LEGISLATIVE COUNCIL

Wednesday 30 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.

LEGISLATIVE REVIEW COMMITTEE

The Hon. J.M. GAZZOLA (14:17): I bring up the 18th report of the committee.

Report received.

PAPERS

The following paper was laid on the table:

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

Outback Areas Community Development Trust—Report, 2006-07

QUEEN'S COUNSEL

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:18): I lay on the table a copy of a ministerial statement relating to reform of the appointment and designation of Queen's Counsel made earlier today in another place by the Premier.

QUESTION TIME

POLICE, SUPER LOCAL SERVICE AREAS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:18): I seek leave to make a brief explanation before asking the Minister for Police a question about super local service areas.

Leave granted.

The Hon. D.W. RIDGWAY: I have been advised that a project team has been put together within SAPOL to investigate a proposal to realign local service areas to make them more consistent with the current local council boundaries. Apparently, these new areas will be named super local service areas and may be formed next year. A concern was expressed to me that the accessibility of police stations in regional towns may now be compromised if the new boundaries place the nearest station in a different LSA. My questions to the minister are:

1. What is the current status of this proposal for super service areas to date?

2. Who has SAPOL consulted with on this proposal?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:19): It is much broader than the honourable member suggests. In fact, the state government some time ago now (more than a year ago, I would have thought) was looking at having common boundaries for government agencies, because there is a great deal of benefit to be gained by having consistent boundaries. As members may know, in many of the regions of this state there are senior public servants who meet regularly to discuss issues. Just as the heads of the Public Service in Adelaide would meet on a state basis so, too, in many of the regional areas there are local heads who meet in relation to regional issues.

There is a good exchange of information between agencies such as SAPOL, emergency services, social welfare, health, and so on. There is a lot to be gained from that. That is why the

government through cabinet some time ago in principle supported common government boundaries. I am sure if the honourable member looks on the website he will see that it was announced some time ago. It was always recognised that there would be some difficulties—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: It is not a matter of neglecting communities. In fact, it is giving better service to local communities. It is recognised that the boundary for one government agency will not always be the most appropriate or the best boundary for another government agency. As a result of that decision, a lot of work has been done in relation to the boundaries.

Clearly, there are some anomalies. The boundaries under which police operate will not necessarily be the best boundaries for others. As Minister for Urban Development and Planning I have already exempted SAPOL where there are clear anomalies. For example, in the West Coast, if the anomaly had not been corrected, Port Augusta police would have been responsible for policing part of Flinders Highway south of Whyalla. Clearly, that would be absurd.

When these situations arise, the boundaries will be adjusted but, generally, the government will try to get common boundaries, so that when a senior police officer in a particular district meets with his Public Service colleagues, whether from health or Aboriginal affairs, and so on, about issues of mutual concern within the area they will be talking about the same jurisdiction. That is the point of it. It is a simple principle. By and large, we want the boundaries to align, but it is recognised that it will not always be possible in every case and when there are anomalies there is provision in the policy to make exemptions.

POLICE, SUPER LOCAL SERVICE AREAS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:22): I have a supplementary question. What is the estimated cost of the realignment project within SAPOL?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:22): In relation to SAPOL it will cost nothing other than the time taken to do it. In most cases, these boundaries, particularly in some of the rural areas, are just a matter of aligning particular remote areas where few resources will be involved. When I say 'resources', I mean that there are very few service providers within that particular boundary.

For example, in relation to a boundary between a northern region and the Murraylands region, it makes sense to have a common boundary, but whether it is closer to the Barrier Highway or the River Murray probably does not make a lot of difference in terms of the actual services provided. However, in terms of getting good government and having a common look across the agencies, it does make sense.

The policy of the government is sensible, and it is a policy which probably exists in the rest of the world. Sometimes it will happen that a logical police boundary will differ from a boundary that is appropriate for other agencies, and there are provisions for those issues to be dealt with. Otherwise, in general terms we will try to align the boundaries so that we get the benefits to government of having common consideration within our regions.

POLICE, SUPER LOCAL SERVICE AREAS

The Hon. J.S.L. DAWKINS (14:24): I have a supplementary question. Is it the government's intention to continue with a proposal to have the entire Murraylands and Riverland regions incorporated and to have communities as diverse as Policeman's Point and Yamba in the same region? Will it be headquartered at Berri or Murray Bridge?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:24): There has been a lot of misinformation in relation to what is happening. I know that issue has been raised for some time. We have indicated that the importance of the Murray Bridge Police Station will continue. Indeed, as I indicated yesterday, we are spending $9.5 million to upgrade the Murray Bridge Police Station. In fact, as a result of government upgrading to so many other police stations, it is probably the worst in the state. That is why it is next in line for an upgrade.

Those matters are being considered, but certainly there will not be any changes to boundaries that will lead to any worse service; in fact, it will be to the contrary—we will make changes to regional boundaries and/or police local service area boundaries only if they lead to better services for the people and the staff.

MARITIME HERITAGE

The Hon. J.M.A. LENSINK (14:26): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about heritage.

Leave granted.

The Hon. J.M.A. LENSINK: In relation to the Newport Quays development, the occupants of the Searle's boatyard have been given until 30 June to vacate the site, and the National Trust has identified concerns regarding a number of sites which have no formal heritage listing, namely, the boatyard.

The Hon. P. Holloway interjecting:

The Hon. J.M.A. LENSINK: They have a lot of historical value. The Radio Shack and the *Nelcebee*, which until recently was Australia's oldest seagoing ship, the *Falie,* and two electric cranes.

An honourable member interjecting:

The Hon. J.M.A. LENSINK: That's a beautiful development.

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Stephens and the Hon. Mr Holloway will come to order.

The Hon. J.M.A. LENSINK: It was reported by *Stateline* several years ago that minister Lomax-Smith was outraged that both the tourism commission and DEH were not consulted regarding the development and that the heritage listed site of Harts Mill will not be incorporated harmoniously in a way that appreciates its true heritage value. My questions to the minister are:

1. What representations has she or her department made in regard to this development to ensure that South Australia's early maritime heritage will not be lost forever?

2. Is she confident that the development does comply with the Public Works Committee's recommendation that the development be done harmoniously with heritage values?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:27): I thank the honourable member for her questions.

Members interjecting:

The PRESIDENT: Order! The minister does not require any help from those behind her.

The Hon. G.E. GAGO: As we are well aware, a development proposal is underway. There is a range of mechanisms within that proposal to deal with a significant number of elements of the development. In relation to the heritage of the boat sheds, I understand that the National Trust has nominated the sheds to be considered for state heritage listing. I understand that matter is currently before the heritage council for consideration or is about to go before it.

We have expert bodies and processes in place that make assessments about the value of these items, so that is how the matter should be considered, and that process is underway. The heritage council no doubt will decide whether it is worth taking up and assessing and, if so, it will pursue the relevant and appropriate heritage assessments.

In terms of the relevant steps being undertaken around this development, the answer is that, yes, all relevant processes will be included. As with any development there is a range of different issues and standards that have to be considered—for instance, environmental and heritage values—and there is also a range of different mechanisms available during the development process to enable these various issues to be considered in the appropriate way.

MARITIME HERITAGE

The Hon. J.M.A. LENSINK (14:29): Sir, I have a supplementary question. Will the minister advise whether a stop order will be put on the demolition until the application has been considered?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:30): I am

not aware exactly where the application for heritage listing is at. I am not aware whether the heritage council has even considered the application or whether it considers the boatsheds worthy of even the first stage, which is a heritage assessment. The issue is in the hands of the appropriate body, which will consider the matter according to its protocols, and it is being dealt with in an appropriate way.

MARITIME HERITAGE

The Hon. M. PARNELL (14:30): Sir, I have a supplementary question. Given that the deadline of 30 June is looming, will the minister commit to following this up with the heritage council and bringing back to this council a report as to the status of the heritage application? Will she also commit to using her best endeavours to stop the business from being closed down and the buildings demolished before the proper heritage assessment process is completed?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (14:31): I am happy to inquire as to where this matter is in relation to the heritage council and to bring back a response. That is the appropriate body to make heritage assessment: I am not a heritage expert. So, the matter is before the appropriate body with the appropriate expertise, and I am very confident that it will deal with the matter in the correct way. I am happy to inquire as to what stage it has reached in its considerations in relation to the boathouse.

DANGEROUS OFFENDERS

The Hon. S.G. WADE (14:32): I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about dangerous offenders.

Leave granted.

The Hon. S.G. WADE: The government enacted dangerous offenders laws last year to allow the Attorney-General to directly apply to the Supreme Court to have the nonparole period removed for a prisoner classified as a dangerous offender. In July 2007, *The Advertiser* reported that sources had identified six offenders as people who would be dealt with under the laws and that 'Correctional Services Minister Carmel Zollo has been preparing a list of criminals she believes should never be released from prison'.

One of those listed in the article, Judith Lynette Dowell, has been released. In the *Sunday Mail* of 27 April 2008, a spokesman for the Attorney-General was quoted as saying: 'We never released a list and Judith Dowell would never have been on any such list.' A number of stakeholders—and, no doubt, a number of prisoners—assumed that the source of the list was a government source and that it was a government list. There are only two possibilities: first, either the government allowed Judith Lynette Dowell to be repeatedly and unfairly labelled as a dangerous offender last year and allowed other prisoners to be misled about their prospects for parole; or, secondly, the government has released a dangerous offender. My questions are:

1. Did the minister or any officer of her department advise any prisoners identified as dangerous offenders in *The Advertiser* of 27 July 2007 that they were not on a list to be regarded as a dangerous offender?

2. What work has the minister or the minister's department done to assess whether people should be identified as dangerous offenders under the dangerous offenders legislation?

3. Has the minister prepared or caused to be prepared documents or lists that identify any offenders as people who should be considered for action under the dangerous offenders legislation?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:33): By way of background, just to refresh the memory of those in the chamber, the Rann government's dangerous offenders laws allow for the Attorney-General to apply to the Supreme Court to have the nonparole period removed for any prisoner classified as a dangerous offender. The court can classify an offender as dangerous based on the nature of the original crime, the lack of contrition, behaviour and rehabilitation in gaol, willingness to cooperate with inquiries and the likelihood of committing a serious offence in the future.

I note that, when these laws were introduced, the shadow attorney-general from another place rejected them outright, putting her at odds with her colleagues once again. It seems that the opposition cannot readily agree on everything. In relation to the question just asked, I understand

that the *Sunday Mail* carried a story on 27 April referring to a list of dangerous offenders that had been drawn up.

If my recollection serves me correctly, the list was compiled by *The Advertiser*, not by the government, in May last year. In the article by journalist Sean Fewster, it states, 'An *Advertiser* study has found six killers likely to be targeted before 2010.' *The Advertiser* would have compiled its list from publicly available sources, such as court documents and media reports, and such information is readily available.

It would be inappropriate and unlawful for a list to be compiled of people who will never be released from prison, so there is no list and there cannot be a list. Each case is assessed and determined on its own merits.

The government process is that the Department for Correctional Services provides information on prisoners convicted of murder, including conspiracy, as prisoners become eligible for parole. The Crown Solicitor's Office assesses the information on a case-by-case basis, and it prepares cases for possible submission to the Supreme Court by the Attorney-General. The Crown Solicitor's Office reviews the circumstances of offences and the behaviour of prisoners whilst they are in custody and gives advice to the Attorney-General about whether he should make an application to the court under this legislation.

In summary, when the dangerous offenders legislation was being debated in the other place, I understand *The Advertiser* created its own list of those it deemed to be dangerous offenders; it is certainly not an official list and, in truth, it has no relevance. The role of the Department for Correctional Services is to ensure that all relevant information on any prisoner is made available to the Crown Solicitor and the Attorney-General if and when requested.

There is no list of prisoners who have been identified as dangerous offenders because, in the absence of a court order, this would be unlawful. Identifying dangerous offenders is subject to a separate process, as I have just identified.

For the information of the chamber, Judith Dowell was taken into custody on 6 April 1990. On 1 August 1994, she was sentenced in the Supreme Court of South Australia to life imprisonment for the offence of murder, with a nonparole period of 25 years, which was later remitted to 16 years, five months and 19 days under the truth in sentencing legislation, and her earliest conditional parole date was 21 April 2006.

Throughout her imprisonment, Ms Dowell received highly favourable work and conduct reports. She completed offence focus programs, and she participated in educational programs whilst incarcerated, gaining certificates to aid in employment.

I should mention that Ms Dowell's co-offender was released on parole on 14 June 2007, having been set a nonparole period of 22 years, which was reduced to 14 years, three months and seven days. His parole supervision will expire on 13 June 2017.

Ms Dowell made an application to the Parole Board, a very open and transparent process, for conditional release, pursuant to section 67 of the Correctional Services Act 1982. The board gave full consideration to victims of crime and community safety when processing the application, and the board resolved to make a recommendation to me and to cabinet for Ms Dowell's conditional release, having regard to the criteria for release provided within the act. As is the normal practice, the application was then referred to His Excellency the Governor and Executive Council for a decision. On 4 December 2007, Ms Dowell was conditionally released on parole for a term of 10 years, under strict conditions.

Ms Dowell's parole order will expire on 3 December 2017. There was no need to advise the public (which is something I think we were accused of by the Hon. Steven Wade of the opposition) of Ms Dowell's release, consistent with the rehabilitative approach.

As I understand from the *Sunday Mail*, the Hon. Stephen Wade said, 'I have no reason to believe that Ms Judith Dowell is a threat to public safety.' If you actually believe that, why go ahead with this really ridiculous story and, in so doing, upset the process of this woman's rehabilitation? It potentially causes distress to victims of crime because, in all of this, they are the most important members of our community that we should be concerned about.

DANGEROUS OFFENDERS

The Hon. S.G. WADE (14:40): Can I clarify the minister's answer? Did she lead the council to believe that an offender who is charged and convicted of an offence other than murder will not be considered for a submission to the court to be classified as a dangerous offender?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:40): I understand that the act—I do not have a copy of the act with me—does specify those cases from which the Attorney-General can apply to the Supreme Court to have a nonparole period removed. So, it is in the act. The honourable member, I am sure, is more than capable of looking at the act. I do not have a copy of it in front of me but, as I said, we will provide information on prisoners convicted of murder as they become eligible for parole. That does include conspiracy, and it would also include perhaps other categories along with it.

DANGEROUS OFFENDERS

The Hon. SANDRA KANCK (14:41): In light of the minister's answer, would she please comment on the accuracy of the article by Nick Henderson in *The Advertiser* in July 2007, in which he states that the minister has been preparing a list of prisoners she believes should never be released?

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): I think that is probably the same article that we are talking about, which Sean Fewster commented on as well. I think there was only ever the one article.

The Hon. S.G. Wade: Fewster was in May.

The Hon. CARMEL ZOLLO: Okay. The legislation had not even passed the house in May last year.

The Hon. S.G. Wade interjecting:

The Hon. CARMEL ZOLLO: No; I did not speak to *The Advertiser.* I certainly have not spoken to *The Advertiser.*

The Hon. S.G. Wade: There's your answer; she is saying she never spoke to them.

The Hon. CARMEL ZOLLO: Thank you.

The PRESIDENT: The honourable minister will answer the question, not the shadow minister.

The Hon. CARMEL ZOLLO: I have not spoken to *The Advertiser.* As I said, the Department of Correctional Services has a very important role, which is to provide information on prisoners convicted of murder, and that is a separate process. As I said before, identifying dangerous offenders is subject to a separate process.

DESALINATION PLANTS

The Hon. R.P. WORTLEY (14:42): My question is—

Members interjecting:

The Hon. R.P. WORTLEY: It is obvious—

Members interjecting:

The PRESIDENT: The Hon. Mr Wortley.

The Hon. R.P. WORTLEY: If there is one thing that this elitist rabble—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.S.L. DAWKINS: I have a point of order, Mr President. The honourable member has not sought leave to do anything, and he should not be speaking.

The PRESIDENT: The honourable member will seek leave or ask his question and not respond to the opposition.

The Hon. R.P. WORTLEY: Will the Minister for Urban Development and Planning provide an update on any progress made on the state government's proposed desalination plant at Port Stanvac?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:43): The Rann Labor government is committed to securing the water needs of the residents of Adelaide. As part of that commitment—

Members interjecting:

The Hon. P. HOLLOWAY: Catch up? Are they joking, Mr President? We are setting the pace. What have they done?

Members interjecting:

The Hon. P. HOLLOWAY: One of these days, and it will not be too much longer, we will look at eight years of—well, I would not call them achievements—decision making under the former Liberal government. This is the party that wanted to still have 1929 trams ending in Victoria Square, and they talk about public transport. This is the party whose only policy is that it wants to build sporting stadiums. That would be the only progress members opposite could talk about. They can promise lots of things but, when they had eight years to do it, what did we get? We got sporting stadiums.

Members interjecting:

The Hon. P. HOLLOWAY: No; what you did was divert money from public transport into the arts. They took money that should have gone to public transport and they put it into the arts That is why, over the years, there has been such a backlog of money in public transport. That is what they did there. They built wine centres and sports stadiums, and they still want more of the same. I do not think that the Liberal opposition should be talking too much about catch up. As part of our commitment—

The Hon. J.S.L. Dawkins: It was our idea.

The Hon. P. HOLLOWAY: It was your idea! Heavens above! As part of that commitment—

The Hon. S.G. Wade: You're embarrassed.

The Hon. P. HOLLOWAY: I am not embarrassed in the least. What would I be embarrassed about? This government will deliver on good projects. Anyone could go to the media and say they are going to do things. What about—

Members interjecting:

The PRESIDENT: Order! The only people finding this embarrassing are, perhaps, the young ones in the gallery.

The Hon. P. HOLLOWAY: What about their planning strategy? They are talking about seaside villages at places such as Marion and Noarlunga. Next we will be having them at Coober Pedy! In fact, when they released it, they said that this was the most comprehensive direction statement since Sir Thomas Playford. It is without a doubt so comprehensive that everybody forgot about it within 24 hours—it was a joke. If we decide to put in a swimming pool at Aldinga, no doubt we will be accused of pinching their policy because it happened to be in one of their absurd policies.

The time will come when we can assess eight years of what they did under their government. We will remind people about their public transport policy—the 1929 trams ending in Victoria Square. They did not want any extensions or things like that. What we are talking about here is substance and progress.

As part of the commitment, the proposed 50 gigalitre desalination plant planned for Port Stanvac has been declared a major project under the Development Act. The $1.1 billion desalination plant is one of the largest infrastructure projects in which the state government has invested. By declaring the desalination plant a major project, a process has been triggered that provides a comprehensive and coordinated assessment of this development.

The Development Assessment Commission, which is an independent authority, will determine the level of scrutiny imposed. The commission can require three levels of assessment,

from a development report to a public environmental report to an environmental impact statement. The major development declaration provides for a comprehensive assessment process, and it allows for the consideration of issues, such as the suitability of the location at Port Stanvac, the size of the plant, its brine discharge, the impact on Gulf waters and other environmental issues, to be fully explored.

The proposed plant will occupy about 20 hectares, and its exact location at Port Stanvac is subject to negotiations between the state government and Exxon Mobil. The major project process enables a comprehensive assessment of the requirements of key stakeholders, including the Onkaparinga and Marion councils and the broader community. Government stakeholders include the Environment Protection Authority, the Department for Environment and Heritage, the Coast Protection Board, DWLBC, SARDI and the fisheries section of PIRSA.

The first stage of the assessment process requires the submission by SA Water of a formal development application, which will then be examined by the independent Development Assessment Commission. DAC will then decide which of the three levels of scrutiny available under the major development assessment process will be required. The commission will also provide guidelines on the issues that need to be examined in greater detail.

A document responding to the guidelines will then be produced by SA Water. A formal period of public consultation, including a public meeting, will then occur where the public and other stakeholders will have an opportunity to review the document and receive information about the proposal. All the public submissions received during the consultation period will then be considered and a response document prepared by SA Water. These documents will then form the basis of an assessment report that will be provided to me by Planning SA.

A recommendation will then be made to the state Governor on whether the proposal should be approved and, if it is to be approved, under what conditions. Major development status allows us to get the ball rolling on the assessment process so that this important project for the wellbeing of South Australia can be developed with public input and environmental scrutiny.

This desalination plant, I should stress, is not a stand-alone initiative, it is part of a $2.5 billion investment in water infrastructure to secure South Australia's water supply, which includes doubling the capacity of storage in the Mount Lofty Ranges and linking reservoirs in the north and south of the ranges. This latest step in the development of the desalination plant reinforces this government's commitment to securing a reliable water supply for South Australia.

DESALINATION PLANTS

The Hon. J.M.A. LENSINK (14:50): When will the information as to the extent of contamination on that site be made public?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:50): I did indicate something about the site, that is, that the exact site has not been determined. That is subject to negotiation between the government and Exxon Mobil. Obviously, not all of the site at Port Stanvac is contaminated; there is a significant buffer area around it. There will have to be negotiations between Exxon Mobil and the state government in relation to the exact site.

Regardless of the exact site, work can begin on the environmental assessment process. Obviously, a significant study will need to be undertaken—the level is to be determined by DAC, but it will undoubtedly be a comprehensive statement—and that can get underway regardless of the exact site. There are obviously other issues involved with the Port Stanvac site which will need to be further considered as to what happens ultimately to the rest of that site.

DESALINATION PLANTS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:51): The minister mentioned the doubling of the Mount Bold Reservoir. My supplementary question is: where is the water coming from to fill it?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:51): I am not the minister for water, but what I do know is that the Mount Bold Reservoir has two sources: one is the local catchment area and the other is the River Murray. The third response, of course, will be that ultimately if you do have a desalination plant you will need somewhere which can operate all the time, you will need to store it—

The Hon. D.W. Ridgway: What a joke!

The Hon. P. HOLLOWAY: Well, how do you think water gets delivered?

The Hon. D.W. Ridgway: How do you think? Are you going to desalinate water and put it in a dam to let birds crap in it? You're off the planet! You don't understand what you're on about.

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: What I do understand—

Members interjecting:

The PRESIDENT: Order!

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: The Leader of the Opposition will come to order.

Members interjecting:

The PRESIDENT: Order! If honourable members would like to waste their question time, that is fine by me.

DESALINATION PLANTS

The Hon. T.J. STEPHENS (14:53): Can the minister explain why there is no urgency with this particular project, given that in Western Australia it took 18 months from start to completion and delivery, and you are still talking about not until 2011? Where is the sense of urgency and why are you penalising people with water restrictions in South Australia?

The PRESIDENT: The honourable member will just ask the question, rather than make comment.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:53): Because this desalination plant will be operating in gulf waters, rather than in the Pacific Ocean, obviously I think it is appropriate that it should have a level of proper assessment. There are issues which need to be properly assessed. Regardless of the timing, the fact—

An honourable member interjecting:

The Hon. P. HOLLOWAY: We will all be dead, will we? The fact is that we have just been through the most serious drought that this state has faced in well over 100 years, and hopefully we are coming to the end of it.

Members interjecting:

The Hon. P. HOLLOWAY: Well, it's statistical. Members opposite go 'Oh'. That is a statistical fact. If the opposition has got to the stage where they just ignore basic scientific facts, then what hope is there for them?

DESALINATION PLANTS

The Hon. M. PARNELL (14:54): I have a supplementary question.

The PRESIDENT: We are not getting far today.

The Hon. M. PARNELL: In relation to the government's proposal to double the amount of storage in the Mount Lofty Ranges, will the minister confirm that that part of this project will also be the subject of a major project declaration and, therefore, require an environmental impact assessment?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:55): That is not part of the current scheme. However, obviously, any new structure like that would have to be subject to a very significant study. That goes without question; that goes with the territory. As my colleague the Hon. John Gazzola said, if we are talking about building down at Port Stanvac we should not take the lead from members opposite who, earlier today, asked questions about tin sheds that they want to put on the heritage list. No doubt we will have to face the problem of the opposition wanting to put oil tanks on the heritage list, as well—that would make about as much sense.

WORKCOVER CORPORATION

The Hon. J.A. DARLEY (14:56): I seek leave to make a brief explanation before asking the Minister of Police, representing the Minister for Industrial Relations, questions in relation to the WorkCover Corporation.

Leave granted.

The Hon. J.A. DARLEY: On 30 March 2006, the WorkCover Corporation issued a media release regarding its funding position. WorkCover's CEO, Julia Davison, stated:

> We have made a great deal of progress in the past 12 months in implementing changes needed to turn the scheme around. However, the benefits of those changes will take time to flow into the actuarial assessment and the financial result.

Further, she stated:

> We are confident we have the right settings in place to achieve improved service and results in coming years for injured workers and employers who fund the scheme, and we remain on target to achieve full funding by 2012-13.

My questions are:

1. Given the comments made by WorkCover, will the minister advise why there is a need for urgent amendments to the legislation?

2. Does the minister concede that a paradigm shift in the culture of all parties involved in the WorkCover scheme is essential and, if so, what action will be undertaken to ensure this occurs?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:57): They are matters for my colleague, the Minister for Industrial Relations. However, I think it should be clear to everybody that the WorkCover Board is ultimately responsible for the management of that scheme and has broad representation from unions and industry—the head of Unions SA and the head of Business SA are both on the board. The honourable member should read the statements they made at the time which clearly indicated that they did not believe that the system was achieving financial or fiscal stability. Obviously, in the 12 months since they made their statement it is clear that the deficit has been increasing rapidly, and that is why the government has taken the action that it has.

In relation to the other opinions the honourable member makes about culture, again, I think all of us who are aware of it would agree that the WorkCover scheme within the state has evolved in a particular way. It does appear to have cultural differences, if you like, that schemes in other states do not.

The bottom line is that the cost to employers is much higher in the state than in any other state, but the return-to-work level is much poorer than in any other state. Of course, those two factors are not unrelated. Obviously, if you have a poor return-to-work record the scheme will cost more. That is why the government is seeking to address it. Whatever one might think about the solutions to that, I would have thought that everybody now would agree that it is not sustainable to have a system that has a liability of—

The Hon. J.M.A. Lensink interjecting:

The Hon. P. HOLLOWAY: 'It wasn't under us,' the honourable member says, but I am mindful that, just before the 2002 election, the previous government dropped the rates.

Members interjecting:

The Hon. P. HOLLOWAY: Just before the election, the board—

Members interjecting:

The Hon. P. HOLLOWAY: That is right; it is a statement of fact. Just before the election it dropped the rates. Clearly, that was not sustainable. What this government will not do is play politics, which is the opposition's history—playing politics. That is historical fact. If the honourable member thinks that the government is going through this WorkCover exercise just because we are masochists or for the fun of it, he can think again. We are doing it for one reason only: the fiscal stability of the scheme is under threat and injured workers deserve a scheme that is sustainable. That is what the government is seeking to achieve.

WORKCOVER CORPORATION

The Hon. A. BRESSINGTON (15:00): I have a supplementary question. Is the minister aware that in 1997 the unfunded liability was cut by $6.9 million a month as a result of paying redemptions and that there was no need to slash injured workers' entitlements in 1997 in order to achieve that result?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:01): The answer is that we are now in 2008. WorkCover has a liability of over $800 million and rising. It is in the interests of all injured workers in this state that we have a scheme that is fiscally sustainable.

WORKCOVER CORPORATION

The Hon. A. BRESSINGTON (15:01): I have a supplementary question. Will the minister explain why the referral to return to work has now become the mantra of the need for change of this legislation when Mr Robin Shaw from Self Insurers of South Australia has said that there is no way we are measuring return-to-work rates accurately?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:01): We can debate these issues at great length. In fact, I look forward to it. The bill is on the *Notice Paper,* and nothing would delight me more than debating the bill this evening. We can do it this evening, because the bill is on the *Notice Paper*. I look forward to the honourable member's contribution this evening. We are happy to sit here all night if necessary in order to get the bill underway and examine the issues in more detail.

POLICE HANDGUNS

The Hon. T.J. STEPHENS (15:02): I seek leave to make a brief explanation before asking the Minister for Police a question about police equipment.

Members interjecting:

The PRESIDENT: Order! I ask the Hon. Mr Stephens to ask his question again.

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Police a question about police equipment.

Leave granted.

The Hon. T.J. STEPHENS: I know that members are well aware, and no doubt welcome the news, that our frontline police officers will now be equipped with semiautomatic firearms which will replace the outdated revolvers SAPOL has been using for many years. For several years the opposition has called for this to happen. I personally have been happy to wear the taunts and insults that I have received from the Police Minister, including names such as 'Rambo' Stephens (which I wear as a badge of honour).

Finally, our officers are following the example of other states and we are arming our police with up-to-date equipment. I note that the Police Association's new President Mr Mark Carroll—and I congratulate him on his appointment—has welcomed the move and has started to lobby the government for support for the introduction of tasers for police officers.

Recently, I was in the northern Pit lands. I was made well aware of the situation that confronts our frontline police officers there, often when they are alone or, if lucky, with another police officer. Often they are confronted by up to 100 angry citizens hurling stones. When I say 'stones', I am not talking about pebbles (because I have seen them on the roofs of buildings on the lands) but, rather, big rocks. A policeman has said to me—

The Hon. G.E. Gago interjecting:

The Hon. T.J. STEPHENS: What is disgraceful is the fact that they are left up there—

The Hon. G.E. Gago interjecting:

The Hon. T.J. STEPHENS: I say to the honourable member that you are putting their lives in danger. I know that the police minister has been recalcitrant in introducing semiautomatic weapons. We want to know whether the minister will ask the Commissioner whether tasers can be trialled in the APY lands to protect our serving officers; and will it take the government as long to support the introduction of tasers across operational policing roles as it did to back the introduction of semiautomatic firearms?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:04): First, I can only take up the point my colleague made by way of interjection. Members opposite took police officers off the APY lands and now talk about protection. There was no protection. What about the 2,000 people who lived there? What about the 2,000 residents of the lands who were left without any protection at all?

The honourable member was a little selective when he wanted the police to have a particular type of pistol—the Glock. The Police Commissioner and the department have done a comprehensive study—

The Hon. T.J. Stephens interjecting:

The Hon. P. HOLLOWAY: The Police Department has done a comprehensive survey and has come up with the Smith and Wesson MP40, which is a superior weapon if for no other reason than its safety. It is a better weapon. If we had taken the advice of the Hon. Terry Stephens and rushed in and bought Glocks, our police officers would have a more dangerous weapon in terms of its safety features than the one that ultimately will be purchased. The same argument applies to the taser, as it can be a dangerous weapon. I am sure that the honourable member is aware that Amnesty International has called for the removal of the taser. There is a big debate about the conditions—

The Hon. T.J. Stephens interjecting:

The Hon. P. HOLLOWAY: Some people have died as a result of these things. There are safety issues in relation to these weapons. The Commissioner has already indicated that they are issued to some police staff and they are looking at extending that, but there needs to be some limit to the operational equipment police officers have. They already have batons, handcuffs, spare ammunition, rifles and capsicum spray. One can keep on issuing endless pieces of equipment, but there must be a limit to what police officers physically can carry, and the equipment they have will vary from situation to situation.

If in the APY lands tasers are more suitable than capsicum spray or other weapons, then I am sure the Commissioner is the best person to determine that and I will trust his judgment in relation to those issues. I am happy to raise the point with him, but I point out again that the Commissioner has already indicated that he is looking at a more general extension of tasers. However, there has to be some limit to the amount of equipment police officers can physically carry. At the end of the day equipment is very important, but on most occasions police officers will rely on their training and skill at avoiding conflict, which should always be the priority of police officers.

POLICE HANDGUNS

The Hon. T.J. STEPHENS (15:08): By way of supplementary question, on the issue of firearms, was I ahead of my time or was the minister behind the times with semi-automatic handguns?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:08): Maybe my calling the honourable member Rambo was correct. Maybe it is the type of style, and he is a little bit keen.

COUNTRY FIRE SERVICE VOLUNTEERS

The Hon. B.V. FINNIGAN (15:09): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question regarding volunteer recognition.

Leave granted.

The Hon. B.V. FINNIGAN: I understand that recently an extraordinary milestone in terms of volunteering was reached by a Country Fire Service member. Is the minister able to provide the council with any details of this achievement and how it was appropriately commemorated?

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

The Hon. B.V. Finnigan: So you don't think 60 years with the CFS is worth commemorating?

Members interjecting:

The PRESIDENT: Order!

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:10): I thank the honourable member for his important question and interest in the Country Fire Service. As Minister for Emergency Services, I place on record how delighted I was to be asked to attend on Wednesday 9 April this year a small but very important ceremony at the Athelstone CFS brigade.

The Premier, the Chief Officer, representatives from the CFS Volunteers Association and local member Ms Lindsay Simmons MP joined us to celebrate 60 years of outstanding and continuous service to the CFS by Mr George Polomka. This is a unique achievement in the history of the CFS in South Australia. To commemorate this achievement, George was presented with a 60-year service plaque, and the Premier and I unveiled a plaque that dedicates the George Polomka Building at the CFS State Training Centre at Brukunga.

George started his service with the Jamestown brigade. He was a foundation member of what was then known as the emergency fire service at Jamestown in 1948. In 1971, he was appointed as a life member of the brigade. George also served as a councillor in the District Council of Jamestown and was its mayor from 1977 to 1982. George was also appointed as the first volunteer regional officer—

The Hon. B.V. Finnigan: They are all silent now—

The Hon. CARMEL ZOLLO: —absolutely—for Region 4, which is the largest CFS region in the state. These are now paid positions and are known as regional commanders. George played a key role in securing a new fire station for the Jamestown community and was instrumental in the development and design of new fire appliances with improved safety features following the 1983 Ash Wednesday bushfires. Members with any connection to the Mid North are no doubt aware of George's commitment to the community.

The dedication of the George Polomka Building is fitting, given the focus on training in George's service with the CFS. George now serves as administration officer with the Athelstone CFS brigade. The breadth of knowledge and experience that he brings to the brigade is seriously appreciated. I know that brigade captain Eero Haatainen certainly appreciates all that George brings to that brigade, and I thank Eero and his brigade members for hosting the evening.

It is hard to put into perspective what a 60-year volunteer commitment to community safety is, particularly bearing in mind that this is an emergency response capacity—in all weather, in the middle of the night, at weekends; all that being a CFS or emergency service volunteer entails. George's wife Elaine has herself been a member of the CFS for 33 years. So, between the two of them, they have 93 years of service. I ask all members to join me in congratulating George Polomka on this extraordinary achievement—and, most importantly, commitment—and thanking him on behalf of this parliament for his service.

Honourable members: Hear, hear!

The Hon. CARMEL ZOLLO: And I am not sure that George Polomka is even considering retiring.

MINING SECTOR

The Hon. M. PARNELL (15:13): I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about oversight and assessment of mining projects in conservation areas.

Leave granted.

The Hon. M. PARNELL: With the huge increase in mining exploration in South Australia, inevitably, more interest is being shown in our so-called protected areas under the National Parks and Wildlife Act and other public land. I understand that, despite this increased activity, the Department for Environment and Heritage has only one permanent employee, three contractors and one temporary position overseeing, reviewing and assessing all mining-related activities in the state over our important conservation areas (which, from memory, amount to some 21 per cent, or it might even be up to 22 per cent of the state).

For example, in November last year, Iluka Resources Limited lodged a detailed 800-page mining lease proposal for its Jacinth-Ambrosia Heavy Mineral Sands Project, which is in the Yellabinna and Nullarbor regional reserves, which are both managed by the Department for Environment and Heritage under the National Parks and Wildlife Act. We know that just this one

project has enormous complex challenges, including vegetation clearance, water management and the rehabilitation of the site after mining, and that projects such as this single-handedly could take all the resources available in the department. My questions are:

1. Will the minister confirm that there is only one permanent staff member employed by DEH overseeing, reviewing and assessing all mining-related activities in the state over our important conservation areas?

2. How many mining exploration licences exist in our National Parks and Wildlife reserves and sanctuaries?

3. Given the increase in exploration activity in our parks and reserves, will the minister now allocate more DEH staff to monitor this activity?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:15): I thank the honourable member for his important questions. Most of the details requested by the honourable member relate to operational matters, and I will need to seek those details and bring back a response. In terms of the exact number of staff involved in various responsibilities, I do not have that level of detail with me. However, I do know that DEH staff play a wide range of significant roles, and many are trained and able to participate in a wide range of different tasks, functions and roles; indeed, many of them are multiskilled.

I also bring to the attention of the chamber that, in 2006, the South Australian government committed to creating 20 full-time ranger positions over four years. Additional staff are being put into the system, and these rangers play an important role. So, we have committed to extra staffing resources.

In terms of the number of exploration licences, again, these are operational matters, and I do not carry those details with me; however, I am more than happy to take those questions on notice and bring back a response.

POLICE TATTOO

The Hon. R.D. LAWSON (15:17): I seek leave to make a brief explanation before asking the Minister for Police a question about the SA Police Tattoo.

Leave granted.

The Hon. R.D. LAWSON: The Police Commissioner announced today that Mr Todd McKenney will host the South Australia Police Tattoo this coming weekend. As you would know, Mr President, South Australians have been treated to extensive accounts of recent happenings in Mr McKenney's life. My questions are:

1. Did the minister have any discussion with the Police Commissioner about the matter of Mr McKenney's appearance at the SA Police Tattoo?

2. Irrespective of whether the minister had any discussions with the Police Commissioner, did the minister, or any person on his behalf, convey any view on this matter to the Police Commissioner?

3. What is the cost to South Australian taxpayers of Mr McKenney's attendance here and appearance at the South Australia Police Tattoo?

4. While Mr McKenney is in Adelaide, can the minister assure the community that South Australia Police will provide sufficient security to ensure that Mr McKenney does not encounter the same misfortunes he has experienced elsewhere?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:19): I have not personally spoken to the Police Commissioner. However, when I became aware of this matter, when I returned from overseas on Sunday, I asked my office to contact the Commissioner for his response in relation to this matter. I am aware that the Police Commissioner has considered the matter, and he has put out a statement today. In that statement, the Police Commissioner said:

> Mr McKenney will now perform at the Commonwealth Bank Police Tattoo.
>
> Mr McKenney's arrest and charges in New South Wales are serious matters and his situation presented us with a difficult problem to resolve. South Australia Police does not condone illicit drug use in any shape or form. That said, the current facts of this situation are New South Wales Police are investigating the incident and the substance in question has not yet been analysed.

Mr McKenney has also publicly declared his intent to vigorously defend himself against the allegations and it is not possible to predict the outcome.

Mr McKenney has been engaged as an entertainer, he is not representing South Australia Police, so we need to view his involvement with the Tattoo within that context. We also have considered that many people—

because it is not just a matter of how much he is paid—

The Hon. R.I. Lucas: Well, how much is he being paid?

The Hon. P. HOLLOWAY: Well, I do not know. I will take that part on notice, but let me make the point that, if it had not been done, there would be a question presumably of some compensation. So, if one is going to talk about costs, one needs to consider that as well. The police Commissioner's statement continues:

Mr McKenney has been engaged as an entertainer, he is not representing South Australia Police, so we need to view his involvement with the Tattoo within that context. We have also considered that many people have bought their tickets in good faith, to see Mr McKenney. Mr McKenney's appearance at the Tattoo should not be regarded as either public or tacit support from South Australia Police for Mr McKenney's circumstances in New South Wales.

I endorse the decision of the Police Commissioner.

MATTERS OF INTEREST

POLITICAL TOKENISM

The Hon. R.I. LUCAS (15:21): I want to speak about rampant political tokenism. Can I say at the outset that I accept that, on specific or ceremonial occasions, it is appropriate to acknowledge the traditional owners of our lands here in South Australia or, indeed, in other states and territories of Australia.

However, I believe that it has got to a ridiculous stage. If I hear the acknowledgement on certain occasions and in certain circumstances, I—and I suspect a number of other members of the audience—will either scream or heckle the speakers. We not only have the Premier and ministers but we also have senior public servants, we now have university academics at conferences, and we even have within government departments and agencies instructions to certain department and agency officers that the traditional owners of lands have to be acknowledged at committee meetings within those particular departments and agencies.

We also have the Police Commissioner doing so at various ceremonies, and also the Governor on recent occasions. As I said, it is now right across the board that traditional owners of lands are being acknowledged by speakers at particular functions, not just on traditional, specific ceremonial and important occasions, but just about any occasion you would dare to contemplate.

I suggest that if members look at what occurs in other countries around the world they will not see the Governor of California (or various governors), the President of the United States or, indeed, their equivalents in Canada acknowledging the traditional owners of the lands in Canada and North America on every occasion. So, for how long are we to go on? Is this to go on for hundreds of years?

The Hon. R.P. Wortley: Forever.

The Hon. R.I. LUCAS: Forever, as the Hon. Mr Wortley suggests; forever acknowledging the traditional owners of the lands.

The second area that I want to highlight in relation to rampant political tokenism is what we are seeing increasingly as the Australian population being described as indigenous and, for those who are not, non-indigenous. We hear the Premier and the Prime Minister, and now most sections of the media, describing the Australian population as comprising indigenous and non-indigenous.

I assume that I am described as non-indigenous and, on behalf of the non-indigenous community, I object strenuously to being defined and described as what I am not. I am an Australian. If you want to describe me as an Australian of Japanese Catholic background, so be it; that is a fair and accurate description, but I am not a non-indigenous Australian. I do not want to be described as a non-indigenous Australian. I do not want the Premier, the Prime Minister or, indeed, *The Advertiser* or the ABC—as I said in the examples of rampant political tokenism and correctness—to describe me and others as non-indigenous.

Again, I suggest that one looks at the experiences in Canada and North America, and, indeed, in New Zealand also. Canada has its Aboriginals, who are described as North American Indians or other correct descriptions of that section of the population. But, those who are not North

American Indians or Aboriginals are described as Canadians. In America, there are the Native Americans or American Indians, but those who are not are described as Americans. They are not described as non-Native Americans. They are not described as non-American Indians. In Canada they are not described as non-Aboriginals. And, in New Zealand, the indigenous population, of course, is known as Maori, but the non indigenous population is not described as non-Maori. They are described as New Zealanders.

I believe that the silent majority in Australia should, as I said, speak out if they agree with this particular view, and we should object to being described by those who want to label and use politically correct titles, as I said, as an example of rampant political tokenism in calling all of us non indigenous Australians.

Finally, I will not have time to speak at length about it but, as to the latest attempts to retitle some of Adelaide's major landmarks with Aboriginal names, I will reserve speaking about that issue for another occasion.

ANZAC DAY

The Hon. R.P. WORTLEY (15:26): On Friday 25 April we marked this country's most important national occasion—ANZAC Day. On this day, Australians young and old remember those who fought—

Members interjecting:

The Hon. R.P. WORTLEY: Mr Acting President, in talking about such an important issue, I would like to do it without the heckling and with a show of respect. Opposition members obviously have no respect for our indigenous people, but they could at least show some respect for our ANZACs.

The Hon. J.M.A. Lensink interjecting:

The ACTING PRESIDENT (Hon. B.V. Finnigan): The members on my left will come to order.

The Hon. R.P. WORTLEY: On this day, Australia's young and old remember those who fought and died in all wars from the Boer War in 1899 to the conflicts of today, including Afghanistan and Iraq. We also remember those who served on the home front supplying material and morale to the fighting forces, for theirs was no less a service to Australia.

ANZAC Day is more than a national holiday; rather, it is a fundamental Australian tradition. On this day, we remember in particular the first major military action fought by Australian and New Zealand forces—the landing at Gallipoli in 1915—and we honour the spirit of the original ANZACs. Every nation remembers some past event, some battle, or some defining moment in history. Our defining moment came at Gallipoli, a campaign which, if not an outright defeat, was certainly not a success.

It was at dawn on 25 April that the Australian and New Zealand troops landed at what has now become known as ANZAC Cove. Thousands of men would die in the hours and days that followed the landing at that beach. Although the Gallipoli campaign failed in its military objectives of capturing Constantinople and taking Turkey out of the war, the Australian and New Zealand actions during this campaign leave an intangible but powerful legacy.

The remarkable bravery and courage shown by those young men during that time will be long remembered. The young men of Gallipoli were the first ANZACs—ordinary young Australians doing their best in a campaign of intense ferocity. The casualties were horrendous.

Of all the battle fields on which Australians fought, it is the disastrous Gallipoli campaign that has come to symbolise the Australian soldiers' courage, endurance, initiative, discipline and mateship. The essence of Gallipoli was that, in the face of adversity and potential defeat, the Australian spirit triumphed. It is this Australian spirit that I talk about today, one which was born in the trenches of Gallipoli years ago, and one that has carried on through to future war efforts—World War II, Korea and Vietnam, and to those men and women on duty today in Afghanistan, East Timor, the Solomon Islands, Sudan, the Sinai and Lebanon.

To this very day, the spirit of the ANZACs' courage, endurance, initiative, discipline and mateship continues in times of conflict, danger and hardships such as cyclones, floods and bushfires. At these times, Australians come together to rescue one another, to ease suffering, to

provide food and shelter, to look after one another and to let the victims of these disasters know they are not alone.

It gave me great sadness to learn this week about Lance Corporal Jason Marks, Australia's most recent casualty of war. Lance Corporal Jason Marks was killed and four other Australian soldiers wounded in a fire fight with the Taliban in Afghanistan on Sunday 27 April.

Lance Corporal Marks joined the army in 1999, and was a member of the Army Medical Corps before transferring to the Sydney-based 4th Battalion (Commandos) in 2005. He had been in Afghanistan for only a few weeks. Lance Corporal Marks leaves behind a wife, a five year old son and a five month old daughter. Lance Corporal Marks is the fifth Australian to be killed in action in Afghanistan since 2002.

I, like many Australians, hold the traditions of ANZAC close to my heart. My great uncle was killed at the Somme in France during one of the great battles of World War I. I often go to the War Memorial on North Terrace with my young son and look at my uncle's name engraved on the wall. I get such a feeling of pride to see my son, who himself looks at the name with admiration.

It was at dawn on 25 April that Australians gathered together at memorials in cities, towns and suburbs to honour those men and women who gave their lives for their country.

BUSINESS ENTERPRISE CENTRES

The Hon. J.S.L. DAWKINS (15:31): I rise today to speak about the business enterprise centre network throughout Adelaide. First, I will list those various centres: the East Side BEC, which is based at Payneham; the Inner Southern BEC at Morphettville; Southern Success BEC, Morphett Vale; the Northern Adelaide BEC at Elizabeth West; the Inner West BEC at Thebarton; BEC Tea Tree Gully, which is based at the North-East Development Agency, St Agnes; the North-West Business Development Centre at Port Adelaide; and the Salisbury Business and Export Centre at Mawson Lakes.

On 2 April, I gave a matter of interest speech in this place about the regional development boards and the current resource agreement situation with those boards and the fact that the government has delayed the confirmation of resource agreements for the next five years. It has refused to confirm whether they will be increasing the funding for the boards, which has not been increased for 10 years, and it also refused, among other things, to confirm whether it will increase the amount of money that is provided to employ business advisers.

In that speech, I actually highlighted the fact that this is a situation which was very similar to what happened with the BECs a number of years ago, and I did not want that to continue. A number of years ago, the BECs were in the situation where they were kept hanging on without any certainty, and they were given 12 months extra funding only about five weeks before their funding levels would have run out.

On that occasion the business enterprise centres lost a lot of very good staff because people did not have the certainty of a job. If you get to 31 May in a year and you do not know whether you are going to have a job beyond 30 June, that is a fair incentive to start looking around for another position.

What happened the following year was that, while they were given 12 months funding at a late stage, they were promised that the following three years' funding would be determined very quickly. It was not determined until the following March, and a similar situation with the resultant pressures occurred.

I appealed to this government to make sure that this never happened again, but it is happening again. We are seeing a situation where I understand that the new three-year agreement for the boards will not be confirmed earlier than mid-May. The funding levels are proposed to be the same as for the previous three years, and there seems to be no indication of increasing the amount of money for business advisers, despite the fact that the BEC network around the country is sourcing these people at at least the mid-$70,000 salary, plus oncosts.

It is important that the government supports the BECs, which have claimed five of the six available national awards for excellence within the BEC national network over the past three years. It is true that selected BECs throughout Australia—I think 36 of the 100—are about to receive some federal funding, but this is provided against some very measured tasks.

I think the government needs to make sure that it supports these BECs. They do extraordinary work. The same minister who is responsible for the BECs is also responsible for

regional development boards. Minister Maywald needs to make sure that the Department of Trade and Economic Development takes urgent action to support the excellent work that the business enterprise centres do, and that she gives them the capability to undertake the role that they have been given and that they have performed right across their sectors of metropolitan Adelaide.

MERCY MINISTRIES

The Hon. I.K. HUNTER (15:36): I was shocked and dismayed at recent reports in the *Sydney Morning Herald* from journalist Ruth Pollard about the activities of a secretive religious organisation called Mercy Ministries, which takes in young women who have emotional and mental health problems and attempts to cure them through prayer and exorcism rather than through qualified medical or psychiatric treatment.

I am also concerned at reports that they are considering opening similar centres here in Adelaide. Mercy Ministries takes in women from the ages of 16 to 28, offering support from, in their words, 'Psychologists, general practitioners, dieticians, social workers and careers counsellors.' Another dimension to this is that Gloria Jean's cafes throughout Australia have been promoting this ministry through their outlets and, indeed, soliciting donations for them.

Gloria Jean's is the major sponsor of the program, a program which we should not be surprised has close links to the Hillsong Church in New South Wales. Gloria Jean's reportedly contributes 90 per cent of all moneys the ministries receive. On their website, Gloria Jean's describes the Mercy Ministries as:

> ... a national charity that provides a free residential program for women in crisis, aged between 16 and 28 years. At Mercy Ministries' homes, young women receive support and counselling to help deal with eating disorders, self-harm, abuse, depression and life-controlling issues.

However, the truth has been revealed by whistleblowers who say that they came out of the Ministries' program suicidal and more depressed than ever, convinced that their problems were due to demonic possession and satanic control.

I have no problem with church groups supporting the vulnerable in our community. Indeed, I admire them for doing so. However, when the services that they provide—with the continued backing of corporations such as Gloria Jean's—claim to be medical and psychiatric but are actually based on superstitious nonsense, we really must speak out.

This is the worst sort of American theological hooliganism which I had hoped we, in Australia, were immune to. Ruth Pollard's article details the experiences of three young women in particular who spent time in the program because of various psychological disorders. They were subjected to a regime of prayer and Christian counselling. They were subjected to exorcisms which were supposed to expel the evil demons which they claimed cause bipolar disorder, depression and eating disorders.

They were effectively isolated from the outside world in what Pollard calls 'a humidicrib of Pentecostal religion'. According to Mercy, 96 women have graduated from the program. However, what is does not say is that many others have been expelled with no support or follow-up care. According to reports published by the ABC, many girls have left the Mercy Centre suicidal after being told they were possessed by demons.

Naomi Johnson is a 21-year-old whose story is typical. It seems that when she entered the centre she was suffering from anorexia. Because her family did not have private health insurance, after much searching they found the Mercy Ministries website. After nine months in the Sydney ministry she was finally expelled, a broken woman. During this time she received no accredited psychiatric help and was subjected to exorcism to expel the demons of her anorexia. Upon expulsion (she claims for smoking a cigarette) Johnson was so crippled by the experience that she could barely function in the adult world. Ms Johnson's mother gives a harrowing account of how her daughter 'went into that place as a young lady and came back to us as a child'.

Another former Mercy Ministries participant, Rhiannon Canham-Wright, has commented as follows:

> Every time I had an asthma attack they told me to stop acting...I was punished; I had to do an assignment about why God believes that I was lying.

Those who sign up for the Mercy Ministries program are forced to sign separation contracts agreeing not to see those people who the Mercy Centre view as troublemakers; they are prevented from talking about their past; they are given scant medical or psychiatric assistance; and they are not allowed to get medical help for bipolar disorder, anxiety or anorexia.

Former participants have even told of being locked in their room and being told they were useless and not worth helping. This horrific level of control and manipulation even extends to forcing those in their care to ask permission before they do things as simple as taking a garbage bag to the bin or cleaning their teeth. Ms Johnson said:

> It was a lot to do with control and manipulation and it just shows that they did have that power over us.

If all this was not enough, not only are the organisers attempting to manipulate and indoctrinate innocent young women with their dangerous dogma, recent reports by the ABC show that they are now also attempting to make a quick buck out of it. The Mercy Ministries, according to the report, recently have been referred to the ACCC after fresh claims that many young women would enter the centres thinking they would receive free help whereas, in fact, Mercy repeatedly claimed carers benefits from Centrelink.

These events are not in the past. These horrific centres are still operating in Sydney and on the Sunshine Coast and there are plans to open similar centres in Adelaide. Mercy Ministries remains committed to continuing its operations despite intense controversy and, given these concerns, several corporations have acted quickly to cut their ties with Mercy Ministries but not Gloria Jeans coffee shops.

COMPUTER GAMES

The Hon. D.G.E. HOOD (15:41): Yesterday marked the next chapter in the violent antisocial video game known as Grand Theft Auto IV when the fourth chapter was released worldwide with much hype and controversy. I mentioned it in this place yesterday, so I thought I would elaborate on it for the interest of members and to give some detail of what the game contains.

The latest version of the game includes a lot of things that members might find interesting, including things which would be considered disorderly behaviour in public places. The game includes blood and gore, with the ability to choose body parts which you would want to shoot at or off. Famously, a previous version of the game enabled you to pick up a prostitute and then run over her after you had sex with her. One reviewer of Grand Theft Auto IV said:

> ...in-game sex offered up and drunk down like flavoured water.

This game is directed at 15 year old kids, Mr President. Another reviewer said:

> If you grow tired of running around town executing fellow crooks, you can spend some much needed R&R bashing cars into pedestrians.

At higher levels, in Grand Theft Auto IV the game's protagonist called Niko Belic engages in drug running and performs gangland assassinations.

The question arises time and again why we as legislators would allow material to circulate in the public arena that encourages antisocial behaviour of this nature, particularly that which is targeted at children. At what point do we stop allowing creativity or artistic expression (so-called) and say that society expects people to adhere to certain social standards?

In the year 2000 the American Psychological Association reported on two studies of over 200 students who engaged in frequent use of violent video games, finding that playing violent video games can increase a person's aggressive thoughts, feelings and behaviour in both laboratory settings and actual life. A University of Missouri-Columbia psychologist and his research team in 2005 found a brain mechanism that may link violent computer games with aggression.

As I said in my question yesterday, I think the government via SAPOL could easily conduct worthwhile video game research on arrested criminals, just like research on drug presence in arrested criminals. I think we would find fascinating causal connections. Surely, the teenagers involved in high-speed pursuits with police should be asked as a matter of research whether they have had exposure to these games.

Recently, in the United States a teenage gunman killed five and wounded 16 in Illinois in February this year. The gunman was reported to be 'a loner who...was obsessed with an ultra-violent video game'. The notorious shooting massacre at Virginia Tech just over a year ago in which 32 people died involved a mentally ill student who was obsessed with violent computer games, such as Counter-Strike. Just after the massacre, US psychologist Phil McGraw on CNN said:

> You cannot tell me—common sense tells you—that if these kids are playing video games, where they're on a mass killing spree in a video game, it's glamorised on the big screen, it's become part of the fibre of our society.

You take that and mix it with a psychopath, a sociopath or someone suffering from mental illness and add in a dose of rage, the suggestibility is too high.

These violent video games desensitise people—especially young people—to violence itself and reduce their respect for other human beings and general standards of social behaviour.

Of course it is not true for everyone, but it can be true for a minority of users. Australia does not need this game. I am glad it had to be toned down for our rating system in this market, but even watering down delivers no benefit to our society. I conclude by adding a note of congratulations to the Attorney-General, who recently was active in restricting the access of some of these games into the South Australian marketplace, and Family First wholeheartedly applauds that. I understand that he was the lone voice at the national meeting of Attorneys-General that held that line, and if it were not for his voice it seems that such games that were restricted would be unrestricted in Australia. Credit where credit is due: we commend him for those actions.

EDIBLE ESTATES

The Hon. B.V. FINNIGAN (15:46): I rise today to speak about edible estates. This is a concept or program that has arisen out of the United States to make use of front lawns for the purpose of growing vegetables. I have eaten vegetables, but I do not eat as many as I should and I am a negligent gardener, so I do not propose to lead the way in this regard. The use of vast swathes of lawn, particularly in the front yard, is a rather anomalous thing to do, particularly with our climate and the lack of sufficient water resources with which we are currently grappling.

The lawn as we know it has its roots in England and English society, and it spread throughout the areas that were colonised, including the United States and Australia. The cultivation of a patch of lawn, particularly out the front of your house, was a symbol of the wealth you enjoy. You were able to demonstrate that you were so well off and had so much land that you did not even have to use productive and fertile land for the growing of food but could use it for purely an ornamental purpose. Over time it has become an integral part of our culture, particularly in Australia where people are very attached to the quarter acre block and the idea of having significant lawn spaces.

The edible estates movement's goal is to use that space more productively, a goal that makes a lot of sense, particularly in Australia where we do not have the climate and rainfall enjoyed in Europe where these lawns began. Fritz Haeg is the founder of this group known as edible estates, and he wrote a book called *Edible Estates: Attack on the Front Lawn* from Metropolis Books. He looks at the historical context and says that, by the end of World War Two, over 80 per cent of American households were actually growing some of their own food, but when the strictures and rations imposed by war time ended that activity subsided and we went back to having an expanse of lawn.

I am not suggesting that all lawn should be ditched and turned into vegetable gardens, but the edible estates program is designed to assist and enable people to set up productive and edible organic gardens in their front yards. There are movements in Australia that look at similar proposals. If you go into your average suburb, particularly some of the newer housing developments that are designed with large lawn spaces, and get out your shovel, dig up your front yard and start planting carrots, you may find people being rather aggrieved and thinking that you are ruining the streetscape.

This project is proposing to take those front lawns and turn them into a semi-public area and, while they are still retained by the owners, they are used for a public purpose, namely, the organic growing of vegetables, herbs or other foodstuffs, and so on, which means the lawns go from being a purely decorative area, which requires chemical treatments to keep them running, to a productive area. This obviously has advantages, because it means that more food is being produced, and that is of assistance for the people who are doing it, and it means that land is being used more productively.

We know that there is a looming shortage of farmland and land available for cultivation across the world. The expansion of urban boundaries, the growth of golf courses and other land-intensive hobbies has meant that less fertile land is available for cultivation, and that is a problem—perhaps not so much in Australia but, certainly, it is becoming a problem across the world. So, the idea of using front lawn spaces to grow food is one that would address that problem.

The other advantage it has is that it becomes a tool for social networking, because what tends to happen is that people spend a bit of time in the morning, or perhaps after work at night,

working on their front garden, as are other people in the community, and it becomes an opportunity for social interaction as well.

GRANT DISTRICT COUNCIL

Notices of Motion, Private Business, No. 1 Hon. J.M. Gazzola to move:

That the District Council of Grant general by-laws made on 20 December 2007 and laid on the table of this council on 12 February 2008, be disallowed.

The Hon. J.M. GAZZOLA (15:51): I do not intend to proceed with this notice of motion.

FOOD (LABELLING—GENETICALLY MODIFIED PRODUCTS) AMENDMENT BILL

The Hon. SANDRA KANCK (15:52): Obtained leave and introduced a bill for an act to amend the Food Act 2001. Read a first time.

The Hon. SANDRA KANCK (15:52): I move:

That this bill be now read a second time.

In 1996, I introduced a bill to require in South Australia the labelling of consumer products that contained either genetically modified material or food that had been irradiated. The argument of the then Liberal government was that we needed nationally consistent legislation. Some 12 years later, we are still waiting for that nationally consistent legislation. So, I hope that in the ensuing debate on this bill I will not hear that argument advanced again.

The state government, to its credit, has just indefinitely extended the moratorium on GM crops in South Australia. I understand the government's position is that the moratorium will continue unless there are 'compelling reasons' to lift it. Federal legislation spells out that the states can make their decisions on genetically modified crops and products only on the basis of markets. That means that the only compelling reason to lift the moratorium some time in the future could be proof that there is a market disadvantage to our farmers in being prevented from growing GM crops.

There may well be health reasons for not allowing the production of GM crops, but we in South Australia (and, for that matter, in other states) are prevented from taking these into consideration in our decision making. I think that that is unfortunate. However, given that we are constrained in our decision making to consider only the market, the question arises of how an assessment will be made.

Currently, we know that South Australian farmers are getting very good prices for their non-GM crops. Some have argued that this price is not related to their crop's non-GM status; rather, it simply indicates a supply shortage in drought conditions. As it appears that such conditions will be with us for quite a few years ahead, particularly with the world food shortages that are now apparent, it will be very difficult to assess the reasons for any price advantage that is occurring in South Australia.

So, how are we to measure the market advantage or disadvantage of not having GM crops in South Australia? It is interesting to know that Foodland has announced that its Home Brand products will be GM free; Goodman Fielder, which is the largest user of canola products in this country, has announced its intention to use non-GM products; and the Tatiara Meat Company has announced that it will stay GM free.

So the market itself is now providing us with the opportunity to be able to monitor market advantage or disadvantage. However, that opportunity will be limited without informed consumer choice. If labelling were to be required on all products containing GM material, that informed choice would be possible and sales could be monitored, allowing comparisons of foods that do and do not contain GM material.

I sit on the cross-bench, and I am here to help the government by providing in this bill a mechanism to assist the government in determining whether or not there is a market advantage. This legislation will require the labelling of products that contain genetically modified material. The consumer will the be able to check the labels and be able to make an informed choice.

Once labels begin to appear on food products, the consumer would be able to decide, effectively, for or against non-GM products and the government would be able to seek information from retailers about the sales of comparative products, and farmers would also experience either an increase or decrease in demand for their non-GM crops.

It is possible, in passing legislation such as this, that we could see a challenge based on the Australian Constitution and the section on free trade in regard to labelling. I am aware that in the 1980s something similar happened in regard to our container deposit legislation, and we as a state managed to withstand that.

We now see that products in the container deposit field that are nationally produced have labels on them so that they apply to South Australia, advising that, if the product is sold in South Australia, there is a 5 cent deposit on it. Of course, in the other states, where there is not that legislation in place, it simply does not apply. So, effectively, the same thing could happen with the labelling of foods that contain GM.

The implementation of this bill would assist the government by providing the information it requires about market advantage or disadvantage, and it is the only real way of finding out. From my perspective, we have waited more than 12 years, with no sign of any advances, for nationally consistent legislation on the labelling of GM foods.

We have gone out on our own on container deposits. Last week, the Minister for Environment and Conservation announced that we will go it alone on plastic bags. So, I am saying that we should make it a trifecta and go it alone now on GM labelling and maybe we will be able to bring some other states, such as Western Australia and Tasmania, along with us.

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

PUBLIC TRANSPORT

The Hon. D.G.E. HOOD (15:59): I move:

That the Environment, Resources and Development Committee inquire into and report on the current and future public transport needs for South Australia, and in particular—

1. The development of an efficient and integrated public transport system incorporating all forms of public transport and necessary infrastructure improvements;

2. The needs of metropolitan and outer metropolitan regions;

3. The opportunities and impediments to increasing public transport patronage with a view to reducing greenhouse emissions and other relevant matters; and

4. An assessment and report of the feasibility and cost and benefits of the following proposals (to include the benefit to car users who remain on the road network, road crash cost savings, benefits to car drivers who shift to public transport, revenue, journey time savings, emission reductions, noise reductions, avoided car ownership)—

(a) the introduction of a high speed passenger train service between Adelaide and Angaston to service the Barossa tourist area, with a report on the feasibility of co-leasing or of purchasing the current line from Gawler to Angaston from GWA to restore rail coverage to Lyndoch, Tanunda, Nuriootpa and Angaston;

(b) the introduction of a passenger train service between Adelaide and Mount Barker via either the duplication of a broad gauge line from Belair to Mount Barker or conversion of the Belair metropolitan train line to standard gauge during scheduled re-sleepering works in such a way that the metropolitan line can reconnect with the standard gauge ARTC line from Mount Barker to restore rail coverage to Mount Barker, Littlehampton, Balhannah, Bridgewater, Aldgate and Stirling;

(c) the re-laying of the now defunct Northfield line to include 'Park and Ride' stations at Port Wakefield Road and Main North Road, and to provide high-speed passenger rail coverage to the suburbs of Gepps Cross, Pooraka, Walkley Heights, Northfield, Gilles Plains, Ingle Farm and Valley View;

(d) the relaying of the now defunct southern suburbs line from Reynella to Huntfield Heights (known as the 'Willunga line'), with an investigation as to the feasibility of using either the old corridor from Hallett Cove station, or of alternatively linking viable portions of the old corridor to a new line extending from Tonsley station to Reynella, Woodcroft, Morphett Vale, Hackham, and Huntfield Heights (and provide new coverage to Flinders University and Medical Centre, Darlington, and O'Halloran Hill should the line extend from Tonsley station);

(e) costs and feasibility of providing high-speed rail services from Adelaide to Aldinga via a restored Willunga rail line and the feasibility of re-using the existing but defunct Willunga line bridge over the Onkaparinga River as an alternative to a new extension and new bridge from Noarlunga to restore rail coverage to Seaford and provide new coverage to Aldinga; and

(f) the re-instatement of regular regional passenger rail services, including services to Murray Bridge, Victor Harbor, Whyalla, Mount Gambier and Broken Hill;

and such report to include any other factors or recommendations that the committee deems appropriate, along with a summary of submissions provided in response to a request for community input regarding each proposal.

South Australia needs a world-class high-speed mass transit system. It needs one for the wellbeing of the families of the state, for the economy and for our environment. Family First's proposal is that the families of Adelaide, and surrounding areas, need a world-class mass transit system, as I said. We propose a cost-effective, high-speed clean rail system for Adelaide, extending into rural regional areas. The crucial part is that it will use predominately existing defunct and disused corridors, all at a cost comparable to that of building one freeway.

The Advertiser some months ago had a very telling article in it, and I will quote from it, because it captures a sentiment that I believe is accurate: that Adelaide must think bigger and we must have a greater appreciation of where Adelaide will be in 2020. The article states:

Adelaide tolerates anti-progress attitudes that could hold back future generations incoming SA Great Chairman, Nigel McBride, has warned. The prominent business leader and the state's next key public advocate said he would 'refuse to listen to' further self-depreciation by South Australians about the state. He urged people to stop 'sweating the small stuff' and embrace development by taking a less conservative approach to such issues as infrastructure.

He went on to say, 'It is an attitude that says we don't want another 500,000 people here because we might have to queue up for something. The missing ingredient for our state is attitude and confidence', he said. He continued, 'With the mining industry about to peak, and the benefits of the ASC shipbuilding contract to kick in, Adelaide comfortably would enter a period of economic growth. We are a globally competitive city, but there is an inherent conservative culture, which means that the government has to be conservative in its decision making.'

He is referring to governments of either colour. South Australia needs to think big again. That is the sort of sentiment that this motion seeks to put in place in seeking an inquiry into how we move about our capital and, indeed, our state.

This motion expands on the one proposed by the member for Schubert in the other place, whom I commend on the motion. I acknowledge the truth of what members said on his motion on 2 April, and I advise that the Environment, Resources and Development Committee is now already committed to some form of inquiry into public transport. That motion was carried with support from both major parties, to their credit.

It is an absolute tragedy that in the 1950s we had a metropolitan and regional rail system in many ways superior to the one that we have today. It is a tragedy to see disused or dismantled railway tracks running right alongside our clogged roads as we now inch ourselves along to work each day.

The Torrens Transport CEO recently complained in the press that it was now taking its buses some 30 minutes to travel from West Terrace to East Terrace during the evening peak hour. It is also tragedy that we have disused and dismantled mass-transit infrastructure in this state at a time when people can barely afford petrol any more. What use are more roads when no-one can afford to drive on them? I was profoundly disappointed to note one website describing Adelaide as follows:

Adelaide has the worst metropolitan rail service in the nation and is the only major city in Australia without electric train services. In contrast to all other cities, there are no plans for any development of the services and, in fact, there are even mild threats of service reduction and route curtailment.

That is what people are saying about Adelaide's rail infrastructure on the internet.

Although the State Strategic Plan contains a target to increase public transport usage to 10 per cent of metropolitan weekday passenger vehicle kilometres—which I understand equates to doubling our public transport usage by 2018—we are frankly doing nothing, or very little, to achieve that target.

In Adelaide's relatively short history, we have opened and then subsequently closed 14 separate rail lines. The Willunga line, which we closed in 1969, had stops in Happy Valley, Reynella, Morphett Vale, Hackham, Moana and Seaford. What would we give today to still have a rail line that serviced those suburbs? The south, like the outer north, has been forgotten when it comes to infrastructure for decades. Thanks to the closing of that rail line, we are now forced to consider a new line from Noarlunga to Seaford at a cost of some $171.9 million.

The Mount Pleasant line was closed in 1963, servicing locations like Oakbank. Wouldn't it have been nice to be able to avoid the jam of the cars going up to the Oakbank races over Easter by just jumping on a train? I could go on. The Clapham branch closed in 1917; the Henley Beach

line closed in 1957; the Largs jetty branch closed; the Semaphore line closed in 1978; the Finsbury line closed in 1979; the Hendon branch closed in 1980, and on and on it goes.

What about the tragedy of the Bridgewater line closure in 1987? A federal government infrastructure project meant that this single line had to be converted to a standard gauge, which meant that our metropolitan trains, which run on broad gauge, could not operate beyond the Belair station any more.

How much would we give today for a rail service operating to the booming Mount Barker and Littlehampton subdivisions and the surrounding suburbs? The Northfield line would have a great deal of potential if it was not also closed in 1987 and then dismantled. The new Northfield sub-developments would have had a fast rail service that would rival the well received service from the new Mawson Lakes station, which has been very successful.

The Penfield branch closed in 1991. The Main North branch closed in 1982. There was a St Leonard to Grange railway, and even a railway line under Parliament House and King William Street called the jubilee exhibition line, which was closed way back in 1927. For members' interest, that line went under King William Street right next parliament and terminated near the zoo at the old festival grounds. The tunnel still exists, and at one stage it was going to be made into a pedestrian subway, but, unfortunately, it was filled up during the construction of the Festival Theatre presumably to substantiate the foundations.

Adelaide also had something like 27 separate tramways going as far out as Paradise, Glen Osmond, Magill and Burnside, not to mention the whole of the CBD. We are only now starting to re-lay some of the old tracks that were once pulled up down King William Street. Unfortunately, trams themselves are probably not the answer, although they are partially the answer. The Flexity Classic trams, most recently purchased, can be cramped and slow. There certainly seem to be problems with the airconditioning, and the tram lines in place share the road with cars, which makes them dependent on traffic conditions and traffic lights, of course.

For heavy high-speed rail users dedicated corridors would make them independent of road congestion. However, we are still cutting back on our already limited rail services. Greenfield station on the Gawler line has just lost 10 services a day. Dry Creek has just lost five trains a day. A number of stations have also been closed on the Belair line, including Millswood and Clapham.

Across the world, and indeed across our country, cities that have kept or rebuilt their railways, such as Melbourne and Sydney, as Australian examples, have kept a genuine alternative to family car use. They are popular and getting more so as the cost of fuel skyrockets, and people cannot find parks in our increasingly congested cities. People who are concerned about the environment quite rightly advocate for the much cleaner and greener public transport alternative, as does Family First.

Setting emissions targets is one thing, but if we do nothing to get cars off the roads then those targets will be difficult if not impossible to achieve. Fast and efficient public transport networks are seeing a resurgence across Australia, and indeed across the world. Melbourne is seeing a resurgence, and is a good example. It has invested heavily in public transport, like its city loop recently, at the same time as Adelaide was pulling up its rail lines. They are now reporting 189.4 million passenger rail trips per year, an incredible jump to a level not seen since the 1950s.

Since 2001 the number of trains considered overcrowded has increased by an incredible 700 per cent in Victoria. That is a short-term problem but in the long-term it is a good thing. The Victorian public transport minister, Lynne Kosky—and I note that they have a Minister for Public Transport, which we do not—a few weeks ago had to respond by adding 200 new train services each week just to cope with the demand.

China, of course, has spent a staggering $100 billion on its railways in the past few years. In contrast, since 1990 Adelaide has somewhere in the region of a constant 7 to 8 million trips by rail per year. Perth had a similar patronage back in 1990, but, unlike Adelaide, they invested in infrastructure, including electrification and spur lines to well-populated suburbs, and increased their patronage from 7 million—about the level of Adelaide—to some 30 million trips per year in only a seven-year period. A lot can be learned from the Perth experience.

I believe that if the infrastructure existed in Adelaide the uptake here would be comparable. People do want fast, clean and cheap transport to and from work, school and other social activities. In short, if you build it they will come.

In Adelaide the extra demand for our new tram service to North Terrace has stretched the infrastructure to breaking point. People cannot get on the tram—and, by the way, are not even able to validate their tickets if they can squeeze on in some cases—after about the Glandore station during morning rush-hour. I have personal experience of this.

Problems stemming from a poor choice of tram have masked what is a tremendously popular service. The idea is right but the implementation may not be so right. The new Mawson Lakes rail service is also tremendously popular, and I think that offers proof of the success of investing in rail infrastructure.

The state of our roads is one reason why public transportation would be so popular, but the solution is not simply building more and more roads.

A recent *Sunday Mail* article had the story of a reporter who accompanied bus driver Barry Forrestal on the 273 route from Adelaide to Paradise. He started driving some eight years ago with Torrens Transport, and he says that traffic is, in his words, 'very much worse' now. He also made the observation that there was often one person per car clogging up the roads.

Petrol prices are also escalating at an alarming rate, and the forecast is that they will continue to do so. Members may be surprised to hear that 10 years ago crude oil was only $10 a barrel, which seems laughingly cheap now. Last week crude oil hit an all-time high of $119.48 a barrel, a jump of almost $20 a barrel since January alone.

OPEC's president announced on Monday that prices could foreseeably rise to $200 a barrel within two to three years. This is because demand for oil across the world is frantic at a time when production of oil is no longer increasing to keep pace. Car sales in Russia, for example, were up 60 per cent last year, 30 per cent in Brazil and 20 per cent in China (a population of 1.3 billion people). Further, the $2,500 Indian Tata car was recently launched, allowing literally millions of Indians to own and drive a car for the first time and, of course, consume more of the world's oil.

In Australia petrol prices are now, for the first time, above $1.50 per litre, and this is at a time when the Australian dollar is still remarkably high. How will we cope when the Australian dollar falls? When the Australian dollar falls you will see petrol become more expensive at the pump, of course. How will South Australians cope with petrol at $3, $4 or even $5 per litre? How will our economy continue to operate at its current rate if that happens?

Monday's *Advertiser* warned of even higher petrol prices as emissions trading schemes start to kick in. The study reported talked about an extra cost of some $1,300 per year for families in outer metropolitan suburbs. Unfortunately, the people in some of our more disadvantaged outer metropolitan suburbs are both the biggest losers when it comes to higher fuel costs, and at the same time the least able to afford those sorts of price increases.

We are not doing anything about petrol availability and price at the moment but I, for one, do not want to be asked in 10 years what I did about this problem or what I had to say about it and have no answer. With a 38 per cent excise tax on every litre of petrol, it is a further impost to families.

Right now our focus should be on building real public transport infrastructure in this small window of opportunity we have before petrol prices and environmental concerns become overwhelming for the families of South Australia, if they are not already. The environmental benefits alone are worth it. Our calculations put the greenhouse gas emissions saved from a revitalised high-speed rail system in Adelaide at approximately 200,000 to 300,000 tonnes of carbon dioxide per year.

At a local level, using data from the proposed Seaford extension, pollution in the form of particles, nitrous oxides, non-volatile hydrocarbons and carbon monoxide will also be reduced, with added health benefits for those living in the transport corridor. Pollution would be even less if the system were to be electrified, which is something that must happen at some point in time. I remind members that, of all Australian capitals, Adelaide alone is still running the noisier, slower, more polluting diesel trains. I commend the Liberal Party for being proponents of rail electrification.

In summing up, I would now like to look at the specific lines. The first one is the Barossa line. Moving on to the specific proposals, I think the member for Schubert put the case well for the Gawler line again extending to the Barossa Valley in his original motion. The broad gauge line already goes there. In fact, apart from some track maintenance there would be nothing physically stopping TransAdelaide today from turning off at Gawler and ending up at Angaston.

An agreement on paper is the only substantial thing that stands in its way, because that line has now been sold off to the GWA rail company. On that point, it is surprising that such a valuable piece of state rail infrastructure was sold to a private overseas-based company. It has resulted in incredible headaches for companies like the Barossa Tourist Train that want to run a limited passenger service to the region.

The South Australian Tourism Commission desperately wants a rail line to the Barossa Valley. It has pleaded for a passenger train to the area for some time. It wants it because the Barossa Valley is perhaps our premier tourist attraction in South Australia and we have virtually no public transport to it, which is quite incredible. How many major tourist attractions around the world would have little or, in fact, no public transport available?

A 90-minute or less rail service to the Barossa would do wonderful things for the region's tourism, and yet today the line remains restricted to freight. I have an email from the Barossa Valley Information Centre, which states:

> We have so many inquiries regarding train travel into the region from visitors...and I am aware of many locals who drive into or drive to Gawler to catch the train daily.

The member for Schubert, who now finds himself having to take a train to the city, described recently seeing dozens of commuters getting off at the Gawler station to drive the rest of the way to the Barossa, so this is something which is needed for tourists and people living in the area. Over the past two years, visitors to and residents of the Barossa have signed over 5,800 petitions for a return of rail services to the area. That is a large number of submissions and, in my opinion, makes the submission worthy of investigation by the committee.

I know that the government has looked at this proposal in the past, and I am aware that a report was prepared approximately three years ago but never released. I call on the government to release that report so that the residents and tourists to the Barossa know where they stand and whether or not they are likely to have rail services restored any time soon.

It is also important that the government decides very quickly what to do with the old Barossa line. I understand that Angaston Subaru has expressed an interest in putting a shed at the old station and there are, apparently, surveyor's pegs already dotted around the line as we speak.

Turning to Mount Barker and the Bridgewater line (now called the Belair line because it no longer goes to Bridgewater, of course), it was opened back in 1883. It is not an ideal route because it winds its way through the hills around Blackwood. The line has double track to Keswick and then crossing loops to Goodwood, Mitcham, Sleeps Hill and Blackwood. Trains are frequently delayed on the track because not enough crossing loops are provided on the route.

In the past, there were two tracks to Belair. However, in 1995 one of those tracks was converted from Adelaide's broad gauge to standard so that we could have one standard national gauge line fitted from Adelaide to Melbourne, allowing the Overland to travel three times each week and several interstate freight trains. At the same time, the stations at Millswood, Hawthorn and Clapham were closed—tragically.

Although the route it is not completed directly to the city, buses from Mount Barker, like the 840 to Adelaide, now already take over an hour and the buses are cramped and often get stuck in traffic. According to a 1984 timetable I have for the Bridgewater line, there were services reaching Bridgewater from Adelaide in under 50 minutes. This is before the closure of the three stations and, taking electrification and concrete sleepers into account, a train could reach Mount Barker within a comparable time frame; certainly less than an hour and without the same threat of traffic jams, the use of petrol, and the general stress for people who are driving.

The difficulty with restoring services to Mount Barker is that beyond Belair we now have only a standard gauge line. To reinstate services there are only two options: there is one broad gauge and one standard gauge line to Belair, with only a single standard gauge line extension to Mount Barker and on to Melbourne. The cheapest option, in the short term, would be to convert the second line from Adelaide to Belair from broad to standard gauge during the concrete re-sleepering, which should occur next year, so that there are two standard gauge lines.

The sleepers are already designed to allow either standard gauge line, and conversion during re-sleepering would be the most cost-effective time to change the gauge. As I said, this is happening next year, anyway. We would then have a consistent standard gauge line from Adelaide to Mount Barker with high-quality concrete sleepers, which has already been budgeted for, allowing higher operating speeds.

There are two downsides to this option: first, the standard gauge line from Adelaide to Mount Barker is owned and operated by ARTC and agreement would have to be reached with it for use of the single line from Belair to Mount Barker; secondly, TransAdelaide's rolling stock is all considered for broad gauge use and, if some were converted to standard gauge, it would not be able to operate on other lines in the network.

The other and more costly option in the shorter term, but not necessarily the longer term, would be for a second broad gauge line to be constructed from Belair to Mount Barker. The committee may have to examine whether or not this is feasible. This option may be more costly, but it will provide one continuous broad gauge line all the way to Victor Harbor.

The Northfield line was a spur of the Gawler train line, branching off just north of the Dry Creek station near Grand Junction Road. It crossed Port Wakefield Road and Main North Road and then crossed through Pooraka, at the rear of the Yatala Labour Prison. It existed for about 130 years of Adelaide's history, from 1857 until the last passenger service ran on 24 July 1987. It was still used for some freight until, unfortunately, it was ripped up about 10 years ago.

In much the same way as the Willunga line was ripped up shortly before housing developments were founded along its route, we are now in the process of developing the Northfield area as a major housing development and, yet, the train line is gone. The line would have serviced well established suburbs like Pooraka, Northfield and Walkleys Heights and could have been extended to Valley View relatively easily.

These are all public transport black spots in between areas serviced by the Gawler train line and the O-Bahn which at the moment have little access to public transport. I understand that the whole Northfield corridor remains intact apart from one temporary worker's shed over a small part of the old line. Relaying a section of track should be reconsidered. Large Park'n'Ride stations could be set up on vacant land where the track crosses Port Wakefield and Main North roads, and possibly also Briens Road.

I can imagine that people living north of the line would welcome the opportunity to get out of their cars before they hit the city rush-hour traffic and take the last part of the trip by train, and also save on petrol and parking costs. We could even place large electric signs on the road, advising drivers how long it will be until the next train, and encouraging them to park their cars and finish the journey by rail. That is a proposal that I will put to the committee.

Looking at the Willunga line—the old southern suburbs service–my 1955 timetable of this service had trains leaving Adelaide going to Willunga four times a day, winding through what was then the sparsely populated southern suburbs of Papta (now called Sheidow Park), Happy Valley, Reynella, Morphett Vale, Hackham, Noarlunga and Seaford, and then through McLaren Vale and, ultimately, Willunga.

The main aim in those days was to get a train to Willunga, but the aim today would be to get a train from the densely populated southern suburbs into and out of the city. The story of this line is nothing short of a tragedy. Just as the outer southern suburbs were springing up in 1969 and becoming more and more populated, ironically, the line was closed. Then, rather than keeping the infrastructure in place, the line was completely pulled up just a few years later in 1972. The only good news about this line is that the corridor is still reasonably intact, apart from a recent decision by Marion council to put a connector road on the old corridor between Hallett Cove and Sheidow Park. Most of the old line is now used as a pedestrian and bike trail, the so-called Coast to Vines Trail.

One problem with the Willunga line is that it is not direct and that there is a sharp detour to the west at O'Halloran Hill, connecting to Hallett Cove. Given the construction in that area of the connector road, another often discussed proposal has been to extend the line straight down the hill parallel to the Southern Expressway and past Darlington and Flinders University and the hospital, linking up with the Tonsley line. A Park'n'Ride station could be set up opposite the Flinders Medical Centre and a passenger bridge could connect the station with the hospital and the university. I am sure that would be a welcome addition for southern suburbs residents and people working and living in the area.

Without Mitsubishi the Tonsley line is at risk of being yet another one declared as unnecessary. This proposal would see it again serving a major purpose for the state and providing a direct, fast rail line to the neglected outer southern suburbs via the old corridor. Many of the bridges of the old corridor still exist, although some have been filled with rubble. The line may have to be straightened and the incline reduced in some areas. However, a bridge from this line extends

over the Onkaparinga River, and I am informed that there is nothing structurally unsound with the bridge; it is the second bridge to be constructed over the river.

The first bridge lattice girder (built in 1914) had three spans each of 70 feet. For some reason there were problems with that bridge. The current bridge (built in 1930) was made to last with riveted plate-girder construction founded on concrete abutment piers driven deep into the bedrock—and it is still there. I am told that it is structurally very sound but that it needs a coat of paint and some water pipes (which recently have been put over the bridge) removed.

If that bridge can still be used—and, of course, it would need to be confirmed by engineers, but anecdotal reports from people in the industry suggest it could be—we have made an immediate saving of $38.5 million for the construction of the new bridge and $13.2 million in grade separation for the proposed new bridge. All this can be put towards building the new section of line from Tonsley station to the old corridor—and it would go a substantial way towards paying for it.

A fast train service from these areas might even see duplication of the Southern Expressway unnecessary in the future. Of course, that would need to be debated, but it would certainly relieve pressure on the road, anyway. At the very least it should enable the Southern Expressway to become bidirectional during off-peak periods, such as in the middle of the day, during the night and at weekends. Currently, even during quiet times of the day, the entire road allows traffic only in one direction which, while it is useful to have that service, is certainly annoying at times to residents of the south.

The reinstatement of regional services should also be considered. In years gone by it was possible to take rail to most regional towns in the state. Now commuters have to deal with trucks and drink drivers on the roads if they want to venture outside the metropolitan area. Sadly, large numbers of our young regional men and women are killed on the roads each year. I am sure that many families in the bush and well-established country towns would welcome a fast, efficient rail service into the city.

It is very disappointing that Australian National has worked over the decades to purposely degrade regional rail transportation. When reading a rail magazine recently I noted a complaint from someone intimate to the decisions of the AN board. The article states:

> The AN board was not happy about the positive performance of the passenger business. The board's aim was to get rid of the business at any cost and for political reasons it was considered that the electorate would oppose the sale of a profitable government-owned business. The aim therefore was to make the passenger business appear unfavourable and to be making a substantial loss. When an advertising campaign was launched over the Christmas period, Chris was called in to explain why the business was being advertised. The board made it clear that there was not to be any advertising of the AN passenger trains.

In essence, and despite the fact that the regional passenger services were performing well, there was to be no advertising of them and the aim was to make them appear unprofitable. That sort of decision making is very hard to understand, indeed.

I believe that there is substantial popular demand for a rail service to our regional towns, including Murray Bridge, Mount Barker, Whyalla and Mount Gambier and extending to Broken Hill. Currently, the entire railway line from Mount Barker to Victor Harbor is being maintained by a band of SteamRanger volunteers. They are poorly funded and require more assistance. They run a limited tourist train service between those towns, but I understand that the trains are not operational at present for funding reasons.

What they run could not be categorised as a passenger service. Given the costs and limited timetable involved, it is mostly a tourist service. Nevertheless, they should be commended for the terrific work they do, and I thank them for information provided to us in support of this motion. I can advise that the SteamRanger volunteers to whom I have spoken are very much in support of services returning—at least to the Mount Barker station. Some of our other railways have been handed over to volunteers, as well, including the very famous Pichi Richi railway which runs from Port Augusta to Quorn—a railway on which I myself have travelled. Again, the people responsible are doing an excellent job.

As I have already said, if a broad gauge line could run to Mount Barker then we would have a connecting rail line all the way from Adelaide to Victor Harbor, also servicing Strathalbyn and Goolwa. Alternatively, if we were to convert the second Belair line to standard gauge then passengers would need to change trains at Mount Barker but the same would be achieved. Indeed, I have a timetable from 1955 which shows that a 320 train went from Victor Harbor to Adelaide with

a 325 going in the opposite direction. There was another train—the 807—which returned to Victor Harbor each night.

The Victor Harbor Road is notoriously dangerous. I think a lot of South Australians would take up the option of a safer, more relaxing scenic trip to Victor Harbor if the opportunity was there. The trip on the old 1955 train took several hours, but from a road safety point of view I think many parents would like the option of sending their teenagers to Schoolies Week by train rather than in the back of a mate's car. Of course, modern trains would be much quicker and comparable to, if not quicker than, driving a car.

The report into the Seaford rail extension talks about $25 million in savings from reduced road crashes if that line proceeded. The report then adds that cold number into the cost/benefit analysis before deciding to put the Seaford extension on ice. But good government should not be about numbers and a balance sheet all the time. The $25 million worth of road crash savings equates to real people who could be saved from death and injury on our roads through the implementation of a safe mass transport system, even for a limited extension to Aldinga.

There was a good opinion piece in *The Advertiser* on Monday. It talks about our road toll which, unfortunately, rose from 117 in 2006 to 125 last year. I ask: what better way to reduce the road toll than to get people off the roads onto comparatively safe, clean, efficient and cheap public transport?

I encourage the committee to speak to the residents of some of our larger rural towns and simply ask them whether they want a rail service from their town to Adelaide. They may not be surprised, but I think they will hear very positive responses to that question—certainly for return services to regional cities in our state. Many people in more distant country towns can no longer afford to drive to Adelaide, especially the elderly who might find it difficult to drive.

I think the committee will get the same answer if it asks tourists and constituents from the Barossa Valley, Mount Barker, the southern suburbs and the newer developments at Northfield. I have very little doubt that the resounding answer to the question would be yes, whoever is asked.

I believe that Adelaide needs a fast, environmentally clean and cheap mass transport system. The Family First proposal has outlined some avenues of inquiry for providing such a system in a cost-effective way to government. I commend the motion to members.

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

FAIR WORK ACT

Adjourned debate on motion of Hon. R.D. Lawson:

That the regulations under the Fair Work Act 1994, concerning clothing outworkers, made on 18 October 2007, and laid on the table of this council on 23 October 2007, be disallowed.

(Continued from 2 April 2008. Page 2242.)

The Hon. A.L. EVANS (16:30): I rise to speak on this important issue. I recall the debate that occurred in 2004 and early 2005 when the Industrial Law Reform (Fair Work) Bill was debated and the lobbying I received concerning outworkers. The intention at that time was for there to be regulations specific to outworkers, and it is amazing now that in late April 2008 we still do not have regulations and those that we have we are being asked to disallow. I can therefore understand the desperation and frustration of some people involved in the regulation-making process finally to see some regulations made.

We have received submissions from a number of groups and individuals, but perhaps the one I find most interesting is a submission that the Office of the Employee Ombudsman made. It is unusual in my experience for the Ombudsman to lobby on a bill, and I feel this carries considerable weight in this debate. We could argue whether it is appropriate, but it is a fact that Mr Brennan has lobbied us to oppose the disallowance, so this is a very important matter.

Family First has been told all sorts of things about these regulations. We are told on the one hand by the regulation supporters that they will have minimal impact upon retailers and manufacturers. Currently the Australian Retail Association supports the code. Furthermore, the award and contractual requirements for outworkers are such that these minimal standards impose no additional burden on business. On the other hand, some of the regulation opponents claim that outworkers do not exist or that they are well looked after and do not need this code of practice. The same supporters claim that more time and consultation is required, but as I said from the outset it is

now more than three years since we passed the bill that created the act under which these regulations have been produced.

Family First is satisfied that outworkers are being exploited in South Australia. Our consultation on the original bill and revisited during this debate demonstrates and satisfies us that this is the case. We are concerned about the standover tactics used by those who organise outworkers to produce goods such as clothing and the substantial cash economy that can exist in this industry. Outwork tends to happen in people's homes and therefore affects family life arguably more than work at different premises. Sometimes people providing the outwork visit the family home looking for the finished product or offering more work. The lines of work and family are distinctly blurred for outworkers, and an unhealthy working environment makes for an unhealthy family environment, and potentially a situation where the family is intimidated from saying anything against the outwork provider because, to use a phrase, 'it cuts a bit too close to home'.

Family First stands up for those without a voice, and in circumstances of a power imbalance that can occur in this industry there is a strong risk that there will be people without a voice. Outworkers, whether exploited or not, comprise a significant number in South Australia. Family First understands that, Australia wide in 2005, ABS data showed that there were 724,000 outworkers either full or part-time, with approximately 50,000 in full-time employment. South Australia's per capita share of that is significant.

The ATO data was different and suggests a lesser figure, but when you consider the cash economy I was referring to it is little wonder that there are fewer outworkers on the ATO books than on the ABS books. These regulations impose minimal standards for outworkers for the outwork industry. Family First is satisfied that these minimal standards will not be a huge impost on business. We are not giving outworkers—some significant part of them being new arrivals to our country—a fair go if we fail to provide minimal protections for them and their families. Family First supports the regulations and therefore opposes the disallowance.

The Hon. SANDRA KANCK (16:35): In moving the disallowance of these regulations the opposition is effectively saying, whether intentionally or not, that it is okay for outworkers—usually the newest wave of migrants in this state—to make clothes for us to wear at a pittance and at great sacrifice to themselves, and the Democrats are not okay with that. So often these people are marginalised. They have come to Australia penniless as refugees. They are people at a disadvantage to begin with because they do not speak English, do not belong to a union and some will have fled from countries where union activity is not allowed. Such people are unrepresented and therefore can be pushed around and hoodwinked. Around 99 per cent of them are women, and presently they are paid for their piecework around $3 to $4 a hour. That is less than a high school student gets for babysitting. For $3 or $4 an hour they may have to enlist the help of their children to finish their quota of clothes in time to hand them over to the person who has farmed it out to them. The question that arises for me is how close we come to child slavery in this state if we allow this to happen.

The nub of the Opposition's argument is that retailers will have the inconvenience of having to supply quarterly returns to show the source of some of their products. They will have to disclose information about the contract for the production of the clothes they sell. I point out that, these regulations, are a move towards a nationally consistent position. South Australian businesses will not be disadvantaged by it relative to other states.

The only businesses that might be disadvantaged will be those that have been involved in the exploitation of these women, and the outcome of that is that those who are dedicated followers of fashion might have to pay a few more dollars each for the garments that they choose to buy. It means that the good guys—in this case, the ones who have not been exploiting these women and may have been at a competitive disadvantage as a consequence—will now be located on that geographical location much vaunted by the Liberals, that is, the level playing field.

The mover of this motion (Hon. Robert Lawson) quoted from a letter from Business SA in which the Chief Executive, Peter Vaughan, claimed that there has been 'inadequate consideration and assessment of the need and impact of the introduction of these regulations'. That is very peculiar. Stephen Brennan, the Employee Ombudsman, came and spoke to me and he said that Business SA was on the outwork group that was responsible for the recommendations that have led to these regulations.

I will read out a list of who was on this group: Bill Bourke from SafeWork SA; Stephen Brennan from the Office of the Employee Ombudsman; Lucy D'Aloia from WorkCover; Sandra Dann from the Working Women's Centre SA Inc and contact for Fair Wear; Patricia

Donovan from the Dale Street Women's Health Centre; David Frith from Business SA (so, it was represented); Michelle Hogan from SafeWork SA; Mark Hulme from SafeWork SA; Michelle Gilbert from the Office of the Employee Ombudsman; Ros Gumbys from the Working Women's Centre; Janet Giles from SA Unions; Michael Lonie from the Australian Retailers Association (and one might consider that group to be fairly representative of a retailer's point of view); Igor Nossar from the Textile Clothing and Footwear Union of Australia; Brenda Rolls from the Workplace Ombudsman's office; and Yvonna Zurawska from the Migrant Women's Lobby Group.

So, quite clearly, Business SA was a part of the group. Stephen Brennan told me that, within the meetings of the group, at no stage did Business SA indicate any opposition—in fact, it did not even indicate that it had problems with the whole issue.

I think it is also worth while looking at the pamphlet that has come out called New Clothing Outworker Code of Practice. It is produced by the government of South Australia, dated 2007, and it has logos of the Government of South Australia; SafeWork SA; Business SA, the hive of industry; SA Unions; the Working Women's Centre SA Inc.; the Australian Retailers Association; TCFUA; and the Office of the Employee Ombudsman. The pamphlet states:

> This brochure is a joint initiative between SafeWork SA, the Working Women's Centre, the Office of the Employee Ombudsman, the Dale Street Women's Health Centre, the Australian Retailers Association, the Textile, Clothing and Footwear Union of Australia, SA Unions and Business SA.

It further states:

> The Code of Practice has been made as a regulation under Section 99C of the Fair Work Act 1994 and promotes the fair treatment of outworkers consistent with best practice in the clothing industry. The Code of Practice applies to persons engaging in manufacturing, distribution and retailing of clothing products supplied in South Australia.
>
> Under the Code of Practice, clothing retailers, suppliers and contractors are now required to provide and maintain records relating to the engagement of outworkers, and show how clothing has been produced and supplied within South Australia.
>
> The Clothing Outworker Code of Practice is closely aligned with the Fair Wear Campaign, which aims to eliminate the exploitation of outworkers in the Australian clothing industry, and encourage all Australians to think about where and how their clothing is produced.

I remind members that it appears to have been signed off by Business SA and also the Australian Retailers Association, unless those logos have been used without their permission. Business SA might want to advise the parliament, through the Hon. Robert Lawson, whether that is the case.

I have not received any communication supporting what the Liberals are doing. However, I have received opposition from Uniting Care Wesley, the International Women's Day Collective, the Office of the Employee Ombudsman, the Working Women's Centre, the Fair Wear campaign, the Australian Services Union and assorted individuals. One of the individuals who wrote was a woman by the name of Christine Gates, who said that she was the outwork project officer at Dale Street Women's Health Centre between 1995 and 1998, and I will read a little of what she has to say about her time there. She said:

> I worked closely with a Vietnamese project worker who talked to many outworkers in her community. They shared with her their stories of long hours of work, of children helping parents so they could meet impossibly short deadlines, of respiratory problems associated with working with materials in poorly ventilated and hot rooms and poor light. She found that some outworkers were owed up to $3,000 in wages that contractors refused to pay. I talked with an Australian Anglo woman sewing pillowslips in batches of 5,000 for as little as $40 a day with extremely short turnaround times. The manufacturer denied publicly that they used outworkers. I talked with a Filipino outworker sewing school uniforms who asked for 20 cents an item more. She was then considered a troublemaker and received no more work. This is the tip of the iceberg.
>
> From my experience I believe the school uniform industry and bridal industry has extensive exploitation of outworkers. As a project officer in a community health service I was able to get closer to the front line of outwork than most yet I only scratched the surface. The more I learnt the bigger the problems and issues became. This SA Outworker Code of Practice offers some much needed legislative protection for sewing outworkers. It recognises their plight and offers some legitimate systemic processes to address the exploitation of outworkers and associated problems, including health issues. The Outworkers Code of Practice has been working well in New South Wales and Victoria for a number of years. By establishing the Code in South Australia it also sends a clear message to the wider community that this form of exploitation is unacceptable in Australia.

In his speech, the Hon. Robert Lawson referred to his meeting with Stephen Brennan, the Employee Ombudsman, and was somewhat scathing (as I read it) that Mr Brennan was not able to give exact figures for outworkers in South Australia and that he had referred only to an academic study indicating that there were 300,000 outworkers across Australia. It takes a little bit of mathematics to work out that, on a pro rata basis, probably about 25,000 of those would be in

South Australia, and I wonder what difference the numbers actually make. To my mind, 25,000 is 25,000 too many. I wonder whether the Hon. Robert Lawson thinks that there is an acceptable figure.

It is difficult to get exact figures, because these women are part of a hidden workforce. The very reason we cannot get such hard data is the same reason they are able to be exploited: they are migrants, and many of them come from a non-English speaking background. They face the strangeness of a new country, and for refugees that might even lead to fear. So, they choose to stay at home. They lack knowledge about and access to child care, and that is likely to exacerbate this so that, when someone offers them work at home, it would seem like a solution.

Outworkers also may not reveal their job status because they are getting cash in hand without paying tax, and they may fear that the Australian Tax Office could descend on them. Alternatively, some of them are in receipt of Centrelink payments, and they are fearful that this could result in some sort of reduction in their Centrelink payments or even termination of those payments.

So, these sorts of facts ensure that there will be an under-reporting of numbers and that these women will effectively hide what they are doing so that no-one knows. So, it is not surprising that there are not the figures available.

In terms of the garments that are produced using outworkers, the sorts of activities that would be covered by these regulations include hand knitting, machine knitting and machining (and by that I mean the use of sewing machines) for the complete assembly of garments, embroidery and smocking.

Outworkers are often lied to by the people who are providing them with the work and told that they are subcontractors. So, in part because they are not declaring the income they receive, they are also not able to claim their home, where they are working, as a workplace, which means that they are not able to claim power and lighting, the depreciation of their sewing machines or knitting machines, which, by the way, they would have supplied themselves without cost to the retailer who is selling the products; nor would they be able to claim the cost of travel involved in either the collection of the materials or the delivery of the finished article. The Hon. Mr Lawson said:

> It has not been demonstrated that these regulations are necessary. No study has been undertaken and no evidence has been presented to suggest that there is a serious problem with outworkers in this state.

Well, some studies have been undertaken and, although it was in 1989, I refer to the study done by the Working Women's Centre. It is very hard to collect this information, and this particular study that was done in 1989 by the Working Women's Centre found a difficulty in being able to contact the women of non-English speaking backgrounds. Nevertheless, it is worthwhile hearing about what was happening back in 1989, because I suspect the differences today would be minimal. The report was done by Jane Tassie on behalf of the Working Women's Centre, and it is called 'Out of sight, out of mind: Outworkers in South Australia', which I think is a very apt description of this situation: it is out of sight.

There are many things I could quote from this study, because it is about 80 pages in length. However, I will quote only from mostly anecdotal information that records the experience of some of these workers. One of the problems these outworkers have is that, because they are on their own, they have no negotiating power. The report states:

> Judith, machinist: They expected me to work for 12 days straight, nights and weekends leading up to Christmas—

I note, of course, many of us would have been attending Christmas parties at that time—

> I said no and the boss threw my pay at me and said she could get plenty more to do the work.
>
> Mary, knitter: I went in to take in the last one and she said, 'Can you do them a bit faster next time.' My husband said I was being taken for a ride. The other day I rang another company. They wanted me to come and see them to do a test. I asked her could she give me an idea of what they pay. She wouldn't even tell me what I could expect...
>
> Sally, knitter: They didn't want to pay me when one [jumper] went missing in the post. I threatened to contact the *Women's Weekly* and then I quit.
>
> Ingrid, knitter: The jumpers take so much concentration. If you make a mistake they don't pay you. They tell you to do it again or take $5 off. That's a lot when you are only being paid $20-$30.

Jo, knitter: Sometimes they wouldn't tell you how much you'd get until you finished and returned the garment. Then they'd make up all kinds of excuses to knock money off. For example they might say your sewing up wasn't good enough. It should be looked into. My father said, 'I thought slave labour should have finished in Australia'. But it's hard because my husband's $1 above the income supplement level. We need all we can get....

Judith, machinist: Sometimes there's so much work you can't cope. And other times she says there's nothing for you this week.

Of course, that last quote indicates the problem that, effectively, in terms of income, the women do not know whether they are going to have enough money to support their families. Jane Tassie's report goes on:

Outworkers lack the negotiating power to determine how much work they will take on. If they question the amount of work they are required to do, they risk losing their work.

The report goes on:

Shirley, machinist: It takes me 1½ hours to do one piece. They told me it should take me 39 minutes, and I got a distinction in speed sewing.

Judith, machinist: They use a really shoddy sample garment to set rates and, of course, it would take longer to sew than the sample.

Brenda, machinist: They told me other workers could sew faster than me, so why couldn't I keep up.

In the report, Jane Tassie says:

It would appear that outwork gives women the freedom and flexibility to do two jobs, one for no pay and the other for little pay.

I think that is a very quotable quote. There is the problem of what women ultimately are paid compared to what these products retail at. Judith, the machinist, says:

I made lingerie for $2.50 and it sold for $75. No wonder the boss drives a Mercedes and has built a home in—

and that is struck out—

...using imported stone!

Jane, a knitter, says:

I designed and graphed the jumper and then knitted it. He gave me $30. I saw it in his shop for $500. How do you think I felt?

And Sue, a knitter, says:

She sells the jumpers for about $350 to $400 and puts her costs down as $100 to $150. It is not true. She'd get yarn wholesale so the real cost would be much less. And she uses cheap wool. I looked into starting my own business so I looked at the wholesale rates. I knitted a jumper for—

and the name is crossed out—

...once—all mohair and very complicated. I got $50 and they were selling it for $500 at—

and the name of the shop is crossed out—

...It was lots of work and it was not worth it.

Jenny says:

The employers are feathering their nests on a whole lot of poor people. They brag about their overseas contracts to supply top stores.

One of the points that are raised by Jane Tassie is the issue of the stress and exhaustion that these workers suffer. I will quote Jane:

Stress and exhaustion were common problems for all groups of respondents. The stress of working in isolation, of carrying the double burden of their paid and domestic work, and of having very little control over any part of their working conditions, was evident from their comments.

Here are just a few more of those comments. From Helen, a knitter:

I've had headaches and stress, especially when I have to meet a deadline. She keeps ringing me up about when I'm going to finish. It's really annoying.

Jane, a knitter, says:

I have RSI in my shoulder and back—from looking at a graph continually. You have to keep your head in the same place. The mohair causes coughing and it comes up in your saliva. I've also had eyestrain.

Jo, a knitter, says:

I lost weight, my hair started to fall out. It was very stressful meeting deadlines. I got a sore back, headaches and had to get glasses. I'd sit knitting and thinking about how much money I might be going to get paid, knowing it wouldn't be enough.

Jane Tassie, the author, says:

It appeared that employers had little concern to the occupational health and safety of their workers. This was confirmed when the project officer contacted the office of a large employer of home knitters and asked if work was available. She asked what would happen if she became ill or, for example, developed RSI as a result of her employment. She was told that she would not be considered to be an employee, and that she wouldn't get RSI. After a hesitation, the following comment was made: 'Well, to be honest with you, we do have some ladies coming in here complaining of sore shoulders and arms, but that's just arthritis because they're old. We tell them to have a rest for a while.

I suspect that the retailers that the Hon. Mr Lawson has gone in to bat for will not suffer the same degree of stress and exhaustion as these workers do when they have to lodge a quarterly return about the source of clothes they sell.

When speaking on 27 February, the Hon. Mr Lawson responded to an interjection from me asking what was a fair rate of pay for them. He said, 'The rate of pay is that rate of pay under the award.' His next sentence is very telling: 'Whether or not they comply with it is another question.' Perhaps he has actually gone to the nub of the problem here. The Hon. Robert Lawson is underestimating the hidden nature of this work. It is so easy for these workers to disappear under the radar.

A short time later in that same speech, he said:

If you want to protect outworkers, you do it by the normal method; that is, pass a law which requires the employers to comply with the law and to meet his obligations and, if he does not, he will be prosecuted.

I would say to him: if only life were that simple. Because this is such a hidden form of employment and exploitation, it is not easy for the inspectors even to find where these women are working. It perplexes me that the Liberals are attempting to disallow these regulations.

I quote from a document that was published under the auspices of the Minister for the Status of Women, the Hon. Diana Laidlaw. It is the 'The Women's Statement 1996—Focus on Women', which shows that she had a concern about outworkers. Under the heading 'Outworkers', it says:

The Women's Outwork project targets women who work from home for an employer or contractor. Outwork is growing—

I hope the Hon. Mr Lawson is aware of that—

and is often performed by women, with a significant number being of diverse cultural and linguistic backgrounds. With the support of funding from WorkCover, Dale Street Women's Health Centre is working to improve conditions for women by developing education, training and information kits for outworkers, employers, community workers, doctors and training providers. Occupational health and safety aspects of outwork are key issues being addressed by the project.

So, the Hon. Diana Laidlaw, when she was Minister for the Status of Women, recognised that there was a problem associated with outwork that apparently the Hon. Mr Lawson does not recognise. By creating transparency, these regulations will assist the initiatives to ensure that our workers are fairly paid and treated.

As I conclude, I quote article 23(1) of the Universal Declaration Of Human Rights, to which Australia is a signatory:

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

In case the important message does not get through by quoting the whole sentence, I will put it into a shorter form: everyone has the right to just and favourable conditions of work. All that these women—outworkers—are asking for is just and favourable conditions of work. The Democrats will not agree to this move by the opposition to create a loophole which would allow some retailers to get away from meeting that obligation.

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

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

Second reading.

The Hon. I.K. HUNTER (17:01): I move:

That this bill be now read a second time.

This bill arises from a case in which a medical practitioner operating out of premises on Glynburn Road walked out of his practice leaving, among other items, the medical records of his patients at his former surgery. The medical practitioner at the centre of the matter made no attempt, prior to abandoning the practice, to secure the medical records of his patients. The landlord took possession of the premises and the medical records.

When patients of the practice, having been made aware of the circumstances, requested their medical records, the landlord refused, agreeing only that the patients would be provided with copies of their records upon payment of a fee. The landlord claimed the right to retain the records as assets of the company and, alleging that rent was unpaid, initiated (or threatened to initiate) proceedings for distress over the assets, including the medical records.

Arising from this situation, the member for Hartley in another place introduced this private member's bill. It is a simple remedy to a local dispute but one which seems, judging from the remarks in the second reading speeches in the other place, not unknown to other members. I think it was the member for Fisher who commented that he had knowledge of a similar experience in his electorate some years ago.

By a relatively simple amendment to the Landlord and Tenant Act, the member for Hartley seeks to remedy a problem for her constituents, which may end up helping many hundreds, or perhaps thousands, of others who might find themselves in a similar predicament at some time in their life. It is important to note that this bill does not in any way seek to challenge the ownership of medical records. The courts normally hold them to be the property of the practitioner who generates them, and this bill does not intrude into those rights.

The member for Hartley makes the point that medical records should not be treated like other assets—furniture and such. Now, we readily concede that the resolution proposed in this bill may not be the most elegant, and, no doubt, the lawyers in this chamber would prefer something more thorough, but when the Minister for Health convened a panel of advisers to look into this matter they reported back that the issue is a very complex cross jurisdictional legal problem going to issues of records storage, privacy concerns and access.

As many members know, trying to get commonwealth and state agreement on even major issues is a long and arduous road, let alone getting these things fixed for less important matters that are not as immediate a concern in other jurisdictions. It would be tough, indeed. The member for Hartley, however, was not prepared to explain to her constituents that, because of the complexities of the case, she could do nothing for them. Instead, she decided to opt for this very common sense amendment which would give her constituents—and dare I say it—our constituents some relief from the distressing circumstances in which they have found themselves through the operation of the Landlord and Tenant Act.

The remedy of distress is a landlord's right to enter premises and seize a tenant's goods to satisfy rent arrears. It has been abolished in so far as it applies to residential tenancies. The remedy is available in respect of commercial tenancy agreements regulated under the Landlord and Tenant Act of, I think, 1936.

Part 2 of the Landlord and Tenant Act sets out the procedure to be followed by a landlord when seeking to distrain goods for underpaid rent, and sets out the rights of the landlord and tenant. Goods are defined broadly to mean cattle, horses, livestock, furniture, goods, chattels, effects or things which are by law liable to be distrained for rent, and includes lodgers' goods and, in some cases, agisted cattle. This definition would also include medical records.

Certain goods are, however, expressly quarantined from distraint. These include sewing machines, typewriting machines and mangles belonging to a female person, cattle and vehicles at livery, with all saddles, bridles and harnesses belonging or appertaining thereto, and wearing apparel, tools and implements of trade and household requisites to the total value of $20. It is a simple matter then to add in medical records as one of those items not to be distrained

Specifically, this bill proposes that a landlord must not distrain health records for rent and that, if a landlord is currently doing so, that landlord must take reasonable steps to return the records to the health practitioner to whom they belong. This will then enable the patients concerned, through their current doctor, to request a copy of their records from their former doctor in line with AMA policy and guidelines.

Additionally, the bill provides for situations where the former health practitioner is no longer interested in those files. In this case, the Minister for Health may direct delivery of such records to a person nominated by the minister, and that could possibly be to the patients concerned. I commend this bill to the chamber, and I place on record my appreciation to the member for Hartley, Grace Portolesi, for her initiative in bringing forward this bill.

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

WORKERS REHABILITATION AND COMPENSATION (SCHEME REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 April 2008. Page 2467.)

The Hon. D.G.E. HOOD (17:08): The starting legal principle for workers compensation is a worker's right to sue in tort (in other words, to sue their employer) when and if injured if the employer failed to take all reasonable steps to prevent the injury. Granted, in creating a legislative scheme the trade-off is that it is no-fault, so the worker need not demonstrate that the employer has failed to take reasonable steps; liability is much easier to prove.

It is, therefore, highly relevant to note that removing common law claims, as the original WorkCover legislation provided and continues to provide today, actually serves to contain and regulate the government's liability to injured workers. Without this legislation the government's liability could be at large (in other words, much greater) if the findings of the common law courts were that employees had greater entitlements.

Sure, without the no-fault scheme, liability might not be found on so many occasions, but it would also be the case that, where liability were found, compensation payments could be a lot larger than is currently the case. Yet here in this bill we are being asked not to grant common law rights to injured workers but, rather, to curtail them even further than we already have.

North America has a much longer history of workers compensation than we do in Australia, with the USA and then Canada legislating to protect injured workers and also contain employers' exposure to common law claims, since the early 1900s. It should be noted that all 50 US states have workers compensation schemes and only 12 of those have state-run schemes, most of which are only to insure state employees and serve as an example to private sector insurance funds.

Very few US states—and I mean very few—have state-run monopolies. Yet here in South Australia, since a few years ago, we have followed the example of the few (certainly not the majority) of the US state-run monopoly funds. Strangely too, our fund insures much of the private sector but relatively little of the public sector.

I think it is fair to say that the response to the unfunded liability situation is lacking in one significant area in this bill. Family First has researched this situation thoroughly. We have listened to the record number of people who have lobbied us and written to us about this bill, and I am confident that WorkCover is in deep trouble, and it has become so particularly in the last few years.

The record stands for itself, I think, considering the unfunded liability and funding ratio for WorkCover which have spiralled out of control in recent times. Further evidence of WorkCover's woes is the comparatively healthy position—using the very same legislation that we are being asked to significantly amend today—that the self-insurers find themselves in, that is, without using the services of WorkCover SA at all.

We have been told that our laws are generous, and I say 'good on us' if that is the case, and the self-insurers and previous government have demonstrated that these laws might appear generous compared to other states. These laws can and do work well when run properly. The real problem, to be clear, in Family First's view, is the management of the organisation.

We point no specific finger of blame at individuals on the board; other organisations, be it Employers Mutual Limited (EML) or the WorkCover Board itself; or the minister. I know there is a school of thought that the minister should take the blame, but I do not always see it that way. At the end of the day, WorkCover has been mismanaged, regardless of who is to blame.

We hear it from injured workers, unions and worker representatives and we know it from experience: injured workers cannot be swept away under the blanket and forgotten, and I think that at the next election there will certainly be a number of workers who will be taking that into account. It sits very poorly with Family First that mismanagement results in punishment for the people the system is meant to serve. We feel it is terribly unjust.

Much has been made of the malingerers, those people who hang around on weekly payments and do nothing or, worse still, feign an injury, yet WorkCover itself informs us that only about 2 per cent of claimants are suspected of committing fraud, so there is some distance between the fraudsters and, I suggest, the large majority of 98 per cent of people who are unfortunately injured doing legitimate work and therefore claiming benefits that they are entitled to.

If management, or whoever was responsible, had done the job properly or, to be fair, if WorkCover had been properly funded to do its job—and there may be some elements of both in this—WorkCover, through investigation teams and existing legislative process, could have flushed these people out more effectively than they already have. Even so, as I say, it is only a group representing 2 per cent of the entire group.

There has been an inverse relationship between participation in rehabilitation insofar as WorkCover is concerned—I believe the self-insurers do not have the same problem—and the likelihood of a worker's return to work to pre-injury levels. Again, the government and Business SA's answer seems to be to label injured workers (in some cases) as malingerers, when the truth of the matter is that WorkCover and the rehabilitation consultants simply have not done their job or, to be fair, perhaps have not been able to do their job or have faced hurdles in doing their job properly.

Again, the self-insurers have shown that there is a way that can work in this regard. However, to use this excuse of those malingering on weekly payments as justification for hitting all workers for management's failures is like cancelling train services because some people evade fares or imposing a night curfew because some people play up in the evenings and doing nothing to reform poor policing and management. Or, again, it is like leaving the sheep in the pen and building bigger fences but failing to deal with the foxes inside.

The WorkCover board and EML might consider that harsh, but it is not necessarily them that I am likening to foxes. It is simply astonishing to Family First that injured workers or, if you like, in my analogies the commuters, the revellers or the sheep, wearing all of the consequences for poor management of this scheme.

To illustrate our beef with this management, let us cast our minds back to 31 March 2006, just over two years ago. EML took over claims management then from Vero and Allianz and became the monopoly provider of the service. We have now passed the two-year anniversary, and I am making reference to those two years for an important reason. In a media release issued by WorkCover SA dated 7 March 2006, just prior to the last state election, it stated (in black and white):

> As WorkCover's sole claims agent, EML expects to cut the claims liability by up to $100 million a year after only two years under the new contract.

That was their claim. What have they achieved? When you consider that in mid-2006 the unfunded liability was at $694 million and we are told that it is now close to $1 billion in unfunded liability, that is a very far cry from a $200 million reduction in two years. To emphasise the point, EML's bold claim was that it would have the unfunded liability down to roughly $500 million by now but, instead, it is double that. That is surely the main problem.

EML's inexperienced case managers (and I am told that is the case) and their poor management of rehabilitation has seen it make a thorough mess of this and, as I said at the outset, a ruin of what ought to be a generous and fair workers compensation scheme. On a related note, it seems to me that if you do not change the management that has made the mess but change the legislation, surely we can conceivably find ourselves in the same situation in a few years' time. Will we be asked in 2011 to make even more draconian cuts because management have failed to implement these changes that are going to pass this parliament now?

The Clayton review relies too heavily on the assumption that some watchdog and accountability functions will somehow ensure that management will apply the new scheme effectively and produce the financial results that will see the scheme ultimately fully funded. Indeed, Alan Clayton expressed some reservation about the capacity of his recommendations, which are not fully reflected in this bill. He expressed reservations that his recommendations could deliver the reduction in premiums, as set out on page 200 of the report.

Looking at the way WorkCover is being managed now, I believe it is a little presumptuous to assume that it will manage this bill and its massive changes any better than it has managed the existing system. So, I think Mr Clayton is right to express reservations about projected savings due to changes.

The step-downs are the largest and most controversial feature of this legislation. For the record, we were originally looking at a step-down to 80 per cent of average weekly earnings after 13 weeks but the government says it will now be 90 per cent after 13 weeks and 80 per cent after 26 weeks. The original 80 per cent step-down at 13 weeks was going to deliver 0.11 of 1 per cent of wages reductions in WorkCover levies. That will be even less of a saving thanks to the step-down of the step-down, so to speak.

The 2½ year reviews, by contrast, deliver a 0.69 of 1 per cent of wages saving; significantly, 0.69 of 1 per cent out of a total of 0.79 per cent of wages saving on WorkCover levies. Granted, the step-downs will deliver the second-largest percentage of wages saving after the 2½ year reviews; still, a clearly significant component of this bill from the precious economic aspect in levy reductions, is the 2½ year reviews and, coupled with that, the introduction of medical panels. I think it is important to record that data (which honourable members can read for themselves on page 200 of the Clayton report) to put the step-downs into the all-important economic perspective.

We have not had a chance to participate in this debate until now and much of the heat in the debate concerns the step-down proposals, and much has been said already. The fact is that a person might not yet have had the opportunity to see a specialist, let alone have surgery and recover from that injury within 13 weeks or even the 26-week period.

Some people in this debate have mentioned the shortage of medical professionals available to service injured workers. Again, that is arguably a failure of the system or management to provide these services or fund them at a rate attractive enough for professionals to do the job.

Family circumstances or an aggravation of the injury might be a reason why 13 weeks is simply not long enough. Why should those workers suffer? Why should those workers, after only 13 weeks, through no fault of their own, see a reduction in their benefits? Indeed, the same is the case after 26 weeks. In many cases they would not have been able to see a specialist or certainly not have surgery during that time.

The simple fact is that it can take longer than 13 weeks to recover from a work injury due purely to circumstances beyond injured worker's control. Yet, after 13 weeks there will be a cut—originally 80 per cent, but now 90 per cent—in their average weekly earnings. I find it fascinating that honourable members might say that they care about mortgage stress, that they weep with hurting working families as the banks threaten to foreclose on them and, yet, after 13 weeks a faultless injured worker will suffer new mortgage stress because they have 10 per cent less of their income than they were getting before. That is not a fair system.

Spouses are likely to have to seek work (or additional work) or things may need to be sold or refinanced as soon as a work injury occurs if the prognosis is that there will be a lay-off period of longer than 13 weeks. I find it remarkable that this chamber and, indeed, this parliament is prepared to go along with that.

I know that we will be pointed eastward, to the comparative legislation in Sydney and Melbourne, and I am sure that Alan Clayton's words of generosity will be repeated to us. However, I have to come back to WorkCover's previous healthy funding position and the funding position of self-insurers. If they can do it, why can't we?

Let me also say of the self-insureds, that Family First is very concerned about the alleged behaviour of WorkCover in terms of exit payments sought from large employers waiting to get out of WorkCover. There is a matter on that issue apparently before the courts, and we wait with bated breath, so to speak. However, certainly the self-insurers of South Australia are not altogether happy with the government's amendment to raise the exit fee calculations to legislative status without reviewing the content of those exit fee calculations.

They complain of a failure by the government or WorkCover to consult on that amendment. Also, it is not too long ago to recall an inappropriate letter that WorkCover sent out, threatening an injured worker, which the minister had to apologise for and retract—and rightly so. Those acts, or alleged acts, coupled with what we know and are hearing about WorkCover management, suggests a culture that is not really suffering any consequences for its mismanagement when, of course, they should be.

To conclude on the subject of step-downs, I think it is incredible that, in the federal election, much was said about caring for working families but it seems here that we only care about uninjured working families and not families with a work-injured mum or dad or provider.

I want to talk about redemptions because, to me, they are a pathway to resolving the unfunded liability situation. By getting people off the WorkCover books through redemptions, the unfunded liability shifts downwards straightaway. Whilst I am sure there are injured workers (perhaps encouraged by their lawyers) who hang in there for a better redemption offer, the vast majority do not want to be on weekly payments and want to get off the system. Certainly, that is the experience in the self-insured system.

Injured workers are stigmatised and treated with scepticism by case managers and the community alike. A number of them even begin to doubt themselves, I am told. Men and women certainly enjoy work, as a rule. People enjoy work and gain satisfaction from the toil of their labour, so to speak. To sit about uninjured is not only a rejection of involvement in the community and things that make people happy and satisfy them; it can actually lead to conditions such as depression and other mental illnesses, as we have seen and heard from injured workers.

Recently, I asked a question of the Minister for Mental Health and Substance Abuse about a person who was suicidal; and this information came to light when the person wrote to us about this bill. It is quite accurate to say that this bill will put potentially suicidal injured workers at even greater risk.

Redemption offers the opportunity to put an end to the depression and stigma of WorkCover and make a fresh start, whether or not the price is right, so to speak. I understand that in recent times WorkCover has had little interest in redemptions or has been making paltry offers, perhaps in desperation of its budget circumstances. Nonetheless, the universal criticism of WorkCover is that EML has made very poor use of redemptions in order to get people off the system.

We have been told, quite remarkably, that the changes to redemptions are only to change the alleged culture of hanging in there for a payout. If WorkCover made a rigid policy on redemptions—again, if it had managed the WorkCover system properly—there would not be this alleged culture and these allegations would not be made. It is quite surprising to hear WorkCover complaining of such a culture when it is solely responsible for controlling whether such a culture exists within its own organisation.

In the debate about this bill not enough has been made about its retrospective application. Retrospectivity will allow the unfunded liability to be cut back sooner, that is true, because some people, by definition, are past the 130-week period and will be cut off automatically. No doubt, those people would have read the writing on the wall and would be making lifestyle and financial plans, based on the date this bill is proclaimed. Their future lies in the hands of WorkCover's assessing that the worker lacks current work capacity and is likely to continue indefinitely to lack that capacity. For reasons I have outlined above, injured workers have little confidence in WorkCover's deciding in their favour—and that is a potential tragedy. There will be some people amongst that group rorting the system, but the vast majority will be doing the right thing.

Before leaving the question of retrospectivity, I seek clarification from the government (perhaps in the summing-up phase) as to whether the reduction to 90 per cent after 13 weeks and 80 per cent after 26 weeks will have retrospective application. It has been put to us that this component, arguably, will not be retrospective. I have been told in briefings that this will not be the case, but I seek this point to be on the record for certainty's sake.

I turn to the question of investigations. I believe that injured workers have been let down here, as well. No injured worker likes to be accused of rorting the system. It is terrible to be accused of rorting the system. Injured workers as much as anyone else want to see the malingerers and the fraudsters kicked out of the system so they are not falsely accused. I have heard injured workers' frustration at others who are defrauding the system, but in their view WorkCover does nothing about it.

I ask the government to give a detailed summary of the funding provided for prosecution activity and the investigation history for fraud and malingering in the WorkCover system. If they are making much of malingerers being the reason that we have to introduce new step-downs in weekly payments, I hope they can make the case that there has been a dramatic increase in fraudsters and malingerers detected by their investigation unit in order to justify the change. I suspect that that is not the case.

While I am putting forward questions for the summing up, Family First would be grateful for the public release of the actuarial opinion provided on the Clayton report. My recollection is that this has not been disclosed. If I recall correctly, the Clayton report was not released before the last federal election in November 2007, when it was originally scheduled for release, largely because

the government wanted to have actuarial advice to hand. I would be grateful to have that actuarial advice, in particular to see the extent in dollar terms to which each of Mr Clayton's recommendations contributes to fixing up the WorkCover problem.

I have raised some doubts so far about the economic arguments of this bill. Economics are not everything. As someone with an economics degree, I certainly understand that economists disagree with each other all the time. Changing a culture takes more than legislative change, and changing a culture can produce more than economic outcomes. There are also social outcomes that are beneficial and, ultimately, Family First believes in treating people decently. Sometimes that costs money. We have been told that we must cut workers' entitlements in order to remain competitive with the eastern states. This is said to be an economic argument for the benefit of the state. But there is another way one can look at it by two names—downward harmonisation or, more roughly, a race to the bottom.

In order to compete economically, we will cut the entitlements of injured workers—and that is a concerning state of affairs. This bill and its sister bill will result in greater industrial action down the track. I foresee that police officers may strike or threaten to strike if there are not sufficient protections in place for police because, if they get injured, they know they will have their pay cut after just 13 weeks. Why would a fireman go into a building or beyond the call of duty to help someone if he or she knows that they will not be properly looked after if they are injured in their work? It takes incredible heroism to undertake tasks such as that, but I think that by introducing this bill we are asking for more heroism and less self-interest for our emergency services personnel. When I say 'self-interest' I mean their interest in providing for their families. They will not be looked after as they are looked after under the current scheme.

People working in mental health may strike, for example, if they do not feel safe when doing their job. Through industrial action—which the unions have foreshadowed already—we may well see this bill costing South Australian taxpayers more, not less, in lost productivity and the outcomes negotiated after industrial action. This would be a tragic outcome.

I want to thank all the people who visited me and the Hon. Andrew Evans, wrote to us or lobbied us. I want to make it plain to those people that their views were heard loud and clear. Some campaigners saw this coming from a long way off and were lobbying us for some time about the unfunded liability. It may be little comfort to them, but I congratulate them for their articulate and passionate pleas for action. Family First certainly agrees with their general position.

I also thank Dr Zoë Gill from the Parliamentary Library for her excellent summary of the various stakeholder positions and the history of this bill. It has made our task easier and the history aspect, in particular, made most educating reading about changes to WorkCover that have been proposed in the past. The positions that the major parties have held in the past (as demonstrated by Dr Gill and other sources) have played a large role in informing us on the decision to make in relation to this bill.

I will conclude now on the important question; that is, how Family First will vote in relation to this bill. I may have sounded harsh on the government with some of my comments on this bill. I know that some members on the government side of the chamber will feel dejected when this legislation passes, as it does not reflect their personal views—and they personally have told me that. I feel for them. But, as always, one only votes as they feel so compelled. In our party, people never have to vote against their conscience. I think that should be the case for all members of parliament, no matter what the situation.

I will not spend a lot of time talking about that but, primarily, this bill hurts working families. I will borrow a phrase from the newly elected Prime Minister: it throws fairness out the back door. I believe the government and the opposition have made tough choices. I understand the economic arguments, but we believe these choices are wrong. The bravest choice would be to take drastic and, arguably, much more decisive action; that is, to change the culture and behaviour of the management of WorkCover and take a leaf out of the self-insurers' book, and indeed a lesson from history on how this scheme can be run effectively in order to get the scheme back on track.

Sometimes you have to spend money to make long-term savings, and investing and using the legislation properly would in our view have been a better choice than to spend relatively little by comparison and simply further damage injured workers for such a bill. This is a human cost that Family First is not willing to pay.

Family First rejects this bill and does not support the second reading. We saw advertisements in the newspaper funded by Business SA and other industry groups and have

heard calls for this bill to be passed urgently as every day's delay is allegedly costing this state economically. As I have said, the unions will have much to say about that in the coming weeks and months ahead. We have made our decision: Family First opposes the bill because it abandons families when they are most in need and because it does little to address the real problems of WorkCover, which are its mismanagement.

The Hon. T.J. STEPHENS (17:32): I move:

That the debate be now adjourned.

The PRESIDENT: The motion is: that the debate be now adjourned.

The Hon. P. Holloway: No.

The PRESIDENT: There has been a motion to adjourn the bill. The only voice I heard was a no, so unless a division is called the bill is not adjourned.

The Hon. P. HOLLOWAY: Where are Kanck, Parnell and Bressington?

Members interjecting:

The Hon. P. HOLLOWAY: You are paid to do some work.

The Hon. A. Bressington: Don't lecture me on being paid to do my job, thank you very much. I will speak on the WorkCover bill next week, as has been discussed already.

The PRESIDENT: Order! The Hon. Mr Stephens moved that the debate be adjourned. That was put. The only voice I heard was no; therefore the motion will pass in the negative, unless a division is called for.

The Hon. P. HOLLOWAY: If there are no other speakers, I will get up to close the debate.

The Hon. A. Bressington: There are next week, and I have already spoken to the Whips.

The Hon. P. HOLLOWAY: This is a priority for this week.

The Hon. M. Parnell: What about the bikies bill? We have come in ready every day, and for two weeks in a row you said that it was not a priority.

Members interjecting:

The PRESIDENT: Order! I do not know whether anybody is listening to the chair. The Hon. Mr Stephens moved that the debate be adjourned. That was put. The only voice I heard was a no. You either call for a division or the debate is in the hands of the minister.

The Hon. SANDRA KANCK: Okay, divide!

The council divided on the motion:

AYES (13)

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

NOES (6)

Finnigan, B.V.	Gago, G.E.	Gazzola, J.M.
Holloway, P. (teller)	Wortley, R.P.	Zollo, C.

PAIRS (2)

Wade, S.G.	Hunter, I.K.

Majority of 7 for the ayes.

Motion thus carried.

ENVIRONMENT PROTECTION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 2 April. Page 2247.)

The Hon. A.L. EVANS (17:39): I rise to indicate the support of Family First of the second reading. This bill has a particularly South Australian history, with our former premier (Hon. Don Dunstan) in 1975 being the first in the country to introduce such a scheme. Indeed, today only South Australia has a fully fledged scheme, with Western Australia now having set up the framework for a similar scheme. At a federal level, Family First Senator Steve Fielding has been predominantly responsible for pushing a nationwide rollout of container deposits and was recently caught walking around the grounds of the commonwealth parliament dressed as a recycled bottle. Perhaps, Mr President, he is trying to cut Mr Xenophon off at the pass with a stunt or two!

Certainly, the container deposit scheme is supported by Family First as a sensible and practical way to reduce waste and pollution. It is a win for the environment, because it ends up with container recycling lifting from 38 per cent to 85 per cent, according to some estimates, which would result in 15 per cent less litter on the streets and in our waterways and over half a million less tonnes of waste each year. It is also a win for the community, with a cleaner looking environment, and local community groups can also 'clean up' financially by participating in the scheme. I note that last year the South Australian Scouts organisation earned something like $7 million from container and other recycling initiatives, even under the 5 cent refund scheme. Family First is confident that a national container deposit scheme would:

- lift drink container recycling from 38 per cent to up to 85 per cent;
- recycle an extra half a million tonnes of waste each year;
- reduce litter by at least 15 per cent;
- reduce greenhouse gases by 1.38 million tonnes (the equivalent of switching about 180,000 people to 100 per cent renewable energy);
- save the average family $30 each year on kerbside recycling;
- create more than 2,000 new jobs;
- save 5.6 gigalitres of drinking water each year (enough to supply about 17,000 homes); and
- allow community and sporting groups and our kids to earn pocket money while cleaning up the environment.

I note that the federal Environment Protection and Heritage Council recently met on 17 April to consider a national rollout of the scheme but ended up deferring the matter to a working group. I do not believe that South Australia can wait for a national response to the fully hashed out plan. Family First is grateful for Peter Dolan's briefing on this bill. Peter is the Director of Science and Sustainability at the EPA, and he attended the meeting with Peter Watters. We agree with their conclusion that a national rollout could still be five years away. We are not prepared to wait that long.

The central element of our scheme, although not mentioned in this legislation, is to increase by regulation the refund on Category B containers from 5¢ to 10¢. The vast majority of all containers are Category B, and these are containers that must be brought to a recycling depot to claim a refund. Supermarkets and other stores prefer not to have to run such schemes because of the cost of handling and bottle storage requirements involved.

Therefore, category A containers, for which a deposit is redeemed in-store, are now very rare. I understand that there are now only one or two very specialised beverages that fall under category A (including a type of exotic German soup drink). These are low-turnover beverages for which it is not economically viable to set up a depot recycling scheme.

There are now approximately 120 collection depots in South Australia for category B containers, and 110 (or thereabouts) of these are represented by the Recyclers Association of South Australia, which employs 900 people. In turn, these depots send their collections on to one of four 'super collectors', which at the moment are, in order of size, Statewide Recycling, run by Coke and Cadbury-Schweppes; Marine Stores, run by Lion Nathans; Visi Recycling, which processes milk cartons; and Flag Can, which is an agent for Statewide.

We have a system set up now whereby, if a beverage container does not conform to recycling requirements, the sale is prohibited. For example, I understand that there was a Nestlé flavoured milk container made from a composite sandwich of plastic and carbon black to stop light

penetration and, although it was a good concept because the milk lasted longer, the EPA would not allow the container's sale until suitable recycling could be provided, and that is appropriate.

A question arises as to whether or not the scheme could be expanded to other containers, such as food packaging. I am often concerned to see McDonald's containers left at the side of the road. A deposit of even 1¢ or 2¢ might go some way towards recycling that garbage.

On a strict reading of the legislation, wine bottles would seem to be covered by the act, but deposits are still not levied on wine. I would appreciate it if the minister could advise during the committee stage whether any investigations along these lines have been carried out and, if so, the conclusions reached regarding any expansion of the scheme.

Family First believes that the 5¢ deposit should have been increased long ago. By way of comparison, in 1977 the container deposit was 5¢ and a *Sunday Mail* cost 10¢. Thirty years later, the container deposit has remained at 5¢ while a *Sunday Mail* now costs $1.70. If the 5¢ deposit had been increased by only the CPI each year, the container deposit would now be 32¢. So, this is a change that is long overdue.

The mechanics of a changeover would be very complicated. I am advised that there are several options, including a change in rebate for all containers returned following a certain cut-off date. This would be by far the simplest scheme to implement, but safeguards must be introduced to prohibit hoarding of old cans and bottles until that cut-off date.

The other proposed solutions are almost too painful to contemplate. Those solutions would see each can or bottle having to be individually handled and examined to determine the deposit payable. Unless this could be done on a bulk or estimated basis, that strikes me as a terrible waste of resources.

As I have indicated, the deposit increase and this new framework are long overdue, and it has our support. I indicate Family First support for the second reading.

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

ROAD TRAFFIC (HEAVY VEHICLE DRIVER FATIGUE) AMENDMENT BILL

Second reading.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (17:50): I move:

That this bill be now read a second time.

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

Leave granted.

The safety of heavy vehicle drivers, in the trucks that are their workplaces, and road safety for all members of the community, are high priorities for the community and the Government. We also value the important contribution of the heavy vehicle transport industry to the South Australian economy. It is estimated that the transport and storage industry contributes 4.8 per cent to the economy, accounts for 3.8 per cent of the workforce in South Australia, and supports a diverse range of industries. Nationally the road transport sector employs more than 2 per cent of the workforce and is expected to experience further growth with the land transport task anticipated by the National Transport Commission to double between the years 2000 and 2020.

These social and economic contributions are eroded by road crashes involving heavy vehicles, many of which may be preventable. It is important to recognise that the demands and actions of customers and other off road parties may influence the behaviour of heavy vehicle drivers in a way that leads to breaches of the law, inadvertent or otherwise, and possibly crashes. The costs of crashes where a heavy vehicle (truck or bus) is involved are borne by all Australians, and are estimated at $2 billion per year. The Australian Transport Safety Bureau estimates that up to 30 per cent of truck fatalities and 52 per cent of major crash insurance claims are fatigue related—at an estimated cost of $300 million per year. Of even greater importance, heavy vehicle crashes have a devastating impact on drivers, their families, the operators they work for, businesses big and small, and the community as a whole.

In line with its commitment to road safety, the Government has introduced a brief Bill to enable adoption in South Australia of model Heavy Vehicle Driver Fatigue legislation and model Compliance Scheme Regulations.

The implementation of the model Heavy Vehicle Driver Fatigue legislation will provide for a three tiered approach to management of fatigue of drivers of regulated heavy vehicles. Regulated heavy vehicles are trucks with a gross vehicle mass exceeding 12 tonnes, and buses seating more than 12 adults including the driver. Operators can choose standard hours, as set in the legislation, which allow a maximum of 12 hours work time in 24 (with minimum rest periods required within set intervals); or choose between basic fatigue management and advanced fatigue management that allow for progressively increased flexibility of work and rest hours for operators with systems and practices to safely manage the risk of driver fatigue, in accordance with fatigue management standards

and business rules. There will also be new provisions for bus operators and 'two up' driver teams, developed in conjunction with fatigue experts, which will enable them to meet fatigue management and productivity requirements.

The model legislation also extends appropriate levels of responsibility for managing fatigue risks to those off road parties who have control over activities affecting driver work and rest times, and ultimately driver fatigue. This will bring heavy vehicle driver fatigue management into line with existing chain of responsibility requirements under the Road Traffic Act 1961 in relation to heavy vehicle mass, dimension and load restraint.

The implementation of the model Compliance Scheme Regulations will provide a legislative basis for administration of approved road transport compliance schemes for heavy vehicles and/or operators and drivers. Such schemes have been offered by administrative arrangement in South Australia since their inception in 1999, and provide significant incentives and flexibility for heavy vehicle transporters who demonstrate compliance with road laws. Adopting the model Compliance Scheme regulations through South Australian legislation will better align our administration of the schemes with other jurisdictions.

Heavy Vehicle Driver Fatigue

In 1999, South Australia and several other jurisdictions adopted national "Driving Hours regulations" that regulate driving, work and rest hours of drivers of heavy trucks and commercial buses (the existing Road Traffic (Driving Hours) Regulations 1999). In 2004 the Australian Transport Council recognised the importance of developing new national policy and legislation to combat driver fatigue, beyond simple prescription of driving hour limits.

The resulting model Heavy Vehicle Driver Fatigue legislation is soundly based upon expert advice regarding fatigue. The legislation has been developed by the National Transport Commission with the assistance of jurisdictional transport agencies, the heavy vehicle transport industry and unions. Transport Ministers of all States and Territories making up the Australian Transport Council have unanimously approved the reform. The Australian Transport Council also approved a national implementation date of 29 September 2008, which has strong industry support.

The National Transport Commission conducted a comprehensive public consultation process in cooperation with jurisdictions during development of the model Heavy Vehicle Driver Fatigue legislation. More than 30 public information sessions and a number of workshops were conducted with industry and union organisations including the South Australian Road Transport Association, the Australian Trucking Association and the Transport Workers' Union. Industry and union organisations had extensive input into the development of the model national provisions, with a number of amendments made in response to submissions received during this process. The South Australian Road Transport Association has been kept informed about progress of the reform in South Australia.

Industry and unions have indicated support for consistent implementation of the model legislation, provided that adequate provision is made for rest areas for use by heavy vehicle drivers. This Government has therefore provided significant resources for its Roadside Rest Areas project in the State Budget 2007 2008.

The South Australian Bill provides the heads of power required to make regulations based upon the model legislation. The regulations will repeal and replace the existing Driving Hours Regulations. Industry and Unions will be consulted regarding any substantive local variations from the model legislation that may be identified as necessary during the process of drafting.

Only one substantive variation has been identified to date, appearing in clause 9 of the Bill, and the South Australian Road Transport Association has been made aware of it and understands the reason for its inclusion. The variation is from the model 'reasonable steps defence', which requires the person wishing to use it to establish that they took all 'reasonable steps' or there were none that could be taken, to prevent the offence. The South Australian Bill provides that a person must also show that they did not know, and could not reasonably have been expected to know, of the contravention concerned. This is consistent with:

- the reasonable steps defence provided in the recent Compliance and Enforcement amendments to the Road Traffic Act in relation to heavy vehicle mass, dimension and load restraint;
- model national legislation for Chain of Responsibility for Heavy Vehicle Speed Compliance recently approved by the Australian Transport Council; and
- the Heavy Vehicle Driver Fatigue legislation as modified and implemented in Victoria in December 2007 (Victoria being the only jurisdiction to have enacted the model legislation to date), although unlike this Bill and the model legislation, the Victorian legislation limits availability of the defence to certain parties.

The National Transport Commission and jurisdictions at officer level have indicated in principle support for recommending to the Australian Transport Council a modification of the national model legislation in keeping with the approach in the South Australian Bill, which prevents a defendant who was aware of the offence using the reasonable steps defence.

Implementation of the model legislation will build upon the framework established by the Statutes Amendment (Road Transport Compliance and Enforcement) Act 2006. The provisions relating to mass, dimension and load restraint will be extended to the regulation of heavy vehicle driver fatigue. For example, off road parties who may influence road transport will be required to take reasonable steps, consistent with their role, to prevent driver fatigue; and revised penalties and sanctions will apply to heavy vehicle driver fatigue offences and breaches of work and rest limits. This will achieve the fairer distribution of responsibility among those parties who are in a position to exercise some control over risks to safety.

The reasonable steps that should be taken will vary depending on the nature of the parties and their contractual relationship, their respective knowledge and expertise, and the measures reasonably available to them in relation to the particular risks faced. For example, a consignor demanding a delivery time that could only be achieved by a transport operator prepared to allow drivers to speed, or take inadequate rest breaks, will be liable along with the transport operator unless reasonable steps were taken to avoid making such a demand.

The reform also addresses the current problem of a driver compliant with driving hours being in breach of occupational, health and safety laws. A vehicle is deemed to be a workplace under Occupational Health Safety and Welfare legislation. The reasonable steps duty under the reform complements the existing obligation to manage risks to health and safety 'so far as is reasonably practicable' under the Occupational Health, Safety and Welfare Act 1986. It is in the interests of all businesses not to create unsafe workplaces, particularly when this may directly affect the public who share the road with heavy vehicles.

Compliance with a relevant registered Industry Code of Practice will assist in demonstrating that an operator has taken reasonable steps in relation to management of fatigue. Such non binding codes assist smaller operators in developing low cost systems suitable to their operations.

The overall impact of implementing the model Heavy Vehicle Driver Fatigue legislation is positive as a result of anticipated improvements in road and workplace safety, and reduced road and workplace accidents involving heavy vehicle driver fatigue. Implementation of the reform will result in an increase in compliance costs for the road transport industry, some of which is likely to be offset by savings to organisations as a result of improved business systems, increased certainty regarding and improved compliance with occupational health and safety obligations, and safer working conditions.

Clearly the anticipated reduction in social and economic costs of road crashes, as a result of improved safety for heavy vehicle drivers and other road users, would be of significant benefit to the community as a whole. The National Transport Commission in its Heavy Vehicle Driver Fatigue Regulatory Impact Statement anticipates that full compliance with the proposed regime would result in national net benefits of up to $143 million per annum.

Compliance Schemes

The national 'Alternative Compliance Scheme' framework, now known as the National Heavy Vehicle Accreditation Scheme or NHVAS, was approved by the forerunner of the Australian Transport Council in 1997. National policy objectives include improving safety, productivity and compliance within the road transport industry.

In April 2000, NHVAS was implemented in South Australia by notices in the Government Gazette, with Mass Management and Maintenance Management modules offered to operators. At present the Department for Transport, Energy and Infrastructure manages over 660 operators, with a combined fleet of more than 11,700 vehicles, accredited in these modules.

The Transitional Fatigue Management Scheme has operated in South Australia since 1999 through accreditation under the Driving Hours Regulations rather than under the NHVAS. Over 335 employers and self employed drivers are registered and more than 1,350 drivers presently participate in the Scheme, also administered by the Department for Transport, Energy and Infrastructure.

In South Australia, as in other jurisdictions, accreditation schemes usually provide incentives (e.g. access to additional routes, improved flexibility of work and rest hours, increased mass limits) for participating operators who are required in turn to demonstrate increased accountability for risk management and compliance, and/or to better manage the impact of their vehicles on road infrastructure.

The provision of new Fatigue Management modules (to replace the Transitional Fatigue Management Scheme) through NHVAS, along with the existing NHVAS modules, presents an opportunity to better align South Australia's administration of the Scheme with other implementing jurisdictions, currently New South Wales, Queensland and Victoria. This will minimise 'jurisdiction shopping' as well as providing a legislative basis for the administration and enforcement of the existing schemes of heavy vehicle accreditation.

As with the general approach to the model fatigue legislation, the Bill provides heads of power in the Road Traffic Act so that regulations based upon model Compliance Scheme legislation can be made.

The Road Traffic Act already provides for authorised officers and police officers to exercise certain compliance and enforcement powers in relation to an 'approved road transport compliance scheme'. The NHVAS is currently the only such scheme prescribed. The regulations will include provisions for administration of the schemes, setting fees for accreditation, and penalties not exceeding $50,000 for offences relating to compliance schemes.

Under existing arrangements NHVAS accreditation services are provided by the Department for Transport, Energy and Infrastructure free of charge. Participants in the Transitional Fatigue Management Scheme are required to pay a once off registration fee of $50 under the Driving Hours Regulations.

Compliance requirements will not be significantly increased but will be made more transparent. From 1 July 2008 operators will be charged $80 per operator (per module) and $25 per vehicle (for nomination in one or more modules) per two year renewal period in NHVAS. In the case of operators in the Fatigue Management modules of NHVAS, only employers and self employed drivers will be charged $80 for every two year accreditation period, with no fees payable for nomination of employed drivers or vehicles.

The proposed costs will enable partial recovery of the cost of administering the scheme in South Australia and are broadly consistent with fee structures applicable in other implementing jurisdictions. In addition, the per vehicle charge for the Mass Management and Maintenance Management modules will ensure that the proposed fee is automatically scaled to the size of the operation in order to avoid a disproportionate impact on smaller businesses including family businesses.

As membership in the Scheme will continue to be voluntary, operators will be able to assess the cost to them of participation, compared with the benefits that accrue from membership. It is worth noting that national accreditation reviews point to significant savings for businesses associated with safer work practices adopted as a result of accreditation. Anticipated improvements in compliance rates are also expected to contribute to improvements in road and workplace safety to the benefit of the industry and the whole community.

Conclusion

The Government is committed to improving road and workplace safety. It is also committed to providing a safer and fairer system—a more level playing field within the heavy vehicle transport industry—as a result of more effective enforcement and enhanced levels of compliance; and improved industry efficiency as a result of enhanced regulatory harmonisation between jurisdictions. These outcomes will benefit road transport organisations and the community alike.

This Bill is a product of significant cooperation, consultation and effort within South Australia and at the national level and I look forward to receiving bipartisan support in the Parliament during its debate and passage.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Road Traffic Act 1961

4—Amendment of section 5—Interpretation

This clause makes consequential amendments to definitions of terms used in the Act, such amendments being necessary to reflect the extension of the responsibilities under the proposed Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008 to persons prospectively involved in the chain of responsibility such as consignors and loaders.

5—Repeal of Part 3AA

This clause substitutes a new Part 3AA into the principal Act, providing a regulation making power in relation to the establishment of a scheme for the management of fatigue in drivers of regulated heavy vehicles.

6—Amendment of heading to Part 4 Division 3B Subdivision 2

This clause makes a consequential amendment.

7—Substitution of section 121

This clause repeals section 121 of the Act, the bulk of which (subsections (1), (3) and (4)) has been relocated in the measure to become proposed section 173AA, and substitutes the remaining subsection (2) as section 121.

8—Amendment of section 165—False statements

This clause amends section 165 of the Act to make it clear that a record compiled under the Act is not false or misleading merely because the record contains a spelling error.

9—Insertion of section 173AA

This clause relocates the bulk of what was section 121 of the Act so as to become section 173AA, and makes changes to that provision so that provisions dealing with the reasonable steps defence become of general application to the relevant offences under the Act, and any regulations under the Act, rather than being limited to Part 4 Division 3B of the Act as is currently the case. This is because the new offences under the proposed Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008 rely in part on the defendant being able to avail himself or herself of the reasonable steps defence.

10—Amendment of section 176—Regulations

This clause amends the regulation making power in section 176 of the Act to provide a power to make provisions in relation to the establishment and administration of approved road transport compliance schemes (including the imposition of penalties and expiation fees and the prescription of fees in relation to such schemes).

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

STATUTES AMENDMENT (TRANSPORT PORTFOLIO) BILL

Second reading.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (17:51): I move:

That this bill be now read a second time.

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

Leave granted.

The *Statutes Amendment (Transport Portfolio) Bill 2008* includes a number of transport related amendments to the *Motor Vehicles Act 1959, Road Traffic Act 1961, Passenger Transport Act 1994* and the *Harbors and Navigation Act 1993*, most of which are minor in nature and aim to improve the operation and administration of the respective pieces of legislation.

Of most significance, the Bill aims to improve the management of unregistered and/or uninsured vehicles by making the offences of driving or leaving standing on a road an unregistered and/or uninsured vehicle expiable. South Australia is the only State where these offences are not expiable. The Bill also aims to improve compliance by increasing the perceived risk of detection by making both offences detectable by camera.

At present, the maximum penalty for driving an unregistered vehicle is $750 or twice the amount of the prescribed registration fee for 12 months, whichever is higher. Driving uninsured attracts a maximum penalty of up to $2,500 and disqualification from holding or obtaining a driver's licence for up to 12 months. The offence of driving uninsured attracts a higher penalty as it constitutes a derogation of fiscal responsibility for personal injury in the event of an accident.

The average fine imposed by the courts has tended to be low in relation to the maximum penalty–around $240 for driving an unregistered vehicle and around $300 for driving an unregistered and uninsured vehicle. In addition, an average driver's licence disqualification of 2 days (usually of the driver's choice) is imposed for uninsured offences in most circumstances.

The number of people who drive an unregistered and/or uninsured vehicle is increasing. In 2000-01, there were 14,517 unregistered and/or uninsured charges before the courts and in 2005-06, that number had increased to over 19,000. The total number of unregistered and/or uninsured vehicles being used on the road network is likely to be much higher.

As the total fee to 'register' a vehicle includes a registration charge, a premium for the compulsory third party insurance, stamp duty on the issue of the insurance cover, an Emergency Services Levy and an administration fee, each unregistered vehicle driven on a road results in higher premiums for people who register their vehicle, as well as loss of revenue to the Government.

The Department for Transport, Energy and Infrastructure has been working with the Motor Accident Commission, South Australia Police, the Attorney General's Department and the Courts Administration Authority for some time to address the issue in a comprehensive way.

To ensure that those who drive an unregistered and/or uninsured vehicle on our roads are held accountable for their actions, the Bill increases the penalty for driving or leaving standing on a road an unregistered vehicle from $750 to $2,500, with an expiation fee of $250 to be prescribed by the *Motor Vehicles Regulations 1996*. Similarly, the Bill increases the penalty for driving or leaving standing on a road an uninsured vehicle from $2,500 to $5,000, with an expiation fee of $500 to be prescribed by the regulations. A person whose vehicle is detected on a road without registration and insurance will be liable to the penalty for both offences. The increases in penalties are designed to counteract the perceived financial benefit of not paying the registration and insurance fees, allows the courts to impose penalties that equate to the amount of registration and insurance avoided, and reflects the seriousness of these offences.

Issuing an expiation notice also provides an immediate penalty, and this, together with the sufficiently high expiation fees, will act as a more effective deterrent.

While it might be thought that making unregistered and/or uninsured offences expiable will reduce the time and resources required by the courts, the Courts Administration Authority has advised that unregistered and/or uninsured offences are not usually heard alone but generally form part of a larger group of offences being heard together. The Courts Administration Authority has confirmed that there would be limited savings in court time as a result of making the offences expiable.

To reinforce the serious nature of these offences and to respond to repeat offenders, the Bill ensures that those who have been detected on a number of occasions driving an unregistered and/or uninsured vehicle, as well as those subject to a Cessation of Business order imposed by the Courts Administration Authority as a result of unpaid fines, may continue to be dealt with by the courts, rather than by expiation.

As a licence disqualification is more appropriately associated with offences related to licensing matters, the Bill removes the licence disqualification penalty for the offence of driving an uninsured vehicle. South Australia is the only State to apply a licence disqualification for the offence.

In addition, the Bill will enable all road traffic cameras such as speed, red light and Safe T Cam cameras (currently used to detect heavy vehicle driving hours offences) to be used to detect and enforce unregistered and/or uninsured offences. This is expected to improve detection of unregistered and/or uninsured vehicles. Safe T Cam, which has 11 fixed sites across South Australia, uses Automated Number Plate Recognition technology and is able to detect unregistered and/or uninsured vehicles without another offence being committed, while other cameras are activated only by red light or speeding offences.

With the introduction of camera detection it has been necessary to include a provision to cater for multiple offences detected via camera in a short period of time. This is particularly so due to the continuing nature of the offending, the ability for Safe T Cam to detect unregistered and/or uninsured vehicles without another offence being

committed, and the delay between committing the offence and receiving an expiation notice in the post. To ensure owners of vehicles do not inadvertently commit multiple offences detected by camera and incur a number of expiation fees before they receive the first expiation notice and the matter comes to their attention, the Bill proposes that where a person is given an expiation notice for an unregistered and/or uninsured offence detected by camera, that offence will subsume all other unregistered/uninsured offences detected by camera within 7 days of the date of the offence that triggered the first expiation notice. This means that if more than 1 expiation notice is issued for an unregistered and/or uninsured offence detected by camera in a 7 day period, payment of the first will satisfy any others issued within that period. The 7 day period was based on advice from South Australia Police as to the time required to issue an expiation notice, which will reduce to 3 4 days with the roll out of digital cameras.

This 7 day period will only apply to camera detected offences. If a person is detected road side and issued an expiation notice, they will immediately be made aware of the need to register their vehicle and there is no need to make provision for the delay in receiving an expiation notice through the post.

A provision to this effect has been included in the Bill to ensure that where the owner of a vehicle is detected driving an unregistered and/or uninsured vehicle by police road side within 7 days of a camera detected offence, the 7 day period associated with a camera detected offence will no longer apply and all subsequent unregistered and/or uninsured offences detected by camera will not be subsumed. In addition, the Bill incorporates a provision to cater for the reverse example, that is, where the owner of the vehicle is detected road side for an unregistered and/or uninsured offence before a camera offence has been detected. For consistency, the 7 day period will not be applied in these circumstances. This will ensure that owners who are caught driving their unregistered and/or uninsured vehicle by police will not have the benefit of the 7 day period during which time any subsequent camera detected offences would be subsumed.

As camera detection of road traffic offences relies on the identification of a vehicle via the vehicle's number plate, it is expected that with the increase of offences able to be detected via camera, there may be an increase in the removal of number plates or the use of false or defective number plates in order to avoid detection. The system also relies heavily on the register of motor vehicles being accurate and up to date and while the purchaser of a vehicle is currently required under the legislation to apply to the Registrar within 14 days of purchase to transfer the registration of a vehicle, they may not fulfil this obligation to avoid stamp duty or other fees or even to avoid being pursued for camera detected offences.

To complement making unregistered and/or uninsured offences expiable and detectable by camera, the Bill proposes to increase the penalties for number plate offences to the same level as the uninsured offence, that is, a maximum penalty of $5,000 and expiation fee of $500. This will ensure there is appropriate disincentive to remove number plates or use false or defective number plates to avoid detection for driving without registration and insurance. It is also intended that an expiation fee of $200 will be introduced for failing to return number plates, although an exemption will be provided in the *Motor Vehicles Regulations 1996* to licensed motor vehicle dealers from having to return number plates belonging to an unregistered and/or uninsured vehicle if the vehicle is being kept for resale purposes.

The Bill also introduces a new requirement for the person selling a vehicle, as well as the purchaser, to notify the Registrar of Motor Vehicles of the disposal of a registered vehicle and of the details of the purchaser. The Registrar will then be able to match the notification from both the purchaser and the seller to ensure that the register of motor vehicles accurately reflects the change in ownership of a vehicle. This provision is intended to assist enforcement agencies with an improved trail of vehicle ownership for all camera detected offences. It should be noted that over 40,000 notices of disposal are already received by the Registrar from vehicle sellers each year under the current voluntary system.

The maximum penalty for a seller failing to notify the Registrar of the disposal of a vehicle is proposed to be $1,250 with an expiation fee of $160. This penalty will not be enforced for the first 12 months to enable the vehicle selling community to get accustomed to the new requirements.

To ensure consistency, the Bill also increases the maximum penalty applying to the purchaser of a vehicle who fails to notify the Registrar. As well, it increases the penalty associated with failing to notify the Registrar of a change of address from $250 to $1,250. This increase in the maximum penalty able to be imposed by the courts aims to prevent the system from being manipulated and ensures that the register of motor vehicles will be accurate and up to date.

In cases where the purchaser of a vehicle fails to lodge with the Registrar an application to transfer the registration of the vehicle within 14 days, the Bill provides the Registrar with the power to refuse to transact any business with him or her under the Motor Vehicles Act until the application has been lodged.

The Bill provides a comprehensive approach to the improved management of unregistered and/or uninsured vehicles and aims to reduce the number of people who fail to register their vehicle because they think they won't get caught and if they do, it won't cost as much as the registration would have.

The remaining amendments addressed within the Bill are of an administrative nature and will improve the operation and administration of various pieces of transport related legislation.

In particular, the Bill amends:

- the *Motor Vehicles Act 1959* to allow the current Ministerial guidelines for the release of information to be prescribed by the *Motor Vehicles Regulations 1996*. This will provide greater transparency to the process and raise the status of the guidelines from a policy document, subject to administrative review, to a statutory instrument.
- the *Motor Vehicles Act 1959* to improve the operation and administration of the Act by:

- removing all expiation fees set in the Act to enable them to be included in Schedule 9 of the *Road Traffic (Miscellaneous) Regulations 1999* with all other expiation fees applying under the Act; and
- addressing some minor drafting anomalies associated with the introduction of the *Statutes Amendment (Compliance and Enforcement) Act 2006*.

- the *Passenger Transport Act 1994* by introducing several expiation fees for offences against the Act and a regulation making power to fix expiation fees not exceeding $500 for offences against the regulations. For example, as part of the Government's strategy for improving safety in taxis, the Bill introduces an expiation fee of $210 for the offence of contravening a condition of driver accreditation, which can be used if a taxi driver fails to display an identification card. In addition, the Bill introduces an expiation fee of $315 for drivers who do not hold appropriate accreditation and an expiation fee of $210 for persons who contravene a code of practice to be observed by approved vehicle inspectors. Introducing expiation fees for particular offences will provide an alternative to prosecution and practically act as a more effective deterrent due to the immediacy of the sanction.
- the *Harbors and Navigation Act 1993* to enable the type of Emergency Position Indicating Radio Beacon (commonly referred to an EPIRB) required to be carried on a vessel operating off the coast of South Australia to be specified by regulation. At present, the legislation only specifies that an EPIRB must be carried on a vessel, but does not specify the type or that it needs to be functional. The Bill ensures that the *Harbors and Navigation Regulations 1994* will be able to specify the carriage of a 406 Megahertz EPIRB as a consequence of the monitoring of the 121.5 Megahertz EPIRB being discontinued in February 2009. If the amendment is not made, there is a risk that vessel operators may carry a type of EPIRB that is not monitored, posing a significant safety risk to vessel operators and their passengers.

The opportunity has also been taken to correct various drafting anomalies within the Motor Vehicles Act and the Road Traffic Act as well as update references to a government department.

To sum up the major initiative in this Bill, at present, the penalties imposed for an unregistered and/or uninsured offence are not acting as a sufficient deterrent. It appears that, to a small group of motorists, it is worth the risk of getting caught and paying a fine rather than paying to register and insure their vehicle. If the system to manage unregistered and/or uninsured vehicles is not improved, the incidence of the offences will continue to increase and will ultimately impact on the Highways Fund, the Compulsory Third Party Insurance Fund, the Emergency Services Fund and the Hospital Fund, as well as lead to higher charges for those law abiding motorists who register and insure their vehicle.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

Clauses 1 to 3 are formal.

Part 2—Amendment of *Harbors and Navigation Act 1993*

4—Amendment of section 65A—Requirement to have emergency position indicating radio beacon

This clause amends section 65A which requires vessels of certain classes operating in the jurisdiction to carry an emergency position indicating radio beacon. Currently section 65A provides that the beacon must be in good working order. The amendment requires the beacon to comply with the requirements specified by the regulations.

Part 3—Amendment of *Motor Vehicles Act 1959*

5—Amendment of section 9—Duty to register

This clause amends section 9 to increase the maximum penalty for offences against the section to $2,500. Section 9 makes it an offence to drive an unregistered motor vehicle on a road or cause an unregistered motor vehicle to stand on a road. If an unregistered motor vehicle is found standing on a road, the owner of the vehicle is guilty of an offence. The maximum penalty is currently $750 or twice the registration fee that would be payable for registration of the vehicle for 12 months, whichever is the greater amount.

6—Amendment of section 38A—Reduced fees for certain concession card holders

7—Amendment of section 38AB—Registration fees for trailers owned by certain concession card holders

Clauses 6 and 7 update references to a government department.

8—Amendment of section 43A—Temporary configuration certificate for heavy vehicle

This clause amends section 43A to increase the maximum penalty for an offence against the section to $2,500. Section 43A makes it an offence for a person to cause or permit another to drive a registered heavy vehicle on a road in an unregistered configuration unless there is in force a temporary configuration certificate for that configuration. The maximum penalty is currently $750.

9—Amendment of section 47—Duty to carry number plates

This clause amends section 47 to increase the maximum penalty for offences against the section to $5,000. Section 47 makes it an offence to drive a motor vehicle, or cause a motor vehicle to stand, on a road if the vehicle does not bear number plates. If such an offence is committed, the owner of the vehicle is also guilty of an offence. The maximum penalty is currently $250.

10—Amendment of section 47A—Classes of number plates and agreements for allotment of numbers

This clause amends section 47A to increase the maximum penalty for an offence against the section to $5,000. Section 47A makes it an offence for a person to drive a motor vehicle on a road bearing number plates of a class in respect of which a declaration under the section has been made unless the registered owner has acquired the right to attach the number plates to the vehicle. The maximum penalty is currently $250.

11—Amendment of section 47B—Issue of number plates

This clause amends section 47B to increase the maximum penalty for an offence against the section to $5,000. Section 47B makes it an offence for a person to sell or supply number plates without the approval of the Minister. The maximum penalty is currently $250.

12—Amendment of section 47C—Return or recovery of number plates

This clause amends section 47C to increase the maximum penalty for an offence against the section to $5,000. Section 47C makes it an offence for a person to fail to comply with a direction of the Registrar to return number plates. The maximum penalty is currently $250.

13—Amendment of section 47D—Offences in connection with number plates

This clause amends section 47D to increase the maximum penalty for offences against the section to $5,000. Section 47D makes it an offence to drive a motor vehicle on a road, or cause a motor vehicle to stand on the road, if the vehicle has attached to it a number plate relating to another vehicle, a number plate that has been defaced, mutilated or added to or a colourable imitation of a number plate. If a motor vehicle is driven or caused to stand on a road in contravention of the section, the registered owner and registered operator are also guilty of an offence. It is also an offence to have possession, without reasonable excuse, of a number plate or article resembling a number plate that is liable to be mistaken for a number plate. The maximum penalty for offences against the section is currently $250.

14—Amendment of section 55C—Action following disqualification or suspension outside State

This clause amends section 55C to correct a drafting error.

15—Substitution of section 56

This clause substitutes section 56.

56—Duty of transferor on transfer of vehicle

This section provides that within 7 days after a transfer in the ownership of a motor vehicle, the transferor must either apply for cancellation of the vehicle's registration or give the transferee the current registration certificate, a signed application to transfer the vehicle's registration and a notice of the transfer of ownership. In addition, within 14 days after the transfer, the transferor must lodge the notice of the transfer of ownership with the Registrar. A maximum penalty of $1,250 is prescribed for non compliance.

16—Amendment of section 57—Duty of transferee on transfer of vehicle

This clause amends section 57 to increase the maximum penalty for an offence against the section to $1,250. Section 57 provides that within 14 days after a transfer of ownership of a motor vehicle, the transferee must lodge with the Registrar a completed application to transfer the vehicle's registration, accompanied by the current certificate of registration, the prescribed transfer fee and any stamp duty payable on the application. The maximum penalty is currently $250. The clause also amends the section so that if an application to transfer registration is not lodged within 14 days of the transfer, the Registrar may refuse to enter into any transaction with the transferee until such an application is lodged.

17—Substitution of section 57A

This clause substitutes section 57A.

57A—Power of Registrar to record change of ownership of motor vehicle

This section provides that if an application to transfer the registration of a motor vehicle has not been made, but a notice of the transfer has been lodged under section 56, or the Registrar is satisfied on other evidence that the ownership of the vehicle has been transferred to a particular person, the Registrar can record on the register the new owner without registering the vehicle in the name of that person.

18—Amendment of section 102—Duty to insure against third party risks

This clause amends section 102 to increase the maximum penalty for offences against the section to $5,000. Section 102 makes it an offence to drive an uninsured motor vehicle on a road or cause an uninsured motor vehicle to stand on a road. If an uninsured motor vehicle is found standing on a road, the owner of the vehicle is guilty of an offence. The maximum penalty is currently $2,500 and disqualification from holding and obtaining a driver's licence for a period of not more than 12 months, unless the vehicle is a trailer with a gross vehicle mass not exceeding 4.5 tonnes, in which case the current maximum penalty is a fine of $250.

19—Amendment of section 136—Duty to notify change of name, address etc

This clause amends section 136 to increase the maximum penalty for offences against the section to $1,250. Section 136 requires certain classes of persons to notify the Registrar of a change of name or address. Currently the maximum penalty for offences against the section is $250.

20—Amendment of section 139D—Confidentiality

This clause amends section 139D to require guidelines for the disclosure of confidential information obtained in the administration of the Act to be prescribed by the regulations rather than be approved by the Minister.

21—Amendment of section 142A—Evidence of ownership of motor vehicle

This clause amends section 142A to update a cross reference.

Part 4—Amendment of *Passenger Transport Act 1994*

22—Amendment of section 28—Accreditation of drivers

This clause amends section 28 to introduce an expiation fee of $315 for an offence of driving a public passenger vehicle for the purposes of a passenger transport service without holding an appropriate accreditation.

23—Amendment of section 31—Conditions

This clause amends section 31 to introduce an expiation fee of $210 for an offence of contravening or failing to comply with a condition of an accreditation as a driver of a public passenger vehicle.

24—Amendment of section 54—Inspections

This clause amends section 54 to introduce an expiation fee of $210 for an offence of contravening a code of practice to be observed by approved vehicle inspectors.

25—Amendment of Schedule 1—Regulations

This clause amends Schedule 1 to enable expiation fees not exceeding $500 to be prescribed for offences against the regulations.

Part 5—Amendment of *Road Traffic Act 1961*

26—Amendment of section 5—Interpretation

This clause amends section 5 by altering the definitions of *registered operator, registered owner, road related area* and *unladen mass*.

27—Amendment of section 45A—Excessive speed

This clause amends section 45A to remove the expiation provision. This will enable the expiation fee to be fixed by the regulations.

28—Amendment of section 79B—Provisions applying where certain offences are detected by photographic detection devices

This clause amends section 79B to enable registration offences and offences against prescribed provisions of the *Motor Vehicles Act 1959* to be detected by photographic detection devices. *Registration offence* is defined to mean an offence against section 9(1) of the Motor Vehicles Act constituted of driving an unregistered vehicle, or an offence against section 102(1) of that Act constituted of driving an uninsured vehicle. The term *owner registration offence* is defined to mean an offence against section 79B constituted of being the owner of a vehicle that appears from evidence obtained through the operation of a photographic detection device to have been involved in a registration offence.

The clause inserts new subsections (2c) and (2d).

Subsection (2c) provides that if—

(a) the registration of a motor vehicle has expired; and

(b) the owner of the vehicle is given an expiation notice for an owner registration offence involving the vehicle (the *first owner registration offence*); and

(c) the vehicle was last registered in the name of that owner; and

(d) since the vehicle was last registered, that owner has not been charged with, or been given an expiation notice for, a registration offence involving that vehicle,

the first owner registration offence subsumes all other owner registration offences involving that vehicle and committed by that owner within 7 days of the date of the commission of the first owner registration offence.

Subsection (2d) provides that if within 7 days of the date of the commission of the first owner registration offence, the owner is charged with, or given an expiation notice for, a registration offence involving the same vehicle, any owner registration offences involving that vehicle and committed by that owner after the commission of the registration offence are not subsumed by the first owner registration offence.

The clause also amends section 79B so that the requirement to allow a person an opportunity to expiate an offence against section 79B does not apply if the offence is an owner registration offence and the person has previously expiated or been found guilty of an owner registration offence or there is an order under section 70F of

the *Criminal Law (Sentencing) Act 1988* that restricts the owner from transacting any business with the Registrar of Motor Vehicles.

29—Amendment of section 110AAB—Driving hours

This clause amends section 110AAB to remove an obsolete reference to inspectors and replace it with a reference to authorised officers.

30—Amendment of section 110C—Offences

This clause amends section 110C to remove the expiation provisions. This will enable the expiation fees to be fixed by the regulations.

31—Amendment of section 163L—Definition

This clause amends section 163L by substituting a new definition of *approved officer* that includes police officers nominated as approved officers by the Commissioner of Police.

32—Amendment of section 175—Evidence

This clause amends section 175 to correct obsolete references.

33—Amendment of section 176—Regulations

This clause amends section 176 to remove an obsolete provision.

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

ADELAIDE FESTIVAL CENTRE TRUST (FINANCIAL RESTRUCTURE) AMENDMENT BILL

Second reading.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (17:53): 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.

This government is committed to the long-term sustainability of the Adelaide Festival Centre, in recognition of the key role that it plays as a presenter of the best of our home-grown, national and international performing arts product, for the enjoyment and benefit of South Australians and our visitors.

Evidence of this commitment includes this government's investment of $8 million in the current refurbishment of the Dunstan Playhouse, as the next stage in a long-term process of revitalising the Festival Centre precinct.

CEO and artistic director of the Festival Centre, Mr Douglas Gautier, developed the Trust's new artistic vision, entitled New Directions. This was publicly announced in October 2006, and the government and community have enthusiastically embraced it. New Directions places a far greater emphasis on the development, marketing and presentation of suitable product for the Festival Centre and on customer relationship management, and focuses on the doubling of audience numbers over a five-year period.

We note that the Adelaide Festival Centre Trust's operating position over recent years has been adversely affected by the debts of the past – including the original $20 million building debt, which has remained on the Trust's balance sheet since the 1970s.

The Adelaide Festival Centre Trust has been running at a loss (inclusive of depreciation) for several years given its current financial structure and asset base.

As part of our strategy for future success, this government announced, in June 2007, the clearing of some $28 million in debt from the Trust's balance sheet.

The government is now looking at management options which would enable the Trust to focus on its core mission, as outlined in its Act, of 'encouraging and facilitating artistic, cultural and performing arts activities throughout the State', in particular to focus on managing the development marketing and presentation of its artistic vision. One way of achieving this would be to have another government agency take responsibility for the financial and strategic management of those Trust assets, such as land and buildings. Such an arrangement would see a transfer of assets within Government, with the Trust of course retaining the use of those assets for its purposes.

The government therefore proposes to amend the Adelaide Festival Centre Trust Act 1971 to enable a future transfer of Trust assets and liabilities, which would nevertheless remain within government ownership.

Such a step would allow the organisation to better realise Douglas Gautier's New Directions artistic vision, which is already beginning to show success. And it would enable the Trust to focus on the future with confidence, and for the benefit of all South Australians.

The Adelaide Festival Centre Trust Act 1971 makes provisions for the Festival Theatre and certain land to be vested in and belong to the Trust. It also foreshadows the later construction of drama facilities, being the Dunstan Playhouse, Space Theatre and amphitheatre. And the Act provides for the care, control, management, maintenance

and improvement of the Centre and of all things necessary for, incidental and ancillary to such care, control, management, maintenance and improvement to be the responsibility of the Trust.

The Adelaide Festival Centre Trust (Financial Restructure) Amendment Bill 2008 removes references in the Act to property being vested in the Trust and imports a facultative provision enabling the future transfer of assets and liabilities via a proclamation issued by the Governor.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Adelaide Festival Centre Trust Act 1971

4—Amendment of section 4—Interpretation

This clause removes the definition of "the vesting day" and definitions of references to section numbers of land. The terms are removed as a consequence of the deletion of various provisions of the Act that use those terms.

5—Repeal of section 18

This clause deletes section 18 (section 18 currently vests certain real and personal property in the Trust).

6—Amendment of section 20—Objects, powers etc of Trust

The addition by this clause of the words "(subject to such arrangements as may be established from time to time for the occupation of the Centre by the Trust)" serves to emphasise that the future responsibilities of the Trust are those of occupier, not owner.

7—Repeal of section 23

This clause deletes section 23, an outdated section that enabled the Trust to assume the care, control and management of the Festival Theatre while the Festival Theatre was vested in the Council, pending its vesting in the Trust. The section had no more work to do once the Festival Theatre was vested in the Trust.

8—Amendment of section 24—Construction of Drama Facilities

The amendments effected by this clause ensure that, at such future time as the Trust becomes occupier rather than owner of the land, the ability of the Trust to construct drama facilities and associated works and conveniences on land will be preserved.

9—Substitution of Parts 3A and 4

This clause removes Parts 3A and 4 which effected the vesting of certain land (including the Festival Theatre) in the Trust. Once such land was so vested, these provisions no longer had any work to do. The clause replaces these Parts with new Part 4 (consisting of section 29).

Part 4—Ability to transfer property

29—Ability to transfer property

Proposed section 29 enables the transfer of the Trust's assets or liabilities (or both) to the Minister by proclamation.

10—Repeal of Schedules 1, 2 and 3

This clause deletes Schedules 1, 2 and 3 as a consequence of the deletion of Part 4. The Schedules currently provide map descriptions of sections of land referred to in Part 4.

Schedule 1—Transitional provision

1—Transitional provision

This clause clarifies that the vesting of property that occurred before the commencement of this Bill is not affected by the repeal of any provisions of the principal Act by this Bill, however, such property may, after the commencement of this Bill, be subject to transfer effected by proclamation under proposed section 29 of this Bill.

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

STATUTES AMENDMENT AND REPEAL (INSTITUTE OF MEDICAL AND VETERINARY SCIENCE) 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) (17:53): I move:

That this bill be now read a second time.

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

Leave granted.

The Statutes Amendment and Repeal (Institute of Medical and Veterinary Science) Bill 2008 that is being introduced today is a continuation of this Government's commitment to improving health services for South Australians.

The Government announced its intention to establish a single statewide public pathology service called SA Pathology in September 2006. This was to be achieved by the establishment of a new public pathology service called SA Pathology which will include the functions of the three public pathology providers in South Australia.

These three providers are SouthPath, which operates as a division of the Flinders Medical Centre and is part of the Southern Adelaide Health Service and the Repatriation General Hospital, the Women's and Children's Hospital Division of Laboratory Medicine which operates as a division within the Children, Youth and Women's Health Service and the Institute of Medical and Veterinary Science (or IMVS as it is known) which is established under its own Act, the Institute of Medical and Veterinary Science Act 1982, (the IMVS Act). The IMVS is by far the largest and generally most recognised of the public pathology services in this State.

The Bill before the House will repeal the IMVS Act and enable an incorporated hospital created under the Health Care Act 2008, to continue to provide the pathology and other functions of these three services through SA Pathology, which will be a division of that incorporated hospital. It is our intention to enable CNAHS to be the host for SA Pathology.

The Bill proposes the establishment of new governance arrangements for public pathology services to ensure that these services can continue to respond to the increasing pressures on them into the future.

There are a number of factors that are placing increasing pressures on public pathology services and many of these are the same as those faced by our health system more generally. The consolidation of the three existing pathology services is therefore a key strategy to respond to these pressures.

In summary, these pressures arise from the increasing demand for diagnostic services, demand for new and high cost diagnostic technology, the need for increased quality testing, maximising the use of financial resources and future workforce shortages.

The increasing demand for diagnostic services arises from an increasing population and an increasingly older population associated with greater longevity often requiring more diagnostic services. Changing disease and illness patterns are adding to the demand on diagnostic services as are consumer expectations of these services.

To manage higher throughput of patients in hospitals will also require speedier diagnostic services and therefore a greater and more efficient level of these services. This will lead to more requirements for interpretative advice from clinical pathologists to guide laboratory testing and interpret results, increasing the demand on this workforce.

These are serious pressures which can be most comprehensively addressed with a systematic and coherent approach that is best provided by a single service, rather than through three more disparate services. The bringing of pathology services into a single service will provide a governance structure that will enable this systematic approach to be undertaken and ensure the continuation of high-quality pathology services for all South Australians.

The benefits of such a single service will mean that unnecessary duplication or overheads can be avoided. There can be better retention and recruitment opportunities for all staff and there will also be a greater capacity to respond to increasing demand and to address current and future workforce issues to ensure services can respond to new diagnostic technologies.

The need for increasing teaching and training capacities also arises from the need to ensure pathologists have the requisite skills not only as part of their training, but increasingly as part of the continuing professional development for specialist registration and hospital credentialing. Accreditation requires these members of staff to develop new skills and maintain existing ones such that pathologists and senior scientists will increasingly be expected to be major providers of training for the disciplines of pathology and meet the education requirements for medical students and postgraduate medical trainees in various specialties and other healthcare workers.

The establishment of a single statewide public pathology service will allow for better strategic planning in this area that is linked to South Australia's overall health strategies and considers all elements of pathology services. That is, diagnostic, clinical, research and teaching and training.

The IMVS has, over the period of its existence established considerable commercial interests to exploit the outcomes of its research. It has primarily undertaken this through Medvet Sciences, a company formed by the IMVS to undertake these activities. The Bill ensures that the commercial and research interests of the IMVS and Medvet can be maintained along with the significant commercial and research status, credibility and goodwill attached to these names. It is intended that the names of both IMVS and Medvet will be maintained as appropriate, to ensure that the status associated with the names is not lost.

The Bill ensures that as part of the transfer of real property, assets, rights and liabilities, all existing contracts and agreements can be honoured with no loss for any parties associated with these as a result of the repeal of the IMVS Act and the transfer of the functions to an incorporated hospital. The Chief Executive Officer of Central Northern Adelaide Health Service will be responsible for these and any future contracts and agreements.

The Government announced that the Executive Director of SA Pathology will be Associate Professor Ruth Salom. Associate Professor Salom will be responsible for the management of the pathology services and will report to the Chief Executive Officer of Central Northern Adelaide Health Service.

The Bill also allows for some assets, rights and liabilities to be transferred by the Minister to another body once the proposed Act comes into effect. The assets, rights and liabilities include all contracts, agreements, shares, property, rights, liabilities and any interests in these. The asset transfer is a highly complex process and the provisions will ensure that the transfer process can be as smooth as possible and meet the interests of the parties involved.

The Bill ensures that staff employed by the IMVS and transferred to Central Northern Adelaide Health Service do not lose any entitlements. For these staff there will be a particular advantage since, by becoming part of an incorporated hospital, they will be able to access the Fringe Benefit Tax entitlement currently valued at $17,000. This entitlement can be a considerable attraction to retain and recruit staff.

To be eligible for the Medicare payments for pathology services for private patients the Commonwealth's Health Insurance Act 1973 requires there be an Approved Pathology Authority responsible for the pathology services. It also requires, amongst other things, that the Approved Pathology Authority employ the laboratory and collection centre staff and for pathology services to be rendered by or on behalf of Approved Pathology Practitioners. The Approved Pathology Authority must also have effective control or exclusive use of the premises and equipment in the laboratory. The Department of Health is awaiting a decision from the Commonwealth to determine whether the Chief Executive of the Department of Health or the Chief Executive Officer of Central Northern Adelaide Health Service can be the Approved Pathology Authority. The Bill ensures that the Department is able to comply with the Commonwealth's decision and meet the requirements of the Health Insurance Act.

In addition to the pathology services that the IMVS provides for public and private patients, it is also obliged under its Act to provide and maintain services and facilities for the Minister of Agriculture in relation to veterinary laboratory services, services to veterinary surgeons in private practice, the conduct of research in the field of veterinary science and any other veterinary services provided by the Department of Agriculture.

This provision was made for the very practical reason that the skills and equipment required to do this work for people are very similar to that required for animals and it would not be cost effective for the times required by the Minister for Agriculture for that Minister to establish and maintain the laboratory equipment and staff that may be required as part of the Minister's portfolio responsibilities.

However, because these services are to be undertaken by an incorporated hospital under the recently assented to Health Care Act 2008, it will be necessary for this Bill to amend the Health Care Act to ensure that these functions can be continued by the incorporated hospital through SA Pathology.

At the time of the drafting and passage through the Parliament of the then Health Care Bill, the Department was still undertaking an extensive due diligence process associated with the repeal of the IMVS Act and it was not desirable to delay the passage of the then Health Care Bill through the Parliament to include the required clauses.

The amendments to the Health Care Act made by this Bill are those necessary to ensure the functions, including the veterinary pathology, research, training and commercialisation functions that the IMVS is able to undertake under the IMVS Act, can be continued by Central Northern Adelaide Health Service.

The Bill makes amendments to ensure that the long title, objectives and definition of a health service in the Health Care Act can encompass the relevant functions currently carried out by the IMVS which are to become part of the Health Care Act.

It makes amendments to ensure the Minister and the Chief Executive have the necessary functions consistent with the amended objective and to specifically enable an incorporated hospital to carry out the relevant functions that were previously undertaken by the IMVS.

In summary, the Bill before the House is very straightforward. It repeals the IMVS Act and enables the transfer of assets, rights and liabilities and where it applies, real property, to an incorporated hospital which as stated above, is to be Central Northern Adelaide Health Service.

As a consequence of the transfer of functions, it makes necessary amendments to the Health Care Act 2008 so that Central Northern Adelaide Health Service can properly undertake these functions and in particular, the veterinary functions that currently exist under the IMVS Act and ensures that that there are powers and functions relevant to these for the Minister and the Chief Executive and that the requirements under the Commonwealth Health Insurance Act in relation to pathology services can continue to be met.

As part of the proposal for the development of the single pathology service, extensive stakeholder consultation was undertaken including the universities, TAFE colleges, professional associations, unions, health service management and the pathology providers. In summary, these stakeholders identified as key to the successful establishment of the service the need to ensure:

- The maintenance of high-quality seamless service delivery throughout the state including co-ordination between the pathology service and the rest of the health system.
- Ensuring the linkages between clinical, diagnostic, research, teaching and training work are maintained within pathology services and with the health services generally, including private practitioners.
- Maintaining linkages with research functions and other collaborative efforts with Universities as well as enhancing the attractiveness and protection of teaching and training roles including with Universities.

- Protection of the recognised brand names for private and commercial work and maintaining flexibility to respond to competitor actions.
- Attracting and retaining of pathologist and scientific staff in face of increasing worldwide workforce shortages.
- Ensuring there are no adverse affects on employee remuneration, in particular, the ability to salary sacrifice.
- Having a single point of accountability for statewide service delivery.

The Bill before the House ensures that these concerns of the stakeholders have been addressed through its transitional provisions and through the amendments it makes to the Health Care Act. The Department of Health will also establish the necessary policies, protocols and delegations in consultation with the relevant stakeholders to ensure that there is a smooth as possible transition of the services to Central Northern Adelaide Health Service and SA Pathology.

The Statutes Amendment and Repeal (Institute of Medical and Veterinary Science) Bill 2008 will provide for a better and more efficient public pathology service for South Australians into the future.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Health Care Act 2008

4—Amendment of long title

This clause makes consequential amendments to the long title.

5—Amendment of section 3—Interpretation

This clause makes an amendment to the definition of health service that is consequential upon the proposed amendments to the functions of the Minister, Chief Executive and an incorporated hospital that enable the provision of a research, pathology or diagnostic service associated with veterinary science.

6—Amendment of section 4—Objects of Act

This clause makes an amendment to section 4 of the Health Care Act 2008 that is consequential upon the amendments in proposed sections 6, 7 and 31.

7—Amendment of section 6—Minister

This clause confers additional functions on the Minister to facilitate the performance of functions previously carried out by the IMVS. The proposed amendment to section 6(1)(g)(i) enables the Minister to promote or support the provision of facilities or other forms of support to a university or other institution, authority or person considered to be appropriate by the Minister. The proposed section 6(1)(ka) enables the Minister to provide and maintain such services or facilities as another Minister may request in connection with the field of veterinary science.

8—Amendment of section 7—Chief Executive

This clause makes an amendment to section 7 of the Health Care Act 2008 to enable the Chief Executive to facilitate the provision of laboratory, research or other similar facilities, including on account of a request by a Minister under proposed section 6(1)(ka) of the Health Care Act 2008.

9—Amendment of section 31—General powers of incorporated hospital

This clause inserts new subsection (1a).

Proposed subsection (1a) provides that without limiting subsection (1), an incorporated hospital may undertake the following functions:

- to undertake or facilitate—

  the commercial exploitation of knowledge arising from its activities; or

  the commercial development of its services, functions or expertise;

- to produce and sell instruments or other equipment for use in—

  the provision of medical services, including medical diagnostic services; or

  the teaching of medical science; or

  scientific research;

- to provide consultancy services;
- to provide and maintain a drug and alcohol testing service for such persons as the hospital thinks fit;
- to conduct a testing service for the purpose of determining parentage or other human genetic relationships;
- to provide and maintain such services or facilities as the State Government may require in relation to—

  veterinary laboratory services, or services to veterinary surgeons in private practice, or other veterinary services provided by a public sector agency within the meaning of the Public Sector Management Act 1995; or

  research in the field of veterinary science;
- to conduct such other activities considered appropriate by the Minister that can be efficiently or effectively managed through the use of hospital facilities and resources.

Part 3—Repeal

10—Repeal of Institute of Medical and Veterinary Science Act 1982

This clause repeals the Institute of Medical and Veterinary Science Act 1982.

Schedule 1—Transitional provisions

This Schedule contains transitional arrangements for the implementation of the measure.

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

NATIONAL GAS (SOUTH AUSTRALIA) 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) (17:54): I move:

That this bill be now read a second time.

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

Leave granted.

The Government is again delivering on a key energy commitment through new legislation to improve the governance arrangements for the regulation of natural gas pipeline services, for the benefit of South Australians and all Australians.

The National Gas (South Australia) Bill 2008 will make important governance reforms to gas regulation, through separating high level policy direction, economic regulation, rule making, and rule enforcement. The Bill brings gas access regulation under the jurisdiction of the Australian Energy Market Commission as rule maker and the Australian Energy Regulator as the economic regulator and enforcement body. These reforms are modelled on the changes made to electricity regulation in the 2005 and 2007 amendments to the National Electricity Law and are designed to ensure consistency between gas and electricity regulation where appropriate.

The Bill contains new incentives to encourage investment in gas infrastructure, which are particularly important in light of the important role gas is expected to play as we move to a carbon constrained economy. These incentives include the continuation of the greenfields pipeline incentives, a new light handed regulatory regime and improvements to the rules around cost recovery for investment in expanding existing gas infrastructure capacity.

A further major reform is the streamlined rule change process, now embodied in the new National Gas Law. As a result of these reforms, the rules that govern the regulation of pipeline services, and which are currently embodied in the National Gas Code, will be replaced with rules made under the National Gas Law.

This Bill also makes significant advances in transparency in the market for gas by establishing a Bulletin Board to provide information about natural gas services and assist in the response to gas emergencies.

In short, this Bill will strengthen and improve the quality, timeliness and national character of the governance and economic regulation of pipeline services while increasing consistency between electricity and gas regulation and improving transparency.

Background

As Honourable Members will be aware, South Australia is the lead legislator for national gas legislation and retains this important role under the reforms proposed.

The existing co operative scheme for the regulation of pipeline services came into operation in 1997. The lead legislation is the Gas Pipelines Access (South Australia) Act 1997. There are two Schedules to this Act, the first titled Third party access to natural gas pipelines, and the second being the National Third Party Access Code for Natural Gas Pipeline Systems (the Gas Code). Together these Schedules are referred to as the Gas Pipelines Access Law and, along with the Regulations made under them, are applied by all Australian States and Territories as well as the Commonwealth. The Gas Code is able to be amended by a Ministerial approval process.

Under the proposed reforms, the new National Gas Law, the Regulations made under the National Gas (South Australia) Act 2008 and, now, the National Gas Rules, will be applied in all Australian jurisdictions by application Acts which apply our Law, Regulations and Rules.

As Honourable Members will be aware, in December 2003, the Ministerial Council on Energy responded to the Council of Australian Governments' report 'Towards a Truly National and Efficient Energy Market', also known as the Parer Review by announcing a comprehensive and sweeping set of policy decisions for its major energy market reform program. These policy decisions were publicly released as the Ministerial Council's Report to the Council of Australian Governments on 'Reform of Energy Markets'. All first Ministers endorsed the Ministerial Council's Report.

The 2004 Australian Energy Market Agreement, as amended in 2006 commits the Commonwealth, State and Territory Governments to establish and maintain the new national energy market framework. An important objective of the Australian Energy Market Agreement is the promotion of the long term interests of energy consumers, which has been enshrined as the key objective of the Law, in the new National Gas Objective in the National Gas Law.

Also in 2004, the Productivity Commission completed its 'Review of the Gas Access Regime'. This Bill implements the policy responses of the Ministerial Council on Energy to that Review and incorporates a number of resulting regulatory reforms.

Parallel to the process of replacing the Gas Code with the National Gas Law, the Ministerial Council on Energy has been pursuing other mechanisms to develop the gas market. In November 2005 the Ministerial Council on Energy announced the establishment of the Gas Market Leaders Group, an industry run group, to develop proposals to improve transparency and trading in Australia's gas markets. The Gas Market Leaders Group reported to the Ministerial Council in June 2006, and in October 2006 the Ministerial Council endorsed the proposals for development of a gas market Bulletin Board and design work for a Gas Short Term Trading Market. This Bill contains provisions to allow the Bulletin Board to become operational.

New regulatory arrangements

This Bill reforms the governance arrangements for the regulation of pipeline services by conferring functions and powers on two national energy bodies, the Australian Energy Market Commission, which was established under the South Australian Australian Energy Market Commission Establishment Act 2004, and the Australian Energy Regulator, established under the Commonwealth Trade Practices Act 1974. These bodies were originally given functions and powers as the regulator and rule maker under the National Electricity Law, and will now have similar functions conferred on them under the National Gas Law. Importantly, the Bill also enshrines the policy making role of the Ministerial Council on Energy in the context of gas regulation.

The Australian Energy Regulator will be responsible for gas transmission and distribution regulation in all jurisdictions other than Western Australia, where the Economic Regulation Authority retains this role. The Australian Energy Market Commission will be responsible for rule making for gas transmission and distribution in all jurisdictions.

As a result of these new regulatory arrangements, the Code Registrar and the National Gas Pipelines Advisory Committee are to be abolished and their functions assumed by the Australian Energy Market Commission.

Consultation

All of these reforms have been the result of extensive public consultation processes with industry participants and other stakeholders. These have included the development, publication and MCE responses to the 2002 Parer Review and the 2004 Productivity Commission Review of the Gas Access Regime. Further consultation was then undertaken on the implementation of the recommendations contained in the Expert Panel in its 'Report on Energy Access Pricing' of 2006.

Consultation on this Bill itself included opportunities to provide written submissions on two exposure drafts of the Bill and the National Gas Rules. In total, 45 written submissions on the drafts of this Bill and the rules were received. I take this opportunity to thank all parties who made submissions for their valuable contribution to these important reforms. As you have heard, however, many of the constituent parts of the overall reform program, including important elements of this Bill, have also been subject to previous consultation processes.

The Bulletin Board provisions of the Law and the Rules have been extensively consulted on by the Gas Market Leaders Group, including an initial consultation paper in June 2007, a final paper outlining business data and requirements for the Bulletin Board in September 2007 and consultation on exposure drafts of the Bulletin Board Law and Rules provisions in February of this year.

National gas objective

This Bill incorporates a new national gas objective which mirrors the National Electricity Objective in the National Electricity Law.

The alignment between the objectives of the gas and electricity regime is an important foundation for the regime. A single consistent objective across gas and electricity will increase the prospect that the regimes remain closely aligned over the long term, even in light of the capacity in both regimes for interested parties to make applications to change rules through the Australian Energy Market Commission.

The national gas objective is to promote efficient investment in, and efficient use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, reliability and security of supply of natural gas.

The national gas objective is an economic concept and should be interpreted as such.

The long term interest of consumers of gas requires the economic welfare of consumers, over the long term, to be maximised. If gas markets and access to pipeline services are efficient in an economic sense, the long term economic interests of consumers in respect of price, quality, reliability, safety and security of natural gas services will be maximised. By the promotion of an economic efficiency objective in access to pipeline services, competition will be promoted in upstream and downstream markets.

Just as the Australian Energy Market Commission must test changes against the objective of the law when making rules, the Australian Energy Regulator must perform its functions in a manner that will or is likely to contribute to achieving the objective of the law.

The purpose of the National Gas Law is to establish a framework to ensure the efficient operation of pipeline services, efficient investment, and the effective regulation of gas networks.

Revenue and pricing principles

A key feature of the amended National Gas Law is the inclusion of six principles that guide the development of the framework for the regulation of pipeline services. These revenue and pricing principles will guide the Australian Energy Market Commission in making the rules governing the regulation of pipeline services and the Australian Energy Regulator when approving access arrangements.

These principles are fundamental to ensuring that the Ministerial Council on Energy's intention of enhancing the efficient delivery of natural gas services is achieved. To provide certainty to the industry and consumers, these principles will be applied through the National Gas Law. The aim of the pricing principles is to provide the necessary balance between allowing the regulatory regime to evolve as the industry evolves through the National Gas Rules and provide the framework for efficient investment in pipelines. These revenue and pricing principles replicate the principles in the National Electricity Law to ensure a consistent framework for energy access pricing.

The first of these principles requires that a regulated service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in providing services, complying with a regulatory obligation or requirement or making a regulatory payment. At least efficient cost recovery is vital if service providers are to maintain their gas networks in order to meet community expectations of the service levels they receive, and to undertake further investment to serve Australia's growing population.

The second principle requires that service providers should be provided with effective incentives in order to promote the economically efficient investment in and provision and use of pipeline services.

The third principle requires that regulators have regard to the capital base adopted in any previous determination conducted by the Australian Competition and Consumer Commission or jurisdictional regulators, or as specified in the rules. This principle is important to ensure that the regulatory framework recognises the long lived nature of pipelines by recognising how sunk assets have been considered previously in rules or previous access arrangements.

The fourth principle ensures that risks are appropriately compensated by requiring that prices and charges for the provision of reference services allow for a return commensurate with the regulatory and commercial risks involved in providing the services to which that price or charge relates.

The fifth principle explicitly requires the Australian Energy Regulator to have regard to the economic costs and risks of the potential for under and over investment by a regulated service provider in its network. The cost of under investment is lower service standards for consumers and ultimately higher costs to correct these, while the cost of over investment is unnecessarily high prices to consumers. This principle will ensure that Australian consumers receive the level of service that they expect and at the right price.

The final principle requires that regard be had to the economic costs and risks of the potential for under and over utilisation of a service provider's network. This principle guides decision makers to consider the efficiency of the usage of existing assets and balance this against the principle of over and under investment. Utilisation is another important indicator of whether the network is operating efficiently. Under utilisation during a previous access arrangement period might indicate that prices have been set too high. It may also be an indicator of over investment, which can also result in high prices. Either way it can have adverse consequences on consumers. Conversely, over utilisation is an indicator of under investment which can result in poor service standards.

Ministerial Council on Energy role and functions

Consistent with the Australian Energy Market Agreement the new National Gas Law and Rules have been drafted to reflect the Ministerial Council on Energy's function to give high level policy direction to the Australian Energy Market Commission in relation to the national energy market, rather than engaged directly in the day to day operation of the energy market or the conduct of regulators. The Ministerial Council's powers under the National Gas Law mirror its role under the National Electricity Law.

The means by which the Ministerial Council on Energy will perform this role under the new National Gas Law and Rules is, first, through its ability to direct the Australian Energy Market Commission to carry out a review and report to the Ministerial Council on Energy. Such a review may result in the Australian Energy Market Commission making recommendations to the Ministerial Council on Energy in relation to any relevant changes to the Rules that it considers are required. Secondly, the Ministerial Council on Energy may initiate a Rule change proposal including in response to a review or advice carried out or provided by the Australian Energy Market Commission as a result of a request by the Ministerial Council on Energy. Thirdly, the Ministerial Council on Energy may publish

statements of policy principles in relation to the Australian Energy Market Commission's rule making and review functions under the new National Gas Law, or the Rules.

Ministerial Council on Energy statements of policy principles must be consistent with the National Gas Objective. The Ministerial Council will be required to give a copy of such statements to the Australian Energy Market Commission which must then publish the statement in the South Australian Government Gazette and on the Australian Energy Market Commission's website.

Australian Energy Market Commission role and functions

The Australian Energy Market Commission has been established as a statutory commission. Under the new National Gas Law and Rules, the Australian Energy Market Commission is responsible for Rule making and market development. Market development will occur as a result of the Rule review function.

In so far as its Rule making function is concerned, the Australian Energy Market Commission itself will generally not be empowered to initiate any change to the Rules other than where the proposed change seeks to correct a minor error or is non material. Instead, its role is to manage the Rule change process and to consult and decide on Rule changes that are proposed by others, including the Ministerial Council on Energy, gas market operators, industry participants and gas users.

In so far as its market development function is concerned, the Australian Energy Market Commission must conduct such reviews into any matter related to the national gas market or the Rules as directed by the Ministerial Council on Energy. The Australian Energy Market Commission may also, of its own volition, conduct reviews into the operation and effectiveness of the Rules or any matter relating to them. These reviews may result in the Australian Energy Market Commission recommending changes to the Rules, in which case the Ministerial Council on Energy, or any other person, can then decide to initiate a Rule change proposal based on these recommendations through the Rule change process.

In performing its functions under the new National Gas Law and Rules, the Australian Energy Market Commission will be required to have regard to the National Gas Objective. Further, the Australian Energy Market Commission must have regard to any relevant Ministerial Council on Energy statements of policy principles in making a Rule change or conducting a review into any matter relating to the Rules.

Australian Energy Regulator role and functions

The Australian Energy Regulator has been established as a Commonwealth statutory body under the Trade Practices Act1974. The Australian Energy Regulator is the primary regulator under the National Electricity Law and will take on this function under the National Gas Law in all jurisdictions except Western Australia, where the Western Australian Economic Regulation Authority will perform this function. Under the new National Gas Law and Rules, the Australian Energy Regulator has enforcement, compliance monitoring, and economic regulatory functions. To perform these functions under the National Gas Law, the Australian Energy Regulator will be given identical powers to those it has under the National Electricity Law.

Information gathering powers

This Bill adopts the Australian Energy Regulator's information gathering powers under the National Electricity Law. They are designed to address ongoing issues of information asymmetry between regulated businesses and the regulator that were recognised by the Expert Panel.

The amendments enable the Australian Energy Regulator to obtain adequate information from industry to set efficient prices for energy services without placing an unnecessarily heavy administrative burden on industry, while supporting competition in the energy market and protecting commercially sensitive information.

Information on costs incurred in supplying pipeline services is a critical input into the regulatory process and is an essential starting point for determining regulated prices for services supplied in such a market. These provisions implement the concerns of the Expert Panel about the necessity of information provision in gas and electricity regulation.

The Bill includes search warrant provisions consistent with current criminal law policy and with the National Electricity Law. Search warrants are a tool for breaches of the legislative regime rather than economic regulation.

The National Gas Law gives the Australian Energy Regulator the ability to obtain information or documents from any person where such information or documents are required by the Australian Energy Regulator for the purpose of performing or exercising any of its functions and powers. The Australian Energy Regulator's information gathering powers under this provision extend to existing information. However, persons are not required to provide information or documents pursuant to such a notice where they have a reasonable excuse for not doing so, such as that the person is not capable of complying with the notice. Information that is the subject to legal professional privilege is also protected from disclosure under such a notice.

The Bill includes the concepts of a 'general regulatory information order' and a 'regulatory information notice' that were developed in the 2007 amendments to the National Electricity Law. The law outlines the processes by which these instruments may be used by the Australian Energy Regulator.

A general regulatory information order is an order made by the Australian Energy Regulator that requires each regulated service provider of a specified class, or each related provider of a specified class, to provide the information specified in the order and to prepare, maintain or keep information described in the notice in a manner specified in the order. A regulatory information notice is a notice prepared and served by the Australian Energy Regulator that requires the regulated network service provider, or a related provider, named in the notice to provide

the information specified in the notice and to prepare, maintain or keep information described in the notice in a manner and form specified in the notice.

The Australian Energy Regulator can only serve a regulatory information notice or make a general regulatory information order if it considers it reasonably necessary for the performance or exercise of its functions. In considering whether it is reasonably necessary, the Australian Energy Regulator must have regard to the matters to be addressed in the service of the regulatory information notice or the making of the general regulatory information order, and the likely costs that may be incurred by an efficient network service provider or efficient related provider in complying with the notice or order. The Australian Energy Regulator must also exercise its powers under this section in a manner that will or is likely to contribute to the achievement of the national gas objective.

A key component of this Bill is to extend the Australian Energy Regulator's information gathering powers to parties related to the service provider. This mechanism is designed to ensure that the Australian Energy Regulator has sufficient information to perform its functions and to discourage service providers from using corporate structures to avoid disclosure of information to the regulator, without allowing the Australian Energy Regulator to unduly interfere in competitive commercial arrangements.

The National Gas Law requires the Australian Energy Regulator to consider additional matters in considering whether it is reasonably necessary to serve a regulatory information notice or make a general regulatory information order for related providers. One of the matters the Australian Energy Regulator is required to consider is whether the service provider is able to provide sufficient and timely information to address the reasons for issuing the information instrument. The Australian Energy Regulator is also required to consider the extent to which it considers the services provided by the related provider are a contributing service provided on a genuinely competitive basis having regard to the nature of ownership and control between the related provider and the network service provider and the competitiveness of the market in which the person provides services to the service provider.

The National Gas Law identifies the functions to which the general regulatory information order and regulatory information notice powers extend. A regulatory information instrument must not be served solely for the Australian Energy Regulator's enforcement functions, appeals or collecting information for the preparation of a service provider performance report. Outside of these areas, the tests for issuing a regulatory information instrument are sufficient to ensure these powers do not create an unnecessary regulatory burden.

The National Gas Law also recognises that there are certain circumstances where the Australian Energy Regulator needs to issue an urgent regulatory information notice. In such circumstances, the Australian Energy Regulator is required to identify that the notice is an urgent regulatory information notice and give reasons as to why the regulatory information notice is an urgent notice.

The National Gas Law gives the Australian Energy Regulator the ability to make certain assumptions in instances where the regulated network service provider or related provider does not provide the information to the Australian Energy Regulator in accordance with the applicable regulatory information instrument or provides information that is insufficient.

These instruments are intended to clearly set out the information requirements on service providers to report annually and at an access arrangement review. By creating clear obligations, regulators, users, related providers and network service providers will be able to more clearly ascertain compliance with the law and the efficiency of prices for services. As well, the framework set out in the National Gas Law should help to avoid information being collected in several different ways under different parts of the National Gas Rules.

These amendments will require the Australian Energy Regulator to take into account the comments received, including the likely costs of compliance, before issuing a regulatory information notice. Consultation is intended to ensure the Australian Energy Regulator does not exercise its powers without regard to why it requires the information and taking into account the regulatory burden that may be imposed by the request for information.

Protection of confidential information

This Bill also establishes a comprehensive framework covering the circumstances where the Australian Energy Regulator is authorised to disclose confidential information. The Trade Practices Act generally requires the Australian Energy Regulator keep information confidential but allows the National Electricity Law and National Gas Law to specify how and when the Australian Energy Regulator may disclose confidential information. In the regulatory framework for energy, while there is a legitimate need to protect confidential information, particularly that relating to businesses in competitive parts of the market, there is also a need to disclose much of a network service provider's information to the public to allow adequate scrutiny of its costs.

Accordingly, the Australian Energy Regulator is able to disclose confidential information with consent, where aggregated, for proceedings or to accord natural justice. Additionally, where none of the previous options apply or are appropriate, the Australian Energy Regulator is able to disclose information where it would not cause detriment or if the public benefit of disclosing outweighs the detriment. The Australian Energy Regulator must give affected parties 5 business days to comment on such a disclosure and if submissions are received, must issue a further disclosure notice and wait a further 5 business days before disclosure. These decisions are also subject to merits review in the Australian Competition Tribunal.

Performance reporting

This Bill replicates the power given to the Australian Energy Regulator under the National Electricity law to publish performance reports on the financial and operational performance of service providers. This is a key aspect of transparency for service providers and will be of great benefit to gas users and consumers. Performance reporting on regulated services is an important element of the regulatory framework as it allows the Australian Energy

Regulator to consider whether the service providers are complying with the regulatory determinations, and to promote competition by comparison for monopoly service providers.

In preparing a report on the financial and operational performance of a network service provider, the National Gas Law provides that the Australian Energy Regulator can only prepare a report in a manner that will, or is likely to, contribute to the achievement of the National Gas Objective. The National Gas Law also provides that the report prepared by the Australian Energy Regulator can include performance against network service standards, customer service standards, and profitability of the regulated services. The report may also cover other performance of service providers directly related to the economic regulatory functions of the Australian Energy Regulator. The purpose of these requirements is to provide the regulator and users and consumers with information about how the regulated service provider is performing more broadly to ensure it can deliver reliable and efficient pipeline services.

The National Gas Law also requires the Australian Energy Regulator, before preparing a performance report under the law, to consult with persons specified in the Rules and in accordance with the consultation process outlined in the Rules. The initial rules require the Australian Energy Regulator to consult with service providers, associations representing service providers, and the public generally in order to determine the appropriate priorities and objectives to be addressed in the preparation of a performance report. In preparing the performance report, the Australian Energy Regulator is also required to consult with jurisdictional safety and technical regulators to avoid unnecessary duplication.

The Rules also provide the service provider with an opportunity, at least 30 business days before the publication of the report, to submit information and make submissions relevant to the subject matter of the report. The service provider must be given an opportunity to comment on material of a factual nature to be included in the report. This provides an opportunity for affected stakeholders to be consulted while at the same time encouraging transparency and insight into a service provider's performance.

Coverage of pipelines

The National Gas Law retains the structure of the Gas Code where economic regulation is only applied to covered pipelines which exhibit a level of market power where the benefits of regulation outweigh the costs. Coverage of pipelines is a process for determining whether or not economic regulation should or should not be applied to the services provided by a particular pipeline. This decision is made by the relevant State or Commonwealth Minister, on the recommendation of the National Competition Council. The decision of whether or not to regulate is based upon whether the pipeline coverage criteria are satisfied. Consistent with the current Gas Code, a coverage decision may apply to more or less of the pipeline than is the subject of the application or recommendation.

The Gas Code coverage criteria have been amended in response to the Productivity Commission Review of the Gas Access Regime such that a 'material' increase in competition in at least one market is required before coverage should be applied. This, consistent with similar amendments to Part IIIA of the Trade Practices Act, ensures that the increase in competition needs to be non trivial before regulation is imposed.

The National Gas Law does not apply economic regulation to pipelines that do not meet the coverage criteria. Any person can apply to bring a pipeline under the regime or for a pipeline to become uncovered at any time, unless the pipeline has been granted a greenfields pipeline incentive.

This Bill streamlines the pipeline classification and coverage process. Under the National Gas Law, classification and coverage will be dealt with simultaneously. In this process the National Competition Council will make draft and final recommendations on coverage at the same time as making draft and final decisions on the classification of the pipeline. That final classification decision will therefore determine who is to be the relevant Minister for making the decision on whether the pipeline should be covered or uncovered under the regime. As in the Gas Pipelines Access Law, the relevant Minister so determined will make the final coverage determination based on the advice of the National Competition Council.

Light regulation of services

Under the National Gas Law not all covered pipelines will necessarily be subject to upfront price regulation in an access arrangement. This Bill implements the recommendation of the Productivity Commission that a light handed form of regulation be introduced into the gas access regime which does not involve upfront setting of reference tariffs through the access arrangement approval process. In its response to the review, the Ministerial Council on Energy largely accepted the thrust of the Productivity Commission's proposals and adapted them to be consistent with the new governance framework. It should be noted that both the Productivity Commission and the Ministerial Council have recognised that binding arbitration, as a core requirement for certified effective access regimes, needs to be able to be applied to pipelines under this form of regulation.

The National Gas Law allows service providers operating covered pipelines to apply for the services offered by means of that pipeline to be 'light regulation services'. The National Competition Council is the body charged with the responsibility of deciding whether or not to make a 'light regulation determination' in regard to a covered pipeline. A light regulation determination means that services provided by a pipeline are light regulation services and has effect until it is revoked.

Service providers offering light regulation services are not required to, but may, submit a limited access arrangement to the Australian Energy Regulator for approval. A limited access arrangement is an access arrangement without provision for price or revenue regulation. Service providers may wish to submit such an arrangement as it gives certainty over terms and conditions applicable to their pipeline services. Further, a limited access arrangement also means the Australian Energy Regulator, in resolving an access dispute, must apply the limited access arrangement terms and conditions. Even though limited access arrangements do not provide for price

or revenue regulation, in an arbitration the Australian Energy Regulator will be able to set a price between the parties for the purpose of resolving the access dispute. However, the price would only be a price set between the parties to the dispute based upon the application of the revenue and pricing principles.

Service providers subject to light regulation will be required to make public the terms and conditions of access, including prices, for provision of those services. A service provider is also required by the National Gas Law not to engage in price discrimination.

The Ministerial Council has also agreed that the market status of the current covered pipeline networks in South Australia, Victoria and Western Australia makes them inappropriate for light regulation. These networks will be listed as designated pipelines in the initial regulations. Should market circumstances change, advice may be provided to the Ministerial Council by the Australian Energy Regulator and the Council may decide to pass a regulation removing one or more of the pipelines from the list as designated pipelines.

Test for light regulation and form of regulation factors

Determining how covered pipeline services are to be regulated requires an assessment of the potential for market power to be exploited by a service provider. The National Gas Law requires the National Competition Council to consider the likely effectiveness of light regulation as opposed to access arrangement regulation in promoting access to pipeline services in light of the costs of each form of regulation. Accordingly, where light regulation can reduce the costs of regulation while still providing an effective check on a pipeline's market power, the light regulation option should be available. Light regulation may be particularly relevant for point to point transmission pipelines with a small number of users who have countervailing market power.

The National Gas Objective and 'form of regulation factors' guide this assessment of the form of regulation to apply to covered pipeline services. This framework effectively implements the Expert Panel recommendations and mirrors considerations in the National Electricity Law.

The first of the form of regulation factors assesses the presence and extent of any barriers to entry in a market for pipeline services. Many of the services provided by pipelines can be characterised as natural monopolies and need to be regulated to ensure that consumers' interests are met.

Another factor that predisposes pipelines towards natural monopoly status is the interdependent nature of network services. This means that it is usually more efficient to have one service provider provide a pipeline service to a given geographical area. Additionally it may be more efficient to have the same company provide other pipeline services to the same geographical area.

The second and third form of regulation factors require that the National Competition Council identify these interdependencies and network externalities as potential sources of market power.

The fourth form of regulation factor looks to consider the extent to which market power possessed by the owner, operator or controller of a pipeline by which services to be subject to regulation are provided is likely to be mitigated by countervailing market power possessed by the users of those services. This factor allows the National Competition Council to apply a lighter form of regulation to a pipeline that is subject to this type of countervailing market power from a major user.

Another factor that may cause the National Competition Council to consider a lighter form of regulation is the degree to which pipeline services can be substituted for other products. For example, electricity may also compete with natural gas for some or all of a customer's needs. The fifth and sixth form of regulation factors allow the National Competition Council to consider the presence and extent of substitutions for users to be provided with the particular service.

Finally, customers can only negotiate with service providers when they have adequate information, to determine whether or not payments required of them accurately reflect the efficient cost of providing the service. In a competitive market the efficient cost is revealed as competing providers seek to out bid each other down to the point where they are covering their costs plus a normal profit. Where a business is a natural monopoly this does not occur and it can be difficult for consumers and regulators to access information from natural monopoly service providers. The final form of regulation factor allows the National Competition Council to consider the extent to which there is adequate information available to users, to enable them to negotiate with the service provider on an informed basis.

Additionally, even within a pipeline regulated by an access arrangement, some services may still only be subject to arbitration rather than upfront price regulation. The form of regulation factors will guide the Australian Energy Market Commission in making rules which distinguish between these services.

General obligations on covered pipelines

The National Gas Law directly imposes a number of fundamental obligations on pipelines similar to the previous regime. Service providers and related parties are prohibited from preventing and hindering access, must comply with their queuing requirements and are subject to a number of ring fencing obligations including not carrying on a related business, restrictions on marketing staff and requirements about keeping separate and consolidated accounts for their business. Other details about ring fencing and exemptions from ring fencing requirements are in the Rules. Just as in the current regime, producers are required to offer terms and conditions of sale from the exit flange of their facility to ensure there are no gaps in the access regime.

The approval process for contracts between service providers and associates has been altered, so that approval from the regulator is not needed for every such contract. It is now left to the discretion of the service provider as to whether such a contract is likely to breach the associate contract provisions of the National Gas Law, by reducing competition. If other parties or the Australia Energy Regulator believe that a party is in breach of the associate contract provisions, the Australian Energy Regulator or an affected party may enforce those provisions.

This approach is similar to arrangements in the Trade Practices Act 1974. It achieves an appropriate balance between reducing the regulatory burden on the pipeline industry and protecting the interests of downstream users of pipeline services.

Access arrangements

Access arrangements have been the central feature of pipeline regulation under the Gas Code and will continue to have this position under the National Gas Law. The law requires service providers who are subject to price regulation to submit access arrangements and revisions to access arrangements to the Australian Energy Regulator in accordance with the Rules. The Australian Energy Regulator is also required to apply an access arrangement during an access dispute. The processes for submitting, approving and revising access arrangements will be contained in the National Gas Rules to allow flexible development through the rule change process. In the initial Rules the approval processes for access arrangements will now be subject to clear time limits. The benefits of this are that the approval of access arrangements will be expedited and certainty as to what is expected of all parties has been improved.

The intention has been for the Rules concerning access arrangements to replicate the economic regulatory model operating under the Gas Code while implementing the Ministerial Council on Energy's response to both the Productivity Commission Review of the Gas Access Regime and the Expert Panel on Energy Access Pricing. In a small number of areas, such as pricing principles for distribution networks, the gas regime has been aligned to the regime in the National Electricity Rules to promote greater consistency in regulation. Generally, consistency with current practice will ensure business and user certainty in the transition between the current and new regimes.

Consistent with the Gas Code, the National Gas Law ensures that access arrangements do not infringe upon protected existing contractual rights and service providers are free to negotiate terms and conditions of access with users which differ from an applicable access arrangement.

Access arrangement decision making framework

A key aspect of the regulatory framework established by this Bill is the recognition of a 'fit for purpose' decision making framework as recommended by the Expert Panel.

The National Gas Law reflects the Ministerial Council on Energy policy intention to establish a 'fit for purpose' decision making model by allowing the rules to set out the decision making framework and determine the level of discretion the Australian Energy Regulator has in dealing with the different aspects of a regulatory determination. The decision making model adopted in this Bill mirrors the decision making model established under the National Electricity Law and is designed to ensure a consistent approach to regulatory decision making in electricity and gas regulation.

The key aspect of the 'fit for purpose' framework is that it best balances the aims of reducing the risk of regulatory error, balancing the interests of consumers and the service provider, and allowing for the regulatory regime to evolve where required.

The 'fit for purpose' framework acknowledges that in a service provider's proposal, there is such a range of dimensions and inter relationships between revenue and price components, that the regulatory framework should retain the capacity to require the regulator to have a presumption of acceptance, have discretion to determine an outcome or apply a more specific test to different elements of the proposal. Under this model, the regulator is not given absolute discretion for different elements of the proposal, but is guided in its decision making by the National Gas Objective, the revenue and pricing principles, and the fit for purpose framework established in the National Gas Rules.

The 'fit for purpose' framework provides the appropriate degree of flexibility by allowing the National Gas Rule to evolve and adapt the model of regulatory decision making according to the degree of regulatory risk or certainty desired by the market.

Increasing investment in existing pipelines

The initial Rules will now include a 'positive economic value' test for investment in existing pipelines designed to capture net increases in producer and consumer surpluses in upstream and downstream gas markets, whilst also capturing the system security and reliability benefits that were considered by regulators to constitute system wide benefits.

This test will ensure the assessment of pipeline investments unambiguously includes benefits that accrue to users and end users of gas when they are able to purchase additional quantities of gas, or to gas producers when they are able to sell additional quantities of gas. This should assist in promoting efficient investment in our existing pipeline network to meet our increasing demand for natural gas.

Access disputes

This Bill adopts the procedure for disputes relating to access used in the National Electricity Law. Under the new Part 6, a dispute occurs when a user or prospective user is unable to agree with a service provider about one or more aspects of access to a regulated pipeline service.

These provisions will allow the Australian Energy Regulator to act as arbitrator over parties to an access dispute. They will establish the Australian Energy Regulator's powers and make its access determinations binding on the parties to an access dispute. This access dispute framework is consistent with the 2007 amendments to the National Electricity Law, 1995 Competition Principles Agreement and Parts IIIA and XIC of the Commonwealth Trade Practices Act.

Under the new process the Australian Energy Regulator may terminate access disputes where it is clear that the service sought in the dispute is capable of being provided on a genuinely competitive basis. The Bill also ensures that existing contractual rights are protected in access disputes and that, by obliging the Australian Energy Regulator to take into account the revenue and pricing principles, service providers are appropriately compensated for providing access.

Greenfields pipeline incentives

This Bill continues the greenfields incentives established in 2006 under the Gas Pipelines Access Law. The greenfields incentives allow the relevant Minister to make, following a recommendation by the National Competition Council, a no coverage determination that is binding for a period of 15 years (a 15 year no coverage determination) if a new pipeline does not meet the pipeline coverage criteria.

However, the 15 year no coverage assessment process may not be a sufficiently timely process to provide regulatory certainty for complex international greenfields gas pipeline projects. For this reason, the Ministerial Council on Energy also decided to implement the option of a price regulation exemption (also having effect for 15 years) for international transmission pipelines bringing gas from a source outside Australia.

The Ministerial Council on Energy implemented these two measures in the existing gas access regime in June 2006 and the relevant provisions (set out in Part 3A of the Gas Pipelines Access Law) are replicated in the National Gas Law.

Competitive tender processes

This Bill retains and simplifies the Gas Code provisions applying to pipelines built under competitive tendering arrangements. In the initial Rules, the competitive tendering process has been improved to increase the level of certainty for pipeline developers, by allowing pipeline users or other proponents (such as local councils), to seek approval of a tender process as a competitive tender process with a special regulatory status. This will guarantee that the terms negotiated through the competitive tendering process are reflected in access arrangements. This provision will support the Ministerial Council on Energy policy of increased penetration of natural gas services in Australia. This process will be particularly beneficial for encouraging investment in pipelines in new and unproven markets, offering access to new gas services for consumers at competitive and sustainable tariffs. Similar to the greenfields incentives, pipelines subject to an access arrangement resulting from a competitive tendering process become uncovered upon the expiry of those arrangements.

Gas Market Bulletin Board

This Bill includes provisions establishing a Natural Gas Services Bulletin Board. The provisions in the National Gas Law are designed to support the Bulletin Board rules being developed as part of the Gas Market Leaders Group process. The purpose of the Bulletin Board is to both to facilitate trade in natural gas and markets for natural gas services through the provision of system and market information which is readily available to all interested parties, including the general public, and assist in emergency management through the provision of system and market information. The Bulletin Board will also provide a platform for future gas market transparency measures such as a gas market statement of opportunities.

The law provisions establish the Bulletin Board Operator, define the scope of its functions and allow rules to be made supporting the Bulletin Board. The law provides civil immunity to the Bulletin Board operator for the performance of its functions and immunity to persons who provide information in accordance with the law and rules other than through negligence or bad faith. The law provisions also protect information given to the Bulletin Board Operator by restricting what its employees or contractors can do with the information and allow the Bulletin Board Operator to collect fees to fund its operations. The Bulletin Board Operator will initially be the Victorian Energy Networks Corporation but will be transferred to the Australian Energy Market Operator when that body is established.

The initial National Gas Rules, will also include Rules to support the operation of the Bulletin Board. These rules were developed as part of the Gas Market Leaders Group process. The rules contain a variety of detailed requirements about the operation of the Bulletin Board, registration of participants, the provision of information and the creation of more detailed bulletin board procedures by the Bulletin Board Operator. The key requirements are that Bulletin Board facility operators provide information about the nameplate rating of their plant, three day capacity outlooks and actual flow data which will be reconciled against the three day outlooks. The Bulletin Board will also contain an emergency page that will be used to help market participants and the National Gas Emergency Response Advisory Committee respond to gas emergencies. The Bulletin Board Rules will be part of the National Gas Rules and will be open for further development by the Australian Energy Market Commission through the rule change process following their commencement.

Enforcement

The new National Gas Law makes a number of important changes in relation to the enforcement of the National Gas Law, the Regulations made under the National Gas (South Australia) Act 2008and the National Gas Rules.

Under the new regulatory regime, the Australian Energy Regulator is able to bring proceedings for a breach of the National Gas Law, the Regulations made under the National Gas (South Australia) Act 2008 or the National Gas Rules.

The Australian Energy Regulator will be able to bring proceedings for a breach of the National Gas Law, the Regulations or the Rules in a State or Territory Supreme Court or the Federal Court, as appropriate. For the purposes of such proceedings, the Court may make an order declaring that the person is in breach of the National Gas Law, the Regulations or the Rules. If the Court makes such a declaration, the Court may also order the person

to pay a civil penalty (for prescribed civil penalty provisions), to desist from the breach, to remedy the breach or to implement a compliance program.

As is the case under the current National Electricity Law, provision is made for the Regulations to prescribe provisions of the National Gas Rules, as well as provisions of the new National Gas Law, the breach of which will attract a civil penalty. However, under the new regulatory regime, the current graduated civil penalties scheme will be replaced by a maximum civil penalty of $100,000 and $10,000 for every day during which the breach continues (in the case of a body corporate) and of $20,000 and $2,000 for every day during which the breach continues (in case of a natural person). The National Gas Law has not adopted a graduated civil penalty scheme rather, the civil penalties regime has been simplified so that the Courts will determine the appropriate amount of the civil penalty having regard to the circumstances of each particular breach.

The Australian Energy Regulator may also apply to the Court for an injunction where a person has engaged in, is engaging in or is proposing to engage in conduct in breach of the National Gas Law, the Regulations or the Rules.

Under the National Gas Law a person who attempts to commit a breach of a civil penalty provision is taken to have committed that breach and persons who are in any way directly or indirectly knowingly concerned in, or party to, a breach of a civil penalty provision by a relevant participant are also liable for a breach of that provision. As is the case under the current National Electricity Law, officers of corporations which breach a civil penalty provision will also be liable for that breach if they knowingly authorised or permitted it.

The last element of the new enforcement regime is the ability of the Australian Energy Regulator to serve an infringement notice for breaches of civil penalty provisions. A person who receives such a notice may either pay the infringement penalty, or defend, in court, any proceedings brought by the Australian Energy Regulator in respect of the breach. The amount of the infringement penalty is $20,000 (for a body corporate) and $4,000 (for a natural person), or such lesser amount as is prescribed by the Regulations for the particular civil penalty provision.

While persons other than the Australian Energy Regulator cannot bring general enforcement proceedings for a breach of the National Gas Rules, the National Gas Law allows other parties to enforce provisions to be prescribed as conduct provisions by the Law or Regulations. If a provision is prescribed as a conduct provision, a person may apply to a court for an order that another person is in breach of the provision. The court then has the power to make various orders including injunctions to prevent the person engaging in the conduct or the payment of damages. These provisions recognize that market participants are best placed to enforce some of the obligations under the regime and should be compensated for any damage they suffer for conduct in breach of the Law and Rules.

Judicial Review

As with the National Electricity Law, judicial review in State Supreme Courts is provided for decisions of the Australian Energy Market Commission and also for the Bulletin Board Operator. Commonwealth bodies performing functions under the National Gas Law are subject to judicial review under the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth.

Merits review

This package will include a mechanism for limited merits review by the Australian Competition Tribunal of specified regulatory decisions under the National Gas Law. This merits review model mirrors the model adopted in the National Electricity Law to ensure consistent regulation of electricity and gas. The decisions subject to merits review include coverage decisions, decisions on greenfields incentives, light regulation determinations, approvals of associate contracts, ring fencing decisions and final access arrangement decisions.

These amendments will allow a range of affected parties including service providers, users and consumer associations to seek review of decisions made by the various decision makers under the National Gas Law.

Merits review will only be available if the original decision contained errors of fact, if the original decision maker's discretion was incorrectly exercised or their decision was unreasonable, having regard to all the circumstances.

An applicant for merits review will need to seek leave from the Tribunal to bring an action for review and, amongst other things, will need to meet a materiality threshold. The Tribunal must be satisfied that there is a serious issue to be heard. In addition, for revenue related errors, the amount at issue as a result of all of the alleged grounds of review must exceed $5 million or 2 per cent of average annual regulated revenue. An application for leave setting out the grounds of review must be made within 15 business days of a reviewable decision being published.

There will be a relatively wide scope for persons and groups to intervene in merits review proceedings, once commenced. Persons with a sufficient interest in the original decision are able to intervene, as well as jurisdictions, and user and consumer associations and interest groups with the leave of the Tribunal. Specific provision is made for the intervention of user and consumer associations and interest groups to overcome legal arguments that regulatory decisions are not sufficiently connected to their concerns or members.

The Tribunal will be able to affirm or vary the original decision, or set the decision aside and either substitute a new decision or remit the matter to the Australian Energy Regulator for reconsideration.

Consistent with the regime under the Gas Code and the desire to make the original decision making process meaningful, arguments to make out a ground of review must be based upon submissions to the original decision maker or the NCC when it is making a recommendation. The original decision maker is also able to raise related and consequential matters in a review to ensure that the Tribunal takes account of broader issues affecting the decision, and is able to defend its decision in full. The Tribunal is also required to have regard to any public

policy documents which have guided the original decision maker in its decision to help avoid unnecessary policy divergence between the Tribunal and the original decision maker.

Rule making under the National Gas Law

The National Gas Law embodies a rule change process identical to that contained within the National Electricity Law. The Australian Energy Market Commission may make a Rule following a Rule change proposal if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the National Gas Objective. As with the National Electricity Law, the Australian Energy Market Commission, although not being able to initiate substantive rule changes itself, is able to solve the issues or problems raised by a rule change proposal by implementing a solution which it considers best contributes to the achievement of the national gas objective.

The Rule change process set out in the new National Gas Law is transparent and involves the opportunity for significant input by stakeholders. Thorough consultation must be carried out on rule changes, with requirements for fully reasoned draft and final determinations. There is also the ability for fast tracked amendments by gas market regulatory bodies where adequate prior consultation has been undertaken. A fast tracked rule change process proceeds straight to a draft determination.

Given the need to have Rules in place at the same time as the National Gas Law comes into operation, the initial National Gas Rules will not be made under this Rule change process. Instead, they will be made, on the recommendation of the Ministerial Council on Energy, by a Ministerial notice. The initial Rules will largely consist of the provisions of the current National Gas Code as amended to accommodate the reforms contained in the new National Gas Law, the new governance and institutional arrangements, the status of the Rules as law, and various other consequential modifications. However, once made, these Rules will be subject to change in accordance with the new Rule change process, including through the application of the Rule making test and the public consultation arrangements. It is important to note that this initial Rule making power can only be exercised once.

While the Bill includes the power to levy fees for rule change applications, it has also been decided not to levy any such fees in the initial Regulations. This recognises the public interest in an open and accessible rule change process but allows further action should the revised process lead to a large number of vexatious applications.

Regulations made under the National Gas Law

As with the National Electricity (South Australia) Act 1996, this Bill allows Regulations to be made where they are contemplated by, or necessary or expedient for the purpose of, the National Gas Law. However, the extent of the Regulations that may be made is constrained by the provisions of the National Gas Law, and Regulations cannot be made to implement extensive changes. Regulations will only deal with the prescription of civil penalty and conduct provisions, designated pipelines, some transitional issues and other minor and machinery matters. An important safeguard is that Regulations can only be made with the unanimous agreement of all relevant Ministerial Council on Energy Ministers.

Savings and transitionals

To ensure a smooth transition to the National Gas Law and Rules, savings and transitional provisions are included in the new Law and initial Rules. Additional savings and transitional provisions may also be included in the Regulations, and a specific regulation making power has been included under the National Gas (South Australia) Act 2008 for this purpose. The savings and transitional provisions contained in the National Gas Law are designed to ensure a smooth transition to the new regime for all regulated pipelines.

Interpretation

Like the existing Gas Pipelines Access Law, the National Gas Law includes a schedule of interpretive provisions. This Schedule 2 to the National Gas Law means the Law is subject to uniform interpretation provisions in all participating jurisdictions.

As I noted at the beginning of this speech, this Bill will strengthen and improve the quality, timeliness and national character of the governance and economic regulation of the national gas market, for the benefit of South Australians and all Australians.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal. It provides for the name (also called the short title) of the proposed Act.

2—Commencement

Clause 2(1) provides for the measure to be brought into operation by proclamation. Clause 2(2) makes it clear that the Governor may, if necessary, bring different provisions of the Schedule into operation on different days. Clause 2(3) excludes the operation of section 7(5) of the Acts Interpretation Act 1915 due to the fact that this measure forms part of a co operative legislative scheme involving other Australian jurisdictions.

3—Interpretation

A key aspect to the definitions under the Act is that there will be a point of distinction between the National Gas Law, being a law to be applied in the jurisdiction of the scheme participants, and the National Gas (South

Australia) Law, being the National Gas Law as it applies in this State. The clause also provides that definitions included in the law (as applying because of this measure) also apply for the purposes of the Act.

4—Crown to be bound

This clause provides that the legislation binds the Crown.

5—Application to coastal waters

This clause applies the legislation to the coastal waters of the State.

6—Extra territorial operation

This clause provides for the extra territorial operation of the legislation.

Part 2—National Gas (South Australia) Law and National Gas (South Australia) Regulations

7—Application of National Gas Law

This clause applies the National Gas Law set out in the Schedule as a law of South Australia. The applied law is to be referred to as the National Gas (South Australia) Law.

8—Application of regulations under National Gas Law

This clause provides that the regulations in force under Part 3 apply as regulations in force for the purposes of the National Gas (South Australia) Law. The regulations are to be referred to as the National Gas (South Australia) Regulations.

9—Interpretation of some expressions in National Gas (South Australia) Law and National Gas (South Australia) Regulations

This clause contains a number of definitions used for the purposes of the National Gas (South Australia) Law and the National Gas (South Australia) Regulations. These definitions relate to expressions whose meaning necessarily varies according to the jurisdiction in which the National Gas Law is being applied.

Part 3—Making of regulations and rules under National Gas Law

10—Definitions

This clause provides that for the purposes of this Part a reference to the National Gas Law is a reference to the law as in force for the time being.

11—General regulation making power for National Gas Law

This clause enables the Governor to make regulations to give effect to the National Gas Law on the unanimous recommendation of the Ministers of the participating jurisdictions. In view of the interstate application of laws scheme that is based on this measure and regulations made under the Act, Parliamentary disallowance of the regulations is excluded.

12—Specific regulation making power

This clause enables the Governor to make regulations of a transitional nature relating to the transition from the Gas Code under the current Act (the Gas Pipelines Access (South Australia) Act 1997) to this new scheme.

13—Making of rules

In view of the interstate application of Rules made under this scheme, it is appropriate that the Rules be excluded from the operation of the South Australian Subordinate Legislation Act 1978.

Part 4—Cross vesting of powers

14—Conferral of powers on Commonwealth Minister and Commonwealth bodies to act in this State

This clause provides for the Minister of the Commonwealth administering the Australian Energy Market Act 2004 of the Commonwealth (the Commonwealth Minister), the Australian Energy Regulator, the National Competition Council and the Australian Competition Tribunal to do acts in or in relation to this State in the performance or exercise of a function or power conferred by the national gas legislation of another participating State or Territory.

15—Conferral of powers on Ministers of other participating States and Territories to act in this State

This clause provides for the Minister of another participating State or Territory to do acts in or in relation to this State in the performance or exercise of a function or power conferred by the national gas legislation of another participating State or Territory.

16—Conferral of functions or powers on State Minister

This clause provides that if the national gas legislation of another participating State or Territory confers a function or power on the Minister, the Minister may perform that function or exercise that power.

Part 5—General

17—Exemption from taxes

This clause provides for an exemption from State duties or taxes in relation to certain transfers of assets or liabilities that are made for the purposes of ensuring that a person does not carry on a business of producing, purchasing or selling natural gas or processable gas in breach of any ring fencing requirements of any national gas legislation or for the purpose of the separation of certain businesses or business activities as required by an Australian Energy Regulator ring fencing determination.

18—Actions in relation to cross boundary pipelines

This clause provides that if any action is taken under the national gas legislation of a participating jurisdiction with respect to a cross boundary pipeline by a relevant Minister or a Supreme Court of the jurisdiction each other relevant Minister or Supreme Court in any other participating jurisdiction in which the pipeline is situated is also taken to have taken that action. No appeal is permitted against any such action by a relevant Minister except in the jurisdiction with which the pipeline is most closely connected.

19—Conferral of functions and powers on Commonwealth bodies

This clause provides that a provision of the proposed Act or regulations is to be construed so as not to exceed the legislative power of the Parliament, in particular with respect to a provision that appears to impose a duty on the Commonwealth Minister, the Australian Energy Regulator, the National Competition Council or the Australian Competition Tribunal.

Part 6—Repeal of Gas Pipelines Access (South Australia) Act 1997

20—Repeal of Gas Pipelines Access (South Australia) Act 1997

The Gas Pipelines Access (South Australia) Act 1997 is to be repealed.

Part 7—Amendment of this Act when Offshore Petroleum Act 2006 commences

21—Amendment of this Act when Offshore Petroleum Act 2006 commences

This clause provides for the substitution of the definitions of adjacent area of this jurisdiction and adjacent area of another participating jurisdiction in proposed section 9(1) on the commencement of section 7 of the Offshore Petroleum Act 2006 of the Commonwealth.

Part 8—Amendment of Australian Energy Market Commission Establishment Act 2004

22—Amendment of Australian Energy Market Commission Establishment Act 2004

This clause makes consequential amendments to the Australian Energy Market Commission Establishment Act 2004.

Schedule 1—National Gas Law

The National Gas Law constitutes the Schedule.

Chapter 1—Preliminary

Part 1—Citation and interpretation

1—Citation

Provides that this Law may be referred to as the National Gas Law (the NGL).

2—Definitions

Sets out definitions used in the NGL.

3—Meaning of civil penalty provision

Defines 'civil penalty provision.'

4—Meaning of conduct provision

Defines 'conduct provision.'

5—Meaning of prospective user

Defines 'prospective user.'

6—Meaning of regulatory obligation or requirement

Defines 'regulatory obligation or requirement.'

7—Meaning of regulatory payment

Defines 'regulatory payment.'

8—Meaning of service provider

Defines 'service provider.'

9—Passive owners of scheme pipelines deemed to provide or intend to provide pipeline services

Provides that passive owners of scheme pipelines are deemed to provide pipeline services.

10—Things done by 1 service provider to be treated as being done by all of service provider group

Provides that things done by 1 service provider of a pipeline are to be treated as being done by all service providers of the pipeline.

11—Local agents of foreign service providers

Places liability for the actions of foreign service providers on their local agents.

12—Commissioning of a pipeline

Defines when a pipeline is deemed to be commissioned for the purposes of the NGL.

13—Pipeline classification criterion

Sets out the pipeline classification criterion.

14—Jurisdictional determination criteria—cross boundary distribution pipelines

Sets out the pipeline jurisdictional determination criteria.

15—Pipeline coverage criteria

Sets out the pipeline coverage criteria.

16—Form of regulation factors

This provision sets out the form of regulation factors under the NGL. These mirror the factors used in the NEL.

17—Effect of separate and consolidated access arrangements in certain cases

Sets out how pipelines with multiple access arrangements and multiple pipelines covered by a single access arrangement are to be treated.

18—Certain extensions to, or expansion of the capacity of, pipelines to be taken to be part of a covered pipeline

Provides that extensions and expansions to covered pipelines are to be treated as part of the covered pipeline if the applicable access arrangement provides that they will be.

19—Expansions of and extensions to covered pipeline by which light regulation services are provided

Provides that extensions and expansions of pipelines that provide light regulation services are to be considered covered pipelines, unless the pipeline is subject to a limited access arrangement or the AER has determined otherwise.

20—Interpretation generally

Provides that Schedule 2 to the NGL, which contains interpretation provisions, applies to the NGL, to Regulations made under the National Gas (South Australia) Act 2008 and to the National Gas Rules made under the NGL.

Part 2—Participating jurisdictions

21—Participating jurisdictions

Provides for the participating jurisdictions, which will be South Australia together with the Commonwealth, any other State and any Territory that has in place a law that applies the NGL as a law of that jurisdiction.

22—Ministers of participating jurisdictions

Provides for the relevant Ministers of the participating jurisdictions.

Part 3—National gas objective and principles

Division 1—National gas objective

23—National gas objective

The NGL objective is designed to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

Division 2—Revenue and pricing principles

24—Revenue and pricing principles

Sets out the revenue and pricing principles.

Division 3—MCE policy principles

25—MCE statements of policy principles

Provides that the Ministerial Council on Energy (MCE) may issue statements of policy principles in relation to any matters that are relevant to the functions and powers of the Australian energy Market Commission (AEMC). Statements must be published in the South Australian Government Gazette by the AEMC.

Part 4—Operation and effect of National Gas Rules

26—National Gas Rules to have force of law

Provides for the Rules to have the force of law in each of the participating jurisdictions.

Chapter 2—Functions and powers of gas market regulatory entities

Part 1—Functions and powers of the Australian Energy Regulator

Note—

This Part provides for the functions and powers of the Australian Energy Regulator established by section 44AE of the Trade Practices Act 1974 of the Commonwealth (the TPA).

Division 1—General

27—Functions and powers of the AER

Sets out the AER's functions and powers.

28—Manner in which AER must perform or exercise AER economic regulatory functions or powers

Makes provision in relation to the manner in which the AER must perform or exercise the AER's economic regulatory functions or powers.

29—Delegations

Provides that a delegation by the AER under section 44AAH of the TPA is effective for the purposes of the NGL, Regulations and Rules.

30—Confidentiality

Provides that the confidentiality provisions of section 44AAF of the TPA are effective for the purposes of the NGL, Regulations and Rules.

Division 2—Search warrants

31—Definitions

Sets out definitions for the purposes of this Division.

32—Authorised person

Provides that the AER may authorise persons to be authorised persons for the purposes of this Division.

33—Identity cards

Requires the AER to issue identity cards to authorised people.

34—Return of identity cards

Requires identity cards to be returned to the AER.

35—Search warrant

Provides for the issue of search warrants by a magistrate.

36—Announcement of entry and details of warrant to be given to occupier or other person at premises

Provides for announcement before entry to a place in execution of a search warrant and requires certain details of a search warrant to be given to the occupier of premises.

37—Immediate entry permitted in certain cases

Provides a limited exemption from complying with section 36.

38—Copies of seized documents

Requires a certified copy of a seized document to be provided to the person from whom it was seized in execution of a search warrant.

39—Retention and return of seized documents or things

Provides for return of documents or other things seized in execution of a search warrant.

40—Retention of and return of documents or things

Provides for extension of the period within which a document or other thing must be returned.

41—Obstruction of persons authorised to enter

Creates an offence of obstructing or hindering a person in the exercise of power under a warrant, for which the penalty is a fine of up to $2,000 for a natural person or up to $10,000 for a body corporate.

Division 3—General information gathering powers

42—Power to obtain information and documents in relation to performance and exercise of functions and powers

Provides that the AER may serve notices requiring information to be furnished or documents to be produced and creates an offence of failing to comply with such a notice, for which the penalty is a fine of up to $2,000 for a natural person or up to $10,000 for a body corporate.

Division 4—Regulatory information notices and general regulatory information orders

Subdivision 1—Interpretation

43—Definitions

Defines terms used in this division.

44—Meaning of contributing service

Defines 'contributing service.'

45—Meaning of general regulatory information order

Defines 'general regulatory information order.'

46—Meaning of regulatory information notice

Defines 'regulatory information notice.'

47—Division does not limit operation of information gathering powers under Division 3

Provides that this division does not limit Division 3.

Subdivision 2—Serving and making of regulatory information instruments

48—Service and making of regulatory information instrument

Allows the AER to serve regulatory information instruments if it considers it reasonably necessary for the performance of its functions or powers. The AER may not issue an instrument for the purpose of investigating breaches, preparing a performance report or as part of a merits review.

49—Additional matters to be considered for related provider regulatory information instruments

Imposes additional considerations on the AER before issuing an information instrument to a related provider.

50—AER must consult before publishing a general regulatory information order

Requires the AER to consult before issuing a general regulatory information order.

51—Publication requirements for general regulatory information orders

Requires publication of a general regulatory information order.

52—Opportunity to be heard before regulatory information notice is served

Gives covered pipeline service providers and related providers an opportunity to be heard before the AER serves a regulatory information notice on them.

Subdivision 3—Form and content of regulatory information instruments

53—Form and content of regulatory information instrument

Sets out the information that is required to be in a regulatory information instrument and allows the AER to specify how the information is to be provided as well as what information must be prepared, maintained or kept to comply with the instrument.

54—Further provision about the information that may be described in a regulatory information instrument

Provides a non-exclusive list of the possible content of a regulatory information instrument.

55—Further provision about manner in which information must be provided to AER or kept

Provides a non-exclusive list of the information that the AER may require to be kept or provided under a regulatory information instrument.

Subdivision 4—Compliance with regulatory information instruments

56—Compliance with regulatory information notice that is served

Provides that a person served with a regulatory information notice must comply with the notice.

57—Compliance with general regulatory information order

Provides that a member of the class of persons to whom a regulatory information order applies must comply with it once it is published.

58—Exemptions from compliance with general regulatory information order

Allows the AER to exempt individuals or classes of people from complying with a general regulatory information order.

59—Assumptions where there is non compliance with regulatory information instrument

Allows the AER to make economic regulatory decisions on the basis of assumptions if a covered service provider or related provider fails to comply with a regulatory information instrument.

Subdivision 5—General

60—Providing to AER false and misleading information

Imposes penalties of $2,000 for a natural person and $10,000 for a body corporate for knowingly providing false or misleading information to the AER.

61—Person cannot rely on duty of confidence to avoid compliance with regulatory information instrument

Provides that a person may not rely on a duty of confidence to avoid compliance with a regulatory information instrument. This section also provides protection form civil liability for a person who complies provides information in accordance with a regulatory information instrument.

62—Legal professional privilege not affected

Provides that regulatory information instruments do not require people to provide information that is subject to legal professional privilege.

63—Protection against self incrimination

Provides that a natural person does not have to provide information in compliance with a regulatory information instrument of if it may make them liable to a criminal penalty in a participating jurisdiction.

Division 5—Service provider performance reports

64—Preparation of service provider performance reports

Allows the AER to prepare performance reports of covered pipelines.

Division 6—Miscellaneous matters

65—Consideration by the AER of submissions or comments made to it under this Law or the Rules

Requires the AER to consider submissions, made in response to an invitation to provide submissions, when making economic regulatory decisions.

66—Use of information provided under a notice under Division 3 or a regulatory information instrument

Allows the AER to use information collected under Division 3 to exercise its functions or powers under this law.

67—AER to inform certain persons of decisions not to investigate breaches, institute proceedings or serve infringement notices

Requires the AER to inform a person who provided information about a breach or potential breach of the law or rules, that they do not intend to investigate the breach or commence proceedings.

68—AER enforcement guidelines

Allows the AER to issue guidelines about how it will conduct enforcement actions under this law.

Part 2—Functions and powers of the Australian Energy Market Commission

Division 1—General

69—Functions and powers of the AEMC

Sets out the AEMC's functions and powers.

70—Delegations

Provides that a delegation by the AEMC under section 20 of the Australian Energy Market Commission Establishment Act 2004 is effective for the purposes of the NGL, Regulations and Rules.

71—Confidentiality

Provides that the confidentiality provisions of section 24 of the Australian Energy Market Commission Establishment Act 2004 are effective for the purposes of the NGL, Regulations and Rules.

72—AEMC must have regard to national gas market objective

Provides that the AEMC must have regard to the national gas market objective.

73—AEMC must have regard to MCE statements of policy principles in relation to Rule making and reviews

Provides that the AEMC must have regard to any relevant MCE statements of policy principles in making a Rule or conducting certain reviews.

Division 2—Rule making functions and powers of the AEMC

74—Subject matter for National Gas Rules

Provides for the subject matter of the Rules. Schedule 1 to the NGL also specifies matters about which the AEMC may make Rules.

75—Rules in relation to economic regulation of transmission systems

Provides for the making of Rules in relation to economic regulation of transmission systems.

76—National Gas Rules to always provide for certain matters relating to transmission systems

Provides that the Rules are at all times to provide for certain matters relating to transmission systems.

77—Documents etc. applied, adopted and incorporated by Rules to be publicly available

Requires documents applied, adopted or incorporated by a Rule to be publicly available.

Division 3—Committees, panels and working groups of the AEMC

78—Establishment of committees, panels and working groups

Provides for establishment of committees, panels and working groups by the AEMC.

Division 4—MCE directed reviews

79—MCE directions

Provides that the MCE may direct the AEMC to conduct reviews. The direction must be published in the South Australian Government Gazette.

80—Terms of reference

Provides for the terms of reference of MCE directed reviews.

81—Notice of MCE directed review

Requires the AEMC to publish notice of an MCE directed review.

82—Conduct of MCE directed review

Provides for the conduct of MCE directed reviews.

Division 5—Other reviews

83—Rule reviews by the AEMC

Provides for reviews by the AEMC other than MCE directed reviews.

Division 6—Miscellaneous

84—AEMC must publish and make available up to date versions of the National Gas Rules

Requires the AEMC to maintain an up to date copy of the Rules on its website and to make copies of the Rules available for inspection at its offices.

85—Fees

Provides for the AEMC to charge fees as specified in the Regulations.

86—Immunity from personal liability of AEMC officials

Protects AEMC officials from any personal liability as a result of performing their functions under this Law and the Rules.

Part 3—Functions and powers of Ministers of participating jurisdictions

87—Functions and powers of Minister of this participating jurisdiction under this Law

Allows the Minister administering the NGL in any particular jurisdiction to perform their functions under this law.

88—Functions and powers of Commonwealth Minister under this Law

Allows the Commonwealth Minister to perform their functions under this law.

Part 4—Functions and powers of the NCC

89—Functions and powers of NCC under this Law

Empowers the NCC to perform its functions under this law.

90—Confidentiality

Requires the NCC to protect confidential information while allowing it to share information with other regulatory bodies.

Part 5—Functions and powers of Tribunal

91—Functions and powers of Tribunal under this Law

Empowers the Australian Competition Tribunal to perform its functions under the NGL.

Chapter 3—Coverage and classification of pipelines

Part 1—Coverage of pipelines

Note—

This Chapter provides for the coverage and classification of pipelines for the haulage of natural gas.

Division 1—Coverage determinations

92—Application for recommendation that a pipeline be a covered pipeline

Provides that a person may apply for to the NCC for a determination that a pipeline be a covered pipeline.

93—Application to be dealt with in accordance with the Rules

Provides that an application to the NCC must be dealt with in accordance with the National Gas Rules.

94—NCC may defer consideration of application in certain cases

Provides that the NCC may defer consideration of an application under section 92, if an application has been made to the AER under the National Gas Rules in relation to approval of a competitive tender process or a tender approval decision has been made.

95—NCC coverage recommendation

Provides that the NCC must make a coverage recommendation to the relevant Minister in accordance with this Law and the National Gas Rules.

96—NCC must not make coverage recommendation if tender approval decision becomes irrevocable

Provides that the NCC must not recommend coverage if a tender approval decision becomes irrevocable.

97—Principles governing the making of a coverage recommendation

Provides that the NCC must give effect to the pipeline coverage criteria and have regard to the national gas objective when making a coverage recommendation.

98—Initial classification decision to be made as part of recommendation

Provides that the NCC must make an initial classification decision in relation to a pipeline the subject of a pipeline application as a transmission or distribution pipeline utilising the pipeline classification criterion. The NCC must also determine whether the pipeline is a cross boundary transmission or distribution pipeline and, if so, the participating jurisdiction with which the pipeline is most closely connected.

99—Relevant Minister's determination on application

Provides that the relevant Minister must, on receiving a coverage recommendation from the NCC, decide whether to make a coverage determination within a certain period of time and that a coverage determination or decision not to make a coverage determination must be made in accordance with this Law and the National Gas Rules.

100—Principles governing the making of a coverage determination or decision not to do so

Provides that the relevant Minister must give effect to the pipeline coverage criteria, have regard to the national gas objective and the coverage recommendation and must take into account certain submissions received when making a coverage determination or decision not to do so.

101—Operation and effect of coverage determination

Provides for the time when the coverage determination takes effect and that it continues to be a covered pipeline while the coverage determination is in effect.

Division 2—Coverage revocation determinations

102—Applications for a determination that a pipeline no longer be a covered pipeline

Provides that any person may apply to the NCC for a coverage revocation determination in accordance with the National Gas Rules.

103—Application to be dealt with in accordance with the Rules

Provides that the NCC must deal with an application for a coverage revocation determination in accordance with the National Gas Rules.

104—NCC coverage revocation recommendation

Provides that the NCC must make a coverage recommendation in accordance with this Law and the National Gas Rules.

105—Principles governing the making of a coverage revocation recommendation

Provides that the NCC must give effect to the pipeline coverage criteria and have regard to the national gas objective when making a coverage revocation recommendation.

106—Relevant Minister's determination on application

Provides that the relevant Minister must, on receiving a coverage revocation recommendation from the NCC, decide whether to make a coverage revocation determination within a certain period of time and that a coverage revocation determination or decision not to make a coverage revocation determination, must be made in accordance with this Law and the National Gas Rules.

107—Principles governing the making of a coverage revocation determination or decision not to do so

Provides that the relevant Minister must give effect to the pipeline coverage criteria, have regard to the national gas objective and the coverage recommendation and must take into account certain submissions received when making a coverage revocation determination or decision not to do so.

108—Operation and effect of coverage revocation determination

Provides for the time when the coverage revocation determination takes effect and that it continues to be a covered pipeline while the coverage revocation determination is in effect.

Part 2—Light regulation of covered pipeline services

Division 1—Making of light regulation determinations

Subdivision 1—Decisions when pipeline is not a covered pipeline

109—Application of Subdivision

Provides that this Subdivision applies if an application has been made for a coverage determination and the pipeline the subject of the application is not a pipeline prescribed by the National Gas Regulations to be a designated pipeline.

110—NCC's decision on light regulation of pipeline services

Provides that the NCC must decide whether to make a light regulation determination at the same time and within the same time as it makes a coverage recommendation and in accordance with this Law and the National Gas Rules.

Subdivision 2—Decisions when pipeline is a covered pipeline

111—Application of Subdivision

Provides that this subdivision applies if a service provider provides pipeline services by means of a covered pipeline that is not a designated pipeline and to which an applicable access arrangement approved or made under a full access arrangement decision applies.

112—Application

Provides that a service provider may apply to the NCC for a light regulation determination in accordance with the National Gas Rules and in respect of all of the pipeline services provided by means of the pipeline.

113—Application to be dealt with in accordance with the Rules

Provides that the NCC must deal with an light regulation determination application in accordance with the National Gas Rules.

114—NCC's decision on light regulation of pipeline services

Provides that the NCC must decide whether to make a light regulation determination within a certain period of time and that a light regulation determination or a decision not to make a light regulation determination must be made in accordance with this Law and the National Gas Rules.

Subdivision 3—Operation and effect of light regulation determinations

115—When light regulation determinations take effect

Provides when a light regulation determination takes effect and the circumstances in which it is revoked.

116—Submission of limited access arrangement for light regulation services

Provides that a service provider may, in respect of light regulation services, submit a limited access arrangement drafted in accordance with the National Gas Rules to the AER for approval under the National Gas Rules.

Division 2—Revocation of light regulation determinations

Subdivision 1—On advice from service providers

117—Advice by service provider that light regulation services should cease to be light regulation services

Provides that a service provider may advise the NCC in writing that it wishes the pipeline services to cease to be light regulation services and provides for a process that the NCC must follow upon receiving that advice. Also provides that a light regulation determination is revoked on the same day that an access arrangement that applies to the relevant pipeline is approved or made.

Subdivision 2—On application by persons other than service providers

118—Application (other than by service provider) for revocation of light regulation determinations

Provides that a person other than the service provider who provides light regulation services may apply in accordance with the National Gas Rules to the NCC for the revocation of a light regulation determination.

119—Decisions on applications made around time of applications for coverage revocation determinations

Provides that the NCC must make a decision in relation to an application to revoke a light regulation determination and a decision in relation to an application for a coverage revocation determination received around the same time as the first application, at the same time and within the same time period and in accordance with this Law and the National Gas Rules.

120—NCC decision on application where no application for a coverage revocation recommendation

Provides that the NCC must make a decision in relation to an application to revoke a light regulation determination, where no application has been made to it in relation to a coverage revocation recommendation within a certain period of time and in accordance with this Law and the National Gas Rules.

121—Operation and effect of decision of NCC under this Division

Provides that a service provider must submit a full access arrangement on the making of a decision by the NCC to revoke a light regulation determination, and that the light regulation revocation determination does not take effect until the relevant access arrangement is approved or made under a full access arrangement decision.

Division 3—Principles governing light regulation determinations

122—Principles governing the making or revoking of light regulation determinations

Provides that in deciding whether to make a light regulation determination or to revoke a light regulation determination, the NCC must consider:

- the likely effectiveness of the forms of regulation provided for under this Law and the National Gas Rules in promoting access to pipeline services; and
- the effect of those forms of regulation on the likely costs that may be incurred by an efficient service provider, efficient users and prospective users and end users.

In considering these matters, the NCC must have regard to the national gas objective, the form of regulation factors and any other matters it considers relevant.

Division 4—Revocation if coverage determination not made

123—Light regulation determination revoked if coverage determination not made

Provides that a light regulation determination is revoked at the same time as the relevant Minister makes a decision not to make a coverage determination in relation to the relevant pipeline.

Division 5—Effect of pipeline ceasing to be covered pipeline

124—Light regulation services cease to be such services on cessation of coverage of pipeline

Provides that a light regulation determination is revoked on the same day as a coverage revocation determination takes effect.

Division 6—AER reviews into designated pipelines

125—AER reviews

Provides that the MCE or the service provider may request the AER to conduct a review into and report to the MCE as to whether a pipeline should continue to be a designated pipeline and, in conducting a review, the AER must have regard to the national gas objective and whether there has been a material change in competition in a market served by the designated pipeline and must undertake public consultation on the matter. Also provides that the AER must, after completion of the review, prepare a report, give it to the AER and the service provider and publish the report on its website.

Part 3—Coverage of pipelines the subject of tender process

126—Tender approval pipelines deemed to be covered pipelines

Provides that a pipeline is deemed to be a covered pipeline on and from the date that the tender approval decision becomes irrevocable and ceases to be a covered pipeline on the expiry of an applicable access arrangement (if one applies to the pipeline) or when a coverage revocation determination takes effect.

Part 4—Coverage following approval of voluntary access arrangement

127—Certain pipelines become covered pipelines on approval of voluntary access arrangement

Provides that a pipeline the subject of a full access arrangement voluntarily submitted by a service provider to the AER for approval is deemed to be a covered pipeline on the day that access arrangement takes effect as an applicable access arrangement and ceases to be a covered pipeline if the applicable access arrangement expires or when a coverage revocation determination takes effect.

Part 5—Reclassification of pipelines

128—Service provider may apply for reclassification of pipeline

Provides that a service provider may apply to the NCC for reclassification of a pipeline.

129—Reclassification decision

Provides that the NCC must make a reclassification decision within a certain time period and in accordance with this Law and the National Gas Rules. In making a reclassification decision, the NCC must have regard to the national gas objective and the pipeline classification criterion and must as part of the reclassification decision, determine whether the pipeline is a cross boundary transmission or distribution pipeline.

130—Effect of reclassification decision

Provides that the pipeline is reclassified in accordance with the decision of the NCC and that the relevant Minister is the relevant Minister as provided under this Law.

Chapter 4—General requirements for provision of covered pipeline services

Part 1—General duties for provision of pipeline services by covered pipelines

131—Service provider must be legal entity of a specified kind to provide pipeline services by covered pipeline

Provides that a covered pipeline service provider must be constituted as a legal entity of a kind specified in this section in order to provide pipeline services by means of a covered pipeline.

132—Submission of full access arrangement or revisions to applicable full access arrangements

Provides that a covered pipeline service provider must submit in accordance with the National Gas Rules a full access arrangement or revisions to that access arrangement to the AER for approval unless the pipeline services are or are intended to be light regulation services.

133—Preventing or hindering access

Provides that various person or entities must not engage in conduct for the purpose of preventing or hindering the access of another person to a pipeline service. The section details further the meaning of the term 'purpose' and 'conduct' within the context of the prohibition.

134—Supply and haulage of natural gas

Provides that if a producer offers to supply natural gas on certain terms and conditions at a place other than the exit flange ('the first terms') , the producer must also, on request, state terms and conditions (including price if that was included in the first terms) for supply of natural gas at the exit flange ('the second terms') with reasons if there is a price differential between the first and second terms. Also obliges the producer to supply natural at the exist flange on the terms and conditions stated if an offer has been made by the producer to offer to supply natural gas at a place other than the exit flange.

135—Covered pipeline service provider must comply with queuing requirements

Provides that a covered pipeline service provider must comply with the queuing requirements of an applicable access arrangement.

136—Covered pipeline service provider providing light regulation services must not price discriminate

Provides that a covered pipeline service provider must not discriminate in relation to price when providing light regulation services unless that price discrimination is conducive to efficient service provision.

Part 2—Structural and operational separation requirements (ring fencing)

Division 1—Interpretation

137—Definitions

Provides for definitions specific to this Part.

138—Meaning of marketing staff

Provides for a definition of 'marketing staff'.

Division 2—Minimum ring fencing requirements

139—Carrying on of related businesses prohibited

Provides that on and after the compliance date, as defined, a covered pipeline service provider must not carry on a related business.

140—Marketing staff and the taking part in related businesses

Provides that on and after the compliance date, as defined, that marketing staff must not take certain roles in related businesses.

141—Accounts that must be prepared, maintained and kept

Provides that on and after the compliance date, as defined, a covered pipeline service provider must prepare, maintain and keep separate accounts for pipeline services provided by each covered pipeline and a consolidated set of accounts for the whole of the business of the covered pipeline service provider.

Division 3—Additional ring fencing requirements

142—Division does not limit operation of Division 2

Provides that this Division does not limit Division 2.

143—AER ring fencing determinations

Provides that the AER, in accordance with this Division and the National Gas Rules, may make a determination requiring a covered pipeline service provider to comply with an additional ring fencing requirement. The provision also specifies that the AER, when making a determination in relation to an additional ring fencing requirement, must have regard to various principles.

144—AER to have regard to likely compliance costs of additional ring fencing requirements

Provides that the AER, when making an additional ring fencing requirement, must have regard to the likely costs the may be incurred by an efficient covered pipeline service provider or and efficient associate of covered pipeline service provider.

145—Types of ring fencing requirements that may be specified in an AER ring fencing determination

Provides for, without limitation, particular types of additional ring fencing requirements that the AER may require of a covered pipeline service provider in a determination.

Division 4—AER ring fencing exemptions

146—Exemptions from minimum ring fencing requirements

Provides that a covered pipeline service provider may apply to the AER, in accordance with the National Gas Rules, for a exemption from the requirements of sections 139, 140 or 141 and empowers the AER to grant that exemption in accordance with the National Gas Rules.

Division 5—Associate contracts

147—Service provider must not enter into or give effect to associate contracts that have anti competitive effect

Provides that a covered pipeline service provider must not enter into or vary an associate contract or give effect to a provision of an associate contract that has the purpose of would have or be likely to have the effect of substantially lessening competition in a market for natural gas services, unless that associated contract is approved or the provision is contained in an approved associate contract.

148—Service provider must not enter into or give effect to associate contracts inconsistent with competitive parity rule

Provides that a service provider must not enter into or vary an associate contract or give effect to a provision of an associate contract that is inconsistent with the competitive parity rule, unless that associated contract is approved or the provision is contained in an approved associate contract.

Chapter 5—Greenfields pipeline incentives

Part 1—Interpretation

149—Definitions

Defines terms used in this Chapter.

150—International pipeline to be a transmission pipeline for purposes of Chapter

An international pipeline is, for the purposes of this Chapter, a transmission pipeline.

Part 2—15 year no coverage determinations

151—Application for 15 year no coverage determination for proposed pipeline

Allows a service provider to apply to the National Competition Council for a binding no coverage determination exempting the pipeline from coverage.

152—Application to be dealt with in accordance with the Rules

Provides that an application must be dealt with in accordance with the rules.

153—No coverage recommendation

Provides that the NCC may make no-coverage recommendations.

154—Principles governing the making of a no coverage recommendation

Provides that the NCC is required to give effect to the pipeline coverage criteria. In deciding whether or not those criteria are satisfied, the NCC is required to have regard to relevant submissions and comments made within the time allowed for submissions and comments. If the NCC is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline, the NCC must recommend against making a binding no coverage determination. If the NCC is not satisfied that all the criteria are satisfied, the recommendation must be in favour of making a determination.

155—Initial classification decision to be made as part of recommendation

Requires the NCC to classify the pipeline as part of its recommendation.

156—Relevant Minister's determination on application

Requires the relevant Minister to decide whether or not to make a binding no coverage determination within 30 days of receiving the NCC's recommendation. In making his or her decision, the relevant Minister must give effect to the pipeline coverage criteria.

157—Principles governing the making of a 15 year no coverage determination or decision not to do so

In deciding whether or not the pipeline coverage criteria are satisfied in relation to the pipeline, the Minister must have regard to the national gas objective and the NCC's recommendation. He or she may take into account any relevant submissions and comments made to the NCC. If the Minister is satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline, the Minister must not make a binding no coverage determination. If the Minister is not satisfied that all the pipeline coverage criteria are satisfied in relation to the pipeline, the Minister must make a binding no coverage determination. A binding no coverage determination, or a decision not to make a binding no coverage determination, must be in writing and must contain a short description of the pipeline the subject of the determination, accompanied by a reference to a website at which the relevant pipeline description can be inspected.

158—Effect of 15 year no coverage determination

Provides that a binding no coverage determination takes effect when it is made and remains in force for a period of 15 years from the commissioning of the pipeline. An application for coverage of a pipeline to which a binding no coverage determination applies can only be made before the end of the period for which the determination remains in force if the coverage sought in the application is to commence from, or after, the end of that period.

159—Consequences of Minister deciding against making 15 year no coverage determination for international pipeline

If the Commonwealth Minister decides against making a binding no coverage determination for an international pipeline, and the applicant asks the Commonwealth Minister to treat the application as an application for a price regulation exemption, the Minister may treat the application as an application for a price regulation exemption. The Commonwealth Minister may then refer the application back to the NCC for a recommendation or proceed to determine the application without a further recommendation.

Part 3—Price regulation exemptions

Division 1—Application for price regulation exemption

160—Application for price regulation exemption

Provides that if a greenfields pipeline project for construction of an international pipeline is proposed, or has commenced, the service provider may apply for a price regulation exemption for the pipeline.

Division 2—Recommendations by NCC

161—Application to be dealt with in accordance with the Rules

Requires applications to be dealt with in accordance with the rules.

162—NCC's recommendation

Requires the NCC to make a recommendation to the Commonwealth Minister.

163—General principle governing NCC's recommendation

Requires the NCC to weigh the benefits to the public of granting the exemption against the detriments to the public. The NCC is required to have regard to the national gas objective and other relevant matters.

Division 3—Making and effect of price regulation exemption

164—Making of price regulation exemption

Requires the Commonwealth Minister to decide whether or not to make a price regulation exemption following receipt of the NCC's recommendation.

165—Principles governing the making of a price regulation exemption

Requires the Commonwealth Minister to weigh the benefits to the public, of granting the exemption against the detriments to the public and to have regard to the national gas objective and other relevant matters.

166—Conditions applying to a price regulation exemption

Requires service providers to publish certain information and provide information to the AER or Commonwealth Minister.

167—Effect of price regulation exemption

Describes the effect of a price regulation exemption.

Division 4—Limited access arrangements

168—Limited access arrangements for pipeline services provided by international pipeline to which a price regulation exemption applies

Requires holders of price regulation exemptions to submit limited access arrangements.

185—Dispute resolution body may require parties to mediate, conciliate or engage in an alternative dispute resolution process

Allows the AER to require parties to engage in alternative dispute resolution.

186—Dispute resolution body may terminate access dispute in certain cases

Allows the AER to terminate a dispute if it considers that; the notification was vexatious, the subject matter of the dispute is trivial, misconceived or lacking in substance, the party who notified the dispute did not negotiate in good faith or a specific termination circumstances has occurred.

187—No access determination if dispute resolution body considers there is genuine competition

The AER may refuse to make a determination if it considers that the pipeline service could be provided on a genuinely competitive basis.

188—Restrictions on access determinations

Prevents the AER from making a determination that affects existing contractual rights or rights under earlier access determinations.

189—Access determination must give effect to applicable access arrangement

Requires the AER to apply an applicable access arrangement when making an access determination.

190—Access determinations and past contributions of capital to fund installations or the construction of new facilities

Allows the AER to consider past contributions of capital by users.

191—Rules may allow determination that varies applicable access arrangement for installation of a new facility

Allows the AEMC to make Rules concerning alteration of access arrangements when access determinations require the construction of a new facility.

192—Access determinations need not require the provision of a pipeline service

Enables the AER to make an access determination that does not grant access to a pipeline service.

193—Content of access determinations

Specifies the content of an access determination.

Part 4—Variation of access determinations

194—Variation of access determination

Allows the AER to vary an access determination at the request of a party to the determination if no other parties object.

Part 5—Compliance with access determinations

195—Compliance with access determination

Requires parties to an access determination to comply with the determination.

Part 6—Access dispute hearing procedure

196—Hearing to be in private

Access Dispute hearings are to be conducted in private unless the parties agree.

197—Right to representation

Allows other people to appear as representatives of the parties to the dispute.

198—Procedure of dispute resolution body

Establishes the procedure for the AER in an access dispute.

199—Particular powers of dispute resolution body in a hearing

Gives the AER powers to assist it conduct hearings.

200—Disclosure of information

Allows the AER to authorise disclosure of information as part of a hearing.

201—Power to take evidence on oath or affirmation

Empowers the AER to take evidence under oath.

202—Failing to attend as a witness

Imposes a penalty of $2,000 for failure of a witness to attend.

203—Failing to answer questions etc

Imposes a penalty of $2,000 for witnesses who fail to answer questions.

204—Intimidation etc

Creates a penalty of $2,000 for intimidating witnesses.

205—Party may request dispute resolution body to treat material as confidential

Allows a party to request that information be treated as confidential and allows the AER to decide to treat the information as confidential.

206—Costs

Creates a presumption that parties will pay their own costs but allows the AER to award costs under some circumstances.

207—Outstanding costs are a debt due to party awarded the costs

Allows parties to recover unpaid costs in court.

Part 7—Joint access dispute hearings

208—Definition

Defines terms used in this Part.

209—Joint dispute hearing

Allows the AER to conduct joint dispute hearings.

210—Consulting the parties

Requires the AER to consult with the parties before deciding to hold a joint dispute hearing.

211—Constitution and procedure of dispute resolution body for joint dispute hearings

Applies Chapter 6 Part 6 to joint dispute hearings.

212—Record of proceedings etc

Allows the AER to have regard to records of proceedings.

Part 8—Miscellaneous matters

213—Correction of access determinations for clerical mistakes etc

Allows correction of minor clerical errors in a determination.

214—Reservation of capacity during an access dispute

Prohibits a service provider from altering a users access rights during the period of a dispute.

215—Subsequent service providers bound by access determinations

Applies the result of an access dispute to subsequent service providers.

216—Regulations about the costs to be paid by parties to access dispute

Allows the regulations to specify charges for access disputes.

Chapter 7—The Natural Gas Services Bulletin Board

Part 1—The Bulletin Board Operator

217—The Bulletin Board operator

Allows the Bulletin Board operator to be prescribed by regulation.

218—Obligation to establish and maintain the Natural Gas Services Bulletin Board

Requires the Bulletin Board operator to establish and maintain a Bulletin Board.

219—Other functions of the Bulletin Board operator

Gives the Bulletin Board operator additional functions to assist them operate the Bulletin Board.

220—Powers of the Bulletin Board operator

Allows the Bulletin Board operator to do all things necessary and convenient for the performance of its functions.

221—Immunity of the Bulletin Board operator

Protects the Bulletin Board operator and its staff from liability while performing their functions under this Law.

222—Fees for services provided

Allows the Rules to specify fees for access to the Bulletin Board.

Part 2—Bulletin Board information

223—Obligation to give information to the Bulletin Board operator

Lists classes of people who the Rules may require to provide information to the Bulletin Board operator.

224—Person cannot rely on duty of confidence to avoid compliance with obligation

Prevents people relying on duties of confidence to avoid providing information to the Bulletin Board operator.

225—Giving to Bulletin Board operator false and misleading information

Prohibits providing false or misleading information to the Bulletin Board operator.

226—Immunity of persons giving information to the Bulletin Board operator

Protects people providing information to the Bulletin Board operator from civil monetary liability.

Part 3—Protection of information

227—Protection of information by the Bulletin Board operator

Requires the Bulletin Board operator to only use information given to it in ways permitted by the Law or Rules.

228—Protection of information by employees etc of the Bulletin Board operator

Prohibits employees of the Bulletin Board operator and other persons performing work for the Bulletin Board operator, from using information given to them for anything other than uses allowed by the Law or Rules.

Chapter 8—Proceedings under the National Gas Law

Part 1—General

229—Instituting civil proceedings under this Law

Provides that proceedings for breach of the NGL, Regulations or Rules may not be instituted except as provided in this Part.

230—Time limit within which proceedings may be instituted

Provides for the time limit within which proceedings may be instituted.

Part 2—Proceedings by the AER in respect of this Law, Regulations or the Rules

231—AER proceedings for breaches of a provision of this Law, Regulations or the Rules that are not offences

Provides for the orders that may be made in proceedings in respect of breaches of provisions of the NGL, Regulations or Rules that are not offence provisions.

232—Proceedings for declaration that a person is in breach of a conduct provision

Allows a person other than the AER to apply to a court for a declaration that a person is in breach of a conduct provision.

233—Actions for damages by persons for breach of conduct provision

Allows recovery of damages by people who suffer loss as a result of a breach of a conduct provision.

Part 3—Matters relating to breaches of this Law, the Regulations or the Rules

234—Matters for which there must be regard in determining amount of civil penalty

Sets out matters to be taken into account in determining civil penalties.

235—Breach of a civil penalty provision is not an offence

Provides that a breach of a civil penalty provision (as defined in clause 58) is not an offence.

236—Breaches of civil penalty provisions involving continuing failure

Provides for breaches of civil penalty provisions involving continuing failure.

237—Conduct in breach of more than 1 civil penalty provision

Provides for liability for one civil penalty in respect of the same conduct constituting a breach of two or more civil penalty provisions.

238—Persons involved in breach of civil penalty provision

Provides for aiding, abetting, counselling, procuring or being knowingly concerned in or party to a breach of a civil penalty provision.

239—Attempt to breach a civil penalty provision

Provides that an attempted breach of a civil penalty provision is deemed to be a breach of that provision.

240—Civil penalties payable to the Commonwealth

Provides that civil penalties are payable to the Commonwealth.

Part 4—Judicial review of decisions under this Law, the Regulations and the Rules

241—Definition

Defines terms used in this Part.

242—Applications for judicial review of decisions of the AEMC

Provides that aggrieved persons (as defined) may apply for judicial review in respect of AEMC decisions and determinations; the operation of a decision or determination is not affected by an application for judicial review, unless the Court otherwise orders.

243—Applications for judicial review of decisions of the Bulletin Board operator

Provides that aggrieved persons (as defined) may apply for judicial review in respect of Bulletin Board Operator decisions and determinations; the operation of a decision or determination is not affected by an application for judicial review, unless the Court otherwise orders.

Part 5—Merits review and other non judicial review

Division 1—Interpretation

244—Definitions

Defines terms used in this Part.

Division 2—Merits review for reviewable regulatory decisions

245—Applications for review

Allows affected or interested persons to apply for review or a reviewable regulatory decision.

246—Grounds for review

Allows review if the original decision maker made an error in finding of fact that was material to the decision or their decision was incorrect or unreasonable.

247—By when an application must be made

Requires applications for review to be made within 15 business days.

248—Tribunal must not grant leave unless serious issue to be heard and determined

The Tribunal may only hear matters if it is convinced that there is a serious issue to be heard.

249—Leave must be refused if application is about an error relating to revenue amounts below specified threshold

Leave for review of some decisions must be refused if the amount in dispute is smaller than the lesser of five million dollars or two percent of average annual regulated revenue.

250—Tribunal must refuse to grant leave if submission not made or is made late

The Tribunal must refuse leave to an applicant other than a service provider if the applicant failed to make submissions to the original decision maker or made a late submission.

251—Tribunal may refuse to grant leave to service provider in certain cases

Allows the Tribunal to refuse leave for a review to a service provider if they; failed to comply with a request of the original decision maker, delayed the making of the original decision or misled the original decision maker.

252—Effect of application on operation of reviewable regulatory decisions

Provides that an application for review stays the operation of all reviewable regulatory decisions accept access arrangement decisions and associate contract decisions.

253—Intervention by others in a review without leave

Allows the service provider to whom a reviewable regulatory decision applies and Minister's of participating jurisdictions to intervene in a review without the leave of the Tribunal.

254—Leave for reviewable regulatory decision process participants

Allows other parties to intervene in a review with the leave of the Tribunal.

255—Leave for user or consumer intervener

Allows user or consumer groups to intervene in a review with the leave of the Tribunal.

256—Interveners may raise new grounds for review

Allows interveners to raise new grounds of review.

257—Parties to a review under this Division

Lists the parties to a review.

258—Matters that parties to a review may and may not raise in a review

Lists matters that may and may not be raised in a review by the parties to a review.

259—Tribunal must make determination

Requires the Tribunal to make a decision and allows them to affirm, set aside or vary the original decision or remit the decision to the original decision maker.

260—Target time limit for Tribunal for making a determination under this Division

Provides a target time limit of 3 months for the Tribunal to make decisions.

261—Matters to be considered by Tribunal in making determination

Lists material that may be considered by the Tribunal.

262—Assistance from NCC in certain cases

Allows the Tribunal to seek assistance from the NCC when reviewing ministerial coverage decisions.

Division 3—Tribunal review of AER information disclosure decisions under section 329

263—Application for review

Allows applications for review of AER information disclosure decisions.

264—Exclusion of public in certain cases

Allows the review to be conducted in private.

265—Determination in the review

Allows the Tribunal to affirm the AER's decision or forbid or restrict disclosure of the information.

266—Tribunal must be taken to have affirmed decision if decision not made within time

Deems the Tribunal to have affirmed the AER's decision if it does not make a decision within 20 business days.

267—Assistance from the AER in certain cases

Allows the AER to request assistance from the AER in certain circumstances.

Division 4—General

268—Costs in a review

Specifies how the AER may award costs.

269—Amount of costs

Allows the Tribunal to determine how the amount of costs will be calculated.

270—Review of Part

Requires the MCE to review this Part within 7 years after its commencement.

Part 6—Enforcement of access determinations

271—Enforcement of access determinations

Allows parties to an access determination to apply to a court to enforce the determination.

272—Consent injunctions

Allows the court to grant consent injunctions.

273—Interim injunctions

Allows the court to grant interim injunctions.

274—Factors relevant to granting a restraining injunction

Lists factors to be considered by the court when granting restraining injunctions.

275—Factors relevant to granting a mandatory injunction

Lists factors to be considered by the court when granting mandatory injunctions.

276—Discharge or variation of injunction or other order

Allows the court to discharge or vary injunctions.

Part 7—Infringement notices

277—Power to serve a notice

Provides that the AER may serve infringement notices for breaches of relevant civil penalty provisions.

278—Form of notice

Provides for the form of the infringement notice.

279—Infringement penalty

Sets out the amount of the infringement penalty: $4 000, or such lesser amount as is prescribed in the Regulations, for a natural person; or $20 000, or such lesser amount as is prescribed in the Regulations, for a body corporate.

280—AER cannot institute proceedings while infringement notice on foot

Provides that the AER must not, without first withdrawing the infringement notice, institute proceedings for a breach until the period for payment under the infringement notice expires.

281—Late payment of penalty

Provides for when the AER may accept late payment of an infringement penalty.

282—Withdrawal of notice

Provides that the AER may withdraw an infringement notice.

283—Refund of infringement penalty

Provides for refund of an infringement penalty if the infringement notice is withdrawn.

284—Payment expiates breach of civil penalty provision

Provides for expiation of a breach subject to an infringement notice.

285—Payment not to have certain consequences

Provides that payment of an infringement penalty is not to be taken to be an admission of a breach or of liability.

286—Conduct in breach of more than 1 civil penalty provision

Provides for payment of one infringement penalty in respect of the same conduct constituting a breach of two or more civil penalty provisions for which two or more infringement notices have been served.

Part 8—Further provision for corporate liability for breaches of this Law etc

287—Definition

Defines terms used in this Part.

288—Offences and breaches by corporations

Provides that an officer (as defined) of a corporation is also liable for a breach of an offence provision or civil penalty provision by the corporation if the officer knowingly authorised or permitted the breach.

289—Corporations also in breach if officers and employees are in breach

Provides that an act committed by an officer (as defined) or employee of a relevant participant (as defined) will be a breach where the act, if committed by the relevant participant, would be a breach.

Chapter 9—The making of the National Gas Rules

Part 1—General

Division 1—Interpretation

290—Definitions

Sets out definitions for the purposes of this Part.

Division 2—Rule making tests

291—Application of national gas objective

Requires the AEMC to make rules that contribute towards achieving the National Gas Objective.

292—AEMC must take into account form of regulation factors in certain cases

Requires the AEMC to consider the form of regulation factors when making a rule that specifies reference services or allows the AER to determine reference services.

293—AEMC must take into account revenue and pricing principles in certain cases

The AEMC must take the revenue and pricing principles into account when specifying regulatory economic methodologies.

Part 2—Initial National Gas Rules

294—South Australian Minister to make initial National Gas Rules

Provides for the South Australian Minister to make the initial Rules. A notice of making must be published in the South Australian Government Gazette and the Rules must be made publicly available.

Part 3—Procedure for the making of a Rule by the AEMC

295—Initiation of making of a Rule

Provides for who may request the making of a Rule and also provides that the AEMC must not make a Rule on its own initiative except in certain circumstances.

296—AEMC may make more preferable Rule in certain cases

The AEMC will be able to make a Rule that is different from a market initiated Rule if the AEMC is satisfied that its proposed rule will or is more likely to better contribute to the achievement of the national electricity objective.

297—AEMC may make Rules that are consequential to a Rule request

Allows the AEMC to make Rules that are consequential to a rule change request.

298—Content of requests for a Rule

Sets out what a request for the making of a Rule must contain.

299—Waiver of fee for Rule requests

Allows the AEMC to waive a fee for a rule request.

300—Consolidation of 2 or more Rule requests

The powers of the AEMC to consolidate requests for Rules are to be clarified. The processes surrounding the consideration of a request for a Rule are to be revised to some extent.

301—Initial consideration of request for Rule

Provides for initial consideration by the AEMC of a request for a Rule.

302—AEMC may request further information from Rule proponent in certain cases

The AEMC will be given express power to request additional information from a person who requests the making of a Rule.

303—Notice of proposed Rule

If the AEMC decides to act on a request for a rule to be made, or forms an intention to make an AEMC initiated rule, the AEMC will publish notice of the request or intention and a draft of the proposed Rule.

304—Publication of non controversial or urgent final Rule determination

Provides for the publication of non controversial and urgent Rules.

305—'Fast track' Rules where previous public consultation by gas market regulatory body or an AEMC review

Certain requests for Rules will be able to be dealt with expeditiously.

306—Right to make written submissions and comments

Provides for the making of written submissions on a proposed Rule.

307—AEMC may hold public hearings before draft Rule determination

Provides for the holding of a hearing in relation to a proposed Rule.

308—Draft Rule determination

Requires the AEMC to publish its draft determination, including reasons, in relation to a proposed Rule.

309—Right to make written submissions and comments in relation to draft Rule determination

Provides for written submissions on a draft Rule determination.

310—Pre final Rule determination hearing may be held

Provides for holding of a pre final determination in relation to a draft Rule determination.

311—Final Rule determination as to whether to make a Rule

Requires the AEMC to publish its final Rule determination, including reasons.

312—Further draft Rule determination may be made where proposed Rule is a proposed more preferable Rule

The AEMC may take action to consult, receive submissions and conduct hearings in relation to a more preferable Rule.

313—Making of Rule

Requires the AEMC to make a Rule as soon as practicable after publication of its final Rule determination. Notice of the making of a Rule must be published in the South Australian Government Gazette.

314—Operation and commencement of Rule

Provides that a Rule comes into operation on the day the notice of making is published or on such later date as is specified in that notice or the Rule.

315—Rule that is made to be published on website and made available to the public

Requires the AEMC, without delay after making a Rule, to publish the Rule on its website and make a copy available for inspection at its offices.

316—Evidence of the National Gas Rules

Is an evidentiary provision relating to the Rules.

Part 4—Miscellaneous provisions relating to rule making by the AEMC

317—Extension of periods of time in Rule making procedure

Provides a general power for the AEMC to extend periods of time in the Rule making procedure.

318—AEMC may extend period of time for making of final Rule determination for further consultation

Allows the AEMC to extend periods of time for consultation as a result of comments received during consultation.

319—AEMC may publish written submissions and comments unless confidential

Allows the AEMC to publish submissions unless they are confidential.

320—AEMC must publicly report on Rules not made within 12 months of public notification of requests

Requires the AEMC to publicly report if it fails to make a Rule within 12 months of receiving a request.

Chapter 10—General

Part 1—Provisions relating to applicable access arrangements

321—Protection of certain pre existing contractual rights

Prevents access arrangement decisions from depriving parties of protected contractual rights.

322—Service provider may enter into agreement for access different from applicable access arrangement

Allows a service provider to enter into agreement for access different from applicable access arrangement.

323—Applicable access arrangements continue to apply regardless of who provides pipeline service

Applies an access arrangement to whichever service provider provides the service.

Part 2—Handling of confidential information

Division 1—Disclosure of confidential information held by AER

324—Authorised disclosure of information given to the AER in confidence

Allows the AER to disclose information in some circumstances.

325—Disclosure with prior written consent is authorised

Allows the AER to disclose information with the consent of the person who provided it.

326—Disclosure for purposes of court and tribunal proceedings and to accord natural justice

Allows the AER to disclose information if it is required to for a court or tribunal proceedings.

327—Disclosure of information given to the AER with confidential information omitted

Allows the AER to omit confidential information before disclosing a document.

328—Disclosure of information given in confidence does not identify anyone

Allows the AER to disclose de identified information.

329—Disclosure of confidential information authorised if detriment does not outweigh public benefit

Allows the AER to disclose information if the detriment does not outweigh the public benefit.

Division 2—Disclosure of confidential information held by relevant Ministers, NCC and AEMC

330—Definitions

Defines terms used in this division.

331—Confidentiality of information received for scheme procedure purpose and for making of scheme decision

Allows the disclosure of confidential information to other scheme decision makers or the MCE as well as it is identified as confidential.

Part 3—Miscellaneous

332—Failure to make a decision under this Law or the Rules within time does not invalidate the decision

Provides that a failure to make a decision in time does not invalidate the decision.

333—Withdrawal of applications relating to coverage or reclassification

Allows applications for decisions to be withdrawn.

334—Notification of Ministers of participating jurisdictions of receipt of application

Requires the NCC to notify Minister's of participating jurisdictions of applications for ministerial decisions.

335—Relevant Minister may request NCC to give information or assistance

Allows the relevant Minister to request assistance from the NCC when making a decision.

336—Savings and transitionals

Schedule 3 has effect under the Law.

Schedule 1—Subject matter for the National Gas Rules

Specifies matters about which the AEMC may make Rules.

Schedule 2—Miscellaneous provisions relating to interpretation

Contains interpretation provisions that will apply to the NGL, Regulations and Rules.

Schedule 3—Savings and transitionals

Sets out savings and transitional provisions.

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

At 17:54 the council adjourned until Thursday 1 May 2008 at 11:00.