LEGISLATIVE COUNCIL

Tuesday 24 March 2009

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:18 and read prayers.

STATUTES AMENDMENT (TRANSPORT PORTFOLIO—ALCOHOL AND DRUGS) BILL

His Excellency the Governor assented to the bill.

MOUNT GAMBIER HOSPITAL HYDROTHERAPY POOL FUND BILL

His Excellency the Governor assented to the bill.

PAPERS

The following papers were laid on the table:

By the President—

Register of member's Interests—March 2009—Registrar's Statement
Ordered—That the Statement be printed. (Paper No. 134B)

By the Minister for Mineral Resources Development (Hon. P. Holloway)—

Section 16(5) of the Climate Change and Greenhouse Emissions Reduction Act 2007—South Australian Government Report dated February 2009
Regulations under the following Acts—
Primary Produce (Food Safety Schemes) Act 2004—Dairy Industry
Primary Industry Funding Schemes Act 1998—Olive Industry Fund
South Australian Country Arts Trust Act 1992—Revocation
Rules of Court—
Supreme Court—Supreme Court Act 1935—Civil—Amendment No. 7
Workers Compensation Tribunal—Workers Rehabilitation and Compensation Act 1986—Rule 30—Costs of Proceedings

By the Minister for State/Local Government Relations (Hon. G.E. Gago)—

Reports, 2007-08—
Institute of Medical and Veterinary Science
Mid North Health
National Environment Protection Council
Northern Adelaide Hills Health Service Inc.
Regulations under the following Acts—
Authorised Betting Operations Act 2000—Contributions Payable
Correctional Services Act 1982—Exclusions from Automatic Release on Parole
Advertising (Authorised Interstate Betting Operations) Code of Practice
Advertising (Bookmakers) Code of Practice
Requirements for Systems and Procedures Designed to Prevent Betting by Children Code of Practice
Responsible Gambling (Authorised Interstate Betting Operations) Code of Practice
Responsible Gambling (Bookmakers) Code of Practice

By the Minister for Consumer Affairs (Hon. G.E. Gago)—

Regulation under the following Act—
Liquor Licensing Act 1997—Dry Areas—Long Term—Bordertown

GLENTHORNE FARM

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:22): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P. HOLLOWAY: In June last year, the University of Adelaide advised the South Australian public of plans to investigate setting up a woodland recovery initiative based at Glenthorne Farm in Adelaide's south. Glenthorne Farm, near O'Halloran Hill, has a special relationship with the community in the southern suburbs as well as the winemaking industry at McLaren Vale.

This historic property was first settled in 1839 by Major Thomas O'Halloran, the South Australian colony's first police commissioner. In 2001, Glenthorne Farm, the former CSIRO research facility, was handed over to the University of Adelaide by the state government for use as a vineyard and winemaking facility. This followed the former state government's decision to purchase the 200 hectare property from the commonwealth in 1998 after the CSIRO's decision to quit the site.

A plan to establish vineyards and a winemaking facility at the farm, as originally envisaged at the time of the land transfer, has since stalled. Instead, the university has proposed using the farm as a base for a woodland recovery initiative. This project aims to help re-establish native vegetation to 30 per cent of the Mount Lofty Ranges and prevent further species loss in the region.

As part of the woodland recovery initiative, the university aims to establish a world-class environment research centre at Glenthorne, reclaim about 100 hectares of farmland at Glenthorne and reconstruct a suitable habitat that encourages the return of native species, develop educational programs so that young people are engaged in the project and see it as important to the future of their community, and employ about 30 people including scientists, technicians, teachers and managers.

From October last year, the university has held community information days and sought public feedback in an effort to build support for the recovery project. As part of the funding model for this initiative, the university had requested permission to sell 63 hectares of the farm to developers as a way of generating seed money for a $100 million trust fund. This trust would provide ongoing funding during the next 100 years which the university estimates is required to establish the revegetation project. However, this proposal to sell land to raise funds fails to meet the terms of the deed and land management agreement signed at the time of the transfer in 2001. Taking that into consideration, the government has declined the university's request.

The state government's view remains that the land was transferred to the university on the basis that there would be no housing on the site. Notwithstanding that decision, the concept to reafforest 150,000 hectares of woodlands in the Adelaide Hills face has some merit.

The government has offered to work with the university to find alternative sources of funding for its aim of reafforesting the property to create native woodland. Therefore, I have written today to the university Vice-Chancellor and President, James McWha, offering to work with his staff to identify alternative funding through research grants that can finance the woodland recovery initiative without requiring any of the land to be sold off for housing.

This government supports the retention of open space within the metropolitan area. We remain committed to ensuring that the pressure to develop land within the urban growth boundary is balanced by the retention of sufficient public open space for community use.

SA JOCKEY CLUB

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:26): I table a copy of a ministerial statement made earlier today in another place by my colleague the Minister for Recreation, Sport and Racing.

QUESTION TIME

VANCO, MR G.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:30): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question in relation to appointments within Planning SA.

Leave granted.

The Hon. D.W. RIDGWAY: I received a copy of an internal email a week or so ago from the Chief Executive of Planning SA, Mr Ian Nightingale. I assume it was to Planning SA as a whole. It states:

Good afternoon, I am pleased to announce the appointment of George Vanco as the Director Major Projects. This is a new role that will report directly to me. George will start work on Monday 16 March. He will play a key role in helping the agency deliver on major projects and initiatives in line with both the planning reform agenda and the South Australian Strategic Plan.

As I am sure members are aware, Mr Vanco was often seen in this chamber assisting the minister and he was very diligent in providing the minister with a range of advice and notes during question time. In light of that, I would like the minister to provide a copy of the documents I am asking for before the end of question time today, given that they will all be in existence and electronically available. My questions to the minister are:

1. Will he provide a copy of all advertisements in relation to the advertising of this position?

2. Will he provide the chamber with the number of applicants who applied for this position and the number who were interviewed?

3. Will he provide a copy of the job and person specification?

4. Finally, will he provide details of the total employment cost, which includes superannuation, motor vehicle and other extra benefits that this position may attract?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:33): I am very pleased that a former hard-working member of my staff, Mr George Vanco, who has great experience, has been appointed to the position of major projects director. That appointment is a 12-month contract. The honourable member would be well aware that the Department of Planning and Local Government was recently restructured. It was recently re-created as a new department. It was formerly a unit, Planning SA, within the Department of Primary Industries and Resources. As part of the restructure, the new chief executive officer of the department, who has responsibility for such matters, has been seeking to restructure his organisation. It is his choice.

The Hon. D.W. Ridgway: Show us the advertisements.

The Hon. P. HOLLOWAY: There are no advertisements because it is a contract. To get this department up and running, it is clear that the new chief executive had to appoint people with significant experience in the area who can undertake the role envisaged of the newly designed department, and that is exactly what happened. Ultimately those positions will be subject to advertising. If a temporary appointment had not been made, the department would not have had anyone to fill the role. I do not believe anyone is more qualified to undertake that task, and I am sure that all members in this chamber who have been briefed by Mr Vanco would know that his knowledge in these areas is second to none.

VANCO, MR G.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:34): As a supplementary question, is it a 12-month contract position because Mr Vanco is a candidate for the ALP at the next state election?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:34): The honourable member would well know that Mr Vanco is not a candidate for the ALP. I understand that Mr Vanco did stand as a candidate, I think, in the federal seat of Sturt way back in the 1996 election. I do not believe the fact that more than a decade ago he may have stood as a Labor candidate for a federal seat should preclude him (or anyone for that matter who stood as a Liberal candidate) from a position if he has the qualities that are required.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, certainly not as many as you do. The Hon. Rob Lucas interjects with a smile on his face. I am sure we could talk about some historical precedent, but I will not waste question time.

VANCO, MR G.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:35): As a supplementary question, will the minister provide the documents that exist in electronic form to the chamber before the end of question time today?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:36): I have explained that there were no advertisements to get the department up and running. To wait for that would have meant no-one was operating this important area of major projects within Planning SA because there is a deficiency in there. As I said, ultimately, there will be advertising at the appropriate time.

STRATEGY AND SUSTAINABILITY DIRECTOR

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:36): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about the appointment of her chief of staff.

Leave granted.

The Hon. D.W. RIDGWAY: I beg your pardon, Mr President; I ask the question of the Minister for Urban Development and Planning.

The PRESIDENT: Who is your question to?

The Hon. D.W. RIDGWAY: To the Minister for Urban Development and Planning.

The Hon. G.E. Gago: Which one?

The Hon. D.W. RIDGWAY: The Minister for Urban Development and Planning.

The PRESIDENT: Is the leader seeking leave to make a personal explanation?

The Hon. D.W. RIDGWAY: No, Mr President. I am seeking leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the appointment of the Director of Strategy and Sustainability within Planning SA.

Leave granted.

The Hon. D.W. RIDGWAY: The opposition has been advised that another person from within the government—in fact, the Minister for State/Local Government Relations' former chief of staff—has been appointed Director of Strategy and Sustainability within Planning SA. As I did in my previous question, my questions to the minister are:

1. Will he provide to this chamber by the end of question time a copy of all advertisements placed in relation to that position, the number of applicants who applied for the position and the number who were interviewed?

2. Will he provide a copy of the job and person specifications for that particular position and the total employment cost, that is, the salary, plus other benefits, including superannuation, motor vehicle and other benefits?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:38): Again, what happened in relation to Planning SA was that the former director of sustainability left several months ago to take up another position; so, there was a vacancy in that specialist area within the department. Again, similar conditions apply, as I understand it. The particular applicant for that job has been given a contract so that there is the expertise during this important period of establishing a new and very important department. I believe that, really, the same comments apply as I gave to the previous answer.

STRATEGY AND SUSTAINABILITY DIRECTOR

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:39): As a supplementary question, given the important significance of the new department he spoke of, is the minister able to advise the chamber of the salary band within which this person is being paid?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:39): I will get that information—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, it is the appropriate level for that executive position. I will get that information and bring it back for the honourable member.

COMPETITIONS

The Hon. J.M.A. LENSINK (14:40): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about SMS competitions and trivia scams.

Leave granted.

The Hon. J.M.A. LENSINK: Other members of our community may have received on 11 March a scratchie-like advert in the *Sunday Mail* called Text Lotto, which is being promoted by Star Promotions Club, and in bold print it states that you can join for your chance to win $5,000 cash, with an $80 lifestyle voucher for every entry. One is required to scratch the panel at the front to reveal the unique code and SMS the code at a cost of 25¢, which subscribes you to the Star Promotions Club at a cost of $6.60 a week. Further in the terms and conditions it states that there is a $6.60 sign-up fee and a further weekly cost of $6.60. These terms also state that the Australian resident must be aged 16 years or over. However, I note also that the conditions exclude New South Wales and ACT residents. My questions to the minister are:

1. Why does South Australia not also provide some exclusion?

2. Is the Office of Consumer and Business Affairs aware of this promotion, and does it have any concerns about targeting the under aged or vulnerable and their being recruited into something that they may not fully understand?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:41): Indeed, the Office of Consumer and Business Affairs provides a great deal of advice and also public warnings to a number of different groups of targeted people, providing them with information about being very cautious and aware of the potential for scams and other get-rich-quick schemes, such as illegal pyramid schemes, and others. Warnings are usually published via media release, with information about the schemes being available through the consumer affairs telephone advisory service. Also, we tend to put a great deal of detail on our internet site. We also have a number of valuable publications—booklets, pamphlets, etc.—that also target their message at a wide range of groups and sectors to get the message across.

Unfortunately, there is a lot of very shady deals being offered, and I think the word of warning to people is that, if it is a deal that looks too good to be true, then it probably is, so be very careful. The other really important warning message that we distribute wide and far is never to give out personal information or details, particularly banking and credit details, to people that you do not know.

There have been a number of these scratchie-type offers. There was one a number of months ago where some of the terms and conditions outlined in the scratchie contest were not accurate and therefore we were able to require those to be withdrawn and refunds and such-like given, and we put out public notices about that. Although I do not have the particular details of the example that the honourable member has given, I believe it is a recent scratchy competition that has been circulated that the Office of Consumer and Business Affairs is aware of. They have had a preliminary look at the way this particular scratchie competition is being operated, and they believe it adheres to the terms and conditions outlined in that competition so therefore they have not been able to find any breach in relation to that particular contest.

I guess the other word of warning is for people to be very careful and cautious and to read the terms and conditions that apply to contests that they enter. As I said, the consumer affairs office spends a great deal of time, effort and energy trying to make members of the public more aware and informed of their rights and obligations, and also areas in which they can easily be taken advantage of.

It would appear, unfortunately, at this time that that particular scratchie competition is not in breach of any particular legislation or regulation. However, we continue to monitor these schemes, and I just caution people when they go out to try to win their life's fortune that it is a most unlikely thing to do.

GEOTHERMAL ENERGY

The Hon. CARMEL ZOLLO (14:45): Is the Minister for Mineral Resources Development aware of any new developments in the geothermal industry that have consequences for South Australia and its leading role in developing this clean, renewable source of energy?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:45): I thank the honourable member for her important question, because today has been a very significant day in the future of geothermal energy in this state with the announcement to the Australian Stock Exchange by Panax Geothermal Limited of the positive results from its pre-feasibility study for its Penola project. Based on analysis of this study, Panax Geothermal has announced it will begin drilling its first production well in September this year.

This government welcomes the announcement by Panax Geothermal Limited of further progress on its hot sedimentary aquifer project for the state's South-East. The Panax Geothermal announcement is a timely reminder of the excitement being generated within the energy sector by South Australia's geothermal industry.

Geodynamics Limited was the first to drill deep wells for hot rocks in both our state and in Australia, and its Habanero proof-of-concept project near Innamincka in the Cooper Basin is recognised as the world's leading effort in making progress towards the commercialisation of engineered geothermal systems.

It is significant to note that Tata Power and Origin Energy are backing Geodynamics' geothermal projects. Also, Petratherm Limited is scheduled to be the second company to drill a deep well to prove the concept of geothermal energy production in Australia, and the Paralana project is also located in South Australia.

Petratherm is also targeting hot rocks but will test the potential to flow heat energy from the insulating rocks that overlie the source of the geothermal energy. Petratherm has coined the term 'heat exchange within insulator' (HEWI) to describe the geothermal play at Paralana. It is significant to note that Beach Petroleum and TRUenergy are backing Petratherm's Paralana geothermal project.

Panax's Penola project in the South-East of South Australia is now expected to be the third deep drilling test to prove the concept of geothermal energy production in Australia. Panax is targeting heat energy contained in sandstones in the Otway Basin. This is now expected to be Australia's first deliberate test of a hot sedimentary aquifer play. These and other geothermal projects in South Australia have vast potential to make a meaningful contribution to clean baseload power supply.

Following on from progress made by several geothermal licence holders in our state, Panax's latest announcement is further evidence that South Australia is favourably placed to be a world leader in geothermal generation, technical skills, proven project development and long-term commercial success. South Australia's Otway Basin represents an area of anomalously high heat flows close to the National Electricity Market transmission grid. The Otway Basin also has an extensive and readily accessible database of petroleum well and seismic data that define hot wet sedimentary rock targets.

Panax has gained a significant advantage from the easily accessible and comprehensive seismic and well-informed database managed by Primary Industries and Resources SA. Both the federal and state governments have previously recognised the prospectivity of the area and are supportive of the pre-competitive information gathering.

The South Australian government previously awarded a $130,000 PACE grant to advance understanding of the Limestone Coast geothermal project area. As I am sure you are aware, Mr President, PACE (Plan for Accelerated Exploration), which is a policy introduced by this government in April 2004, has been a major driver of the increased interest by resource companies in exploring for new deposits in this state.

Investment in mineral exploration in South Australia has grown to more than $300 million a year, from just $40 million when this government came into office seven years ago. PACE has been central to that markedly improved performance. South Australia has attracted an estimated 97 per cent of all the investment in South Australian geothermal exploration projects in the period from 2000 to 2008. Some 28 companies have applied for 271 geothermal exploration licences in South Australia, representing 71 per cent of all geothermal licences applied for in Australia. Based on information to hand, this state is forecast to remain in the lead for Australian work program investment in geothermal projects in the period 2000 to 2013 at least.

It is very good news today that, along with those two other hot rock projects in the northern part of the state, this exciting new development by Panax in the South-East of the state is also moving towards development in the near future.

FINKS MOTORCYCLE CLUB

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:51): I table a copy of a ministerial statement relating to the Serious and Organised Crime (Control) Act 2008 made earlier today in another place by my colleague the Attorney-General.

QUESTION TIME

FAMILIES SA

The Hon. A. BRESSINGTON (14:52): I seek leave to make a brief explanation before asking the minister representing the Attorney-General and the Minister for Families and Communities a question.

Leave granted.

The Hon. A. BRESSINGTON: Will the Attorney-General and the Minister for Families and Communities undertake an investigation to deal with the matters raised by Mr John Ternezis and his lawyers in a document that was the equivalent of a public disclosure statement in October 2007, relating to abuse of public office, lack of enforcement of court orders (specifically Youth Court orders), lack of professional application of policy and procedures of case workers in Families SA, and the placement of a child in moral danger and harbouring?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:53): I suggest that the honourable member provide me with information relevant to that case and I will refer it to the Attorney-General and/or the Minister for Families and Communities, whoever is appropriate. I am not familiar with any of the information in respect of that matter.

ZERO WASTE FOOD TRIAL

The Hon. S.G. WADE (14:53): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about state-local government relations.

Leave granted.

The Hon. S.G. WADE: In January 2008, the government invited councils to participate in a Zero Waste food trial. In February 2009, the government launched an attack on the councils participating in their own trial. Campbelltown city council has since abandoned its fortnightly rubbish bin collection trial after criticism from the state government. In an *Advertiser* report headed 'Dumped on from a great height', Campbelltown mayor Simon Brewer is reported as saying that the council had signed onto the scheme 'in good faith' but was now backing away because it was left 'unsupported' by the government. Mr Brewer was reported as saying:

> My council understands the waste problems and saw this as an opportunity to help the government achieve their clearly stated goal of reducing waste to landfill. Unfortunately, we were then left unsupported by the government and have largely worn their criticism.

Mr Brewer highlighted the fact that, if the state government wants to pursue objectives, it needs to support it wholeheartedly and unreservedly. My questions are:

1. Given the minister's responsibility to nurture healthy relations between state and local governments, has she had discussions with Campbelltown city council and the Local Government Association in relation to the trial experience?

2. What steps has she taken to ensure that the state government does not continue to use local government as a whipping boy for its own initiatives?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:54): I have answered this question previously in this council. The honourable member has failed to understand that the food waste pilot falls under the responsibility of the Minister for Environment and Conservation. The contract and arrangements that councils have entered into are with another minister, and it would be most improper for me to interfere in those areas. The frequency of waste

collection is a matter for local councils to decide and involves consideration of a number of elements, including weather conditions and hygiene, etc. Councils should also consider the views of their ratepayers, and it is the responsibility of local government to do that. It is an important responsibility but, as I said, it is not my responsibility, and it would be most improper and out of place for me to interfere in the responsibilities and duties of other levels of government. Just as state government does not respond well in terms of interference, neither would local government.

It is important to remind members that councils were not forced to take part in the trials offered; indeed, councils themselves decided whether or not they would participate. It was a voluntary matter, and I believe that should be emphasised: councils were not forced into it. I have put on record in this place before that, given it was a trial, I think it was absolutely appropriate that they take into consideration the feedback from all relevant stakeholders.

I have a great deal of confidence in local councils. They are a marvellous level of government and provide incredible value to their communities. They are made up of truly remarkable people, many working way beyond the call of duty; in effect, many are volunteers who are not paid for the work they do. It is a quite remarkable contribution to the South Australian community and I would not want to say anything that would undermine that. However, and as I emphasised previously, this was a trial that councils entered into in a voluntary way. I understand that negotiations have occurred in relation to modifications of the original arrangements, which I was pleased to see, and all is well with the world.

OUTBACK COMMUNITIES

The Hon. I.K. HUNTER (14:58): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about outback communities.

Leave granted.

The Hon. I.K. HUNTER: I understand that there are about 5,000 people in outback areas in a number of small communities spread across a wide geographic area of our state. Despite not having a large enough population to form local councils, these communities are full of volunteers who help to run their local areas. Will the minister advise the council about the state government's commitment to these outback communities?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:58): I thank the honourable member for his important question. As Minister for State/Local Government Relations I was very happy to release recently a draft bill designed to meet the administrative and management needs of outback communities into the future. The aim of this bill is to provide efficient and accountable administration of outback communities and to repeal the Outback Areas Community Development Act 1978.

Many regional communities contributed to the initial review of that act, which was conducted in 2007 and which looked at the formal capacity of the Outback Areas Community Development Trust to respond adequately to the needs of outback areas now and into the future. The Outback Areas Community Development Trust covers 65 per cent of the state's land mass, Mr President—and I can see that you are astounded by that figure—with less than 1 per cent of the population.

An honourable member interjecting:

The Hon. G.E. GAGO: Here we have an honourable member who is not interested in our rural and outback communities; you can hear by the interjections that the honourable member does not give a flying leap about our outback and rural communities, and that is a real shame.

The Dunstan government first created the trust to support and assist outback communities with their unique needs. The outback areas of our state are facing many challenges with the current growth of some communities, and it is important that communities have up-to-date governance structures in place to manage local affairs for the benefit of communities whilst upholding a strong sense of community spirit.

The bill creates a new Outback Communities Authority to replace the Outback Areas Development Trust. The key elements of the Outback Communities (Administration and Management) Bill include:

- increasing the capacity and expertise of the authority by increasing membership of the authority to seven;
- increasing community consultation to better inform the authority's future operations through the development of five-yearly strategic management plans, an annual business plan and budget and community resourcing and management agreements;
- giving the new authority the ability to raise revenue to assist in the maintenance of whole of outback assets and the ability to raise a community contribution at the request of individual communities to run projects specific to that community; and
- strengthening regulatory powers to enable the new authority to better manage issues confronting its communities such as the collection of rubbish, dealing with litter and abandoned vehicles and land hazards such as animals causing a nuisance as well as managing development.

An information package including the draft bill is available on the Outback Areas Community Trust website or through our OACDT services.

WASTE WATER MANAGEMENT

The Hon. DAVID WINDERLICH (15:02): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about the community waste water management scheme of the District Council of the Copper Coast.

Leave granted.

The Hon. DAVID WINDERLICH: The community waste water management scheme of the District Council of the Copper Coast is proposed for the Moonta, Moonta Bay and Port Hughes areas, and it is designed to replace a sewer system based on septic tanks with a modern reticulated waste water system. The estimated cost of constructing the scheme is about $46 million to $50 million.

Community members have raised three major concerns about the scheme. The first of these is its financial viability; this is a major scheme for a small council. The second concern is the cost to ratepayers. Costs for the scheme are as follows: up to $30,000 for on-site plumber's work to connect septic tanks to the main pipes and connection fees ranging from $2,500 for connection within the first 12 months to $5,000 if connection is delayed for four years.

The third concern is the impact on heritage buildings. The construction of the gravity-based community waste water management scheme involves breaking up hard rock that covers this area. This, in turn, creates vibrations that could destroy or damage the many 19th-century Cornish buildings. These were built without mortar and often on very small or no foundations. A wall of the Druids Hall on Ryan Street in Moonta recently collapsed for no apparent reason. This highlights the fragility of many of these buildings.

Council has responded to concerns about costs by deciding that people on the pension or in financial hardship will be able to defer payment. However, as around 30 per cent of the population of the whole area is over 65—and, therefore, of pension age—or unemployed, this policy of the council demands that the financial viability of the project be re-examined. My questions are:

1. Is the minister aware of the potential impact on the financial viability of this project of deferring payment for such a high proportion of the population of Moonta, Moonta Bay and Port Hughes?

2. Is the minister aware of the potential risk to heritage buildings of the drilling and rock sawing involved in trenching for the community waste water management system?

3. Is the minister aware of the possible damage to private property posed by the drilling and rock sawing involved in this project?

4. Given that, recently, this council only narrowly escaped the use of the minister's power under section 272 due to poor processes, and given the risks to viability, heritage and property, will the minister write to the District Council of the Copper Coast seeking assurances that those risks are being managed appropriately?

5. Given that the council only narrowly escaped the use of the minister's power under section 272, will the minister undertake to demand a copy of the prudential report that the council is required to prepare under section 48 of the Local Government Act for projects of this nature?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:05): Indeed, the Community Waste Water Management System is very important to many of our rural and regional communities that do not have access to the SA Water waste system. It is a tremendous system, and I believe that it is unique to South Australia. It is a way of collectively using a septic system that allows for very efficient waste water treatment. It also has a very good environmental impact in terms of strategies for water reuse, and suchlike. It is certainly a system that is well worth while investing in, and it is something that South Australia should be very proud of.

However, the downside of this is that, although the system has been developing here in South Australia for many years, unfortunately a review a number of years ago showed that, in fact, we were not investing in the infrastructure in a way that enables us to maintain it to appropriate standards and that enables us—once it is worn out—to actually replace that system. The review found that, in fact, councils were very much underpricing the rates they were collecting for the installation and maintenance of that system.

The government provides a subsidy equaliser that contributes to that scheme as well. I think the commonwealth government also recently contributed about $20 million to the development of some of these schemes, so a great deal of resources have been put in. In terms of the installation and ongoing management of the systems, the LGA manages those systems and has spent a great deal of time and energy informing communities and trying to educate them about the importance of the systems and the fact that councils need to charge rates to enable the ongoing management sustainability of these systems.

We have seen fairly significant increases in the rates charged for these schemes across a number of council areas, and that is something that really is about the long-term future of these schemes. We have seen what happens when we do not put adequate resources in. We see systems that are not well maintained, and we see them leaching into the soils and into watertables, creating all sorts of significant health and environmental problems. It is extremely expensive to then go along and clean up, so it is most important that we install these systems to a high standard and maintain them throughout their lifetime.

These are very difficult issues for local council areas. Every community and household has to deal with its waste in some form. There are only three alternatives. One is to put in a private septic tank and pick up all the costs of the installation, and then empty and clean off that system. The second alternative is this community waste water management system, which is managed through the LGA and subsidised through the state and commonwealth government. The third is to have access to mains water and sewerage services, and pay through that. So, it is the cost that users have to pick up, if you like. I am not familiar with the actual details of the Copper Coast project, but I am certainly happy to take on notice the questions that need further detail and to bring back a response.

WASTE WATER MANAGEMENT

The Hon. DAVID WINDERLICH (15:09): I have a supplementary question. The minister mentioned state government subsidy of the community waste water management scheme. Given that the state government is subsidising these schemes, does it monitor the risk management of such projects by local councils?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:10): A management committee is established through the LGA. I cannot at this point list the members of that committee, but it has done the job extremely well in the past, and they manage the oversight of these projects. In conjunction with the EPA, they are responsible for any environmental problems, but I am not sure who are the members of that management committee. I am happy to bring back the details.

GAWLER RAIL LINE

The Hon. J.S.L. DAWKINS (15:11): I seek leave to make a brief explanation before asking the Minister Assisting the Minister for Transport, Infrastructure and Energy questions relating to the Gawler rail line.

Leave granted.

The Hon. J.S.L. DAWKINS: Members may recall that on 27 January this year the government introduced a new timetable schedule for the Gawler rail line. This followed widespread community concern about the impact of timetables introduced last April and slightly amended in November. Unfortunately, the changes made in January were also of a minimal nature and have had no effect on the severe crowding and lack of timeliness that have become daily occurrences for commuters on the Gawler line. Only this morning I travelled to Adelaide on the 6.35 service from Gawler Central Station. This train stops at every station. As has been the case on many other occasions, this train arrived in Adelaide several minutes late and with up to 50 people standing in each carriage.

After another similar occurrence recently, passengers appreciated the apology of a TransAdelaide staff member who noted that the situation had been the case for some time on this service but said that it was beyond his control. As a further example of the failure of the current timetable schedule, on a recent morning I arrived at the local station to hear an announcement that my selected service would be 12 minutes late leaving for Adelaide. This is not unusual. There is little wonder that commuters need to utilise services much earlier than should be necessary in order to arrive at their destination on time. My questions are:

1. When will the minister act to completely overhaul the timetables for the Gawler line?

2. As part of such an overhaul will the minister ensure that a limited stop service is scheduled to leave Gawler Central before 7am to meet the growing number of commuters travelling at that time?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:13): I am happy to refer those questions to the minister in another place and bring back a response. It is important to put on record that the spending by the South Australian government on its infrastructure capital program has been at unprecedented levels. An amount of $3 billion will be spent over the next four or five years on transport alone.

This government has committed $3 billion to transport capital infrastructure alone. Rail revitalisation will transform Adelaide's public transport system on the Belair and Noarlunga lines. The electrification of the Gawler line is sure to improve efficiencies there. The government has committed to: the coast to coast rail, additional trams, the rail car depot relocation, the South Road/Anzac Highway underpass, 80 new buses, the Glenelg tram overpass—the list goes on. There has been unprecedented spending on transport infrastructure by this government. In terms of the specific timetable details the member has asked about, I am happy to refer the question to the appropriate minister in another place and bring back a response.

MINERAL EXPLORATION

The Hon. B.V. FINNIGAN (15:15): Will the Leader of the Government, as Minister for Mineral Resources Development, provide an update on mineral exploration data for the December quarter?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:15): The latest Australian Bureau of Statistics figures show that $68 million was spent on mineral exploration in South Australia for the December quarter of 2008. Of the $68 million spent in the December quarter, $22 million was invested in the search for new mineral deposits. The remaining $46 million was spent on the expansion and development of South Australia's growing list of known mineral deposits.

The latest quarterly result brings overall spending for the calendar year 2008 to $317.5 million, which is down from both the $331.3 million in the 2007 calendar year and the most recent peak of $355.5 million in the 2007-08 financial year. The latest result for the 12 months

ending in December is still more than triple the $100 million target set by South Australia's State Strategic Plan. While South Australia remained in third place (behind resource-rich Western Australia and Queensland), exploration spending slowed in all jurisdictions except New South Wales and the Northern Territory. A cut-back in spending on exploration in South Australia was inevitable in the face of the sharp fall in world commodity prices in the past six months. The global financial crisis that sparked this fall in commodity prices is clearly a major concern for governments, industry, businesses and private individuals.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Yes, and that is why it trebled. If members opposite want it, I am happy to give them the history lesson. Just $40 million was spent for an entire year on exploration when this government came to office. Even going through the world's worst global financial crisis ever, in 2008 we were still able to get exploration of over $300 million a year compared with just $40 million a year when we came to office.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Let me go through the state's share. South Australia had less than 5 per cent of the country's mineral exploration when we came to office; it is now over 12 per cent. That is more in line with our share and, of course, that was achieved through the PACE program, which enabled us to get it up from that. Access to capital, whether through banks or equity markets, remains hard to come by. In that climate, investors are looking for certainty and stability, and that is why this government continues to work hard to create a climate of certainty in this state that provides investors with the confidence they need to plan long-term investments in the resources sector.

We also realise that investment in our resources sector is critical for the continued development and growth of the South Australian economy. The fact that quarterly exploration numbers continue to hold up in the current environment confirm that the global exploration sector continues to have the highest levels of confidence in South Australia's mineral potential. Even taking the December quarter slow-down into account, South Australia is still faring well compared with that total exploration expenditure of about $40 million a year experienced just seven years ago.

Many of the world-class projects that have been identified by prospectors in the past few years are still being developed, and that is because many companies are prepared to look beyond the global economic slow-down to the next up-swing as fiscal and monetary policy responses eventually help lead the way to worldwide recovery. While the current economic climate is casting a shadow on the short-term outlook for the mineral sector, the fundamentals of the mining industry, including the demand for resources from Asia, remains positive. Some doomsayers are already complaining that the ongoing expansion of the mining sector in this state has somehow stalled; and we see those opposite who seem to specialise in knocking this state and its achievements.

Even though we are more than triple our target and eight times the level of exploration we had seven years ago, those opposite still continue to knock. Such unnecessary pessimism denies the increase in operating mines to 11—so, the number of mines now is 11 compared to four when this government came into office—and the expectation that two more mines at least will go into production over the next 12 months. Those new mines are not only generating investment and export dollars for this state but also creating jobs at a time when Australia's employment outlook faces the most challenging period since the early 1990s, or perhaps even the 1930s. This government remains confident in the prospects for BHP Billiton's proposed expansion of the Olympic Dam mine, with a comprehensive environmental impact statement due to be made available from early May.

I am acutely aware of the pressures the current economic situation places on the mineral resources industry. Funds for exploration are essentially unavailable for many small miners at present due to the global credit squeeze and companies need to preserve their cash. To assist companies identify sources of capital during this testing period, the government is ramping up its efforts to promote South Australian projects overseas, particularly in China, Japan and India where companies remain cashed up and are looking for investment targets. This government remains committed to supporting and developing a healthy mineral sector through the good times and the bad.

As we have seen with previous downturns, the business cycle will eventually turn into an upswing. This government aims to be ready for that recovery by taking advantage of the current

period to lock in infrastructure projects that support the mining industry, and we are also looking to train the skilled workforce that will be required once many of the world-class projects still in the pipeline come on stream in the next few years. The latest mineral exploration results certainly reflect, to some extent, as they do across Australia, the global financial situation, but the levels of exploration for 2008 will still more than treble the Strategic Plan target set just five years ago.

FAMILIES SA

The Hon. D.G.E. HOOD (15:21): I seek leave to make a brief explanation before asking the minister representing the Minister for Families and Communities a question about Family Court intervention requests.

Leave granted.

The Hon. D.G.E. HOOD: Pursuant to sections 91B and 92A of the Family Law Act, judges and magistrates can request state child welfare agencies to urgently intervene in child custody and access proceedings if they have a fear that a child has 'been abused or is at risk of being abused'. These sorts of requests are usually made of Families SA when there are grave fears by a judge for a child's welfare and safety. Judges and federal magistrates who deal with children's matters are experts in child welfare and it would therefore be expected that requests made by these judicial officers to Families SA to intervene in such proceedings to ensure a child's welfare are responded to quickly and effectively.

However, a recent reply to a question on notice of mine indicated that, of approximately 30 such requests received by Families SA in 2007 from the family and federal magistrates courts to urgently intervene to ensure a child's welfare, they intervened only twice. The government refused to supply data for 2008 and beyond, saying that it received 26 requests for intervention from 1 January to 30 September. The Minister for Families and Communities said that the department prepared 26 written responses for the Family Court but refused to say how many times it actually intervened. My questions are:

1. Did Families SA fail to intervene at all in 2008?

2. Why, when a federal law judicial officer has requested Families SA intervention for a child's welfare, does Families SA so regularly fail to intervene?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:23): I thank the honourable member for his important questions and will refer them to the Minister for Families and Communities in another place and bring back a response.

DRESS CODES

The Hon. R.I. LUCAS (15:23): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about the subject of dress code double standards.

Leave granted.

The Hon. R.I. LUCAS: Last Sunday, a young male would-be patron at 9pm endeavoured to enter the Lion Hotel, which most members would be familiar with, in North Adelaide. There was a 30th birthday celebration going on and the young male would-be patron had been invited as a guest. The bouncers at the Lion Hotel refused entry to this person on the basis that the young male was wearing a pair of what he describes as 'fashionable shorts'.

The bouncers indicated that males were not allowed to wear shorts into the Lion Hotel of an evening. When the young male patron indicated that young females inside the Lion Hotel were wearing shorts and there appeared to be some discrimination in the policy of the Lion Hotel, the security staff said, 'Well, they are the rules, and you won't be allowed in.'

The *Sunday Mail* in January 2007, under the heading of 'Open-toe the line, pubs told,' stated:

> Pubs and clubs have been warned not to discriminate between men and women with their dress code after a popular beachside hotel was forced to change its footwear standards. The Equal Opportunity Commission issued its warning to SA's 600-plus hotels after investigating a complaint of sex discrimination, which began when a man was ejected from the front bar in the Stamford Grand Hotel in Glenelg for wearing brown thongs about 6pm on a spring Sunday.

I will not read all the gory detail of the *Sunday Mail* story in relation to the arguments for the case. I am sure there are other questions. Let me come to the final statement from the Equal Opportunity Commissioner, as follows:

> Equal Opportunity Commissioner Linda Matthews said the overwhelming majority of hotels and clubs knew they couldn't discriminate with their dress code. 'But some still do and these operators run the risk of someone making a complaint and—if mediation is not successful—face an Equal Opportunity Tribunal which can award an unlimited amount of monetary damages to the person discriminated against', she said.

I hasten to say that the issue was resolved with the involvement of the Equal Opportunity Commissioner through conciliation, and a non-discriminatory dress code at the Stamford Grand was instituted which allowed males and females to be treated equally. My questions are as follows:

1. Does the minister accept that it is unfair that hotels or clubs could allow young women to enter those premises wearing fashionable shorts but to exclude or discriminate against young men who are wearing a similar fashionable pair of shorts?

2. Is the minister aware of the 2006 decision or announcement of the Equal Opportunity Commissioner in relation to this issue of dress code double standards, and has she as the Minister for the Status of Women received any similar complaints in relation to the dress codes of Adelaide's hotels and clubs?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:27): Talk about back to the future! I thank the honourable member for his most interesting questions. In terms of receiving other complaints I can confidently say that, absolutely to the best of my abilities and knowledge, I am not aware of receiving any other complaints about dress codes at pubs and clubs. I believe the Hon. Robert Lucas is my first. I would have to check my records to be absolutely certain about that, of course, but it is certainly not an issue that I have to say—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: As I was saying, this is not an issue that I can in all honesty say I have put a lot of thought, consideration and research into, given that I believe this is probably the first complaint of this nature, but I would have to check my records to be absolutely certain about that.

In terms of dress codes, I understand that pubs and clubs do formulate their dress codes and that the dress codes vary over time. Fashion dictates certain standards. I recall that many years ago there were dress standards that were much lower in some cases. There was one facility where men had to at least wear a singlet rather than go bare-chested. Anyway, they do vary from time to time, as I said, as fashion dictates. My view is that it is really in the best interests of pubs and clubs not to discriminate in terms of dress codes. It is in everyone's best interests to have something that is even and fair handed, sensible to our climate, and fair and equitable.

In terms of cases that may have occurred, as I have already put on record, this is not an issue to which I have given a great deal of thought and consideration, but I am happy to be briefed about where the EO commissioner currently stands in relation to these issues and the sorts of messages she is sending out to industry. I am also happy to discuss with her the level of complaints she might have received in the commission, in order to get a feel for it. In terms of this very important question, I think that just about sums it up.

ANSWERS TO QUESTIONS

WORKCOVER REHABILITATION AND COMPENSATION

In reply to the **Hon. J.A. DARLEY** (24 July 2008).

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business): The Minister for Industrial Relations has provided the following information:

1. De Poi Consultancy Services were not exempt from participating in the rotational referral system. The rotational system was an effective instrument to ensure that De Poi Consultancy and all other providers continued to receive a historically consistent number of referrals during the period the rotational referral system operated.

Many providers have established strong preferred provider networks. Referral overrides can occur in circumstances where the employer or worker could establish that sound reasons existed to direct the referral to a particular provider. An example of this would be any employer requesting to utilise a provider who had previously provided service to them and who was familiar with the workplace including physical demands of available alternative duties. The general experience is that better results are achieved where strong provider relationships exist and the provider has either good workplace knowledge or a good relationship with worker representatives.

2. Not applicable.

3. De Poi Consultancy Services' performance is assessed in the same manner as other rehabilitation providers. CAPO is one tool that advises of provider performance and provide for some indication of comparative provider performance.

Employers Mutual are responsible for referrals to providers and assessing provider performance through monthly data given by providers, feedback received from claims staff, and quarterly performance information relating to claims closed in the quarter. The file audit strategy is also linked to feedback from Employers Mutual's quality assurance team and case managers. It also considers statistical feedback, and findings from Employers Mutual's regular internal file reviews.

4. De Poi Consultancy Services' results were considered to be in the top third of providers in the period when key provider relationships were established.

RURAL SOLUTIONS SA

In reply to the **Hon. D.W. RIDGWAY (Leader of the Opposition)** (2 December 2008).

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (00:00): The Minister for Agriculture, Food and Fisheries has provided the following information:

I can confirm that there is a clear arms length relationship between PIRSA's minerals regulatory authority and Rural Solutions SA consulting services.

I can further confirm that Rural Solutions SA operates as a business entity within PIRSA and does not have access to any confidential information or Departmental files on mining operators, site histories, or other documents and records required under the Mining Act 1971.

Rural Solutions SA does not have a privileged position or access to privileged information on the State's extractives operators. Rural Solutions SA abides by the rules of competitive neutrality to compete fairly with all other companies offering services to the industry, as they have for many years in other rural sectors.

ONE AND ALL

In reply to the **Hon. T.J. STEPHENS** (4 February 2009).

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business): The Treasurer has provided the following information:

1. The Department for Transport, Energy and Infrastructure (DTEI) issued a nationwide Request for Proposal for the refurbishment of the One and All, which closed in May 2008.

Those remaining SA businesses specialising in this area were encouraged by DTEI to either submit a proposal or form an alliance with another company to conduct the works in SA.

23 companies in total downloaded the Request for Proposal documents from the SA Tenders and Contracts website. Fifteen of these companies were from SA.

Four companies attended the mandatory site visit, one of which was from SA. However, only three proposals were received—all from interstate companies. There were no proposals or further enquiries from within this State.

All the bidding companies were visited and audited by the project team. The most cost effective proposal was chosen which resulted in the contract being let to an experienced boatyard in Sydney.

2. The refurbishment included the total replacement of the timber deck—a specialised and laborious activity, utilising the best-suited timber available—Tasmanian-sourced Celery Top Pine.

While there has been some minor splitting of timber planks, there are no resultant leaks as these timbers are overlay bonded to a full deck structural base treated with Glass Reinforced Plastic membrane ensuring the deck's watertight integrity. Unlike a completely synthetic manufactured product, any naturally grown product like timber is prone to some imperfections and, considering there is approximately 120m^2 of deck, the percentage of shrinkage is minimal.

Once the deck has been allowed to settle through use for a period of time, the planking will be inspected and a warranty claim will be submitted on the installer. Repairs will be easily achieved through replacement of individual planks.

It should be noted that DTEI was advised that the Tasmanian Celery Top Pine was amongst the best Australian timbers available, based on performance, quality and supply availability, while also supporting an Australian supplier.

I am advised that the wall and ceiling lining in the toilet area has had some issues with condensation being generated behind the walls and ceiling panels. The amount of condensation generated by the compressors supplying the refrigeration systems was unforeseen.

Local South Australian labour has been used to rectify the problem to minimise impact on the vessel availability. The cost of repairs has been accepted by the original contractor and will be recovered under an agreed warranty claim.

Since its refurbishment, the One and All has completed its tour of duty as a support vessel for the Sydney to Hobart race, as well as several sail training voyages, whilst she made her way back to Adelaide. These initial voyages were extremely demanding on a vessel of this type and, given that she has been virtually rebuilt, a few minor issues are not unexpected.

It should be noted that the One and All, was built in traditional style as a wooden sailing 'Tall Ship' and is used extensively by SA Youth. Ongoing maintenance, whether reactive or planned, is an accepted part of ensuring the continued safety and availability of such a unique asset.

STATUTES AMENDMENT (PROHIBITION OF HUMAN CLONING FOR REPRODUCTION AND REGULATION OF RESEARCH INVOLVING HUMAN EMBRYOS) BILL

Adjourned debate on second reading.

(Continued from 5 March 2009. Page 1577.)

The Hon. B.V. FINNIGAN (15:31): I thank the council for leave to conclude my contribution today. When I addressed this bill on the last occasion we were sitting, I gave an introduction to what I saw as the critical issues in this debate, both scientific and ethical, and a bit of an overview of the bill. I framed the questions that we are facing on this bill with a couple of quotations from an interview with Professor Loane Skene, who ended up chairing the Lockhart review after the untimely passing of Mr Lockhart.

One of those quotations related to whether the onus fell on those advocating change or those opposing it to justify why a thing should or should not be done—in this case, the allowing of human cloning. The second quotation went to the more ethical or moral question about whether the ends—that is, the cure of debilitating diseases and human progress—can be sufficient to overcome any concern we have about the means—that is, cloning, hybrids and other changes to our ethical understanding.

I would like to continue my contribution today by talking about the scientific evidence. When we address the question that Professor Skene addressed—that is, the matter of those to whom the burden falls in relation to proving whether a measure is necessary—I argue that, quite clearly, it falls to those advocating change to justify why it is a good idea.

In relation to the question of human cloning and advances in this area of stem cell research, the scientific evidence is more leaning towards the position that it is not in fact necessary to go down the track of human cloning and to allow the changes to our ethical boundaries that are contemplated by this bill. It is important to remember what it is we are talking about with this legislation. We are not talking about getting rid of research into human embryonic stem cells. That is not what this bill is about.

There is existing legislation which allows for the use of assisted reproduction technology embryos (or IVF embryos) and this bill does not seek to change that. This bill allows further advances or further changes in what it is permitted to do, namely, to allow human cloning in limited circumstances and to allow the creation of hybrid embryos in very limited circumstances.

There are those who have put up a number of arguments about human embryonic stem cells and why they believe that research in this area is important and needs to continue. It is important to remember that that is not within the scope of this bill, in the sense that, if you are a great advocate of research into the use of human embryonic stem cells for this sort of research, it will not be affected by defeating this bill. That research will continue whether or not we pass this bill. The question of whether or not to allow embryonic stem cells for research on human embryonic stem cells was decided some time ago; it is not the principal subject of this second round of our legislation.

However, when it comes to the scientific evidence that justifies taking these further steps, I am sure honourable members will have received a great deal of communication about induced pluripotent stem cells. The reason for that is simple: the discovery of induced pluripotent stem cells, or iPS cells, is one of the great discoveries of recent times. I am sure members are well aware of the great advance that has meant and of the recognition it has been given in the scientific community—and, indeed, in the popular press.

A number of concerns were expressed in relation to iPS cells early on in the development of that technology, particularly in relation to tumours and the limits of the potential of the technology. As time has gone on it has become clearer that those problems are being overcome and that induced pluripotent stem cells offer enormous promise and are one of the most exciting discoveries in this area for a long time.

I am indebted to a number of organisations—including the Australian Family Association, the Do No Harm group, and Medicine with Morality—for providing a lot of information to honourable members about induced pluripotent stem cells and the potential they have. I do not intend to spend a great deal of time talking about iPS cells, because I know honourable members have had a lot of that information made available to them. However, this is one of the most important discoveries that we have had in this field of research, and it is particularly important to note the promise that iPS cells offer relevant to the use of embryonic stem cells.

I draw honourable members' attention to a letter they will have received from Dr James Sherley MD PhD, a senior scientist at the Boston Biomedical Research Institute. Dr Sherley has written to all members of the Legislative Council in this state and has noted that he gave evidence to the federal parliament when it was considering this legislation 2½ years ago. He writes:

> I want to impress upon you that the present moment in which you consider this issue is quite different than the earlier one in Canberra. Previously scientists on both sides of the issue could only project what they thought would happen in cloned human [embryonic stem] cell research. Proponents of the research promised that cloned human [embryonic stem] cells would provide new cures; whereas opponents warned that the cells would be too defective to yield any new medical advances—in this present moment, we no longer have to wonder what will happen. We know. The awaited future, now come to be the present, is that cloned human embryos are too defective to produce human [embryonic stem] cells.

I will repeat that, Mr Acting President. Dr Sherley says:

> …cloned human embryos are too defective to produce human embryonic stem cells.

In his letter Dr Sherley goes on to refer to some coverage there has been about stem cell research and cloning in other places, noting that those efforts have not borne the fruit that a lot of scientists hoped for in the beginning.

Induced pluripotent stem cells offer great promise, and we have already seen an enormous amount of progress in a short time. I think it was in late 2007 that Dr Yamanaka and his team, as well as others around the world, first started developing the technology, and in such a short period of time—less than 18 months—it is remarkable how far things have progressed.

I draw members' attention to a story in February this year which comes from a website called scientificblogging.com. The article notes that scientists at the Monash Institute of Medical Research had created Australia's first induced pluripotent stem cell lines. They derived the cells from skin cells and reprogrammed them to behave as embryonic stem cells, a breakthrough that will allow Australian scientists unlimited access to study a range of diseases.

So, not even 18 months after the initial discovery of induced pluripotent stem cells, we have already seen this technology being developed and used in Australia, and it is hoped that that will lead to a whole range of beneficial treatments in due course. To be fair, I will note that one of the doctors at the Monash Institute said that it is too early to assume that iPS cells are the preferable alternative to working with embryonic stem cells, but I will address that argument in some detail later on.

This bill was introduced in November, and as time has gone on with this debate, a week has not passed in which there is not some new application or development of the induced pluripotent stem cell technology. I could draw members' attention to a whole range of those and also, in particular, to a number of cases where adult stem cells are being used.

Advances in the use of adult stem cells are proving more and more promising. I draw members' attention to some of the advances that have been made just in the last six months of last year. One from the United States involves a person in Florida where doctors were able to treat auto–immune disease by using stem cells from her blood.

New brain cells are necessary for learning and memory, as we know, and researchers at Kyoto University have conducted research that shows that transplanting adult neural stem cells into brain-injured mice could restore some memory. That is an example of some progress in relation to brain injury in research in Japan.

In Auckland, New Zealand, a person who was born prematurely and was therefore brain-damaged upon her birth was the first person to undergo experimental treatment using her own umbilical cord blood in relation to brain injury. Doctors have also used a revolutionary stem cell treatment to restore the power of speech to a stroke victim in the United Kingdom.

There have been advances in relation to cerebral palsy in Arizona and in spinal cord injury here at Griffith University in our own country. At Kansas State University, researchers are working on delivering cancer drugs that promise to be more efficient and reduce side effects.

There has been some further progress in the areas of immune deficiency, heart tissue regeneration, bone healing, liver cirrhosis, disorders of the digestive tract, pulmonary hypertension, knee cartilage, windpipe reconstruction, the use of adult stem cells from wisdom teeth and flexible adult stem cells from testes.

I will not go through all the details of those cases and those advances, but they are examples where, in the six months at the end of 2008, there were considerable advances made in a whole range of areas using adult stem cells.

I am not suggesting that those things have meant that we have conquered everything, or that we are now able to make disabled people walk. Of course, I am not suggesting that that means the battle is won when it comes to finding treatments and cures, but it does again demonstrate that the promise in this field has been very much on the side of adult stem cells and in using induced pluripotent stem cells, rather than human embryonic stem cells.

Growing scientific evidence suggests that human cloning is not necessary and is not the most promising field of endeavour. So, when we examine the scientific evidence before us, it is my quite firm contention that human cloning does not offer the most promising course of discovery and future investigation. There is no reason why the South Australian parliament should be a legislature that leads the way in relation to allowing human cloning and hybrid embryos with the expectation that they will lead to particularly great advances. The evidence suggests that the most promising advances are coming out of the fields of adult stem cells and induced pluripotent stem cells.

The science is an important consideration for us all to take into account but, as I said in my contribution a couple of weeks ago, this is not ultimately a decision of induced pluripotent stem cells versus human embryonic stem cells. Ultimately, this is about ethical choice—the ethical judgment to be made—about whether or not we consider that ethical boundaries should be expanded and whether to allow things that we have never allowed before in the hope that we will have advances and treatments that would have previously seemed out of reach.

There is no doubt that there are any number of scientists who will posit that the most promising course of research is one way or another. Naturally, there will be a lot of debate within scientific circles—that is the nature of science—but, ultimately, it comes to us to make an ethical and moral judgment about whether or not certain ethical boundaries should be crossed and whether or not we should allow things that we have not allowed before because we believe that the potential for benefit is so great.

The fundamental question here comes down to how we view embryos and the humanity of the embryo. I imagine that members will have a lot of different personal views about the sanctity of human life, about when life begins, and the consequences for us as legislators. Those differences are important, and they are to be respected but, ultimately, it is not simply a case of when the life of an embryo begins. I appreciate that it is very unlikely that we will get a consensus amongst members of parliament or amongst people in the community that life begins at conception. That may be a position to which I adhere, but I understand that other people will not take that point of view.

What is important is that the humanity of the embryo is intact and that it is acknowledged. There is no doubt that, at seven or eight days' development, not all of an embryo's organs are developed. It is not at the point at which a baby is when it is born after nine months. Of course, we know that to be the case, but that does not mean that we can dismiss the embryo as being, essentially, a bunch of cells.

We have heard that point of view advanced in this debate: that, at the end of the day, what we are dealing with here is a bunch of cells in a Petri dish; that they do not really mean an awful lot. We can have this sort of interesting philosophical debate about life, the universe, and everything but, ultimately, we are talking about a few cells that most of us have no ability to see or understand much about. So, we really should not get bogged down in these sorts of ethical debates.

I firmly reject that notion because ultimately we have to consider the humanity of the embryos created if this legislation goes ahead. No-one is suggesting that these embryos are the same as you and I in terms of our development, but it is absolutely certain that all of us began at the same point that these embryos did. We may not have been fully formed, had all our organs, emotions and the ability to love, laugh, feel, run and all the rest. We did not have all those things as an embryo of 13 days, but we were certainly there at some point. That is where we began and that is how we got to where we are now. It is too flippant and dismissive an argument to suggest that we are talking here about a bunch of cells and that it is not something that can be considered human life, because in reality that is where we all started and how every human being, alive and dead, began—as an embryo. That is to where we can trace our development.

The important thing to note about this bill is that it allows human cloning for what are described as therapeutic purposes. It allows for the cloning of a human embryo through somatic cell nuclear transfer. This human cloning creates a living human embryo like any other. We may have different views about the humanity of the embryo, about its status and about when its life begins, but we cannot dispute that those embryos are the same as embryos produced through assisted reproduction technology or naturally. Professor Loane Skene of the Lockhart committee said in evidence to the Senate:

> We do not shy away from calling it an embryo because it is conceivable, as happened with Dolly the sheep, that if that entity were put into a woman, after a lot of care it could in fact develop into a foetus, so we did call it an embryo.

A 1997 report to President Clinton, 'Cloning Human Beings', from the National Bioethics Advisory Commission in the United States, states:

> The commission began its discussions, fully recognising that any effort in humans to transfer a somatic cell nucleus into a nucleated egg involves the creation of an embryo, with the apparent potential to be implanted in utero and developed to term.

It is very important to acknowledge that a cloned embryo produced, as provided for in this bill, is to be considered in the same light as embryos created through the combination of egg and sperm, whether naturally or in a laboratory. Both are able to be brought to term, both are able to become fully human in anybody's ethical conception of it. That is an important point to note. We cannot say that embryos created through assisted reproduction technology or embryos naturally created can somehow be distinguished from cloned embryos, from embryos produced through somatic cell nuclear transfer. That is not a logical conclusion to draw because both have the capacity to be brought to full term and be implanted in a women, if we are talking cloned embryos or assisted reproduction technology embryos, and brought to birth.

It is a fallacy to say that we can play a semantic game where we say that these cloned embryos are really just a bunch of cells and can only live, under this legislation, for 14 days and that therefore we should not get too worked up about them. The reality is that those cloned embryos produced through somatic cell nuclear transfer have the potential to be brought to full term and to walk around as do you and I. That is of course what happened with Dolly the sheep.

I am not suggesting that this legislation allows that to happen, and I do not believe anyone opposing this bill has suggested that it would allow anything of that kind. This bill does have important safeguards which ensure that all that is permitted is for the cloned human embryo to be brought to the stage of 14 days. Nonetheless, it is important to note that it is possible for these cloned human embryos to be brought to birth; and I have no doubt that, if we pass this legislation and continue down this track, it will not be very long at all before we are asked to extend the boundary from 14 to 28 days, then perhaps to two or three months, and who knows where that could end?

Essentially, I suppose, we could say that this is the slippery-slope argument, and that is often dismissed by those who would support this sort of legislation and research as scaremongering. However, in only five or six years in this field we have gone from saying, 'We are so confident that we don't need human cloning that in fact we will put "prohibition of human cloning" in the very name of the bill', to saying, 'Just imagine what might be possible if we go down that track of human cloning.' Even in a very short period of time we are pushing that boundary, and we are seeking to extend the limits.

Certainly there is no doubt in my mind that there will be future moves to expand further that boundary to allow even further development from where we are now. It is important to take that into account. If we do take this step now and if we do accept the principle that because the potential for treatment, progress and cures is so great that we can overlook and overcome our ethical concerns and allow the cloning of human embryos, allow the creation of human embryos, and once that principle is enshrined we will find it so much more difficult to draw a future line.

If we draw a line in the sand here, having already established the principle that the end does justify the means, it is so much easier to push the line in the sand a bit further and a bit further still, and that is what I believe will happen if we go down the track of allowing human cloning. We have seen in the area of in-vitro fertilisation—or assisted reproduction technology—how much has changed since that technique was first introduced. All sorts of restrictions are now considered old fashioned or have been changed. I am not reflecting on the worthiness or otherwise of what has happened in that field but use that as an example of what has happened over a period of time when a new technology in this field has been introduced.

There is no doubt that a cloned human embryo is able to be brought to term, and therefore we need to weigh that up very carefully and not dismiss that embryo as simply a bunch of cells. This legislation allows the creation of cloned human embryos for the first time with the express intention of destroying it. The ethical argument advanced back in 2002 and 2003 for the first round of legislation allowing human embryonic stem cell research was that some spare or surplus IVF embryos would perish. I cannot quite recall the technical word that was used, but the argument was that those embryos would essentially cease to be and therefore why not make use of those human embryos for the benefit of humanity?

The essential argument that many people advanced in 2002 and 2003 was, 'We are talking here about embryos which already exist and which will be surplus, that will never be transplanted in utero, that will never be brought to birth, therefore why not make the best use we can of them for the benefit of everyone?' That was the principle argument, yet here we are, not even a decade later, saying, 'Now we want to create human cloned embryos.'

It is true that this is legislation that allows it narrowly, with safeguards, but it takes that vital important step. It takes that critical step of allowing for the first time the creation of cloned human embryos with the sole purpose of destroying them.

It is not sufficient to say that, because there is no sperm involved in the creation of a somatic cell nuclear transfer human cloned embryo, it is not really an embryo or should not really be considered human. That is exactly what happened with Dolly the sheep. There was no sperm involved in the creation of Dolly the sheep but that does not mean that a sheep was not brought to birth—and we all know the final point for Dolly.

The reality is that all embryos have to be considered human embryos. We may have ethical differences about when life begins or at what point of development it can be considered that a person is invested with full personhood or humanity, but we cannot dispute that a distinction cannot be drawn between naturally conceived embryos, IVF embryos and cloned human embryos in terms of their humanity. We cannot simply dismiss human cloned embryos through somatic cell nuclear transfer as being a bunch of cells not really to be considered in the same light as embryos that are produced through sperm and egg combining.

It is important to go back for a moment to the slippery slope argument. There is no doubt that there are those in these fields of research and those who advocate a vast expansion of the ethical boundaries far beyond what this bill contemplates, and we know there are certain practitioners in the world who fully intend to be the first to bring a human cloned embryo to birth. I draw to honourable members' attention what Melbourne's Daniel Elsner, in the *Journal of Medical Ethics* in 2006, said:

> People who wish to reproduce by cloning should be permitted to do so provided there is no reasonable alternative.

In the same journal another person from Melbourne, Julian Savulescu, raised the prospect of essentially farming cloned foetuses for organs. In an article entitled 'Cloning as a source of transplant tissue', Professor Savulescu, who is a professor of practical ethics at Oxford, writes:

> it is...morally required that we employ cloning to produce embryos or foetuses for the sake of providing cells, tissues or even organs for therapy, followed by abortion of the embryo or foetus.

I am not suggesting that this bill allows those things to happen—of course not—but it is an indication of where some of those—I am not suggesting these people in particular—involved in this research would like to see us end up. There is no doubt that there are people—prominent people—in our community who quite happily advance the notion that we should, in fact, be able to use embryos and even bring such embryos to a late period of development before birth in order to be able to obtain organs or save the lives of others. That is not envisaged by this bill. That is not what we are being asked to do here.

However, there are certainly those—as I say, some prominent people and scientists and ethicists—who are happy to advance that argument. There is no doubt that there are those who believe that, once we accept the principle that the potential for cures, treatment and human progress is so great we should cross ethical boundaries we would not have contemplated crossing before, we should continue to expand those boundaries to a point which at the moment would seem unthinkable, yet a lot of things which are considered unthinkable at some point can become quite acceptable at another time.

So, while we are not being asked in this bill to vote on the entire future of this field, it is nonetheless important that we weigh up where we sit—where we find that balance between the potential for progress, treatment and benefit to humanity against the ethical considerations and the allowance of technology which we would once not have contemplated.

I think it is important to note that a lot of the improvements and advances using human embryonic stem cells that are talked about are treatments or progress which do have problems associated with them or are work that can be done using adult or non-embryonic stem cells. It is often suggested by those advocating this sort of research that, essentially, if you put the brakes on you will call everything to a halt and you will stop a lot of advances being made, whereas the reality is that a lot of the advances can be made without using human embryonic stem cells and, indeed, as I have argued, the use of induced pluripotent stem cells and adult stem cells is the most promising of all.

A number of arguments are generally advanced for this legislation—or, perhaps I should say, against those who oppose it. One of those arguments is that essentially only religious fanatics oppose this sort of thing; there is a small, hard-core group of people who are opposed to scientific progress, and they will conjure up all sorts of scare campaigns and spectres to try to suggest that we are going down a track that we are not actually going down. The argument is advanced that these people have a particular view about when life begins. They draw that from their Christian or other faith, and we cannot allow that to be imposed on everyone else.

In my view, this is essentially playing the man, not the ball, to use a football aphorism. Rather than trying to engage in the debate on its merits; rather than trying to talk about what is the most promising scientifically; rather than focusing on the ethical questions at hand, it is much easier to say, 'Look, we're dealing here with a bunch of slightly mediaeval reactionaries who are against the general advance of human progress because of their religious beliefs, and we can't let them become the barrier to where we want to go.'

That is simply not a valid argument; that is just sophistry, but we hear it again and again. Undoubtedly, many who advocate for this sort of legislation spend a great deal of time talking about things which are not strictly relevant and which are not at all part of what this bill encompasses and do so in order to try to discredit those who oppose it.

I am not aware that any of those opposing this legislation have got up and said that the Bible says you should do this or that or the Catholic catechism says you should do this or do that and therefore that is what you should all do, but that is the argument that is responded to, whether or not that argument has ever been made.

I think we need to keep perspective and balance and not allow ourselves to try to use some hostility to religious fanaticism as the basis for deciding on important legislation. We need to examine this legislation on its merits; we need to look at what it does; we need to look at whether it is the right thing to do; and we need to look at whether it will advance the lot of humanity. Voting for a piece of legislation because you do not like the people who are opposed to it or because you do not like people coming to your door on a Sunday morning trying to convert you to their religion is hardly a just reason to support a very significant change in our ethical framework.

The second argument I would like to touch on that is often advanced for this legislation is to say that the promise of cures is so great, and so often we hear emotive appeals about what might be possible: 'Wouldn't we like to see children with type 1 diabetes being cured? Wouldn't we like to see people with Parkinson's Disease, motor neurone disease, spinal cord injury being cured? Wouldn't we like to see incredible, unthought-of advances in those areas?' Of course we would; we all would.

In my view there is far too great a reliance on that emotive appeal by those who advocate this sort of legislation. It is often those like me opposed to such legislation who are accused of being emotive or irrational, yet that glorious prospect of cures that we can only imagine is so often held out as the most likely result. I pointed out the quote from Professor Loane Skene in my last contribution. In relation to people having a moral objection to cloning, she said:

> This is the sort of objection we are getting from some people. My view on this is that if there were a cure this objection would immediately be overridden...Can you imagine that somebody would be arguing that sort of moral right against the right of somebody else to get up and walk?

There we have the professor who ended up chairing the Lockhart committee after the death of Mr Lockhart conjuring up the prospect of people getting up and walking from incurable diseases and suggesting that those who oppose this sort of legislation on moral grounds are having the audacity or temerity to look those people in the eye and say, 'You have no right to walk and you have no right to a cure.' Of course, I do not say that. I do not believe anyone who opposes this legislation has ever taken the view that we want people to suffer, that we want people not to be cured or that we are happy that there are kids with diabetes and people bound to wheelchairs or people who are quadriplegics and what have you. Of course, none of us likes to see those things happen.

We all want to see progress and better treatment. We all are amazed constantly at what is now medically possible that was unheard of even a few years ago, let alone a century ago. We all are hopeful that medical science will continue to progress so that there will be advances in treatments and cures, but to hold out this emotive lure that people will be cured of degenerative, debilitating disease and restored to full health—which may not be possible, no matter what happens, because of the damage done to their body—is a most unfair thing to do to those people; to use the suffering of others to justify a position when in fact there is little evidence to suggest that that position will lead to those advances for those people.

Another argument commonly advanced for the legislation is that we should make every post a winner. Induced pluripotent stem cells are good and adult stem cells are good, and it is good that there is progress in those areas. However, we cannot limit ourselves. We need to let 1,000 flowers bloom and try every avenue of endeavour we have in order to see what comes up trumps. The problem with that is that we need to go with what works. I believe the scientific evidence is more clear that going down the track of human cloning does not work. It has not produced the sorts of advances that were promised.

Human embryonic stem cell research has been around for some years now. At the beginning there were great promises of incredible, unthought-of progress being held out. I am not suggesting that no progress has been made, but we certainly have not got to nirvana in a short time just because we opened up those ethical boundaries. If we vote for this legislation, the likelihood that people will be cured of debilitating disease in a few short years because of what we do is simply not there.

While it is important to follow fields of scientific endeavour, we should not say that we need to go down the track of doing something we are unsure of because, otherwise, we might be

depriving ourselves of potential cures and treatments. We need to make every post a winner is the argument and, therefore, we should allow all possibilities.

If there is any doubt or concern about what it is we are proposing here, surely we should err on the side of caution. When we are talking about allowing the cloning of human embryos and allowing the creation of hybrid embryos—something we have never done before—surely in such a fundamental matter we need to err on the side of caution. If there is doubt or concern, if it is unclear (and I would argue that it is), about whether this potential course of research will lead to an incredible wealth of discovery, then surely we must err on the side of caution.

We have a whole range of promising treatments—such as using induced pluripotent stem cells and adult stem cells—so surely, if there is some doubt about whether cloning will lead to the sort of progress we want to see, we would err on the side of caution; we would not go down that track but would at least give ourselves some time to see how these other techniques pan out, rather than saying, 'Let's smash down boundaries and see what comes up, see what works.' If we do that, we essentially accept the principle that the ends do justify the means; we have to cross ethical boundaries that we would not have considered crossing and allow things we do not believe are ethical because we are so keen to get the progress we seek. If we accept that principle as being at the root of our decision-making then we have to ask ourselves, 'Where do we draw the line; what is no longer possible?' I argue that if there is doubt, if there is concern—as there is—in the minds of many honourable members and people in the community, then surely we should err on the side of caution.

The final argument I wish to address, which is often advanced for this legislation, is that those who oppose it are simply running a scare campaign, talking about *The Island of Dr Moreau* and raising the spectre of all these clones and half-breeds running around—all that sort of nonsense. No-one is suggesting that this legislation will lead to that kind of outcome. It provides for the cloning of human embryos up to the point of 14 days and allows for the combination of animal eggs and human sperm up to the second day. No-one is suggesting that it will lead to some sort of absurd parody of science fiction; however, if we cross those ethical boundaries and allow this sort of research, and if it does lead in certain directions, there is no doubt that if the genie is out of the bottle things will happen internationally that we do not want to see happen.

I have raised that point before: that there are those who clearly, publicly, and quite happily advance the idea that we should be able to grow embryos to term in order to harvest their organs if that is for the benefit of saving other lives. I do not think many people share that view, but if it becomes possible to do that then there are those who will do it. I believe that scientists in Australia generally adhere to important ethical standards, but I understand that there is a range of opinions about that, with some members expressing the view that we need to trust the scientists and others saying that they are not sure we should trust them. I do not doubt that Australian scientists are, on the whole, ethical people who accept the boundaries of research they are given, but there are many around the world who do not, and there are places in the world where our highly regulated environment does not exist.

If we are at the forefront of allowing certain progress that develops certain techniques, we cannot stop that being utilised elsewhere in ways we do not want to see. There is no way that we can quarantine ourselves and say that we will allow cloning and research on human cloned embryos here in very limited circumstances, but will not let other people utilise that technology: whether we like it or not, they will. If we allow the edges of this research to be entered into then there is no doubt that there are others who will take it much further—others around the world who will not worry about ethical boundaries and who will do whatever they think is possible, because their desire to be the pioneer of some discovery is greater than their ethical considerations.

I have spoken on this bill for a while now, including my contribution on the previous occasion, but it is a fundamentally important bill for us to consider. We need to ask ourselves whether it is necessary scientifically, and I argue that the evidence is overwhelming that it is not, that the advances and progress promised by other techniques—particularly by the use of induced pluripotent stem cells and adult stem cells and the existing human embryonic stem cell research that is going on, which is not threatened by this legislation—offer far more avenues of promise. I do not pretend that I would be a supporter of research in human embryonic stem cells but, for those who believe that is a promising field of research, that will continue. That is not the subject of this bill.

So, is it necessary, from a scientific point of view, to do this? The answer is no. Is it wise, from an ethical point of view, to do this? The answer is again no, because for the first time it allows

the creation of cloned human embryos for the sole purpose of research with the intention, from the very moment of their creation, of destroying them. It allows for the creation of hybrid embryos—the combination of animal eggs and human sperm—again, in limited circumstances, but it allows that boundary to be crossed, something that we have never done before.

In voting for this legislation we would be establishing the principle that we want to see great progress and are prepared to cross ethical boundaries in pursuit of that goal. If we allow the creation of cloned human embryos, allow the creation of hybrid embryos, we will do so in a limited and controlled environment but we cannot put limits on where that will go. We can in this legislation. We are not proposing to open the floodgates, but we are creating a situation where we are establishing principles that can lead to dangerous situations in the future.

I think we need to ask ourselves some simple questions in relation to this bill. While it is complicated legislation, the following matters are before us. Is it necessary scientifically? I believe the answer is no, because other avenues of scientific research are more promising. Is it necessary ethically? I believe the answer is no, because it will allow the creation of cloned human embryos and hybrid embryos for the first time, and that is an ethical boundary that is not in our best interests to cross.

We have the capacity now, as members of the South Australian parliament, to make it clear where we stand on this matter: that we are excited about the prospects of the other avenues of research and we want to foster those, and we see them as important to progress. We do not see it as necessary or ethically correct to allow human cloning and, so, we should not pass this legislation. That is the position that I advocate to honourable members. I encourage all members to oppose the bill. It is not necessary, and it is not wise.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (16:23): I rise to speak in favour of the bill. As other honourable members have indicated, this bill emanates from commonwealth legislation of 2002. At that particular time, two pieces of legislation were passed relating to the prohibition of human cloning and the research involving human embryos and then, in 2003, we addressed two bills with identical names.

I remember that the shadow attorney-general, Isobel Redmond, in another place recounted that the purpose of those bills was to make certain provisions for the use of IVF for people with fertility problems. The thrust of the bill was to allow the harvest of more eggs than were potentially required. There then arose the ethical dispute over the treatment of eggs which would not be needed should the process be successful before they had been exhausted.

The legislation was reviewed some time later, and recommendations were made which were passed by way of a bill with a conscience vote. I recall that debate as one of the early ones in my parliamentary career and, at the time, I certainly supported the use of these particular embryos that had been created but were not needed by their owners—the mother and the father. I saw it as an absolute waste if they were to be washed down the sink and disposed of in that way when the research had gone into the actual ability to harvest these eggs and fertilise them. If they had some potential to offer—cures for diseases and also increased wellbeing for humanity—then it was, in my view at the time, certainly something that we should support.

It is interesting to note now that parliament faces a very similar question. This legislation having been passed, we now have young adults who are leading healthy, happy lives because they arrived in this world through in vitro fertilisation. Now, we are dealing with research embryos which come from a more technical manipulation of egg cells which is by no means based on the natural process of fertilisation as it has been with traditional IVF.

Effectively, though, the bill will allow the production of therapeutic cells through the use of an egg in combination with DNA. As the Hon. Bernard Finnigan has said, a number of views have been expressed and it is something that I know he feels very passionate about. He has spoken at length today, and it was the conclusion to a lengthy contribution that he made last time we sat.

There are different views. One view is that support for the bill is an ethical atrocity of the highest order, and the other is that the legislation will provide quick solutions to medical hurdles that, as yet, have not been overcome. I do not believe that either of these is correct, but I do think, possibly, there is an opportunity for an answer to medical problems in the longer term.

Therefore, I find myself—and I will not be making a particularly lengthy contribution—in a position where I am happy to support the legislation. The eggs that are dealt with are not fertilised, so I do not believe that we are dealing with the potential destruction of human life—an issue that

has been raised and was certainly the issue that was raised with respect to the embryos that were surplus to requirements because of the IVF process where the expiry date had been reached.

Here, we are not dealing with something as close to human life. I think this is more comparable to the donation of other human cells such as, perhaps, the donation of blood. I have been a blood donor for a number of years, although I chastise myself because I have not given blood recently, and I must make sure I get back to doing so.

We hear of family members who donate organs to each other. They match kidney donors and the like. I think there is a significant community benefit from allowing those procedures to take place, notwithstanding the hybrid issue that the Hon. Mr Finnigan addressed in his closing remarks.

I certainly do not support the creation of hybrid cells between humans and animals or animals of different species. To me, that is going too far. I am aware that one or two members may well put forward amendments to address that, and I would certainly be interested in those. If none are put on file, I may look at one myself.

I was looking through the list of diseases that the Parliamentary Research Library provided to me for which a cure or solution could potentially be provided, and I will just quickly run through them: Parkinson's, Alzheimer's, spinal cord injury, stroke, burns, heart disease, type 1 diabetes, osteoarthritis, rheumatoid arthritis, muscular dystrophy and liver disease.

There has also been an indication that there is a range of cancers that could not so much be cured but there is the possibility of replacement organs and a whole range of interesting medical opportunities. I was contemplating that list when I was thinking about what I would say. Sadly, in this modern world, as we get a little older, we realise that our lives are touched more and more by disease and sickness.

Most members would be aware that my mother is still alive. She is in a nursing home at Bordertown suffering from Alzheimer's and a type of dementia. I am sure that she is comfortable and relatively happy. She is as physically fit as one would expect an 86-year-old lady to be. She has been almost a vegetarian since I was born so, for some 48 years, she has actually looked after herself in a dietary sense. She was physically quite active, but she is now mentally incapacitated through a lack of brain function—dementia and Alzheimer's. I love my mother dearly. If it was at all possible that other families could receive some benefit—it certainly will not help my mother in her lifetime—in the future, I think that we should progress it.

On my list are two cousins who had leukaemia. Sadly, one has died—my cousin's daughter. I have three children. I remember my cousin and his wife going through the trauma of treatment after treatment with their little girl, and how she would scream the moment she was put in the car, because she knew she was going to the hospital for her next lot of treatment. I can still vividly see my cousin and his wife weeping at the funeral of their daughter. My cousin's wife was pregnant with their next child, because they were advised that having a child would help them—as part of the healing and grieving process—to move on with their lives.

My father died of cancer. At present, my father-in-law is dying of cancer. Sadly, I suspect that he visited our house in Adelaide over the weekend for the last time. He is not a well man, and it is a pretty tough thing for my three children to have to go through. This time last year, one of my cousins passed away with cancer. I have a cousin whose husband died of a brain tumour. Of all those people, the eldest was a few weeks short of 72, so they were not elderly people. In fact, some of them were quite young. My cousin's daughter, from memory, was only four years old.

Certainly, if there is an opportunity for families in the future not to have to go through such a terrible loss, it should be supported. Most deaths have been premature. Of course, when you are a child, somebody in their 70s seems quite old. As someone who is nearly 50, to me anyone in their 70s is not old at all. Sadly, my father died almost before my children can remember. They have enjoyed their other grandfather (my father-in-law) for some years. If technology was available to help people who suffer from diseases, it would be of tremendous benefit to the individuals involved.

It is for all of those reasons that I support this legislation. I have always supported research, whether it involves this type of research or genetically modified crops and foods. I think we should always look at research to progress ourselves, our communities and the wellbeing of the people in those communities.

The Hon. Bernard Finnigan made some comments about people expecting cures within a few short years. I do not think that is the case. While we have this research and these techniques, I

think people expect that, over time, our scientific community will actually develop methods of treatment for a whole range of ailments. Sadly, a whole range of new ailments will afflict society in the future. For those reasons, I support the legislation. I am aware that at least one or two members are seeking an amendment in relation to hybrid embryos and, as I have indicated, I will be looking to see the effect of those amendments. However, at this stage, I support the legislation.

The Hon. R.I. LUCAS (16:35): I indicate at the outset that I was one member who spoke about this matter at length almost six years ago, on 5 June 2003. I expressed my views at that stage, and I do not intend to repeat all that I said on that occasion. I will repeat some bits, and make some additional comments as a result of what has transpired over the past six years in this particular area.

The first point that I want to make in relation to this legislation, referring to the minister's second reading explanation in this chamber, is that this bill does not stop embryonic stem cell research. As a number of members have highlighted, we have existing legislation from 2003. We have federal legislation which allows embryonic stem cell research using so-called surplus embryos. It is permitted and it is allowed to continue, and it is continuing as we speak. Again, my contribution in 2003 highlighted what the research at that stage told us in terms of the numbers of what they called surplus embryos that were available for research at that time. I think 70,000 was one particular estimate. I think that is certainly more than enough to allow the people concerned to continue the research in that field of endeavour for many years.

It is important for those who read these contributions to acknowledge or recognise that this is not a vote for or against stem cell research: it is a question of where the boundaries will be drawn and whether or not the boundaries ought to be further extended from those that exist already.

The second point that I want to make—referring again to the minister's second reading explanation—is what, in practical terms, the impact of this legislation will be. I refer members to the section which the minister highlights as coverage of commonwealth and state laws.

In that explanation the minister acknowledges that in summary the commonwealth laws cover Australian government authorities, constitutional corporations and trade and commerce. The minister then goes on to indicate that all current South Australian human reproductive medicine embryo research and training activity is being conducted within either a corporation—Repromed laboratories—or a university—the University of Adelaide Medical School laboratories.

The minister said that it is thought to be unlikely that future research or training proposals will emanate from facilities that are not a university research institute or a corporation. The minister then, having acknowledged that, in essence is saying that the people undertaking research in this area, irrespective of how we vote on this legislation, will continue because federal law actually allows them to continue. Some would argue that in one respect it is essentially an academic argument in terms of the practical impact of whether or not this legislation is passed and in what form.

Clearly the strongly-held conscience view that many of us hold on this issue means that nevertheless we want to express our view and should do so. One of the issues that ought to be explored with the minister in committee is whether my reading of her second reading explanation is correct, namely, given that we already have a change to federal law, whether or not we make this change will not inhibit or prevent what is already going on under and sanctioned by federal law.

The minister goes on to say that there might be some legal uncertainty about whether our universities are constitutional corporations and therefore facilities, and then she goes on to say that there may be some doubt about research being done collaboratively through our universities. I do not profess to be an eminent legal expert like my colleague the Hon. Mr Lawson QC, but from my understanding of what the minister has said and from my understanding about this section of the commonwealth law it is clear that Repromed laboratories and the University of Adelaide will be covered by federal law and, in essence, will be able to do whatever they wish to do under federal legislation. That is an issue members ought to pursue. It may be that we have a long and interesting debate here, but in practical terms it will come to not very much in terms of impacting Repromed or the University of Adelaide in terms of what sort of research they end up doing.

I refer to the contribution of the Hon. Mr Hunter and others in another chamber who sought to dismiss what they term to be the slippery slope argument. The Hon. Mr Hunter said:

> The other argument often conjured up is the slippery slope argument, one which is very emotive and is used to stir up images reminiscent of Huxley's *Brave New World*. It is also completely nonsensical.

The Hon. Mr Hunter then goes on to further explain why, in his strongly-held personal view, he believes it to be nonsensical. I was here in this chamber in 2003 voting on the legislation and, as the Hon. Mr Finnigan and others have indicated, there was in this parliament—and I think in every other state parliament and the commonwealth parliament that voted on the legislation—100 per cent agreement on the issue of the banning or prohibition of human cloning of any form or another. There were not vast majorities outvoting a small minority: my understanding is that nobody wanted to even contemplate going down that path, that is, we will only vote on embryonic stem cell research to this limit and no way in the world would we ever contemplate any form of human cloning. As the Hon. Mr Finnigan rightly pointed out, it was actually the title to the bill. That was just a short five or six years ago in this and all chambers around that time that we were told that that was the limit and that we would not go beyond it. Within that short space of time we are back with legislation completely contrary to that indication.

The second example of what some might call the slippery slope argument in this area is the indication in the legislation in relation to hybrid embryos. The Hons Mr Hood and Mr Brokenshire and even the Hon. Mr Wade raised this issue in relation to hybrid embryos. For the avid readers of *Hansard*, I will read what Mr Rann, on behalf of the government and the vast majority of government members, is supporting:

> Hybrid embryo means:
>
> (a) an embryo created by the fertilisation of a human egg by animal sperm; or
>
> (b) an embryo created by the fertilisation of an animal egg by human sperm; or
>
> (c) a human egg into which the nucleus of an animal cell has been introduced; or
>
> (d) an animal egg into which the nucleus of a human cell has been introduced; or—

and this is the clincher—

> (e) a thing—

I do not know whether I have ever seen that reference in legislation, but the Hon. Mr Lawson may be able to give previous examples. So, a hybrid embryo is:

> (e) a thing declared by the regulations to be a hybrid embryo;

That is the best Mr Rann, parliamentary draftspersons and others who support this could do in terms of defining a hybrid embryo.

They are the four specific examples of combining human eggs, animal sperm or various combinations. Then, just to cover it all, in the bill Mr Rann wants us to support something which defines a hybrid embryo as a 'thing' declared by the regulations to be a hybrid embryo. How extraordinary for Mr Rann to ask us to support this sort of proposition in legislation. He wants us to support a hybrid embryo being defined as a 'thing' declared by regulations. So, it is anything that he and his government want to promulgate by way of regulation, because it is only Mr Rann and the government who can promulgate regulations: we cannot do that as individuals. If Mr Rann wants to promulgate a 'thing' and declare it to be a hybrid embryo—any particular variation of combinations he might contemplate or would like to support—then that thing will be a hybrid embryo for the purposes of this legislation.

I am appalled that the Premier of my state and the others who have supported him are prepared to seek the support of members of this chamber for this proposition of a hybrid embryo, but importantly that aspect, a 'thing', declared by the regulations to be a hybrid embryo. As other members have highlighted, at this stage we are being told that this will be used for only 24 hours, although I think in the original drafting the House of Assembly contemplated 14 days. Mr Rann's Minister for Health, Mr Hill, said, 'Well, whoops, we didn't really mean that. Thank you for highlighting that'—one of the members highlighted it in the House of Assembly—'and we will tidy that up in the legislation.' I think they are now talking maybe 24 hours, and at this stage it will be for a specific test in relation to sperms.

The Hon. Mr Hunter says that this argument about the slippery slope is nonsensical. Let me assure the Hon. Mr Hunter, who has not been in the chamber (and he is probably grateful) for as long I have, that in the short space of 5½ or six years this whole debate has moved from what we were told in 2003 was an outright prohibition on cloning to now allowing cloning in a significant way, but now also asking us to contemplate the combinations of human and animal sperms and eggs. If that had been raised in 2003 there would have been a scream.

It shocks me that, when you have the Premier of the state supporting and voting for this definition of hybrid embryos, a combination of human eggs and animal sperm and vice versa, and a definition of a 'thing' being a hybrid embryo, that should not be an issue of some public debate. Not one member of the media so far (and it has not been for the want of trying because the Hon. Mr Hood and the Hon. Mr Brokenshire have spoken passionately on it, as have other members) appears to be interested in this notion; and a number of members in this chamber who are supporting the legislation are indicating their support for this proposition as well.

I hope that even those members who might ultimately support the legislation will be at least prepared to support the amendments that have been floated in relation to the removal of the issue of hybrid embryos; that is, I hope that enough members in this chamber—Liberal, Labor, Independent and minor parties—will strongly enough disagree with the views of the Premier and his supporters on this issue and let us put a stop to what I would term 'Rann's madness' in relation to this issue of the hybrid embryos being included in the legislation.

My well-intentioned and cautioning advice to the Hon. Mr Hunter and others who say that it is nonsensical to talk about the slippery slope is to look at the history in relation to these issues. At the moment we are being told that the 'foot in the door', if I can use that inelegant expression, in relation to the hybrid embryo provision is that it will be allowed for only 24 hours or so—it will be allowed only in relation to this specific test. That is now. But in three, four or five years Mr Rann and co. will be coming back to us saying, 'Look, 24 hours is not long enough; we'd like to have it for seven or 14 days. We'd like to do another range of tests. There are these wonderful potential benefits if we are able to do this further round of testing.'

Mark my words, if this legislation is unamended in that area we will see at some stage in the future inevitably the Premier—if he is still in the parliament at that time, or the member for Ramsay, whatever his title is—and others with similar views wanting to extend these provisions even further. That has been the history, and the people of South Australia ought to be warned.

The next matter I want to raise is the rapid pace of change we have seen in this area, even since the contribution I made in 2003. I have referred in part to the issue of what is being sought in this legislation. I want to refer very briefly—and other members have done it much more comprehensively—to the groundbreaking research of just two years ago in relation to induced pluripotent stem cells. I referred in my 2003 speech—and I will come back to it in a moment—to the significant advances in adult stem cell research. As members have mentioned, in the past two years there has been groundbreaking research in relation to induced pluripotent stem cells, and I refer to two quotes, the first in *The New York Times* of 22 November 2007 headed 'Man who helped start stem cell war may end it', which states:

> If the stem cell wars are indeed nearly over, no-one will savour the peace more than Dr James A. Thomson.
>
> Dr Thomson's laboratory in 1988 plucked stem cells from human embryos for the first time, destroying the embryos in the process and touching off a divisive national debate.
>
> And on Tuesday, his laboratory was one of two that reported a new way to turn ordinary human skin cells into what appear to be embryonic stem cells without ever using a human embryo.
>
> The fact is, Dr Thomson said in an interview, he had ethical concerns about embryonic research from the outset, even though he knew that such research offered insights into human development and the potential for powerful new treatments for disease.
>
> 'If human embryonic stem cell research does not make you at least a little bit uncomfortable, you have not thought about it enough,' he said. 'I thought long and hard about whether I would do it.'
>
> He decided in the end to go ahead, reasoning that the work was important and that he was using embryos from fertility clinics that would have been destroyed otherwise.
>
> Now with the new technique, which involves adding just four genes to ordinary adult skin cells, it will not be long, he says, before the stem cell wars are a distant memory. 'A decade from now, this will be just a funny historical footnote,' Dr Thomson said.
>
> More work remains, but he is confident the path ahead is clear. 'Isn't it great to start a field and then to end it,' he said.

In and about the same time, 16 November 2007, an article on telegraph.co.uk headed 'Dolly creator Professor Ian Wilmut shuns cloning' states:

> The scientist who created Dolly the sheep...is to abandon the cloning technique he pioneered to create her.
>
> Professor Wilmut believes a rival method pioneered in Japan has better potential...and will be less controversial than the Dolly method, known as 'nuclear transfer'.

His announcement could mark the beginning of the end for therapeutic cloning. 'I decided a few weeks ago not to pursue nuclear transfer,' Professor Wilmut said.

Most of his motivation is practical but he admits the Japanese approach is also 'easier to accept socially'.

Professor Ian Wilmut said: 'The fact that introduction of a small number of proteins into adult human cells could produce cells that are equivalent to embryo stem cells takes us into an entirely new era of stem cell biology. We can now envisage a time when a simple approach can be used to produce stem cells that are able to form any tissue from a small sample taken from any of us. This will have enormous implications for research and perhaps one day for therapy'.

I use those couple of quotes, and there are thousands of others, to highlight the enormous advances since our debate in 2003, and it is due to the groundbreaking research in 2007 in a couple of separate places in the world, and that is clearly going on at an enormous rate right across the board.

To highlight the tremendous rate of change, I refer to the minister's second reading contribution in this place, which states:

Induced Pluripotent Stem Cells...

The use of induced Pluripotent Stems Cells (iPSCs) has not superseded embryonic stem cell research as some members in the other place have suggested.

Although iPSCs may be a promising tool for basic research, disease modelling and drug trials, they remain an unknown quantity. IPSCs are genetically modified and the use of genetic alterations and viruses in their creation makes them less predictable and risks causing tumours.

So, the minister is referring to one of the arguments against iPSCs, that is, the fact that viruses, or viral vectors, are used in their creation. The speech the minister gave is dated November of last year.

I will refer to a number of news stories from this month. In an item entitled 'Researchers advance in stem cell treatments' dated Monday 2 March on ABC News, it was reported:

British and Canadian researchers say the ability to create stem cell treatments without using embryos is a step closer.

The team has manipulated human skin cells to act like embryonic stem cells without using viruses, making them safer for use in humans.

The head of the Centre for Regenerative Medicine in Edinburgh, Professor Sir Ian Wilmut, says the researchers have created something that behaves like an embryo, but is not an embryo.

'This technique has been refined even further and we've done more detailed studies,' he said.

'We will find that there is no longer a benefit in recovering cells from embryos and that work will just naturally draw to a close'.

The source was the BBC. Another report came out of Paris, again in March of this year, and I quote from a media report:

Pioneering work by Japanese stem cell researchers two years ago has taken a major step forward, helping the quest for versatile, grow-in-a-dish transplant tissue, according to papers published on Sunday.

Further, it states:

But the downside of the technique for creating these so-called induced pluripotent stem cells...is that the genes are delivered by a 'Trojan horse' virus.

Reprogramming cells using a virus modifies their DNA in such a way that they cannot be given to patients without boosting the risk of cancer. In the new studies, published by the British-based journal *Nature*—

and the reference is 'Virus-free induction of pluripotency and subsequent excision of reprogramming factors', an article by Kaji, Norrby, Paca, Mileikovsky, Mohseni and Woltjen, joint authors of that study published in the March edition of *Nature*—

two squads of researchers from Britain and Canada recount a method by which the four genes are delivered into the cell without using a virus—and then are removed after the reprogramming is done.

The insertion is carried out using 'piggyBac', a tried and tested technique in genetically modified crops in which mobile genetic sequences called transposons are slotted into the genome.

In the iPS work, it has been tested successfully on mouse and human skin cells. Tests on the reprogrammed cell lines show they faithfully reproduce the behaviour of embryonic stem cells.

'I was very excited when I found stem cell-like cells in my culture dishes. Nobody, including me, thought it was really possible,' said Keisuke Kaji from the Centre for Regenerative Medicine at the University of Edinburgh, Scotland.

In a sense, the minister prepared her second reading contribution in November of last year highlighting that one of the concerns about induced pluripotent stem cells was the fact that we were using viruses and they were dangerous and could cause cancers and a whole variety of other things like that; therefore, we needed to be very careful about those and we should to go back to the embryonic stem cells. Since that statement we have now had this quantum leap, with researchers indicating that now it will be possible to use techniques that do not use those viral vectors with those downsides in the research that they do.

The final issue I want to raise is one that a number of my colleagues have raised. As I said in 2003, it was a difficult issue for me, and I indicated at that stage that my mind was open in relation to how I would consider legislation in the future, because the potential benefits indicated by members and others who lobby for this legislation are very attractive. Back in 2003 I referred to some quotes, and I will quote them again and put them on the record. During the second reading response I want the minister to provide whatever factual information she has available either to accept that these statements are correct or to indicate that time has moved on and they are no longer as accurate as perhaps they were in 2003.

I refer to contributions made in 2003 in which I quoted from my federal colleagues. The Liberal Party being a broad church, I will quote from contributions from Christopher Pyne and Nick Minchin who, on this issue, had almost unanimity of view. Christopher Pyne's contribution in the federal parliament was as follows:

> However, right now, today, as we speak, adult stem cells are being used following research to benefit the injured, the diseased and those people who are disabled. Adult stem cell research is being used right now as we speak to help humankind. The potential of it is even greater but in fact adult stem cell research is making the breakthroughs that those proponents of embryonic stem cell research claim may be possible in the future.
>
> Let me give you some examples. In July 2001, German doctors used stem cells taken from a patient's own bone marrow to regenerate heart tissue damaged by heart attack, successfully improving his coronary function. American doctors have reimplanted stem cells taken from the brain of a patient with Parkinson's disease, resulting in an 83 per cent improvement in the patient's condition. The Washington Medical Centre treated 26 patients with rapidly deteriorating multiple sclerosis with their own stem cells, stabilising the condition in 20 patients, improving the condition in the other six. Israeli doctors implanted adult stem cells taken from a paraplegic woman's blood into her spinal cord, allowing her to regain bladder control and the ability to move her own toes and legs.
>
> In Canada, another paraplegic had movement in her toes and legs restored after stem cells from her immune system were implanted in her severed spinal cord. Surgeons in Taiwan have used stem cells taken from a patient's eyes to restore vision. In the US adult stem cells have been used to treat sufferers of the sickle blood cell disease. Stem cells taken from umbilical cord blood have allowed doctors to restore the immune systems of children which were destroyed by cancer. In the UK, a 3-year old boy was recently cured of a fatal disease by the use of stem cells extracted from his sister's placenta. American doctors have reported that adult stem cells have been used to improve the condition of 15 people with insulin dependent diabetes. Blood cells have been used to repair gangrenous limbs. Adult stem cells have been used to repair the cornea of an eye to restore sight and at Cedars-Sinai in LA adult stem cells have been found to treat Parkinson's disease.
>
> The University of Minnesota has published research in the last three months that shows that adult stem cells are as versatile as embryonic stem cells, meaning that the only feature of embryonic stem cells which was regarded as unique to embryonic stem cells—being their versatility and their ability to change into many different organs of the body—has been swept away by the fact that adult stem cells have now been shown in recent research from the United States to be able to be as versatile as embryonic stem cell research without the disbenefit of being rejected by the immuno system and requiring major immunosuppressant drugs.

I quote also from a contribution from Kevin Andrews in the federal parliament in relation to this issue:

> By contrast, I am informed that research involving adult stem cells is already producing cures. Bone marrow stem cells have been used to regenerate heart tissue. Brain stem cells have been used to treat Parkinson's disease. Multiple sclerosis has been stabilised in patients using adult stem cells. Spinal cord damage has been repaired using blood stem cells. Adult cells have been used to restore vision. Sickle cell blood disease has been treated with adult stem cells. Placental stem cells have been used to restore immune systems destroyed by cancer, and diabetes sufferers have had their condition improved using adult stem cells. The successful use of adult stem cells goes on and on. Recently the so-called bubble boy was restored to health with gene therapy using adult stem cells.

At that time, in 2003, having quoted Christopher Pyne's and Kevin Andrews' contributions, I highlighted that those members and others were indicating that adult stem cell research was at that stage actually being used to treat patients, whereas embryonic stem cells were not being used to treat patients at that stage. They were talking about the potential value at some stage in the future: that was in 2003. Let me quote from what I said in 2003:

> I return again to the Bresagen presentation to some South Australian members of parliament. Even they acknowledge that with embryonic stem cells it may take years to produce patient benefit. So, even the proponents of

the legislation are acknowledging that it may take years—although the critics will say even longer—in terms of producing patient benefit.

Finally, I quote from the contribution from Senator Minchin on this issue. He actually quotes as follows:

> On this matter, Dr David Prentice, the American expert who visited Australia earlier this year, said: 'Embryonic stem cells have not yet produced a single clinical treatment; there are few and limited successes in animal models; and problems of immune rejection, tumour formation and genomic instability continue to be unresolved.'

If I can summarise the contributions from that broad church of Liberal members in the federal parliament, Senator Minchin, Mr Pyne and Mr Andrews, the essential point and the information at that stage given to me as a member of the upper house from BresaGen, one of the companies supporting research in this area (although I should not include BresaGen in relation to all of what I am about to say) was, in essence, that adult stem cells were being used at that time in relation to producing treatments for patients with many of these diseases but that embryonic stem cells were not, at that stage.

Given that we are 5½ years down the track, will the minister provide information to members in relation to the summaries produced in the federal parliament by members to whom I have referred in relation to embryonic stem cell research in terms of actual treatments of many of these very desirable and worthy aims and about where, in practice, that research and application is at present as opposed to the use of the examples I have given of adult stem cells, for example?

I think it is important. I know that some members are supporting this legislation because they believe that it might in some way help cure some of the diseases that have been listed here. If that is the case, this parliament deserves a factual and comprehensive update from the minister, on behalf of the government, as to where the real state of the research and application is at present in relation to embryonic stem cells and adult stem cells, and induced pluripotent stem cells, as well.

I indicate that my position at this stage is that I will support the second reading to allow consideration of debate in the committee stage. I will be trenchantly opposed to the proposition of Mr Rann and other members in relation to hybrid embryos and I would be wanting to seek some amendment to those particular provisions. I reserve my position on the third reading, but at this stage it is likely I would oppose the third reading of the legislation.

The Hon. A. BRESSINGTON (17:10): I rise to indicate that I will not be supporting this bill, and I will not rehash the arguments of the Hons Dennis Hood, Bernie Finnigan and Rob Lucas. There is a great deal of concern as to the necessity for this kind of research to be going ahead. Dare I be brave enough to say that stem cell research itself has produced few outcomes for the amount of kerfuffle that has been raised in the public and scientific arenas of the need for this kind of research. I note that very recently President Barack Obama in the United States lifted the ban on embryonic stem cell research but said at the time that he would not condone human cloning for embryonic stem cell research because it was found to be repugnant to the American people and, also, to him. I hope he has the tenacity over time to stand by that statement.

I heard the Hon. Mr Ridgway talking about family members who have died because of cancer and illness. Indeed, it is a sad thing that children, especially, contract serious illness. The point to be made here is that none of those particular illnesses or cancers could have been assisted at all with embryonic stem cells. In fact, as the Hon. Rob Lucas said, adult stem cell research has gone ahead in leaps and bounds. In fact, 73 illnesses and disorders can be treated with adult stem cells. The score for adult stem cells versus embryonic stem cells is adult stem cells 73, embryonic stem cells zero.

I will painstakingly read out the disorders and illnesses that can be treated by adult stem cells because it is important that each one is on the public record as being able to be cured with treatment by adult stem cells. A lot of these illnesses and disorders are used in the embryonic stem cell debate to stir up emotion. In fact, we can already apply medicine and science to them. All these disorders and diseases can be treated with adult stem cells: brain cancer, retinoblastoma, ovarian cancer, skin cancer (merkel cell carcinoma), testicular cancer, tumours abdominal organs lymphoma, non-Hodgkin's lymphoma, Hodgkin's lymphoma, acute lymphoblastic leukaemia, chronic myelogenous leukaemia, juvenile myelomonocytic leukaemia, chronic myelomonocytic leukaemia, cancer of the lymph nodes, multiple myeloma, breast cancer, neuroblastoma, renal cell carcinoma, various solid tumours, soft tissue sarcoma, Ewing's sarcoma, diabetes type 1, systemic lupus, Crohn's disease, juvenile arthritis, multiple sclerosis, acute heart damage, chronic coronary artery disease, corneal degeneration, severe combined immunodeficiency syndrome, Parkinson's

disease, spinal cord injury, stroke damage, sickle cell anaemia, sideroblastic anaemia, aplastic anaemia and red cell aplasia. By the way, I am reading out only those that I can pronounce. There is also chronic Epstein-Barr infection, limb gangrene, surface wound healing, jawbone replacement, skull bone repair, Hurler's Syndrome, osteogenesis imperfecta, chronic liver failure, liver cirrhosis, end stage bladder disease—and there are another 60-odd that I have not read out.

I think that those 73 diseases and illnesses cited, which can be treated with the medical application of adult stem cells, should be a pretty clear indication that this is the way we need to go with the research and the science. The whole use of embryonic stem cells, this move to human cloning, is quite a concern to many people who are aware that this sort of debate is occurring, and I am sure people are even more shattered now, as I am, to find out that this is just an academic exercise and that federal legislation will, in fact, override whatever we do here. That is most disappointing. I think Theodore Roosevelt said it best, when he said: 'To educate a man in mind and not morals is to educate a menace to society.'

I think we can only put so much trust in the scientific profession. As the Hon. Mr Finnigan said, most people abide by the rules, most people do have respect and see that there is a need for clear boundaries, but there is always that radical few who will want to push the envelope. As the Hon. Rob Lawson stated, only 5½ years ago this place was debating one level of this kind of legislation and research and here we are again, taking it to that next level. That is indeed the beginning of the slippery slope that we would all prefer to believe does not exist—but there are plenty of examples that it does.

I would also draw to the attention of honourable members that in November last year *60 Minutes* did a report on stem cell research which showed that we are now able to grow hearts with a scaffold from a cadaver (or not even from a cadaver) that has been treated, cleaned and brushed with stem cells—and not embryonic stem cells. A fully functioning heart can now be grown and transplanted, and they did that with a rat.

On the *60 Minutes* program I watched they were able to transplant the heart, which had been grown in a test tube, and the rat survived with no signs of rejection and no need for any anti-viral medications to prevent rejection, because it was the rat's stem cells that were used to grow the heart over a scaffold. Ellen Fanning did the story, which was quite fascinating, and she said:

> I've just had the most amazing experience. A glimpse of the future. I've seen a living, beating heart built from scratch in a laboratory. It's a major breakthrough. A vital step towards custom-made human body parts for transplants. Now say you had a serious heart or kidney disease. There would be no more waiting months, maybe years for a donor. Your doctor would simply order a new organ designed especially for you. Imagine what that would mean to thousands of Australians now on the list for organ transplants. As you will see, this isn't some scientist's crazy dream—it's already happening.

In fact it's happening at the University of Minnesota, where they not only grew a heart in a jar but where they also helped a young girl who was born with spina bifida whose bladder had never fully developed. They grew her a new bladder. Prior to this process, although she was studying at university she had to do all that from home. She could rarely leave there because she had no bladder and, as you can imagine, it was just too embarrassing for her. They grew her this bladder, it was transplanted, and she now attends the university campus. She can go anywhere and has a whole new life ahead of her. I stress that this was not because of embryonic stem cell research; it was adult stem cells that assisted in this.

I would also like to read from a paper that I had hoped members would be able to access before they made their decision on the bill, because it is a monitor of stem cell research. In a paper by Dr David A. Prentice PhD, a professor in the department of life sciences at Indiana State University, he states:

> Within just a few years, the possibility that the human body contains cells that can repair and regenerate damaged and diseased tissue has gone from an unlikely proposition to a virtual certainty. Adult stem cells have been isolated from numerous adult tissues, umbilical cord, and other non-embryonic sources, and have demonstrated a surprising ability for transformation into other tissue and cell types and for repair of damaged tissues.
>
> Adult stem cells have received intense scrutiny over the past few years due to surprising discoveries regarding heretofore unknown abilities to form multiple cell and tissue types, as well as the discovery of such cells in an increasing number of tissues. The term 'adult stem cell' is somewhat of a misnomer, because the cells are present even in infants and similar cells exist in umbilical cord and placenta.

So we have had the information about this skin technology and the ability to extract stem cells and grow organisms and so forth. This adult stem cell technology, according to the Hon. Rob Lucas, was raised in the federal debate by the Hon. Christopher Pyne. This is an old technology; it is not

new technology. This science, this information, has not just dropped out of the blue; it has been around and it has been basically buried in all the hype around embryonic stem cell research and human cloning.

I am going to be very brief with this because everybody has basically said everything that there is to say on it. However, I do have one concern and that relates to a comment made by the Hon. Ian Hunter. I believe he said that this bill would now perhaps make it easier for the process of parthenogenesis to be explored and used in the application of IVF, and that, to me, is a huge concern—parthenogenesis being an asexual way of reproducing and not being specific to mammals or humans.

There has already been quite a bit of experimentation, if you like, with this process and, as we know, that slippery slope may not be as far away as we think. In 2007, I think, there was research into this, and we have now seen that a mouse developed from a parthenogenic process has been born and has created viable offspring.

This sort of science, although it seems like sci-fi, is not that far away, and I think that comment of the Hon. Ian Hunter brought up for me a number of concerns as to where we would be in perhaps 10 or 20 years and how many more allowances we would be prepared to make all in the name of science.

Really, we are asking ourselves: is this necessary? In my opinion and in science's opinion, adult stem cell research has a lot more to offer and, therefore, I think it would be wise of us to tread very carefully with the processes to which we may be opening the door.

As I have said, other members have raised all the information and research that shows that this is a bill that is outdated and has been already surpassed by science, by medicine and by treatment and the application of stem cell technology from adult stem cells. I think that this is a bit of an indulgence for us to be considering human cloning at this stage of medical and scientific research.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (17:27): By way of concluding remarks, I thank all honourable members for their very valuable contributions. There have been many, and a great deal of detail and consideration has gone into the individual contributions that have been part of the second reading debate.

This bill raises important moral and ethical questions that require deep consideration. I note that both major parties have accorded members a conscience vote on the amendments to the South Australian laws and that some members have spoken very passionately about the proposed amendments.

First, it is important to distinguish between reproductive embryos and research embryos. The amendments differentiate between embryos created by fertilisation of an egg by a sperm for the purpose of creating a baby and embryos created by technical manipulation of cells and DNA for research and potential therapies.

Human reproductive embryos are embryos created using human sperm and eggs and, under this bill, are able to be used only for assisted reproduction treatment—that is, to form a family. In 2003, this parliament determined that only embryos deemed excess by the couple obtaining such treatment can, once the proper consent process has occurred, be used for research.

This research has led and will continue to lead to better treatment outcomes for people who need assisted reproductive treatment to form a family. I will refer to the creation of embryos by other means, for example, somatic cell nuclear transfer, as research embryos. This is where the distinction is important. Some members have said that life is precious, and I certainly agree with that. However, research embryos are not a person, and it is not possible for them to become one. There is no sperm involved: merely an egg which is encouraged to divide by other artificial means.

Before addressing some of the issues that have been raised, I would like to remind members what this bill permits and what it does not. The bill retains the prohibition on creating reproductive embryos, that is, those created with sperm and egg for a purpose other than assisted reproductive treatment. The bill allows research embryos to be created by somatic cell nuclear transfer (SCNT) and parthenogenesis (stimulating the cells to divide by other means).

It allows such embryos to use genetic material from more than two people and precursor cells (immature eggs). These research embryos must not be implanted, are subject to a strict licensing, monitoring and compliance regime and cannot be developed for more than 14 days.

Other prohibitions which will still apply are: heritable alterations to the genome (preventing 'designer babies'); chimeras (adding components of an animal cell to a human embryo, or vice versa); importing and exporting prohibited embryos; commercial trading in eggs, sperm or embryos; and implanting any type of human embryo into an animal or any type of animal embryo into a human. So, they all remain prohibited.

Enabling for the creation of hybrid embryos—that is, when human sperm is introduced into an animal egg—allows for a diagnostic test for sperm quality. This can occur only with a licence in a reproductive medicine clinic, and only as part of assisted reproductive treatment. This procedure tests the fertilisation capacity of human sperm using animal eggs. Ensuring that only robust, healthy sperm will be used on a woman's egg, thereby giving the best possible chance of creating a baby, will obviously save valuable human eggs.

To test the robustness of sperm, hybrids will be able to be created only until a detectable change indicates a result. This is generally the first cell division which happens on about day two. This testing can be undertaken only with a licence. I remind members that the licensing regime is obviously very strict. The NHMRC applies a strict set of criteria on a case-by-case basis and only when: there is a likelihood of significant advances which could not reasonably be achieved by other means; a human research ethics committee has approved the research project; the number of embryos is restricted to only those likely to be necessary; there is evidence of proper informed consent by all tissue and gamete providers; there is a separate account of each embryo; and there is transparent reporting (six-monthly reports to federal parliament).

The bill increases penalties for prohibited practices from 10 years imprisonment to 15 years imprisonment. There is a wide range of prohibited practices that would attract a maximum 15-year term of imprisonment. Increased penalties also relate to the prohibited practice of trading, importing and exporting gametes (oocytes or sperm). In addition, the human tissue acts nationally (the Transplantation and Anatomy Act 1983 in South Australia) prohibit payment for any organs or tissues, including eggs.

The commonwealth legislation, together with equivalent legislation in all states and territories and the National Health and Medical Research Council's Embryo Research Licensing Committee, creates a strict national legislative scheme prohibiting human cloning and regulating human embryo research.

I will now address some of the specific issues that have been raised in the council during the second reading debate. The Hon. Mr Brokenshire proposes amendments to the bill which will prohibit the use of precursor cells for the research and development of hybrid embryos for testing sperm quality. First, I will talk about precursor cells. The Lockhart Review Committee, which was established to review the national legislative framework, recommended that a licence be permitted for the creation of human embryos using precursor cells from a human embryo or foetus for use in research—including the production of human embryonic stem cells—as one means of addressing a potential future shortage of human eggs for somatic cell nuclear transfer.

It is clinically impossible to fertilise precursor cells from foetuses with sperm. However, precursor cells extracted from late term aborted foetuses of sufficient gestational age that the ovaries are identifiable could, in future, be matured in laboratories and used in somatic cell nuclear transfer. It would only be the egg shell that is used with the genetic material of the foetus removed; the DNA in the resulting embryo would be from another source, such as a skin cell. The resulting embryo would therefore not be progeny of an unborn foetus. It would not be allowed to mature past 14 days and it would be prohibited from being transferred to the body of a woman.

The specific consent of the mother of the foetus, and her partner, is required to use foetal material for research or for any other purpose, in the same way as parents can consent to the donation of tissues from their children. The NHMRC ethical guidelines specific to the use of foetal tissue would apply. These guidelines stipulate that the foetus is available for research only as a result of separation by natural processes, or by lawful means, and that proper and separate consent has been obtained. These guidelines have been in existence since 1992, and research using foetal tissue has been conducted since then.

The NHMRC ethical guidelines also specify that, if a foetus or foetal tissue becomes available as a result of a termination, the process through which the woman is informed about

donation, and her consent sought, should be separate from that under which she decides to terminate her pregnancy and should not begin until a decision to terminate has, in fact, been made.

South Australia does not take terminations of pregnancy lightly. South Australia is one of only two states with specific abortion legislation. The use of precursor cells from foetuses will not mean that more women will terminate their pregnancy; nor will it result in increased miscarriages.

As members will appreciate, such an event can be a very traumatic experience for a woman, her partner and their families. However, women who terminate a pregnancy because of an abnormality or disease—or women who miscarry—may want to donate foetal tissue to research that could benefit their family.

We should remember that research permitted by the bill is not just about growing healthy stem cells but also about generating stem cells with specific genetic disorders to enable study into how these diseases act on other cells at a molecular level. Such study would also assist in the identification of therapeutics and treatments.

The Hon. Mr Brokenshire is proposing that the bill be amended to prevent the development of a hybrid embryo under any circumstances. The prohibition of human cloning legislation regulates not only the creation of embryonic stem cells but also embryo research that leads to improved clinical outcomes in assisted reproductive treatment. Research in clinical practice in assisted reproductive medicine in South Australia is considered to be world class. Well-regulated embryo research is critical to maintaining and improving the standards of reproductive medicine. This is necessary to preserve the safety and effectiveness of treatments for those South Australians who rely on reproductive medicine for family formation and for children born through assisted reproductive medicine.

The bill allows a hybrid embryo to be created or used solely for the purpose of testing sperm quality, that is, to see if a sperm is robust enough to penetrate an egg. This knowledge helps assisted reproductive medicine specialists to tailor treatment for those affected who are seeking to have a family. Further, this diagnostic test can only be carried out in an accredited ART centre and only with a licence. The bill makes it an offence to develop a hybrid embryo past the point where the embryo reaches the first mitotic division early on day two and, again, only for the purposes of testing sperm quality for a couple undergoing reproductive medicine treatment.

The bill and the commonwealth legislation prohibit the creation and use of hybrid embryos for any other purpose, and they cannot be transferred into a woman. An offence attracts a term of imprisonment of 15 years, which has been increased from 10 years. If South Australia's laws are not amended, infertility research and development would continue to be constrained. New techniques and treatments using embryos would not be able to be developed nor tested, and South Australian couples may be denied the benefits of increasing choice, quality and safety available to those in other states.

IVF treatment is not always painless. If we do not allow the testing of sperm using animal eggs, then more woman will have to undergo ovarian stimulation to produce extra eggs for diagnostic testing. This is a process whereby women are given drugs in an attempt to make them release more than one egg at a time. This treatment comes with its own risks. Ovarian hyper-stimulation syndrome (OHSS) is a common complication of pharmacological ovarian stimulation. The severity of the side effects ranges from mild—things like abdominal pain and distension—to critical—things such as blood clots and collapsed lungs and, in extreme cases, death can result. To suggest that women should continue to go through this process for what amounts to a diagnostic test of sperm to test its robustness is disgraceful. We have the opportunity to put the welfare of women higher on the priority list.

Most members speaking on the bill have suggested that induced pluripotent stem cells (iPSCs) have superseded embryonic stem cell research. This is not necessarily the case, and only time will tell. It was only last month that a joint Victorian and New South Wales team produced the nation's first human iP stem cell line. Although iPSCs may be a promising tool for basic research, disease modelling and drug trials, they are still a relatively new discovery compared with embryonic stem cell research.

Embryonic stem cell research has been conducted using animal cells for over two decades. It has been replicated and proven reliable. The same cannot be said for iPSC research. It has not being adequately reproduced; therefore, at this early stage it cannot be considered reliable. It is far too soon to tell, and it will take decades before more research is conducted and methods

made safer to see whether it will be appropriate for therapeutic use. That addresses some of the issues raised by the Hon. Ann Bressington.

In terms of the list of successes for stem cell research, much more time has been available in the development of those techniques, whereas for embryonic stem cell research to date that has mainly been for use in animals, and this will allow us to do further testing involving humans, which should allow us a broader scope of knowledge and understanding in these matters.

iPSCs remain an unknown quantity. Until recently iPSCs have required genetic modification through the use of viruses in their creation, which has made them less predictable and risks causing tumours. Professor Peter Rathjen informed the briefing session for members of parliament last year that the derivation of iPSCs takes somatic cells backwards to their original form in the embryo, an abnormal process which may generate abnormal cells, whereas the development of embryonic stem cells follows the normal direction of developing early cells into mature cells. After 20 years of research, it is now relatively well controlled, has been verified and is reliable. He advised that much more work is needed before iPSCs could prove safe or useful in humans.

Australian research Professor Alan Trounson, who heads the world's biggest stem cell research project at the California Institute of Regenerative Medicine, has advised that stem cells derived from skin have not been fully investigated and are still far from ready for clinical use because of their potential to cause cancer. Professor Trounson advised that embryonic stem cells, which do not carry the same risk of mutation, are currently the only option for therapeutic trials and that many scientists will continue to research embryonic stem cells because they are the gold standard.

Ever since the latest breakthroughs in iPSC research, which did not use the tumour-causing viral vectors but which used foetal skin tissue and something called electroporation, there have been no calls from scientists to halt work on human embryonic stem cells. In fact, Rich Weiss from the Democratic think tank at the Center for American Progress insisted that it would be foolish to abandon human embryonic stem cell research for a new and unproven alternative. He points out:

- this is the first paper to show this technique and the findings have not yet been verified by others;
- it uses human foetal skin cells, not adult skin cells, which are more difficult to convert into embryonic stem cells; and
- it will take years to compare these cells thoroughly with 'gold standard' human embryonic stem cells to see whether they are biologically and medically equivalent.

The majority of scientific opinion seems to be that embryonic stem cell research should continue while the problems with iPSCs are being investigated and have been scientifically verified. Embryonic stem cells can address questions about early human development and, in particular, infertility research that iPSCs cannot. Research with both iPSCs and embryonic stem cells may eventually lead to the development of patient-specific stem cell lines suitable for clinical use. Many in the scientific community argue that both types of research should continue to occur.

The question of how much money is being spent on embryonic stem cell research has been raised. In truth, very little is being spent on human embryonic stem cell research. Sydney IVF, Melbourne IVF and IVF Australia are the only organisations with licences authorising the use of excess ART embryos. Since amendments were passed in other jurisdictions only four licences have been granted to create human embryos for research purposes. All four licences have been issued to Sydney IVF. Sydney IVF and Melbourne IVF invest approximately 10 per cent of their revenue back into research. Many other organisations, including those in South Australia, fund their own research.

The Centre for Stem Cell Research in Adelaide provides early career research fellowships to attract and retain researchers to Adelaide and to continue to build the already substantial critical mass of stem cell researchers within Adelaide. Initial funding for the fellowships has come from the University of Adelaide and Bellberry Limited, a not-for-profit company that manages a private human research ethics committee. It has since attracted almost $7.5 million worth of research grants to the state for research commencing in 2008. The Australian Stem Cell Centre based in Victoria (with a node in Queensland) has the largest funding base, having been awarded grants

from the commonwealth and Victorian governments valued at around $98.5 million. It is yet to get a licence so would not be undertaking any human embryonic stem cell research.

In 2007, approximately 9 per cent of NHMRC funding was committed to research involving the use of animal or human stem cells; of this, approximately 1.9 per cent is dedicated to research involving the use of human embryonic stem cells. The amendment bill is also about enabling South Australia to be part of a national scheme that regulates human cloning and embryo research across Australia. Some members appear to be unclear about what research could still be conducted if the South Australia, acts were not amended to realign with the national scheme.

South Australia ceased to be a party to the national legislative scheme in June 2007, when the current South Australian acts were declared no longer corresponding to the amended commonwealth laws. The NHMRC Embryo Research Licensing Committee is authorised to issue a licence only to researchers covered by a corresponding act. The NHMRC is also not authorised to inspect premises if it suspects wrongdoing unless authorised by a corresponding act. Since June 2007, the licensing committee has not been able to license any use of human embryos for researchers covered only by the South Australian laws. Even research that is lawful under the current South Australian acts cannot be licensed because our laws are no longer part of the national scheme.

There is a great deal of ambiguity and uncertainty about who is covered under the state and commonwealth legislation for these matters. There is no certainty that the licensing committee would grant a licence to researchers operating under commonwealth legislation in a state where the local laws do not correspond with commonwealth laws. The licensing committee will not be authorised to issue licences to researchers under the South Australian laws unless the South Australian acts are amended in a way that the commonwealth accepts as corresponding to the commonwealth acts.

In closing, I would like to point out that it was not all that long ago that other research that was considered equally as 'icky' led to scientific breakthroughs. Think back a few decades when many considered it immoral and unethical to think about using animal products in humans. Today it is considered mainstream clinical practice to use pig valves in human hearts to prevent, treat and cure congestive heart failure, heart attack and other serious cardiovascular illnesses. I believe that, amongst other things, pig pancreatic cells are injected in the treatment of diabetes. Transplantation of hearts, lungs and kidneys may have led to Frankenstein-like images, yet to today we actively encourage people to become donors, and organ and tissue donation and transplantation are widely accepted. Embryonic stem cell research has the potential to cure or to prevent many diseases, such as diabetes, repair spinal cord damage and replace tissue after injury or disease.

At the moment, our South Australian laws only permit excess reproductive embryos to be used for such research. Whereas in the past couples undergoing assisted reproductive technology treatments had many embryos created, better procedures and processes mean that today fewer reproductive embryos are being created and, as a result, fewer excess reproductive embryos are available for research. This bill will ensure that further advances in the field of embryonic stem cell research are made within a responsible regulatory framework, with strong oversight, protection and consent processes. I commend the bill to the council.

Bill read a second time.

EQUAL OPPORTUNITY (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 March 2009. Page 1562.)

The Hon. R.D. LAWSON (17:51): I rise to make a second reading contribution to this bill which, as others have noted, has been a long time in coming. We are frequently reminded that South Australia was the first state in Australia to have an anti-discrimination law, which was that introduced by the Dunstan government in 1966 relating to racial discrimination. However, since that time all states and territories in Australia as well as the commonwealth have passed various anti-discrimination laws. In some jurisdictions they are called exactly that, anti-discrimination, and in others they are called (as is ours) equal opportunity legislation. Our Equal Opportunity Act was passed in 1984, and that is the act primarily that is to be amended by this bill.

The commonwealth already has separate pieces of legislation relating to various forms of discrimination, namely, the Racial Discrimination Act, passed in 1975; the Sex Discrimination Act, passed in 1984; the Disability Discrimination Act, passed in 1992; and the Age Discrimination Act,

passed in 2004. That series of acts contains remedies that are available to South Australian citizens because the commonwealth law, of course, applies here concurrently with state acts, and I think some case can be made in relation to this area of law for uniformity. We certainly do not have uniformity in relation to the discrimination legislation in various states.

A recently published text on this subject, *Australian anti-discrimination law*, by Rees, Lindsay and Rice, a tome of some 800 pages, highlights on almost every page the differences that apply between the various jurisdictions. The text to which I have just referred does conveniently make a number of general points in relation to anti-discrimination laws. A fair comment appears on page 3 of the text dealing with the policy goals of Australian anti-discrimination laws. The learned authors say that these policy goals are 'not particularly clear'. They go on to say:

> Some advocates of these laws saw them as radically changing the structure of Australian society by overcoming the longstanding exclusion of people who were not of the dominant race, sex and sexual preference, and by promoting the inclusion of other people who had been neglected or ill-treated because of attributes such as disability or age. In the minds of others these laws were little more than tokenism designed to silence the clamouring of minority groups who had raised their voices. In most instances, they have been laws ahead of their time in the sense that they would not have attracted majority support had they been put to referendum. They have sought to shape rather than reflect public opinion. While it is impossible to measure whether they have achieved this goal, the notion that 'discrimination' is unfair and wrong certainly seems to be more widely accepted than it was when these laws were first passed.

A little later in relation to the policy goals, the learned authors say:

> The traditional sources of statements of the goals of legislation, such as Ministers' Second Reading Speeches to Parliament and governmental reports recommending new or amended laws, have little information which assists this task.

I interpose: namely, the task of identifying the policy goals of these laws. I continue:

> While some of the Second Reading Speeches contain inspiring statements about the importance of eradicating discrimination and promoting equality, there is a lack of detail in those speeches about the actual goals of the law and, most importantly, about how those goals will be achieved.
>
> Even though the High Court has consistently maintained that anti-discrimination laws should be interpreted beneficially and liberally, very few members of the judiciary have been prepared to enter the fray by seeking to characterise the goals of the legislation in order to assist them with the task of applying those laws beneficially and liberally.

By way of example, later on at page 73, a dictum from three High Court judges—justices Gaudron, Gummow and Hayne—in the case of Austin v The Commonwealth (decided in 2003) said:

> The essence of the notion of discrimination is said to lie in the unequal treatment of equals or the equal treatment of those who are not equals, where the differential treatment and unequal outcome is not the product of a distinction which is appropriate and adapted to the attainment of a proper objective.

That is what the judges said. The authors, I think perceptively, comment as follows:

> While such an approach to the concept of discrimination may be appropriate in a constitutional context when considering whether a particular law should be characterised as being unlawfully discriminatory, this description of conduct which is unacceptably discriminatory is far too sophisticated to be of any practical use in an anti-discrimination statute which regulates the daily activities of people such as employers and providers of goods and services. People who are subject to a legal obligation not to discriminate against others on nominated grounds when they hire employees, or decide who to serve in a hotel or coffee shop, cannot reasonably be expected to make fine distinctions about the circumstances in which different treatment of others may, or may not, be appropriate. In order to be effective anti-discrimination law must stipulate with reasonable clarity the circumstances in which it is impermissible for an attribute possessed by a person, such as his or her race or sex, to influence a decision which is made about that person.

I fear that the bill we are now considering will not have the effect of clarifying or making it easier for businesses, institutions, schools and the like to conduct their business, nor will it greatly clarify in an educational sense for general members of the community what people's rights and responsibilities are.

[Sitting suspended from 18:00 to 19:48]

The Hon. R.D. LAWSON: Before the adjournment I was lamenting the fact that this bill is not expressed in the sort of language that ordinary members of the community who are obliged to comply with it would readily understand, principally because the very notion of discrimination is one that has not been clearly articulated in the second reading explanations over the years and the

various materials that have been presented. I think it is a matter for some lament that what we are now doing is further complicating a complicated piece of legislation.

However, more to the point, I adhere to the view that this legislation is more about aspiration and education than it is about enforcement. It is designed, in the view of its propounders, to make a better society and make people better. That is not really the best function for statutes passed by parliaments. I think that is something of a matter for lament. However, the fact is that we and everyone else have equal opportunity or anti-discrimination legislation; and we have had ours now since 1984 and it is entirely appropriate that, if it is to continue in existence, it ought be updated.

I do not think it can be said by any stretch of the imagination that this is an undoubtedly successful piece of legislation. In saying that, I am not in any way denigrating the efforts of the holders of the office of commissioner for equal opportunity over the years and the staff who have worked there, nor of the Equal Opportunity Tribunal that has performed its statutory function. I simply believe that the tools with which those offices and tribunals have been working are far from perfect.

As have others, I mentioned that, in 1994, the previous Liberal government commissioned Brian Martin QC (now Chief Justice Martin of the Northern Territory) to prepare a report on the act, and he produced that report in October 1994. It is a comprehensive report with many recommendations at over 250 pages. He consulted with a large number of community groups and made a number of sensible suggestions. In the introduction to his report, Brian Martin stated:

> The equal opportunity and anti-discrimination laws are an essential feature of the fabric of our community. They provide a framework of values and standards of conduct within which the community operates. The system of social justice created by these laws is crucial to the development of a truly just and equitable society.
>
> Future development of the system should occur in a balanced manner. Human rights must be protected and enforced, but it is impossible to rectify every inequity or prevent all offensive behaviour by Government regulation. Consideration of practical issues cannot be avoided. Education fostering correct community attitudes is of prime importance. Unnecessary government intrusion into the lives of South Australians should be eschewed.
>
> It was in the above context and with a commitment to the balanced development and enhancement of this system that I was requested to review the Act. I have approached the review and the formulation of my recommendations in that spirit.

I think they are admirable sentiments, and it is a pity that this parliament has not earlier acted on the recommendations of Mr Martin.

As others have mentioned, a bill was introduced by the previous Liberal government. It did not pass through the parliament. That bill was introduced in 2000, and it had not passed at the time of the 2002 election. This government issued a discussion paper in 2003 in relation to proposals. It was full of promises and commitments to do various things. The bill, when introduced in 2006, was largely based upon that discussion paper, although many of the suggestions and ideas floated in the discussion paper had been abandoned.

The bill that was introduced in 2006 was debated in February 2007, and the bill subsequently lapsed with the prorogation of parliament. In May 2007, it was restored to the *Notice Paper* as a lapsed bill, but that bill itself lapsed in 2008. I believe that this government has been playing politics with this measure.

The bill now introduced is in far different shape to that which was introduced and promised to be passed in 2006. More importantly, the bill now introduced is a far cry from the bill which was introduced in 2001 by the Liberal government. In a media release issued on 26 November 2008, the Attorney-General claimed that the 2006 version of the bill was opposed by the Liberals and the minor parties. It actually did not arrive in this council for debate.

In statements made at about the same time, the Attorney claimed that 80 per cent of the 2006 bill was substantially the same as the previous 2001 bill. However, that is not the case, and it is an entirely misleading statement. The Attorney sought to create the impression that this bill is the result of some sort of evolutionary process. It is not.

Many substantial changes have been made. Indeed, they are not only substantial changes, they are procedural changes. A number of other formal changes have been made, and I will be pursuing that issue during the committee stage. However, in this contribution I wish to emphasise my general position in relation to the overall provisions of the bill and to identify some that are problematic.

In the latest annual report (2007-08) of the Office of the Commissioner for Equal Opportunity, Linda Matthews, the commissioner, laments the fact that the government has not acted in relation to these laws. In her opening message, she states:

> The equality of opportunity sits with those great freedoms and should be an equal part of the picture. It is an area where leadership is critical to keep our rights and freedoms protected, developed and current.

Later on, she states:

> In South Australia we have had over 40 years of anti-discrimination laws. Such laws are now a community standard. In 1975 South Australia was the first state in Australia to introduce a Sex Discrimination Act. In 1984 the Equal Opportunity Act was one of the first pieces of legislation in the country to bring together different anti-discrimination laws into one Act. Since that time other States and Territories and various Federal governments have continually updated their equivalent laws. South Australia has not done so. Consequently our State legislation is now seriously out of date. It is a matter of regret that the Bill introduced to Parliament in 2006 designed to bring our legislation in line with contemporary standards has not been passed. South Australians do not have the protections provided everywhere else in Australia.

There are a number of elements of that particular extract with which I disagree. I do not believe, notwithstanding the fact that our laws may not have been amended as often as other laws, that South Australians have not enjoyed living in a place where discrimination is not rampant. There are, of course, and there always will be, as Martin acknowledged, episodes of discrimination, not usually systemic, often isolated instances, but sometimes practices that ought be corrected.

However, by and large, I believe that the legislation we have here has worked well. We are not in some sort of competition to try to outdo every other jurisdiction by providing additional remedies and redress. If that is the process, we will continue to amend this legislation to meet the requirements of every interest group that has some hobbyhorse that can catch the eye of the government of the day.

A couple of points from the commissioner's annual report ought be emphasised. For example, it is reported that a total of 258 people complained to the commission in the year under review; 29 of them complained of more than one type of discrimination. In total there were 287 complaints. In a state like South Australia with over a million and a half people, 287 is precious few complaints. If one looks at the number of complaints lodged with the Ombudsman, which runs to tens of thousands every year, the fact that 258 people complained does not suggest that there is widespread agitation in the community. The commissioner notes that, this year, 273 South Australians took their complaints to the national level.

Of those 258 people, 146 had complaints that could be accepted and addressed under our law. That does not mean that the balance—that is, some hundred and a few people—could not have their complaints dealt with because of any inadequacy in the law that is currently being addressed.

Some of them at least, one imagines, would have been complaints in respect of which there was no possible redress. When one also looks at the breakdown of complaints lodged in 2007-08, one finds that the largest number of complaints is in relation to disability issues.

For example, of the total 167 employment complaints, 47 of them arose from alleged disability discrimination; there were 22 complaints about sex discrimination; 22, race discrimination; 17, age; 18, victimisation; 19 complaints of sexual harassment; 13 complaints of alleged discrimination on the grounds of pregnancy; six on the grounds of sexuality in employment; two on the grounds of marital status; and one whistleblower.

That is in the particular category, which is the largest category, of alleged discrimination in relation to employment. So, I do not believe that we have what one could term a serious problem that requires immediate redress in this state. I commend the report also to members because it does contain a brief description of all of the tribunal decisions in the year under review together with a list and brief description of the complaints that were referred to the tribunal with the assistance of the commissioner.

Once again, I believe that an examination of those cases does not suggest that we have a serious problem in this state. The particular case to which most attention was given was that of of Colquhoun against the South Australian Trailer Boat Club, a case concerning a Ms Colquhoun who had applied for membership of the South Australian Trailer Boat Club. She had been involved in that club since she was a child and her father was a life member, but the club did not accept her application for membership.

She took a case to the tribunal, and it was found that, in fact, she was discriminated against because of her sex. However, the rules of the club did not stipulate that it was a male-only club and the tribunal took the view that the club was open to both male and female members and it should have considered her application for membership. It found that she had been discriminated against. However, the club then changed its rules to make it a male-only club. That tied the hands of the tribunal, and illustrates, I think, the point that, even though it had been pointed out to this club that it was engaged in discrimination, it chose not to be educated by the process, as the do-gooders would suggest it should be. The club chose to change the rules, and I am glad to see that the tribunal ordered that Ms Colquhoun be paid $10,000 compensation. I think that case highlights yet again the point made by Martin that it is impossible to rectify by regulation every inequity or to prevent all offensive behaviour.

This bill contains quite a number of what I would regard as tinkering provisions—really, almost changes for the sake of change when you undertake a review calling for change. I want to mention some of the issues which have certainly given me most concern and which I know have caused concern in the community. The first arises because this bill will give the Equal Opportunity Commissioner the power to initiate inquiries and investigations of her own motion.

Philosophically, certainly my position is that in a jurisdiction of this kind one would expect a commissioner to have to rely upon someone making a complaint and that the person against whom it is alleged there has been discrimination should be the ultimate judge of whether anything happens. They might say for all sorts of reasons, 'I don't want to make a complaint. I don't want to have an investigation.' However, this bill will now give the commissioner the power to inquire into and investigate matters even when there is no complaint and, as I have said, philosophically, that is something that is of concern to me.

However, on examining the legislation in other jurisdictions, I find that it is by no means unusual—in fact, it is almost invariable—that legislation of this kind vests a similar power in the person who holds a position the equivalent of the commissioner. I think it is only in Victoria that there is no such explicit provision, although there is currently a report which suggests that it be introduced. For example, in the commonwealth jurisdiction, the Human Rights and Equal Opportunity Commission does have power to initiate inquiries, and section 11(f) of that act gives the HREOC the power 'to inquire into any act or practice that may be inconsistent with or contrary to any human right' on its own initiative without the approval of a minister or any other body.

In New South Wales, section 119 of the Anti-Discrimination Act empowers the Anti-Discrimination Board to carry out investigations, research and inquiries, and there is no requirement that the investigation or inquiry be initiated as a result of a particular complaint from the individual person affected.

Likewise, in Queensland, section 155 of the Anti-Discrimination Act sets out the requirements needed for the anti-discrimination commissioner in that state to initiate investigations, and there is no requirement for a complaint. Similarly, in Tasmania, section 60(2) of the Anti-Discrimination Act provides that the commission may investigate without the lodgement of a complaint if it is satisfied that there are reasonable grounds for doing so. Likewise, in Western Australia, section 80 of the Equal Opportunity Act gives to the Commissioner for Equal Opportunity a power that is not based upon a complaint. In the ACT, section 48 of the Human Rights Commission Act 2005 gives the commission the power to act on its own initiative, as does section 13(1)(f) of the Northern Territory Anti Discrimination Act.

In relation to Victoria, Mr Julian Gardner undertook an independent review of the Equal Opportunity Act. A discussion paper issued in November 2007 and an options paper issued in March of this year suggests that it is recommended that the Victorian commission have a power.

Notwithstanding the philosophical objections that I have to a clause of this kind, I must say that the fact that other commissions can initiate matters of their own volition suggests that we are currently out of line, and it would be appropriate to allow the commissioner this power. Bear in mind also that, in South Australia, citizens who are discriminated against have remedies under the commonwealth legislation, and the relevant commonwealth authority does have power to initiate on its own initiative.

Another issue that has caused me some concern is the provision for exemptions. Clause 18 of this bill will insert a new section 34 which will provide that this particular division—the major discrimination division—does not apply to discrimination on the grounds of chosen gender or sexuality in relation to employment or engagement for the purposes of an educational institution if

(a) the educational institution is administered in accordance with the precepts of a particular religion, and is founded on the precepts of that religion; and (b) the educational authority administering the institution has a written policy stating its position in relation to the matter. That is, the employment of—let's not beat around the bush—homosexual people. The policy is available on the website of the educational institution, and a copy of the policy is provided on request free of charge to employees, students and members of the public.

It seems to me that this is a most obnoxious provision. Currently, religious institutions are exempt from the anti-discrimination provisions in relation to the employment of persons on the grounds of their sexuality. There have been, so far as I am aware, no demonstrable injustices perpetrated under this existing regime. Now what the government has sought to do is to limit that exemption only to educational institutions and not to other institutions, such as aged care facilities or hospitals and other institutions conducted under the precepts of a particular religion.

It seeks this really offensive and obnoxious requirement that the institution have a written policy—and I do not believe it is any business of legislators to say that you have to have a written policy. If you said they had to have a policy, that would be reasonable, but to say that they have to actually write it down, to say that they have to put it up on their website, to say they have to give it to every Tom, Dick and Harry is kind of a way, and not a very backhanded way, of slurring the institution.

It is saying, 'We are going to out you. This is something reprehensible that you are doing and if you want to do this terrible and reprehensible thing then you have to jump through all of these hoops. You have to publicly shame yourself', in the views of the policy makers. I regard that as an offensive provision. As I say, I do not see that there is anything wrong with the existing exemption regime. It has not been demonstrated that it is causing grave concern.

I turn next to the provisions relating to discrimination on the ground of religious dress. This is a bizarre provision in the context of this particular legislative regime. Section 85T(1)(f) will now define discrimination as, or the prohibition will be, 'discriminate on the ground of religious appearance or dress.' Subsection (7) of that section will provide:

> ...a person discriminates on the ground of religious appearance or dress—
>
> (a) if he or she treats another unfavourably because of the other's appearance or dress and that appearance or dress is required by, or symbolic of, the other's religious beliefs; or
>
> (b) if he or she requires a person to alter the person's appearance or dress and that appearance or dress is required by, or symbolic of, the other's religious beliefs; or
>
> (c) if he or she treats another unfavourably because of the appearance or dress of a relative or associate of the other and that appearance or dress is required by, or symbolic of, the relative or associate's religious beliefs.

The extraordinary thing is that this legislation does not make it an offence or prohibit discrimination on the ground of religion. Under South Australian law you are allowed to say, 'I am not hiring you because I don't like Methodists or Callithumpians', or anything else. You are not allowed now, though, to say, 'I won't be hiring you because of what you are wearing.'

Originally, as it was prepared, merely wearing a crucifix could have incurred the wrath of this legislation, although the wording has now been tightened up to dress that 'is required by'—crucifixes are not ordinarily required by, for example, the Catholic religion—'or symbolic of', and a crucifix is certainly, I would think, in the view of most, symbolic of one's Christian beliefs.

If we had a prohibition against discriminating on the ground of religion it would be reasonable to have this religious dress provision, but we do not have a provision about discrimination on the ground of religion, for very good reasons, and we will not go into them here.

One sees a lot of other discrimination in the world that is not dealt with in this legislation. For example, the largest Christian denomination in Australia (indeed, the world) does not have women priests. Is that discrimination against women? Is that discrimination on the grounds of sex? Possibly it is, but legislators would not go there. If they were seriously interested in abandoning all discrimination they would not have permitted that, if this legislature was seen to be the font of all anti-discrimination wisdom. So, I have serious concerns about discrimination on the grounds of religious dress.

They are the three issues that I want to mention at this stage. Others will be pursued in the committee stage. I believe that this bill will require serious amendment if it is to pass through the parliament. However, if amendments are made to address some of the concerns I have raised and

the concerns of others, my position would be that the bill should be supported. It is not the panacea some claim it to be but it is some sort of improvement on the legislation.

The Hon. J.M.A. LENSINK (20:21): I rise to make some comments on this bill. I would like to commend the comments of our learned colleague, the preceding speaker in this debate, the Hon. Robert Lawson, and also refer to the speech made by our lead speaker on this debate, the Hon. Stephen Wade, on 3 March. He has outlined for the parliament what the Liberal Party's position is in relation to which aspects of this bill will be party votes and which will be conscience votes. I would also like to commend the member for Heysen in another place who has, I think in good faith, attempted to negotiate a position which Liberal members would find more satisfactory. As preceding speakers have already referred to, there have been, in the previous iterations of this bill, many things which members on this side of the council would have vehemently disagreed with.

I recognise that all legislation that tries to address equal opportunity and discrimination does need to be modernised over time and, therefore, this bill needs to be given due consideration. I think in the initial bill some 80 per cent of the content was not regarded as contentious, but some of it was quite ludicrous. One ground that springs to mind quite easily is on the basis of one's trade; another is on the grounds of one's geographic residence. I scratch my head trying to understand why that sort of thing would be included in the legislation.

I think that this bill has been quite a burr in the side of the government and has exposed the vast differences in opinion between the left and right of the Labor Party. As I have said, there have been attempts in good faith by our negotiator to negotiate a responsible position in relation to equal opportunity. I would also like to echo the words of the Hon. Robert Lawson in that this is an aspirational piece of legislation. I think it is unrealistic to expect that every instance of discrimination could possibly be properly addressed or every grievance could ever be addressed through the Equal Opportunity Act, and it would be incorrect to attempt to enact symbolism through a piece of legislation such as this. It needs to be realistic in that advancements can be made in correcting some grievances but, ultimately, it is educating people to understand that difference is not a reason to discriminate.

To briefly recap, the Liberal Party has a firm position in relation to caring relationships. It has a position which also supports the inclusion of domestic partners and, in relation to the tribunal being constituted of a presiding member or deputy presiding member, we have an amendment which will seek to ensure that one party will not be unfairly advantaged by having legal representation without the agreement of the other party, which I understand is a key provision of the Magistrates Court operation, and there may be other areas. The Hon. Stephen Wade referred to particular amendments proposed in this regard, and I refer members to his speech in relation to those.

There are areas in which Liberal members have been provided with a conscience vote, including chosen gender, religious dress or adornment, the right of religious institutions to discriminate on the basis of sexuality, or in respect of sporting or other clubs. I indicate that I will place my position formally on those matters when we debate the substantive clauses of those provisions.

I also refer to correspondence we have received from various stakeholders: Carers SA, the Mental Illness Fellowship, the Mental Health Coalition and the Premier's Council for Women. Members who have been aware of my interest in parliamentary matters over the years would understand that I have great sympathy for the position that has been placed on the record to each of us by those groups.

It is curious that the Premier's Council for Women—an advisory body for government—has written to all members, and I ask the government whether this is the first time the Premier's Council for Women has ever written to members of parliament in relation to a bill before parliament and whether it will be an ongoing practice. The way that organisation is constituted, I did not understand that that would be part of its role.

In relation to some of the matters that will be a conscience issue for members, a couple of areas I will touch on are in relation to independent schools. I listened with interest to the Hon. Ann Bressington, who spoke passionately about her sister's situation, and I can understand that it is very personal for her. She has great concern, and that is understandable but, on balance, in relation to independent schools we must understand as a parliament that they have particular strongly-held beliefs, which have not, as the preceding speaker stated, caused undue grief in South Australia, and I think they have valid reasons for wishing to continue to have those rules. I also

agree with our preceding speaker that it was a petty provision of the government to insist that those policies be published on the internet as if to say that they should be outed and made ashamed of themselves and forced to publish those rules on the internet.

As the member for Heysen stated in another place in relation to this bill in some previous iteration, we are not requiring organisations to publish their occupational health and safety policy, so why should we do the same in relation to those aspects of it?

With those remarks, I indicate that I am broadly supportive of the bill. However, we will examine each clause, and I do have some sympathy for particular amendments that are being proposed.

The Hon. J.M. GAZZOLA (20:30): My contribution on this bill and its passage through the council will be brief. I support this bill and wish to congratulate the minister on the introduction and progress of the bill. I also endorse the comments and reflections of my colleague the Hon. Ian Hunter in his address to the amendment bill. As he observed, there has been an effort by a vocal and organised fundamentalist minority to hijack this bill on the grounds of religious vitriol and extreme prejudice.

I commend his reply to the council in noting that the strength of our system is its capacity to protect and develop understanding, tolerance and fairness—values that I have endeavoured to promote since my first Address in Reply. In closing, I thank all those people who wrote to me with their concerns on this bill.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (20:32): I thank members for their most valuable contributions to this important debate, and, certainly, I acknowledge that there are a wide range of very passionately held views in relation to these matters. A number of issues were raised during the second reading debate which I will now attempt to address.

The Hon. Mr Hood offered several criticisms of the bill, and it will take me a little time to address them. First, the Hon. Mr Hood said that the bill requires a school-aged child to be hauled before the tribunal for making a sexually offensive remark even if no complaint has been made about the behaviour. That is incorrect.

The bill deals only with the case of a student aged 16 years or older. It permits an aggrieved fellow student to complain first to the school. If, however, the school conciliation process fails to resolve the dispute, the aggrieved student may complain to the Commissioner for Equal Opportunity again. That will lead to a conciliation process, this time through the commissioner. If that also fails to resolve the matter, the aggrieved student may lodge the complaint in the tribunal. The situation is different if the complainant is a teacher at the school because, in that case, the school conciliation process need not be used and the teacher can go directly to the commission.

It is fair to say that the majority of complaints lodged with the commissioner do not lead to tribunal cases. Many are successfully conciliated; some are declined or withdrawn. Thus, although it is possible that a student aged 16 or 17 might be brought before the tribunal, it is reasonable to expect that it would be rare. If it happens, the bill provides that the child's name cannot be published and that he or she cannot be made to pay monetary compensation. Redress could take some other form, such as an apology or attendance at counselling, for example.

The honourable member implies that joking remarks in the school ground are of no consequence, but, of course, that depends very much on what is said. Harassment at school can be so serious that a child refuses to return to school or even engages in self-harm, and there is plenty of documented evidence around that.

On the subject of religious dress, the Hon. Mr Hood also said that it would be difficult for an employer under this bill to prevent a person who claims to be a Jedi from wearing Jedi robes and carrying a light sabre to work. I wonder how many members have, in fact, seen a person dressed in Jedi robes and carrying a light sabre in a workplace (or, for that matter, anywhere else) in this state. It seems that there are few South Australian Jedi who are so devout as to wish to do that.

If, however, the situation arose where a person claimed the right to wear the dress of some unusual religion, the case would turn on whether there was, indeed, such a religion and whether that person practises it and, if so, whether the employer, by asking the person not to wear the

attire, is enforcing a standard of dress reasonably required for the employment. The bill clearly permits employers to do that.

To say that employers cannot object is incorrect. I refer the member to proposed new section 85Z(5) on page 27 of the bill. What is reasonable will be a question of fact in each case. I would have thought that the Jedi problem would rarely arise, but it might well be that an employer asks a conscientious Muslim woman to remove her hijab and that she sincerely objects to doing so. In that case, the employer's request should prevail over that woman's conscience only if it is a reasonable requirement that she work without her hijab. In many jobs, the wearing of such could not reasonably present a problem to the employer, and so the woman's conscientious position should be respected.

The member had much to say about censorship and free speech. He implied that somehow the bill would forbid one calling an English friend a 'pom', for example. That quite simply is not so. This bill is not about censorship and, in general, it does not provide a remedy for unkind remarks. It is true that the sexual harassment provisions of the bill do provide a remedy for some types of offensive remarks. That remedy has existed for nearly 25 years: it is not new. All we are doing in the bill is changing the definition of 'sexual harassment' to match that used in the commonwealth law so that employers, in particular, do not have the inconvenience of working with two different definitions. How could that possibly be objectionable? I am sure the member did not mean to say that there should be a right to make sexually harassing remarks, but his criticism of the bill on this point is, in fact, hard to follow.

The Hon. Mr Hood also spoke about the provision that would require some religious schools to publish their policy against hiring workers of a particular sexuality, and he has filed amendments on this point. The government's view is that, if that is the school's conscientious belief arising from its religious faith, it ought to say so publicly. True enough, this might provoke public debate, even criticism, of the school from some groups. Is that not the very freedom of speech that the member has claimed he values so much?

I know that this has also been equated with the example of publishing one's occupational health and safety policy. There is a dramatic difference between the two. One affects the general policy pertaining to staff and students and the other could impact on the employment contract of the individual. So, if they take a job with the school not knowing that that is the policy of the school they can, in fact, be sacked and lose their employment. That is a big difference to outlining the occupational health and safety policies of a school. So, there is a very big difference between the two.

The member noted that the bill proposes to permit the Commissioner for Equal Opportunity to undertake her own investigation into a practice, even where there has been no complaint of discrimination. It is quite true that this is an important new power. At present, the commission needs the approval of both the minister and the tribunal before she can do so. This is to be contrasted with the Australian Human Rights Commission, for example, which can and does launch inquiries of its own motion. New South Wales, Western Australia, the ACT and the Northern Territory also provide comparable powers.

The member wondered why we would ever want such a power in South Australia. The answer is that, where discrimination or other unlawful acts are occurring, the victim will not always be prepared to speak up. It is not impossible, particularly where the victim fears losing his or her job, that the victim will be more inclined to waive his or her rights and let the unlawful conduct go. In such situations, there might be merit in the commissioner investigating what has happened. If it turns out that there is nothing amiss, so be it, but if the commissioner believes that the law has been broken, then the commissioner can bring a complaint before the tribunal for determination. Members should note that the commissioner herself does not decide the complaint. The tribunal would do that, just as if the complaint had been brought in the ordinary way. If there is a reason to suspect that unlawful action has occurred, why should an authority not be able to at least ask some questions?

The member thought that this power would enable the commissioner to 'determine social policy'. That is not so. The commissioner's investigation is aimed solely at discovering whether there has been a breach of the act. I refer the member to clause 67. It is parliament that sets the policy. The member asks: where is the consistency? Well, it is in the act. Whatever the views of an individual commissioner, an action either does or does not contravene the act. The tribunal will decide. It is wholly wrong to say, as the member does, that 'we will have a situation where the commissioner becomes the arbitrator of what is acceptable'.

The tribunal alone can decide these cases. However, what is the good of us legislating that, for instance, a person should not be refused lodging on the grounds of his race, if this wrong is never discovered and redressed? Suppose that a large landlord was systematically refusing to let to persons of a particular race, each of whom was individually unwilling to lodge a formal complaint. Would that not be something that could be usefully investigated and brought before the tribunal? Would we not want public scrutiny and, as the member says, open criticism of such a practice?

Finally, the member complains that the tribunal is a no cost jurisdiction. That is, ordinarily, claimants are funded by the commissioner and respondents pay their own legal fees. This is not the result of the bill. It has been the law since the act was passed in 1984. No doubt it may have been parliament's concern that, if a jurisdiction carried the cost risk of the civil courts, most complainants would be discouraged from taking the risk of a tribunal case. We would not want that because, if the complaint is well-founded, bringing it forward serves not only the individual complainant but also the public good, because it brings to light and helps to stamp out discriminatory practices in our society, making it more equal for all.

The bill proposes no change to this aspect of the law, but it does something to reduce the risk that the commissioner will be funding undeserving claims. This is achieved by creating wider powers to decline to fund a complaint. Under the bill, the commissioner need not take up a complaint if there are no reasonable prospects that the tribunal would make an order in the complainant's favour, nor need she take up a complaint if the complainant has already been made a satisfactory offer of redress. In this way, the commissioner will be directing public funds only to cases that reasonably should be brought before the tribunal. The government thinks that it is an important improvement on the present position and a fair solution.

The Hon. Mr Parnell also contributed to the debate. He noted that a number of proposals which were put forward in the 2006 version of the bill and which he supported have since been abandoned. In particular, he asked why the government has not included in this bill the formerly proposed ground of 'area of residence'. He also mentioned his disappointment that the formerly proposed ground of 'lawful occupation or trade' was not covered. He thought that people should not be treated unfavourably on these grounds. The government does not disagree, but, quite simply, the present bill represents a compromise. The government would have wished it to go further but has brought before this parliament a bill in a form that it hopes will commend itself to the majority of members. We have had to sacrifice some reforms in the hope of achieving others, for example, the protection of carers, as the member outlined.

The Hon. Ms Bressington quoted from correspondence she had received criticising the bill and responded to those criticisms. I thank her for her exposition of some of the principles of equality the bill seeks to promote. It may be helpful if I also point out that the bill does not affect the existing immunity that protects any practice of a 'body established for religious purposes' if the practice either conforms to the precepts of the religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion. I refer to section 50(1)(c). A church would clearly be a body established for religious purposes. Thus the suggestion that the bill would require churches to hire out their premises for so-called gay weddings is mischievous, to say the least, as is the suggestion that the bill would require churches to accept homosexual staff for administrative or clerical posts within the church.

The Hon. Mr Wade outlined the opposition's views on this bill, distinguishing those matters on which the Liberal Party has a position and those that are to be conscience votes. He has also foreshadowed amendments, and it is clear that we need to spend some time on the detail of the bill in the committee stage.

The Hon. Mr Winderlich spoke in support of the bill and in particular set out his views on some aspects that have proved controversial with some stakeholders. I thank him for his attention to those matters.

A number of other members have contributed to the second reading debate this evening. If they have raised issues in those speeches that I have not dealt with in these summary remarks, I am very happy to deal with them during the committee stage. I thank all honourable members for their contributions to the second reading debate.

Bill read a second time.

STATUTES AMENDMENT (VICTIMS OF CRIME) BILL

Adjourned debate on second reading.

(Continued from 5 February 2009. Page 1225.)

The Hon. S.G. WADE (20:48): I rise to speak on behalf of the opposition and indicate our support for this bill. We do have concerns with the bill, which is the reincarnation of the government's previous victims of crime bill from 2007. Members may recall the previous bill, which was laid aside due to the government's refusal to accept the amendments moved by the Hon. Mr Darley and supported by the opposition and some crossbench MPs. Some of those amendments have now been included in the government's bill but it is unfortunate the government has denied and delayed these reforms for victims because of its belligerence and refusal to accept that an idea can be a good idea, even if it is not their own. The opposition is pleased to see these reforms finally return to the parliament in this bill. We also welcome some new additions to this most recent bill.

As I said in my contribution to the previous measure, these bills continue South Australia's journey to positively engage victims in the criminal law and its processes. Victims are likely to experience the most direct and enduring impact of crime. They are particularly entitled to have the effect of crime on them recognised, and they are particularly likely to benefit from positive engagement in the process.

This bill largely contains the provisions proposed in its precursor bill. The key provision of this bill is the introduction of victim impact statements for indictable offences or summary offences which result in the death of a victim or a victim suffering total incapacity. The Liberal Party supports this measure but thinks that it could be extended further to include all offences or, at the very least, all summary offences in which a victim suffers serious injury.

Secondly, as with the previous bill, the current bill provides that the victim can have an appropriate representative read their victim impact statement to the court. I mentioned previously the benefits these provisions offer to South Australians with a disability, and I fully support this intention. This new bill before us slightly expands the category of people compared with the previous bill in terms of who is entitled to present the victim impact statement on behalf of the victim.

Thirdly, the bill provides for community impact statements. These community impact statements are intended to inform the sentencing court about the effects on the community of the crimes being considered by the court. The bill proposes to create two types of community impact statements: neighbourhood impact statements and social impact statements.

The government has suggested that such statements will be compiled by the Commissioner for Victims' Rights. While we support these provisions, we are keen to monitor their implementation and practice, because we would be concerned if they were to become purely pro formas.

Another provision from the previous bill is the proposal to allow indirect delivery of victim impact statements through such technology as closed-circuit television, audio or audiovisual recording. We were informed in the context of the previous bill that this amendment was suggested by the Commissioner for Victims' Rights. We support this provision to assist victims in making their impact statements, but again we are concerned about the potential for this provision to be used to discourage the personal attendance of the victims because, for many victims, that would serve to dilute the impact of a victim impact statement.

The final element carried over from the previous bill is the provision for restitution orders to compel an offender to return misappropriated property to the victim or owner. Again, this innovation was reportedly suggested by the Commissioner for Victims' Rights.

The new bill also incorporates an amendment previously proposed by the Hon. Mr Darley which proposes to allow victims to make a submission in their victim impact statement regarding the penalty given to the offender. The opposition is pleased to see this provision in the government's bill, and we will continue to support it.

A new addition to the bill is the requirement in the case of sexual offences for a court to impose a restraining order on the convicted offender and, where a court declines to do so, it must give an explanation for its reasons. We support this amendment, although we query why it is

restricted to sexual offences only. It would seem equally sensible to extend this provision to other offences such as violent offences.

I understand, from comments made by the Attorney-General in another place, that he justified this restriction on the grounds that the Commissioner for Victims' Rights expressed concern that the problem being addressed lay with sexual offences and that other offences are adequately covered by other provisions. The Attorney-General indicated that the government may well expand these provisions if they prove successful in relation to sexual offences.

The final amendment I wish to address is one with which the opposition takes issue. This is the amendment giving the Commissioner for Victims' Rights a blanket exemption from the freedom of information laws. Whilst we certainly understand that there will be many documents which should be exempt from release under freedom of information, particularly to protect the privacy of victims, we are very hesitant to provide a blanket exemption.

The very purpose of freedom of information legislation is to ensure that operations of the government and statutory authorities are transparent to the parliament and the community, and providing an authority with a blanket exemption is not something which the parliament should do lightly. Any statutory authority will be naturally cautious and, therefore, unlikely to release any document to the public if given a blanket exemption. This is not a reflection on the current commissioner or future commissioners or an expression of distrust but rather a concern that we need to maintain the integrity of our freedom of information laws. The opposition does not consider this amendment appropriate and we will not be supporting this section.

In closing, I highlight again our disappointment in the delay caused by the government's stubborn refusal to accept the amendments to the previous bill, which refusal has denied and delayed these rights to victims for some time now. We support this bill and look forward to its passage and to the provision of these rights to victims and the community.

The Hon. M. PARNELL (20:55): The Greens will be supporting this bill as we have supported previous victims of crime bills. It is a disturbing habit of the Attorney-General to go on talkback radio and say that the Greens do not support victims of crime, yet the voting record of this place clearly shows that we do. Victims have an important role to play in the sentencing process to make sure that our judges are aware of all the circumstances of crime and its effects on victims of crime.

I have one concern with this bill. As it happens, it is the same concern the Hon. Stephen Wade has just referred to, that is, clause 13 of the bill, which provides a blanket exemption from freedom of information laws for the Commissioner for Victims' Rights. I will take some responsibility for this clause being in the bill, because I think I am possibly the only person who has lodged a recent freedom of information application with the Commissioner for Victims' Rights.

That freedom of information request resulted in a number of documents, which in turn resulted in an *Advertiser* newspaper article, which pointed out that, according to our Commissioner for Victims' Rights, there needs to be a better complaints procedure for people engaged in the justice system, including a method of dealing with judges who fall asleep. The commissioner was referring to the fact that, under our present regime, judges tend to sit in judgment on other judges. He was making a submission to a federal government law reform inquiry.

That type of document held by the commissioner—a submission made to a law reform inquiry—is absolutely the sort of document we should be entitled to access under freedom of information laws. My original thought was that we would simply object to clause 13, and that is the clause which basically provides a blanket exemption for all documents held by the commissioner.

Having given the matter some more consideration, however, I can see that there are some documents that are held by the commissioner that would be inappropriate to release. The question for us, then, is: do we rely on other provisions of the Freedom of Information Act that deal with the sensitivity of particular documents, or do we try to amend clause 13 to provide for only a limited exemption for the agency?

That is a matter on which I will now seek to have further discussions with Liberal members of this place, because it seems we are of a single mind as to the inappropriateness of a blanket prohibition. However, that is the only clause in the bill that causes me any concern. I support the second reading, and I look forward to supporting an amended bill when it comes back to us later.

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

PUBLIC SECTOR BILL

Adjourned debate on second reading.

(Continued from 18 February 2009. Page 1357.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (20:59): I rise to speak to the Public Sector Bill, which was received from the House of Assembly and which has had some significant debate, in both the parliament and the media. In starting my comments, I would like to address the history of our public sector, not particularly this piece of legislation, and I will make just a few comments in relation to the public sector.

The public sector is based on a quality of service delivery that is independent of private motives or prejudices of individuals or the organisation delivering the service. It is about social justice, social equity, community responsibility and democratic accountability. Yet, the distinction between the public and private sectors has become blurred in recent years, and the essence of this bill is the removal of powers from the independent commissioner with the final say going to the Premier.

The public sector has played a key role in our economic and social development over the past 150 years. Soon after the state achieved self-government, the public sector was a major driver of economic and social development. Infrastructure projects financed with the issue of government bonds attracted considerable support from British investors and, by the end of the 19th century, the public sector share of total investment had grown to about £11.3 million, exceeding the total private investment of about £8.7 million.

The opportunities through partnership between the state government and South Australians were extensive. Australia's first government-owned railway was completed in South Australia in 1856 to support the movement of goods between Adelaide and Port Adelaide. By 1860, the railway had been extended to Gawler and Kapunda.

At this time, the South Australian rail department was a major public employer with more than 3,500 employees by 1906. During the 1870s, the government extended the rail and telegraph linkages completing the 2,600 kilometre overland telegraph from Adelaide to Darwin in 1873 and the 1,200 kilometre link between Port Augusta and Eucla in 1876.

The government has built strong institutions by investing public funds and developing a highly skilled public sector. The Playford government's industrialisation of South Australia was driven by efforts to promote and attract new investment. The Housing Trust played a key role in underpinning the new industrial development, providing some 66,000 relatively cheap houses for workers and assisting in the construction of some 50 factories by 1965.

The public sector allows unpoliticised decisions to be made, and this bill that the government proposes risks changing that. Selfless determination is needed to further develop the state, and that is not the intent of this bill. South Australia's best interests will not be realised without political neutrality within our public sector.

Having been a small business operator in my former life before coming to parliament, in very small terms but having had some 30 employees at various times, I know that the success or failure of our particular business certainly hinged on the leadership that the managers or the owner—in fact, it was me a lot of the time—showed and the morale that you actually build within your team.

I do not believe that it is any different in a modern public service: it is about leadership. It is about the leadership of our parliament, the government of the day, the premier and his or her ministers and, likewise, also, the members of the parliament whether it is the opposition members or members on the crossbenches. We show leadership and, if you like, we actually build the morale with a respect for the Public Service that it deserves.

Notwithstanding that, occasionally we may have some personal issues not with a state public sector person but somebody from the tax office wanting to speak to us or a police officer issuing a speeding notice or some other compliance issue which, at the time, we find frustrating and very annoying, but it is really not the fault of the person delivering that bad news.

It is actually about those of us in this place who make the rules and make the laws. We should never hold accountable the people who deliver those messages to us. In fact, we in here, perhaps, are the ones who should be held accountable. A modern public service is really about a partnership between the community and delivering services, those of us in here who are the

lawmakers and, of course, the Public Service that delivers the policies of the government of the day without fear or favour.

I think it is important to recognise the contribution made by the Public Service. Interestingly, the figures I received today show that some 79,000 full-time equivalent employees are working in the public sector, and I think there are about 98,000 additional workers. If you look at the total employment numbers for our state—and some of these figures have been quoted by the member for Goyder, Steven Griffiths, the shadow minister in the other place who has carriage of this legislation—you see that some 780,000 people are employed in South Australia and that the public sector employs a significant number of people, without whom our state would certainly cease to function.

As I said earlier, it is about building morale and showing leadership to the community, and there needs to be some form of mutual respect between those of us who make the rules and the public sector, which applies the rules or provides the services to members of the community. Having been a member of a rural and regional community, although not a particularly remote one, I believe that public sector employees play a very important role in our regional communities, no matter how they are employed, because they often remain within those communities for long periods of time often in very secure employment. That then affords them time to become involved with community organisations, whether it be sporting clubs or other volunteer organisations, and they certainly provide a strong base to a lot of regional communities.

In the past 12 months or so, we have seen, with the government's shared services initiative, a range of positions being removed from our rural and regional communities, which not only has impacted the individuals who have lost those jobs but also there is the flow-on effect on those rural communities. Often you will find that the partner and the family of the person who has lost their employment are put under pressure, and sometimes they have to leave those communities. Of course, once they leave those communities, fewer children are enrolled in the schools, which means that services are withdrawn from the schools, and so it flows on through the community into areas, such as health care, dental services and a whole range of services. It not only has an impact on regional and rural communities in terms of the number of services members of the Public Service provide in a volunteer capacity but it also has an effect on the community when those people have to leave the community.

Unfortunately, I think that in the past we have not respected a lot of the people employed in the public sector in rural areas in relation to benefits that we might have provided to them. I know the shadow minister for police has referred to the provision of police housing and to benefits and packages designed to attract police officers to regional and remote areas, and it is an issue that is constantly being raised with me. Again, I think that is part of the respect that can be shown for the services they deliver.

I intend to make a range of general comments about the legislation, and I indicate that the opposition has a number of amendments on file. We are also aware that the government and I think the Hon. Ann Bressington have some amendments on file, and I suspect the Family First Party will also have some amendments at some stage. I will make some general comments about the bill relating to particular areas of interest to the opposition, and then I will be making a much more detailed contribution in relation to our amendments and other proposed amendments as we journey through the debate.

It is interesting to note that this bill was put out for consultation, with an issues or position paper being released some time late in November 2007, and then, finally, I think it was open for public consultation until January 2008.

It is interesting that it then takes almost 12 months for the government to come to the parliament with a bill—which I think was in November last year. I think it was tabled just as the parliament got up for the summer break. I think it is on the PSA's website. Traditionally, the minister has a particularly good relationship—and a sense of wanting to consult—with the major sector that any legislation affects. I have been advised that Ms Jan McMahon has met with the minister (the Hon. J. Weatherill) only once on this bill, and that was about a week ago. This is a key piece of legislation, and the government has been determined to see it through the parliament. One would think that the minister would work more closely than he has with the key stakeholders. I have copies of letters and correspondence in relation to the meeting they had last week, and I may refer to some of that during the committee stage of the bill.

It really does surprise me that it took that long for the minister to speak to the PSA. In particular, within this piece of legislation, the opposition is broadly supportive of a range of measures mentioned in the legislation but, in some areas, we think they have gone a little too far. I will certainly talk about some of those issues as we continue this discussion.

I would like to talk briefly about the election policy. The election policy of the opposition at the last election was a reduction of some 4,000 members of the public sector through attrition. There were not going to be any sackings or terminations: it was just going to be through attrition. Naturally, during that time, we had a very poor election result, and I am sure that that policy was certainly one of the areas on which we were harshly judged. The government of the day—Premier Rann, Treasurer Foley, and others—was quite critical of that policy and, in fact, it ridiculed the opposition after the election because of it.

It is interesting to look at some figures; they confuse me somewhat. Since 2002, according to the Commissioner for Public Employment, the numbers have increased by some 17,000 positions. I find that a little hard to understand, and I think Steven Griffiths made some similar comments. This is not directed at the people who have put their hand up, applied for a job vacancy and won that position. I am not directing these comments at them. If one looks at the budget figures over the past seven years provided by Treasury and the Treasurer, we think the estimate is that somewhere around 3,000 extra public servants were to be employed.

I do not want the minister to hide behind cabinet confidentiality, cabinet documents and cabinet secrecy. One of the questions I want to ask the minister is: if you have a budget that you present to the parliament saying that, over a period of time—let's say seven budgets—you are going to increase the public sector by 3,000 and it actually increases by 17,000, how does that happen? What the minister has done now is put a whole range of people in work, and he did not intend to give them a job.

As I have said, this is certainly not directed at those people who have answered a job advertisement, gone through the interview process and won a job. I am sure they are working extremely hard and diligently in the best interests of the state. However, it interests me to know how this can happen, and I would like the minister to address that matter when he sums up the debate. A budget is tabled every year, and we know that revenue changes and expenses change, and you would assume that there would be some fluctuations in employment. Things happen and there are certain demands, promises or commitments made, like the extra 400 police, although we know that the government will not deliver the 400 police before the next election.

I would like the minister to answer: how does it happen that 14,000 extra positions have been filled? It is interesting that members of the government, and backbenchers in particular, have expressed concerns to me (privately) that they cannot understand how that can happen.

Last year, after the mid-year budget review, the Treasurer announced that there would be 1,600 reductions in positions over the forward estimates. When you look at that you think: this is a party that attacked the opposition for daring to talk about reductions over a period of time by natural attrition, but you have to look at the circumstances now—the pressure, the uncertainty and the stress, if you like, that that puts on the public sector.

We are now in a shrinking job market. We have had booming times—indeed, possibly the best economic times this country has ever seen. Certainly in the post-wartime it is about as good as we have ever seen, but we are now entering a shrinking job market and we have growing unemployment. You then find—when there is a threat or a plan or policy to reduce Public Service numbers—that there are not the jobs out there for them to go to.

We then see the good hardworking families of South Australia coming under that pressure. We also know that if, for instance, one of the breadwinners in a family loses their job, financial hardship is one of the major causes, if not the major cause, of relationship breakdown in our community. So, it is in a very difficult economic time that we are seeing a government policy of reducing the number of those positions, and it is really quite stressful.

There are some questions that I hope the minister and the government have the courage to answer. How did they let the public sector grow as much as it did during those buoyant economic times when there was a very robust job market and there was an opportunity for people to seek employment elsewhere in our community? How did they allow that to happen? Now, of course, we find that with this bill they wish to remove tenure. We have a shrinking job market and therefore a much more difficult environment for anybody who loses their employment, whether it is in the public or private sector, to gain alternative employment.

One of the important points that the bill raises, and I think it is actually a very useful one, is to have, if you like, a more robust review capacity or a performance management system. I see that as a really important component of this legislation: to have an appraisal or performance management system, but it has to be consistent across all sectors.

I think that, for our Public Service to really deliver quality outcomes and a quality service to our state, there needs to be consistency across every agency; there cannot be different standards applying from one to another. So, I certainly see that that is an important step forward.

The bill recognises that agencies have to put in place an effective performance management system, and I think that is a really important way for any organisation—private, public or whatever—to be able to critique their performance. It may also identify areas where perhaps there is a chance that they are a little short on skills in a particular area, in a non-threatening way, and to look for ways for people to upskill themselves and to end up providing a better quality service to the community and increase their expertise. As I said, this should not be a process that is feared. The good thing is that having commonality and consistency across all sectors certainly will give our Public Service a much better chance of providing a better service to our state.

I note that one of the new principles that has been developed is the new governance arrangements that have been put in place. Certainly there has been an enhanced role for chief executive officers. Much of the authority currently held by the Commissioner for Public Employment and, indeed, the government for the hiring and firing of staff has been assigned to the Premier by delegation to the departmental executives. That might be okay if we had a perfect system where consistent rules were applied and the chief executive officers were consistent across all sectors. I think that is where this is flawed, and I will highlight some examples later in my contribution where determinations have been made about employees that really displayed a total lack of consistency from one section to another.

I also note that this bill creates the South Australian Executive Service. It is our understanding that this will involve approximately 500 staff members. It is my understanding that in the future everybody appointed to the Executive Service will be appointed on a contractual basis. This raises a couple of questions for me in relation to tenure. If they do not have tenure and it is only a contract period, it may be offered for perhaps only five years. Here in the parliament we have it with our own staff who are, if you like, four year appointments. Some of us in this chamber are more fortunate than others in that we do have an eight year term, but the staff of the House of Assembly members have only a four year tenure and are linked to the member of parliament. They have extra salary and extra benefits because of the uncertainty of employment and there is no guarantee that they will have their position after any particular election.

I would ask the minister whether there is any likelihood for people in this situation, who are on a contract, to attract a higher salary or benefit. I asked a couple of questions today in relation to two appointments that have been made to the Public Service by the minister's department (Planning SA) which, again, were one year contracts. I am sure the minister will provide the details, as he always provides details to my questions. Unfortunately, he did not provide them by the end of question time, as we had hoped he would have done, but I would like to know whether those contract positions for 12 months have a salary benefit that reflects the lack of tenure.

One of the things that is really important—and I have thought about this for some time and am very happy to see this provision in the new legislation—is to provide mobility of public sector employees across various agencies. I think that is very important. There is perhaps an old movie stereotype where a public servant has worked at the same desk, doing the same thing for all of their working life. I am sure there are people in our community who have done that and who have provided wonderful opportunities for the community and served the state very well.

However, I am told that generation Y will have 14, 15 or 16 jobs in their lifetime. I know that you, Mr President, would say that shearing, crutching and a range of things you did in your day, and what I did as a farmer—carting hay, shearing and irrigating—were different jobs, but we worked in the same industry. I envisage that generation Y will move across a range of different career opportunities and, for them to be attracted to the public sector and have the benefits of their modern education system and all the experience they will bring, we need to allow them to move around within the state.

I would like to see opportunities where they can move nationally between states, as there are real benefits for our state to have public servants, wherever they happen to work, going to another state and working in, for example, the EPA, the parks and wildlife in Victoria or with the

police. We undertake parliamentary travel to learn about new issues and initiatives. Ministers often travel and look at other parts of the world to see how things can be done better and differently. Surely, it would be a great opportunity to provide vigour and opportunities within our Public Service for a national exchange of positions because it would create much more diverse and long-term career paths. I am pleased to see that that provision exists in this legislation.

The Hon. P. Holloway interjecting:

The Hon. D.W. RIDGWAY: It is important across all walks of life, and people in the private sector often do that. They move from place to place and from employment to employment. This is a great opportunity not only for the personal development of the individuals, raising their skill levels and being able to win higher positions, but also because there is a benefit for our state. We have had the brain drain and expertise leaving.

Most members know that I now have only two school-aged children; until recently I had three. Many parents I bump into are professional people who have worked interstate but who have come back to Adelaide to bring up their family as it is a smaller city, it is easier to get around and their parents are here to offer some support. If you have the ability to transfer from state to state, it would be a real benefit to the public sector, to individuals and to our state as a whole. It is an important component of the legislation.

One issue that jumped out at me was that the bill does not refer to a reduction or expansion of the Public Service but provides the opportunity to remove an excess. I am interested in the word 'excess'. I am intrigued, as it comes back to my previous comments on the Commissioner for Public Employment's figures of 17,000 positions that have grown under this government. If the minister is not able to provide an answer as to why they have exceeded their budget by approximately 14,000 positions and, if they have not exceeded the budget, I assume that there is no excess and that the public sector is what the government intended to have.

So, there should not be any need to have a provision in a bill to remove excess if the government intended to increase the public sector by the 17,000 positions the commissioner claims it has. I come back to the best of economic times we have gone through. That was when the government should not have let the public sector grow as much is it did because there was an abundance of jobs in the community, there were difficulties with skills and we had regional status for migrants to come in to help bolster our industries. I am just reminded of a comment someone made to me recently about the Labor Party's three mines policy for uranium mining that has recently been overturned by the ALP, and, in particular—

The Hon. P. Holloway interjecting:

The Hon. D.W. RIDGWAY: 'And no new mines', the minister interjects. Also, of course, there is the Premier's opposition to the Roxby Downs mine in the first place, Olympic Dam. What was put to me is that South Australia—and the Minister for Mineral Resources Development will know this—is regarded as being highly prospective for uranium. In fact, Western Mining was looking for copper at Olympic Dam. In the end, it was a bit of a pain in the neck that it had so much uranium in it because it was looking for copper.

All of South Australia is looked upon as being an area of rich resources but you will probably always get uranium. We have seen it with Prominent Hill—there is copper and some uranium. Roxby Downs has copper, silver, gold and uranium. In terms of this ALP policy of no new mines, all explorers have basically said, 'Well, we'd better not go looking in South Australia because there is a fair chance we'll find some uranium and we can't mine that.' That policy has been in place for a significant period of time. It has been put to me that South Australia is 20 years behind where it would have been if that policy had not been in place.

The Hon. P. Holloway interjecting:

The Hon. D.W. RIDGWAY: The minister interjects that we have been ahead of the other states for the past three years, but we have been playing catch-up. I went to a family wedding in Perth in 1982. Adelaide and Perth were roughly similar cities. You look at the two cities today and tell me that they are still roughly the same. In fact, Western Australia electrified its rail network in the early 1990s—you lot are still talking about it! I suspect that, with where the economy has gone, it will be pushed out further; and, if you look, it is because the government's no new mines policy has stifled exploration. People know that there is a very good chance of finding uranium and they would not be allowed to mine it.

The point I am trying to make is that this indicates how we could have had better economic times over a much longer period and maybe our economy would have been in much better shape. Now, of course, we have this excess the government claims we have, and the nature of the bill allows removal of an excess. We have absolute silence from the government on the 17,000 extra positions, yet it budgeted on only 3,000. I am a little intrigued with that removal of excess. Of course, we all know the grief, stress and all the other issues that are potentially hanging over people's heads because they are now excess or surplus to requirements; and, again, all the pressure that will emanate from the threat of losing their positions.

One issue raised in the bill is consideration of the involvement of the Industrial Relations Commission. I know that Steven Griffiths indicated that, and certainly it is an amendment we will move. We will propose that the provisions of the Public Sector Management Act 1995 be returned to this bill because we think that the collective use of the existing process has worked quite well. We will certainly be keen to see that reinstated. I guess that, when it was introduced in November, the biggest component of concern in this legislation was the issue of tenure. Clause 53 provides:

> A public sector agency may terminate the employment of an employee of the agency on any of the following grounds:
>
> (a) an employee is excess to the requirements of the agency;
>
> (b) the employee's physical or mental incapacity to perform his or her duties satisfactory;
>
> (c) the employee's unsatisfactory performance of his or her duties;
>
> (d) the employee's misconduct;
>
> (e) the employee's lack of essential qualification for performing his or her duties;

With respect to paragraph (e), I asked the minister today in question time for the job and person specifications for the positions I outlined, and I would like to know what the qualifications for those two appointments were. We do not know whether there was a set of performance duties or job and person specifications against which the people who were given those positions were judged. So, potentially, we have one set of rules applying to some people and another set of rules applying to others. The final paragraph states:

> (f) any other ground prescribed by regulation.

We thank the minister for providing the residential code, which was by way of regulation. However, this government has, if you like, some form on leaving a lot of detail to regulation and the parliament really not being able to scrutinise that, and that is a matter of some concern. I think the minister realised that he needed to provide the residential code to give us some comfort. Notwithstanding the fact that the opposition would support the implementation of a residential code, it was useful to see the code—although version 10 or 11, I think, was tabled with the bill towards the end of the committee stage and we now have yet another version, albeit with some minor amendments and changes, as the residential code.

So, these regulations have gone through quite an evolutionary process, and it certainly concerns the opposition that a reason for termination can be 'any other ground prescribed by regulation'. I also note that in the regulations there is a code of conduct that will be used in this whole process. That also concerns us, and I will address that matter a little later.

Clause 53, I think, is causing some concern in the community. I know that there is an opportunity within the process proposed by the government, but we are certainly proposing some amendments, because there is not an opportunity for a proper review of this clause. We note that the review provisions proposed by the government are included in the bill, but our concern is that the process will be quite time intensive and could take far longer than might otherwise be needed. If someone's employment were terminated on the grounds of clause 53, that person could lodge a request for a review to be undertaken and go through the process available under the bill. However, that would take some time and would therefore put that person under some enormous pressure, especially in this time of global financial crisis. There is no doubt about that.

The preservation of one's employment is going to be their primary focus through these difficult economic times. Indeed, the next few years will be very difficult for all of us. Under this legislation, a person can suddenly have their employment in the public sector taken away because a senior person has made a decision.

Some information has been provided to me containing examples which I think highlight the issue that I raised previously about consistency across agencies with respect to chief executive

officers. I will cite the following examples. An employee was suspended without pay pending a disciplinary inquiry regarding a complaint from a client. The female client had made a complaint of a sexual nature which caused the employee anxiety and depression. The employer then took the opportunity of instigating the section 51 process of the current PSM Act (physical and mental incapacity) and his employment was terminated due to the way in which his matter had been inappropriately dealt with and investigated. The employee sought legal assistance and the matter was appealed to the Supreme Court and the employee was reinstated. This demonstrates how inappropriate action in resolving issues can lead to unfair and discriminatory results. Under the new powers, this could well become more prevalent.

In the second example, an employee was threatened with section 51 (physical and mental incapacity) due to absences resulting from a work injury. He had no history of performance issues; however, he was told that he was not performing because he was not at work. He was under medical direction; that is, a certificate that he was unfit for work and undergoing treatment. The employee was open and honest with the employer. The employer was more interested in termination than assistance. There was absolutely no necessity to pursue section 51 as it did not apply. The agency withdrew the action once the PSA threatened an equal opportunity commission action under disability discrimination. The section 51 was then withdrawn. Members can see a couple of examples of inconsistencies.

I will refer to two more cases. An employee allegedly called a director—and pardon me for this unparliamentary language—an 'arse licker' in front of a manager who was offended by the comment.

The Hon. P. Holloway interjecting:

The Hon. D.W. RIDGWAY: I do understand that it is very unparliamentary but I think it is important in the context of the debate. This was said by an employee who had never used foul language in the workplace—and this was supported by numerous witnesses who gave evidence at his hearing—but was said in frustration at the utter waste of public moneys by the department which the employee felt could have been avoided.

It is a well-known fact that worse language had been used by other senior managers and in front of anyone, whereas this was only said in front of one person, a work colleague. No member of the public was anywhere in the vicinity. The employee also sent an email to the said director advising him that he had lost confidence in his leadership. The employee was suspended over three months—full disciplinary action. No-one else heard the comment. No mediation or conciliation was considered. Notice of intent to pursue a disciplinary inquiry was delivered on Christmas eve. The matter was attended to by the tribunal. The suspension was revoked and the employee returned to work.

I will give one final example to illustrate the inconsistencies that can occur between chief executive officers. An employee lost a family member in a car accident overseas. The employee had to travel overseas to identify the body, wait for the coroner's report and then fly home with the body for funeral arrangements. The general manager provided only three days special leave with pay. The employee ought to have been provided with 15 days special leave with pay. Other members of the family who worked within government were provided with the 15 days. The general manager then approved a further four days, giving a total of seven days. However, the general manager informed the grieving employee that any further amounts would not be provided because the member had to put in a grievance and fight the issue.

That example demonstrates the difficulties with allowing chief executive officers to terminate people's employment. There are inconsistencies across the Public Service, and there are a range of other examples. The examples given clearly indicate the flaws in this system. One suggestion is that the Commissioner for Public Employment has an important role to play. A decision can be made by a senior manager or a CEO of a department to terminate an arrangement on whatever grounds are included in the clause but, if it has to go to the Commissioner for Public Employment, it creates an opportunity for a review and a decision to be made in the fullness of time, taking into account all the required information, which allows not only the department but also the employee to see an outcome that everyone can appreciate and understand.

It is interesting to note that clauses 60 and 61 deal with the review of employment decisions and the creation of a proposed public sector review commission, which we understand—and the minister might like to clarify—is made up of one single commissioner. It is the opposition's view that we should not have a single commissioner but that we should have a tribunal potentially

made up of three people. We believe that, rather than having just one person, we should have a group of three, and probably people with various expertise. It could include the presiding officer, someone from within an agency and maybe a PSA representative as well. It would certainly bring a better and more balanced approach to the issues.

We note that the code of conduct in clause 14 relates to the public sector code of conduct. Unless you can see a code of conduct, you are never quite certain what is in it. I would certainly like to see what the government is suggesting in its code of conduct, because, again, this government has had some form on hiding behind the fact that something is in regulation or yet to be developed and saying, 'Trust us, we will deal with it after the bill gets through the parliament.' I think this is a significantly important component of this legislation and we should see that before the parliament.

In particular in regard to the code of conduct in relation to public service members' activities, I know Steven Griffiths gave an example of someone who might have a particular interest, say, in the disability sector. We have seen that here, where we have had someone providing care for an immediate family member or friend and the carer attends a rally—we have had them here on the steps of parliament and have had meetings and gatherings in Old Parliament House, and elsewhere. Their attendance and participation may affect their employment purely because they want to stick up for and represent the family member or friend. Certainly, I think that needs some exploration, and we will do that further in the committee stage.

It seems very unfair to the opposition that someone cannot participate in an advocacy way in an area where they have had a longstanding commitment, whether in the disability or volunteer sector. If it is in the code of conduct and they breach the code of conduct they should not be subject to termination because of that. I think that undermines democracy in this state. People should be able to speak freely, provided they are not undermining the agency for which they work and it is some area with which they have had a connection—not necessarily a longstanding connection. Someone may tragically have someone with a disability for a relatively short period of time, so it might be something that grows over time.

Those are some of the concerns I wanted to put on the record tonight. We have a range of amendments that we will move and, certainly, I will make some detailed contributions to those amendments. I am also aware that the Hon. Ann Bressington and Family First (probably the Hon. Dennis Hood) will speak, and I know there are some government amendments. I look forward to other honourable members' contributions and the committee stage of this bill where, hopefully, we can make some good sense of this government legislation.

The Hon. M. PARNELL (21:48): There can be no doubt that public sector workers are the lifeblood of government and administration and, in fact, government could not function without them. The Greens believe that public sector employees deserve an industrial relations system that provides for fair work practices whilst providing the community with efficient and effective service delivery. My contribution to the second reading will focus on the more contentious parts of the bill, one of which in particular may even prove to be fatal. The five issues that I want to address are: first, the question of the right of chief executives to hire and fire; secondly, the rights of public sector employees to engage in community activity outside their work responsibilities; thirdly, the right of public sector workers to choose who can represent them in industrial matters; fourthly, the role of the Commissioner for Public Employment in investigating matters; and, fifthly, some remarks in relation to the grievance review commission.

I will deal with the most contentious issue first, that is, the question of hiring and firing. The government has made it very clear that it is not prepared to move on the question of giving chief executives the power to hire and fire. From all the communications I have had with unions and government representatives, this is probably the single most contentious part of the bill.

I believe that the decision to terminate employment is a very serious one, and it should be surrounded by sufficient checks and balances to ensure that it is not exercised capriciously. I do not support the unfettered right of chief executives to fire staff. At present, it is the Commissioner for Public Employment who has that right, but the government is proposing that it be the chief executive of the agency.

The Liberals have an amendment on file that provides that the commissioner should remain the ultimate decision maker. Under the Liberal proposal, as I understand it, the dismissal proceedings would be initiated by the chief executive but the commissioner would make the final

decision. My view is that the firing decision should be based on more than just the judgment of the chief executive.

Another option the government may want to consider is a model whereby the chief executive remains the formal decision maker for termination; however, the chief executive could be required to obtain the concurrence of the commissioner. That model is used in other areas of government. For example, under the development control regime, some types of decisions cannot be made without the concurrence of another agency; for example, local councils cannot approve subdivisions without the concurrence of the Development Assessment Commission.

I offer that as a suggestion to government. It would seem to me that it would satisfy the demands of unions that we not have unfettered chief executive control, but you could leave the decision in the hands of the chief executive, subject to balances. Whether the government decides to move at all on this question, I think, could well determine the fate of this bill. The Greens' position is that we want more checks and balances than are currently in the government's bill.

The second issue is in relation to public sector workers and community engagement. The bill proposes a code of conduct for public sector workers, and I think it is most important that both the bill that we are discussing and the code of conduct recognise that when we, as a community, buy the labour of public sector employees, we do not buy their souls. We are buying their labour for specific purposes.

Public sector workers are no different from anyone else in the community; they have passions and interests that extend beyond the workplace and they have civil and constitutional rights to engage in public activity and debate in their own time. In fact, my view is that we should be doing much more to encourage public sector employees to use these skills in the community.

Certainly, they can do this in their own time, but I think there is also a good case for enabling public sector employees to be entitled to volunteering leave so that they can engage in worthwhile community activities in work time in much the same way as we support and encourage CFS and SES volunteers to engage in community work, and we do not dock their pay when they do so, when they are away from their normal jobs fighting fires or helping with emergencies.

However, that is a matter for another day. The question for us in this bill is: what barriers, if any, should be in the way of public sector employees engaging in community or political activities outside the workplace?

As a lawyer, I had some experience in advising people in this area. Probably the worst case that I came across was that of a public employee who was called into the boss's office and told that, unless he resigned his position as chair of a community group, he would lose his public sector job. The pressure for that move came from a big business client of that public sector agency who could see that this person in their private life was a thorn in their side and sought a way to silence him by going to his boss and trying to have him effectively disciplined.

The Law Society, in its submission to the original bill back in January 2008, addressed this issue in the following terms:

> It is accepted that public employment must carry with it some diminution in the freedom to engage in political activities and some restriction on the disclosure of information gained in the course of public employment. However a strong case can be made in favour of ensuring that the severity and degree of such restrictions should vary with the seniority and relevance of the particular employment involvement. Thus the further removed an employee is from a matter of political significance and the more junior the status of the employee, the greater should be the freedom that is given to such an employee.

It states that it appears that that is the position in the United Kingdom. I am not sure I agree entirely with the Law Society's approach, but, nevertheless, the two factors it refers to—the seniority of the person and the level of connectedness between their day job, if you like, and their community activities—are relevant considerations.

The present situation under the Public Sector Management Act appears at first blush to be quite draconian. Basically, section 57 provides that an employee is liable to disciplinary action if the employee 'except as authorised under the regulations...comments on any matter affecting the public service or the business of the public service'. At first blush it would appear that any comment by any public servant on any matter of government gives rise to disciplinary action.

The harshness of that provision is softened when you consider the regulations under the act. As I understand it, it is the government's intention to bring, if not verbatim, certainly the intent of those regulations into the bill as a government amendment. Those provisions are complex in

their wording, but they are certainly an improvement on the current situation in that they elevate those regulations into the act.

The main provision in the government's amendment is that the public sector code of conduct will be taken to allow a public sector employee to engage, in a private capacity, in conduct intended to influence public opinion or promote an outcome in relation to an issue of public interest. That is the main principle, and then there is a list of exceptions.

One of the exceptions provides 'except if it is reasonably foreseeable that the conduct may prejudice the government or a public sector agency in the conduct of its policies, taking into account the role or a previous role of the employee and the nature and circumstances of the conduct'. That is a convoluted provision.

The amendment foreshadowed by the government is based on the premise that it is appropriate for public sector employees to engage, provided it is in a private capacity and provided it is conduct that is intended to influence public opinion or promote an outcome in relation to an issue of the public interest. That definition is reasonable. It is very similar in many ways to the definition I have for public participation in my Protection of Public Participation Bill, which I look forward to bringing back for a third time perhaps later this year. However, the wording of the exception gives me some concern.

Under that model, a public sector employee is not free to engage in conduct if it might 'prejudice the government or a public sector agency in the conduct of its policies, taking into account the role or a previous role of the employee and the nature and circumstances of the conduct'.

Presumably, what the government had in mind is similar to what the Law Society was proposing; namely, that if a person is engaging privately in an area outside their employment they should be free to do so, especially if they are, for example, below the top rung of the Public Service. However, I am not sure that that is, in fact, the outcome of that provision.

I invite the minister, perhaps in the closing of the second reading, or otherwise in committee, to explain exactly what is meant by that amendment. It seems to me that many campaigns are deliberately designed to prejudice the government in that what we often want in community campaigns is to get the government to change its mind. If that is regarded as prejudicing the government, I think this exception to the free speech rule, if I can refer to it as such, it is probably not the way to go. However, I note that the Liberals have also filed an amendment on this matter. The Liberal amendment is simpler.

The Hon. D.W. Ridgway interjecting:

The Hon. M. PARNELL: I didn't say 'better'; I said it was simpler. We will come to whether it is better or not later. The Liberal amendment provides that the code of conduct may not restrict participation by public sector employees in community activities unrelated to their employment except so as to ensure that public sector employees conduct themselves in public in a manner that will not reflect adversely on the public sector.

As I say, that is simpler. My position for now, at the second reading stage, is that I will support whichever of these amendments provides the greatest freedom for public sector employees to engage in public debate and other activities without risking disciplinary action. I look forward to the committee stage on that point.

The third issue that I want to deal with is the question of who represents public sector employees and who should be recognised as genuine representatives. Again, the Liberals have foreshadowed a number of amendments. I think they are amendments 1 and 2 as filed, and I will say at the outset that the Greens do not support those amendments. They undermine the principle of freedom of association by providing that the Commissioner for Public Employment can choose which unions to recognise based on whether he or she is of the opinion that the union represents a significant number of public sector employees.

In my view, that would make it very difficult for a number of unions, including the Health Services Union of Australia and the Association of Professional Engineers, Scientists and Managers, Australia from being recognised under this regime. For example, when it comes to public sector employees in the health sector, I am informed that the Health Services Union membership includes some 580 publicly employed health professionals.

My view is that it is inappropriate for the commissioner to decide who should represent workers. It should be up to individual workers to decide which union they want to join and, therefore, which union they want to represent them. Choosing the appropriate union would be on the basis of the worker's field of work, the benefits, the advocacy services that are offered by the various unions and other such factors. I do not believe that the playing field should be skewed and competition between unions lessened by a legislative provision that rules out certain unions from important negotiations around public sector work conditions.

The fourth point that I want to raise relates to the role of the commissioner. I do support provisions that allow the commissioner to investigate matters on his or her own initiative. I think that is an important provision, and I note that it is consistent with the position that the government has taken in other legislation such as the equal opportunity legislation that is currently before us.

The arguments that were put forward by the government in that case for allowing the Commissioner for Equal Opportunity to proactively investigate matters also apply here, for example, when investigating cases where vulnerable people might be involved who will not or do not complain because of fear of discrimination. Those reasons apply equally in this situation, or perhaps even more when we are in a climate where unemployment is likely to get worse before it improves.

The fifth and final point that I want to raise relates to the grievance review commission. I have concerns in relation to that commission that are similar to concerns that I have in other areas of government where we have effectively quasi-judicial functions being performed by people who are appointed by the Governor and can be, effectively, dismissed by non-renewal of contract on the basis of their performance.

For example, the government's bill, I think, provides that members of the commission can be appointed for up to five years. They might be appointed for one year and if, at the end of that year, the government does a tally and works out how often that person came down on the side of the worker and how often they came down on the side of the boss, if you like, and the government decides that someone was too soft on workers, then they would simply not have their contract renewed. They would have no right to have that decision reviewed, and they have no right to any explanation as to why their contract was not renewed. So, what I am looking for is some way through that which provides for not just merit based appointment, which I think is the subject of another Liberal amendment, but also some greater security of tenure, other than the whim of the government of the day.

In conclusion, I look forward to the committee stage. I urge the government to engage more fully in discussion with key stakeholders, in particular, the union representatives. I think we have an opportunity here to ensure that our laws can be made fairer, yet provide a very sound framework for an efficient and effective Public Service.

The Hon. J.A. DARLEY (22:06): I rise to support the second reading of the bill. I think that reform in the public sector is long overdue. Having worked in the Public Service for 39 years, I have experienced first hand how difficult staff management and evaluation can be, and I have seen how the bureaucratic processes that have been in place for many years stymie the proper and efficient administration of government departments.

I commend the government on implementing whole of government objectives, as outlined in clause 9 of the bill. I hope this will ensure that, when the government sets a particular agenda, it is adopted in all relevant government departments and that we do not have the situation where departments are ignorant or unwilling to work towards a common goal.

In my time in the Public Service, it was quite evident that, notwithstanding the government's setting particular objectives, some CEOs went out of their way not to cooperate with other government departments. I am sorry to say that, in the short time I have been in this place, I have seen exactly the same behaviour from some departmental executives, in particular, in the Department for Transport, Energy and Infrastructure.

In principle, I am also supportive of the new power of the CEO to terminate employment. I believe that the Commissioner for Public Employment has a role to play, so I look forward to the committee stage and to hearing the debate on the opposition's amendment in relation to this point.

I remember when I was the CEO of the Lands Department and State Services Department that we had staff members who were not performing and, in fact, who were quite unproductive, yet they could not be dismissed and we had to find work for them to do in our department. This

hampered the efficiency of the department as a whole and was particularly disruptive for other members of staff who were doing a good job. I once told a particular employee to sit in the corridor and do nothing; at least that would be a positive contribution. I note the new power under clause 8 which enables the Premier to transfer employees within the public sector. This will provide much greater flexibility and opportunities within the public sector workforce.

I was concerned that the provisions outlining performance reviews of chief executives would be ineffective, as they have been in the past. I am grateful to the ministerial and departmental staff who have provided me with a comprehensive document outlining the guidelines for the chief executive performance appraisal process. It seems to be a thorough and rigorous process, unlike the very informal process it has been in the past. Provided the process is rigidly adhered to, this should lead to an improved performance in the future. I indicate my support for the bill, and I look forward to the committee stage.

The Hon. DAVID WINDERLICH (22:09): I understand that I am already getting a reputation for short speeches, and this will be another one. I have come to the position that, where my words do not matter very much, I will not use too many. In this case, most of the major negotiations have taken place. I think the opposition has worked well with the Public Service Association to improve this bill, and I support the majority of the amendments the opposition is putting forward, although there are two exceptions. One relates to clauses 3 and 9, which appear to entrench the rights of the Public Service Association to consultation over that of other unions with smaller memberships. The Hon. Mark Parnell outlined that situation in relation to the Health Services Union, which represents about 580 people within the public sector. I think that all legitimate industrial organisations should be consulted. This is about the basic rights of working people, and no union should have preferential treatment over another.

I am surprised that the Liberal Party—which sees itself as championing choice—has gone along with this provision. I am also inclined to support the government's amendments to clause 14, which relate to the code of conduct. I believe this gives more protection for the rights of public sector employees to engage in community and political activity and debate. I think this is very important. The importance of this was also very well outlined by the Hon. Mark Parnell.

I will conclude with a few brief remarks about hiring and firing. I am instinctively attracted to giving chief executive officers the right to hire and fire. I am inclined to devolution of authority wherever possible, so it makes sense on those grounds. The reason why I do not support it in relation to the public sector is that I observe—and it is certainly not unique to me—the increasing politicisation of the public sector. The calls for responsiveness and flexibility are, in effect, calls for responsiveness to political masters who are driven by, at best, three-year time cycles, when, in fact, much of the work of the public sector should be in terms of 20-year time cycles, whether we are talking about major infrastructure projects, major planning and development or long-term environmental projects.

So, the clash between the short-term imperatives of a responsive public sector—which I think means a politicised public sector where chief executives are responsible to ministers who have very short-term time frames—contrasted with the need for a longer term strategic perspective I think is a real problem. It is a problem that this bill has no answers to and one that I think is an institutional challenge in many ways—how we separate the longer term strategic perspective from the short-term responsive one. However, without institutional innovation, I think it becomes a recipe for more politicisation and more instability.

In conclusion, when we think about the public sector and its importance in South Australia and South Australian history, I think of the way in which, at its best, it has been the great builder of our state. I think of innovations such as Goyder's line, the timber plantations of the South-East, or Wirrabara, and things like the linear park as long-term projects that have left a legacy that lives on through the generations. That is what the public sector can do at its best and, in many ways, those sorts of things come out of individual innovation; they are not dependent on particular regulations or legislation.

So, while I see this bill as in many ways providing some advances in modernising the public sector, in the end, the particular advances that the public sector makes are dependent on the individual qualities, the individual leadership and the culture of the agencies and departments. I look forward to the committee stage. As I have said, I think that the majority of the amendments developed by the opposition in consultation with the Public Service Association have improved this bill.

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

MENTAL HEALTH BILL

Adjourned debate on second reading.

(Continued from 5 March 2009. Page 1566.)

The Hon. M. PARNELL (22:14): The Greens support this bill, which we see as a timely and important reform to mental health law in this state. At the outset, I want to put on the record that I have an indirect personal interest in the subject matter of this bill, in that my wife is a deputy president of the Guardianship Board, which is the body responsible for a number of decisions under both the present legislation and this bill.

I have received a number of submissions on this bill over the past two years, in particular from the Law Society and the Mental Health Coalition of South Australia. I would also like to acknowledge that I appreciate the two briefings that I had from government officers and a personal briefing with minister Lomax-Smith last week.

The Mental Health Coalition of South Australia advised that it welcomes this bill and supports its timely passage into law. It states that it regards the bill as a considerable improvement on the old act and, in particular, it supports the bill's potential for enabling, as opposed to enforcing, treatment and appropriate care.

The Mental Health Coalition of South Australia states that the bill reflects changes in social and health policy in line with community expectation about a more inclusive mental health system. It states that in particular the focus on the consumer and carers, as well as a philosophical aspect that acknowledges the importance of community and recovery in a person's wellbeing, is welcome.

The Mental Health Coalition, however, states that it is concerned that the bill does not deal with some other legislation that impacts on mental health and it sees this as a missed opportunity for South Australia to lead the nation in mental health reform and legislation. It was particularly concerned that in conjunction with this bill we should also have been reviewing the Guardianship and Administration Act 1993, the Criminal Law Consolidation Act 1935 and the Criminal Law Sentencing Act 1988.

One of the main shortcomings in the existing legislation that this bill goes some small way towards addressing is the lack of any cross-border arrangements to enable South Australian mental health patients to receive treatment interstate and for interstate patients to receive treatment here.

Whilst this issue has been discussed at a national level for over a decade, my understanding is that the only formal agreement that has been reached is with the Northern Territory government, and that that is particularly aimed at Aboriginal patients in the northern part of our state being able to be treated in Alice Springs.

So, my question for the minister is: where are the ministerial agreements with the other six Australian jurisdictions? Because in the absence of formal agreements with the other states, we have a situation where there is some potential abuse of cross-border transfers of mental health patients in order to remove persons with mental illness from our jurisdiction and responsibility.

On the other hand, however, it may be appropriate, in fact more appropriate, for persons to be treated interstate, especially where a person's support networks, such as their family, are interstate. So, getting these cross-border arrangements right is very important and I would like the minister to address this in her summing up or in the committee stage of the bill.

I now want to address one of the important aspects of the bill and that is community treatment orders. The bill recognises, as does the existing act that it replaces, that not every single patient needs to be detained in order to secure compliance with a treatment program. Clearly, there is a spectrum of approaches, with purely voluntary arrangements at one end of the spectrum and involuntary detention and treatment at the other end of the spectrum.

Quite properly, this bill focuses on the more coercive end of the spectrum, because that is where the law needs to create clear rules that govern the serious matter of a breach of a person's right to freedom and liberty. The bill provides that decisions must be made on the objects and guiding principles of the bill.

However, within this framework there is also the further requirement that orders should not be made unless 'there is no less restrictive means' of ensuring appropriate treatment of a person's illness.

In general, I think that is a good approach. Community treatment orders or even detention orders are not there for the convenience of the medical system or staff: they are there for the benefit of patients. However, I am not convinced that the new set of requirements that must be met before a community treatment order or even a detention order can be issued are as clear as they could be.

Under section 19 of the current act, one of the considerations in issuing an order is that the person has refused or failed or is likely to refuse or fail to undergo the treatment voluntarily. Under clause 10 of the new bill, that requirement is missing and, instead, there is the new consideration of there being 'no less restrictive means' than a community treatment order of ensuring appropriate treatment of the person's illness. That similar requirement exists under the detention order provisions of the bill, as well.

I think that the decision-maker should be required to take into consideration the likelihood of a person complying with their treatment without an order before the decision-maker makes an order. In other words, if there is every likelihood that the person will comply of their own free will, then there should not be the need for an order. I think there should be an additional test along the lines that it is more likely than not that a person will refuse or fail to undergo the treatment for the proposed period of the order.

I think that that proviso is important—the proposed period of the order—because sometimes people do comply with their treatment regime for a while and then they stop. So, that should be the test of the decision-maker: how likely are they to comply with their treatment for its duration? I have asked parliamentary counsel to come up with a form of words that directs the decision-maker's mind to this issue, with the evidentiary standard being one of the balance of probabilities rather than a higher standard of mere likelihood.

In relation to detention orders, these are at the most coercive end of the spectrum of mental health treatment, that is, the power to detain patients against their will in a psychiatric hospital in order to ensure treatment. For some patients this will be the best strategy and, in fact, the only strategy to help them to overcome their mental illness. The regime that is proposed under this bill is slightly different from the current arrangements but, at its most basic level, it is similar in that there are various periods of time for which detention orders can be made with various checks and balances at each stage of the process.

I want to refer briefly to the most recent annual report of the Guardianship Board of South Australia, because it deals at some length with the checks and balances that apply in relation to involuntary detention, that is, people detained in psychiatric hospitals against their will. The Guardianship Board's 2007-08 Annual Report at page 35 states:

> A person may challenge a decision or order to detain them. There are certain rights of appeal against detention orders made by doctors and psychiatrists to the appeals division of the Guardianship Board, which is a separate division of the Guardianship Board and only hears appeals against detention orders made by doctors.

At page 37 it further states:

> As detention to hospital clearly involves a significant incursion into a person's autonomy and self-determination, the right to challenge such detention under section 26 of the Mental Health Act, provides an important check and balance in the system. Most commonly, a detained person may argue that they do not have a mental illness, they do not require treatment in hospital or they do not pose a risk to themselves or other people.

One of the safeguards that apply in relation to people being able to appeal against their detention is their ability to access legal representation. I will quote three paragraphs from the Guardianship Board's last annual report as follows:

> As a further safeguard detained persons have a right to free legal representation in appeal hearings (under section 27 of the act). If the person has not chosen their own lawyer, a lawyer may be appointed from a panel of self-nominated lawyers who are willing to act in the appeals jurisdiction. The majority of appeal hearings involve lawyers who make submissions on behalf of their clients. Legal arguments generally relate to the technical validity of the detention forms, the reliability of evidence before the board, or relevant decisions of the Administrative Appeals Court, which are binding on the Guardianship Board.
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> The role of a legal representative in this jurisdiction is not an easy one and this is reflected in the diverse manner of representation and personal styles employed by those on the panel. Frequently, due to the nature of their illness at the time of the appeal, their clients do not have full capacity to give instructions—or to understand the implications of the instructions they are giving. Their lawyers face a dilemma about the manner and extent to which

they should put their instructions. In some cases there is risk that overzealous rhetoric—justifying or minimising psychotic symptoms such as grandiosity or paranoia for instance, may reinforce a detained person's symptoms and lack of insight into their illness. Although this may constitute robust advocacy, it is not in the interests of a person who is unwell. Similarly, while it is important to thoroughly test the evidence upon which findings of illness or risk may be based (with serious consequences for liberty and autonomy), confrontation or cross-examination of medical staff or family members is not appropriate.

In some cases the nature of the evidence is such that it is distressing for the detained person to hear about their behaviour or the views of others in minute detail. Others perceive that all evidence about them is negative, or they feel disparaged or humiliated. Aggressive cross-examination of medical staff by lawyers can serve to elicit more detail than is helpful to the detained person and may damage the therapeutic relationship. In other cases, evidence from family members or community mental health workers can serve to reinforce persecutory thinking or increase a risk to the safety of those people because of potential retaliation against them by the detained person. For many detained persons their ongoing relationships with their carers and family are crucial for their long-term welfare, well beyond a temporary stay in hospital. The balance between adequately representing their interests in the appeal hearing, and the maintenance of important relationships into the future, requires wise and sensitive handling by legal representatives.

The reason for my raising those concerns that come from the Guardianship Board's annual report is to invite the government to respond to those concerns. That is my question: how will the government address those concerns? In particular, I am interested to know what program of training the government will put in place to assist lawyers to understand the nature of the jurisdiction and to help them to advocate appropriately for their clients.

Will the government consider making appropriate professional training a prerequisite to inclusion on the self-selected legal panel in this jurisdiction? In posing these questions, I would say that I think that some level of professional development of lawyers in this jurisdiction is essential. However, it is by no means a lucrative area of practice, and there are already significant cost disincentives on lawyers to work in this field. I suggest that this professional training for lawyers should be provided at no charge. In fact, there would even be a case for our paying the lawyers on these panels at the fairly miserly Legal Aid rates to attend professional development so that they can provide the best help possible to the mentally ill in our community.

The next point I will address is the community visitor scheme. This is the subject of an amendment, which I think the Hon. Michelle Lensink has put on file. I note that it has a good deal of support in the mental health community. In fact, the Mental Health Coalition felt that the failure of bill to provide immediate transparency, through an independent tribunal and a community visitor scheme, was disappointing.

The Mental Health Coalition points out that a visitor scheme was a key recommendation in Ian Bidmeade's report into the review of mental health legislation in South Australia entitled 'Paving the Way'. As I understand it, all other jurisdictions in Australia currently have community or official visitor programs to strengthen consumer participation and ensure that services are responsive to their needs. I do not propose to outline the official or community visitor programs in all other jurisdictions, but I will point out that the Victorian scheme celebrated recently its 21st birthday, yet no such scheme operates in South Australia.

The Mental Health Coalition, as I said, is an advocate for an independent or community visitor program, and that has been its position for some time. The value of an official visitors program is that it can safeguard standards of treatment and care and can advocate for the rights and dignity of people being treated under the Mental Health Act. The way in which such a scheme would work is that the visitors would make regular visits to mental health institutions, they would talk to patients, they would inspect records and registers, they can report on the standard of facilities and services, they can liaise with staff about issues of concern and then they can report back to the minister.

I think that the time has come for such a scheme. I understand that the government is not opposed in principle to a community visitor scheme but that it desires such a scheme to be constructed with a view to its supervising more than just mental health. However, at the heart of the government's concerns I really see a reluctance to spend the money that the scheme could require. I also note that one advantage of the community visitor scheme is that it is a proactive scheme and it is not a complaints resolution scheme. It is not reliant on people making complaints for the community visitor to identify problems.

Of course, that is entirely consistent with the view that the government has taken in other areas. Again, we come back to the equal opportunity legislation where the commissioner is to have independent powers of investigation without requiring a particular complainant. The official visitors that operate in other jurisdictions are appointed by the government. One question that has been

raised is whether or not we have existing within government people who could already fulfil this role without creating a new scheme. The office that is most commonly pointed to is the Office of the Public Advocate. When I raised this, the Mental Health Coalition pointed out that, whilst that might be an appropriate home for an official visitor scheme, it did not have the resources to do this work.

In fact, I was directed to the Office of the Public Advocate's annual report for the year 2007-08, which states:

> Vulnerable adults living in residential or community accommodation, or in hospitals, are often at a disadvantage in terms of understanding their rights and having a voice to advocate for their needs. The Victorian Public Advocate recently celebrated the 22nd birthday of its community visitor scheme. This program is not an inspectorate or complaints management scheme, rather, it seeks to monitor the wellbeing of individuals and advocate for their rights. Independent volunteers provide feedback to the Public Advocate on systems issues. South Australia is the only state that does not have such a scheme. Such a scheme would fit within the state's strategic objective of community capacity building.

I note further that the annual report included a tribute to the outgoing public advocate, Mr John Harley. That tribute included the following words:

> John's biggest disappointment was that he had to leave his position without achieving the establishment of a robust community visitors scheme in this state—a vision which has had widespread support amongst local advocates and service providers and is in existence in some form in all other states.

Unless the government comes up with an alternative model for a community visitor scheme, I will be supporting the Liberal amendment. My view is that the government has had long enough and has had enough encouragement from within government and the community to get this right. If it has not done it up until now it does not have much longer to do it, and I will be supporting the Liberal amendment if the government does not produce its own scheme very quickly.

I want to briefly comment on one of the other amendments that has been filed by the Liberals. That amendment relates to a criminal offence of harbouring or assisting a patient at large, that is, someone who may have escaped involuntary detention. I make the point at this stage that I will not be supporting any such amendment. I do not think it is appropriate to be attaching criminal liability to those who seek to help people with mental illnesses, even if such help is misguided or counterproductive. However, for now, I support the second reading of the bill.

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

CROSS-BORDER JUSTICE BILL

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

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (22:38): 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 bill will enable South Australia to participate in the cross-border justice schemes in conjunction with Western Australia and the Northern Territory. The schemes are aimed at delivering better justice services to, and improving the safety of, the communities in the regions covered by them. They will allow police, magistrates, fines enforcement agencies, community corrections officers, prison officers and other office holders to deal with offenders from any one of the participating jurisdictions, providing the offender has a connection to the cross-border region.
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> The Bill allows for cross-border schemes to be introduced where border regions are shared, for example, the Kimberley region or the Western Australian-South Australian border area of the Nullarbor Plain. The regions will be prescribed by regulations.
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> Initially, the scheme will apply to the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Lands in Australia's central desert region. The NPY Lands occupy some 450,000 square kilometres that straddle the borders of Western Australia, South Australia and the Northern Territory. The local people of the NPY lands live and travel throughout the region according to their traditional culture and customs, frequently crossing the borders of the three jurisdictions. Many communities in the NPY lands, like other remote communities, experience high levels of alcohol and substance abuse, sexual abuse and domestic violence. The transient lifestyle of the people of the NPY lands brings challenges for justice agencies dealing with those community problems, which are constrained by the State and Territory borders of the region. This Bill is part of a tri-jurisdictional response to those challenges.
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> The idea for the cross-border justice schemes came out of the NPY Lands Tri-Jurisdictional Justice Initiatives Roundtable in June 2003. Members of the NPY Women's Council, judicial officers, police and other officials working in the criminal justice systems of South Australia, Western Australia and the Northern Territory, met

in Alice Springs to discuss, and find better ways to provide effective justice services in the NPY lands. The NPY Women's Council, a non-Government organisation that provides support and advocacy services for Aboriginal women in the region, was already operating under a tri-State model, recognising that the State and Territory borders mean little to the indigenous people of the cross-border region, and that the State services are often hampered by jurisdictional boundaries.

In November 2007, South Australian, Western Australian and Northern Territory Governments agreed to develop legislation that would enable cross-border justice schemes to operate. Western Australia worked up the model Bill for the mirror legislation. Usually, the purpose of mirror legislation is to enact new substantive law in a number of jurisdictions. The mirror legislation for the cross-border justice scheme does not enact new substantive law. Instead, it extends the geographical area in which the existing substantive law of each jurisdiction applies. The Western Australian *Cross-Border Justice Act 2008* received Royal Assent on 31 March 2008, and this Bill mirrors that Act.

South Australia, Western Australia and the Northern Territory have worked together to create the legislative and administrative frameworks that will allow each justice system to operate across the borders. Under the scheme, each jurisdiction will extend the geographical area in which its law can operate beyond its borders to include the geographical area of each of the other jurisdictions; and will allow the law of each of the other jurisdictions to apply within its borders. The cross-border legislation for each jurisdiction will contain provisions about three aspects of the criminal justice system:

- the exercise of police powers,
- the jurisdiction of summary courts, and
- the enforcement of sentences and orders.

Cross-border policing is not a new concept. For several years, multi-jurisdictional police stations have operated at Warakurna in Western Australia and Kintore in the Northern Territory. Each police station is staffed with both WA and NT police officers who hold appointments as special constables of each other's police force and patrols of areas in both jurisdictions are conducted out of those police stations. The existing legal restrictions, however, mean that whilst operating a patrol in the NT the officers can only exercise their powers as NT officers, and while in WA they can only exercise their powers as WA officers. This means that if, while on patrol in WA, they come across a person who is alleged to have committed an offence in the NT, the patrolling officers cannot arrest the person in WA That person must be dealt with under the extradition laws; a costly and time-consuming process. The cross-border legislation will provide an alternative to that process. Under the scheme, police officers from South Australia, Western Australia and Northern Territory can be appointed as officers of each other's police force. Those officers will be able to arrest, detain and charge an alleged offender in any of the three jurisdictions, if the alleged offender has a connection with the prescribed cross-border region.

An appropriately appointed magistrate will be able to deal with a matter in any of the participating jurisdictions, under the law of the place where the offence took place and, if necessary, deal at the same time with any outstanding offences that may have occurred in another participating jurisdiction. The arrest, charges, hearing and sentences can be dealt with quickly and efficiently, thereby minimising the time, inconvenience and cost for everyone involved in the process. The risks of transporting prisoners over long distances to enable them to be charged or dealt with by a court in the State or Territory in which the alleged offence took place will be removed or reduced.

The main features of the Bill are as follows:

The application of the cross-border scheme is restricted to the region prescribed in the Regulations as the 'cross-border region'. A matter will only fall within the scope of a cross-border justice scheme if the offence is connected to the relevant cross-border region. The criteria that will determine whether there is a connection are:

- the alleged offence occurred in the cross-border region; or
- the alleged offender was arrested in the cross-border region; or
- the alleged offender normally resided in the cross-border region at the time of arrest or of the alleged offence.

A connection also exists if at the time a person comes before a court, he ordinarily resides in the region, or is before the court for another matter where he has a connection with the region. A person may have one or many connections with a cross-border region.

The Bill places the onus of proof on the arrested person as to their whereabouts at the time of arrest and his or her normal place of residence at the time of arrest. The onus has been placed on the arrested person so as to discourage false claims of the person being outside the cross-border region, thereby frustrating the use of the cross-border legislation, and to limit the extent to which the boundaries of the region can be used to evade justice. Proof is to be determined on the balance of probabilities.

The Bill limits the application of the scheme to those matters that can be dealt with by the Magistrates Court or the Youth Court, other than when constituted by or so as to include a judge. Those courts will be able to deal with aspects of indictable offences that magistrates are able to deal with, such as bail and committal proceedings. This will allow much of the offending behaviour in the cross-border regions to be dealt with under this scheme.

Part 13 of the Bill will allow office holders of the State to hold secondary office under the law of another participating jurisdiction and exercise the powers of that office. For example, the Bill allows each participating jurisdiction to appoint magistrates of the other participating jurisdictions to their own magistracy through their own legislation governing the appointment of magistrates. Police officers will also be secondary office holders by appointment through each jurisdiction's existing appointment processes for special constables. Community corrections officers and Registrars will, under the cross-border provisions, be automatically officers of each of the other jurisdictions. The bill will amend the *Magistrates Court Act 1991* so that a member of the Court's administrative and ancillary staff may, with the approval of the State Courts Administrator, concurrently hold office as an officer of a court of a participating jurisdiction.

For each provision of this Bill authorising the application of South Australian law in WA and NT, there are corresponding provisions in the WA Act and NT Bill to allow the SA law to apply in WA and NT.

The factor that will determine which jurisdiction's laws will apply to an alleged offence will be the location where the alleged offence occurred. For example, if a person is arrested in the Northern Territory and charged with an offence alleged to have been committed in South Australia, a magistrate sitting in the Northern Territory could hear the matter sitting as a South Australian court and the South Australian laws of apprehension, court procedure, criminal liability and sentencing would apply. Although convicted offenders will be sentenced according to the law of the jurisdiction where the offence occurred, the sentence will travel with the offender. That is, a person convicted of a Northern Territory offence but serving a custodial sentence in South Australia will serve the sentence as if that person were in the Northern Territory.

Some laws will be applied differently under the cross-border justice scheme than elsewhere. The clauses of the Bill that extend the geographical area within which the existing law of a jurisdiction applies include the provisions applying the existing law 'with any appropriate modifications'. Appropriate modifications are 'modifications that are prescribed by regulations made under the jurisdiction's mirror legislation, and any other modifications that are necessary or convenient to give effect to the jurisdiction's mirror legislation'. The law of the jurisdiction is then applied with those modifications as if the law had been altered in that way. For example, the *Prisoners (Interstate Transfer) Act 1982* will be modified so that WA and NT prisoners sentenced under a cross-border justice scheme will be able to be moved to a prison in S.A. through administrative arrangements and continue to serve the sentence as a WA or NT sentence. In other circumstances a sentence not imposed under a cross-border justice scheme would be translated into a SA sentence when a prisoner is transferred. It is not intended that the capacity for police officers, magistrates and other officials to perform their functions across borders and exercise the powers of another jurisdiction can be extended to apply in other parts of the State. Modifications will apply only in the context of dealing with one across border matter, and the modified form of the Act must be applied when it is used in a cross-border matter.

As already explained, the mirror legislation for the cross-border scheme does not enact new law, but extends the geographical area in which the existing law of each jurisdiction applies. Consequently, during the drafting of the model Bill, the relevant substantive law was examined to determine the differences in the law of the three jurisdictions, and if there were differences, to decide whether or not the substantive law of each jurisdiction should apply to its full extent in the other jurisdictions. Two main areas were identified. The first relates to fines enforcement. All three participating jurisdictions have legislation relating to the enforcement of fines. Under the WA and NT fines recovery processes, the fines recovery unit, in the NT, and the registrar, in WA, may issue a warrant of commitment for failure to expiate a fine. In South Australia, the matter is referred back to the court for the offender to be re-sentenced. Because of the disparity in approaches to the enforcement of fines, the mirror legislation prevents fine enforcement being taken further once all other avenues of expiation have been exhausted and the only option left would be imprisonment. The matter will then go back to the referring jurisdiction to be dealt with according to the State or Territory fines recovery laws.

The second area of difference relates to restraining orders. All three jurisdictions have legislation relating to the making of restraining orders in domestic violence and similar situations. As South Australia does not allow police officers to make short-term restraining orders, care has been taken to ensure that South Australian police officers are not given powers under this scheme, to exercise in Western Australia or the Northern Territory, which they cannot exercise in this State.

For the cross-border justice scheme to operate, each jurisdiction's cross-border justice legislation will need to be made an exception to the *Service and Execution of Process Act.* That Act covers the area of interstate arrest and extradition. If the Act is not amended, the cross-border legislation will be invalid under section 109 of the Constitution for inconsistency. The Commonwealth supports this scheme and has agreed to make the necessary amendments to the *Service and Execution of Process Act.*

The Bill provides for a review of the operation of the cross-border laws three years after the commencement of the Act.

The scheme has been embraced by Western Australia, the Northern Territory and the Commonwealth. I would like to recognise the role of the NPY Women's Council in initiating the project, the support of the Commonwealth Attorney-General as it unfolded, and the hard work of the Western Australian Government, Solicitor General and Parliamentary Counsel in creating the model legislation. The scheme could not operate successfully without the existence of detailed protocols and agreements between the participating jurisdictions, and I acknowledge the work done by the key agencies involved in working up those essential documents.

The cross-border legislation will bring new challenges for the judiciary and Courts Administration Authority, and I am grateful for their co-operation, and their support for the scheme.

The passage of this Bill is a major part of the initiatives aimed at increasing the safety of people in remote communities and I commend it to the House.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

Division 1—Preliminary matters

1—Short title

This clause is formal.

2—Commencement

The date for commencement of the measure will be fixed by proclamation.

3—Act binds Crown

This provision is included to rebut the common law presumption that statutes are intended not to bind the Crown.

Division 2—Object of Act

4—Act gives effect to cooperative schemes

The Act will enable more effective delivery of justice services to cross-border regions. This is to be achieved through cooperative schemes with two of those jurisdictions with which South Australia (SA) shares a border, ie, Western Australia (WA) and the Northern Territory (NT).

5—Object of Act and how it is to be achieved

In order to meet its objective of furthering the cause of justice administration in the cross-border regions, the Act confers on police, magistrates, courts of summary jurisdiction and other office holders the capacity to exercise their SA powers in WA and the NT. It also confers on them the capacity to accept appointment to hold office under the laws of WA and the NT, and to exercise the powers associated with that office. They will be able to exercise those powers in WA and the NT, or do so in SA. Similarly, SA courts of summary jurisdiction will be able to sit, deal with matters and sentence offenders under SA law when the court is sitting in either of these other two jurisdictions. Likewise, the courts of summary jurisdiction of WA and the NT will be able to function within this State.

6—How this Act is to be construed

The Act provides reciprocal recognition of SA courts and officials applying SA law within the boundaries of WA and the NT; and of their WA and NT counterparts applying the laws of those jurisdictions within the boundaries of SA.

Division 3—Interpretation

7—Interpretation

This clause defines the commonly used terms used in the Act. Most importantly, it specifies that the other participating jurisdictions are WA and the NT, two of the jurisdictions with which SA shares a border.

The definitions of offices such as *CEO (corrections)* are derived from the relevant Acts that more generally define these terms, eg, the *Correction Services Act 1982*. *Community corrections officer* is to be defined by regulations made for the purposes of the definition.

Other definitions have been drafted specifically for the purposes of the Act. They include *cross-border jurisdiction*, which is the jurisdiction exercised by a *prescribed court* of a *participating jurisdiction* when dealing with a *cross-border proceeding*. A *cross-border proceeding* is a proceeding falling within the meaning of clause 68 of the Act, or falling within the meaning of the equivalent legislation in WA or the NT. A *prescribed court* is further defined as being (for SA) the Magistrates Court or the Youth Court, other than when a judge is presiding in a matter before the Youth Court, and for the other participating jurisdictions, the courts prescribed in their equivalent legislation.

Some definitions, such as *connection with a cross-border region*, are included in this clause, but they are simply cross-referenced to another clause which sets out their meaning.

In some cases, a term is defined in a general reference to the laws of a participating jurisdiction. This is to accommodate the range of relevant Acts that may be applied under this Bill. For example, *vehicle impounding laws* refers to those laws dealing with the impounding or confiscation of vehicles in the course of their application to driving offences. This acts to limit their application to those situations likely to be encountered by those administering the provisions of this Bill. This definition deliberately limits the context to impounding or confiscation under driving laws, and does not include confiscations that could occur under the confiscation of the proceeds of crime legislation.

8—Meaning of 'cross-border laws'

This Bill is the primary legislation to enable the creation of cross-border justice schemes. It works in conjunction with other laws that also have application to these schemes, and collectively this Bill and these other laws are the 'cross-border laws' for SA. Other laws include those which will apply to cross-border schemes as

modified by the regulations (see clause 13 and clause 14). Other cross-border laws include those which make special provision for the schemes.

This clause also sets out what constitutes the cross-border laws of WA and the NT, and these are consistent with those of SA.

9—Persons who exercise powers are office holders

This clause provides that office holders under cross-border laws are people who exercise a power conferred on them by a cross-border law. Not all office holders are government officials.

10—References to office holders

Under cross-border laws a person may hold a secondary office. For example, an SA magistrate could hold as a secondary office, the office of a magistrate of WA as conferred under WA law. This clause brings the holder of a secondary office into the scope of being an office holder. Even if the office ceases to exist, someone who retains the powers of that office is still taken to be an office holder.

11—References to written laws of another participating jurisdiction

Legislation is often amended. This clause provides continuity by making it clear that if another jurisdiction amends its cross-border laws, then any reference to those laws in the SA *Cross-border Justice Act* still has effect.

12—Use of notes and examples

Due to the complexity of this legislation, the Bill includes notes and examples to assist readers to understand the meaning of some provisions. However, these are only aids to interpretation and have no legislative force.

Division 4—Modifications of other laws of State

13—Appropriate modifications

The intent of the cross-border laws is to respond to the difficulties in the administration of justice in remote border regions. It is not intended that the capacity for police officers, magistrates and so on to perform their functions across borders and exercise the powers of another jurisdiction can be extended to apply in other parts of the State. Some laws will be applied differently under cross-border justice schemes than elsewhere. Rather than make complicated amendments to these other Acts, they are to be modified by regulation. Modifications to other Acts are to apply only in the context of dealing with a cross-border justice matter.

14—Effect of modifications

An Act that has been modified for the purpose of implementing a cross-border justice scheme, has to be applied on the basis of its modified form when it is being used in this context. If an office holder invokes the cross-border laws when dealing with a matter under this Bill, he or she does not have the option of applying the non-modified form of another cross-border law.

Division 5—Relationship between State's cross-border laws and other laws

15—Law of another participating jurisdiction: office holders, prescribed courts, persons serving sentences

Participating jurisdictions still exercise control over what can and cannot be done within their borders, and still exercise control over what their office holders may or may not be permitted to do. This requires provisions from an office holder's home jurisdiction that enable the officer to exercise powers in another jurisdiction, and corresponding provisions from that other jurisdiction to allow the officer to exercise those powers within that State or Territory.

For example, it is not enough for SA to legislate so that its office holders can exercise their powers under SA laws in another jurisdiction. The other jurisdiction must also legislate to allow this to happen. Subclause (1) of clause 15 provides that unless the other jurisdiction has so legislated, an SA office holder cannot exercise his or her SA powers in that jurisdiction even though SA cross-border laws may provide for this.

Similarly, even though SA cross-border laws allow an office holder from the NT or WA to exercise powers within SA, the office holder cannot do so unless the laws of the NT or WA, as the case may be, provide for this (subclause (2) of clause 15).

This clause continues to provide for other reciprocal recognition in relation to courts to hear and determine matters in other jurisdictions, and the imposition and serving/carrying out of sentences.

16—Law of another participating jurisdiction: other persons required to do things

This clause extends the principle contained in clause 15 to those individuals who are not office holders but nevertheless have a legal obligation to undertake some action (eg a person in a motor vehicle accident notifying the appropriate authorities of the accident). It is intended that a person be able to make such notification outside the jurisdiction where the event occurred (eg after an accident in WA a motorist may be able to meet the requirement to notify the police by reporting the accident at an NT police station).

Under clause 16, both SA law and the other jurisdiction's law have to permit the person to make the notification in the other jurisdiction (and vice versa if the event has occurred in WA/NT and the person is to be able to make notification in SA).

17—*Service and Execution of Process Act 1992* of the Commonwealth

To date, in a situation where a police officer has arrested a person in connection with an offence alleged to have occurred in another State or Territory, the Commonwealth *Service and Execution of Process Act 1992* (SEPA) has determined how the person is dealt with. The police officer has been able to bring the person before a magistrate in the State or Territory where the arrest occurred. The magistrate, however, has only had the option to remand the person to be brought before a court in the jurisdiction of the alleged offence, and the person would then go or be taken in custody to that jurisdiction. The magistrate has had no power to deal with the matter to finalisation. This Bill will not replace this process, but rather, will provide an alternative. However, if, as is anticipated, the Commonwealth were to amend SEPA so that it would provide that it does not apply to a matter covered by SA cross-border laws, an office holder or prescribed court of the State would have to proceed under the cross-border laws and not SEPA. That is, the office holder would have no alternative but to apply cross-border laws. This, however, is dependent on SEPA being amended in this fashion. If SEPA is not amended to give primacy to cross-border laws, but allows both systems to co-exist, then the office holder or court would have a choice as to which path to follow.

Division 6—Application

18—Offences, orders and requirements in relation to which State's cross-border laws apply

This clause enables the cross-border laws to be applied to offences, orders or requirements that may have originated before this Bill is enacted. This provides a certain degree of retrospectivity to the legislation. It means, for example, that a person who has breached an order prior to the commencement of the *Cross-border Justice Act* could be arrested for this breach after the commencement date using the provisions of this Act.

Part 2—Cross-border regions

Division 1—Prescribing cross-border regions

19—Cross-border regions to be prescribed

A cross-border region is a region that extends over the border of SA into one or both of the other participating jurisdictions and is prescribed by the regulations to be a cross-border region.

Division 2—Connection with a cross-border region

20—Persons suspected of, alleged to have committed or found guilty of offences

This clause sets out the criteria by which it is determined if a person who is suspected of, alleged to have committed, or has been found guilty of an offence has a relevant connection to a cross-border region, thus falling within the scope of this Bill.

The criteria for establishing whether a person has a connection with a cross-border region are—

- that this is where the suspected/alleged/proven offence occurred; or
- when the person was arrested he or she was physically in the region or normally resides in the region; or
- the person resides or resided in the region at the time the suspected/alleged/proven offence occurred.

Only one of these criteria needs to be met for a connection to a cross-border region to be established. This means, for example, that a person from elsewhere who is arrested whilst transiting a cross-border region, would fall within the scope of this Bill. Likewise, a person from the region who is arrested whilst visiting a different area can be dealt with under this Bill.

A connection also exists if, at the time a person comes before a court, the person ordinarily resides in the region or is before the court in relation to another matter in relation to which he or she has a connection with the region.

21—Persons against whom orders of prescribed courts are in force

This clause reiterates the application and criteria for establishing a cross-border connection as set out in clause 20 and applies them to the making, variation and breaching of orders.

22—Connection for purposes of making restraining orders

An application for a restraining order falls within the scope of this Bill if the respondent to an application (ie, the person against whom a restraining order is sought) has a connection to a cross-border region. The criteria for establishing this connection are that the respondent or the person in whose interests the restraining order is sought ordinarily resides in the region.

23—Persons serving sentences or carrying out orders in respect of offences or alleged offences

A person subject to a sentence or an order has a connection with a cross-border region if the sentence or order results from a court exercising cross-border jurisdiction in relation to a matter where—

- the person has a connection to the region; or
- the court exercising cross-border jurisdiction has ordered the payment of a fine; or
- the person ordinarily resides in the region.

24—Other persons required to do things

A person who has a legislated responsibility to take some action has a connection to a cross-border region if the person is informed of this requirement while in the region, the event occurred in the region, or the person ordinarily resides in the region.

25—Connections are not mutually exclusive

A person may have connections with a cross-border region under any of clause 20 to clause 24. That is, a person may have multiple connections with a cross-border region.

Division 3—Proving connection with a cross-border region

26—Meaning of 'proceeding'

This is a definition clause that applies for the purpose of this Division. A *proceeding* is either a cross-border proceeding in a prescribed court of SA, or a proceeding before an SA court in relation to which an officer of another participating jurisdiction is acting under the provisions of the *Cross-border Justice Act*.

27—Onus of proving person's whereabouts at time of arrest

Given the remoteness of the regions where cross-border justice schemes will operate, it may at times be difficult to establish precisely whether a person was arrested in or normally resided in a region for the purpose of determining whether there is a connection with a cross-border region. This clause places the onus of proof on the arrested person as to his or her whereabouts or normal place of residence at the time of arrest. Proof is to be determined on the balance of probabilities.

One of the aims of the cross-border justice initiative is to overcome the problem of alleged offenders using the State/Territory borders to evade police and the justice system. However, in defining a region, another 'border' is by default imposed and such evasion could again occur. The onus of proof has been placed on the arrested person so as to discourage false claims of the person being outside the cross-border region and to limit the extent to which the boundaries of the region can be used to evade justice.

28—Onus of proving person's residency during cross-border proceeding

For the same reasons stated in relation to clause 27, the onus of proof for establishing if a person ordinarily resides, or resided, in a cross-border region at the time of a cross-border or other proceeding, lies with the person.

Division 4—Multiple cross-border regions

29—Application of this Division

The SA border with the NT and WA touches on different regions of the State. The inaugural cross-border justice scheme is planned for the area where the borders of all three jurisdictions meet. However, separate bi-lateral schemes could be developed for other regions, eg, the region centred on the Nullarbor Plain that straddles the borders of WA and SA.

30—Office holders, prescribed courts, persons serving sentences

This clause is similar to clause 15. However, it limits the extent to which, for example, SA office holders can exercise their cross-border powers in another participating jurisdiction.

If a person's connection with the Central Australian cross-border region is based on the person being arrested or residing in WA, and the person is brought before an SA magistrate exercising cross-border powers in the NT under a scheme based on the SA/NT border (but not the WA border), the magistrate would not be able to deal with the person because WA would not be a party to the scheme.

However, a person may have a connection with more than one cross-border region. An office holder or prescribed court of the State may deal with the person under the State's cross-border laws on the basis of the person's connection with one or another of those regions, having regard to what best facilitates the administration of justice in those regions.

31—Other persons required to do things

As with clause 30, this clause requires that a person has a connection with a particular cross-border region if the person is to be authorised or allowed to take action under cross-border laws relating to that region.

Part 3—Police officers of State exercising powers in another participating jurisdiction

Division 1—Powers generally

32—Arrest without warrant

An SA police officer may arrest a person (who has a connection with a cross-border region), without a warrant and under the laws of SA, in WA or the NT. The arrest will be governed by the laws of SA and can only occur if the arrest could be made in SA.

33—Arrest under warrant

An SA police officer may arrest a person (who has a connection with a cross-border region), under warrant and under the laws of SA, but in another participating jurisdiction. The arrest will be governed by the laws of SA.

Likewise, a magistrate may issue an arrest warrant under SA law and do so whilst in SA or another participating jurisdiction. Again, it is a requirement that the person the subject of the warrant has a connection with a cross-border region.

Examples of the application of this clause are as follows:

Example 1—A person is suspected of committing an offence under SA law in the SA portion of the SA/WA/NT (Central Australia) cross-border region. An SA magistrate anywhere in SA, WA or the NT may issue a warrant for the person's arrest. An SA police officer may arrest the person under the warrant anywhere in any of these three jurisdictions. In this example, the person has a connection to the cross-border region that involves all three jurisdictions.

Example 2—A person who ordinarily resides in the SA/WA (southern border) region is suspected of committing an offence under SA law in Port Augusta. An SA magistrate anywhere in SA or WA may issue a warrant for the person's arrest. An SA magistrate in the NT cannot issue a warrant. An SA police officer may arrest the person under the warrant anywhere in SA or WA but not in the NT. In this example, the person only has a connection to the southern border region, which does not include the NT.

Example 3—A person who ordinarily resides in the SA/NT (northern border) region is suspected of committing an offence under SA law in the SA portion of the SA/WA (southern border) region. An SA magistrate anywhere in SA, WA or the NT may issue a warrant for the person's arrest. An SA police officer may arrest the person under the warrant anywhere in SA, WA or the NT. In this example, the person has connections to two cross-border regions which collectively include all three jurisdictions.

34—Person taken into custody

If an SA police officer arrests a person under the laws of SA either with or without a warrant and in any of the participating jurisdictions, this clause empowers the person to keep the person in custody in another participating jurisdiction but under SA law. This means that a person who is arrested in the NT or SA under SA law does not have to be returned to SA to be kept in custody. The police officer can also take the person to a police station, court or anywhere else for an authorised purpose.

35—Investigation of suspected or alleged offence or breach of order

An SA police officer may investigate a suspected offence or breach of an order made under SA law in WA or the NT but, in doing so, may apply SA law governing investigations. This includes the police officer's powers to conduct interviews and searches, take photographs of people, take fingerprints and other prints, and so on. This clause only applies if the person suspected of having committed the offence or breach has a connection with a cross-border region.

Likewise, a magistrate may issue a warrant or order for the purpose of an investigation under WA law and do so whilst in SA or another participating jurisdiction.

Examples of the application of this clause are as follows:

Example 1—A person is suspected of committing an offence under SA law in the SA portion of the SA/WA/NT (Central Australia) region. An SA police officer may investigate the alleged offence anywhere in SA, WA or the NT. For the purpose of the investigation of the alleged offence, an SA magistrate anywhere in SA, WA or the NT may issue a warrant to search premises anywhere in SA, WA or the NT. In this case, the person has a connection with a cross-border region involving all three jurisdictions.

Example 2—A person is arrested in the SA/WA (southern border) region for an offence under SA law alleged to have been committed in Port Augusta. An SA police officer may investigate the alleged offence anywhere in SA or WA but not in the NT. For the purpose of the investigation of the alleged offence, an SA magistrate anywhere in SA or WA may issue a warrant to search premises anywhere in SA or WA but not in the NT. An SA magistrate in the NT cannot issue a warrant. This is because the person has no connection with a cross-border region in the NT.

Example 3—A person is suspected of committing an offence under SA law in the SA portion of the SA/NT region and is subsequently arrested for the alleged offence in the SA/WA region. An SA police officer may investigate the alleged offence anywhere in SA, WA or the NT. For the purpose of the investigation of the alleged offence, an SA magistrate anywhere in SA, WA or the NT may issue a warrant to search premises anywhere in SA, WA or the NT. In this example, the person has connections to two cross-border regions that collectively include all three jurisdictions.

36—Return of person not charged to place of arrest or other place

Cross-border justice schemes will operate in the more remote areas of the State where there are large distances between population centres and limited transport availability. Therefore, if an SA police officer has kept a person in custody in another jurisdiction (see clause 34), and the person is released from custody, the police officer must take reasonable steps to ensure the person is returned to where he or she was arrested or to a place reasonably nominated by the person. However, if to take a person released from custody to a particular place is likely to endanger the safety of the person or another person, the police officer is not required to assist the person to go to that place.

37—Relationship of this Part with *Criminal Investigation (Extraterritorial Offences) Act 1984*

The provisions of the *Criminal Investigation (Extraterritorial Offences) Act 1984* continue to apply and are not affected by Part 3 of this Bill.

Division 2—Road traffic powers

Subdivision 1—Vehicle or driver licensing laws

38—Powers in relation to offences

An SA police officer may exercise his or her powers under SA vehicle or driver licensing laws in WA or the NT if a person is suspected of having committed an offence under these SA laws and the person has a connection with a cross-border region.

39—Other powers

Subclause (1) of clause 39 defines *licensing powers* to mean those powers that an SA police officer can exercise under SA vehicle or licensing laws in addition to those powers referred to in clause 38. If a person ordinarily resides in the SA segment of a cross-border region, an SA police officer can apply SA vehicle and licensing laws with respect to that person.

Subdivision 2—Drink or drug-driving laws

40—Interpretation

This is a definition clause specifying what constitutes a *sample*, and what a *test* is and what *testing procedures* are for the purposes of this Subdivision.

41—Conduct of preliminary alcohol or drug test in cross-border region

It may be necessary for an SA police officer to take a breath or oral fluid sample from a person in the SA section of a cross-border region for the purpose of conducting a preliminary alcohol or drug test under SA law.

An SA police officer may also be a WA or NT police officer who holds an appointment as a special constable of SA. In this case, the testing equipment and procedures used may be that of the WA or NT police forces and not that of SA. It is also possible that SA police officers may conduct joint patrols with officers from the NT or WA and use NT or WA police vehicles for this purpose. Again, if this patrol was to stop a person in SA and seek to take a sample using the equipment in the NT or WA police vehicle then the procedures of that jurisdiction would apply.

Subclause (2) of clause 41 therefore provides that if a person is required to provide a sample using testing procedures under WA or NT drink driving laws, then the person is taken to be required to provide the sample in accordance with procedures under SA law.

Subclause (3) of clause 41 provides that a sample tested under WA or NT is to be taken to have been tested in accordance with SA procedures.

42—Powers that may be exercised in another participating jurisdiction

This clause applies if an SA police officer has required a person in the SA portion of a cross-border region to provide a sample for a preliminary alcohol or drug test under SA law. The clause requires that the person from whom the sample is being taken has some connection with a cross-border region. This clause has to be read in conjunction with clause 44, which provides that an SA police officer cannot take a sample for preliminary drug or alcohol testing under SA law in another participating jurisdiction. This clause authorises samples to be taken at later stages in the sampling process in another participating jurisdiction (see clause 43).

43—Providing or taking sample in another participating jurisdiction

Clause 41 deals with the situation of a sample being taken from a person and tested in SA under SA law, and allows for this to occur using the procedures of the NT and WA. Clause 43 deals with the situation of an SA police officer taking a sample for testing from a person under SA laws in WA or the NT and using the procedures of WA or the NT. In this situation, the person is again taken to be required to provide a sample using the procedures under SA law.

A test of a sample using NT or WA procedures is again taken to be a test under SA laws. Furthermore, a certificate issued under NT or WA drink or drug-driving laws can be accepted as prima facie evidence for the purpose of section 47K(18) of the *Road Traffic Act 1961*. Similarly, in these circumstances, the analysis of a sample taken in a breath or blood test can be used for the purpose of Part 3 Division 5 of the *Road Traffic Act 1961*.

The option of taking a sample or having it tested in accordance with SA procedures remains.

44—Preliminary alcohol or drug test cannot be conducted in another participating jurisdiction

An SA police officer's power to take samples for testing in another jurisdiction does not include the taking of samples for preliminary testing under SA law.

Subdivision 3—Vehicle impounding laws

45—Powers

For the purpose of this clause, a 'person' connected with a vehicle is someone who is suspected, alleged or found guilty of committing the offence which makes the vehicle subject to impounding or confiscation. An SA police officer can exercise SA vehicle impounding laws in WA or the NT if the person connected with the vehicle also has a connection to a cross-border region and the impounding or confiscation is pursuant to an order made by a prescribed SA court.

Subdivision 4—Miscellaneous matters

46—Law of State applies

The powers exercised under this Division are governed by SA law, taking into account any modifications to specific laws.

47—Relationship with Division 1

This Division does not diminish any powers which an SA police officer may exercise in accordance with Division 1 (Powers generally).

Division 3—Offence

48—Offence to interfere with exercise of power

This clause provides that if a person in another participating jurisdiction takes action in relation to the exercise of a power under Part 3 that would, if the action were to be taken in relation to the exercise of the power in the State, constitute an offence under the law of the State, then the action is an offence under SA law. The penalties for such offences are the same as those prescribed for State offences, ie, an offence of this type when committed in SA. Where a State offence is indictable, it is also indictable if the offence is committed in WA or the NT.

Part 4—Police officers of another participating jurisdiction exercising powers in State

Division 1—Powers generally

49—Arrest without warrant

This Part is the corollary of Part 3 in that it confers powers on NT and WA police officers to exercise their NT and WA powers in SA.

WA and NT police officers can arrest people in SA under WA and NT law, as the case may be, without warrant. They can do so if, under their own State/Territory's law they would be entitled to arrest the person without warrant in their home jurisdiction. It is necessary that the person being arrested has a connection to a cross-border region.

It is not enough, however, for SA to say that NT and WA officers can exercise their NT or WA powers in SA. Ordinarily, an arrest in SA would be covered by SA law. Therefore, it is necessary to disapply SA law in a situation such as this. This is achieved through subclause (2) of clause 49.

50—Arrest under warrant

A person who has a connection to a cross-border region can be arrested by a WA or NT police officer under warrant and under the laws of WA or the NT, as the case may be. A magistrate of the NT or WA can issue a warrant for arrest of the person under NT or WA law. Again, SA law dealing with arrests under warrant is disapplied in relation to this arrest and warrant to enable the NT and WA laws to operate in this situation. Examples of how clause 50 may operate are as follows.

Example 1—A person is suspected of committing an offence under WA law in the WA portion of the SA/WA/NT region. A WA magistrate anywhere in SA may issue a warrant for the person's arrest. A WA police officer may arrest the person under the warrant anywhere in SA.

Example 2—A person who ordinarily resides in the SA/NT region is suspected of committing an offence under NT law in Katherine. An NT magistrate anywhere in SA may issue a warrant for the person's arrest. An NT police officer may arrest the person under the warrant anywhere in SA.

Example 3—A person who ordinarily resides in the SA/WA (southern border) region is suspected of committing an offence under WA law in Kalgoorlie. A WA magistrate anywhere in SA may issue a warrant for the person's arrest. A WA police officer may arrest the person under the warrant anywhere in SA.

51—Person taken into custody

In this clause, the *arresting jurisdiction* is the NT or WA, ie, the other participating jurisdiction under whose laws a person is being arrested in SA. A police officer of the arresting jurisdiction may arrest a person (either with or without a warrant) and keep the person in custody in SA. It is necessary that the arrested person has a connection with a cross-border region for this to apply. Once the person is in custody, he or she can be taken to a police station, court or other authorised place in SA. SA custody laws are disapplied in this situation and do not govern this arrest.

52—Investigation of suspected or alleged offence or breach of order

In this clause, the *investigating jurisdiction* is the NT or WA, ie, the other participating jurisdiction under whose laws an investigation is being conducted. If a police officer of the investigating jurisdiction suspects a person who has a connection with a cross-border region of having committed an offence or breached an order, the police officer can conduct that investigation in SA but under the laws of the investigating jurisdiction, ie, WA or the NT. Likewise, a magistrate of the investigating jurisdiction may issue a warrant under NT or WA law, as the case may be, for the purpose of an investigation. SA laws of investigation are disapplied to investigations governed by the laws of an investigating jurisdiction.

Example 1—A person is suspected of committing an offence under WA law in the WA portion of the SA/WA/NT (Central Australia) region. A WA police officer may investigate the alleged offence anywhere in SA. For the purpose of the investigation of the alleged offence, a WA magistrate anywhere in SA may issue a warrant to search premises anywhere in SA, WA or the NT.

Example 2—A person is arrested in the SA/NT region for an offence under NT law alleged to have been committed in Katherine. An NT police officer may investigate the alleged offence anywhere in SA. For the purpose of the investigation of the alleged offence, an NT magistrate anywhere in SA may issue a warrant to search premises anywhere in SA or the NT but not in WA.

Example 3—A person who ordinarily resides in the SA/WA region is suspected of committing an offence under WA law in Kalgoorlie. A WA police officer may investigate the alleged offence in SA. For the purpose of the investigation of the alleged offence, a WA magistrate anywhere in SA may issue a warrant to search premises anywhere in SA or WA but not in the NT.

Division 2—Road traffic powers

Subdivision 1—Vehicle or driver licensing laws

53—Powers in relation to offences

If a person has a connection to a cross-border region, and a police officer of the NT or WA suspects or alleges that the person has committed an offence under NT or WA vehicle or driver licensing laws, police officers can exercise in SA their NT or WA powers, as the case may be.

54—Other powers

If a person ordinarily resides in a cross-border region, an NT or WA police officer can apply NT or WA licensing laws to the person in SA. In this situation, the police officers are exercising their *licensing powers*, ie, the powers conferred on them under NT or WA licensing laws, as the case may be.

Subdivision 2—Drink or drug-driving laws

55—Powers that may be exercised in State

This clause empowers WA and NT police officers to exercise their WA/NT powers in relation to taking samples for a preliminary alcohol or drug test under WA/NT law in SA. The clause requires that the person from whom the sample is being taken has some connection with a cross-border region. This clause has to be read in conjunction with clause 56, which says that a WA/NT police officer cannot take a sample for preliminary drug or alcohol testing under WA/NT law in SA.

56—Preliminary alcohol or drug test cannot be conducted in State

A WA or NT police officer's power to take samples in SA does not include the taking of samples for preliminary testing under WA or NT law.

Subdivision 3—Vehicle impounding laws

57—Interpretation

For the purpose of this Subdivision, a person connected with a vehicle is someone who is suspected, alleged or found guilty of committing the offence that makes the vehicle subject to impounding or confiscation.

58—Powers

A WA or NT police officer or other office holder can exercise WA or NT vehicle impounding laws in SA in relation to a vehicle if the person connected with the vehicle also has a connection to a cross-border region and the impounding or confiscation is pursuant to an order made by a prescribed WA or NT court.

Subdivision 4—Miscellaneous matters

59—Law of State does not apply

The powers exercised under this Division are not governed by SA law other than this Act.

60—Relationship with Division 1

This Division does not diminish any powers that an NT or WA police officer may exercise in SA in accordance with Division 1 (Powers generally).

Division 3—Restraining orders laws—WA

61—Meaning of 'WA police order'

A *WA police order* is an order made by a police officer of WA under WA's restraining order laws.

62—Making WA police orders

A WA police officer may make a WA police order in SA if the person against whom the order is sought or proposed to be made has a connection with a cross-border region. The law of SA does not apply in relation to the making of the order.

63—Enforcement of WA police orders

If a person in SA is a person against whom a WA police order is made and that person, or the person for whose benefit the order is made, ordinarily resides in a cross-border region, a WA police officer may exercise his or her powers in relation to the person against whom the order is made. SA law does not apply in relation to the WA officer's powers.

Division 4—Restraining orders laws—NT

64—Meaning of 'NT police order'

This clause defines *NT police order* as being an order made by an NT police officer under the restraining order laws of the NT.

65—Making NT police orders

If a person against whom an NT police order is sought or made has a connection with a cross-border region, an NT police officer may make the order in SA. SA laws are disapplied in this circumstance.

66—Enforcement of NT police orders

If an NT police order is made against a person in SA, and the person in whose interest the order was made ordinarily resides in a cross-border region, an NT police officer may exercise their powers in relation to the person against whom the order has been made. SA law does not apply in relation to the powers.

Part 5—Prescribed courts of State exercising cross-border jurisdiction

Division 1—Preliminary matters

67—Operation of courts outside State not limited

This clause makes reference to section 16 of the *Magistrates Court Act 1991*, which provides for where and when the Magistrates Court may sit, and section 15 of the *Youth Court Act 1993* (SA), which makes the same provision for that Court. The clause does not limit the application of these sections of these other two Acts, and provides that the application of Part 5 is subject to these other provisions.

Division 2—Jurisdiction and powers of courts

68—Proceedings that may be heard in another participating jurisdiction

If a person who is the subject of a court proceeding has a connection with a cross-border region for the purpose of that proceeding, an SA court may deal with the matter in a location in WA or the NT. This only applies to the proceedings specified in subclause (2) of clause 68.

Regulations may prescribe other proceedings that fall within the scope of what an SA court may deal with in another jurisdiction.

An SA court can only hear and determine a matter in WA or the NT if the court is able to do so in SA.

Example 1—A person is charged with an offence under SA law alleged to have been committed in the SA portion of the SA/WA/NT region. The charge may be heard by an SA magistrate sitting anywhere in SA, WA or the NT.

Example 2—A person who ordinarily resides in the SA/WA region is charged with an offence under SA law alleged to have been committed in Port Augusta. The charge may be heard by an SA magistrate sitting anywhere in SA or WA but not in the NT.

Example 3—A person is arrested in the SA/WA/NT region for an offence under SA law alleged to have been committed in Adelaide ('the SA/WA/NT charge'). The person also has an outstanding charge for an offence under SA law alleged to have been committed in the SA portion of the SA/NT region (the 'SA/NT charge'). The SA/WA/NT charge may be heard by an SA magistrate sitting anywhere in SA, WA or the NT. The SA/NT charge may be heard by an SA magistrate sitting anywhere in SA or the NT. It may also be heard by an SA magistrate sitting anywhere in WA, but only if it is heard with the SA/WA/NT charge.

69—Exercise of jurisdiction and powers

A prescribed SA court can exercise its cross-border powers in either SA or one of the other participating jurisdictions. To enable the court to exercise its cross-border powers in another participating jurisdiction, it is empowered to sit, and have registries, in that jurisdiction. The powers that an SA cross-border court, or a magistrate or registrar of that court, may exercise in another jurisdiction include compelling witnesses, administering oaths, punishing for contempt and issuing warrants, summonses and other processes. It can only exercise powers that it is also entitled to exercise in SA. Even if the matter is not heard and determined in another participating jurisdiction, the court may still exercise its powers in that jurisdiction in dealing with a cross-border matter eg obtaining a pre-trial order.

70—Practice and procedure

An SA court sitting as a cross-border court follows SA (and not WA or NT) practice and procedure regardless of where it is sitting, subject to appropriate modifications (as defined in clause 13).

71—Rules of evidence

An SA court sitting as a cross-border court follows SA (and not WA or NT) rules of evidence regardless of where it is sitting, subject to appropriate modifications (as defined in clause 13).

72—Offence to fail to comply with order, judgment, warrant or summons

If an SA court is sitting outside of SA and exercising cross-border jurisdiction, it is an offence to fail to comply with an order, judgment, warrant or summons made by that court at that sitting, as long as it would also be

an offence if the same failure to comply would be an offence if the court were sitting in SA. Penalties for offences will be prescribed by regulation, and if the failure to comply would constitute an indictable offence if it occurred when the court was sitting in SA, then it is also an indictable offence if it occurs when the court is sitting in another participating jurisdiction.

Division 3—Miscellaneous matters relating to cross-border proceedings

73—Legal practitioners of another participating jurisdiction entitled to appear etc

A person who is entitled to engage in legal practice under the law of another participating jurisdiction is entitled to appear for a person in cross-border proceedings of a prescribed court of SA, and is also entitled to provide advice and other services, if the person who is the subject of the proceeding has a connection with a cross-border region that is partly in the other jurisdiction.

74—Court documents may be lodged, served or issued in another participating jurisdiction

This clause authorises a court document of an SA court to be lodged, served or issued in WA or the NT.

75—Court documents in wrong form do not invalidate proceedings or decisions

A cross-border court of any of the participating jurisdictions may find itself dealing with matters from two or even three of the jurisdictions at any one sitting. It is unreasonable to expect that each individual court will at all times have available the forms of each jurisdiction. It would be counter-productive to prevent a court from hearing a matter just because the form from the relevant jurisdiction is not available. It may be that a person with a cross-border connection is brought before an SA court in SA on an SA charge, and it is found that there is an outstanding charge in relation to another matter from the NT or WA where the person also has a cross-border connection. It is in the interests of justice that the court be able to deal with both matters at the one sitting, rather than delay dealing with the NT/WA matter for want of an NT/WA form.

This clause ensures that if a document that is lodged, served or issued in an SA court is in the form used in WA or NT, then that document is still effectual for its intended purpose. There is no right of appeal on the basis that the wrong jurisdiction's form was used. Subclause (3) of clause 75, however, does give an SA court the flexibility to order that an SA form be used.

76—Application of *Sheriff's Act 1978*

Part 3 of the *Sheriff's Act 1978* provides that the sheriff is responsible to the principal officer of a court for providing assistance in the maintenance of security and orderly conduct. Under clause 76 of the Bill, that Part will not apply in relation to premises or any other place in another participating jurisdiction used for the purposes of a cross-border proceeding of a prescribed SA court.

77—Law of State applies

SA courts exercising cross-border jurisdiction are governed by the laws of SA except where this Act provides otherwise. Those other laws which apply may also be modified by the regulations and apply in their modified form.

Division 4—Registration of interstate restraining orders

78—Part 2 Division 2 and Division 4 do not apply

Part 2 Division 2 sets out the criteria for determining if a person has a connection to a cross-border region. For the purposes of this Division, a different approach has been taken because of the peculiar nature of restraining orders and the registration process.

Part 2 Division 4 provides for the creation of multiple cross-border regions. However, in order to broaden the application of the cross-border scheme in relation to restraining orders, paragraph (b) of clause 80 and paragraph (b) of clause 81 do not require a connection with a cross-border region. Clause 78 has been included to ensure that the specific requirements of clause 80 and clause 81 will apply and not those of Part 2 Division 4.

79—Terms used in this Division

This is a definition clause. As well as defining *NT restraining order* and *WA restraining order* as restraining orders of those respective jurisdictions, it defines *register* in the context of the *Domestic Violence Act 1994* and the *Summary Procedure Act 1921*.

80—Registration of WA restraining orders under SA law

If a WA restraining order is made, amended or varied by a WA court, and either the respondent to the restraining order has a connection to a cross-border region or the person on whose behalf the restraining order has been taken out ordinarily resides in WA, a registrar of the SA Magistrates Court can register that restraining order.

81—Registration of NT restraining orders under SA law

If an NT restraining order is made, amended or varied by an NT court, and either the respondent to the restraining order has a connection to a cross-border region or the person on whose behalf the restraining order has been taken out ordinarily resides in the NT, a registrar of the SA Magistrates Court can register that restraining order.

Example 1—An NT magistrate sitting in Darwin makes a restraining order under the NT's restraining orders laws. For the purposes of the proceeding, the person against whom the order is made had a connection with the

SA/NT region. The Darwin registry is a registry of the SA Magistrates Court. Exercising the powers of a registrar of the SA Magistrates Court, a registry officer registers the order under SA's restraining orders laws.

Example 2—An NT magistrate sitting in Alice Springs makes a restraining order under the NT's restraining orders laws. The person for whose benefit the order is made ordinarily resides in the NT. The Alice Springs registry is a registry of the SA Magistrates Court. Exercising the powers of a registrar of the SA Magistrates Court, a registry officer registers the order under SA's restraining orders laws.

Part 6—Prescribed courts of another participating jurisdiction exercising cross-border jurisdiction

Division 1—Jurisdiction and powers of courts

82—Proceedings that may be heard in State

If a person who is the subject of a court proceeding has a cross-border connection, for the purpose of that proceeding, a prescribed court of WA or the NT may deal with that matter in SA.

Example 1—A person is charged with an offence under NT law alleged to have been committed in the NT portion of the SA/WA/NT region. The charge may be heard by an NT magistrate sitting anywhere in SA.

Example 2—A person who ordinarily resides in the SA/WA region is charged with an offence under WA law alleged to have been committed in Kalgoorlie. The charge may be heard by a WA magistrate sitting anywhere in SA.

Example 3—A person is arrested in the SA/WA/NT region for an offence alleged to have been committed under NT law in Darwin. The person also has an outstanding charge for an offence under NT law alleged to have been committed in the NT portion of the SA/NT region. Both charges may be heard by an NT magistrate sitting anywhere in SA.

83—Exercise of jurisdiction and powers

A prescribed WA or NT court can exercise its cross-border powers in SA. To enable it to do so, this clause empowers the court to sit in SA and to have registries here as well. The powers that a WA or NT cross-border court, or a magistrate or registrar of that court, may exercise in SA include compelling witnesses, administering oaths, punishing for contempt and issuing warrants, summonses and other processes.

Division 2—Miscellaneous matters relating to cross-border proceedings

84—Saving provision

This clause provides that despite any other Act or law, a person may be tried and punished in SA for an offence under the law of another participating jurisdiction by a prescribed court of that other jurisdiction in a cross-border proceeding of that court.

85—Privileges, protection and immunity of participants in proceedings

People such as magistrates, legal practitioners and witnesses involved in court proceedings in SA have certain privileges, protections and immunities so that they are not inhibited in fulfilling their obligations to the court through, for example, fear of defamation. This clause extends these privileges, protections and immunities to magistrates, legal practitioners and witnesses involved in WA or NT court proceedings being conducted in SA under cross-border jurisdiction.

86—Court documents may be lodged, served or issued in State

This clause gives permission for WA or NT court documents in relation to a cross-border matter to be lodged, served or issued in SA.

87—Application of *Sheriff's Act 1978*

Part 3 of the *Sheriff's Act 1978* applies in relation to any premises or other place in SA used for the purposes of a cross-border proceeding of a prescribed court of another participating jurisdiction as if the premises or place were used for the purposes of a proceeding of a court of SA.

88—Law of State does not apply

SA laws that would otherwise govern the exercise of jurisdiction by a court in this State do not apply when a court is a prescribed court of the NT or WA exercising cross-border jurisdiction.

Division 3—Registration of interstate restraining orders

89—Part 2 Division 2 and Division 4 do not apply

Part 2 Division 2 sets out the criteria for determining if a person has a connection to a cross-border region. For the purposes of this Division, a different approach has been taken because of the peculiar nature of restraining orders and the registration process.

Part 2 Division 4 provides for the creation of multiple cross-border regions. However, in order to broaden the application of the cross-border scheme in relation to restraining orders, clause 90 and clause 91 do not require a connection with a cross-border region. Clause 89 has been included to ensure that the specific requirements of clause 90 and clause 91 will apply and not those of Part 2 Division 4.

90—Registration of SA or NT restraining orders under WA law

This clause enables an SA or NT restraining order to be registered in SA under WA law. To register a restraining order under this clause is to register it as a restraining order of WA. If either the respondent to the restraining order has a connection to a cross-border region or the person on whose behalf the restraining order has been taken out ordinarily resides in WA, the Principal Registrar of the Magistrates Court of WA can register that restraining order.

91—Registration of SA or WA restraining orders under NT law

This clause enables an SA or WA restraining order to be registered in SA under NT law. To register a restraining order under this clause is to register it as a restraining order of the NT. If either the respondent to the restraining order has a connection to a cross-border region or the person on whose behalf the restraining order has been taken out ordinarily resides in the NT, the Registrar of the Local Court of the NT can register that restraining order.

Part 7—Bail of persons in custody under law of State

92—Police officer of State may exercise powers in another participating jurisdiction

Clause 34 sets out the provisions that apply when an SA police officer arrests a person either with or without a warrant under SA law in SA or in another participating jurisdiction. Under clause 92, the *Bail Act 1985* (with any appropriate modifications) applies to anyone held in the custody of an SA police officer in another participating jurisdiction.

93—Offence to fail to comply with bail agreement

If a person in WA or the NT is on bail under the *Bail Act 1985* and fails to comply with a bail agreement under that Act, the person has committed an offence if it would also be an offence if the failure to comply occurred in SA. If the failure to comply would constitute an indictable offence if it occurred in SA, then it is also an indictable offence if it occurs in another participating jurisdiction.

Part 8—Bail of persons in custody under law of another participating jurisdiction

94—Police officer of another participating jurisdiction may exercise powers in State

Proposed clause 51 sets out the provisions which apply when an NT or WA police officer arrests a person either with or without a warrant under NT or WA law in SA or in another participating jurisdiction. Under clause 94, the bail laws of the NT or WA apply to any matter concerning bail for the person in custody, and not the bail laws of SA.

Part 9—Mentally impaired accused

95—Terms used in this Part

This is a definition clause. Cross-border proceedings in prescribed courts in the NT and WA, or appeals from proceedings, are *NT proceedings* and *WA proceedings* respectively. *State treatment centre* is an approved treatment centre under the *Mental Health Act 1993*, and a *State prison* is an SA prison.

96—Persons committed to detention or custody under WA law

If, in a WA proceeding, the person who is the subject of the proceeding is required by a hospital order made under section 5(2) of the *Criminal Law (Mentally Impaired Accused) Act 1996* of WA to be detained in a State treatment centre, or to be kept in custody in another place in the State, the person may be detained in the treatment centre, or kept in custody in the place, in accordance with the order.

If, in a WA proceeding, a custody order under the *Criminal Law (Mentally Impaired Accused) Act 1996* of WA is made in respect of the person who is the subject of the proceeding, and the person is required under that Act to be detained in a State treatment centre or another place in the State, the person may be detained in the treatment centre or other place in accordance with the order.

97—Persons detained under NT law

Sections 74 and 75 of the *Mental Health and Related Services Act* of the NT and sections 79 and 80 of the *Sentencing Act* of the NT make provision for detaining a person where there are questions related to whether the person has a mental impairment. Clause 97 provides that if, in relation to an NT proceeding, a person is committed to detention in a hospital or prison under either of these NT Acts, then the person can be kept in custody in a State treatment centre.

Part 10—Sentences and orders under law of State

Division 1—Custodial sentences and orders

Subdivision 1—Sentences of imprisonment or detention

98—Serving sentence in State or another participating jurisdiction

If a person who is sentenced under SA law has a connection with a cross-border region, that person can be held in custody for the purpose of serving his or her sentence under SA law in a prison or detention centre in SA, WA or the NT.

99—Warrant of commitment

A 'warrant of commitment' is the approved form that is issued by judicial officers or court registrars if a person is sentenced to imprisonment or detention. Under clause 99, a warrant of commitment has general effect and does not specify in which prison or detention centre a sentence is to be served. For that reason, the warrant is not directed to any particular authorised officer, but to authorised officers in general. This provides flexibility in relation to where a cross-border prisoner or detainee may serve his or her sentence, which is one of the aims of the scheme. An SA sentence can be served in the NT or WA, and vice versa.

Subdivision 2—Remand

100—Remanded in custody in State or another participating jurisdiction

If a person who is remanded in custody under SA law has a connection with a cross-border region, that person can be held in custody for the duration of his or her remand under SA law in a remand facility in SA, WA or the NT.

101—Remand warrant

A 'remand warrant' is the approved form that is issued by judicial officers or court registrars if a person is remanded in custody. Under clause 101, a remand warrant has general effect and does not specify in which prison or detention centre the person is to be held. For that reason, the warrant is not directed to any particular authorised officer, but to authorised officers in general. This provides flexibility as to where a person the subject of cross-border proceedings can be held in custody, which is one of the aims of the scheme.

102—Law of State applies

When a person is remanded under clause 101, SA laws of remand apply except if the Act provides otherwise. Those other laws which apply may also be modified by the regulations and apply in their modified form.

Subdivision 3—Bring up orders

103—Bringing prisoner or detainee in another participating jurisdiction before judicial body of State

For certain purposes a prisoner or detainee is required or entitled to be brought before a court in relation to proceedings before a judicial body (eg sentencing). A *judicial body* includes a court or a Royal Commission. This clause provides that such an order can be made in relation to a person in custody in an NT or WA prison or detention centre under the law of any of the participating jurisdictions (including SA). This can only occur if the person has a connection with a cross-border region that includes the jurisdiction in which the person is held.

104—Custody of person brought up from prison or detention centre in another participating jurisdiction

The person who is in charge of a prison or detention centre where a person the subject of a bring up order is held in custody does not have to personally bring the person before the court. This function can be delegated to an authorised officer. A person who is taken from a prison or detention centre in compliance with a bring up order, must remain in the charge of an authorised officer. At the end of the proceeding involving the person brought up from prison or detention, that person must be returned to the prison or detention centre. The person's absence from prison or the detention centre for this purpose is not to be held against the person.

A proceeding involving a person who is the subject of a bring up order could be adjourned. In this circumstance, the person is to be confined to a prison or detention centre in a participating jurisdiction or, whilst in the charge of an authorised officer, kept at some place in a participating jurisdiction. The person is then to be brought up before the judicial body when required.

Subdivision 4—Miscellaneous matters

105—Carrying out custodial orders

SA custodial orders can be carried out by an authorised officer in SA or in WA or the NT.

106—Application of *Sheriff's Act 1978*

If a person is being held in custody under SA law in WA or the NT, his or her custody is not covered by the *Sheriff's Act 1978* of SA. Instead, the corresponding Acts of the WA and NT would apply.

107—Application of *Correctional Services Act 1982*

If a person is being held in custody under SA law in a prison in WA or the NT, the *Correctional Services Act 1982* of SA does not apply in relation to the person. Instead, the corresponding Acts of WA and the NT would apply.

108—Application of *Young Offenders Act 1993*

Prescribed provisions of the *Young Offenders Act 1993* do not apply in relation to a person in custody in a detention centre in WA or the NT under this Part.

Division 2—Non-custodial sentences and orders

109—Carrying out non-custodial orders in another participating jurisdiction

A person who is convicted of an offence may receive a non-custodial sentence. If the person has a connection with a cross-border region, he or she may carry out the terms of the sentence either wholly or partly in WA or the NT. Community corrections officers (CCOs) and juvenile justice officers (JJOs) supervise offenders carrying out non-custodial sentences. This clause provides that SA CCOs and JJOs can fulfil these responsibilities under SA law in WA or the NT provided that the person against whom the order has been made has a connection to

a cross-border region. SA laws govern these orders and the powers that CCOs and JJOs exercise in relation to them.

110—Conducting diversionary programs for young offenders in another participating jurisdiction

A police officer, juvenile justice officer or other office holder of SA may exercise in WA or the NT any of the powers the office holder has under Part 2 of the *Young Offenders Act 1993* in relation to an alleged offender who has a connection with a cross-border region.

Part 11—Sentences and orders under law of another participating jurisdiction

Division 1—Custodial sentences and orders

111—Serving sentence of imprisonment or detention in State

If a person who is sentenced under WA or NT law has a connection with a cross-border region, the person can be held in custody for the purpose of serving his or her sentence under those laws in a prison or detention centre in SA.

112—Remanded in custody in State

If a person who is remanded in custody under WA or NT law has a connection with a cross-border region, that person can be held in custody for the duration of the remand under those laws in a remand facility in SA.

113—Carrying out custodial orders

If a custodial order has been made under the law of NT or WA, it can be carried out in SA by an authorised officer of any of the participating jurisdictions. Likewise, an SA authorised officer may carry out a custodial order made under NT or WA law in either the NT or WA.

114—Effect of bring up order if person in custody under law of State

A person can be held in custody under SA law in an NT or WA prison or detention centre. However, the person may be the subject of an NT or WA bring up order. If the person is absent from prison or a detention centre in order to comply with an NT or WA bring up order, this is not to be held against the person for the purpose of the SA sentence.

115—Application of *Sheriff's Act 1978*

If a person is being held in custody under NT or WA law in SA, the person's custody is covered by the *Sheriff's Act 1978* of SA. The corresponding Acts of the WA and NT would not apply.

116—Application of *Correctional Services Act 1982*

A person being held in custody under NT or WA law in a prison in SA will fall within the scope of the *Correctional Services Act 1982* of SA.

117—Application of *Young Offenders Act 1993*

Prescribed provisions of the *Young Offenders Act 1993* will apply in relation to a person in custody in a detention centre in the State under Division 1.

Division 2—Non-custodial sentences and orders

118—Carrying out non-custodial orders in State

A person who is convicted of an NT or WA offence may receive a non-custodial sentence. If the person has a connection with a cross-border region, he or she may carry out the terms of the sentence either wholly or partly in SA. This clause provides that NT and WA CCOs and JJOs can fulfil their responsibilities under NT and WA law in SA provided that the person against whom the order has been made has a connection to a cross-border region. SA laws relating to non-custodial sentences and related powers do not apply in these circumstances.

119—Conducting diversionary programs for young offenders in State

A juvenile who is alleged to have committed an offence in WA or the NT may be directed to a diversionary program under the relevant laws of those jurisdictions. If the juvenile has a connection with a cross-border region, he or she may participate in a diversionary program either wholly or partly in SA. Office holders such as JJOs and police officers may supervise a young person on a diversion program. This clause provides that NT and WA officers can fulfil these responsibilities under NT and WA respectively in SA provided that the person on the diversionary program has a connection to a cross-border region. SA laws do not apply in these circumstances.

Part 12—Enforcement of fines

Division 1—Preliminary matters

120—Terms used in this Part

This is a definition clause. If a person fails to pay a fine in SA, he or she can have his or her drivers licence disqualified. *Fines Director* refers to the person who holds the office of Manager, Penalty Management under the *Criminal Law Sentencing Act 1988*.

Division 2—Fines under law of State

121—Request to enforce fine in another participating jurisdiction

The Fines Director may request the fines enforcement agency of another participating jurisdiction (the *reciprocating agency*) to enforce a fine that is payable under the *Criminal Law (Sentencing) Act 1988* if the offender on whom the fine has been imposed has a connection with a cross-border region.

122—Effect of making request

It is important that an offender does not find him or herself in the situation of perhaps expiating a fine more than once because a fine has been referred to another jurisdiction for enforcement. In the interest of procedural fairness, the offender should only be subject to one fines enforcement regime at a time. There could also be confusion between fines enforcement agencies if they are simultaneously seeking to enforce the same fine. Therefore, when the SA Fines Director requests another participating jurisdiction to enforce an SA fine, he or she must not take action or further action to enforce the fine under the *Criminal Law (Sentencing) Act 1988*.

123—Receipt of money by Fines Registrar

If the Fines Director receives from the offender money in whole or part satisfaction of the fine, he or she must notify the reciprocating agency in writing of the payment.

124—Receipt of money from reciprocating agency

Should the fines enforcement agency in the NT or WA send money to the SA Fines Director in Part or whole payment of a fine, then the payment is to be treated as if it were received from the offender.

125—Resumption of enforcement by Fines Registrar

After the SA Fines Director has requested another jurisdiction's fines enforcement agency to take over the enforcement of a fine, the Registrar can request that agency to refer the fine back to SA. Also, the other jurisdiction's agency can request that SA resume responsibility for a fine.

Division 3—Fines under law of another participating jurisdiction

126—Request to enforce fine in State

If a fine has been imposed in WA or the NT, and the fines enforcement agency in that jurisdiction sends a request to the SA Fines Director to enforce a fine, the SA Fines Director has no alternative but to register the fine. The serious nature of the payment of fines requires that, under subclause (2) of clause 126, such a request must be made formally in writing and supported by a certified copy of the order imposing the fine, a certificate from the NT or WA agency showing the amount of the fine outstanding and providing written advice that establishes the offender's connection with the cross-border region.

127—Effect of registration

On registration of the fine under clause 126, the Fines Director may enforce the fine under Part 9 Division 3 of the *Criminal Law (Sentencing) Act 1988* as if it were a pecuniary sum recoverable under that Act.

128—Receipt of money by reciprocating agency

It is always possible that an offender may pay money to the WA or NT fines enforcement agency even though the fine has been transferred to SA for enforcement. If the Fines Director receives notice that this has happened, the Director is to record the fine and may only take further action in relation to any outstanding amount.

129—Receipt of money by Fines Registrar

Should the Fines Director receive money in Part or full payment of an NT or WA fine that has been transferred to and registered in SA for enforcement, the Director is to send the money to the WA or NT fines enforcement agency. This applies to money paid by the offender or as a result of enforcement action taken by the SA Fines Registrar under SA law (eg seizure of goods).

130—Request to cease enforcement of fine

A WA or NT fines enforcement agency that has previously transferred a fine to SA for enforcement can request that the Fines Director cease to take action to enforce the fine. Alternatively, the Fines Director may inform the WA or NT agency that SA will no longer be enforcing the fine. If a fine is being returned to an NT or WA agency that had requested that SA enforce the fine, the Fines Director is to advise the NT or WA agency of any money received in relation to the fine and any reduction in the amount of the fine outstanding. Any money that has been received in relation to the fine is to be sent to the other jurisdiction's agency. The Fines Director is not to take any further action with respect to the fine.

Part 13—Office holders of participating jurisdictions

Division 1—Holding offices and exercising powers under law of other jurisdictions

131—Secondary office holders and secondary offices

A secondary office holder is an office holder of a participating jurisdiction who holds office because the office holder is an office holder of one of the other participating jurisdictions. A secondary office is an office held under the law of a participating jurisdiction by a secondary office holder.

Example—WA and NT police officers who are appointed as SA police officers under the *Police Act 1998* will be secondary office holders of SA.

132—Office holders of State may be secondary office holders of another participating jurisdiction

SA office holders may hold a secondary office from the NT or WA. This clause also authorises SA office holders to exercise the powers of their NT or WA secondary office for the purpose of administering or enforcing NT or WA cross-border laws.

133—Office holders of another participating jurisdiction may be secondary office holders of State

WA and NT office holders may hold a secondary office under SA law. This clause also authorises them to exercise SA powers for the purpose of administering or enforcing SA cross-border laws.

134—Prohibition against holding or exercising powers of another office not breached

Some SA office holders are, under other legislation, prevented from holding another office at the same time they hold an office in SA. This clause provides that if the secondary office is held under the provisions of cross-border laws, then this prohibition is not breached.

135—Terms of appointment of secondary office holders under law of State

A WA or NT office holder who holds a secondary office in SA does not receive remuneration from SA as well as from the jurisdiction of his or her principal office. The office holder is only entitled to the remuneration that he or she receives in relation to the principal office. Should the office holder no longer hold the principal office to which his or her status as a secondary office holder in SA is linked, then he or she ceases to be a secondary office holder.

Division 2—Appointment of magistrates of another participating jurisdiction to be magistrates of State

136—Appointment as magistrates of Magistrates Court

WA and NT magistrates are appointed as magistrates of the SA Magistrates Court under the provisions of the *Magistrates Act 1983* of SA.

137—Appointment as magistrates of Youth Court

The *Youth Court Act 1993* applies (with any appropriate modifications) in relation to the appointment of magistrates of WA or the NT to be magistrates of the Youth Court of South Australia.

Part 14—Miscellaneous matters

138—Reporting accidents, producing driver's licences etc at police stations etc

Laws such as road traffic laws place obligations on people to, for example, report certain events such as a serious motor vehicle accident to the police. This clause provides that a person's obligation under SA law can be met by making a report to a police station in another participating jurisdiction if the person has a connection with a cross-border region. Likewise, if a person is required to make a report to the police of another participating jurisdiction, he or she may do so at an SA police station.

139—Jurisdiction of Coroner

The *Cross-border Justice Act 2009* does not affect the operation of the *Coroners Act 2003* in relation to the investigation of the death of a person.

140—Power of Minister to enter agreements

This Bill does not seek to deal with the operational detail of the administration of justice. For effective administration of this legislation, those responsible for providing justice services will be required to operate in a co-operative manner. Therefore, to support the successful implementation of cross-border justice schemes, it is intended that there be agreements between governments at ministerial level. This clause provides for this.

141—Inconsistency between Act and agreement

As referred to in clause 140, there will be intergovernmental agreements at ministerial level to support this Bill. There will also be service level agreements at agency level for police, courts, community corrections, fines enforcement and so on. Should there be an inconsistency between the terms of any of these agreements and this Bill, the terms of the Bill will prevail.

142—Protection of office holders of State taking action in another participating jurisdiction

Office holders have certain protections and immunities in relation to the performance of their official duties. This clause ensures that an SA office holder performing the duties of his or her SA office in WA or the NT has the same protections and immunities as if the office holder were performing the duties in SA.

143—Protection of office holders of another participating jurisdiction taking action in State

Office holders have certain protections and immunities in relation to the performance of their official duties. This clause provides that NT and WA office holders performing the duties of their NT or WA office in SA have the same protections and immunities under SA law as if they were performing these duties in the NT or WA.

144—Disclosure of information to authorities in another participating jurisdiction

Privacy and other laws restrict the capacity of agencies to share information about individuals unless the legislation governing the activities and powers of agencies explicitly allows the sharing of information. For the successful administration of this legislation, it will be necessary for agencies of each of the participating jurisdictions to share information with other agencies from the other participating jurisdictions eg the Parole Board of South

Australia may require information from a prison superintendent in WA or the NT in considering a parole application from a prisoner serving an SA sentence in a WA or NT prison. This clause authorises the exchange of information across the jurisdictions if an agency would be authorised to provide the same information to the equivalent body in its own jurisdiction. There is also explicit provision in this clause for the CEO (corrections) to provide information for the purpose of research.

145—Delegation by CEO (corrections)

This clause empowers the CEO (corrections) to delegate (in writing) his or her powers under the legislation. The CEO may place limits on this delegation. The person to whom the CEO delegates powers cannot delegate them further to someone else. Even though the CEO may have delegated a power, this does not prevent the CEO from also exercising that power during the currency of the delegation.

146—Regulations

This clause enables the Governor to make regulations specified in the Bill or regulations that are deemed necessary to enable the Bill to take effect.

147—Review of Act

This clause requires the Minister to carry out a review of the operation and effectiveness of the Act after it has been in operation for three years. A report on the outcome of the review is to be prepared, and a copy of the report is to be laid before each House of Parliament within four years of the commencement of the Act.

Schedule 1—Related amendments

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of *Bail Act 1985*

2—Amendment of section 11—Conditions of bail

Under section 11 of the *Bail Act 1985* as amended by this clause, a bail condition may relate to a place or circumstances outside of South Australia.

Part 3—Amendment of Magistrates Court Act 1991

3—Insertion of section 14A

This clause inserts a new section into the *Magistrates Court Act 1991*. Under the proposed section, if the Court is required to perform its functions at a place outside the State, the Minister may appoint as a member of the non-judicial staff of the Court at the place—

- a person who holds office as a registrar or other officer of a court of the jurisdiction in which the place is located; or
- any other person.

4—Amendment of section 16—Time and place of sittings

The amendment made by this clause is consequential and makes it clear that the Court may sit outside the State.

Part 4—Amendment of Youth Court Act 1993

5—Insertion of section 13A

This clause inserts a new section into the *Youth Court Act 1993*. Under the proposed section, if the Court is required to perform its functions at a place outside the State, the Minister may appoint as a member of the non-judicial staff of the Court at the place—

- a person who holds office as a registrar or other officer of a court of the jurisdiction in which the place is located; or
- any other person.

6—Amendment of section 15—Time and place of sittings

Under section 15 of the *Youth Court Act 1993* as amended by this clause, registries of the Youth Court are to be maintained at such places (either within or outside the State) as the Governor may determine.

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

STATUTES AMENDMENT (ENERGY EFFICIENCY SHORTFALLS) BILL

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

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (22:39): 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 (Energy Efficiency Shortfalls) Bill 2009 represents a key step in implementing the Government's Residential Energy Efficiency Scheme (REES), which commenced on 1 January 2009.

The REES delivers on the Government's commitment to assisting South Australian families, particularly low income families, reduce their energy bills, cut their greenhouse emissions, and help them prepare for price increases arising from emissions trading in 2010. The Honourable Mike Rann announced the REES at the Solar Cities Congress in Adelaide in February 2009.

The REES takes effect as a licence condition for all retailers of electricity and gas in South Australia who supply more than a threshold number of residential customers. The framework for the scheme has been established by regulations under the *Electricity Act 1996* and *Gas Act 1997*.

The REES requires obliged retailers to meet three targets in respect of each of their licences. Firstly, they must achieve a set amount of greenhouse gas savings, measured in tonnes of carbon dioxide equivalent, by implementing energy efficiency activities such as ceiling insulation in households. Secondly, they must ensure a set proportion of these savings are achieved in a Priority Group comprising low income households and those in hardship. Thirdly, they must deliver a set number of energy audits to Priority Group households.

Scheme targets are set by the Minister for Energy, and are apportioned to obliged retailers by the Essential Services Commission of South Australia (ESCOSA). The Minister also sets the minimum requirements for an energy audit; and the initial list of eligible energy efficiency activities retailers can implement, their deemed value in tonnes of greenhouse savings, and their minimum specification. ESCOSA has the role of maintaining the list of energy efficiency activities going forward.

The REES is similar to schemes being established in other jurisdictions, including the Victorian Energy Efficiency Target and New South Wales Energy Efficiency Target. These schemes also commence in 2009.

This Bill amends the *Electricity Act 1996* and *Gas Act 1997* to provide for a new and flexible penalty regime specifically for the REES and which is designed to motivate retailers to comply with their obligations.

In essence, the penalty regime applies where ESCOSA finds that a retailer has not met more than 90 per cent of one or more of its targets for the year. If this occurs, ESCOSA may issue a notice giving the retailer a choice to either pay a monetary penalty, which varies depending on the size of the shortfall; or be prosecuted for breach of licence which carries a criminal conviction and a fine of up to one million dollars. If the retailer has met more than 90 per cent of its target, any shortfall is simply carried over to the next year without penalty.

The monetary penalty has two components: a flat rate of up to $100,000 which is payable regardless of the size of the shortfall; and a dollar value for each tonne of carbon dioxide equivalent not saved, and for each energy audit not undertaken. Dollar values are to be set above what it would cost retailers to comply, and at a level sufficient to deter non-compliance. The actual dollar values will be considered by the Government and set by Regulation once this Bill has been passed. Any penalties are paid to the Consolidated Account.

If the retailer ignores the notice or refuses to make a choice, ESCOSA has discretion to either enforce the monetary penalty as a debt, or prosecute for breach of licence. Nothing stops ESCOSA from commencing proceedings for breach of licence at any time, but if it does so, then it cannot also recover the monetary penalty.

A 'make good' provision has been included for a shortfall relating to a retailer's energy audit target. This means that even though a retailer pays a penalty or is successfully prosecuted, the entire audit shortfall is added to the retailer's target for the next year. Without this provision, there is a material risk that retailers may pay the penalty rather than comply. The energy audit is an important component of assisting low income families, and the Government has sought to ensure the primacy of this measure.

The amendments provided for in this Bill and the anticipated amendments to the regulations will come into force after the commencement of the REES (1 January 2009). Accordingly, the Bill specifically provides that the penalty regime applies to any relevant shortfall arising in its first year of the operation.

In addition to the penalty regime, retailers face significant commercial, prudential and reputational risk in not complying with their obligations under their licence. All of these things in combination will assist in ensuring South Australian families, including low income families, benefit from reduced energy costs, as well as delivering environmental benefits from reduced greenhouse gas emissions.

The Department for Transport, Energy and Infrastructure consulted extensively with retailers, their potential contractors, ESCOSA, welfare groups and other stakeholders during 2008. This included specific consultation on the penalty regime established by this Bill.

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 *Electricity Act 1996*

4—Insertion of section 94B

This clause inserts new section 94B.

94B—Energy efficiency shortfalls

Proposed section 94B provides that an electricity retailer is liable to a penalty imposed by the Essential Services Commission of South Australia if the retailer has failed to engage, in accordance with and to the extent required by the regulations, in activities relating to energy efficiency identified by the regulations (an 'energy efficiency shortfall'). The penalty is comprised of a prescribed base penalty and an additional amount to reflect the extent of the energy efficiency shortfall. Procedures for recovering a penalty are set out in the measure. A retailer may elect to be prosecuted in respect of a shortfall instead of paying the shortfall penalty.

Part 3—Amendment of *Gas Act 1997*

5—Insertion of section 91A

This clause inserts new section 91A.

91A—Energy efficiency shortfalls

Proposed section 91A is to the same effect as proposed section 94B of the *Electricity Act 1996*. Retailers required to engage in energy efficiency activities hold licences under both the *Gas Act 1997* and the *Electricity Act 1996*. Hence, it is necessary to insert the penalty provision into both Acts.

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

SURVEY (FUNDING AND PROMOTION OF SURVEYING QUALIFICATIONS) AMENDMENT BILL

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

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (22:39): 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 *Survey Act 1992* provides for the licensing and registration of surveyors and makes provisions relating to the surveying of land boundaries. Surveyors play a critical role in the economic development of the State's land development and subdivision processes. Only licensed surveyors can carry out surveys of property boundaries.

I am advised that there are approximately 100 licensed surveyors actively lodging surveys in the Lands Titles Office and a number of others holding administrative roles in government and the private sector. Surveying is an aging profession and there is a shortage of surveyors both nationally and locally and little opportunity to attract surveyors from other parts of Australia or overseas.

In 2005 the University of South Australia ceased offering the undergraduate course necessary for a person to become a licensed or registered surveyor. As a consequence surveying qualifications are no longer offered in South Australia.

The Government is concerned that the closure of the surveying program will have a significant and ongoing impact on the ability to supply the number of surveyors required to support development in the State and has been working with the Institution of Surveyors to explore opportunities to re-establish appropriate courses in South Australia.

The Institution of Surveyors has responsibilities under the *Survey Act 1992* to license and register surveyors and to provide a general oversight over the professional practice of surveyors. Funding to enable it to undertake these responsibilities is provided by way of a levy on plans certified by licensed surveyors and lodged in the Lands Titles Registration Office.

This Bill enables the Institution to utilise money gathered from the plan levy to contribute to the cost of running these courses in surveying and promoting surveying as a career.

Negotiations are currently taking place between the Institution and the University of South Australia to develop an appropriate program of study.

The proposal has the full support of the Institution of Surveyors and has been endorsed by the Survey Advisory Committee. The Housing Industry Association has advised that it believes it essential that surveying courses continue to be provided in South Australia and support this approach.

I commend this Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Survey Act 1992*

3—Amendment of section 10—Functions of Institution of Surveyors under this Act

The following function is assigned to the Institution of Surveyors: providing financial and other assistance for the conduct by a university of, or participation of a student in, a course of instruction and training that provides qualifications for licensing or registration as a surveyor, and otherwise promoting surveying as a career, as agreed with the Minister.

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

LEGISLATIVE REVIEW COMMITTEE

The House of Assembly informed the Legislative Council that it had appointed Mr Kenyon to the committee in place of Ms Fox (resigned).

STANDING ORDERS COMMITTEE

The House of Assembly informed the Legislative Council that it had appointed Ms Simmons to the committee in place of Mr O'Brien (resigned).

PARLIAMENTARY COMMITTEE ON OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION

The House of Assembly informed the Legislative Council that it had appointed Ms Stevens to the committee in place of Mr Koutsantonis (resigned).

PUBLISHING COMMITTEE

The House of Assembly informed the Legislative Council that it had appointed Ms Breuer to the committee in place of Mr Koutsantonis (resigned).

IRRIGATION BILL

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

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (22:42): 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.

A review of the *Irrigation Act* 1994 and the *Renmark Irrigation Trust Act* 1936 has been undertaken to ensure South Australian irrigation infrastructure management practices are consistent with the requirements of key government policy directions and related legislation and to reflect contemporary management practices.

The two Acts establish governance frameworks to provide for the irrigation of land in government and private irrigation districts within rural South Australia. In recent decades the South Australian government has progressively removed itself from the administrative affairs of district irrigators, allowing service provision to be carried out by private irrigation trusts. Significant government investment in replacing irrigation infrastructure occurred with the transition from government to private trusts. Much of this infrastructure has an 80-year lifespan.

This *Irrigation Bill 2009* repeals the *Irrigation Act* 1994 and a companion Bill repeals the *Renmark Irrigation Trust Act* 1936.

The *Irrigation Bill 2009* includes provisions that will ensure compliance with key government policy directions including the National COAG Water Reform (1994), the National Water Initiative (2004), and the Inter-

Governmental Agreement on Murray-Darling Basin Reform (2008). The Bill also ensures consistency with the *Water Act 2007* (Commonwealth) in particular, those provisions relating to water charges and the removal of obstacles to permanent trade in water.

In addition, the *Irrigation Bill 2009* provides for:

- flexibility in the management of water licences so that a trust can choose by resolution to devolve its water licence to all members of the trust;
- flexibility for individual members, enabling them to apply to the trust to transform their irrigation right into a water licence under the *Natural Resources Management Act 2004;* and
- flexibility for existing trusts to continue the management of collectively owned irrigation infrastructure and/or drainage networks, and for new trusts to be established or amalgamated in the future.

Other key features of the proposed provisions in the Bill include:

- removal of the concept of an irrigation district so that the operations and functions of an irrigation trust are based on service provision rather than land tenure;
- emphasis on the power of an irrigation trust to enter into individual service agreements or contracts for the delivery of water or drainage services;
- making explicit that an irrigation trust must not restrict permanent trade of water out of its irrigation network and that an irrigation trust must facilitate trade both within and out of a trust network, at the request of its members, and in accordance with the rules under the *Water Act 2007;*
- providing that fees and charges for water, drainage and other services provided by a trust reflect the cost of providing, maintaining, managing and operating irrigation and drainage infrastructure, subject to the rules under the *Water Act 2007;* and
- that an individual's entitlement to vote at a trust meeting is detennined by an individual's connection to a trust's supply and/or drainage infrastructure as a member of the trust, unless otherwise specified in any contractual arrangements established between the two parties.

The Bill also modernises, aligns and clarifies tenninology, updates penalties, updates other miscellaneous provisions, removes references to government irrigation districts, as they no longer exist, and makes a minor consequential amendment to the *Natural Resources Management Act 2004.*

As well as ensuring compliance with contemporary policy directions these provisions will enable those irrigators wishing to exit the industry in South Australia to trade their water. This is an important element in facilitating irrigator access to the Small Block Irrigator's Exit Grant Packages which have been made available by the Australian Government until 30 June 2009.

The measure is fundamental to ensuring that the management and operation of irrigation infrastructure in South Australia is well equipped to meet future challenges. The Government looks forward to the support of Parliament in the passing of this Bill.

I commend the Bill to the House.

Explanation of Clauses

Part I—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause sets out definitions for the purposes of the measure.

Part 2—Establishment, amalgamation and dissolution of trusts

Division 1—Establishment of trust 4—Application to establish a trust

This clause sets out the basis on which an application for the establishment of an irrigation trust may be made to the Minister and the form in which it must be made.

5—Establishment of trust

This clause makes provision for the granting of an application to establish an irrigation trust by the Minister by notice in the Gazette. The proposed section sets out the information that must be specified in the notice and provides that an irrigation trust established under proposed section 5 is a body corporate. The clause further provides for the vesting of property identified in an application for the establishment of an irrigation trust in the irrigation trust on its incorporation.

6—Rules

Proposed section 6 provides that an irrigation trust may have a set of rules relating to the membership, management or operations of the trust.

Subsection (2) provides that the rules of an irrigation trust—

- must comply with any prescribed requirements; and
- must not contain any provision that is contrary to or inconsistent with this Act; and
- .may provide for the imposition and payment of application and other fees by members of the trust (including a fee to be paid by a person if or when the person ceases to be a member of the trust); and
- may provide for or regulate the times at which irrigation water may be used; and
- .may provide for other matters to facilitate—
  - the effective management of an irrigation or drainage system provided by the trust; or
  - the efficient supply, delivery or use of water provided by an irrigation system provided by the trust; or
  - the efficient drainage, management or disposal of water through a drainage system provided by the trust; and
- may provide for such other matters as may be prescribed by the regulations or expedient for the purposes of the trust.

The provision sets out the basis on which the rules may be altered and makes it an offence for the trust to fail to furnish the Minister with an up-to-date copy of the rules of the trust, following the request of the Minister, within a period specified by the

Minister.

7—Manner in which contracts may be made

Proposed section 7 provides that contracts may be made by or on behalf of an irrigation trust as specified by the proposed section.

Proposed subsection (2) provides that a contract may be varied or rescinded by or on behalf of an irrigation trust in the same manner as it is authorised to be made.

Division 2—Members

8—Members (including presiding member and deputy presiding member)

Clause 8 establishes the membership of an irrigation trust. On the establishment of an irrigation trust, the persons who authorised the application for the establishment of the irrigation trust become members of the trust. Other persons who carry on the business of primary production may be admitted as members of the trust by resolution of the trust or as provided by the rules of the trust.

Proposed subsection (3) specifies the circumstances in which a person ceases to be a member of a trust.

The proposed section provides that a trust must have a presiding member and that it may have a deputy presiding member appointed from its membership. The provision sets out the manner in which a person may be removed from office and the basis on which a person ceases to hold office.

9—Rights and liabilities of membership

Proposed section 9 sets out the rights and liabilities of members of an irrigation trust.

10—Cailing of meetings

This clause sets out the manner in which a meeting of an irrigation trust may be called and imposes a requirement on the presiding member to call an annual general meeting of the trust.

11—Procedures at meetings

This clause specifies the procedures that must be observed at meetings of an irrigation trust.

12—Voting at meetings

Proposed section 12 establishes that a member of an irrigation trust is entitled to vote at meetings of the trust and that a member may nominate another person to attend and vote at meetings on his or her behalf.

Division 3—Amalgamation of trusts

13—Amalgamation of trusts

This clause provides for the amalgamation of 2 or more irrigation trusts by resolution of each trust and by application to the Minister.

Subsection (2) provides that a resolution must be supported by at least two-thirds of the number of votes cast at a meeting of the trust.

Proposed subsection (3) specifies the form in which application to the Minister for amalgamation as a single irrigation trust must be made and proposed subsection (4) sets out the basis on which the Minister may approve the application.

This clause requires the Minister to establish any new irrigation trust following amalgamation by notice in the Gazette.

Proposed subsection (7) provides that an irrigation trust established under the proposed section is a body corporate.

Proposed section 13 provides for the dissolution of any irrigation trust that was party to the application for amalgamation, the transfer of any property of the amalgamating trusts to the irrigation trust formed by the amalgamation and the transfer of the rights and liabilities of the trusts that were party to the amalgamation to the new irrigation trust on the date on which the trust is established.

Division 4—Dissolution of trusts

14—Dissolution on application

This clause provides for the dissolution of an irrigation trust by application to the Minister. The application to the Minister must be made by the members of the trust and the decision to dissolve must be made pursuant to a resolution of the trust that must be supported by 80% or more of the number of votes cast at a meeting of the trust.

15—Dissolution on Minister's initiative

Proposed section 15 provides for the dissolution of an irrigation trust by the Minister if—

- in the Minister's opinion the trust—
  - is unable to carry out its functions properly because of disagreements between its members; or
  - is not carrying out its functions properly for any other reason; or
  - is not properly maintaining any irrigation and drainage systems provided by the trust; or
- the trust is unable to pay its debts as they fall due; or
- the trust has failed to comply with a provision of the Act; or
- the Minister is of the opinion that it is just and equitable that the trust be wound up in the circumstances of the particular case.

At the expiration of 3 months after service by the Minister of a notice of dissolution of the trust—

- the trust is dissolved; and
- any water licence held by the trust—
- will vest in 1 or more persons determined by the Minister; or
- will be dealt with in some other manner determined or approved by the Minister,

subject to the operation of the *Natural Resources Management Act 2004.*

16—Disposal of property on dissolution

This clause provides for the vesting of the property, rights and liabilities of an irrigation trust on its dissolution.

Part 3—Management of trusts

Division 1—Board of management

17—Board of management

This clause provides that an irrigation trust may appoint a board of management of the trust to carry out the day to day operations of the trust and to manage its general affairs.

18—Delegation

This clause provides a power of delegation by a board of management in respect of a function or power of the board to a member of the board or to another person or body.

Division 2—Accounts and audit

19—Accounts to be kept

Proposed section 19 requires an irrigation trust to cause proper accounts to be kept of its financial affairs.

20—Preparation of financial statements

This clause provides that an irrigation trust must, as soon as practicable after the end of each financial year, cause financial statements in respect of that financial year to be prepared in accordance with recognised accounting standards and cause the statements to be audited.

The proposed section makes it an offence for a person—

- to refuse or fail to allow an auditor access, for the purposes of an audit, to any accounts or accounting records of the trust in his or her custody or control; or

- refuse or fail to give any information or explanation as and when required by an auditor; or
- otherwise hinder, obstruct or delay an auditor in the exercise or performance of a power or function of the auditor.

Proposed subsection (6) requires an auditor to prepare a report on the audit on the audit's completion.

21—Accounts etc to be laid before annual general meeting

This clause requires that at each annual general meeting of an irrigation trust, the trust must lay before the meeting a copy of the audited financial statements of the trust for the previous financial year, a copy of the auditors report and a report prepared by the trust on the operations of the trust in the previous financial year.

Proposed subsection (2) requires that at the request of the Minister or any member of the trust, the trust must provide the Minister or member with a copy of the audited financial statements, the auditors report and the report prepared by the trust in respect of the financial year to which the request relates.

Division 3—Committees

22—Committees

Proposed section 22 provides that an irrigation trust may establish committees of members to advise the trust on any aspects of its functions.

Proposed subsection (2) provides that a board of management of an irrigation trust may establish committees to advise the board on any aspects of its functions.

Part 4—Functions and powers of irrigation trusts

Division 1—Functions of trusts

23—Functions of trusts

This clause provides that an irrigation trust has the following functions:

- to provide, maintain, operate and manage an irrigation system or systems;
- to provide, maintain, operate and manage a drainage system or systems;
- such other functions as are specified or prescribed by or under this or any other Act.

Proposed subsection (2) provides that an irrigation trust may operate on the basis that some or all of the water supplied through an irrigation system managed by the trust will be supplied under a water licence held by the trust or on the basis that the trust will deliver water to members of the trust for the purposes of water licences held by the members.

However, an irrigation trust established after the commencement of this Act must operate on the basis that the water licence is held by the members and not the trust itself.

Proposed subsection (5) provides that an irrigation trust may set terms and conditions associated with the use *of* any irrigation system or drainage system provided by the trust and the supply or delivery *of* water by the trust.

Proposed subsection (6) ensures that when determining the terms and conditions on which water is supplied or delivered to, or drained from, land or in holding or dealing with any water licence the trust must comply with this Act as well as other specified requirements. An irrigation trust is always required to take all reasonable steps to ensure that it operates in a financially responsible manner.

Division 2—Powers of trusts

24—Powers of trusts

This clause sets out the powers that an irrigation trust may exercise in order to carry out its functions. Such powers include the power to construct facilities for holding water, install and operate pumps, control the flow *of* water in an irrigation or drainage channel and to acquire land.

25—Further powers of trusts

In addition to the powers conferred on an irrigation trust by proposed section 24, an irrigation trust may, pursuant to an agreement with the owner or occupier *of* any serviced property, construct or extend an irrigation system or a drainage system on the property for the distribution or drainage *of* water.

Proposed subsection (2) provides that a trust may, in order to assist its members, purchase irrigation equipment, components and tools for resale to its members.

26—Delivery of water or supply of drainage to other persons

This clause allows an irrigation trust to enter into an agreement with a person who is not a member *of* the trust to deliver water for the purpose *of* irrigating land or to drain water from land by means *of* an irrigation system or drainage system provided and managed by the trust.

27—Supply or delivery of water for other purposes

This clause provides that in addition to supplying or delivering water for other purposes, an irrigation trust may supply or deliver water for domestic or other purposes by agreement other than if a supply *of* water for those purposes is available under the *Waterworks Act* 1932.

28—Drainage of other water

This clause enables an irrigation trust to drain water from land that is not irrigation water.

Division 3—Irrigation rights, water entitlements and trading

29—Fixing of irrigation rights

Proposed section 29 applies in relation to an irrigation trust that holds 1 or more water licences for the purposes *of* supplying water to its members.

Proposed subsection (2) provides that an irrigation trust to which the proposed section applies must fix an entitlement (an irrigation right) in respect of each member of the trust who is to receive water on account of a water licence held by the trust. The proposed section further provides that an irrigation right will be fixed by resolution of the trust and that it may be expressed as a volume or units.

30—Surrender or transfer *of* water available under irrigation rights

This clause provides for the surrender of water available under an irrigation right held by a member of a trust to the trust and provides for the transfer of water available under an irrigation right by a member of a trust to another member of the trust or by the trust acting at the request of a member to a person who is not a member of the trust.

Proposed subsection (2) provides, that if a member of the trust wishes to surrender water, the trust must take reasonable steps to come to a reasonable agreement on a sum of money or other consideration to be paid. A member must not transfer water to another member of the trust without first notifying the trust of the proposed transfer in accordance with any requirements specified by the trust and a request by a member of the trust to transfer water to a person who is not a member of the trust must be complied with within a reasonable time.

31—Surrender or transfer *of* irrigation rights

This clause provides that an irrigation right held by a member of an irrigation trust is capable of being—

- surrendered by the relevant member to the trust for such sum of money or other consideration as may be agreed between the trust and the relevant member;
- transferred by the relevant member to another member of the trust for such sum of money or other consideration as may be agreed between the members.

Proposed subsection (2) requires that the trust must make reasonable steps to come to a reasonable agreement on a sum of money or other consideration to be paid if a relevant member wishes to surrender an irrigation right to the trust.

A transfer of an irrigation right by a member to another member of the trust under this section must not occur without the member first notifying the trust of the proposed transfer in accordance with any requirements specified by the trust.

32—Transformation *of* irrigation rights

This clause enables an irrigation right held by a member of a trust to be permanently transformed into a water licence to be held by the member if—

- the member applies to the trust for the transformation of the irrigation right in accordance with any requirements specified by the trust (including as to the payment of a specified application fee); and
- the member provides any security required by the trust; and
- the transformation so as to create a water licence held by the member is able to take effect under the *Natural Resources Management Act 2004* and the member, in seeking the water licence, complies with any relevant requirement under that Act.

Proposed subsection (4) provides that if a water licence is to be issued on account of an application under this section—

- an entitlement to an allocation of water that corresponds to the irrigation right I held by the relevant member will arise in connection with the licence; and
- a variation must be made to the water licence held by the trust, and to any other related entitlement,

subject to and in accordance with the *Natural Resources Management Act 2004* (and subject to taking into account the water available under the provisions of that Act).

33—Trust may determine to devolve water licence

This clause enables an irrigation trust to transform irrigation rights held by members of the trust into water licences held by the respective members.

34—Promotion of water trades

This clause provides that an irrigation trust must not unreasonably restrict or prevent any activity contemplated by this or any other Act (including the *Water Act 2007* of the Commonwealth) that will support the efficiency and scope of water trades.

Division 4—other matters

35—Power to restrict supply or to reduce water made available by trust

This clause specifies the circumstances in which an irrigation trust may restrict or suspend the supply or delivery of water or reduce the amount of water available under an irrigation right.

36—Power of delegation

This clause provides that an irrigation trust may delegate a function or power of the trust under this Act.

37—Appointment of authorised officers

Proposed section 37 provides that an irrigation trust may appoint a person to be an authorised officer under this Act.

38—Powers of authorised officers

Proposed section 38 specifies the powers that may be exercised by an authorised officer in relation to the operations of the irrigation trust by whom he or she has been appointed.

39—Hindering etc persons engaged in the administration of this Act

This clause makes it an offence for a person to—

- without reasonable excuse, hinder or obstruct a person acting on behalf of a trust or an authorised officer;
- use abusive, threatening or insulting language to a person acting on behalf of a trust or an authorised officer;
- fail to answer a question put by an authorised officer to the best of his or her knowledge, information or belief;
- falsely represent by words or conduct, that he or she is an authorised officer.

Part 5.—Protection and facilitation of systems

40—Protection and facilitation of systems

Proposed section 40 makes it an offence to contravene or fail to comply with a provision of the proposed section or of a notice served under proposed subsection (4) or (5).

Proposed subsection (1) provides that a person must not—

- connect a channel or pipe to an irrigation or drainage system of an irrigation trust; or
- place a structure or install equipment in, over or immediately adjacent to a channel or pipe connected to an irrigation trust; or
- supply water supplied or delivered to him or her by an irrigation trust under this Act to any other person,

unless he or she does so at the direction, or with the approval, of the trust.

Proposed subsection (2) provides that a person must not use a method of distributing irrigation water in a manner that is inconsistent with any determination or rule of an irrigation trust.

Proposed subsection (3) provides that a person who is a landowner under this Act—

- must ensure that irrigation water does not drain or otherwise escape onto or into adjoining land so as to cause a nuisance to the adjoining landowner;
- must maintain, and when necessary repair or replace an irrigation or drainage system provided by the landowner;
- must not block or impede the flow of water in any part of an irrigation or drainage system except at the direction, or with the approval, of the irrigation trust;
- must, when necessary, clear channels and pipes of an irrigation or drainage system provided by the landowner;
- must ensure that channels and pipes on his or her land, including those forming part of an irrigation or drainage system provided by an irrigation trust, are protected from damage that is reasonably foreseeable.

Proposed subsection (4) provides the trust with the power under specified circumstances to issue a notice to landowners directing the landowner—

- to—
  - construct or erect channels, embankments, structures, tanks, ponds, dams or other facilities for holding water; or

- lay pipes; or
- install fittings or pumps or other equipment,

- on his or her land; or
- to widen or deepen channels forming part *of* an irrigation or drainage system provided by the landowner, to install fittings or equipment for or in relation to irrigating the land, or to carry out any other work on the land; or
- to provide a barrier that is impervious to water on the sides and bed *of* a channel forming part *of* an irrigation or drainage system provided by the landowner; or
- to undertake such other act or activity as is specified in the notice.

Proposed subsection (5) enables the trust to direct the landowner—

- to erect fences to keep stock or other animals away from channels or pipes on the land;
- to comply with the requirements *of* 1 or more *of* the other provisions *of* this section.

If a person fails to comply with a notice issued under this section, proposed subsection (7) provides the trust with the power to enter the relevant land and take the action specified in the notice and such other action as the trust considers appropriate in the circumstances and the trust's costs will be a debt due by the person to the trust.

Part 6—Charges for irrigation and drainage

Division 1—Declaration of charges

41—Charges

This clause allows an irrigation trust to impose a water supply charge or charges in relation to the supply or delivery *of* water (or both) under this Act and impose a drainage charge or charges in relation to the drainage or disposal *of* water (or both) under this Act.

42—Declaration of water supply charges

An irrigation trust may, in respect *of* a financial year or part *of* a financial year, by notice published in a local newspaper, declare a water supply charge or water supply charges based on a number *of* specified factors.

The clause allows the trust to declare different charges—

- in respect *of* different areas;
- for water supplied for irrigation purposes, domestic purposes or other purposes;
- depending on the quality *of* the water supplied or delivered.

43—Minimum amount

This clause provides that an irrigation trust may declare a minimum amount that is payable in respect *of* a water supply charge and the payment *of* the minimum amount must be credited against the water supply charge.

44—Drainage charge

Proposed section 44 provides that an irrigation trust may, in respect of a financial year or part of a financial year by notice published in a local newspaper, declare a drainage charge based on the area of land irrigated or drained or on the basis of the volume of water supplied or delivered for irrigating the land.

Proposed subsection (2) provides that a trust may exempt an owner and occupier of land from payment of drainage charges if water does not drain from the land into the drainage system provided by the trust or if the quantity of water that drains into the system is negligible. A drainage charge may be declared after the period to which it relates has commenced.

45—Determination of area for charging purposes

Proposed section 45 provides that for the purpose of calculating the amount of a water supply charge or a drainage charge based on the area of land, the area of the land will be determined to the nearest one—tenth of a hectare (0.05 of a hectare being increased to the next one-tenth of a hectare).

46— Interest

This clause provides that an irrigation trust may, in fixing a water supply charge or a drainage charge, declare a rate of interest that will be applied if a charge is not paid within a period specified by the trust.

47—Notice of resolution for charges

Proposed section 47 specifies that an irrigation trust must fix the factors on which water supply and drainage charges are based and the amount of those charges by resolution of which 21 days notice has been given.

48—Minister's approval required

This clause proves that if a trust is indebted to the Crown, the Minister or 1 or more other agencies or instrumentalities of the Crown in an amount that exceeds $50,000 or in 2 or more amounts that together exceed $50,000, the trust must not—

- declare a water supply charge or drainage charge; or
- fix a rate of interest for the late payment of charges,

without first obtaining the Minister's approval. However, non—compliance with subsection (1) does not affect the validity of a charge or rate of interest declared or fixed by a trust.

49—Related matters

Proposed subsection (1) provides that nothing in this Division prevents an irrigation trust from entering into an agreement with a person for the supply or delivery of water, or the drainage of land, for a cost or at a rate fixed or determined under the agreement (rather than by the imposition of a charge under this Division). To avoid doubt, the preceding sections of this Division do not apply in relation to an amount payable under an agreement under proposed subsection (1).

Proposed subsection (3) provides that an irrigation trust must, in acting under this Division, ensure that it complies with any requirements imposed by or under the *Water Act 2007* of the Commonwealth.

Division 2—Recovery of charges 50—Liability for charges

Proposed section 50 identifies the persons who are jointly and severally liable for the payment of charges and interest on charges.

Proposed subsection (2) states that notice of the amount payable by way of charges, fixing the date on which the amount becomes payable, must be served on the owner or occupier of the land in respect of which the charges are payable.

However, the section operates subject to any Commonwealth market rules and the provisions of any agreement between the trust and a person for the supply or delivery of water, or the drainage of land.

51—Recovery rights

This clause provides for the recovery of charges and interest on charges as a charge on the land in respect of which water is supplied or delivered, or is drained, in accordance with a scheme established by the regulations. In addition, any charges that are not paid in accordance with a notice under proposed section 50, together with any interest, may be recovered by the irrigation trust as a debt from a person who is liable for the payment of the charges.

Proposed subsection (4) provides that any action to recover any charges (and interest) as a debt does not prejudice any action to recover any charges (and interest) as a charge on land, and vice versa, but any amount sought to be recovered under 1 right must be adjusted to take into account any amount actually recovered under the other right.

52—Sale of land for non-payment of charges

Proposed section 52 provides for the sale of land by the irrigation trust if charges, or interest on charges, are a charge on land and have been unpaid for 1 year or more.

Proposed subsection (2) requires that notice must be served on the owner and occupier of the land—

- stating the period for which the charges or interest have been in arrears; and
- stating the amount of the total liability for charges and interest presently outstanding in relation to the land; and
- stating that if that amount is not paid in full within 1 month of service of the notice (or such longer time as the trust may allow), the trust intends to sell the land for non-payment of the charges or interest.

Proposed subsection (9) states that any money received by the trust in respect of the sale of land under this section will be applied as follows:

- firstly-in paying the costs of the sale and any other costs incurred in proceeding under this section;
- secondly-in discharging the liability for charges and interest and any other liabilities to the trust in respect of the land;
- thirdly-in discharging any liability to the Crown for rates, charges or taxes, or any prescribed liability to the Crown in respect of the land;
- fourthly-in discharging any liabilities secured by registered mortgages, encumbrances or charges;
- fifthly-in discharging any other mortgages, encumbrances and charges of which the trust has notice;
- sixthly-in payment to the owner of the land.

If land is sold by a trust in pursuance of the proposed section, an instrument of transfer under the common seal of the trust will operate to vest title to the land in the purchaser.

Proposed subsection (13) provides that an instrument of transfer passing title to land in pursuance of a sale under this section must, when lodged with the Registrar-General for registration or enrolment, be accompanied by a statutory declaration made by the presiding member of the trust stating that the requirements of this section in relation to the sale of the land have been observed.

53—Trust may remit interest and discount charges

This clause allows the trust to remit the whole, or part, of the amount of any interest payable to the trust and to discount charges to encourage early payment of the charges.

Part 7—Financial provisions

54—Trust's power to borrow etc

This clause allows an irrigation trust to borrow money or take advantage of any other form of financial accommodation.

The trust may also charge the whole or any part of its property (including its revenue arising from water supply or drainage charges) by debenture, mortgage or bill of sale or in any other manner or enter into arrangements for the provision of guarantees or indemnities, in order to provide security for any money borrowed, or other financial accommodation received, by it.

Proposed subsection (3) gives the Supreme Court the power to—

- direct the trust to appropriate a specified portion of its revenue to the satisfaction of its obligations under the debenture; or
- direct the trust to raise a specified amount by way of charges and direct that the amount raised be applied towards satisfaction of the trust's obligations under the debenture; and

give such incidental or ancillary directions as may be necessary or desirable,

on the application of a creditor or a trustee for debenture holders, if a trust defaults in carrying out its obligations under a debenture charged on revenue arising from water supply or drainage charges.

Part 8—Appeals

55—Appeals

This clause provides a right of appeal to the Environment, Resources and Development Court against a decision of an irrigation trust—

- in relation to a decision to discontinue a membership of a trust under proposed section 8(3)(a)(ii); or
- in relation to the fixing of an irrigation right in respect of the person; or
- directing the appellant to undertake an act or activity under proposed Part 5; or
- in relation to any other matter of a class prescribed by the regulations for the purposes of this section.

Proposed subsection (3) provides that the Court on appeal may—

- affirm or vary the decision appealed against or substitute any decision that should have been made in the first instance;
- remit the subject matter of the appeal to the trust for further consideration;
- make such incidental or ancillary order as the Court considers is necessary or desirable.

56—Decision may be suspended pending appeal

This clause allows an irrigation trust or the Court to suspend the operation of the decision until the determination of the appeal.

57—Appeal against proposal to dissolve trust

This clause allows an irrigation trust or a member of an irrigation trust to appeal to the Environment, Resources and Development Court against the Minister's proposal to dissolve the trust under proposed section 15.

Proposed subsection (3) provides that on an appeal the Court may—

- do 1 or more of the following:
  - direct the Minister to withdraw the notice of dissolution;
  - give the Minister such other directions as the Court thinks fit;
  - give the trust such directions as the Court thinks fit;
  - make such incidental or ancillary order as the Court considers is necessary or desirable; or
- refuse to take any action in the matter.

58—Constitution of Environment, Resources and Development Court

When exercising its jurisdiction under this Act, the Environment, Resources and Development Court is constituted as follows:

- the Court may be constituted in a manner provided by the *Environment, Resources and Development Court* Act 1993 or may, if the Senior Judge of the Court so determines, be constituted of a Judge and 1 commissioner;
- the provisions of the *Environment, Resources* and *Development Court .Act* 1993 apply in relation to the Court constituted of a Judge and 1 commissioner in the same way as in relation to a full bench of the Court;
- the Court may not be constituted of or include a commissioner unless-
  - in a case where only 1 commissioner is to sit (whether alone or with another member or members of the Court)-the commissioner; or
  - in any other case—at least 1 commissioner,
- is a commissioner who has been specifically designated by the Governor as a person who has expertise in irrigated farming or management of water resources.

Part 9—Miscellaneous

59—Protection from liability

This clause provides immunity from civil liability for an honest act or omission in the . exercise or discharge, or purported exercise or discharge, by the person or by an irrigation trust, board of management or committee of which he or she is a member, of a power, function or duty under this Act.

60—Division of land

This clause provides that the owner of land where an irrigation or drainage system of an irrigation trust is situated may apply to the trust for its consent to divide the land.

However, land may be divided without the consent of the trust but in that event the following provisions apply:

- the trust has no obligation to extend any irrigation or drainage system to a new allotment;
- a new allotment cannot be connected to an irrigation or drainage system provided by the trust without the trust's approval;
- the division will not affect any irrigation right (unless the holder of the irrigation right applies to the trust for a new right to be issued and an appropriate adjustment made to the terms of the irrigation right);
- the trust may refuse to supply water to an allotment created by the division if the water will pass through another allotment created by the division or the water will be drained through another allotment created by the division.

61—False or misleading information

It is an offence to furnish information to an irrigation trust that is false or misleading in a material particular.

62—Protection of irrigation system etc

This clause makes it an offence for a person to, without lawful authority, interfere with any part of an irrigation or drainage system or with any property of an irrigation trust used in, or in connection with, the irrigation or drainage of land.

63—Unauthorised use of water

This clause makes it an offence for a person to take water from the irrigation or drainage system of an irrigation trust without being authorised to do so or use water taken from an irrigation system for an unauthorised purpose.

64—0ffences by bodies corporate

This clause provides that if a body corporate is guilty of an offence, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

65—General defence

This clause provides that it is a defence to a charge of an offence if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

66—Proceedings for offences

This clause states that proceedings for an offence against this Act must be commenced—

- in the case of an expiable offence-within the time limits prescribed for expiable offences by the *Summary Procedure Act* 1921;
- in any other case-within 2 years of the date on which the offence is alleged to have been committed.

67—Evidentiary provisions

This provision provides evidentiary aids for proceedings.

68—Service etc of notices

This clause sets out the methods by which notices and other documents may be served.

69—Excluded matters

This clause provides that the following matters are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation to which Part 1.IA of that Act applies:

- .a trust;
- .an act or omission of any person, body or other entity in relation to a trust.

70—Regulations

This clause provides general regulation making power.

Schedule 1—Related amendments, repeals and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This Schedule makes related amendments to the *Natural Resources Management Act 2004,* repeals the *Irrigation Act* 1994 and contains transitional arrangements for the implementation of the measure.

Part 2—Amendment of *Natural Resources Management Act 2004*

2—Insertion of Chapter 7 Part SA

Part 5A—Interaction with Irrigation Acts

169A—Interaction with *Irrigation Act 2009*

Part 3—Repeal of Act

3—Repeal of Act

Part 4—Transitional provisions

4—Interpretation

5—Continuation of trusts

6—Presiding member and deputy presiding member

7—Boards of management

8—Resolutions

9—Voting at meetings

10—Irrigation rights

11—Charges and rates

12—Disposal of property on dissolution-special arrangements

13—Other provisions

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

RENMARK IRRIGATION TRUST BILL

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

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (22:43): 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.

A review of the *Irrigation Act 1994* and the *Renmark Irrigation Trust Act 1936* has been undertaken to ensure South Australian irrigation infrastructure management practices are consistent with the requirements of key government policy directions and related legislation and to reflect contemporary management practices.

The *Irrigation Act 1994* and the *Renmark Irrigation Trust Act 1936* establish governance frameworks to provide for the irrigation of land in government and private irrigation districts within rural South Australia. In recent decades the South Australian government has progressively removed itself from the administrative affairs of district irrigators, allowing service provision to be carried out by private irrigation trusts. Significant government investment in replacing irrigation infrastructure occurred with the transition from government to private trusts. Much of this infrastructure has an 80-year lifespan.

The Renmark Irrigation Trust Bill 2009 repeals the *Renmark Irrigation Trust Act 1936*.

The Renmark Irrigation Trust Bill 2009 establishes the powers and functions of the Renmark Irrigation Trust which correspond to those of an irrigation trust under the Irrigation Bill 2009. The proposed provisions closely align models for the management of irrigation infrastructure systems within South Australia.

The Renmark Irrigation Trust Bill 2009 contains additional provisions to:

- change the composition of the Renmark Irrigation Trust so that all current ratepayers (approximately 700 people) comprise the Trust. Currently the Renmark Irrigation Trust comprises 7 members and those in receipt of the Trust's services are deemed to be ratepayers;
- establish a Board of Directors to oversee the day-to-day operations of the Renmark Irrigation Trust. The current Trust of 7 members will be transformed into the Board of Directors as a transitional provision to ensure continuity in the operations and management of the Trust;
- provide specific provisions pertaining to the functions and operations of a Board of Directors; and
- continue specific powers of the Trust.

The Renmark Irrigation Trust Bill 2009 includes provisions that will ensure compliance with key government policy directions including the National COAG Water Reform (1994), the National Water Initiative (2004), and the Inter-Governmental Agreement on Murray-Darling Basin Reform (2008). The Bill also ensures consistency with the *Water Act 2007* (Commonwealth) in particular, those provisions relating to water charges and the removal of obstacles to permanent trade in water.

The Renmark Irrigation Trust Bill provides for:

- flexibility in the management of water licences so that the Trust can choose by resolution to devolve its water licence to all members of the Trust;
- flexibility for individual members, enabling them to apply to the Trust to transform their irrigation right into a water licence under the *Natural Resources Management Act 2004*;
- flexibility for the Trust to continue the management of collectively owned irrigation infrastructure and/or drainage networks;
- the removal of the concept of the irrigation district so that the operations and functions of the Trust are based on service provision rather than land tenure;
- emphasis on the power of the Trust to enter into individual service agreements or contracts for the delivery of water or drainage services;
- making explicit that the Trust must not restrict permanent trade of water out of its irrigation network and that it must facilitate trade both within and out of its network, at the request of its members, and in accordance with the rules under the *Water Act 2007*; and
- fees and charges for water, drainage and other services provided by the Trust to reflect the cost of providing, maintaining, managing and operating irrigation and drainage infrastructure, subject to the rules under the *Water Act 2007*.

The Bill also modernises, aligns and clarifies terminology, updates penalties and other miscellaneous provisions, and, makes a minor consequential amendment to the *Natural Resources Management Act 2004*.

As well as ensuring compliance with contemporary policy directions these provisions will enable those irrigators wishing to exit the industry in South Australia to trade their water. This is an important element in facilitating irrigator access to the Small Block Irrigator's Exit Grant Packages which have been made available by the Australian Government until 30 June 2009.

The measure is fundamental to ensuring that the management and operation of irrigation infrastructure in South Australia is well equipped to meet future challenges. The Government looks forward to the support of Parliament in the passing of this Bill.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause sets out definitions for the purposes of the measure.

Part 2—Constitution of trust

Division 1—Continuation of trust

4—Continuation of trust

This clause provides that the Renmark Irrigation Trust continues as the *Renmark Irrigation Trust*

5—Rules

Proposed section 5 provides that the trust may have a set of rules relating to the membership, management or operations of the trust.

Proposed subsection (2) provides that a set of rules of the trust—

- must comply with any prescribed requirements; and
- must not contain any provision that is contrary to or inconsistent with this Act; and
- may provide for the imposition and payment of application and other fees by members of the trust (including a fee to be paid by a person if or when the person ceases to be a member of the trust); and
- may provide for or regulate the times at which irrigation water may be used; and
- may provide for other matters to facilitate—
  - — the effective management of an irrigation or drainage system provided by the trust; or
  - — the efficient supply, delivery or use of water provided by an irrigation system provided by the trust; or
  - — the efficient drainage, management or disposal of water through a drainage system provided by the trust; and
- may provide for such other matters as may be prescribed by the regulations or expedient for the purposes of the trust.

This clause specifies the manner in which the rules may be altered.

6—Manner in which contracts may be made

Proposed section 6 provides that contracts may be made by or on behalf of the trust as specified by the proposed section.

Proposed subsection (2) provides that a contract may be varied or rescinded by or on behalf of the trust in the same manner as it is authorised to be made.

Division 2—Members

7—Members

This clause provides that the persons who are members of the trust on the commencement of this Act continue as members of the trust and other persons who carry on the business of primary production may be admitted as members of the trust by resolution of the trust or as provided by the rules of the trust.

Proposed subsection (3) specifies the circumstances in which a person ceases to be a member of a trust.

The clause makes provision for a presiding member and deputy presiding member of the trust.

8—Rights and liabilities of membership

Proposed section 8 sets out the rights and liabilities of members of the trust.

9—Calling of meetings

This clause sets out the manner in which a meeting of the trust may be called and imposes a requirement on the presiding member to call an annual general meeting of the trust.

10—Procedures at meetings

This clause specifies the procedures that must be observed at meetings of the trust.

11—Voting at meetings

Proposed section 11 establishes that a member of the trust is entitled to vote at meetings of the trust and that a member may nominate another person to attend and vote at meetings on his or her behalf.

Part 3—Management of trust

Division 1—Board of management

12—Board of management

This clause provides that the trust will appoint a board of management of the trust to carry out the day to day operations of the trust and to manage its general affairs and that the board will consist of 7 members of the trust (who will be called *directors*).

13—Appointment of directors, term of office and remuneration

This clause provides that a director will be elected at the annual general meeting of the trust and that a director will hold office for a term of 2 years (with each period between the annual general meetings of the trust to be taken to be 1 year) and, at the expiration of a term of office, will be eligible for re-election.

This clause specifies when a member of the trust is not eligible for election as a director and when the office of a director becomes vacant.

14—Disclosure of interest

This clause provides that a director who has a direct or indirect personal or pecuniary interest in a matter under consideration by the board—

- must, as soon as he or she becomes aware of the interest, disclose the nature and extent of the interest to the board; and
- must not take part in any deliberations or decision of the board on the matter and must be absent from the room when any such deliberations are taking place or decision is being made.

15—Members' duties of honesty, care and diligence

This clause imposes certain duties on directors and makes it an offence for a director to breach a duty imposed by this clause.

16—Validity of acts and immunity of members

This clause provides that an act or proceeding of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

This clause provides immunity from civil liability for a director for an honest act or omission in the performance or exercise, or purported performance or exercise, of the director's or the board's functions, duties or powers under this or any other Act.

17—Presiding member and deputy presiding member

The proposed section provides that the directors must appoint a presiding member of the board (and therefore of the trust) and that the directors may appoint a deputy presiding member of the board (and therefore of the trust). The provision sets out the manner in which a person may be removed from office and the basis on which a person ceases to hold office.

18—Proceedings

This clause specifies the procedures that must be observed at meetings of the board.

19—Delegation

This clause provides a power of delegation by the board of management in respect of a function or power of the board to a director or to another person or body.

Division 2—Accounts and audit

20—Accounts to be kept

Proposed section 20 requires the trust to cause proper accounts to be kept of its financial affairs.

21—Preparation of financial statements

This clause provides that the trust must, as soon as practicable after the end of each financial year, cause financial statements in respect of that financial year to be prepared in accordance with recognised accounting standards and cause the statements to be audited.

Proposed subsection (5) provides that an officer or employee of the trust or other person must not, without lawful excuse—

- refuse or fail to allow an auditor access, for the purposes of an audit, to any accounts or accounting records of the trust in his or her custody or control; or
- refuse or fail to give any information or explanation as and when required by an auditor; or
- otherwise hinder, obstruct or delay an auditor in the exercise or performance of a power or function of the auditor.

Proposed subsection (6) requires an auditor to prepare a report on the audit on the audit's completion.

22—Accounts etc to be laid before annual general meeting

Proposed section 22 provides that at each annual general meeting of the trust, the trust must lay before the meeting a copy of the audited financial statements of the trust for the previous financial year and a copy of the auditors report and a report prepared by the trust on the operations of the trust in the previous financial year.

Proposed subsection (2) states that at the request of the Minister or any member of the trust, the trust must provide the Minister or member with a copy of the audited financial statements, the auditors report and the report prepared by the trust in respect of the financial year to which the request relates.

Division 3—Committees

23—Committees

Proposed subsection (1) provides that the trust may establish committees (which may, but need not, consist of or include members of the trust) to advise the trust on any aspects of its functions, or to assist it in the performance of its functions.

Proposed subsection (2) provides that the board of management may establish committees (which may, but need not, consist of or include members of the board of management) to advise the board on any aspects of its functions, or to assist it in the performance of its functions.

Part 4—Functions and powers of trust

Division 1—Functions of trust

24—Functions of trust

This clause provides that the trust has the following functions:

- to provide, maintain, operate and manage an irrigation system or systems;
- to provide, maintain, operate and manage a drainage system or systems;
- such other function as are specified or prescribed by or under this or any other Act.

Proposed subsection (2) provides that the trust may operate on the basis that some or all of the water supplied through an irrigation system managed by the trust will be supplied under a water licence held by the trust or on the basis that the trust will deliver water to members of the trust for the purposes of water licences held by the members.

Proposed subsection (4) provides that the trust may set terms and conditions associated with the use of any irrigation system or drainage system provided by the trust and the supply or delivery of water by the trust.

Proposed subsection (5) ensures that when determining the terms and conditions on which water is supplied or delivered to, or drained from, land or in holding or dealing with any water licence the trust must comply with this Act as well as other specified requirements. The trust is always required to take all reasonable steps to ensure that it operates in a financially responsible manner.

Division 2—Powers of trust

25—Powers of trust

This clause sets out the powers that the trust may exercise in order to carry out its functions. Such powers include the power to construct facilities for holding water, install and operate pumps, control the flow of water in an irrigation or drainage channel and to acquire land.

26—Further powers of trust

In addition to the powers conferred on the trust by proposed section 25, the trust may, pursuant to an agreement with the owner or occupier of any serviced property, construct or extend an irrigation system or a drainage system on the property for the distribution or drainage of water.

Proposed subsection (2) provides that the trust may, in order to assist its members, purchase irrigation equipment, components and tools for resale to its members.

27—Delivery of water or supply of drainage to other persons

This clause allows the trust to enter into an agreement with a person who is not a member of the trust to deliver water for the purpose of irrigating land or to drain water from land by means of an irrigation system or drainage system provided and managed by the trust.

28—Supply or delivery of water for other purposes

This clause provides that in addition to supplying or delivering water for other purposes the trust may supply or deliver water for domestic or other purposes by agreement other than if a supply of water for those purposes is available under the *Waterworks Act 1932*.

29—Drainage of other water

This clause provides that in addition to draining irrigation water, the trust may drain any other water from land.

Division 3—Irrigation rights, water entitlements and trading

30—Fixing of irrigation rights

Proposed section 30 applies if the trust holds 1 or more water licences for the purposes of supplying water to its members.

Proposed subsection (2) provides that if this section applies, the trust must fix an entitlement (an irrigation right) in respect of each member of the trust who is to receive water on account of a water licence held by the trust. The proposed section further provides that an irrigation right will be fixed by resolution of the trust and that it may be expressed as a volume or units.

31—Surrender or transfer of water available under irrigation rights

This clause provides for the surrender of water available under an irrigation right held by a member of the trust to the trust and provides for the transfer of water available under an irrigation right by a member of a trust to another member of the trust or by the trust acting at the request of a member to a person who is not a member of the trust.

Proposed subsection (2) provides that if a member of the trust wishes to surrender water, the trust must take reasonable steps to come to a reasonable agreement on a sum of money or other consideration to be paid under that subsection. A member must not transfer water to another member of the trust without first notifying the trust of the proposed transfer in accordance with any requirements specified by the trust and a request by a member of the trust to transfer water to a person who is not a member of the trust must be complied with within a reasonable time.

32—Surrender or transfer of irrigation rights

This clause provides that an irrigation right held by a member of the trust is capable of being—

- surrendered by the relevant member to the trust for such sum of money or other consideration as may be agreed between the trust and the relevant member;
- transferred by the relevant member to another member of the trust for such sum of money or other consideration as may be agreed between the members.

Proposed subsection (2) requires that the trust must make reasonable steps to come to a reasonable agreement on a sum of money or other consideration to be paid if a relevant member wishes to surrender an irrigation right to the trust.

A transfer of an irrigation right by a member to another member of the trust under this section must not occur without the member first notifying the trust of the proposed transfer in accordance with any requirements specified by the trust.

33—Transformation of irrigation rights

This clause enables an irrigation right held by a member of the trust to be permanently transformed into a water licence to be held by the member if—

- the member applies to the trust for the transformation of the irrigation right in accordance with any requirements specified by the trust (including as to the payment of a specified application fee); and
- the member provides any security required by the trust; and
- the transformation so as to create a water licence held by the member is able to take effect under the *Natural Resources Management Act 2004* and the member, in seeking the water licence, complies with any relevant requirement under that Act.

Proposed subsection (4) provides that if a water licence is to be issued on account of an application under this section—

- an entitlement to an allocation of water that corresponds to the irrigation right held by the relevant member will arise in connection with the licence; and
- a variation must be made to the water licence held by the trust, and to any other related entitlement,

subject to and in accordance with the *Natural Resources Management Act 2004* (and subject to taking into account the water available under the provisions of that Act).

34—Trust may determine to devolve water licence

This clause enables the trust to transform irrigation rights held by members of the trust into water licences held by the respective members.

35—Promotion of water trades

This clause provides that the trust must not unreasonably restrict or prevent any activity contemplated by this or any other Act (including the *Water Act 2007* of the Commonwealth) that will support the efficiency and scope of water trades.

Division 4—Other matters

36—Power to restrict supply or to reduce water made available

This clause specifies the circumstances in which the trust may restrict or suspend the supply or delivery of water or reduce the amount of water available under an irrigation right.

37—Power of delegation

This clause provides that the trust may delegate a function or power of the trust under this Act.

38—Appointment of authorised officers

Proposed section 38 provides that the trust may appoint a person to be an authorised officer under this Act.

39—Powers of authorised officers

Proposed section 39 specifies the powers that may be exercised by an authorised officer in relation to the operations of the trust by whom he or she has been appointed.

40—Hindering etc persons engaged in the administration of this Act

This clause makes it an offence for a person to—

- without reasonable excuse, hinder or obstruct a person acting on behalf of the trust or an authorised officer;
- use abusive, threatening or insulting language to a person acting on behalf of the trust or an authorised officer;
- fail to answer a question put by an authorised officer to the best of his or her knowledge, information or belief;
- falsely represent by words or conduct, that he or she is an authorised officer.

Part 5—Protection and facilitation of systems

41—Protection and facilitation of systems

Proposed section 41 makes it an offence to contravene or fail to comply with a provision of the proposed section or of a notice served under proposed subsection (4) or (5).

Proposed subsection (1) provides that a person must not—

- connect a channel or pipe to an irrigation or drainage system of the trust; or
- place a structure or install equipment in, over or immediately adjacent to a channel or pipe connected to the trust; or
- supply water supplied or delivered to him or her by the trust under this Act to any other person,

unless he or she does so at the direction, or with the approval, of the trust.

Proposed subsection (2) provides that a person must not use a method of distributing irrigation water in a manner that is inconsistent with any determination or rule of the trust.

Proposed subsection (3) provides that a person who is a landowner under this Act—

- must ensure that irrigation water does not drain or otherwise escape onto or into adjoining land so as to cause a nuisance to the adjoining landowner;
- must maintain, and when necessary repair or replace an irrigation or drainage system provided by the landowner;
- must not block or impede the flow of water in any part of an irrigation or drainage system except at the direction, or with the approval, of the trust;
- must, when necessary, clear channels and pipes of an irrigation or drainage system provided by the landowner;
- must ensure that channels and pipes on his or her land, including those forming part of an irrigation or drainage system provided by the trust, are protected from damage that is reasonably foreseeable.

Proposed subsection (4) provides the trust with the power, under specified circumstances, to issue a notice to landowners directing the landowner—

- to—
  - — construct or erect channels, embankments, structures, tanks, ponds, dams or other facilities for holding water; or
  - — lay pipes; or
  - — install fittings or pumps or other equipment,

  on his or her land; or
- to widen or deepen channels forming part of an irrigation or drainage system provided by the landowner, to install fittings or equipment for or in relation to irrigating the land, or to carry out any other work on the land; or
- to provide a barrier that is impervious to water on the sides and bed of a channel forming part of an irrigation or drainage system provided by the landowner; or

- to undertake such other act or activity as is specified in the notice.

Proposed subsection (5) enables the trust to direct the landowner—

- to erect fences to keep stock or other animals away from channels or pipes on the land;
- to comply with the requirements of 1 or more of the other provisions of this section.

If a person fails to comply with a notice issued under this section, proposed subsection (7) provides the trust with the power to enter the relevant land and take the action specified in the notice and such other action as the trust considers appropriate in the circumstances and the trust's costs will be a debt due by the person to the trust.

Part 6—Charges for irrigation and drainage

Division 1—Declaration of charges

42—Charges

This clause allows the trust to impose a water supply charge or charges in relation to the supply or delivery of water (or both) under this Act and impose a drainage charge or charges in relation to the drainage or disposal of water (or both) under this Act.

43—Declaration of water supply charges

The trust may, in respect of a financial year or part of a financial year, by notice published in a local newspaper, declare a water supply charge or water supply charges based on a number of specified factors.

The clause allows the trust to declare different charges—

- in respect of different areas;
- for water supplied for irrigation purposes, domestic purposes or other purposes;
- depending on the quality of the water supplied or delivered.

Proposed subsection (3) provides that in the case of water supplied for irrigation purposes, the trust may declare a basic charge in respect of a specific amount of water supplied or delivered under an irrigation right or water licence and a further charge, or series of charges, that increase as the volume of water supplied increases over that amount.

44—Minimum amount

This clause provides that the trust may declare a minimum amount that is payable in respect of a water supply charge and that payment of the minimum amount must be credited against the water supply charge.

45—Drainage charge

Proposed section 45 provides that the trust may, in respect of a financial year or part of a financial year by notice published in a local newspaper, declare a drainage charge based on the area of land irrigated or drained or on the basis of the volume of water supplied or delivered for irrigating the land.

Proposed subsection (2) provides that the trust may exempt an owner and occupier of land from payment of drainage charges if water does not drain from the land into the drainage system provided by the trust or if the quantity of water that drains into the system is negligible.

46—Special rate

Proposed section 46 provides that the trust may, with the approval of the Minister, in respect of a financial year or part of a financial year, by notice published in a local newspaper, declare a special rate or special rates based on 1, or any combination of 2 or more, of the factors that a water supply charge or drainage charge would be based.

47—Determination of area for charging purposes

Proposed section 47 provides that for the purpose of calculating the amount of a water supply charge, a drainage charge or special rate based on the area of land, the area of the land will be determined to the nearest one-tenth of a hectare (0.05 of a hectare being increased to the next one-tenth of a hectare).

48—Interest

This clause provides that the trust may, in fixing a water supply charge, drainage charge or special rate, declare a rate of interest that will be applied if a charge is not paid within a period specified by the trust.

49—Notice of resolution for charges

This clause provides that the trust must fix the factors on which water supply charges, drainage charges and special rates are based and the amount of those charges or rates by resolution of which 21 days notice has been given.

50—Minister's approval required

This clause provides that if the trust is indebted to the Crown, the Minister or 1 or more other agencies or instrumentalities of the Crown in an amount that exceeds $50,000 or in 2 or more amounts that together exceed $50,000, the trust must not—

- declare a water supply charge or drainage charge; or
- fix a rate of interest for the late payment of charges,

without first obtaining the Minister's approval.

51—Related matters

Proposed section 51 provides that nothing in this Division prevents the trust from entering into an agreement with a person for the supply or delivery of water, or the drainage of land, for a cost or at a rate fixed or determined under the agreement (rather than by the imposition of a charge or rate under this Division).

Proposed subsection (3) provides that the trust must, in acting under this Division, ensure that it complies with any requirements imposed by or under the *Water Act 2007* of the Commonwealth.

Division 2—Recovery of charges

52—Liability for charges

This clause identifies the persons who are jointly and severally liable for the payment of charges and interest on charges.

Proposed subsection (2) states that notice of the amount payable by way of charges or rates, fixing the date on which the amount becomes payable, must be served on the owner or occupier of the land in respect of which the charges or rates are payable.

However, the section operates subject to—

- any Commonwealth water rules; and
- the provisions of any agreement between the trust and a person for the supply or delivery of water, or the drainage of land.

53—Recovery rights

This clause provides that any charges or rates and any accrued interest will be a charge on the land in respect of which water is supplied or delivered, or is drained, in accordance with a scheme established by the regulations. In addition, any charges or rates that are not paid in accordance with a notice under proposed section 52, together with any interest, may be recovered by the trust as a debt from a person who is liable for the payment of the charges or rates.

Proposed subsection (4) provides that any action to recover any charges (and interest) as a debt does not prejudice any action to recover any charges or rates (and interest) as a charge on land, and vice versa, but any amount sought to be recovered under 1 right must be adjusted to take into account any amount actually recovered under the other right.

54—Sale of land for non-payment of charges

Proposed section 54 provides for the sale of land by the trust if charges or rates, or interest on charges or rates, are a charge on land and have been unpaid for 1 year or more.

Proposed subsection (2) requires that notice must be served on the owner and occupier of the land—

- stating the period for which the charges or rates or interest have been in arrears; and
- stating the amount of the total liability for charges or rates and interest presently outstanding in relation to the land; and
- stating that if that amount is not paid in full within 1 month of service of the notice (or such longer time as the trust may allow), the trust intends to sell the land for non-payment of the charges or rates or interest.

Proposed subsection (9) states that any money received by the trust in respect of the sale of land under this section will be applied as follows:

- firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;
- secondly—in discharging the liability for charges or rates and interest and any other liabilities to the trust in respect of the land;
- thirdly—in discharging any liability to the Crown for rates, charges or taxes, or any prescribed liability to the Crown in respect of the land;
- fourthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;
- fifthly—in discharging any other mortgages, encumbrances and charges of which the trust has notice;
- sixthly—in payment to the owner of the land.

If land is sold by the trust in pursuance of proposed section 54, an instrument of transfer under the common seal of the trust will operate to vest title to the land in the purchaser.

Proposed subsection (13) provides that an instrument of transfer passing title to land in pursuance of a sale under this section must, when lodged with the Registrar-General for registration or enrolment, be accompanied by a

statutory declaration made by the presiding member of the trust stating that the requirements of this section in relation to the sale of the land have been observed.

55—Trust may remit interest and discount charges

This clause allows the trust to remit the whole, or part, of the amount of any interest payable to the trust and to discount charges to encourage early payment of the charges or rates.

Part 7—Financial provisions

56—Trust's power to borrow etc

This clause provides that the trust may borrow money or take advantage of any other form of financial accommodation.

The trust may also charge the whole or any part of its property (including its revenue arising from water supply charges, drainage charges or rates) by debenture, mortgage or bill of sale or in any other manner or enter into arrangements for the provision of guarantees or indemnities.

Proposed subsection (3) gives the Supreme Court the power to—

- —

  — direct the trust to appropriate a specified portion of its revenue to the satisfaction of its obligations under the debenture; or

  — direct the trust to raise a specified amount by way of charges or rates (subject to any other requirement under this Act), and direct that the amount raised be applied towards satisfaction of the trust's obligations under the debenture; and

- give such incidental or ancillary directions as may be necessary or desirable,

on the application of a creditor or a trustee for debenture holders, if the trust defaults in carrying out its obligations under a debenture charged on revenue arising from water supply or drainage charges.

Part 8—Dissolution of trust

57—Dissolution on application

This clause provides for the dissolution of the trust by application to the Minister. The application to the Minister must be made by the members of the trust and the decision to dissolve must be made pursuant to a resolution of the trust that must be supported by 80 per cent or more of the number of votes cast at a meeting of the trust.

58—Dissolution on Minister's initiative

Proposed section 58 provides for the dissolution of the trust by the Minister if—

- in the Minister's opinion the trust—

  — is unable to carry out its functions properly because of disagreements between its members; or

  — is not carrying out its functions properly for any other reason; or

  — without limiting the generality of proposed subparagraphs (i) and (ii), is not properly maintaining any irrigation and drainage systems provided by the trust; or

- the trust is unable to pay its debts as they fall due; or
- the trust has failed to comply with a provision of this Act; or
- the Minister is of the opinion that it is just and equitable that the trust be wound up in the circumstances of the particular case.

At the expiration of 3 months after service of the notice under proposed subsection (4)—

- the trust is dissolved; and
- any water licence held by the trust—

  — will vest in 1 or more persons determined by the Minister; or

  — will be dealt with in some other manner determined or approved by the Minister,

subject to the operation of the *Natural Resources Management Act 2004*.

59—Disposal of property on dissolution

This clause provides for the vesting of the property, rights and liabilities of the trust on its dissolution.

Part 9—Appeals

60—Appeals

This clause provides a right of appeal to the Environment, Resources and Development Court against a decision of the trust—

- in relation to a decision to discontinue a membership of the trust under proposed section 73(3)(a)(ii); or
- in relation to the fixing of an irrigation right in respect of the person; or
- directing the appellant to undertake an act or activity under proposed Part 5; or
- in relation to any other matter of a class prescribed by the regulations for the purposes of this section.

Proposed subsection (3) provides that on an appeal the Court may—

- affirm or vary the decision appealed against or substitute any decision that should have been made in the first instance;
- remit the subject matter of the appeal to the trust for further consideration;
- make such incidental or ancillary order as the Court considers is necessary or desirable.

61—Decision may be suspended pending appeal

This clause allows the trust or the Court to suspend the operation of the decision until the determination of the appeal.

62—Appeal against proposal to dissolve trust

This clause allows the trust or a member of the trust to appeal to the Environment, Resources and Development Court against the Minister's proposal to dissolve the trust under proposed section 58.

Proposed subsection (3) provides that on an appeal the Court may—

- do 1 or more of the following:
  - — direct the Minister to withdraw the notice of dissolution;
  - — give the Minister such other directions as the Court thinks fit;
  - — give the trust such directions as the Court thinks fit;
  - — make such incidental or ancillary order as the Court considers is necessary or desirable; or
- refuse to take any action in the matter.

63—Constitution of Environment, Resources and Development Court

When exercising its jurisdiction under this Act, the Environment, Resources and Development Court is constituted as follows:

the Court may be constituted in a manner provided by the *Environment, Resources and Development Court Act 1993* or may, if the Senior Judge of the Court so determines, be constituted of a Judge and 1 commissioner;

the provisions of the *Environment, Resources and Development Court Act 1993* apply in relation to the Court constituted of a Judge and 1 commissioner in the same way as in relation to a full bench of the Court;

the Court may not be constituted of or include a commissioner unless—

- in a case where only 1 commissioner is to sit (whether alone or with another member or members of the Court)—the commissioner; or
- in any other case—at least 1 commissioner,

is a commissioner who has been specifically designated by the Governor as a person who has expertise in irrigated farming or management of water resources.

Part 10—Miscellaneous

64—Protection from liability

This clause provides immunity from civil liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, by the person or by the trust, board of management or committee of which he or she is a member, of a power, function or duty under this Act.

65—Division of land

This clause provides that the owner of land where an irrigation or drainage system of the trust is situated may apply to the trust for its consent to divide the land.

However, land may be divided without the consent of the trust but in that event the following provisions apply:

- the trust has no obligation to extend any irrigation or drainage system to a new allotment;

- a new allotment cannot be connected to an irrigation or drainage system provided by the trust without the trust's approval;
- the division will not affect any irrigation right (unless the holder of the irrigation right applies to the trust for a new right to be issued and an appropriate adjustment made to the terms of the irrigation right);
- the trust may refuse to supply water to an allotment created by the division if the water will pass through another allotment created by the division or the water will be drained through another allotment created by the division.

66—False or misleading information

It is an offence for a person to furnish information to the trust that is false or misleading in a material particular.

67—Protection of irrigation system etc

This clause makes it an offence for a person to, without lawful authority, interfere with any part of an irrigation or drainage system or with any property of the trust used in, or in connection with, the irrigation or drainage of land.

68—Unauthorised use of water

This clause makes it an offence for a person to take water from the irrigation or drainage system of the trust without being authorised to do so or use water taken from an irrigation system for an unauthorised purpose.

69—Offences by bodies corporate

This clause provides that if a body corporate is guilty of an offence, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

70—General defence

This clause provides that it is a defence to a charge of an offence if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

71—Proceedings for offences

This clause states that proceedings for an offence against this Act must be commenced—

- in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
- in any other case—within 2 years of the date on which the offence is alleged to have been committed.

72—Evidentiary provisions

This provision provides evidentiary aids for proceedings.

73—Service etc of notices

This clause sets out the methods by which notices and other documents may be served.

74—Certain land vested in trust in fee simple

Proposed section 74 provides that the piece of land delineated and coloured blue in the plan signed J.H. McNamara, Surveyor-General, and deposited in the Land Office of 5 August 1936, and numbered 324, and therein marked 'X', will, so far as that land has not been alienated by the trust, continue to be vested in the trust, to be held by the trust in fee simple under this Act.

75—Power of trust to construct infrastructure across roads

Proposed section 75 provides that the trust may, in connection with the construction or maintenance of any drainage or irrigation system provided (or to be provided) by the trust—

- cut any road (including any road vested in or under the control of a council);
- lay any pipes or other forms of infrastructure under any such road, or construct any culvert, drain or other works along or adjacent to any such road;
- take any steps necessary or convenient in connection with proposed paragraph (a) or (b).

76—Excluded matters

This clause ensures that the trust and an act or omission of any person, body or other entity in relation to the trust are excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.

77—Regulations

This clause provides general regulation making power.

78—Expiry of Act

If the trust has been dissolved under proposed Part 8, the Governor may, if or when it appears to the Governor to be appropriate to do so, fix by proclamation a day on which this Act will expire on the account of the dissolution of the trust.

Schedule 1—Related amendments, repeals and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This Schedule makes related amendments to the *Natural Resources Management Act 2004*, repeals the *Renmark Irrigation Trust Act 1936* and contains transitional arrangements for the implementation of the measure.

Part 2—Amendment of *Natural Resources Management Act 2004*

2—Insertion of section 169B

169B—Interaction with *Renmark Irrigation Trust Act 2009*

Part 3—Repeal of Act

3—Repeal of Act

Part 4—Transitional provisions

4—Interpretation

5—Members

6—Presiding member and deputy presiding member

7—Directors

8—Resolutions

9—Irrigation rights

10—Charges and rates

11—Other provisions

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

At 22:44 the council adjourned until Wednesday 25 March 2009 at 14:15.