in the tobacco industry. I still maintain, however, that it is a hypocritical situation for the public sector to be investing in tobacco, but that is a debate for another day. I wanted to put the correction on the record in clause 1, and I thank John O'Flaherty, General Manager of Super SA, for setting me straight on that matter.

Clause passed.

Clauses 2 to 32 passed.

New clause 32A.

The Hon. M. PARNELL: I move:

Page 12, after line 26—After clause 32 insert:

32A—Amendment of section 7A—Accretions to members' accounts

Section 7A—After subsection (3) insert:

(3a) If members are permitted by the Board to nominate a class or combination of classes of investments a class of investments based on consideration of the impact of the investments on society and the environment must be made available to members (subject to terms and conditions determined by the Board).

All my amendments (and I have five on file) relate to the same issue; therefore, I move this amendment and test the will of the committee in relation to all my amendments.

This amendment is very straightforward, and I will not repeat now all the things I have said in the past in relation to ethical superannuation. As I see it, the position is very straightforward; that is, our police are no different from other public servants, who do not have the same super choice that exists in the rest of the community. Therefore, they need an option to have their superannuation funds invested in an ethical fund.

The concept I use in this amendment does not state that an ethical fund must be provided as an option in all cases—only if choice is to be provided. My amendments state that, if a choice is to be provided, one of those choices should be the ability of superannuation fund members to nominate a class of investments based on consideration of the impact of the investments on society and the environment, and it must be made available to members. So, if there is to be a choice, make this one of the choices.

Those members who entered parliament at the last election and who signed up to the parliamentary No. 3 superannuation scheme were presented with a choice. From memory, there were seven choices, and they ranged from high risk to low risk type investments, but none of those choices was an ethical investment choice. As a result, I imagine that most members of parliament (as with most members of the community) did not exercise any choice but simply accepted the default, and the default was some middle ground.

Interestingly, at the same time I was speaking this week to John O'Flaherty, the General Manager of Super SA, I was also speaking with the sustainability manager of Westpac Bank, who had come from Victoria to attend the conference. He talked about one of its superannuation products in which the default was the ethical investment option. In other words, if you did not elect a different fund, that was the fund you defaulted to. I think that may be the direction we are heading towards, but for now I am happy for us to take some baby steps. I am not suggesting that the ethical option be the default option: I just want an ethical option to be there.

I do not think that our police should be treated any differently from other public servants, and that is why I moved, in both my private member's bill and in my amendments to superannuation legislation last year (and, I think, the year before), that this option should be made available. I will not repeat what I said last Wednesday but, if members are interested, I urge them to refresh their memory. I talked about client surveys which were conducted by Super SA and which showed that some 30 per cent of those surveyed (and thousands were surveyed) said that they were interested in an ethical investment option.

So, even if you accept the principle that people are freer with words than they are with deeds, and even if that 30 per cent turned into, say, 10 per cent, it would still be a huge uptake of ethical investment. My understanding is that, with most of these public superannuation schemes, something like 5 per cent of people exercise some choice. I am sure that, if an ethical investment option were made available, the percentage would be much higher.

I remind members that, when we last debated this concept, the contributions made were along the lines of, 'Yes; it is inevitable. We will eventually get an ethical superannuation choice. It is just a question of timing.' I am a very patient person. I have tried this before and, if unsuccessful, I will try it again, as it seems that superannuation comes before this place quite frequently.

I do not think that we need to wait. I think that members should accept that society is changing, that its values are changing and that providing an ethical investment option does not mean that you are putting your money into some black hole of debt. The ethical funds have performed very well across the country. We are not talking about giving away our funds: we are talking about investing them in a responsible manner so that they make a profit that is socially responsible. With that brief contribution, I commend my amendment to the committee.

The Hon. P. HOLLOWAY: I thank the Hon. Mark Parnell for his explanation. He probably will not be surprised by the response. His amendment seeks to insert a provision into section 7A of the Southern State Superannuation Act dealing with member contribution accounts. This proposed provision would require the South Australian Superannuation Board to provide members with an option to select an investment choice strategy based on the so-called socially responsible investments. The Hon. Mark Parnell has sought to have similar clauses inserted into superannuation legislation in the past, as he has informed us, and of course, on those occasions, the proposal had been voted down, and the government believes they should be again.

I think it is important to note that the Economic and Finance Committee of the parliament is currently investigating ethical public sector superannuation schemes, and this is based on a House of Assembly motion that was passed on 14 November 2007 and, therefore, until such time as the committee delivers its report, we believe it would be inappropriate for the legislation—

The Hon. S.G. Wade: That's like Glenside. We wait for a parliamentary committee to report.

The Hon. P. HOLLOWAY: Not at all. Until it delivers its report, it would be inappropriate for the legislation to incorporate such an investment option requirement. Unlike the Glenside committee, the Economic and Finance Committee has begun this reference because it is an important issue that is worth examining, but it needs to be examined in significant detail. I am sure that the Hon. Mark Parnell will keep a close eye on the findings of the Economic and Finance Committee, as will the rest of us, I am sure. The government believes it would be better if we were to await the outcome of that before we take any further steps.

The Hon. R.I. LUCAS: In addressing this amendment, I want to divide my comments into two parts. The first part is in relation to my personal views as someone who has some of their money in the Triple S scheme and my personal views about whether I would take up the option if one was available and some of the challenges and problems associated with that. The second issue is more general, which I think the Hon. Mr Parnell has moved towards; that is, whatever your views are, should there be an option for those people who might want to choose an option?

In relation to the first issue, in his contribution the Hon. Mr Parnell has outlined some of the general issues that relate to what he has referred to as 'ethical investment'. I note for the record that what used to be called the Ethical Investment Association has rebadged itself as the Responsible Investment Association Australasia. It has moved away from the notion of 'ethical' to 'responsible' and, in its terms, it takes in a whole range of investment methods, practices and guidelines which include social, ethical and other governance practices and organisations, etc.

As the Hon. Mr Parnell indicated, a variety of mechanisms are used by what he has referred to as ethical investment options or responsible investment options. The association would refer to them as responsible investment options. In brief, they are: negative screening which, as its name implies, means that you ban investment in certain industries such as tobacco; positive screening, where the fund actively seeks out companies which have a positive impact on things such as renewable energy, health care, and above average environmental, ethical and social practices; sustainability analysis, which is detailed quantitative and qualitative analysis of all companies in relation to their environmental, social, ethical and governance performance; and then, in essence, a judgment is made by the fund managers. A variety of research techniques are used, and I will not go through all the details of those.

The Hon. Mr Parnell also referred to the option used by some as 'best of sector' which means that the funds invest in all the investment sectors. They do not negative screen or ban but they try to pick from within the investment sectors the best of the companies that are performing in those industry sectors. There are a variety of others and, for those who are interested, the Responsible Investment Association Australasia website and similar websites outline in some detail the various options and mechanisms that might be available, if an amendment like this were passed and then if Funds SA provided the options.

As I said in the first instance, I wanted to look at some of the challenges in terms of what on the surface of it seems to be a relatively easy and attractive option. I want to quote from a respected financial journalist in Mr James Kirby. He has written a number of books on the financial sector, particularly on superannuation. At the outset—and it will become apparent when I read from his article—he sees himself as an ethical investor. He is not somebody who has not taken up the option; he is somebody who has consciously taken up the option of what he terms 'ethical investment'. His article for the magazine, *The Monthly,* was published in 2006. It is called 'The myth of ethical investment', and bear in mind that it was written in 2006. He writes:

> After a decade-long share-market boom—only marginally clouded by the reversals of early June—ethical investing has moved from the margins to the mainstream. From a standing start in the 1980s the industry has flourished, and today there is at least $7 billion in funds that lay claim to being guided by ethical considerations. But when you get that sort of money washing around, the pioneering idealists that started the industry suddenly face stiff competition. What's more, the working definition of 'ethical' becomes malleable...It's no coincidence that the range of ethical funds is widening dramatically. But are all these funds, well, ethical? If Woolworths' gambling activities—

in an earlier part of the article, he referred to the fact that Woolworths now controls 14,000 poker machines as well as being your local retail outlet of choice—

> came as a surprise to you, no doubt it will seem just as odd that some ethical funds have invested in the asbestos company James Hardie and the uranium miner, BHP. It is a problem of definition. For efficiency's sake, commentators like to lump all the ethical-style funds together.

A little further on he states:

> Last year, as resource stocks—which are often avoided on environmental grounds by ethical funds—drove the market higher, ethical funds failed to keep pace. The ratings agency Morningstar has said that mainstream funds gained 21.9 per cent, while ethical funds rose by 18.89 per cent. There's the rub: 3 per cent in lost profits. Over the longer term, the news is better. A swag of local and international studies show that ethical investments do not necessarily do better or worse than mainstream funds. In the vernacular of investment management, they are 'cost neutral'. Still, it's surely logical that the more restricted your investment range, the less likely you are to make money.

I interpose at this stage to say that the Responsible Investment Association quotes a recent study that it has done over the past one-year, three-year and five-year ranges which demonstrates, according to its figures, that Responsible Investment funds have actually performed better than the market over the one-year, three-year and five-year period in accordance with its survey. A survey

done by AMP Capital Investors (which is one of the particular recommended ethical investment funds) also makes similar claims. So, that is consistent, in part, with what James Kirby is saying, namely that, over the longer term, the news is better, that is, it is around about the same.

As I said, the more recent claims by the Responsible Investment Association based on recent figures is that it has out-performed the market, or mainstream funds as it refers to them. However, back in 1986, James Kirby was referring, I presume, to the 2005-06 figures, which indicated it was being out-performed by the mainstream. So, obviously, that changes and, at this stage anyway, there is no definitive argument one way or another. James Kirby goes on to make the point that, in relation to ethical investment opportunities, if you are in the US or the UK, you have a wide range of options. However, there are slim pickings on Australian funds on the Australian Stock Exchange, because it is a resource laden stock exchange, as he indicates, compared with some of the overseas exchanges. James Kirby further states:

> One of the oldest and largest ethical funds on the ASX is Australian Ethical Investment, which has led the pack in banning Woolworths after its move into gambling. But AEI is suffering because of its hardline approach. Many of its rivals are growing faster than it is. While AEI and other traditional funds still espouse such high-minded ideals as 'preservation of endangered ecosystems', newer fund managers such as Ausbil Dexia talk about 'ethical opportunities'. In the battle to gain a few extra percentage points, the ethical war may be lost. James Thier, an Executive Director of AEI, says 'ethical' must always come first, and 'investing' second. 'That's our rule', he explains over (predictably) a soy coffee in a Paddington book shop. Who should we believe? I have my superannuation controlled by the superannuation consultant Mercer, and the whole lot is in 'socially responsible' investments. I signed a form a few years ago and sat back thinking that my nest egg would side step nuclear reactors and godforsaken all-night pokie joints, but has it?
>
> Recently, I rang the Mercer inquiry line and asked what 'socially responsible' actually means: does it exclude nuclear power? A cheery voice at the end of the line said, 'They avoid all that sort of thing'. 'Could you be more specific?' I asked, 'Does it have uranium-mining investments or not?' 'I'll have to refer you to the product disclosure document', came the reply. 'As I thought, sir, it says here the fund will consider issues like you mentioned when it invests'. Yes, but 'consider' is not the same as 'prohibit', is it? I often consider giving up eating meat, but I never do it. I don't want my ethical-investment fund to consider; I want it to decide.

As I said, this comes from someone who has invested and wants to invest in ethical investment and who has written this article in the context of the myth of ethical investment. Many issues, I guess, must be addressed if this is to be an option—well, it already is an option for many companies. As I think the Hon. Mr Parnell indicated (although I am not sure whether he put this figure on the public record), the document from the Responsible Investment Association indicates that over 100 super funds in Australia offer an option that takes environmental and other considerations into account and that it includes eight of Australia's largest 20 super funds, and the document outlines those particular options.

Obviously, a variety of interesting questions need to be resolved if this is to be provided as an option. One has to look at only a couple of the investment options, such as Argo Investments which is an investment powerhouse and which has been very successful over the years in terms of investing in a range of other companies. Now, Argo in and of itself, I would have thought, would have been an ethical investment. However, if it invests in Woolworths or if it invests in a range of options which ethical investors would not want, what do the ethical investor managers do in relation to Argo? Of course, there are literally hundreds of other firms similar to Argo in relation to packaging together investments.

I raise the issue of property trusts and infrastructure groups such as Macquarie and others, where there are investments in property directly and indirectly. If, for example, Macquarie or some of these property trusts are housing pokie palaces, and if you ban Woolworths because it owns gambling institutions, do you similarly ban property trusts or infrastructure groups that in essence are providing the buildings for those investments? I raise the issue of technology companies, because some of the ethical investment funds ban armament or defence-related investments on the basis that anything to do with armaments and war is bad, and therefore do not invest.

In South Australia we would be aware of a company called Vision Systems, which in the end I think was taken over by Tenix. Companies like that invested in technology like radar, which has a variety of uses, but in more recent times, of course, it is very actively used by defence related companies.

Is that an ethical investment in relation to the technology that has been developed? They are difficult decisions for ethical investors. The issue of genetically modified food is something that is obviously strongly opposed by many environmental and social activists. Do ethical investors ban retail outlets, such as Woolworths and Coles, if they stock genetically modified foods? In some other parts of the world supermarket chains are banning, so they say, genetically modified foods

within their stores, to get a tick from those who worry about these sorts of issues. The challenge for managers of ethical or responsible investment funds is: do you ban Woolworths, Coles or IGA or anyone, for example, if they are stocking genetically modified foods?

The issues of experimentation on animals is listed by some ethical or responsible investment funds as being a no-no, that is, if a company is associated with experimentation on animals. So what do we say to the perfume outlets and companies like David Jones? Part of their product range is obviously perfumes, some of which may well have been produced (probably would have been done) by using animals, in terms of laboratory research.

The Hon. R.D. Lawson: They sell furs, too.

The Hon. R.I. LUCAS: The Hon. Mr Lawson—ever available for assistance—has suggested some of these stores sell furs and ethically they would be, therefore, frowned upon as well, so there are all those challenging issues.

As I said, one of the popular sustainable funds is the AMP Capital Sustainable Share Fund, AMP Capital Investors. When you go through its list of investments, there is a whole range of property trusts and infrastructure funds, and I have made comments in relation to those. But I did raise by way of interjection when the Hon. Mr Parnell was speaking to the second reading, I think it was—knowing the Hon. Mr Parnell's very strong views on uranium—whether he saw BHP Billiton as an ethical investment. Would this be banned under an ethical investment option?

The Hon. P. Holloway: He has the higher greenhouse option.

The Hon. R.I. LUCAS: I am not sure, because in some of these investments I notice that Babcock & Brown and a number of other power investment companies are listed as investments within the ethical investment option, and I think that, again, some of the responsible investment options would not see that as being acceptable, but nevertheless this very popular one obviously does. In relation to BHP Billiton, it is interesting to have a look at that, because they obviously know that they are on the cusp of a dilemma, because this is what they say. They list all of the products of BHP Billiton: aluminium, coal, copper, iron ore, diamonds, silver, lead, zinc and petroleum—there is no mention of uranium.

Then in the second part of the summary it does say, 'In mid-2005 BHP Billiton completed its takeover of WMC.' It then says that it produces uranium and that the majority of the revenue from the mine is from copper. The mine also produces 11 per cent of the world's uranium, and it represents approximately a third of the world's economic resource. Post the takeover of WMR, BHP Billiton will still be under the fund's uranium/nuclear power exclusion criteria, with 5 per cent of revenue or profit coming from uranium. See the nuclear fuel cycle position paper for more details. Olympic Dam will contribute less than 4 per cent of BHP Billiton's revenue and EBIT, earnings before interest and tax, and revenue from uranium will represent more than 1 per cent of BHP Billiton's total revenue.

There is a further discussion about the problems BHP Billiton has had with the Octedy Mine, for example, in Papua New Guinea in relation to it, but nevertheless with all of that the judgment is that BHP Billiton is an ethical investment and is included within this particular option.

Without going through all of these, members will be pleased to know, obviously there is a number of property trust investments and infrastructure groups, and I have made comments in relation to that. I turn to another general area that I have not addressed and that is, for example, the company Orica. Orica is the world's largest explosive manufacturer and a very good investment, one might suspect, in terms of its financial performance over the past five to 10 years. However, AMP, nevertheless, still sees it as being within its ethical investment options.

The other one I thought that I would note for the sake of the Hon. Mr Parnell, given his interest in this issue and the Hon. Sandra Kanck's, is OneSteel Limited. The Hon. Mr Parnell has expressed strong views about OneSteel.

The Hon. M. Parnell: In terms of the behaviour of a person.

The Hon. R.I. LUCAS: Yes, but this is about behaviour. This is a judgment about ethical investment. I am not talking about the persons here; we are talking about ethical investment, and the Hon. Mr Parnell and the Hon. Sandra Kanck have strongly opposed the environmental practices of OneSteel.

OneSteel Limited, as I said, is one of the more popular ethical investment options included in the ethical investment options. There are many others, but I am not going to delay the debate in

the committee stage. However, this whole issue of ethical investment is a bit like the issue—in my humble, personal view—of off setting your carbon footprint. It is very easy to say that someone somewhere will plant enough trees to offset the carbon usage of the Hon. Mr Holloway and his fellow ministers in the cabinet, but who will monitor that those trees actually survive and grow and they have not been sold to 1,000 other people as a carbon offset? One of the dilemmas we are going to face in this whole area is that many of these things which are symbolic sound good and sound easy, but are they going to potentially mislead people in terms of the actuality of what is occurring?

If an investment option is provided and, as I said in the debate two or three years ago, I think it is inevitable, because everyone is providing the option. The Hon. Mr Parnell spoke about this in his second reading contribution, when he quoted my previous contribution that most of the funds are now providing an option on the basis that, if individuals choose to go down this particular path, knowing all of the potential pitfalls, essentially that is an individual choice for those individual members.

As members would gather from what I have just said, if a choice was to be provided in the Triple S scheme at some time in the future I, as an individual member of the scheme, would not head down the responsible investment package and I strongly oppose it being the default option (and I accept the assurance from the Hon. Mark Parnell that that is not part of the package of amendments). As a superannuation investor interested in my future and in the future of my family, I want to maximise the investment and return over the long term and, from a personal perspective, I am more comfortable with the other options that exist within the superannuation fund of which we are committed to being a part.

The second part of my contribution was whether, given our individual views on these issues, we as a state should actually provide the option for those people if they so choose. If the Hon. Mr Parnell, with all those warnings, wants to choose the ethical investment option for himself and his family, should we as a parliament or a state prevent him from making that judgment? The shadow treasurer, the member for Waite, has indicated that we will support the option put by the Hon. Mr Parnell, and he has also indicated (along the lines put by the Hon. Mr Parnell) that these options are widely available to a number of superannuation funds. As long as it is an option that individuals can choose, and no-one is forced to go down that path (and I am sure the honourable member would not be supporting a default option; not that that was discussed or canvassed with him), the shadow treasurer's view is that the Liberal Party will support the amendment moved by the honourable member.

With that, I indicate that at this stage the opposition supports the package of amendments moved by the Hon. Mr Parnell. If, in the passage of the legislation from here to the House of Assembly, the government raises specific drafting issues in relation to these amendments I am sure the shadow treasurer and the Treasurer, in another place, would discuss whether the amendments were consistent with the position the shadow treasurer has outlined of allowing the option to be available to participants of these schemes.

The Hon. P. HOLLOWAY: I am really disappointed, and I guess we will see where the numbers lie in a moment. It is not so much whether or not one should have a so-called ethical option in relation to super schemes. That is not the issue. There are two comments I should make. First, it will apply only to police. If we are going to do this, it should be done across the board to all schemes. The amendment requires Super SA to make a scheme available. Since the Economic and Finance Committee of the parliament is currently investigating these schemes, would it not be better that the parliament decides the basis of it? The Hon. Rob Lucas highlighted at great length the issues involved in this matter. What is ethical to some people will not be ethical to others.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: If as a parliament we require Super SA to develop one of these schemes, would it not be better that the parliament, through the committee that has been underway for four or five months, await the report of the committee in order to get a direction for the way in which we are going? I agree with the Hon. Rob Lucas: I think it is inevitable that we will have these schemes. If we are going to establish them, let us at least get a basis on which to do it; let us at least have the parliament play some role.

The committee might have government control but, on an issue such as this, I am sure all the members of the committee, including members of the opposition, would be making a contribution; and that is the way it should be. It would be most regrettable if the Legislative Council were to wipe it out by saying, 'We will totally ignore that and use our basic numbers to impose this

system without doing the work.' I appeal to Independent members. It is probably inevitable that we will get one of these schemes, but let us do it properly. If we are going to do this, let us have it across the board, not for just one individual scheme. A number of other schemes would not have the option. More importantly, we need to give guidance as to how such a scheme should operate.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: What will happen is that a lot of amendments will come back to say, 'We need to exclude this company and that company,' and we will have to do all the work which the Economic and Finance Committee is now doing properly. We have been setting up select committees on everything. A committee has been working on this issue for five months, but we are going to say, 'Let's ignore it. We will override it and make its work irrelevant.'

The Hon. S.G. Wade interjecting:

The Hon. P. HOLLOWAY: On the contrary, the decision is already made. You are double guessing it. There is absolutely no comparison whatsoever. However, if that is the wish of the committee, so be it, but I suggest that it will reflect, yet again, on the capacity of this place, not on the merits of the argument.

The Hon. M. PARNELL: I would say at this stage that I am delighted that the opposition has seen fit to support this amendment.

The Hon. R.I. Lucas interjecting:

The Hon. M. PARNELL: I must say that, until towards the end of the Hon. Rob Lucas' contribution, I was unsure where he was heading with it. He has pointed out that there are difficult issues that need to be resolved. The simple fact of the matter is that, whilst we can make a mountain of difficulties that seem insurmountable, they are not insurmountable. If 12 of the top 20 superannuation funds have been able to offer this option and if the governments of Queensland and Western Australia have been able to offer this option to their public servants, it is not too hard.

As the Hon. Rob Lucas has said, the decision is not going to be one made by the parliament in terms of which companies are in and which companies are out. Whether it is the 'best in show' model that was referred to, or some other model, there are reputable, professional fund managers out there making these judgment calls.

The Hon. Rob Lucas reminded me of an interjection he made when he asked me whether I thought a particular company qualified as an ethical investment. I did not respond at the time to his interjection, because interjections are out of order, as you frequently tells us, Mr Chairman. But my answer is: if there were two identical funds and one did not hold tobacco shares, that fund would be preferable over the one that did.

It is at the margins in many cases that we are looking at this because, of course, we can always find in every company, as we can in every individual, inconsistencies and things that we do not necessarily approve of. Life is just like that. No-one is perfect, and no company is perfect.

What I think is at the heart of this amendment is that neither we in this parliament nor our hardworking police officers, who are the subject of this bill, should feel embarrassed about holding values other than the simple economic bottom line. They should not be embarrassed about having values that it is not just the rate of return, even though, as the Hon. Rob Lucas pointed out, there are statistics that show that the rate of return might be a little lower or a little higher, or maybe it is the same. The point is that these funds exist; they are profitable and viable, and people elect to go into them because they believe that there is some part of their value system that is better served by having this type of option, rather than just having an option that has no responsible or ethical, or however you like to frame it, filter attached.

It is also important to point out to members that I am not suggesting that such a fund would be the default. I just mentioned that in passing, because that is the direction some places are heading. I am inviting us, through this amendment, to take that very small step of saying that, if you are going to offer choices in relation to investment, make one of them a socially responsible investment choice. No-one is going to be compelled to go into it.

The Hon. Rob Lucas will take great comfort that his money will be where he elects to put it, and he will not be forced to adopt any of the moral positions or ethical stances. That is completely irrelevant. What we are saying is that, just like all people in the community outside the public sector who have superannuation choice, let us give our hardworking public servants and our police officers the ability to have that choice as well.

I want to respond quickly to the minister's suggestion that, because there is a reference to one of the standing committees of parliament (the Economic and Finance Committee), that should be a natural break on us considering this option. I do not believe that it should be a break. My understanding is that that particular committee has a great deal on its agenda. I do not believe that this inquiry has any great level of priority.

At the end of the day, it is a very simple matter for me: these funds exist; they are profitable; they are in the general finance community; and they are in the Public Service arrangements of other states. So, I am saying: let us learn from other states' experience; let us copy the best of the other states' legislation. We have spent time today talking about taking legislation from other states that might not work so well, so let us take one that does work well. Two states, at least, have adopted it and others are looking at it.

I thank the members of the Liberal Party for their support, and I now turn to my crossbench colleagues and urge them to support this motion as well. The minister said that it might seem not quite right to be just giving it to police through this amendment, but we will have the opportunity very soon, on a private member's day coming up, to apply these very same standards to the rest of the public sector.

As I said, these provisions are identical to the ones that I have proposed for the Triple S scheme members. I pulled this one out of that private member's bill because I wanted to deal with it as part of the government's agenda, because it brought this police superannuation legislation before us. Now is an appropriate time for us to be dealing with it. This is really a bit of a test for whether or not all our public servants will eventually get this ethical super choice. I urge all honourable members to support this important amendment.

The Hon. R.I. LUCAS: Is the minister's advice that, if the amendments are passed as a package, it will apply to all public servants in the Triple S scheme?

The Hon. P. HOLLOWAY: Yes—just the Triple S scheme. It clearly would not include the PSS3 scheme, for example, which is the parliamentary scheme, but it would apply to the earlier scheme that the honourable member and I are in.

The Hon. R.I. LUCAS: I am more interested in the Triple S scheme as it applies to the wider public sector. Is the answer to that yes?

The Hon. P. HOLLOWAY: Yes.

The Hon. R.I. LUCAS: I want to clarify that, because my reading of the amendments is that this was an amendment to the Southern State Superannuation Scheme (the Triple S scheme) and, therefore, would apply to all public servants who are members of the Triple S scheme, not just police officers who are members of the Triple S scheme. So, I think we need to bear that in mind. I think what the minister is saying is that, potentially, there is a group of members of parliament who might not be—

The Hon. P. HOLLOWAY: The Hon. Mark Parnell.

The Hon. R.I. LUCAS: The Hon. Mark Parnell has deliberately excluded himself from having this option through his amendments. I am surprised that he would try to slip that one through without our realising that. We did not pick it up. If, indeed, that was the case, I suspect that the Hon. Mr Parnell might want to move an amendment to cover that. It seems the government's advice is that maybe the scheme that the Hon. Mr Parnell is in, and the more recent members of parliament—

An honourable member interjecting:

The Hon. R.I. LUCAS: And the Hon. Mr Finnigan, I am sure, would be interested in ethical investment. I am not sure what the Hon. Mr Parnell wants to do in relation to that.

Certainly, as I have indicated, we are happy to support the amendments but, if there is a glitch or an anomaly, I would not want to leave the Hon. Mr Parnell in the position where I could go out publicly and accuse him of providing an option for everyone else but cleverly ensuring that he does not have to take up this option for himself. I am sure that was not his intention.

The Hon. M. PARNELL: I wish to respond to what the honourable member has just said. He has alerted me to something of which I was not necessarily aware. The process that I went through was to draft an omnibus ethical superannuation bill that would cover all public servants. I took advice from parliamentary counsel to extract the bits that related to this government amendment, primarily dealing with police superannuation.

I would be keen to strike while the iron is hot and pass these amendments now. If it turns out that there is some unintended consequence or, for some reason, they do not do all that I expect, then I would think that between the houses we will hear back from the government. However, I wish to put on the record that any consequence that might result from this—that I am unable to take advantage of it, whereas others are—is unintended. I will seek to remedy it very soon and, if I bring my private member's bill on with all haste, that might quickly redress that situation.

I thank the honourable member for pointing out his view that that might be the result, but I think that I will proceed with the amendments as drafted for today, and we will deal with any problems. There may not be any problems; it may be that the honourable member is wrong. I will discuss it with parliamentary counsel later, and we will see whether anything needs to be fixed.

The Hon. P. HOLLOWAY: In fairness to the Hon. Mark Parnell, he would not have been able to amend the parliamentary superannuation scheme because it comes under a different act—the PSS3 scheme. He might have been able to do it, but he would probably have to have a resolution at the second reading stage. In fairness to him, the Hon. Mark Parnell has done all that he can within the terms of this bill.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes, well, I think I have said enough.

The committee divided on the new clause:

AYES (10)

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

NOES (9)

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

Majority of 1 for the ayes.

New clause thus inserted.

Clauses 33 to 43 passed.

New clause 43A.

The Hon. M. PARNELL: As I said at the outset, all of my amendments effectively relate to this same issue. I move:

Page 16, after line 25—

After clause 43 insert:

43A—Amendment of section 26E—Accretions to spouse members' accounts

Section 26E—after subsection (3) insert:

(3a) If spouse members are permitted by the board to nominate a class or combination of classes of investments, the option of nominating a class of investments based on consideration of the impact of the investments on society and the environment must be made available to spouse members (subject to terms and conditions determined by the board).

I urge members to support this for the reasons we have been discussing.

The Hon. P. HOLLOWAY: We will not bother to re-fight the argument. I just want to put on the record that, in reality, what will probably happen is that, given that the number of people who may take up these sorts of packages is likely to be fairly small, one would expect that Funds SA would probably be more likely to buy an investment package, if you like, in relation to this, rather than create one itself. If it were to do so, of course, those costs would have to be passed on to the members of the fund, and that would not be fair if there was a very small number of them. They are likely to buy a package and, of course, the dilemma—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: This is obviously the issue that we are coming to: if they do buy a package presumably we are then going to have arguments and, I suppose, before long, we are going to have amendments coming back, no doubt, from the Hon. Mark Parnell saying, 'Because they've got these companies and so on, we really need to develop our own package, or change the thing,' and so on. That, I guess, is where the debate goes from here. We will not waste any more time on the matter.

New clause inserted.

Clause 44 passed.

Clause 45.

The Hon. M. PARNELL: I move:

Page 15, after line 34—

After subclause (2) insert:

(2a) Section 27—after subsection (4) insert:

(4a) If members are permitted by the board to nominate a class or combination of classes of investments, the option of nominating a class of investments based on consideration of the impact of the investments on society and the environment must be made available to members (subject to terms and conditions determined by the board).

This is, again, in the same terms as the previous amendments.

Amendment carried; clause as amended passed.

New clauses 45A and 45B.

The Hon. M. PARNELL: I move:

Page 17, after line 2—

After clause 45 insert:

45A—Amendment of section 30A—Transition to retirement

(1) Section 30A(7)—delete "The investment" and substitute:

Subject to subsection (7a), the investment

(2) Section 30A—after subsection (7) insert:

(7a) The investment of a draw down benefit under subsection (4)(b)(i) must, if the member so requests, be based on consideration of the impact of the investment on society and the environment (subject to terms and conditions determined by the board).

45B—Amendment of section 30B—Early access to superannuation benefits

(1) Section 30B(8)—delete "An investment" and substitute:

Subject to subsection (8a), an investment

(2) Section 30B—after subsection (8) insert:

(8a) An investment under subsection (7) must, if the member so requests, be based on consideration of the impact of the investment on society and the environment (subject to terms and conditions determined by the board).

Again, these are consequential; it is the same subject.

New clauses inserted.

Clauses 46 to 51 passed.

New clause 51A.

The Hon. M. PARNELL: I move:

Page 17, after line 37—After clause 52 insert:

51A—Amendment of section 47B—Post retirement investment

Section 47B—after subsection (4) insert:

(4a) Despite subsections (2) and (3)(a), the investment of money accepted by the Board under subsection (1) must, if the investor so requests, be based on consideration of the impact of the investment on society and the environment (subject to terms and conditions determined by the Board).

This amendment relates to the same matter we have been discussing.

New clause inserted.

Clause 52, schedule and title passed.

Bill reported with amendments.

Bill read a third time and passed.

STATUTES AMENDMENT (REAL PROPERTY) BILL

Adjourned debate on second reading.

(Continued from 9 April 2008. Page 2376.)

The Hon. R.D. LAWSON (17:36): I rise to make a brief contribution to the second reading of this bill to cover some of the matters not covered by those who have spoken earlier. This bill is the result of a lengthy process that began under the previous administration, and I think that it is regrettable that the Rann government has not brought it to the parliament until now. It contains a great number of provisions that are supported by those practitioners who work in the property field.

The Real Property Act of South Australia is one of our landmark pieces of legislation, and it was introduced as early as 1865. It contains the celebrated Torrens system, which has been copied in many parts of the world. The only point I wish to make relates to the inclusion in this legislation of a new certification clause, which was proposed pretty well at the last minute by the Attorney-General and adopted in the bill without appropriate consultation having taken place with either the Law Society or the Australian Institute of Conveyancers, who were participants in a working group that was providing advice.

This ill-advised clause has caused some considerable consternation to those who are working in the field. When it was proposed at an industry briefing, the Institute of Conveyancers and the Law Society both indicated that they would have to consult their constituent bodies before agreeing to it. Notwithstanding that fact, the government went ahead and introduced the legislation and ignored the wishes of those bodies.

I think that it is testament to the fact that the Attorney-General, having no practical legal experience, insisted upon pressing ahead with the clause. It was opposed in another place by the shadow attorney-general and by the member for Mitchell (both legal practitioners), and it was opposed for good reason.

The bill was passed intact in another place, and now when the bill comes to this council we see that the government has decided to withdraw the amendments to section 273. I applaud the fact that the government has finally seen sense, but I think it is lamentable that the Attorney should have dismissed out of hand, and for specious reasons, in another place, its removal.

I think it is worth placing on the record some of the facts about this. The Law Society, when confronted with this proposed amendment, wrote, on 25 February this year, to the Attorney-General and indicated that further consultation would be required, that there were difficulties of a practical nature in introducing this amendment: the fact that it would be inconsistent with the practice adopted in other Australian jurisdictions; the fact that it would create doubts and uncertainty; that it would lead to logistical difficulties because documents would need to be examined by a number of people, certified, re-certified, and alterations would have to be certified; and it was a complicated system.

The Attorney-General, however, dismissed that out of hand. The Australian Institute of Conveyancers also conveyed, I am advised, to the Attorney and the government its concern, and it pointed to the impracticability of the clause as it stood. Both the Institute of Conveyancers and the Law Society, having worked on this bill for a long time, were keen for it to progress, and both were very positive in the suggestions they made. They simply said that further time was needed to embrace this.

The Attorney dismissed the arguments of the shadow attorney-general in somewhat typical fashion, and also the arguments of the Law Society. The Attorney in another place said that this matter had been the subject of a Crown Solicitor's Office opinion, and the office had advised that

the Law Society's arguments were not capable of being supported in law or practice. He said, and I think this is interesting, that the possibility of fraudulent instruments existing may give rise to a claim against the Lands Titles Assurance Fund.

He denigrated the member for Heysen (the shadow attorney-general) by saying that she simply wants to activate claims against the Lands Titles Assurance Fund. He accused her of wanting to ensure that every other fund should be raided by claimants. But he has been forced to back down. What appears in the Attorney's speech to be certainty is in fact the Crown Solicitor's opinion, which is all about endangering the Lands Titles Assurance Fund. However, at least the Attorney has had the good sense to have an amendment moved in this place to remove this offensive provision.

The provision is offensive in the way in which it is drafted, rather than being unsound in principle. No one argued that certification was not required. Everyone supported the continuance of a certification requirement. So, the principle was one about which there could be no argument, but the deplorable aspect is that in another place wise suggestions put to the government were rejected. Those who made them were denigrated and one can only say that this is typical of this Attorney-General, but it is good to see that some sense has ultimately prevailed.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (17:45): I thank honourable members for their indications of support for this bill. As indicated, there will be a government amendment to this bill to delete clause 68. Clause 68 amends section 273 of the Real Property Act to require certification of an instrument of a prescribed class by each party for the instrument or by a solicitor or registered conveyancer acting on behalf of each party.

Although the government believes that the proposed amendment to section 273 will help eliminate the risk of fraud, the conveyancing industry has expressed concerns regarding the amendment. It is recognised and accepted by industry that these amendments will be required when a national electronic conveyancing system is introduced. At this stage, the government is prepared to remove clause 68 from the bill to allow the issues raised by industry to be worked through before the introduction of amendments to allow for the introduction of electronic conveyancing in South Australia, which is expected to be introduced in 2010. With those comments, I commend the bill to the council.

Bill read a second time.

BLOOD LEAD LEVELS

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (17:47): I lay on the table a copy of a ministerial statement relating to the reduction of blood lead levels in children in Port Pirie made earlier today in another place by my colleague the Minister for Health.

RING CYCLE

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (17:47): I lay on the table a copy of a ministerial statement relating to the *Ring* Cycle made earlier today in another place by my colleague the Minister Assisting the Premier in the Arts.

STAMP DUTIES (TRUSTS) AMENDMENT BILL

Second reading.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (17:47): I move:

That this bill be now read a second time.

I seek leave to have the second reading and the explanation of clauses inserted in *Hansard* without my reading them.

Leave granted.

The Stamp Duties (Trusts) Amendment) Bill 2008 makes amendments to the trust provisions of the Stamp Duties Act 1923 ('the Act').

The Bill makes a number of amendments required as a consequence of two High Court cases and to provide stamp duty relief for transfers resulting from certain land subdivisions and for transfers of property between responsible entities and custodians of managed investments schemes.

A number of the measures contained in this Bill are complex and technical in nature.

In the decision in the case of MSP Nominees Pty Ltd v Commissioner of Stamps ('the MSP case') handed down in September 1999, the High Court held that a redemption of units in a unit trust was not liable to duty under the Act.

The Act was subsequently amended by the Stamp Duties (Land Rich and Redemption) Amendment Act 2000 ('the Amendment Act'), to ensure that the issue and redemption of units in private unit trusts that own property in South Australia remained liable to ad valorem conveyance duty, except where a relevant exemption applied. The Amendment Act operated to validate assessments of duty made prior to the date of the decision in the MSP Case except in situations where valid objections or appeals had been lodged within the legislatively prescribed timeframes.

It has since become apparent that the structure of the Amendment Act has led to unintended consequences in relation to two exemptions available under the Act.

Firstly, the exemption contained in section 71(5)(e) is arguably not available in respect of distributions and transfers from certain trusts.

Prior to the MSP decision, the view held by RevenueSA was that a distribution from a unit trust was exempt from ad valorem duty on the basis that a unit trust was considered a fixed trust in which the unit holders had an equitable interest in the trust assets.

The operation of the Act as a result of the MSP decision and the subsequent amendments is such that the exemption contained in section 71(5)(e) will not apply where trust property is transferred to a unit holder of a unit trust as the unit holder is not considered to have a beneficial interest in the property transferred. Transfers of property from superannuation funds to fund members are similarly not exempt from duty.

Given that this result was not intended, RevenueSA has continued to administer the exemption in a manner consistent with the practice of the Office prior to the decision in the MSP case, so as not to remove benefits to taxpayers.

In order to give legislative effect to this practice, the Bill amends section 71(5)(e) to exempt, from ad valorem duty, distributions from unit trusts, or transfers of property from superannuation trusts to the extent of the value of the unit holder's or fund member's interest in the trust.

The second unintended consequence relates to General Exemption 26 of Schedule 2 of the Act.

Exemption 26 was inserted following submissions from the funds management industry, who were concerned that the broad definitions of interest introduced by the Amendment Act would result in every day transactions where members are added and removed from superannuation funds being subject to ad valorem conveyance duty.

Prior to the Amendment Act ad valorem duty was payable on the conveyance of property from an existing member of a superannuation fund to the trustee of the superannuation fund to be held subject to that superannuation trust. Exemption 26 was not intended to have any affect on such transfers and they should have remained liable to duty.

As a result of objections lodged against assessments of stamp duty made on the above basis, the Solicitor General and Crown Solicitor provided RevenueSA with advice that Exemption 26 operates more broadly than was intended and recommended that consideration should be given to amending the exemption to more clearly provide for the limited exemption that was intended.

This Bill puts beyond doubt that the current stamp duty exemption that allows for new members to join superannuation funds or for existing members to retire from superannuation funds does not extend to circumstances where property is transferred to the trustee of a superannuation fund on behalf of fund members without the payment of ad valorem duty.

On 28 September 2005, the High Court handed down its decision in the Victorian case of CPT Custodian Pty Ltd vs Commissioner of State Revenue ('the CPT Case'). The decision in this case cast doubt on the effectiveness of the changes made by the Amendment Act to the charging provisions of the Act in response to the original MSP decision.

The Crown Solicitor has advised that the decision in the CPT Case essentially means that the transfer of a unit in a unit trust will not constitute a transfer of property that is subject to that trust and, therefore, is not liable to ad valorem conveyance duty in South Australia. Consequently, further amendments are now required.

Private unit trusts are a commonly employed means to hold high value property, such as city office buildings, shopping centres and large development stock. As such, duty on private unit trust transfers is a significant component of the conveyance base.

The Bill therefore amends the private unit trust provisions of the Act as advised by the Crown Solicitor to clarify the operation of the provisions, to ensure they continue to apply in the same way that they did prior to the High Court decision in the CPT Case.

In order to protect the integrity of the revenue base the amendments operate both retrospectively and prospectively.

The proposed amendments ensure that the trust provisions of the Act will operate in the same manner as they did prior to the two High Court decisions, thereby protecting the revenue base whilst at the same time providing a fair and consistent outcome for taxpayers.

The Bill also provides two additional stamp duty exemptions.

The first additional measure relates to cases where ad valorem stamp duty is paid on the transfer of land which has been purchased subject to a written trust arrangement and is then subdivided into multiple lots and transferred to identified beneficiaries.

Currently the Act only provides an exemption from duty where the original purchased land is Torrens Title land and the land is subdivided into multiple Torrens Title lots, and then transferred to the beneficiaries as contemplated under the trust.

The existing exemption does not apply in circumstances where the relevant land is subdivided into community titles or community strata titles rather than Torrens Titles.

The Government is of the view that to restrict the exemption in this way is inequitable and the Bill operates to provide an exemption from ad valorem duty in situations where trust property is sub divided into community or community strata titles and transferred to previously identified beneficiaries as required under the trust.

The Bill also provides a new exemption in relation to transfers between the responsible entity and the custodian of a managed investment scheme.

On 1 July 1998, the Commonwealth of Australia enacted the Managed Investments Act 1998, which created Chapter 5C of the Corporations Law (Cth), the predecessor to the Corporations Act 2001 ("the Corporations Act"), and introduced the concept of a managed investment scheme into the property investment market in Australia.

A managed investment scheme is similar in form and in operation to a unit trust. It is an avenue through which an investor contributes money to acquire an interest in any benefits produced by the scheme. The scheme pools the money from the investors and produces benefits by investing in such things as real property, shares, units and mortgages. The pool of money from multiple investors enables the scheme to take advantage of larger investment opportunities.

A managed investment scheme, though regulated under the Corporations Act, is not a legal entity. Hence, the Corporations Act mandates the appointment of a responsible entity both to hold property and to undertake the business of the scheme.

The Corporations Act also allows for the appointment of a custodian to hold the assets of the scheme and Australian Securities and Investment Commission ('ASIC') has stipulated that a custodian must be utilised when the responsible entity has less than $5 million in net assets.

Where a managed investment scheme has a responsible entity and custodian in place, it is sometimes necessary for assets to be transferred between the responsible entity and the custodian.

On a technical reading of the Act, transfers between the responsible entity and the custodian of a managed investment scheme are currently subject to ad valorem conveyance duty as a voluntary conveyance.

All other jurisdictions provide an exemption or concession from duty in relation to such transfers and following representations from industry, the Government is of the view that an exemption is warranted.

A number of the measures contained in this Bill have been the subject of lengthy and detailed consultation with industry representatives, and I take this opportunity to thank the members of RevenueSA's consulting groups who have taken the time to provide valuable assistance in the formulation of the Bill.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal.

Part 2—Amendment of Stamp Duties Act 1923

3—Amendment of section 71—Instruments chargeable as conveyances

This clause amends section 71 of the Stamp Duties Act 1923.

Section 71(3) deems certain instruments to be conveyances operating as voluntary dispositions inter vivos (that is, among or between living persons).

This clause inserts a new subsection into section 71. Proposed subsection (4b) provides that, for the purposes of the Act, property held by the trustees of a unit trust scheme in trust for the unitholders is taken to be held beneficially by the scheme. Further, the holder of a unit in a unit trust scheme that is taken to hold property beneficially is taken to have a beneficial interest in that property. The new subsection also provides that the transfer, creation, surrender, renunciation, redemption, cancellation or extinguishment of a unit in a unit trust scheme that is taken to hold property beneficially is taken to be a transfer, creation, surrender, renunciation, redemption, cancellation or extinguishment (as appropriate) of a beneficial interest in that property.

Under section 71(5), certain instruments are deemed not to be conveyances operating as voluntary dispositions inter vivos. This clause makes a number of amendments to subsection (5).

A number of new definitions are inserted into subsection (15). Three of the new definitions are relevant to proposed new paragraph (da) of subsection (5), which relates to managed investment schemes. A registered managed investment scheme is a managed investment scheme registered under the Corporations Act 2001 of the Commonwealth. The responsible entity for a registered managed investment scheme is the responsible entity for the scheme under that Act. The primary custodian for the responsible entity is the person that has been appointed under section 601FB(2) of the Corporations Act 2001 to hold property for the scheme as agent for the responsible entity.

Under proposed new paragraph (da), a transfer of property subject to a registered managed investment scheme from the responsible entity of the scheme to a person as primary custodian for the responsible entity (or vice versa) will be deemed not to be a conveyance operating as a voluntary disposition inter vivos.

The provision includes an exception to this general rule. Paragraph (da) does not apply to a transfer of property that is part of an arrangement under which either the property ceases to be subject to the scheme or the persons who are members of the scheme do not have the same interest in the property after the transfer as they had immediately before the arrangement was entered into.

Under proposed paragraph (e) of section 71(5), which replaces an existing paragraph, a transfer of property by a trustee to a person who has a beneficial interest in the property will be deemed not to be a conveyance operating as a voluntary disposition inter vivos if—

- the person has a beneficial interest in the property (other than a potential beneficial interest) by virtue of an instrument that has been stamped; and
- the property was acquired for the trust, or became subject to the trust—
    - by virtue of an instrument duly stamped with ad valorem duty; or
    - as a result of a transaction to which section 71E applies (see below) in relation to which a statement under that section has been lodged and ad valorem duty paid; or
    - under one of the other paragraphs of section 71(5) (other than paragraph (d)); and
- in the case of a discretionary trust (other than a superannuation fund (as defined) or a unit trust)—the person acquired the beneficial interest by virtue of a duly stamped instrument that is separate from the instrument under which he or she became an object of the trust.

Section 71E applies to a transaction resulting in a change of ownership of certain interests if—

- the transaction was not effected by an instrument on which ad valorem duty is chargeable; but
- if the transaction had been effected by an instrument, the instrument would be chargeable with duty as a conveyance or as if it were a conveyance.

Under new definitions inserted into section 71(15), a superannuation fund is a fund that is, under the Commonwealth Superannuation (Supervision) Act 1993, a complying superannuation fund for the purposes of the Income Tax Assessment Act, while a unit trust is a trust giving effect to a unit trust scheme.

The proposed paragraph also includes an exception.

The Bill also inserts a new subsection. Proposed subsection (7) replaces an existing subsection and includes provisions that apply for the purposes of subsection (5)(e). The first of these provisions says that, for the purposes of subsection (5)(e), the net value of property is to be calculated by subtracting from its unencumbered value the amount of any liability subject to which the property is transferred. This does not include a liability that is to be discharged after the transfer takes effect by the trustee or for some other reason is not finally assumed by the transferee.

The second provision provides that, in calculating the value of a beneficiary's interest in a trust, all assets and liabilities of the trust are to be taken into account. Under the third provision, a member of a superannuation fund is to be taken to have a beneficial interest in the property of the fund equivalent to the amount to which the member would be entitled on transfer of membership to another fund.

Finally, the proposed subsection provides that if property of a trust consisting of land is divided by community plan under the Community Titles Act 1996 and land subject to the division is then transferred to a beneficiary of the trust, the transfer will be taken to have been a transfer to the beneficiary of property in which the beneficiary had a beneficial interest. The Commissioner must be satisfied that the land the subject of the transfer—

- was transferred to the beneficiary pursuant to the trust; and
- is identifiable as property in which the beneficiary had a fixed beneficial interest contingent on, and arising from, the division.

4—Amendment of Schedule 2—Stamp duties and exemptions

This clause recasts exemption 26, which appears in the list of general exemptions from all stamp duties in clause 16 of Schedule 2 of the Stamp Duties Act 1923. The exemption as recast makes it clear that the exemption applicable to instruments relating to the creation and redemption of certain interests in the property of a superannuation fund does not operate so as to exempt a conveyance or transfer of property into or out of the fund.

Schedule 1—Transitional provision

1—Transitional provision

This clause provides that the insertion of section 71(4b) operates both prospectively and retrospectively.

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

WORKERS REHABILITATION AND COMPENSATION (SCHEME REVIEW) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (17:49): I move:

That this bill be now read a second time.

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

Leave granted.

Today I am introducing a Bill to amend the Workers Rehabilitation and Compensation Act 1986.

The Bill contains a large number of amendments directed at various aspects of the design of South Australia's Workers Compensation system.

However, the overall objectives of the Bill are very simple. There are three:

- First, the Bill aims to align South Australia's Scheme nationally while ensuring the State scheme is fair for injured workers particularly in terms of the critical elements of, income maintenance, medical payments and non economic loss.
- Second, the Bill amends the Scheme in a way that is anticipated to restore its financial health and allow it to go on providing benefits at this level.
- Third, it is expected that the improved financial outlook for the Scheme will also be able to be used to the benefit of the cost competitiveness of the State's economy.

The Bill is the outcome of the Government's decision to commission an independent review of the South Australian Workers Rehabilitation and Compensation Scheme.

The decision to conduct the Review was made against a background of a deterioration in the state of WorkCover's compensation funds.

WorkCover SA announced that as of 31 December 2007 the unfunded liability has increased to $911 million. This is after a loss of $67.9 million for the half-year.

The Board of WorkCover has sought to address the deterioration in its financial circumstances in several ways. The most important to date is the decision to engage Employers Mutual as sole claim agents from 1 July 2006, replacing the four previous claim managers.

The Board has also examined the design of the current Scheme. In November 2006, the Board submitted a package of proposals for changing the design of the Scheme to the Government. This precipitated the Government's subsequent decision to hold the Review.

The consultation processes supporting the Review have been extensive with 76 written submissions received.

There are a number of factors which have been identified by WorkCover and by the Review as contributors to the financial deterioration of the Scheme. However, underlying these factors is one common element—a shift in culture away from injury management and return to work towards a culture of compensation.

Reversing this culture is the key to restoring the financial health of the Scheme while ensuring that injured workers have the best possible chance of resuming productive working lives.

Regrettably, there are, and will be, cases where the degree of impairment is so severe as to prevent early return to work or return to work at all. In these cases, the South Australian Scheme has traditionally been more generous than the Scheme of any other State in Australia.

South Australia will go on providing the most generous income maintenance benefits in Australia. Workers who do not have a work capacity will continue to receive weekly payments until retirement.

These payments will be made at 100 per cent of the workers pre-injury average weekly earnings for 13 weeks, 90 per cent for the next 13 weeks and at 80 per cent thereafter. This 80 per cent is higher than the rates paid in New South Wales and Victoria, the two jurisdictions with Schemes most comparable with our own.

Injured workers will also be eligible to claim compensation for non-economic loss under an entitlement that is now the highest maximum payment for such loss of any State Scheme.

Workers will also continue to be able to receive compensation for medical benefits beyond 12 months cessation of income maintenance as the proposal to cap these benefits after that period has been rejected by the Review and by the Government.

Another benefit for injured workers is that the Bill adopts the successful New South Wales model of provisional liability. Under this provision, injured workers will be able to avoid delays in payments by accepting up to

13 weeks of income replacement and a maximum of $5,000 of medical expenses. The experience in New South Wales is that this form of intervention assists both return to work and the efficiency of the dispute resolution process.

These reforms have as their twin objectives encouraging return to work and providing equitable and generous support for those whose impairment prevents them from resuming work at an early date.

The Review has also identified other measures for achieving the shift in culture that is required to secure early return to work. There are two that are particularly important.

The first is changes to work capacity reviews.

This review is a statutory process which requires the assessment of an injured worker's capacity for some form of work. It can lead to a cessation of benefits or reduction of benefits if the worker has not returned to work to their maximum capacity.

The Review argues that the current procedure for this assessment in South Australia has 'become opaque and tortuous' and 'interpreted in a very restricted and technical manner in a number of decisions of the Tribunal.'

Difficulties also appear to arise in relation to the 'job matching' requirements whereby WorkCover must establish that a particular injured worker is able to enter into particular types of employment.

The Review has supported WorkCover's proposal to apply the Victorian legislative model which limits the obligations of the compensating authority to establishing whether or not the worker has a current work capacity, irrespective of the availability of work for which the worker has been determined as capable of performing.

WorkCover proposed that this model be applied after 104 weeks. The Review is recommending 130 weeks, consistent with current Victorian practice, and that has been adopted by the Government

The second major measure for achieving early return to work is the amendment to significantly restrict access to redemptions.

The historical, financial, and comparative analyses contained in the Review report all point to the central significance that the payment of lump sum redemptions has assumed—as a method for closing claims.

Individual redemptions can appear to benefit the financial position of the scheme in circumstances where they redeem a claim for less than the claim's estimated liability. However, the net impact of the significant use of redemptions has been the creation of a 'lump sum culture' in which the negotiation and settlement of pay-outs for claims often replaces a primary focus on achieving return to work outcomes.

This Bill amends the Act to implement these and a number of other proposals that are consistent with the Government's policy objectives.

In closing, there are three points I would like to make:

- First, the Government has accepted the majority of recommendations provided by Australia's pre-eminent expert in this area, with some improvements that have been made as a result of the Government's consultation.
- Second, an independent actuarial assessment has indicated that the Review's recommendations:
- 'satisfy the Review Terms of Reference provided initiatives are undertaken and applied as recommended'.

Third, I draw the attention of the House to Mr Clayton's conclusion that:

'If the full range of recommendations set out in this Report were to be implemented, South Australia will retain its position as the fairest workers' compensation scheme in the country. For workers who do not have a work capacity, weekly payment benefits continue to the age of retirement. The benefit arrangements for non-economic loss will be modernised and, particularly for the most seriously injured workers, will be the most generous in Australia. The wider structural arrangements are aimed to position South Australia as a leading jurisdiction in terms of a 'work health' model of workers' compensation. The strong accountability arrangements, including the Code of Workers' Rights and the South Australia WorkCover Ombudsman will provide a level of protection that places South Australia among the international best.'

Since his comments we have in fact strengthened his proposals further and I am confident the Bill the Government proposes will enable South Australia to continue to provide the fairest workers compensation scheme in Australia.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

Operation of the measure will commence on a day to be fixed by proclamation. Section 7(5) of the Acts Interpretation Act 1915 will not apply to the amending Act (in case it is necessary to delay the commencement of certain amendments beyond the second anniversary of assent).

3—Amendment provisions

This clause is formal.

Part 2—Amendment of Workers Rehabilitation and Compensation Act 1986

4—Amendment of section 2—Objects of Act

This clause amends section 2 of the Act by inserting a new subsection requiring the Corporation, and the employer from whose employment a compensable disability arises, to seek to achieve a disabled worker's return to work (taking into account the objects and requirements of the Act).

5—Amendment of section 3—Interpretation

This clause inserts new definitions required for the purposes of the measure. Some existing definitions are amended. The following are examples of new defined terms:

A worker's current work capacity is a present inability arising from a compensable disability such that he or she is not able to return to the employment in which he or she was engaged when the disability occurred but is able to return to work in suitable employment. No current work capacity, in relation to a worker, means a present inability arising from a compensable disability such that a worker is unable to return to work.

New subsection (10) explains that total incapacity for work is an incapacity where the worker has no current work capacity, while partial incapacity for work is an incapacity where the worker has a current work capacity.

Suitable employment means employment for which a worker is suited, whether or not the work is available, having regard to the following:

- the nature of the worker's incapacity and previous employment;
- the worker's age, education, skills and work experience;
- the worker's place of residence;
- medical information relating to the worker that is reasonably available, including in any medical certificate or report;
- if any rehabilitation programs are being provided to or for the worker.
- the worker's rehabilitation and return to work plan, if any;

Proposed subsection (12) explains the meaning of a reference in the Act to suitable employment provided by a worker's employer.

The definition of arbitration officer is deleted, and the definition of conciliation and arbitration officer is consequentially amended, because arbitration is to be removed from the dispute resolution system.

The definition of exempt employer is deleted as that term is to be replaced with self insured employer. The opportunity has also been taken to correct a number of obsolete references and to provide clarification in relation to existing terms. For example, proposed subsection (11) explains the meaning of legal personal representative in relation to a deceased worker for the purposes of the Act. A person is the legal personal representative of a deceased worker if the person is entitled to administer the deceased's estate or authorised by the Tribunal to act as the deceased's representative.

New subsection (13) provides that a reference in a provision of the Act to a designated form is a reference to a form designated for the purposes of the provision by the Minister.

6—Substitution of section 4

Section 4 of the Act provides for the determination of a worker's average weekly earnings. The section currently provides in subsection (1) that the average weekly earnings of a disabled worker are the average amount that the worker could reasonably be expected to have earned for a week's work if the worker had not been disabled.

This clause substitutes a new section 4 under which the average weekly earnings of a disabled worker is the average weekly amount that the worker earned during the period of 12 months preceding the date on which the disability occurred in relevant employment.

Relevant employment is constituted by employment with the employer from whose employment the disability arose. If the worker was, at the time of the occurrence of the disability, employed by 2 or more employers, relevant employment is constituted by employment with each such employer. An amount paid while a worker was on annual, sick or other leave is to be taken to be earnings.

The proposed section includes a number of additional provisions relevant to determining a disabled worker's average weekly earnings. These provisions deal with, for example, the average weekly earnings of a worker who is a director and employee of a body corporate, the extent to which overtime is to be taken into account and matters to be disregarded in determining average weekly earnings (such as superannuation contributions payable by an employer and prescribed allowances).

7—Amendment of section 7—Advisory Committee

This amendment is consequential on the change in terminology from 'exempt employer' to 'self-insured employer'.

8—Amendment of section 28A—Rehabilitation and return to work plans

Under section 28A, a rehabilitation and return to work plan is to be prepared for a worker who is receiving income maintenance and is likely to be incapacitated for work by a compensable disability for more than 3 months but has some prospect of returning to work. The first amendment made by this clause reduces then length of the relevant period of incapacity to 13 weeks.

The second amendment is consequential on the insertion of section 28D by clause 9. The Corporation will be required to consult a relevant rehabilitation and return to work co-ordinator when preparing a plan.

9—Insertion of section 28D

This clause inserts new section 28D, which will require employers to appoint rehabilitation and return to work co-ordinators. The co-ordinator is to be an employee of the employer and based in South Australia. The functions of the co-ordinator are as follows:

- to assist workers suffering from compensable disabilities, where prudent and practicable, to remain at or return to work as soon as possible after the occurrence of the disability;
- to assist with liaising with the Corporation in the preparation and implementation of a rehabilitation and return to work plan for a disabled worker;
- to liaise with any persons involved in the rehabilitation of, or the provision of medical services to, workers;
- to monitor the progress of a disabled worker's capacity to return to work;
- to take steps to as far as practicable prevent the occurrence of a secondary disability when a worker returns to work;
- to perform other functions prescribed by the regulations.

10—Amendment of section 30—Compensability of disabilities

As a consequence of this amendment, a worker's employment will include attendance at a place for the purposes of a rehabilitation and return to work plan.

11—Amendment of section 32—Compensation for medical expenses

Under section 32, a worker is entitled to be compensated for certain medical and related costs in accordance with scales of charges prescribed by regulation. As a consequence of these amendments, the scales will be published by the Minister rather than prescribed by regulation.

12—Insertion of section 32A

This clause inserts a new section. Section 32A provides that a worker may apply to the Corporation for the payment of costs within the ambit of section 32 (ie, medical and related expenses) before his or her claim for compensation is determined. The Corporation may determine that it is reasonable to accept provisional liability for the payment of compensation under section 32 and make payments under section 32A.

The maximum amount payable with respect to a particular disability is $5,000 (indexed). The acceptance of provisional liability under section 32A does not constitute an admission of liability, and a payment under the section with respect to a particular cost discharges any liability that the Corporation may have with respect to the cost under section 32. Section 32A also provides that the Corporation may determine not to make a payment with respect to a particular disability despite having previously done so.

The following decisions under section 32A are not reviewable:

- a decision to accept or not to accept liability;
- a decision to make or not to make a payment;
- a decision to exercise or not to exercise a right of recovery.

13—Amendment of section 33—Transportation for initial treatment

This amendment provides for the indexing of an amount prescribed by regulation under section 33(4), which relates to recovery by an employer of the costs of transportation provided for an injured worker.

14—Amendment of section 34—Compensation for property damage

This amendment provides for the indexing of an amount prescribed by regulation under section 34(1), which relates to compensation for a disabled worker for damage to therapeutic appliances, clothes, personal effects or tools of trade.

15—Substitution of section 35

This clause replaces section 35 with a number of new provisions relating to compensation by way of income maintenance.

35—Preliminary

New section 35 provides that a worker who suffers a compensable disability that results in incapacity for work is entitled to weekly payments in respect of the disability in accordance with Part 4 Division 4.

Weekly payments are not payable under Division 4 in respect of a period of incapacity for work falling after the date on which the worker reaches retirement age. If, however, a worker who is within 2 years of retirement age, or above retirement age, becomes incapacitated for work while still in employment, weekly payments are payable for a period of incapacity falling within 2 years after the commencement of the incapacity.

A worker is not entitled to receive, in respect of 2 or more disabilities, weekly payments in excess of the worker's notional weekly earnings. Where a liability to make weekly payments is redeemed, the worker will be taken to be receiving the weekly payments that would have been payable is there had been no redemption.

The section provides that a reference in Division 4 to a worker making every reasonable effort to return to work in suitable employment includes any reasonable period during which—

- the worker is waiting for a response to a request for suitable employment made by the worker and received by the employer; and
- if the employer's response is that suitable employment may or will be provided at some time, the worker is waiting for suitable employment to commence; and
- if the employer's response is that suitable employment cannot be provided at some time, the worker is waiting for a response to requests for suitable employment from other employers; and
- the worker is waiting for the commencement of a rehabilitation and return to work plan, after approval has been given.

A worker is not to be treated as making every reasonable effort to return to work in suitable employment if the worker—

- has refused to have an assessment made of the his or her employment prospects; or
- has refused or failed to take all reasonably necessary steps to obtain suitable employment; or
- has refused or failed to accept an offer of suitable employment from a person; or
- has refused or failed to participate in a rehabilitation program or a rehabilitation and return to work plan.

For the purposes of Division 4, the first entitlement period is an aggregate period not exceeding 13 weeks in respect of which a worker has an incapacity for work and is entitled to compensation because of the incapacity.

The second entitlement period is an aggregate period not exceeding 13 weeks, commencing after the first entitlement period, in respect of which a worker has an incapacity for work and is entitled to the payment of compensation on account of the incapacity.

The third entitlement period is an aggregate period not exceeding 104 weeks, commencing after the second entitlement period, in respect of which a worker has an incapacity for work and is entitled to compensation because of the incapacity.

35A—Weekly payments over designated periods

Section 35A sets out the weekly payment entitlements of a worker in respect of a compensable disability while incapacitated for work.

During the first entitlement period, the worker is entitled, for any period during which he or she has no current work capacity, to weekly payments equal to his or her notional weekly earnings. For any period during which the worker has a current work capacity, he or she is entitled to weekly payments equal to the difference between his or her notional weekly earnings and designated weekly earnings (see below).

During the second entitlement period, the worker is entitled, for any period during which he or she has no current work capacity, to weekly payments equal to 90 per cent of his or her notional weekly earnings. For any period during which the worker has a current work capacity, he or she is entitled to weekly payments equal to 90 per cent of the difference between his or her notional weekly earnings and designated weekly earnings.

During the third entitlement period, the worker is entitled, for any period during which he or she has no current work capacity, to weekly payments equal to 80 per cent of his or her notional weekly earnings. For any period during which the worker has a current work capacity, he or she is entitled to weekly payments equal to 80 per cent of the difference between his or her notional weekly earnings and designated weekly earnings.

For the purposes of section 35A, the designated weekly earnings of a worker will be taken to be the current weekly earnings of the worker in employment or the weekly earnings the Corporation determines that the worker could earn from time to time in employment, whichever is the greater. The 'weekly earnings that the worker could earn from time to time' may be in the worker's employment previous to the disability or in suitable employment, that the Corporation determines that the worker is capable of

performing despite the disability. In determining a worker's 'designated weekly earnings', certain prescribed benefits are not to be taken into account.

Designated weekly earnings will not be taken to be the weekly earnings that a worker could earn from time to time if—

- the employer has failed to provide the worker with suitable employment and the worker is making every reasonable effort to return to work in suitable employment; or
- the worker is participating in a rehabilitation and return to work plan which reasonably prevents the worker from returning to employment.

35B—Weekly payments after expiry of designated periods—no work capacity

Under section 35B(1), which is to operate subject to section 35C and other relevant provisions, a worker's entitlement to weekly payments will cease at the end of the third entitlement period (unless brought to an end at an earlier time) unless the worker is assessed by the Corporation as having no current work capacity and likely to continue indefinitely to have no current work capacity.

If the worker is so assessed by the Corporation, he or she is entitled to weekly payments while incapacitated for work in respect of a particular disability equal to 80 per cent of his or her notional weekly earnings as though the second entitlement period were continuing.

The Corporation is entitled to conduct a review of the assessment of a worker at any time. A review must be conducted as often as may be reasonably necessary, being at least once in every 2 years.

A worker who, immediately before the end of a third entitlement period, is in receipt of payments under paragraph (a) of section 35A(2) (that is, he or she has no current work capacity), is entitled to continue to receive weekly payments at the rate prescribed by that paragraph (80 per cent of notional weekly earnings) unless or until the Corporation has assessed whether he or she falls within the category of a worker who may be considered as having no current work capacity and likely to continue indefinitely to have no current work capacity. The Corporation must not discontinue weekly payments to such a worker until he or she has been given at least 13 weeks notice in writing of the proposed discontinuance. The notice must not be given unless or until the assessment has been undertaken.

The provisions mentioned in the above paragraph do not apply if the Corporation discontinues the worker's weekly payments under section 36 or suspends payments under some other provision.

I f the Corporation is satisfied, following a review of an assessment of a worker, that the worker has a current work capacity, it may discontinue weekly payments.

35C—Weekly payments after expiry of designated periods—current work capacity

Under section 35C, but subject to the Act, a worker who is, or has been, entitled to weekly payments under section 35A(2)(b) or 35B, may apply to the Corporation for a determination that his or her entitlement to weekly payments does not cease at the end of the third entitlement period under section 35A or at the expiry of an entitlement under section 35B.

If the Corporation is satisfied that a worker who has made such an application is in employment and that because of the compensable disability, he or she is, and is likely to continue indefinitely to be, incapable of undertaking further or additional employment or work that would increase his or her current weekly earnings, the Corporation may determine that the worker's entitlement to weekly payments does not cease.

The worker's entitlement where such a determination has been made will be (subject to other relevant provisions) 80 per cent of the difference between the worker's notional weekly earnings and his or her current weekly earnings.

16—Amendment of section 36—Discontinuance of weekly payments

Section 36 deals with circumstances in which a worker's weekly payments can be discontinued. The first amendment made by this clause adds the following to the list of such circumstances in subsection (1):

- that the worker's entitlement to weekly payments has ceased because of the passage of time;
- that the worker's entitlement to weekly payments has ceased because of the occurrence of some other event or the making of some other decision or determination that, under another provision of the Act, brings the entitlement to weekly payments to an end, or the discontinuance of weekly payments is otherwise authorised or required under another provision of the Act.

Section 36(1a) lists circumstances in which a worker breaches the obligation of mutuality. As a consequence of the second amendment made by this clause, a worker breaches the obligation of mutuality if he or she refuses or fails to participate in an assessment of his or her capacity, rehabilitation progress or future employment prospects.

Section 36(2) lists circumstances in which weekly payments to a worker who has suffered a compensable disability may be reduced. This clause adds the following to the list:

- the worker has recommenced work as an employee or as a self employed contractor, or the worker has had an increase in remuneration as an employee or a self employed contractor;

- the worker's entitlements to weekly payments reduces because of the passage of time;
- the worker's entitlement to weekly payments reduces because of the occurrence of some other event or the making of some other decision or determination that, under another provision of the Act, is expressed to result in a reduction to an entitlement to weekly payments or the reduction of weekly payments is otherwise authorised or required under another provision of the Act.

Section 36(3a) currently provides that notice of a decision to discontinue or reduce weekly payments under the section must (depending on the ground for the decision) be given at least 21 days before the decision is to take effect. The provision as amended by this clause will provide that the notice is to be given at least the prescribed number of days, rather than 21 days, before the decision is to take effect. The prescribed number of days is as follows:

- if the worker has been receiving weekly payments under the Division (or Division 7A) for a period that is less than 52 weeks, or for 2 or more periods that aggregate less than 52 weeks—14 days;
- in any other case—28 days.

The amendments also add the following to the list of decisions to reduce weekly payments where the required notice must be given:

- a decision to reduce weekly payments on account of the end of the first entitlement period under section 35A;
- a decision to discontinue weekly payments on account of the end of the second entitlement period under section 35A;
- a decision to discontinue weekly payments on account of—
  - a review by the Corporation under section 35B(3); or
  - a decision of the Corporation under section 35C(5)(a).

Section 36(4) currently provides that if a worker lodges a notice of dispute in relation to a decision of the Corporation to discontinue or reduce weekly payments within 1 month of receiving notice of the decision, the operation of the decision will be suspended and may be further suspended by the Workers Compensation Tribunal from time to time to allow a reasonable opportunity for resolution of the dispute. That subsection is to be deleted. New subsection (4) will provide that, so long as there has been compliance with subsection (3a) (ie, notice has been given as required), a discontinuance or reduction of weekly payments under section 36 is to take effect in accordance with the Corporation's notice of the determination. The effect of a decision to discontinue or reduce weekly payments will not be affected by the worker lodging a notice of dispute.

New subsection (5a) sets out the amount a worker is entitled to be paid where a dispute is resolved in favour of the worker at the reconsideration, conciliation or judicial determination stage, or on appeal:

- in the case of resolution on a reconsideration—the worker is entitled to the total amount that, under the terms of the reconsideration, should have been paid to the worker between the date that the disputed decision took effect and the date that the decision, as varied under the reconsideration, takes effect (less any amount paid to the worker under new subsection (15));
- in the case of a resolution at the conciliation stage—the worker is entitled to be paid any amount payable under the terms of the relevant settlement;
- in the case of a judicial determination or determination on appeal—the worker is entitled to be paid the amount that, under the terms of the determination or according to the outcome of the appeal, would have constituted the worker's entitlements under the Act had the weekly payments not been discontinued or reduced.

New section 36(14) provides that a worker is required to take reasonable steps to attend any appointment reasonably required for the purposes of the Division. A worker is also required to take reasonable steps to comply with any requirement reasonably required under a rehabilitation program or a rehabilitation and return to work plan. A failure to comply with these requirements constitutes a ground for the discontinuance of payments under section 36. This provision is expressed to be for the avoidance of doubt.

Under new section 36(15), a worker who has received a notice of discontinuance of weekly payments and lodged a notice of dispute may apply to the WorkCover Ombudsman for a review of the decision to discontinue the payments. If it appears to the WorkCover Ombudsman that it was not reasonably open to the Corporation to make the decision to discontinue payments, the WorkCover Ombudsman may suspend the operation of the decision so that weekly payments to the worker are reinstated.

17—Insertion of section 37

This clause inserts a new section. Under the proposed section, the Corporation may review the calculation of the average weekly earnings of a worker for the purpose of making an adjustment due to a change in a component of the worker's remuneration used to determine average weekly earnings or a change in the equipment or facilities provided or made available to the worker. This review may be undertaken on the Corporation's own initiative or at the request of a worker.

The Corporation is required to give a worker notice of a proposed review under the section and also to invite the worker to make submissions. If the Corporation finds on a review that there has been a change that

warrants an adjustment, the Corporation may make the adjustment. The worker may be required by the Corporation to provide relevant information and must be given notice of the Corporation's decision on the review.

18—Amendment of section 38—Review of weekly payments

Section 38 provides for review on the initiative of the Corporation or at the request of a worker of the amount of weekly payments made to the worker. As a consequence of the amendments to section 38 made by this clause, a worker's request for a review must be in a designated manner and a designated form, and notices to the worker under the section must be in a designated form (rather than a prescribed form).

19—Repeal of section 38A

Section 38A, which authorises the discontinuance or reduction of weekly payments because of passage of time, is repealed by this clause.

20—Amendment of section 39—Economic adjustments to weekly payments

Section 39 applies if a worker to whom weekly payments are payable is incapacitated for work, or appears likely to be incapacitated for work, for more than 1 year. The Corporation is required, during the period of incapacity, to review the weekly payments for the purpose of making an adjustment under the section.

Under new subsection (1a), the Corporation will be required to give a worker notice in the designated form before commencing a review. The notice must inform the worker of the proposed review and invite him or her to make written representations.

21—Amendment of section 41—Absence of worker from Australia

This amendment has the effect of requiring a notice to be in a designated form rather than the form prescribed by regulation.

22—Amendment of section 42—Redemption of liabilities

As a consequence of this amendment to section 42, where a redemption of a liability to make weekly payments is proposed, an agreement for that redemption cannot be made unless 1 or more of the following requirements are satisfied:

- the rate of weekly payments to be redeemed does not exceed $30 (indexed);
- the worker has attained the age of 55 years and the Corporation has determined that he or she has no current work capacity;
- the Tribunal (constituted of a presidential member) has determined, on the basis of a joint application made to the Tribunal by the worker and the Corporation, that the continuation of weekly payments is contrary to the best interests of the worker from a psychological and social perspective.

23—Repeal of Part 4 Division 4B

Division 4B of Part 4, which authorises the Corporation assess the loss of future earning capacity of a worker who has been incapacitated by a compensable disability for more than 2 years, is repealed by this clause.

24—Substitution of section 43

This clause repeals section 43, which provides for lump sum compensation for a worker's non-economic loss, and substitutes a number of new provisions.

43—Lump sum compensation

New section 43 provides that a compensable disability resulting in permanent impairment as assessed in accordance with section 43A gives rise to an entitlement to compensation for non-economic loss by way of a lump sum. The lump sum will be an amount that represents a portion of the prescribed sum calculated in accordance with the regulations.

The prescribed sum is $400,000 (indexed). However, if a regulation is made prescribing a greater amount, the prescribed sum is that amount.

Regulations made for this purpose must provide for compensation that at least satisfies the requirements of Schedule 3 (inserted by clause 73) taking into account assessment of whole person impairment.

There is no entitlement under section 43 if the worker's impairment is less than 5 per cent, and no entitlement arises in relation to a psychiatric impairment.

Any degree of impairment is to be assessed for the purposes of section 43 in accordance with section 43A.

Compensation will not be payable under section 43 in respect of a worker following his or her death.

43A—Assessment of impairment

Section 43A sets out a scheme for assessing the degree of permanent impairment. An assessment is to be made in accordance with the WorkCover guidelines (to be published by the Minister

for the purposes of section 43) and must be made by a legally qualified medical practitioner. The practitioner must also hold a current accreditation issued by the Corporation.

The guidelines are to be published in the Gazette. They may adopt or incorporate the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time. Other requirements and options in relation to the guidelines are listed in section 43A(4). The Minister may amend or substitute the guidelines from time to time but must, before publishing or amending the guidelines, consult with the Australian Medical Association (South Australia) Incorporated and any other prescribed body.

The Corporation is to establish an accreditation team for the purposes of the requirement that assessments be made by medical practitioners holding current accreditations.

An assessment of the degree of impairment resulting from a disability must be made after the disability has stabilised and be based on the worker's current impairment as at the date of the assessment. Under section 43A(9), an assessment must take into account the following principles:

- if a worker presents for assessment in relation to disabilities which occurred on different dates, the impairments are to be assessed chronologically by date of disability;
- impairments from unrelated disabilities or causes are to be disregarded in making an assessment;
- assessments are to comply with any other requirements specified by the WorkCover Guidelines or prescribed by the regulations.

43B—No disadvantage—compensation table

This section applies specified circumstances where a worker is entitled to compensation equal to the amount applying under the table in Schedule 3A (inserted by clause 73) instead of the compensation payable under sections 43 and 43A. Those circumstances are as follows:

- the worker suffers a compensable disability that gives rise to compensation under section 43 or 43A;
- the compensable disability is a loss mentioned in the table;
- the amount of compensation payable under section 43 and section 43A in respect of the disability is less than the amount applying under the table in respect of that disability.

However, if a worker suffers 2 or more disabilities mentioned in the table in Schedule 3A arising from the same trauma, the worker is not entitled in any case to receive compensation under section 43B in excess of $254 100 (indexed).

25—Amendment of section 44—Compensation payable on death—weekly payments

Section 44 deals with compensation payable if a worker dies as a result of a work related injury. The section currently sets out the entitlement of certain dependants to a funeral benefit, weekly payments and a lump sum. The section as amended deals only with the entitlement of a spouse, domestic partner or dependent child to weekly payments. Other benefits are detailed in new sections 45A, 45B and 45C (inserted by clause 26).

26—Insertion of sections 45A, 45B and 45C

This clause inserts 3 new sections that detail the lump sum, funeral benefits and counselling services to which a dependent spouse, domestic partner or child is entitled on the death of a worker as a result of a work related injury.

45A—Compensation payable on death—lump sums

For the purposes of this section, a dependent child is a child mainly or partially dependent on the worker's earnings. A dependent partner is a spouse or domestic partner totally dependent on the worker's earnings, while a partially dependent partner is a spouse or domestic partner who is to any extent dependent on the worker's earnings. The prescribed sum is the prescribed sum under section 43.

Under section 45A(4), if a worker dies as a result of a compensable disability, compensation in the form of a lump sum is payable as follows:

- if the worker leaves a dependent partner, or dependent partners, and no dependent child, the amount of compensation is an amount equal to the prescribed sum payable to the dependent partner or, if there is more than 1, in equal shares to the dependent partners;
- if the worker leaves no dependent partner and no dependent children other than an orphan child or orphan children, the amount of compensation is an amount equal to the prescribed sum payable to that orphan child or, if there are 2 or more, in equal shares for those children;
- if the worker leaves a dependent partner, or dependent partners, and 1, and only 1, dependent child, the amount of compensation is—
    - an amount equal to 90 per cent of the prescribed sum payable to the dependent partner or, if more than 1, in equal shares to the dependent partners; and
    - an amount equal to 10 per cent of the prescribed sum payable to the dependent child;

- if the worker leaves a dependent partner, or dependent partners, and more than 1 and not more than 5 dependent children, the amount of compensation is an amount equal to the prescribed sum payable in the following shares:
    - an amount equal to 5 per cent of the prescribed sum payable to each dependent child;
    - the balance to the dependent partner or, if more than 1, in equal shares to the dependent partners;
- if the worker leaves a dependent partner, or dependent partners, and more than 5 dependent children, the amount of compensation is an amount equal to the prescribed sum payable in the following shares:
    - an amount equal to 75 per cent of the prescribed sum payable to the dependent partner or, if more than 1, in equal shares to the dependent partners;
    - an amount equal to 25 per cent of the prescribed sum payable to the dependent children in equal shares;
- if the worker does not leave a dependent partner but leaves a dependent child or dependent children (not taking into account an orphan child or orphan children), the dependent child is, or if more than 1, each of those dependent children are, entitled to the amount of compensation being such share of a sum not exceeding the prescribed sum that the Corporation considers is reasonable and appropriate to the loss to the dependent child or, if more than 1 dependent child, to those dependent children;
- if the worker leaves—
    - a partially dependent partner or partially dependent partners; and
    - a dependent partner or dependent partners or a dependent child or dependent children or any combination of such,
- each of those dependents is entitled to the amount of compensation being such share of a sum not exceeding the prescribed sum that the Corporation considers is reasonable and appropriate to the loss to that dependent;
- if the worker does not leave a dependent partner, dependent child or partially dependent partner but leaves another person who is to an extent dependent on the worker's earnings, the Corporation may, if it considers it to be justified in the circumstances, pay compensation of a sum not exceeding the prescribed sum that the Corporation considers is reasonable and appropriate to the loss to that person (and if the Corporation decides to make a payment of compensation to more than 1 person, the sums paid must not in total exceed the prescribed sum);
- if the worker is under the age of 21 years at the time of the compensable disability and leaves no dependent partner, dependent child or partially dependent partner but, immediately before the disability, was contributing to the maintenance of the home of the members of his or her family, the members of his or her family are taken to be dependents of the worker partly dependent on the worker's earnings.

If a person who is entitled to a payment under section 45A is under the age of 18 years, the payment may, at the determination of the Corporation, be made wholly or partly to a guardian or trustee for the benefit of the person.

The section also provides that compensation is payable, if the Corporation so decides, to a spouse or domestic partner or child of a deceased worker who, although not dependent on the worker at the time of the worker's death, suffers a change of circumstances that may, if the worker had survived, have resulted in the spouse or domestic partner or child becoming dependent on the worker.

45B—Funeral benefit

Where a worker dies because of a compensable disability, a funeral benefit is payable equal to the actual cost of the funeral or the prescribed amount, whichever is the lesser. The funeral benefit is to be paid to the person who conducted the funeral or to a person who has paid, or is liable to pay, the deceased's funeral expenses.

45C—Counselling services

Under this new section, a family member of a worker who has died as a result of a compensable disability is entitled to be compensated for the cost of approved counselling services to assist the family member to deal with issues associated with the death. Family member means a spouse, domestic partner, parent, sibling or child of the worker or of the worker's spouse or domestic partner.

27—Amendment of section 46—Incidence of liability

Section 46 as amended will provide that the Corporation is liable for the compensation that is payable under the Act on account of the occurrence of a compensable disability. Under the section, if a worker is wholly or partially incapacitated for work and is in employment when the incapacity arises, the worker's employer is liable to pay income maintenance for the first 2 weeks of incapacity. Under new subsection (8b), the Corporation will undertake that liability of an employer in respect of a particular disability if the Corporation is satisfied that the

employer has complied with its responsibilities under section 52(5) within 2 business days after receipt of the worker's claim.

28—Amendment of section 50—Corporation as insurer of last resort

These amendments are necessary as a consequence of the change in terminology from 'exempt employer' to 'self-insured employer'.

29—Insertion of Part 4 Division 7A

The new Division inserted by this clause provides for the commencement of weekly payments on a provisional basis following the initial notification of a disability.

Division 7A—Special provisions for commencement of weekly payments after initial notification of disability

50A—Interpretation

This section provides definitions of terms used in Division 7A. An initial notification is the notification of a disability that is given to an employer (if the worker is in employment) and the Corporation, in the manner and form required by the Provisional Payment Guidelines, by the worker or by a person acting on behalf of the worker. The Provisional Payment Guidelines are guidelines published by the Minister from time to time in the Gazette for the purposes of the Division.

50B—Commencement of weekly payments following initial notification of disability

This section provides that provisional weekly payments of compensation by the employer or the Corporation are to commence within 7 days after initial notification of a disability by the worker. This requirement does not apply if the Corporation determines that there is a reasonable excuse (under the Provisional Payment Guidelines) for not commencing weekly payments.

50C—Status of payments

The payment of provisional weekly payments of compensation is on the basis of the provisional acceptance of liability for a period of up to 13 weeks determined by the Corporation having regard to the nature of the disability and the period of incapacity. The acceptance of liability on a provisional basis is not an admission of liability by the employer or the Corporation. A provisional payment will be taken to constitute the payment of weekly payments under Division 4.

The employer or the Corporation may decide to discontinue weekly payments under section 50C on a ground set out in the Provisional Payment Guidelines.

50D—Worker to be notified if weekly payments are not commenced

A worker is to be notified if weekly payments are not commenced because of a reasonable excuse under the Provisional Payment Guidelines. The notice is to include details of the excuse.

50E—Notice of commencement of weekly payments

Following the commencement of weekly payments under Division 7A, the employer or the Corporation must notify the worker that weekly payments have commenced on the basis of provisional acceptance of liability.

50F—Obligations of worker

The Corporation may require the worker to provide a medical certificate in addition to other information of a prescribed kind.

50G—Liability to make weekly payments not affected by making of claim

The making of a claim for compensation does not affect a liability to make weekly payments in connection with the acceptance of liability on a provisional basis.

50H—Set-offs and rights of recovery

An amount paid under Division 7A may be set off against a liability to make weekly payments of compensation under Division 4. Further, if an employer or the Corporation makes 1 or more payments under Division 7A and it is subsequently determined that the worker was not entitled to compensation, the employer or the Corporation may, subject to and in accordance with the regulations, recover the amount or amounts paid as a debt from the worker.

50I—Status of decisions

Certain decisions under Division 7A are not subject to review:

- a decision to make a provisional weekly payment of compensation;
- a decision not to make a provisional weekly payment of compensation after it is established that there is a reasonable excuse under the Provisional Payment Guidelines;
- a decision to discontinue weekly payments of compensation under section 50C or 50F;
- a decision to continue or not to continue weekly payments of compensation under section 50G;
- a decision to exercise or not to exercise a right of recovery under section 50H.

30—Amendment of section 51—Duty to give notice of disability

This amendment is necessary as a consequence of the change in terminology from 'exempt employer' to 'self-insured employer'.

31—Amendment of section 52—Claim for compensation

Some of the amendments made by this clause are necessary as a consequence of the change in terminology from 'exempt employer' to 'self-insured employer'. It is also proposed to refer in some provisions to designated forms instead of prescribed forms.

32—Amendment of section 53—Determination of claim

Section 53(7a) details circumstances that constitute an appropriate case for the Corporation to redetermine a claim. As a consequence of the amendment made to that subsection by this clause, the Corporation will be authorised to redetermine a claim where the redetermination is for the purposes of section 4(11) (inserted by clause 6) and is appropriate by reason of the stabilising of a compensable disability.

33—Amendment of section 54—Limitation of employer's liability

These amendments are necessary because of the change in terminology from 'exempt employer' to 'self-insured employer'.

34—Amendment of section 58A—Reports of return to work etc

This amendment is necessary because of the change in terminology from 'exempt employer' to 'self-insured employer'.

35—Amendment of section 58B—Employer's duty to provide work or pay wages

Section 58B deals with the duty of the employer of a worker who has been incapacitated for work in consequence of a compensable disability to provide suitable employment for the worker. Under section 58B(1) as amended by this clause, a maximum penalty of $25,000 will apply where an employer fails to provide suitable employment in accordance with the section. Proposed new subsection (3) provides that if a worker who has been incapacitated for work in consequence of a compensable disability undertakes alternative or modified duties under employment or an arrangement that falls outside the worker's contract of service for the employment from which the disability arose, the employer must pay an appropriate wage or salary in respect of those duties unless otherwise determined by the Corporation.

36—Amendment of section 60—Self insured employers

Most of the amendments made by this clause are necessary because of the change in terminology from 'exempt employer' to 'self-insured employer'.

This clause also amends section 60, which provides for the registration of an employer or group of employers as a self-insured employer or as a group of self-insured employers, by inserting a definition of 'related bodies corporate'. Some consequential amendments are also made. Related bodies corporate means—

- in the case of corporations—bodies corporate that are related bodies corporate under section 50 of the Corporations Act 2001 of the Commonwealth;
- in the case of any other kind of bodies corporate—bodies corporate that are associated entities under section 50AAA of the Corporations Act 2001 of the Commonwealth.

New subsection (4a) provides that the Corporation may, at any time, on the application of 2 or more self insured employers, amend the registration of each self-insured employer so as to form a group on the ground that they are now related bodies corporate.

Under subsection (4b) the Corporation may, at any time, on application by a group of self insured employers, amend the registration of the group in order to—

- add another body corporate to the group (on the ground that the body corporate is now a related body corporate); or
- remove a body corporate from the group (on the ground that the body corporate is no longer a related body corporate); or
- amalgamate the registration of 2 or more groups (on the ground that all the bodies corporate are now related bodies corporate); or
- divide the registration of a group into 2 or more new groups (on the ground that the bodies corporate have separated into 2 or more groups of related bodies corporate).

37—Amendment of section 61—The Crown and certain agencies to be self insured employers

38—Amendment of section 62—Applications

The amendments made by these clauses are necessary because of the change in terminology from 'exempt employer' to 'self-insured employer'.

39—Amendment of section 62A—Ministerial appeal on decisions relating to self insured employers

Section 62A provides a right of appeal to the Minister in respect of certain decisions of the Corporation relating to registration as a self-insured employer or group of self insured employers. As a consequence of these amendments, an employer or group of employers will be able to appeal to the Minister if the Corporation reduces the period of registration of the employer or group as a self insured employer or group of self insured employers.

Under new subsection (2a), if an employer or a group of employers appeals to the Minister against a decision of the Corporation to refuse to renew, or to cancel, the registration of the employer or employers as a self-insured employer or group of self insured employers, the Corporation may extend or renew the registration of the employer or employers for a period of up to 3 months (pending resolution of the appeal).

40—Substitution of heading to Part 5 Division 2

This amendment is necessary because of the change in terminology from 'exempt employer' to 'self-insured employer'.

41—Amendment of section 63—Delegation to self insured employer

Section 63(1) lists the powers and discretions of the Corporation that are delegated to self-insured employers. This clause amends the subsection adding references to powers and discretions under a number of additional sections of the Act.

New subsection (5a) clarifies that if the Corporation would, but for a delegation under the section, be required to take any action or do any thing in relation to a worker of a self-insured employer. responsibility for taking the action or doing the thing rests with the employer. Further, any cost incurred in connection with taking the action or doing the thing is to be borne by the employer.

Other amendments to section 63 made by this clause are necessary because of the change in terminology from 'exempt employer' to 'self-insured employer'.

42—Amendment of section 64—The Compensation Fund

This clause amends section 64 by adding the following to the list of matters towards which the Compensation Fund may be applied:

- any costs incurred by the Minister or the Crown if a decision or process of the Minister under section 62A becomes the subject of judicial proceedings;
- the costs associated with the establishment and operation of Medical Panels (see note on clause 70);
- the costs recoverable from the Compensation Fund under Part 6C (Medical Panels);
- the costs recoverable from the Compensation Fund under Part 6D (WorkCover Ombudsman).

43—Amendment of section 65—Preliminary

Section 65 deals with preliminary matters in respect of the levy imposed on employers under section 66. The section as amended by this clause will provide that the levy is subject to GST.

44—Amendment of section 66—Imposition of levies

Under section 66, an employer, other than a self-insured employer, is liable to pay a levy to the Corporation. The levy is a percentage of the aggregate remuneration paid to the employer's workers in each class of industry in which the employer employs workers.

Proposed new subsection (2a) provides that the levy will be payable at first instance on the basis of an estimate of aggregate remuneration for a particular financial year in accordance with Division 6. (A new Division 6 is inserted by clause 48.)

45—Amendment of section 67—Adjustment of levy in relation to individual employers

Section 67 provides for adjustment of the levy in relation to individual employers, having regard to various listed matters. This clause amends the section by adding the following to that list: the employer's practices and procedures in connection with the appointment and work of a rehabilitation and return to work co-ordinator under Part 3 (including with respect to compliance with any relevant guidelines published by the Corporation for the purposes of section 28D).

46—Substitution of heading to Part 5 Division 5

47—Amendment of section 68—Special levy for self insured employers

The amendments made by these clauses are necessary because of the change in terminology from 'exempt employer' to 'self-insured employer'.

48—Substitution of Part 5 Division 6

Part 5 Division 6, which relates to the payment of levies by employers, is deleted by this clause and a new Division, dealing with the same subject, is substituted.

Division 6—Payment of levies

69—Initial payment

This clause provides that an employer must provide to the Corporation an estimate of the aggregate remuneration the employer expects to pay to the employer's workers during a financial year. The

estimate provided by an employer that is not a self-insured employer is to relate to workers in each class of industry. The return is to be accompanied by the levy payable on aggregate remuneration in the relevant class or classes of industry based on the estimate or estimates set out in the return.

The Corporation may, by notice to a particular employer or in the Gazette—

- specify another date that will apply instead of the prescribed date; or
- specify an estimate or estimates of aggregate remuneration that will apply instead of any other estimate; or
- specify that the levy must be paid according to some other requirement determined by the Corporation.

69A—Revised estimates of remuneration by employers

This section details circumstances in which an employer must provide the Corporation with a revised estimate or estimates. For example, an employer is obliged to advise the Corporation if it becomes aware that the actual remuneration paid or payable by the employer exceeds or is likely to exceed by more than the prescribed percentage the estimate, or latest estimate, of aggregate remuneration applying in relation to the employer under Division 6.

69B—Certificate of remuneration

The Corporation may require an employer to provide a certified statement of remuneration paid or payable by the employer in a designated form during a period specified by the Corporation to workers employed by the employer. The requirement is to be made by notice in writing to the employer.

69C—Revised estimates of remuneration by Corporation

This section authorises the Corporation to, in its absolute discretion, review an estimate of remuneration previously made under Division 6.

69D—Statement for reconciliation purposes

Section 69D requires an employer to provide the Corporation with a statement setting out the remuneration paid by the employer to workers employed by the employer during a period for which a levy was payable.

69E—Adjustment of levy

The Corporation may issue a notice of adjustment of a levy to an employer if it considers the levy should be adjusted for any 1 of a number of reasons specified in the section.

69F—Deferred payment of levy

Under this section, the Corporation may defer the payment of a levy by an employer in financial difficulties if satisfied that the employer has a reasonable prospect of overcoming those difficulties and the deferment would assist materially in overcoming the difficulties. A deferment may be conditional, and the Corporation may cancel a deferment by written notice to the employer.

69G—Exercise of adjustment powers

Under this section, the Corporation may exercise its powers under Division 6 regardless of whether or not—

- a levy has been fixed, demanded or paid; or
- a period to which a determination or adjustment may apply has been completed; or
- the Corporation has already reviewed or adjusted an estimate, liability or payment under the Division; or
- circumstances have arisen that would, but for this section, stop the Corporation from conducting a review, or making a determination or adjustment.

49—Amendment of section 70—Recovery on default

Section 70 provides the Corporation with a power of recovery in certain circumstances. Under the section as amended by this clause, if an employer fails or neglects to provide information when required by or under Part 5 of the Act, or the employer provides information that the Corporation has reasonable grounds to believe is defective, the Corporation may make its own estimates, determinations or assessments. The Corporation may also impose a fine on the employer. A fine so imposed may be remitted by the Corporation in part or in full.

50—Amendment of section 72—Review

Under section 72, an employer may require the board of management of the WorkCover Corporation to review certain decisions. As a consequence of this amendment, if an employer considers that a decision of the Corporation as to the estimate of remuneration that is to be used for the calculation of a levy is unreasonable, the board must review the decision. On a review, the board may alter the estimate.

51—Insertion of section 76AA

Under proposed section 76AA, an employer will be liable to pay a fee to the Corporation if the employer ceases to be registered under section 59 or section 60. The fee is to be calculated in accordance with the regulations.

52—Amendment of section 78—Constitution of Tribunal

Section 78 provides that the Workers Compensation Tribunal may be comprised of a Full Bench, a single presidential member or a single conciliation and arbitration officer. This clause amends the reference to a conciliation and arbitration officer so that the provision refers instead to an conciliation officer. This is because arbitration is to be removed from the dispute resolution system.

53—Substitution of heading to Part 6 Division5

54—Amendment of section 81—Appointment of conciliation officers

55—Amendment of section 81A—Conditions of appointment

56—Amendment of section 81B—Administrative responsibilities of conciliation officers

57—Amendment of section 84D—Issue of evidentiary summonses

These amendments are consequential on the removal of arbitration from the dispute resolution system.

58—Amendment of section 86A—Reference of question of law and final appeal to Supreme Court

Section 86A as amended will provide for an appeal on a question of law against a decision of the Full Bench of the Tribunal to the Full Court of the Supreme Court. An appeal cannot be commenced except with the permission of a Judge of the Supreme Court.

59—Amendment of section 88—Immunities

60—Amendment of section 88A—Contempts of Tribunal

61—Amendment of section 88E—Rules

62—Amendment of section 88H—Power to set aside judgements or orders

These amendments are consequential on the removal of arbitration from the dispute resolution system.

63—Amendment of section 89—Interpretation

This amendment is necessary because of the change in terminology from 'exempt employer' to 'self-insured employer'.

64—Substitution of section 92D

Section 92D currently provides for the reference of a dispute that is not settled in conciliation proceedings into the Tribunal for either arbitration or judicial determination. This clause substitutes a new section. Under new section 92D, if conciliation proceedings do not result in an agreed settlement of a dispute, the dispute is to be referred by the conciliator into the Tribunal for judicial determination.

65—Repeal of Part 6A Division 5

Division 5 of Part 6A, which sets out requirements in relation to arbitration, is repealed by this clause.

66—Repeal of section 94

Section 94 sets out the circumstances in which the Tribunal is to make a judicial determination of a disputed claim. The section is to be repealed because arbitration is no longer available. Instead, there will be a requirement for disputes that are not resolved by conciliation to be referred to into the Tribunal for judicial determination.

67—Amendment of section 94C—Determination of dispute

This amendment is necessary because arbitration is to be removed from the dispute resolution system and a judicial determination therefore will not be a rehearing of a matter in dispute.

68—Insertion of section 95A

This clause inserts a new section authorising the Tribunal to make certain orders if a party's professional representative has caused costs to be incurred improperly or without reasonable cause or has caused costs to be wasted by undue delay or negligence or by any other misconduct or default.

The orders that the Tribunal may make are as follows:

- that all or any of the costs between the professional representative and his or her client be disallowed or that the professional representative repay to his or her client the whole or part of any money paid on account of costs;
- that the professional representative pay to his or her client all or any of the costs which his or her client has been ordered to pay to a party;
- that the professional representative pay all or any of the costs of a party other than his or her client.

A professional representative is in default if any proceedings cannot conveniently be heard or proceed, or fail or are adjourned without any useful progress being made, because the professional representative failed to—

- attend in person or by a proper representative; or
- file a document which ought to have been filed; or
- lodge or deliver a document for the use of the Tribunal which ought to have been lodged or delivered; or
- be prepared with any proper evidence or account; or
- otherwise proceed.

A professional representative must be given an opportunity to make representations and call evidence before an order is made against him or her under the section.

69—Amendment of section 97A—Constitution of Tribunal for proceedings under this Part

This amendment is consequential on the removal of arbitration from the dispute resolution system.

70—Insertion of Parts 6C and 6D

The clause inserts 2 new Parts. The first deals with the establishment of Medical Panels while the second establishes the office of WorkCover Ombudsman.

Part 6C—Medical Panels

Division 1—Establishment and constitution

98—Establishment

This section provides that there will be such Medical Panels as are necessary for the purposes of the Act and sets out procedures for the appointment of persons to, and removal of persons from, Medical Panels.

98A—Constitution

This section provides that a Medical Panel is to consist of the number of members as is determined by the Convenor of Medical Panels in each particular case. The number of members is not to exceed 5.

98B—Procedures

Medical Panels are not bound by the rules of evidence and may act informally and without regard to technicalities or legal forms.

98C—Validity of acts

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

98D—Immunity of members

No personal liability will attach to a member of a Medical Panel for an act or omission by the member or the Medical Panel in good faith and in the exercise or purported exercise of powers or functions under the Act.

Division 2—Functions and powers

98E—Interpretation

This clause provides that the following are medical questions:

- a question whether a worker has a disability and, if so, the nature or extent of that disability;
- a question whether a worker's disability—
  - in the case of a disability that is not a secondary disability or a disease—arose out of or in the course of employment; or
  - in the case of a disability that is a secondary disability or a disease—arose out of employment or arose in the course of employment and the employment contributed to the disability;
- a question whether a worker's employment was a substantial cause of a worker's disability consisting of an illness or disorder of the mind;
- a question whether a worker has suffered a disability of a kind referred to in the first column of Schedule 2 (which relates to disabilities presumed to have arisen from employment);
- a question whether a medical expense has been reasonably incurred by a worker in consequence of having suffered a compensable disability;
- a question whether a charge for a medical service should be disallowed under section 32(5);

- a question whether a disability results in incapacity for work;
- a question as to the extent or permanency of a worker's incapacity for work and the question whether a worker has no current work capacity or a current work capacity;
- a question as to what employment would or would not constitute suitable employment for a worker;
- a question as to whether a worker who has no current work capacity is likely to continue indefinitely to have no current work capacity;
- a question whether a worker who has a current work capacity is, and is likely to continue indefinitely to be, incapable of undertaking further or additional employment or work and, if not so incapable, what further or additional employment or work the worker is capable of undertaking;
- a question as to when a disability, other than noise induced hearing loss, that developed gradually first caused an incapacity for work;
- a question as to when and in what employment a worker with noise induced hearing loss was last exposed to noise capable of causing noise induced hearing loss;
- a question as to when a worker has ceased to be incapacitated for work by a compensable disability;
- a question as to what constitutes proper medical treatment for the purposes of section 36(1a)(c);
- a question as to whether a disability is permanent and, if so, the level of impairment of a worker for the purposes of sections 43 and 43A;
- a question as to whether a provision of a rehabilitation and return to work plan imposes an unreasonable obligation on a worker;
- a question as to any other prescribed matter.

98F—Functions

A Medical Panel's function is to give an opinion on a referred medical question.

A medical question that constitutes or forms part of, or arises in connection with, a matter that is the subject of a dispute under Part 6A must be referred to a medical panel.

98G—Powers and procedures on a referral

This section sets out the powers and procedures of a Medical Panel. A Medical Panel may ask a worker—

- to meet with the Medical Panel and answer questions;
- to supply to the Medical Panel copies of all documents in the possession of the worker relating to the medical question;
- to submit to a medical examination by the Medical Panel or by a member of the Medical Panel.
- A person or body referring a medical question to a Medical Panel is required to submit a document to the Medical Panel specifying—
- the disability or alleged disability to, or in respect of, which the medical question relates;
- the facts or questions of fact relevant to the medical question which the person or body is satisfied have been agreed and those facts or questions that are in dispute.

The person or body must also submit copies of all documents relating to the medical question in the possession of the person or body.

Under subsection (7), information given to a Medical Panel cannot be used in subsequent proceedings unless the proceedings are before the Tribunal or a court under the Act, or the worker consents to the use, or the proceedings are for an offence against the Act.

98H—Opinions

Medical Panels are required under this section to form an opinion on referred medical questions within 60 days following the referral or a longer period agreed by the Corporation or the Tribunal. The Medical Panel must give a certificate as to its opinion.

Division 3—Related matters

98I—Admissibility

A Medical Panel's certificate is admissible in any proceedings under the Act, and a member of a Medical Panel may give evidence as to matters in a certificate given by a panel of which he or she was a member. The member cannot be compelled to give such evidence.

98J—Support staff

The Minister is required under this section to ensure that there are such administrative and ancillary staff as are necessary for the proper functioning of Medical Panels.

Part 6D—WorkCover Ombudsman

Division 1—Appointment and conditions of office

99—Appointment

Section 99 provides that there is to be a WorkCover Ombudsman who is to be appointed by the Governor. The person appointed to the role may hold another office or position if the Governor is satisfied that there is no conflict between the functions and duties of the WorkCover Ombudsman and the functions and duties of the other office or position.

99A—Term of office and conditions of appointment

Section 99A sets out the term of office, which is not to exceed 7 years, and the conditions of the appointment of the WorkCover Ombudsman. A person cannot hold office as WorkCover Ombudsman for more than 2 consecutive terms.

99B—Remuneration

The WorkCover Ombudsman's remuneration, allowances and expenses are to be determined by the Governor.

99C—Temporary appointments

This section authorises the Minister to appoint a person to act as WorkCover Ombudsman—

- during a vacancy in the office of WorkCover Ombudsman; or
- when the WorkCover Ombudsman is absent from, or unable to discharge, official duties; or
- if the WorkCover Ombudsman is suspended from office.

Division 2—Functions and powers

99D—Functions

The functions of the WorkCover Ombudsman are as follows:

- to identify and review issues arising out of the operation or administration of the Act, and to make recommendations for improving the operation or administration of the Act, especially so as to improve processes that affect workers who have suffered a compensable disability or employers;
- to receive and investigate complaints about administrative acts under the Act, and to seek to resolve those complaints expeditiously, including by making recommendations to relevant parties;
- to receive and investigate complaints about failures to comply with section 58B or 58C and to give directions to the Corporation or any relevant employer in connection with the operation or requirements of either of those sections;
- to investigate other matters relating to providing for the effective rehabilitation of disabled workers and their return to work on a successful basis;
- to encourage and assist the Corporation and employers to establish their own complaint-handling processes and procedures with a view to improving the effectiveness of the Act;
- to initiate or support other activities or projects relating to the workers rehabilitation and compensation scheme established by the Act;
- to provide other assistance or advice to support the fair and effective operation or administration of the Act.

He or she may act on his or her own initiative, at the request of the Minister or on the receipt of a complaint from an interested person. However, under subsection (3), the WorkCover Ombudsman may not investigate certain acts.

The WorkCover Ombudsman may attempt to deal with a complaint by conciliation.

99E—Powers—general

The WorkCover Ombudsman has the powers necessary or expedient for, or incidental to, the performance of his or her functions.

99F—Obtaining information

Under this section, if the WorkCover Ombudsman has reason to believe that a person is capable of providing information or producing a document relevant to a matter under his or her consideration, he or she may, by notice in writing, require the person to do 1 or more of the following:

- to provide the information to the WorkCover Ombudsman in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate;

- to produce the document to the WorkCover Ombudsman;
- to attend before a person specified in the notice and answer questions or produce documents relevant to the matter.

The maximum penalty for failing to comply with such a requirement is a fine of $5,000.

99G—Power to examine witnesses etc

The WorkCover Ombudsman, or a person who is to receive information under section 99F, may administer an oath or affirmation to a person required to attend before him or her and may examine the person on oath or affirmation. The WorkCover Ombudsman may require a person to verify by statutory declaration—

- any information or document produced; or
- a statement that the person has no relevant information or documents or no further relevant information or documents.

The maximum penalty for failing to comply with such a requirement is a fine of $5,000.

Division 3—Other matters

99H—Independence

The WorkCover Ombudsman is to act independently, impartially and in the public interest. The Minister cannot control how the WorkCover Ombudsman is to exercise his or her statutory functions and powers.

99I—Staff

The WorkCover Ombudsman's staff is to consist of—

- Public Service employees assigned to work in the office of the WorkCover Ombudsman; and
- persons appointed by the WorkCover Ombudsman, with the consent of the Minister, for the purposes of the Act.

99J—Funding

The cost associated with the office of the WorkCover Ombudsman (including in the performance by the WorkCover Ombudsman of functions) and the WorkCover Ombudsman's staff are to be recoverable from the Compensation Fund under a scheme established or approved by the Treasurer after consultation with the Corporation.

99K—Delegation

This section sets out the WorkCover Ombudsman's power to delegate a function or power to a particular person or body or to the person for the time being occupying or holding a particular office or position.

99L—Annual report

The WorkCover Ombudsman must, on or before 30 September in each year, forward a report to the Minister on the work of the WorkCover Ombudsman during the financial year ending on the preceding 30 June. The Minister must have copies of the report laid before both Houses of Parliament.

99M—Other reports

The WorkCover Ombudsman may, at any time, prepare a report to the Minister on any matter arising out of the exercise of the WorkCover Ombudsman's functions. The Minister must have copies of the report laid before both Houses of Parliament.

99N—Immunity

The WorkCover Ombudsman is to incur no civil liability for an honest act or omission in the performance or exercise, or purported performance or exercise, of a function or power under the Act. This immunity does not extend to culpable negligence.

71—Amendment of section 103A—Special provision for prescribed classes of volunteers

This amendment is necessary because of the change in terminology from 'exempt employer' to 'self-insured employer'.

72—Amendment of section 105—Insurance of registered employers against other liabilities

This clause amends section 105(2) by adding a reference to a rehabilitation and return to work plan. The subsection currently refers only to a rehabilitation programme.

73—Amendment of section 106—Payment of interim benefits

Under section 106, the Corporation may make interim payments of compensation pending the final determination of a claim. New subsection (3), inserted by this clause, makes it clear that the section does not derogate from Division 7A of Part 4 (Special provisions for commencement of weekly payments after initial notification of disability), which is inserted by clause 29.

74—Amendment of section 107B—Worker's right of access to claims file

Section 107B provides that the Corporation or a delegate of the Corporation must, at the request of a worker, provide the worker with certain material or make certain material available for inspection. The maximum penalty for an offence against the provision is currently a fine of $2,000. This clause increases the maximum fine to $5,000.

75—Amendment of section 111—Inspection of place of employment by rehabilitation adviser

The maximum penalty for hindering an inspection by a rehabilitation adviser of a disabled worker's place of employment is currently a fine of $3,000. This clause amends the provision by increasing the maximum to $5,000.

76—Amendment to section 112—Confidentiality to be maintained

The maximum penalty for disclosing confidential information contrary to section 112(1) is currently a fine of $3,000. This clause amends subsection (1) by increasing the maximum fine to $5,000.

A new subsection authorises the Corporation to enter into arrangements with corresponding workers compensation authorities about sharing information obtained in the course of carrying out functions related to the administration, operation or enforcement of the Act or a corresponding law. A disclosure made in accordance with such an arrangement will be permitted, as will a disclosure authorised or required under any other Act or law.

A corresponding workers compensation authority is any person or authority in a State or a Territory other than South Australia with power to determine or manage claims for compensation for disabilities arising from employment.

77—Insertion of section 112AA

The new section inserted by this clause prohibits an employer who is registered under the Act, and an employee of such an employer, from disclosing the physical or mental condition of a worker unless the disclosure is—

- reasonably required for, or in connection with, the carrying out of the proper conduct of the business of the employer; or
- required in connection with the operation of the Act; or
- made with the consent of the person to whom the information relates, or who furnished the information; or
- required by a court or tribunal constituted by law, or before a review authority; or
- authorised or required under another Act or law; or
- made—
  - to the Corporation; or
  - to the worker's employer; or
- made under the authorisation of the Minister; or
- authorised by regulation.

78—Amendment of section 113—Disabilities that develop gradually

These amendment are necessary because of the change in terminology from 'exempt employer' to 'self-insured employer'.

79—Amendment of section 119—Contract to avoid Act

Section 119(2) provides that a purported waiver of a right conferred by or under the Act is void and of no effect. Under subsection (3), a person who enters into an agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of the Act, or who attempts to induce a person to waive a right or benefit conferred by or under the Act, is guilty of an offence.

Under proposed new subsection (4), subsections (2) and (3) will not apply to action taken by an employer with the consent of the Corporation or to an agreement or arrangement entered into by an employer with, or with the consent of, the Corporation.

80—Amendment of section 120—Dishonesty

This amendment is necessary because of the change in terminology from 'exempt employer' to 'self-insured employer'.

81—Insertion of section 123B

Under new subsection 123B, the Governor may prescribe a code to be known as the Code of Claimants' Rights. The purpose of the Code is to meet the reasonable expectations of claimants for compensation under the Act about how they should be dealt with by the Corporation or a self-insured employer. The Code is to do the following:

- set out principles that should be observed by the Corporation and self-insured employers;
- provide for the procedure for lodging and dealing with complaints about breaches of the Code;

- provide—
  - for the consequences of, and remedies for, a breach of the Code by the Corporation or a self-insured employer; and
  - how and to what extent the Corporation or a self-insured employer must address situations where its conduct is not consistent with or does not uphold the rights of claimants under the Code.

82—Amendment of Schedule 1

This clause amends Schedule 1 by the insertion of a new clause that provides for the making by regulation of provisions of a saving or transitional nature consequent on the amendment of the Act by another Act. Although a provision of a regulation made under this clause may take effect from the commencement of the amendment or from a later day, a provision that takes effect from a day earlier than the day of the regulation's publication in the Gazette does not operate to the disadvantage of a worker by decreasing his or her rights.

83—Substitution of Schedule 3

This clause inserts 2 new Schedules. Schedule 3 is inserted for the purposes of section 43(3). Schedule 3A is inserted for the purposes of section 43B.

Schedule 1—Transitional provisions

The Schedule includes a number of necessary transitional provisions.

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

LANDLORD AND TENANT (DISTRESS FOR RENT—HEALTH RECORDS EXEMPTION) AMENDMENT BILL

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

At 17:51 the council adjourned until Tuesday 29 April 2008 at 14:00.