LEGISLATIVE COUNCIL

Wednesday 8 April 2009

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:22 and read prayers.

STANDING ORDERS SUSPENSION

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

That standing orders be so far suspended as to enable petitions, the tabling of papers, question time, statements on matters of interest, notices of motion and orders of the day private business to be taken into consideration at 2.15pm.

Motion carried.

CROWN LAND MANAGEMENT BILL

Adjourned debate on second reading.

(Continued from 26 March 2009. Page 1811.)

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) (11:05): I understand that there are no further speakers on this bill. I want to thank the Hon. Michelle Lensink for her contribution.

The bill seeks to simplify and modernise the provisions relating to the administration of Crown land in South Australia. It incorporates the principles of transparency, natural justice and red tape reduction. The bill is the result of eight years of consultation and advice and is designed to be more flexible and less prescriptive than the current legislation.

Stakeholders consulted included the Natural Resources Council, regional natural resources management boards, the Local Government Association and local government bodies, the Farmers Federation, the Law Society of South Australia and leaseholder representative bodies as well as members of parliament. I am pleased that the bill has received widespread support.

During the debate in the other place the opposition sought to amend clause 24: the minister may dispose of Crown land. This amendment was also raised by the Hon. Michelle Lensink. This amendment would have prevented the minister from signing land grants and required instead that the Governor sign the grants, as occurs currently. This involves a significant and cumbersome process. The Minister for Environment and Conservation undertook to provide an alternative means of addressing the opposition's concerns.

Between the houses the government has prepared an amendment to clause 72 to limit the ability of the minister to delegate the issuing of a certificate of fee simple. Clause 72 is the operative provision for signature of grants or other certificates to be delivered to the Registrar-General. This allows the minister to sign the land grants, which removes the cumbersome process currently required but ensures that this power cannot be delegated. I understand that this amendment satisfies the concerns of the opposition that were raised in the other place.

To many, this may not be a stimulating endeavour but it is necessary in order to provide stability and security in the land administration area. This is a good example of solid Public Service attention to continuous improvement. To that end, I would like to thank all of those who have worked so hard and long on this bill, particularly Mr Doug Faehrmann (who I think has been working on this legislation since 2000), his manager, Jack Nicklaou and also Amy Travers from parliamentary counsel. I look forward to the committee stage of the bill.

Bill read a second time.

In committee.

Clauses 1 to 71 passed.

Clause 72.

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

Page 33, after line 25—After subclause (4) insert:

(4a) If a certificate certifying the grant of the fee simple of land is required by the Registrar-General under subsection (4), the Minister may not delegate the issuing of such certificate.

This amendment would have prevented the minister from signing land grants in place of the Governor, as occurs under the Crown Lands Act 1929. The ability of the minister to delegate this power under clause 16 of the bill was of concern to the opposition. The government has addressed the opposition's concerns by amending clause 72 to limit the ability of the minister to delegate the issuing of a certificate of fee simple. Clause 72 is the operative provision for the signature of grants or other certificates to be delivered to the Registrar-General.

Amendment carried; clause as amended passed.

Remaining clauses (73 to 81), schedule and title passed.

Bill reported with an amendment.

Bill read a third time and passed.

EQUAL OPPORTUNITY (MISCELLANEOUS) AMENDMENT BILL

Bill recommitted.

New clause 10A.

The Hon. D.G.E. HOOD: I will not proceed with this amendment. I have had discussions with the Hon. Stephen Wade, representing the Liberal Party, and he has a very similar amendment. I do not want to detain the committee. Family First is happy to support his amendment. We prefer ours, of course, but we simply do not have the numbers, so we are happy to support the opposition's amendment in this case.

The Hon. S.G. WADE: I move:

Page 8, after line 33—After clause 10 insert:

10A—Amendment of section 24—Parties to proceedings etc

Section 24(4)—delete subsection (4) and substitute:

(4) A person appearing in proceedings before the Tribunal is entitled to appear personally or be represented as follows:

(a) the person may be represented by counsel but only if—

(i) the Commissioner is a party to the proceedings; or

(ii) another party to the proceedings is a legal practitioner; or

(iii) all parties to the proceedings agree; or

(iv) the Tribunal is of the opinion that the person would be unfairly disadvantaged if not represented by counsel;

(b) the person may, with the leave of the Tribunal, be represented by an officer or employee of a registered industrial association or any other person (but the officer, employee or person must not be a legal practitioner or the Commissioner).

The opposition acknowledges the contribution of the Hon. Mr Hood in raising this issue, because I think it relates to discussions we have been having in relation to other clauses about the desire of the parliament to support the Equal Opportunity Tribunal as an accessible tribunal.

In our discussion last night in relation to inquiries and so forth, a number of members referred to the fact that going into proceedings can be quite daunting, and this provision is in the spirit of those discussions because what it says is that, wherever possible, we should avoid the need to use lawyers.

The Hon. Mr Parnell and the Hon. Mr Winderlich mentioned yesterday how daunting it can be for a complainant to raise their issues, and even the mere fact of trying to engage a legal practitioner can be daunting for many people. They are spooked, if you like, by that prospect so may well not engage.

The opposition's new clause 10A proposes to minimise the use of lawyers. Let me stress that it does not propose to prohibit the use of lawyers but, if you like, to say to parties, 'Don't feel

that you can't come to this jurisdiction without engaging a lawyer. That is an option available to you.' This was an issue that was considered by the Martin report in the early 1990s and, to quote a section of the report, Mr Martin said:

> There is a very natural tendency for respondents and legal practitioners to conclude immediately that a denial of representation is, in all circumstances, a denial of natural justice. In the context of conciliation pursuant to the human rights legislation which is controlled by an independent and impartial officer, however, there are circumstances in which legal representation is inappropriate and a refusal to allow it does not amount to a breach of natural justice.
>
> It is obviously essential that, as far as is reasonably possible, the parties be on an equal basis when appearing before the conciliator at a conciliation conference. This 'level playing field' is not easy to achieve. In many cases the complainant is severely disadvantaged in this regard because of the social and economic power imbalance that frequently exists between complainants and respondents. It is important that the conciliator possess a wide discretion in order to achieve the appropriate balance.

It is in the context of those comments that we as an opposition have constructed this current clause, and I will refer members to it.

New subsection (4) provides that a person is entitled to appear personally. There will be a lot of people who, depending on the nature of the complaint, may well feel they can present their own case. New subsection (4)(a) provides that they can be represented by counsel in one of four circumstances.

The first circumstance is if the commissioner is a party to the proceeding. The commissioner, as I understand it, is not necessarily a legal practitioner but, even if that is not the case in relation to the particular incumbent, the commissioner is likely to be so well versed in the act that they may well be as daunting as a legal practitioner, so we think that in that circumstance counsel is appropriate.

The second case is where another party to the proceedings is a legal practitioner. If someone is a legal practitioner and you are trying to argue your case against them—for example, if you are an employee of a law firm—we do not think it would be equitable to expect you to go in without counsel.

The third instance is by consent. Both parties can say, 'We might be able to do our case but we do not choose to; we prefer to engage a legal practitioner.' If both parties agree, that is fine. That might also be because of the complexity of the case. The parties can make that judgment and agree.

The fourth element, in our view, is crucial, and that is where the tribunal is of the opinion that the person would be unfairly disadvantaged if not represented by counsel. This goes back directly to the issues raised by Martin. There is a social and economic imbalance in many of these cases and the tribunal needs to have the discretion to grant a party permission to have counsel. So that is proposed subsection (4)(a) and that deals with the right to engage counsel or a legal practitioner.

The last element is proposed subsection (4)(b), which is analogous to the current clause. It provides that, with the leave of the tribunal, the person can be represented by any other person, and that includes a person from an industrial association. We propose to maintain that entitlement but to limit it to not being a legal practitioner and not being the commissioner.

We believe that these amendments are important because, not only is engaging lawyers often a daunting experience and that therefore makes the jurisdiction more daunting and it is less likely that complainants will pursue issues, but, secondly, it consumes resources. People come to the tribunal engaging lawyers when, in fact, that may not be necessary. Where it is necessary, we believe our clause provides for that. So, I ask the committee to support the amendment.

The Hon. G.E. GAGO: This amendment would delete the current provision in section 24(4) giving parties the right to representation before the tribunal, which they currently have. At present, a person can appear before the tribunal in person or they can choose to have a lawyer or, with the tribunal's leave, another representative. Instead, the honourable member proposes that there should be no general right to representation but that the tribunal could permit representation for a party who meets certain criteria. If the person wants to have a lawyer, then the person must show that he or she would be unfairly disadvantaged without one, or it must be a case where the other party is a lawyer or where the commissioner is a party, or lawyers are permitted if all parties agree to that.

If the person wants to have another representative—that is, a non-lawyer—that would be possible, as it is now, with the tribunal's permission. These criteria are the same as those now in use for minor civil actions in the Magistrates Court.

As I have explained, although these provisions may work well where the proceedings are in inquiry, it is less clear that they can work well in an adversarial proceeding, and that is the model of the EO Commission: it is an adversarial based forum. The provision that the Hon. Stephen Wade has put forward comes from the minor civil action provision, and that involves a process of inquiry not an adversarial model.

In an adversarial model, people are required not just to be asked questions and give answers: they have to be able to actually present their case. The models of these jurisdictions are very different. I am not saying that this model would not work, but it is a very different model and I am not sure how it would work. Given that we are also removing lawyers pretty well or allowing them only under certain circumstances, it could create significant impediments.

As I said, at this point we are just not clear on how it would work. The government is not necessarily opposed to making the tribunal a non-lawyer jurisdiction or lessening reliance on lawyers in this particular jurisdiction, but we are not in a position to support this amendment at this stage. Work would need to be done to examine the consequences of the proposal.

We need to have a look at what effect this is going to have on the tribunal itself, and there has been no opportunity at all for the government to actually consult on this amendment with the courts themselves, and that would be something that we would definitely need to do. Work would need to be done to examine the consequences of the proposal, including its practical effects on the working of the tribunal. We would certainly wish to discuss it with the courts and the commissioner and, if the amendment is passed (and I am hoping it will not be) we will do that between the houses. So, at present we are not in a position to support this particular amendment.

The Hon. A. BRESSINGTON: I would like to ask the Hon. Stephen Wade a question about this particular amendment, and I admit that I have come in halfway through. The amendment says that a person may be represented by counsel but only if all parties to the proceedings agree. I would just like to present this case scenario, if I may, and get a response.

Suppose the CEO of Harris Scarfe is being taken to the tribunal by the Revlon make-up girl. The Revlon make-up girl gets 20 hours' employment a week. She needs legal representation to be able to plead her case, and the CEO of Harris Scarfe says, 'No, I don't agree. I'm not coming in here with legal representation, so neither will you.' However, the CEO of Harris Scarfe has at his disposal a legal team that can prepare his arguments for him, get him prepared to go into the tribunal and give him all the support he needs without actually presenting his case to the tribunal himself. Where does that leave the Revlon make-up girl?

The Hon. S.G. WADE: First of all, if I could continue in the spirit of the case study, the Revlon make-up girl says to the Harris Scarfe CEO—

The Hon. B.V. Finnigan: Assistant.

The Hon. S.G. WADE: Sorry, assistant, was it? I defer to the Hon. Bernard Finnigan's knowledge of the SDA membership classifications. What I was trying to focus on was that, initially, the complainant engages the respondent and says, 'I need someone to help me with my case, and I want to engage a lawyer.' First of all, I would have thought that the moral stigma on a CEO trying to act like a bully would not be good.

The Hon. A. Bressington: What world do you come from?

The Hon. S.G. WADE: Just let me go; I would like to finish. I would expect him to agree. If he did not, then the Revlon girl would not be able to access 4(a)(iii). However, the Revlon girl could go to the tribunal and say, 'Look, I'm only a Revlon girl.'

Members interjecting:

The Hon. S.G. WADE: Sorry, is it a Revlon person? Is that what we are wanting? I am not really sure.

Members interjecting:

The Hon. S.G. WADE: Sorry, assistant. The person in this case happened to be a female, and I think females have rights, too. In this context, this person could go to the tribunal and say, 'I cannot properly present my case without a lawyer', and the tribunal could agree under proposed

new subsection (4)(a)(iv). In that sense, even if the CEO decides not to engage a lawyer, the Revlon assistant would be entitled to legal counsel.

The other alternative available to the Revlon assistant would be new subsection (4)(b)—'I am daunted by a lawyer too but I will go to an advocate.' Let us say it is a disability advocate, or a friend or mum—anybody.

An honourable member: Union

The Hon. S.G. WADE: Or union, that's right; the SDA, as long as they did not send counsel. So there are a number of options available to the person. I would stress that new subsection (4)(a)(iv) is all about equity. We do not want the imbalance of the economic and social power relationships to discourage people from making complaints. We actually think this would make it more accessible for the Revlon assistant.

I hate lawyers. I have had negative experiences right through my life. I would much rather sit down with a mediator and get them to help me, so it gives them a lot more options. It makes it less of a legalistic jurisdiction. Perhaps I could pause there, and see whether I have adequately answered the question.

The Hon. G.E. GAGO: In fact, it does not provide more options at all. It is reducing options, because already complainants and respondents are entitled to lawyers if they want them and are entitled to bring in representatives, as well, like unions, etc., if they want, and without having to go through as many hoops as they will under this provision. They are hoops. They might work, but they might end up being quite unwieldy, particularly when you look at this particular jurisdiction. It is very often women making complaints against their employer.

Those women who are particularly young and inexperienced can find this an extremely daunting task and can be extremely intimidated by it. Even though they may have a reasonable job and be reasonably articulate, they simply may not feel able to confront the boss who has been harassing or threatening them, or doing all sorts of things in the workplace. So you have an inexperienced and incredibly fearful young person, and then they have to meet eligibility criteria to be able to receive the representation they need and deserve.

That is the whole purpose of this jurisdiction; it is why this jurisdiction was put in place. It does have special elements to it, and those special elements are about recognising the general power differences that occur in this particular jurisdiction so that complainants are given some additional support and assistance to make it a more level playing field.

The Hon. I.K. HUNTER: My observation and question is to the Hon. Mr Wade, as mover of the amendment. I also want to look at a scenario of perhaps a 17 year old girl making a complaint against her boss of sexual harassment. I am concerned that her automatic right to representation has been taken away by this clause; I am concerned that she has to demean herself and say, 'I am only a Revlon girl', and therefore explain to the commission, 'You should then allow me to have representation.'

This is putting in another series of hoops that this poor person—who probably does not want to be there in the first place but who has to stand up for herself—has to jump through. It is adding another disincentive, and that person may say, 'This is all too hard; I'm not going to get justice. I now have to go and defend my position to the tribunal about why I should have a lawyer before I even get to start my argument.' I really am worried that this adds another layer of bureaucracy and will stop people getting justice from this process.

The Hon. S.G. WADE: I am disturbed to hear the minister's change in tone from the first contribution to the second. The first contribution was that the government sees merit, shall we say, (I do not want to misquote the minister), or that there is some benefit in reducing the reliance upon lawyers; let us put it in those terms. That is what the opposition is asserting, and we believe that is very much in the interests of complainants. It is also very much in the interests of the commissioner and the tribunal, because resources that are perhaps being disproportionately consumed by engaging legal counsel might be better deployed in employing advocates of whatever nature—people who may be trained not in the skills of the law, which may not be particularly relevant to the tribunal, but perhaps in the skills of mediation or counselling of a person who has been through trauma.

The opposition believes it is appropriate that this jurisdiction become less legalistic. I am interested to see that the Labor left is defending the rights of the legal profession—that is an interesting development in their tradition. Be that as it may, the minister says that I have taken an

inappropriate precedent from the minor civil claims jurisdiction into this tribunal. I do not think so. The Minor Civil Claims Tribunal is indicative of many administrative tribunals, where parliament has thought it appropriate to minimise the overly legalistic approach.

The Hon. G.E. Gago interjecting:

The Hon. S.G. WADE: Excuse me, I have the call. I encourage the minister to return to the spirit of the first contribution, which was that there may well be some merit in this proposal but that the government has lacked the opportunity to fully think through the consequences and would like to consult with courts, in particular, and perhaps others.

I actually welcomed the first contribution. I suggest to the committee, and to the minister in particular, that we should put in this amendment to keep the idea on the table, if you like, and keep the work being done. The government can consider it between the houses, and in the House of Assembly the government can give its considered position. The council will then have both sets of contributions back in this chamber if, in the end, the government cannot agree. So even if members are nervous about this provision, I encourage them to continue the dialogue. After all, lawyers can actually be a hindrance to justice, not promoters of it.

The Hon. M. PARNELL: I would like to put my views on the record if we are to shortly proceed to a vote on this. I look at this in the framework of it being a human rights issue. We have various human rights. There is the right to liberty without due process, so in a criminal jurisdiction one always has the right to legal representation. However, it is not just because you might go to gaol; even if the only consequence may be a fine, you are still entitled to legal representation. In the area of mental health, which we will be debating again at some stage, there is a guaranteed right of the people to have legal representation. Your human right not to be discriminated against is an important one, and we need to give people every opportunity to put their case as best they can.

I do accept some of the things that the Hon. Stephen Wade said. You can always find cases where the lawyers make things worse rather than better, and the decision-makers can often come to the right conclusion without any extra assistance from lawyers, but it seems to me that if we are serious about promoting human rights, if we are serious about promoting the right of people to live their lives without discrimination, then we need to give them a less fettered opportunity to have legal representation.

Finally, I would like to say that in these cases there is nearly always a power imbalance; there is nearly always someone powerful who has discriminated against someone who is less powerful. One way of levelling the playing field is to make sure that both sides are able to have legal representation. For those reasons, and for the reasons given by the minister, I am not inclined to support this amendment now.

The Hon. D.G.E. HOOD: I rise to indicate that Family First will support the opposition amendment. I think the Hon. Ann Bressington raised a valid point when she used the example of a Revlon assistant and the potential conflict with perhaps the CEO of an organisation. I think that to most people that would appear to be an imbalance. However, I have to agree with the Hon. Mr Wade that new subsection (4)(a)(iv) provides that, if the tribunal is of the opinion that the person would be unfairly disadvantaged if not represented by counsel, they can provide this person (in this case, the Revlon assistant) with counsel.

I do not think anyone would like to see someone in a situation where they did not have access to representation, and I am quite sure that is exactly why the Liberal Party has moved to insert (4)(a)(iv), that is, to make sure that, where there is a clear imbalance, there is an opportunity for people to be represented. What is important to note here is that it does not say anywhere that the Revlon assistant has to apply for that representation; it is in the opinion of the tribunal—the tribunal could initiate the matter with the Revlon assistant. That is the first thing.

The second thing, which we have not focused on much in our discussion on this amendment this morning, is that one of the great things about this amendment is that it will reduce the incidence of vexatious claims. We have talked about fairly large businesses, such as Harris Scarfe, but let us consider a very small family business that employs two or three people, for example, a corner fish and chip shop. It is not beyond the realms of possibility that one of the employees in that business does not get along with the owner or manager of the business.

Under the current law, that person can use the Equal Opportunity Tribunal in a vexatious way, because there is no cost whatsoever to them to pursue a matter against the owner or manager of a particular business. There is no downside as far as they are concerned. If they lose,

they are at no cost and they have their legal representation provided at no cost whatsoever. So, where is the disincentive for them to carefully think through these matters? It is possible—and I am sure it has actually happened—that people would lodge these claims in a vexatious manner. This amendment would make that much more difficult, and that is to the benefit everyone.

Of course, let us remember the example I have given of the poor fish and chip owner. If this amendment does not pass, under current law, they would have to go to the great expense of funding their own lawyer, yet legal representation for the claimant—the person who has the problem, that is, the person working in the fish and chip shop—would be provided at no cost whatsoever. Clearly, that is an imbalance.

The Hon. A. BRESSINGTON: I will be very brief. All I can say is that I wish I lived in the utopia that the Hon. Stephen Wade was portraying when he spoke about CEOs not being inclined to be difficult.

The Hon. S.G. Wade interjecting:

The Hon. A. BRESSINGTON: You know what? When a person goes to the Equal Opportunity Tribunal or the commissioner because they have been harassed, bullied, sexually harassed, unfairly paid, or whatever it is, the last thing they need is to have to justify to anyone their right to legal representation. They have enough on their plate, quite frankly.

It is a person's civil right, if you like, to be entitled to legal representation, and we should make that as easy as possible. People's experiences with lawyers have been wide and varied. However, at the end of the day, this bill is about trying to create a balance of inequality, and I do not see that this amendment would create that. With those remarks, I also indicate that I will not be supporting this amendment.

The Hon. G.E. GAGO: I will be very brief, but I just want to set the record straight in terms of some of the statements made by the Hon. Dennis Hood in relation to frivolous and vexatious complaints. Under section 26, a person who brings a frivolous or vexatious case to the tribunal is liable for an order to pay costs. So, the courts are already protected from that type of abuse.

The Hon. D.G.E. HOOD: I just want to pick up on that point. I am aware of that, minister, but I ask the question: how many costs have been awarded in such cases in the past 12 months?

The Hon. G.E. GAGO: I do not have those figures with me, but I am happy to get them for the honourable member.

The Hon. DAVID WINDERLICH: Does the commission record the number of frivolous and vexatious complaints; and, if so, how many have there been in the past 12 months?

The Hon. G.E. GAGO: As I mentioned yesterday, the results of tribunal cases are on the public record, so these type of cases would also be on the public record. I do not have that information available here, but I am able to get that information for the honourable member.

The committee divided on the new clause:

AYES (9)

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

NOES (10)

Bressington, A.	Darley, J.A.	Finnigan, B.V.
Gago, G.E. (teller)	Gazzola, J.M.	Holloway, P.
Hunter, I.K.	Parnell, M.	Winderlich, D.N.
Zollo, C.		

PAIRS (2)

Lucas, R.I.	Wortley, R.P.

New clause thus negatived.

Clause 18.

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

Page 11, after line 29 [clause 18, inserted section 34(3)]—

After paragraph (c) insert:

(ca) a copy of the policy is given to a person who is to be interviewed for or offered employment with the authority or a teacher who is to be offered engagement as a contractor by the authority; and

As I explained before, the amendment would supplement this clause by providing that, if a person was interviewed for or offered employment with the educational authority or is to be offered engagement as a contract teacher there, then the authority must give that person a copy of the policy that deals with discrimination on the grounds of sexuality. The reason for this is to make sure that no-one accepts employment in a school that has such a policy without knowing about the policy. We do not want a situation where people are taken by surprise; we want them to understand from the beginning the terms on which they are being offered work, that is, that their lawful freedom in their choice of a sexual partner is to be reduced by the conditions of their employment.

It would be most unfortunate, both for the school and for the employee or contract teacher, if there were any misunderstandings about this. Sometimes families move interstate; they might move house, sell their home, buy a new home here and shift their kids into different schools. Some families can go to the most extraordinary amount of effort, reorganisation and cost to take up a new position, so it is most important that people are well informed, given that this is a condition of employment that could adversely impact on their contract status.

This does not duplicate the effect of the clause as it stands, because the clause provides only that the policy is to be supplied on request. Some prospective employees or contract teachers might not think to make the request. This will ensure that they receive the policy anyway.

The Hon. S.G. WADE: The opposition is inclined to support this amendment. We think that it actually highlights a flaw in the government's original clause. In committee the first time we considered this bill, the minister explained that the website policy would need to be promulgated at the time of the complaint. As the minister just explained, that is not the time when the prospective teacher needs to know; they need to know at the time when they are being recruited. We think this is an appropriate provision. I do have a query, however, about the wording of the amendment. It provides 'after paragraph (c) insert'. I understood we had deleted paragraph (c).

The CHAIRMAN: It will be fixed up.

The Hon. S.G. WADE: It will be fixed up as a typo. We believe this is a much better provision than the original. We still wonder whether 3(d)(i) is relevant; if nothing else, it is a request that will not be made because it will already have been provided at the recruitment stage, so we support the amendment.

Amendment carried; clause as amended passed.

Clause 69.

The Hon. D.G.E. HOOD: My amendments 13 and 14 are consequential to different amendments that were moved last night. Amendment 13 is consequential to No. 1 which I withdrew, and 14 is consequential to Nos 9 and 11 which passed successfully last night, so they are quite different.

The CHAIRMAN: I am advised that the Hon. Mr Hood should move both amendments.

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

Page 40—

Line 19 [clause 69, inserted section 95C(1)]—Delete 'initiated by' and substitute:

of a matter referred to.

Line 23 [clause 69, inserted section 95C(2)]—Delete 'initiated by' and substitute:

of a matter referred to

I move both amendments, but they are quite separate.

The Hon. S.G. WADE: I move:

Page 40—

Lines 14 to 17 [clause 69, inserted section 95B(2)]—Delete subsection (2)

After line 17—After inserted section 95B insert:

95BA-Assistance to parties before Tribunal

(1) Subject to subsection (2), the Commissioner may, at the request of the complainant or respondent, provide representation for the complainant or respondent in proceedings before the Tribunal.

(2) The Commissioner must apply available public funds judiciously taking into account—

(i) the capacity of the complainant or respondent to represent himself or herself or provide his or her own representation; and

(ii) the nature and circumstances of the alleged contravention of this Act; and

(iii) any other matter considered relevant by the Commissioner.

(3) If the Commissioner provides representation to a complainant or respondent, the person representing the complainant or respondent—

(a) must disclose to the Commissioner information reasonably required by the Commissioner to determine whether the Commissioner should cease to provide representation; and

(b) may disclose to the Commissioner information that the person considers relevant to the question of whether the Commissioner should cease to provide representation,

and the complainant or respondent will be taken to have waived any right or privilege that might prevent such disclosure.

This deals with a longstanding issue which is not only of concern to the opposition but which also was a concern raised in the Martin report and the government's framework paper of 2004. Amendments Nos 3 and 4 deal with the issue of the obligation of the commissioner to represent the complainant. Amendment No. 3 deletes 95B(2), which withdraws the obligation on the commissioner, and amendment No. 4 provides a discretion not to appear but to provide representation.

The considerations that the commissioner would need to take into account in considering whether or not to provide representation relate to, if you like, the sound stewardship of public funds and also, on the issue of equity, a level playing field. Perhaps the best way to put the case is to quote the Martin report on this issue. In referring to the obligation of the commissioner to represent a complainant, it states:

It is not surprising that this requirement has given rise to the considerable concern expressed in the submissions. It clearly creates both a significant conflict of interest and the perception of conflict between the role of the Commissioner as an impartial investigator and conciliator and the subsequent role of assisting one party if conciliation fails.

It is necessary for each party at conciliation to understand the procedures that will ensue should conciliation fail. Notwithstanding the best efforts of the conciliator, once a respondent has been told that the Commissioner must or will assist the complainant before the Tribunal the appearance of impartiality is immediately destroyed. In addition, it is obviously difficult for Commission staff to investigate and conciliate impartially knowing that the Commissioner may subsequently be required to represent the interests of the complainant before the Tribunal.

Martin further said:

In my view there are [compelling] reasons of principle and practicality for repealing 95(9). But whatever change is made, it is essential that it not disadvantage complainants.

I also refer to the 2004 framework paper, where it notes, in relation to this element, that other states and territories do not generally give the commissioner or equivalent the role of representing the complainant before the tribunal. His or her function is complete when the case is referred to the tribunal unless the tribunal requests that the commissioner assist it in the inquiry.

Perhaps the novel element of the opposition's amendment is to provide that that assistance might not just be available to the complainant; it might also be available to the respondent. We appreciate that that assistance to the respondent is likely to be rare. As we have already discussed in earlier considerations, it is typical of a complaint in this jurisdiction that the balance of power relationship is with the respondent, not with the complainant. However, this is a discretion to assist

in the hands of the commissioner and, in our view, that is an appropriate safeguard to make sure that public funds are used wisely and that they are focused on the spirit of the commissioner's role and the spirit of the legislation.

The Hon. G.E. GAGO: The amendment deletes proposed subsection (2) to pave the way for the following amendment and so is a test for that amendment. The government opposes this amendment, because it cannot support the next amendment, which would potentially open up public funding to both complainants and respondents. We believe that the proposal in the bill to expand the commissioner's declination powers will effectively deal with some of the perceived difficulties that this amendment seeks to address.

We do not agree, however, with the proposal for public funding of respondents. If the complaint is worthy, it may be appropriate that the commissioner should fund representation. If the complaint is not worthy, it should not be funded, but there should be no funding to defeat it. So, at that point, the commissioner's function is at an end. We do not believe that where a complaint lacks merit the commissioner should assist the respondent to defend the complaint by providing representation to the respondent.

The justification for funding complainants only is, essentially, as I have explained earlier, that in a deserving case the complainant is bringing before the tribunal a matter that, even if minor, is of public concern. If an employer or trade engages in discriminatory practice, it is a matter of chance that this particular complainant and not someone else has experienced the discrimination. By making a complaint, he or she takes action designed to stop the respondent repeating discriminatory behaviour in the future as well as redressing that particular instance. Thus, there is a public benefit in the form of greater social equity for funding a complainant.

It is quite true that this applies only in deserving cases. There is no public benefit in funding complaints that are vexatious or misconceived and, indeed, the act, as I said before, provides for the commissioner to decline them. Nor is there any public benefit in funding complaints that have no reasonable prospect of success nor complaints that ought to have been resolved by acceptance of a fair offer of redress.

The bill proposed to broaden the declaration powers to allow the commissioner to decline funding in such cases. That is already in a provision of this bill. If those clauses are passed, some of the understandable criticisms of the present law will be addressed. The commissioner will not be required to fund complaints that lack merit.

Our main concern is not so much with the criteria outlined in the Hon. Mr Wade's amendment—the criteria that the commissioner would have to consider in making a decision about spending public money—but with the inclusion of the word 'respondent' in terms of allowing the representation by the commissioner. The government does not, however, see any public benefit in funding of respondents. If a complaint is frivolous or vexatious or brought simply to cause delay or obstruction, the respondent is protected under section 26 and will be entitled to a costs order.

If the complaint is not so, then the government is not satisfied that there is any case to fund the respondent's representation, if he or she chooses to be represented. The government is open to consider the broader question of representation in the tribunal and is willing to do so between the houses but cannot support the amendment in its present form, particularly in relation to the conclusion of the words 'and respondent'.

The Hon. S.G. WADE: I welcome the minister's concluding remark that the government is willing to give it more thought between the houses. I still submit to the committee that we should maintain the, if you like, 'novel' element: the possibility of funding a respondent. I remind the committee that this is completely at the discretion of the commissioner. We have to ask ourselves whether it is conceivable that a respondent to a complaint might have a case which it is in the public interest to have run, and that, therefore, so to speak, we are not funding a wrongdoer. It is not that hard.

There are a number of clauses in relation to discrimination which give people a reasonableness excuse if it is reasonable in the circumstances. It may well be an established practice within an employer group to assume that a certain practice is reasonable. That may not be at all malevolent—it might be with the best of intentions—but the commissioner, the complainant or other people might regard that as discriminatory. The tribunal is the body to determine that, so why should this parliament say that it is not conceivable that a respondent will be anything but bad, that an issue that a respondent might be defending would ever be in the public interest?

I put to the committee that, considering this is completely in the discretion of the commissioner, that the commissioner has been given criteria in (2) and (3) to deal with issues of public interest, that we should not exclude the prospect. I expect that when we get these annual reports from the commissioner we will find that the occasions when a respondent is funded are rare. I would be surprised if that is not the case. Why should we exclude a rare circumstance as we may well be creating an injustice?

The Hon. D.G.E. HOOD: I indicate Family First support for the opposition amendments, but clarify that my amendments 13 and 14 that we are dealing with as well are both consequential to an amendment that was successful last night.

The committee divided on the Hon. Mr Wade's amendment No.3:

AYES (11)

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

NOES (10)

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

Majority of 1 for the ayes.

The Hon. Mr Wade's amendment No.3 thus carried; the Hon. Mr Wade's amendment No.4 carried; the Hon. Mr Hood's amendments carried; clause as amended passed.

Bill reported with further amendments.

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) (12:10): I move:

That this bill be now read a third time.

The Hon. M. PARNELL (12:10): I remind the council that this bill is by no means perfect but it is an advance on the current law relating to unlawful discrimination. Because it represents an advance, most of the community organisations that have contacted me have urged me to support the bill on the ground that it is an advance on human rights in South Australia. So, I have supported and will continue to support the measure.

However, let us not forget that what we are passing today are laws that allow discrimination to continue. Teachers can still be sacked and denied employment on the basis of who they are. A person's sexual orientation is a fundamental part of who we are as people and, in most cases, it is not something that we can do anything about. It is who we are and how we are. In this bill we are perpetuating the right of certain schools to discriminate against same-sex people. I think that is wrong. I think it is a failure of our society to acknowledge, recognise and support diversity in our community. However, it is a fight for another day.

The Hon. S.G. WADE (12:11): In the spirit of the Hon. Mr Parnell's comments, I would also like to reiterate my second reading comments briefly. I particularly welcome the enhancements to the provisions for carers and people with a disability.

Also, in conclusion, in spite of the fact that the council's deliberations inevitably focus on the issues that we end up dividing on, I acknowledge the discussions I had with both the minister and other members of the council outside the chamber where a lot of the discussions take place to clarify the issues to ensure that the best amendments are put forward and that, if you like, we can focus here on the points that divide us, in spite of the fact that in regard to the vast bulk of the issues the opposition, government and other members of the council were in unison.

The Hon. D.G.E. HOOD (12:12): I also acknowledge that this has been a long process. This bill has been in process for three years or so. Although, at times, we have been involved in, let us say, a fairly enthusiastic fight over various issues and particularly the amendments that have been put up, I acknowledge the government's spirit over that time. Certainly, the Attorney-General has been very open in his discussions around a number of things that Family First have put to him, and we are grateful for that.

Whilst almost no-one is completely happy with how this bill has turned out, certainly Family First is pleased that a number of the amendments were successful. However, we also believe that the bill itself has merit, in particular, as the Hon. Stephen Wade mentioned, the provisions for carers and the disability sector, for example. They are things we are certainly in favour of also. I think no-one is ever completely happy at the outcome of these things, but I think improvements have been made.

The Hon. I.K. HUNTER (12:13): I congratulate the minister on shepherding this bill through this chamber in sometimes a very tortuous process. I echo and support the comments made by the Hon. Mr Parnell. This bill maintains legal discrimination against a minority group in our community—gays and lesbians—and their employment in some religious schools. To my mind, this is untenable and cannot last. We have noted in the debate that no such provisions exist in Tasmania. I have not been down there lately, but I do not think the end of western civilisation has occurred in Tasmania because of the lack of such provisions. Our time will come and we will be back to revisit this bill in the near future.

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) (12:14): I will not speak at length but, certainly, I acknowledge the very important and valuable contributions of all honourable members who participated in this debate.

It is a policy area that elicits a great depth of feeling for many members of this chamber and of the public, and most of us have been lobbied significantly by various parties. A great deal of work has been done not only by me but also by my office, parliamentary counsel and officers from the Attorney's office. I acknowledge the many hours of work that they have put into this.

This bill has been in the making for almost 15 years in terms of work that has been done and, certainly, a great deal of work has been done in the past five years or so. It has been a very tortuous road indeed, and I think that we should all feel very pleased that we are party to finally passing this bill in this place in this form.

Indeed, it goes only some of the way. I believe that it does deliver significant improvements and benefits for our various community members. I am very proud of that, but there is still some way to go. I will be very pleased to be part of the next phase that looks at further improvements to our Equal Opportunity Act, and I hope I am around to bring those back to this chamber as well.

Bill read a third time and passed.

OUTBACK COMMUNITIES (ADMINISTRATION AND MANAGEMENT) 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) (12:17): Obtained leave and introduced a bill for an act to establish the Outback Communities Authority and to facilitate the administration and management of outback communities; to repeal the Outback Areas Community Development Trust Act 1978; and for other purposes. 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) (12:17): I move:

That this bill be now read a second time.

The Outback Communities (Administration and Management) Bill 2009 sets a framework for governance in the unincorporated areas of South Australia, that is, those areas (other than any areas excluded by regulation) not falling under the jurisdiction of a local council (as provided in the Local Government Act 1999.) The new legislation will replace the Outback Areas Community Development Trust 1978, providing for an incorporated body with enhanced responsibilities for overseeing the strategic management of, and business planning for, the outback region.

Those responsibilities will be underpinned and enabled by new powers to raise revenue to support the maintenance of existing infrastructure and provision of services to the community; powers to take action to address pollution or nuisance through issuing orders provided for under the Local Government Act 1999; and will provide for future powers to be granted to the new body by regulation, where appropriate, such as are deemed necessary to give the new body the necessary authority to deliver outcomes for the region.

Furthermore, to clearly denote the strategic and administrative link with the state government and to further herald a break from past arrangements, the new body will be renamed the Outback Communities Authority.

Before providing further details of the bill itself, I will provide the council with some of the context within which the draft legislation has been developed. One of the most pertinent facts to consider in this respect is that, while the area of this bill's jurisdiction contains only about a third of 1 per cent of the state's population, it accounts for 68 per cent of the state's geographic area.

This disproportionate relationship between population and geography makes governance arrangements such as those under the Local Government Act impractical. The vast distances between the diverse nature of localities, the small populations, the practical difficulties in holding elections and the inappropriateness of 'one size fits all' arrangements all conspire against adopting the state's more broadly established local governance model.

The need for appropriate governance arrangements in some form is not debatable. Rather the question is: what kind of arrangement is the right fit? Under the current arrangements, local administration is primarily undertaken by volunteer progress associations in the individual outback communities with the assistance and advice of the trust. The progress associations play a vital role in deciding local priorities, managing local affairs and fostering social cohesion and cultural development. They also provide some funding for local projects.

In recent years, however, the organisations have taken responsibilities for the management and maintenance of essential services and infrastructure, such as aerodromes and water supplies. The reliance on them trying to take these roles and responsibilities is becoming increasingly burdensome as factors such as risk management and insurance compliance gain importance in parallel with the increasing number of responsibilities. Volunteer burnout, the lack of capacity or capability to perform certain functions within some communities and the overreliance on 'one-off' grant funding adds to the problem.

At the same time as these changes have been taking place, civil society's understanding of the importance of a strategic approach to business planning, budgeting and community engagement has made significant advancements. Communities at all levels have come to expect a more strategic approach to governance, and rightly so. These changes, too, have influenced the government's thinking in arriving at the proposals being laid before the council today.

In relation to the consultation to inform the government's response, the then minister for state/local government relations, the member for Wright—whose contribution to the preparation of this legislation I wish to acknowledge here—initiated, in May 2007, a review of the operations and governance arrangements of the trust. As part of that review, feedback on possible future governance options was sought from residents. The community itself was widely engaged. Some of the key themes emerging included:

- being an advocate for the outback was seen as a legitimate role for the trust, particularly in an advisory role to state agencies;
- support was given for more systematic consultation processes;
- there was support for the trust taking control of wider infrastructure issues, such as aerodromes;
- many felt the trust should support and assist community associations in their cultural and social development role;
- it was felt that more streamlined strategic planning, budgeting and business planning processes would lend greater transparency and accountability to the trust; and
- there was broad recognition of the need for some form of local rating to deliver the changes, though with disagreement as to whether any scheme should be community-based or outback-wide.

Drawing on this and other feedback, the government has decided to introduce the following provisions in the draft legislation. The bill seeks to establish a newly-named body—the Outback Communities Authority ('the authority'). While this will be the same body corporate in law as the Outback Areas Community Development Trust, albeit with significantly enhanced powers, the government firmly believes that a change of name is necessary to signal a break from the past and reinforce the close links between the authority and the state government. This will be important as the authority seeks to enhance its influence within government by articulating the views, interests and aspirations of outback communities.

In addition, the authority may establish committees to inform its work. The bill also allows for the area of the authority to be finetuned by regulation. In terms of functions and objectives, the Outback Communities Authority's functions and objectives will be largely similar to that of its predecessor, the trust. However, changes will be made to put the new body on a more strategic footing. Some of these provisions are broadly reflected in this bill being laid before the council today, but the new bill goes further in that it requires the new body to:

- give more long-term consideration to asset management and replacement;
- consider national and state objectives and strategies to inform its work;
- work collaboratively with governments at all levels;
- ensure it has robust processes in place for engaging outback communities and informing external decision making processes with implications for those communities; and
- provide an efficient service, remain accountable and manage its resources effectively.

While the trust has a history of conducting itself with these sorts of aspirations in mind (insofar as it has been equipped to do so), the inclusion of such provisions on the face of this bill will provide added impetus to the drive to provide a more strategic and focussed service. Furthermore its successor, the authority, will be supported in its delivery of this role by Public Service employees assigned to it by the appropriate government agency, currently the Department of Planning and Local Government.

In terms of management and budget planning, the Outback Communities Authority will be required and enabled to engage more systematically in strategic, management and budgetary planning processes in the following ways:

- it must, in consultation with outback communities, prepare strategic management plans for ministerial approval on a five-yearly basis. These plans are to include details of the authority's objectives, intended activities, proposed collaborative work, and long-term financial and asset management plans;
- it must, in consultation with outback communities, prepare a business plan and budget for ministerial approval on an annual basis. These are to include details of the authority's objectives, intended activities, proposed expenditure and revenue requirements, and rates payable for the year and the likely impact of this on communities;
- it may enter into agreements, to be known as community affairs resourcing and management agreements, with individual community organisations to establish ground rules in regard to financial support, service provision, insurance schemes, rates expenditure or governance arrangements. This measure is designed to ensure realistic expectations on behalf of both parties.

In relation to community consultation, the Outback Communities Authority must prepare and adopt a public consultation policy for use in connection with its key planning and budgetary processes and arrangements, including but not limited to those I have just cited. Through this policy, it must ensure that stakeholders are given reasonable opportunity to make submissions on all matters subject to consultation.

With regard to revenue-raising powers, it is proposed to introduce two mechanisms for the authority to raise revenue to contribute towards the funding of facilities and infrastructure in outback areas. One is an asset sustainability levy and the other is a community contribution scheme. The introduction of these arrangements will be balanced with provisions in the bill requiring the authority's accountability, transparency and attention to community input, and the application of both of these mechanisms will be subject to additional public consultation requirements.

The rationale for applying the asset sustainability levy is based on the idea of a shared community responsibility to contribute to the maintenance of existing public use facilities and infrastructure in the outback. It would apply to all properties (including pastoral leases) located within the Outback Communities Authority area, except for those uses of land currently exempt from council rates under the Local Government Act 1999, and be applied as a fixed charge (similar to a local government general rate).

It is expected that these funds collected from the levy would only partially cover the total cost of providing the prescribed services. The remaining costs would still be sourced from commonwealth local government grant moneys, allocations that are sought by the Outback Communities Authority through the normal budget allocation process, and other specific commonwealth and state grants.

It is also proposed to provide the Outback Communities Authority with the capacity to declare a localised user pays system (a community contribution scheme) to enable it to raise revenue for municipal-type services and activities. This will be done at the individual community level, so revenue will only be expended in the community in which it is raised. These schemes will be developed in consultation with individual communities but, unlike a general rates system, will be applied only with the specific agreement of the individual community on which it is proposed to be levied. A community affairs resourcing and management agreement authorising community contributions for a specific purpose will only be developed at the request of the community concerned.

The government believes that the introduction of both an outback-wide and a community specific levy will reflect the fact that certain projects will in themselves be community-specific whereas others, such as UHF transmitters, will benefit the broader outback community.

It is also proposed that the Outback Communities Authority be given similar powers to maintain local amenity and deal with nuisances, as provided in the Local Government Act 1999 (Chapter 12), whereby councils may issue an order to a land owner, occupier or other person to stop or prevent them from carrying out an activity on private land. These relate to the unsightly condition of land, hazards on lands adjoining a public place, animals that may cause a nuisance or hazard, and the use of a caravan or vehicle as a place of habitation. It is also proposed that the authority be given appropriate powers similar to those of a council to deal with illegal dumping on public places and roads.

As with the current trust, the Outback Communities Authority must prepare an annual report for the minister, giving details of its activities, together with an audited statement of income and expenditure. Under the new arrangements, however, the report must also include an assessment of those activities against its business plan aspirations for the previous financial year.

In relation to transitional arrangements, the government recognises that these proposals, if adopted, would signal a generational change in governance for the Outback area of this state. While the changes represented will, I believe, be to the benefit of those living in the jurisdiction covered by the changes, clearly there will be some who will have worries about adapting to the new arrangements. The government is fully conscious of and sympathetic to such concerns, and it is expected that there will be a gradual introduction of the new rates, the amount of which must be approved by the minister.

The fact that the legislation will require the Outback Communities Authority to consult extensively on the strategic directions driving the use of its powers, on detailed business planning, including any planned introduction of an asset sustainability levy or community contribution, should serve to further allay any such concerns and ensure that the community is fully informed and provided with ample opportunity to contribute to the manner and direction of its governance. I commend the bill to the council.

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

AUTHORISED BETTING OPERATIONS (TRADE PRACTICES EXEMPTION) AMENDMENT BILL

Second reading.

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) (12:32): 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 seeks to make a technical amendment to the *Authorised Betting Operations Act 2000* to provide an exemption pursuant to section 51(1) of the *Trade Practices Act 1974 (Commonwealth)* for the conduct of South Australian Racing Controlling Authorities in the entering into and the giving effect to the Contribution and Integrity Agreements that form the core of the new regulatory arrangements introduced by the *Statutes Amendment (Betting Operations) Bill 2008*. That Bill was introduced on 24 November 2008 to strengthen integrity and funding arrangements for the racing industry following the High Court's decision in the *Betfair* case in 2008. The Second Reading Speech to that Bill set out the background to the *Betfair* case.

The *Statutes Amendment (Betting Operations) Bill 2008* itself contained a *Trade Practices Act* exemption, but at the time that Bill was being prepared the exact details of the form of the arrangements that the Racing Controlling Authorities were likely to enter into were not fully known. Given the highly charged litigation environment surrounding racing and wagering arrangements at the present time, it is prudent and appropriate for Parliament to provide a comprehensive *Trade Practices Act* exemption for the Racing Controlling Authorities who, after all, are only complying with the regulatory requirements imposed on them by Parliament.

On the Government's assessment there is no significant competition detriment here. The outcome that this Government seeks, and the outcome that is also being sought by all State Governments that have a significant racing industry, could be achieved by a scheme that had a greater degree of Government intervention. We have chosen to allow the industry to regulate itself, as have the other States. However, because of its universal application to all activities in trade or commerce, the *Trade Practices Act* has an impact on this regulatory activity that potentially creates a litigation exposure for Racing Controlling Authorities and their administrative and collection agents. To avoid that, it is proposed to utilise the 'power to exempt' granted to State Parliaments by section 51 of the *Trade Practices Act*.

The parties that are exempted are the South Australian Racing Controlling Authorities and Racing SA, which is a company formed by the three Racing Controlling Authorities, and which has functions under the proposed arrangements including that of administration and collection agent for the Controlling Authorities. The exemption allows the possibility of another agent, possibly on a national basis, carrying out that role in the future.

The exemption focuses on the entering into, and the giving effect to, contracts arrangements and understandings that contain provisions relating to, first: the matters required to be included in Integrity and Contribution Agreements by section 62E of the *Authorised Betting Operations Act*. Existing section 62E(11) deals with that matter. Secondly, the exemption deals with collective arrangements on the part of the Racing Controlling Authorities, Racing SA or another agent, or, any combination of those persons and bodies. The exemption is structured so as to deal comprehensively with the matrix of operations of a collective nature that might attract section 45 of the *Trade Practices Act*:

- Entering into, and giving effect to, arrangements or understandings by the Racing Controlling Authorities and Racing SA, or any other agent, that are preliminary to the negotiations to enter into collective integrity and contribution agreements with wagering operators; or are preliminary to any action to give effect to the resultant collective integrity and contribution agreements.
- The actual entering into, and the giving effect to, integrity and contribution agreements with a wagering operator by a Racing Controlling Authority and by Racing SA or another agent, where the agreement is of a collective nature in that it also includes other Racing Controlling Authorities, Racing SA or another agent.
- Entering into, and giving effect to, integrity and contribution agreements by a Racing Controlling Authority, where the Racing Controlling Authority acts alone.

I note that this amendment will commence at the same time as the other amendments to the *Authorised Betting Operations Act* introduced by the *Statutes Amendment (Betting Operations) Bill 2008*, that is, on 1 March 2009. Further, the *Trade Practices Act* exemption applies to conduct by those persons who are exempted, whether that conduct was undertaken before or after the commencement of this amendment. This retrospective operation is necessary so as to provide protection to Racing Controlling Authorities and Racing SA who have had to start their consideration of these issues and putting arrangements in place as early as possible to deal with the problems that already exist in the racing industry flowing from the *Betfair* decision.

The Government and racing industry appreciates the willingness of Members to have initially considered the *Statutes Amendment (Betting Operations) Act 2008* with the urgency necessitated by actions in other States following the Betfair High Court decision. The Government looks forward to this Parliament working together to provide the racing industry with greater certainty.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal. Commencement is retrospective so that the trade practices exemption operates from the same time as the amendments to the *Authorised Betting Operations Act 2000* relating to integrity and contribution agreements effected by the *Statutes Amendment (Betting Operations) Act 2008* came into operation.

Part 2—Amendment of *Authorised Betting Operations Act 2000*

4—Amendment of section 62E—Integrity agreements and contribution agreements

This clause provides a trade practices exemption designed to specifically authorise 3 different categories of conduct:

- entering into or giving effect to an agreement by racing controlling authorities, Racing SA Pty Ltd (ACN 095 660 058) and any other agents of racing controlling authorities (or any combination of those persons and bodies) following negotiations conducted for the purposes of a racing controlling authority entering into, giving effect to or enforcing an integrity agreement or contribution agreement;
- entering into, giving effect to or enforcing an integrity agreement or contribution agreement by racing controlling authorities, Racing SA Pty Ltd (ACN 095 660 058), any other agents of racing controlling authorities (or any combination of those persons and bodies) acting collectively;
- entering into, giving effect to or enforcing an integrity agreement or contribution agreement by a racing controlling authority acting alone.

The first category is aimed specifically at the preliminary arrangements and understandings that the racing controlling authorities may enter before they negotiate an integrity agreement or contribution agreement with a betting operator.

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

STATUTES AMENDMENT AND REPEAL (FAIR TRADING) BILL

Adjourned debate on second reading.

(Continued from 26 March 2009. Page 1807.)

The Hon. J.M.A. LENSINK (12:33): I rise to indicate the Liberal Party's position in relation to most of the aspects of this bill. Some aspects of the bill have received more attention than others, and I want to focus initially on the issue of the enforcement powers of the Commissioner for Consumer Affairs. In terms of the representations we have received, this issue has not received much attention, and I want to briefly touch on it before we go on to the more contentious issues.

In large part, some sections of this bill are related to the strengthening of the powers of the Commissioner for Consumer Affairs, and this arises from a review of the Fair Trade Act. I have a copy of the report, which was released in April last year. Can the minister, at some stage in her response, comment on which provisions included in that consultation paper were not proceeded with and why?

Included in the new powers is the provision that the commissioner will have the power to require traders to participate in conciliation where the value of the goods is up to $1,000, which I think is to be commended; and that, if conciliation is not reached, this agreement will be enforceable in the Magistrates Court, which is similar to some provisions in what is termed colloquially the Small Claims Court, which is based in the Magistrates Court. I think conciliation is often preferable, and it is certainly one means which ought to be available to consumers to obtain some sort of redress.

The definition of 'document' will be expanded to include electronic records; I think that is a bit of a no-brainer. Powers of authorised officers will be increased to include the retention and copying of documents. My question on this matter is whether the government anticipates that additional officers will be required for any aspect in relation to this and, given that we are strengthening the powers, whether the government expects to be involved in more complaints matters and whether more resources and officers will be appointed to assist with those aims.

The current offence of providing false information will be extended to include misleading information which is knowingly provided, and a new offence is being created making it an offence to threaten, intimidate or coerce a potential witness and, again, that is a no-brainer.

New part 3A will enable the commissioner to have power to suspend the licence of certain licensed traders for up to six months and, on my reading of the bill, that is on three conditions which must all be fulfilled: that the trader has or is engaged in conduct which constitutes grounds for disciplinary action; that the behaviour is likely to continue; and, finally, that there is a danger that consumers may suffer significant harm, significant loss or damage. These powers will apply to

building work contractors, plumbers, gas fitters, electricians, licensed dealers under the Second-hand Vehicle Dealers Act and travel agents.

Again, this is a positive move. There has been some criticism that the Office of Consumer and Business Affairs does not have sufficient powers to assist consumers who have genuine grievances. Furthermore, the commissioner will be able to note on an existing licence certain events such as whether the licence holder is insolvent, and those sorts of things are very helpful for consumers.

There are also increases in the existing penalties, which I support, in that I think it is curious that penalties in all of our statutes do not keep pace with inflation, and it is only when these matters are reviewed that the penalties are also reviewed. On that matter, I ask where the penalties end up: whether that is general revenue, whether there are any hypothecated funds or whether those funds are returned to OCBA or the like.

I turn now to the other aspects of the bill which relate to recreational service providers. A number of us have been lobbied excessively by a number of concerned recreational service providers in relation to their ability to obtain public liability insurance. I state at the outset that the Liberal Party believes that the most important principle is to find a balance between the rights and responsibilities of consumers, potentially injured parties and recreational service providers and in so doing be able to provide public liability at the most affordable level so that those activities continue. I think we universally agree that we wish for recreational service providers to be able to obtain public liability insurance. They provide a very important role in our community, and their services are greatly appreciated.

In some ways, these provisions have been drafted in order to address the matter, which was the failure of the current regime—which is the Recreational Services (Limitation of Liability) Act 2002, which is clearly unworkable—and we have been advised that recreational services providers do not wish to continue under this regime. In fact, it has been a matter of where codes were required to be registered. That was so unworkable that only one code has been registered, which I understand is one of the pony activities.

I think it is fair to say that, because this debate has a great deal to do with the common law matter of torts, which is certainly not something in which I am well educated (I did only one subject of law as part of a master of bugger all), I will defer to our learned colleague the Hon. Robert Lawson with respect to some of those aspects, because they involve significant amounts of common law development of torts, and what we have here are statutory provisions that are attempting to intersect with those. Therefore, it has been a very complicated issue, I think, for anyone who has attempted to decipher exactly the right way for us to go on this matter.

I will now turn to the issues that were raised with us by recreational services providers. I (and I believe a number of other members) have met with Horse SA and two individuals, Sarita Stratton and Matthew Slater, who were very concerned about some of the existing provisions. I would like to outline some of the concerns that have been raised with us. They include whether the term 'reckless' should be negligence or gross negligence; whether the definition of 'recreational services' is broad enough; whether insurance claims can be capped; whether consumers can be held liable for their own reckless or negligent behaviour; and the matter of waiving the rights of children.

With respect to the issue of whether the definition of 'recreational services' is broad enough, I note that it is broader than the previous definition in the Recreational Services (Limitation of Liability) Act 2002. The capping of claimable amounts, I think, is probably a very problematic area. In some ways, I think it is fair to say that the crisis that led to all of this was not a result of the behaviour of recreational services providers but related to global events—mostly 11 September—which led to a great deal of fear. We can see similar issues in relation to the current global financial crisis, where there is a flight from risk. That led to a massive increase in insurance premiums, which also impacted on recreational services providers in little old South Australia. That was some time ago.

I would also like to make some comments in relation to warranties and conditions, which are included in an extensive section of the bill before us. It appears in new division 2A, which is section 74A and following. I would also like to place on the record my thanks to the minister and her officers for providing honourable members with a briefing within the past two weeks, which I think helped us to clarify some of the matters that were before us. Personally, coming to it cold as the shadow minister has been an interesting process in that my understanding has been evolving

almost on a weekly basis as I come to have a better grasp of what some of the principles mean. However, I will defer to my learned colleague, who has a much better understanding than I have.

Warranties and conditions are contained in the commonwealth Trade Practices Act, at common law in the area of negligence, and in the Fair Trading Act. A warranty relates to a service rendered with due care and skill. The bill before us means that due care and skill must be applied in all cases unless, first, it involves an adult who can waive—the test then is recklessness—and specifically children will not be able to waive, so the due care and skill test will still apply. I believe the minister stated in the briefing that it would be business as usual in that there is no change to the current situation as waivers are unable to be obtained by anyone, adults or children, and a specific clause (74I(2)(b)) is contained within the bill which reflects the common law position, providing that these waivers will apply only if the consumer and any third party consumer are of full age and legal capacity— which I think we could call the child waiver clause.

This act specifically excludes waivers from being able to be signed on behalf of children and I flag that, on the advice of the Insurance Council of Australia, we have drafted an amendment which will delete that clause. Its argument was that this is the only jurisdiction that would include that provision. No other state or territory in Australia specifically prohibits the signing of waivers and, therefore, this would create an additional class of consumer and make it more difficult for them to price insurance which, when we come down to it, is the purpose of this law. If we can retain those balances I mentioned at the start of my contribution, while also trying to balance the ability of recreational services providers to obtain insurance, then that is a positive thing.

I understand that in terms of liability a provider must be reckless and the injuries must be significant, and a recreational services provider is not liable for risk that can be avoided by the exercise of due care and skill. In her second reading explanation and in the briefing the minister spoke of one-off events. An example was provided in the second reading explanation that has concerned a number of the recreational services providers. Explanations provided at the briefing referred to a one-off event in the course of a business being considered to be covered by this measure. There was a little confusion about exactly what a one-off event means, so if the minister in her response could refer to that matter on the record that would be appreciated.

The matter of the Tour Down Under signing has been referred to by other members in that, if we are to take the advice on face value, waivers, whether for adults or children, are not valid under the current regime, so why the government chose to get people to sign them for that particular event—

The Hon. G.E. Gago: The government didn't get them to sign it.

The Hon. J.M.A. LENSINK: Not the government? Who was it then?

The Hon. G.E. Gago: The organisers.

The Hon. J.M.A. LENSINK: It is seen as part of the umbrella.

The Hon. G.E. Gago: The government doesn't get people to sign waivers.

The Hon. J.M.A. LENSINK: Nevertheless, that was a curiosity that has been noted by honourable members, so I will not dwell on that particular point.

There is also, I think, some confusion about what a waiver really means. There have been some emotive arguments that I do not think are helpful to the debate which talk about the rights of parents and attributing waivers to consent forms. All parents know that they sign consent forms for all sorts of things. One of the examples which is often used is in relation to whether a child may have surgery and so forth.

I think it is important to point out that, if a child is undergoing surgery (and, clearly, a responsible parent would not allow their child to undergo unnecessary surgery—it would be taken on professional advice), it would need to be provided with due care and skill; the anaesthetist would be required to operate with due care and skill, and so forth. So, I think there has been some confusion as to whether a waiver is the same as a consent form. A waiver is saying that the services, whatever they may be, no longer need to be provided with due care and skill, and the definition is 'that of a reasonable person who either had, or ought to have had, possession of all the information at the time of the incident'. I think that is a standard to which we all aspire.

In relation to adults who may choose to sign waivers, injured persons are presumed to be aware of obvious risks unless they can prove that they were actually not aware of them, which I

understand to be the principle of that individual taking responsibility for the risk that they have entered into.

Some legal advice has been provided via Sarita Stratton from a lawyer by the name of John Daenke, who has quite an impressive CV. He has provided advice to Sport SA in relation to the current act that we operate under and the proposed sports codes. He is a consultant for Lynch Meyer and has worked in the area of sports law and insurance law. I am very grateful for being provided with this particular brief which I think covers a number of these issues quite well for the lay person.

He states that in providing this advice he is not sure what the insurance industry's opinion is on how this particular bill will assist recreational services providers to obtain insurance. He pretty much states that waivers are not worth the paper they are written on, but sometimes insurers require them anyway for their own risk management purposes, which I think is an important point. He has concerns that not all not-for-profits are covered, which is a matter that relates to the matters that I was talking about in relation to one-off events, in that one of the aspects that the government spoke about in the briefing was that it would apply to not-for-profits and whether they are covered. So, I would appreciate some advice on that from the government.

He states that the matter of waivers is only relevant to what the insurer wants, and even then the recreational services providers should check with their insurer in advance. He refers to the 'significant injury' definition and 'reckless conduct' definition and states that risk management, as a matter, should be looked at.

There has also been some opinion circulated from the Australian Lawyers Alliance which thinks that the statute should be repealed entirely, and that we should just go back to the common law system. That is something that I do not think the parliament would be inclined to do, and it would probably make us unique amongst all the states and territories.

I did state that we received advice from the Insurance Council of Australia for which I am very grateful. It stated that the South Australian model is similar to section 32N of the Fair Trading Act and noted that, while the New South Wales and Victorian provisions are quite different, they have similar effect. The council believes that all the states should be harmonised and, therefore, supports most aspects of this bill because it will repeal the Recreational Services Act and bring South Australia pretty much into line with other states with the exception of section 74I(2)(b).

I do not think that there is a lot more to add, except that we will examine any amendments that have been tabled, but I think that, in principle, we will not support any amendments that either add additional red tape or unnecessary provisions to the act or that change the nature of this piece of legislation. With those comments, I indicate that we will be supporting the second reading of this bill, and I look forward to the committee stage.

Debate adjourned on motion of Hon. R.D. Lawson.

[Sitting suspended from 12:57 to 14:18]

LEGISLATIVE REVIEW COMMITTEE

The Hon. J.M. GAZZOLA (14:18): I bring up the 16th report of the committee.

Report received.

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

Report received and read.

TECHPORT AUSTRALIA

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:22): I table a copy of a ministerial statement relating to the progress at Techport Australia made today by the Premier.

QUESTION TIME

BULK COMMODITY PORTS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:23): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about bulk commodity ports.

Leave granted.

The Hon. D.W. RIDGWAY: Last year—in October, I think—the Minister for Infrastructure advised that the Spencer Gulf Port Link Consortium, led by Flinders Ports, had been selected to undertake a feasibility study for the development and operation of an export facility at Port Bonython. The minister announced that the feasibility report would be completed earlier this year and that the port would be operational within three years.

In the interim, a company by the name of Centrex wanted to export iron ore through Port Lincoln, and the government has undertaken a number of actions, including an application to the Development Assessment Commission, which will receive submissions on this particular development. However, an article in the *Port Lincoln Times* earlier this week quotes from a letter written by Mr Phil Tyler, as follows:

> In relation to Centrex, the SA Government is supporting the company in its efforts to export its minerals...The first Centrex mineral exports will be via Port Lincoln.

I have been contacted by some distressed residents, who feel their ability to lodge a submission has been significantly damaged, and they have also brought into question the open and transparent way in which this whole process is being conducted. Their email states:

> Today in our local newspaper, the headline of 'Fait accompli?' explains that 'according to a senior official (Phil Tyler) in the State Department of Trade and Economic Development...CENTREX Metals will get approval from the State Government to export minerals from Port Lincoln.'
>
> This information was contained in a letter to the Eyre Regional Development Board. If this is so, the whole process with which we have conformed is a farce. We expect to meet with the DAC in the near future, but now we feel this would serve no purpose.

My questions to the minister are:

1. Are Mr Tyler's comments correct?
2. Have Mr Tyler's comments undermined the government's consultation process?
3. Has a decision already been made by the state government?
4. When will the feasibility study on Port Bonython be released?
5. Will the minister confirm that Port Bonython will be open for business within three years?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:26): When the media raised questions about this, I had a look at the letter that Mr Tyler wrote. It is a distortion, I believe, and a misinterpretation of that letter to suggest that it is saying that a decision has already been made.

The point that Mr Tyler was making (in his role in relation to the regional development board) is that the government supported the consideration of that proposal under section 49 of the Development Act—that is, as a crown development—however, that is going through the procedure, which will include public consultation, as required under the act in relation to such projects. The point that I believe Mr Tyler was making is that, yes, the government supported the application to be considered, but to suggest that that means approval would be given automatically is not correct, because it obviously has to be considered by the independent—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Yes, they have applied, under section 49. It is supported; they are looking at it, but it has to be approved by DAC. The DAC approval process is not yet complete.

The Hon. D.W. Ridgway: It's not the same.

The Hon. P. HOLLOWAY: Well, I do not believe he did say that DAC had approved it. I do not think that is said anywhere in the letter.

The Hon. D.W. Ridgway: He said he has obviously made up his mind.

The Hon. P. HOLLOWAY: He said the government was supporting it in the sense that it is being considered as a crown development, sponsored by the department of infrastructure, but, that any proposal they put forward has to go out to public consultation and has to be approved under the terms of the act by the independent Development Assessment Commission. That is where it is at.

There has been a lengthy process of consultation in relation to how Centrex proposed to export the ore from its Wilgerup proposal. For some time, it was looking at the option of barging it out through Proper Bay, and there were a number of other options. Centrex has had extensive consultation with the local community in relation to that.

However, what is being investigated now (under section 49, Crown Development) would be modification of the wharf. As I said, the proposal is more through the infrastructure department than through mine. As I understand it, it is about using rail facilities, because the Wilgerup proposal is quite close to the existing rail facility. It would certainly make sense if that ore is to be exported that rail would be preferable to road traffic, particularly in relation to avoiding the need for many trucks to go through the heart of Port Lincoln.

My understanding is that Centrex is looking at a proposal to build a port at, I think, Sheep Hill, south of Tumby Bay. I believe there is a site there where the water is over 20 metres deep within 450 metres of the shore, which could make a very suitable port in the longer term. The company is clearly looking to get its project under way at some interim facilities. That will all go through the proper process of consideration.

In relation to Port Bonython, Flinders Ports was charged with preparing a report. I understand that that report was given to my colleague the Minister for Infrastructure several weeks ago, and the government will be looking at that. I have had a briefing on that report but, as I said, it comes under the jurisdiction of my colleague the Minister for Infrastructure.

Port Bonython will be an important facility for the future of the mining and other industries within this state and, obviously, it is important that it should go ahead. When Flinders Ports was selected, a number of consortia were making offers to look at the Port Bonython proposal. Of course, the situation occurring at the time when that was done has changed somewhat over the past six months, in terms of the global financial situation and the prospects, but obviously the government would be keen to see that go ahead.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: That is really a question that is better referred to my colleague the Minister for Infrastructure, whose department will be analysing that report in more detail and making a statement. So, I will refer any specific questions on that to him. However, I can at least confirm that the report has been received by government.

BULK COMMODITY PORTS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:31): I have a supplementary question. Is the minister referring to the minister the question of when it will be operational—because it is three years; you have to have some deadline.

The PRESIDENT: Order!

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:31): That is a bit rich coming from an opposition that wants to build a sporting stadium, and it will not even start until after two elections. They want to make it an election issue in 2010 as to whether we have this proposal to build a stadium. If I heard the Leader of the Opposition correctly this morning, I think he was talking about that commencing in 2022, depending on what happens with the World Cup. I think Australia has an application to host the World Cup in 2018, but the leader is suggesting that it could be 2022.

The opposition is quite happy to try to run an election campaign about what might happen in 15 years' time. This government is much more concerned with what will happen in the immediate future. That is why we are keen to get this development under way at Port Bonython. Whether the

port facilities go ahead will clearly depend on the financing and demand from those companies that wish to export commodities from the port, which would be the iron ore commodities, in particular. That clearly will be the deciding factor. Whether or not that can happen will depend on the world situation, but people can be sure that this government will certainly be doing everything it can, as it has done—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: Seven years; yes. We certainly have had the best years that mining has ever had in this state. It went from four mines to 11, and it went from $40 million a year to $370 million with respect to exploration. That is what has happened under this government. For that to continue we need these developments to occur.

The Hon. D.W. Ridgway: You ought to show leadership—

The Hon. P. HOLLOWAY: What leadership, if any, are we getting from members opposite? This question was all about raising concerns in Port Lincoln, so I ask opposition members this question: if you want leadership, will you support the port at Port Lincoln?

The Hon. D.W. Ridgway: I ask the questions and you answer them.

The Hon. P. HOLLOWAY: There we go; given away, isn't it! They will come in here and knock everything that this government does. I could not believe it this morning when I heard the Leader of the Opposition in another place put up this proposal that goes out to maybe 2022. On the back of an envelope you can prove that the costing of a sports stadium will not work. Think about it for a moment. To have a sports stadium that seats 50,000 people, even if you charge 1 million people $50 to go to the footy every week for 20 matches, you get $50 million. How would $50 million of income, before taking out costs, pay for a $1 billion-plus stadium? It would be paid for only if taxpayers put in hundreds of millions of dollars. You can disprove the whole thing in one second with a back of the envelope calculation. It is absurd!

The Leader of the Opposition got on the radio this morning and said that he did not want anyone knocking the project. What a joke! What about the tramline extension? All we had was knocking. After two years of knocking and saying that it was the tram to nowhere, the opposition was then knocking the government because the trams were too full and people could not get on them because they were so successful.

Then we had the hospital proposal, which has been knocked from day one by Liberal opposition members. They are the greatest load of knockers this state has ever seen. When it comes to a proposal where this government is trying to support the mining industry to grow, what do they do? They cannot even come into this parliament and back the government on any of these major projects.

Members interjecting:

The PRESIDENT: Order!

POLICE ROAD SAFETY POLICY

The Hon. S.G. WADE (14:36): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning, representing the Minister for Police—

The Hon. B.V. Finnigan interjecting:

The PRESIDENT: Order! I remind the opposition and the government that they will have fewer questions today, and perhaps those showing tolerance to the chair, such as the Independents, will get more questions.

Leave granted.

The Hon. S.G. WADE: Yesterday on *Adelaidenow* Joanna Vaughan reported the road safety minister's revelation that South Australia Police have been pulling over motorists to tell them that they have been doing a good job.

The Hon. G.E. Gago: Hear, hear!

The Hon. S.G. WADE: I hear the Minister for the Status of Women saying 'Hear, hear' to that proposal—apparently she supports the minister. In response to the article, the *Adelaidenow*

site carried numerous comments of denial by serving members of the South Australian police, including one which stated:

> I am a serving police officer. In my seven years on the job I have never seen or heard of this being done. On the road policing, the kind of officers that stop you for committing traffic offences, is the most demanding, difficult and under-appreciated role in the job. Knee-jerk reactions and off-the-handle comments are heard by many serving police officers at a time when morale is at an all time low and demands on these officers are increasing. Misinformed comments like this, setting members of the public against the serving members, is not something our minister should be doing.

Another correspondent said that he understands that the Canberra police tried a similar initiative some years ago, but soon stopped after one particular incident where a driver was pulled over to be complimented on their driving. The driver became so irritated at being stopped that they ended up being physical with the officer, which resulted in the driver seriously assaulting the officer and ending up in gaol. In the poll, only one of the four respondents welcomed the initiative. My questions to the minister are:

1. Under what legislation are police empowered to require a member of the public to pull over to convey a commendation?

2. When was this practice introduced and what policy was promulgated to introduce the practice?

3. How many people have been pulled over under this policy?

4. Why was the policy not made public until yesterday?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:39): This is not bad for a shadow minister for road safety, whose Facebook friend takes pictures of himself doing 130km/h in his car. This is the Liberal standard for road safety, so I am not surprised that the shadow spokesperson should try to bring—

The Hon. S.G. Wade: Undermine the police—go on!

The Hon. P. HOLLOWAY: I am not happy with people doing 130km/h down the road while taking pictures of themselves.

The Hon. S.G. Wade interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: What have you said about your Liberal friend? When the shadow spokesperson for road safety gets up and condemns his Facebook friend for doing 130 km/h in a car and photographing himself, then he may have some credibility to ask questions in relation to police powers.

In relation to police powers, I will refer that to the Minister for Police in another place. However, I think it is quite extraordinary, but perhaps not surprising, that the shadow minister for road safety should be trying to draw a distraction from the very embarrassing situation that he must find himself in when his Liberal colleague (speeding friend) takes pictures of himself doing 130 km/h.

The Hon. T.J. Stephens interjecting:

The PRESIDENT: Order!

GOVERNMENT BOARDS AND COMMITTEES

The Hon. R.L. BROKENSHIRE (14:40): I seek leave to make a brief explanation before asking the Leader of the Government a question about boards and committees.

Leave granted.

The Hon. R.L. BROKENSHIRE: The Economic Development Board, formed by this government after it won office, has done many good things and recently made some key recommendations for our future. Amongst its contributions to the state was its involvement in the May 2003 new state economic blueprint report which included one key cost-saving initiative, namely, abolishing government-appointed boards and committees. Responding to the report, release on 13 May 2003, the Premier told parliament that he had asked ministers to identify departmental boards and committees they wished to abolish, saying:

The board and summit have said we are over-governed. I agree. I have asked all my ministers to tell me what boards and committees they intend to keep, and why, and to give me a substantial list of the boards, committees, advisory bodies and statutory authorities they intend to abolish.

This government committed to reducing boards and committees, with you, Mr President, saying in April 2003, in your capacity as chair of the Statutory Authorities Review Committee, that you then supported the Economic Development Board's call for a sunset clause for all government committees and boards to ensure they were closed unless they could demonstrate their usefulness. You said, 'Because there are so many at the moment, it makes it very hard to police what they are doing and keep on top of them.'

The Premier said in October 2003 that the government had abolished 29 of the 75 committees earmarked by ministers for abolition, identified 57 others to be amalgamated or restructured, and a further 217 boards and committees faced further review of their activities. Yet, in April 2005, the Premier would not identify publicly which boards and committees had been abolished, nor which new boards and committees had been started, simply saying that his government had abolished 'dozens and dozens' of them. In June 2005 the Premier claimed that his government had abolished 147 boards and committees. In 2003 when the Premier—

The PRESIDENT: Order! You give the Independents a go, and you think they are giving a third reading speech. Will you please get to the question?

The Hon. R.L. BROKENSHIRE: Thank you, sir. I will go straight to the questions. My questions, therefore, are:

1. Has this government failed on its pledge to cut boards and committees?

2. How many boards and committees are there?

3. How many of them produce annual reports on their activities?

4. What steps will this government now take, six years after its original promise, to reduce the cost to taxpayers of administering so many boards and committees, when it is now spending $2.8 million per annum more than when it originally said it was going to cut the committees?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:43): I am not sure where the honourable member gets the last figure from. No, the government has not failed in relation to its policies. This government made a commitment to review all of its boards and committees. It has done so and, of course, a significant number of boards have been abolished, amalgamated, and so forth.

Questions were asked about this subject in the previous parliament—certainly, before the honourable member came into this parliament—and, as I have pointed out in the past, this government has never said that there was no role for boards and committees. What we said was that we would review them. Many of them had functions that were obsolete and many were out of date, so we have reviewed them. There have been many boards which have been abolished, others have been amalgamated and, where necessary, some have been created through legislation.

What is important is that the functions of boards should be contemporary to the needs of government. That does not mean that you will abolish all functions and it does not mean you will never have new committees, but we do need to continually examine the work done by boards to ensure that they are more effective and more focused on the issues that we face. In relation to the statistics asked about by the honourable member, I will refer those on. I believe there is some collation of boards and committees within the Premier's office, and I will refer those questions on.

RACING INDUSTRY

The Hon. T.J. STEPHENS (14:45): I seek leave to make a brief explanation before asking the Leader of the Government a question about lobbyists.

Leave granted.

The Hon. T.J. STEPHENS: Members may be aware of a discussion on 891 ABC Radio on 27 March regarding large payments (evidently in excess of $130,000) made by the SAJC to Mr Nick Bolkus to lobby the government on behalf of the SAJC with regard to the sale of Cheltenham Park Racecourse. Members will also know that there was another discussion on

891 ABC on 2 April about Mr Bolkus being paid a further $35,000 by Thoroughbred Racing South Australia, having been tasked with lobbying the state government for taxation relief for their industry.

It is well known that Thoroughbred Racing South Australia Chairman, Mr Phillip Bentley, is a good friend of the Premier and the racing minister, the Hon. Mr Wright. Let us not forget that Mr Bentley himself was evidently paid well in excess of $100,000 by this government to write a report on the racing industry. Surely, if anyone is well placed to lobby the racing minister for tax relief, it is Mr Bentley. He would no doubt have the mobile numbers of the Premier and the racing minister on speed dial. My questions to the leader are:

1. Why would Thoroughbred Racing South Australia need to pay such funds to a lobbyist when long-time Labor mate, Mr Bentley, is at the helm?

2. Is it possible to get any project up or any dialogue with the government done in this state without Mr Bolkus's involvement?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:46): Obviously, the answer to that question is that the honourable member will have to ask the TRSA. It is not a part of government, so how would I know?

Members interjecting:

The Hon. P. HOLLOWAY: Gutless? The question I was asked was about why TRSA would do something. The only way to find out is to ask TRSA, because I do not know. TRSA is not a government body; it does not report to a minister. The people on that board are not elected by government, nor is the board of the SAJC, as far as I am aware, so really it is up to them as to whom they choose and how they spend their money.

LIQUOR LICENSING

The Hon. I.K. HUNTER (14:47): I seek leave to make an amazingly brief explanation before asking the Minister for Consumer Affairs a question about police barring.

Leave granted.

The Hon. I.K. HUNTER: On 1 March, new laws that enabled police to bar a person from licensed premises came into effect. Will the minister advise how effective this legislation has been to date?

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) (14:47): I thank the member for his very brief, but nonetheless important, question. Recently, I advised the council that these new laws under the Liquor Licensing Act 1997 had assisted police in the first 24 hours of operation allowing them to bar problem patrons from licensed venues. Since these laws have been in effect, police have issued 47 barring orders in the first month of changes to the law.

I welcome the police efforts in cleaning up crime and disorderly conduct in and around pubs and clubs. As members would be aware, these laws allow police to have the power to bar people from licensed venues in a particular area or from all venues of a particular type for a specific period of time. This can be for reasons based on criminal intelligence or the welfare of the person or their family being seriously at risk. It also includes offences or offensive disorderly behaviour in or around licensed premises.

Significantly, more than half the barring orders have been made in regional areas. In 24 instances, people have been barred for up to 72 hours and, on another 23 occasions, people have been barred for up to three months.

The swift action by our police to stamp out unsavoury behaviour shows that laws are already proving to be very effective. South Australians can be increasingly confident of sharing a good night out without having to run the gauntlet of angry, aggressive and loud-mouthed behaviour. Unfortunately, all of us have probably had the experience of having our night ruined by some offensive bad behaviour.

These laws also mean licensees do not always have to wear the potential backlash associated with clearing out troublemakers, as in the past they have had the power to bar from their premises but have always been reluctant to use those powers for fear of retribution. This

appears to be working very well. There have been 24 orders issued on the grounds of offensive and disorderly behaviour, and people breaching a barring order can incur a fine of $1,250.

ROYAL ADELAIDE HOSPITAL

The Hon. A. BRESSINGTON (14:50): My question is to the minister representing the Minister for Health, regarding the Royal Adelaide Hospital and the debate that is ensuing.

1. Do any of the individuals or doctors opposing the development or redevelopment of the RAH currently or have previously had involvement in the operation or ownership of private health or hospital businesses?

2. Have any been suspended from any public or private hospital due to allegations of misconduct?

3. Have any had complaints about misconduct made to any health authority, including the Medical Board, and what was the nature of such complaints?

4. How much do these doctors work at the Royal Adelaide Hospital and what is their total remuneration for this work?

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) (14:51): I am happy to refer those questions to the appropriate minister in another place and bring back a response.

TRANSPLANT PATIENT

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) (14:52): I table a copy of a ministerial statement relating to transplants made earlier today in another place by my colleague the Minister for Health.

QUESTION TIME

CONSUMER PROTECTION

The Hon. J.M.A. LENSINK (14:52): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs on the subject of the Australian Consumers Association.

Leave granted.

The Hon. J.M.A. LENSINK: The Australian Consumers Association, which is the name behind the well-known organisation Choice, has undertaken a report which is entitled 'Good practice in consumer protection enforcement'. Of the 10 jurisdictions in which it was able to rate them, South Australia was in the bottom four and was listed in Band C as below standard. The report had to say a couple of things, and I will quote directly from it, under enforcement outcomes:

> ...we sought information on the number of enforcement outcomes in the high risk consumer protection areas of misleading conduct, credit and product safety and for motor vehicles and weights and measures. Unfortunately, the SA OCBA did not provide us with any data.

It goes on to state that in relation to consumer involvement 'there is no indication of public input being incorporated into final policy decisions'. My questions are:

1. Is the minister concerned about any of these particular criticisms?

2. Are there any of the seven recommendations in the report that the government will not accept?

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) (14:53): I thank the honourable member for her question. Indeed, Choice is an organisation which presents as the Australian Consumers Association and which assesses and compares and reviews products and offers advice to consumers through various media. During 2007-08 Choice reviewed the enforcement performance of state and federal fair trading agencies, including the Office of Consumer and Business Affairs for the period 2001-06 inclusive.

The draft of the good practice model and the performance review was presented to the Commissioner of Consumer and Business Affairs in April 2007 and, in December 2008, Choice released its final report, which incorporated the draft report and responses from each of the fair trading agencies. Choice offered four overall rating levels in the area of consumer protection enforcement: good practice, acceptable practice, below standard and unacceptable. The Office of Consumer and Business Affairs (OCBA) received a below standard rating. OCBA was considered to have an overall rating of below standard, but at the time Choice was conducting its review OCBA was actually in the process of undertaking a significant structural review and many of the areas identified in the report were also identified in that review.

These issues are currently being addressed by the Office of Consumer and Business Affairs, and a new deputy commissioner has recently been appointed. In addition, on 26 November 2008 I introduced a Statutes Amendment and Repeal (Fair Trading) Bill to the Legislative Council, and that bill provides substantial changes to the penalties and increased power to authorised officers. Consequently, we believe that the issues of concern raised in that report are well on the way to being addressed.

CONSUMER PROTECTION

The Hon. J.M.A. LENSINK (14:56): I have a supplementary question. Were any of the seven recommendations contained in that report not accepted by the government?

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) (14:56): I am sorry; I did not answer that part of the question. Not that I am aware of, but I would need to take that on notice to double-check that they have all been picked up.

URBAN GROWTH BOUNDARY

The Hon. B.V. FINNIGAN (14:56): My question is to the Leader of the Government, the Minister for Urban Development and Planning. Will the minister outline the work that is underway to properly identify land for new homes within the urban boundary and townships outside the metropolitan area as part of a strategic approach to planning for our growing population? Is the minister aware of any alternative views?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:57): I thank the honourable member for his questions. To ensure that we plan for enough housing this government is investigating possible growth areas in the Greater Adelaide region as part of a 30 year plan. This investigation includes the availability of land in the metropolitan area as well as in townships on the outer fringe.

South Australia has a growing population, so it is important to maintain land supply to prevent this growth pushing up prices and reducing home affordability. Without an increased population, South Australia will not maintain the pace of economic growth required to support our current enviable lifestyle and our ageing population.

The need to support our housing and construction sector and its supporting industries has taken on even greater importance in the face of meeting the challenges created by the global financial crisis. The federal and state governments are working together to deliver a multi-million dollar economic stimulus package for this state which will, hopefully, limit job losses and reduce the downside to the South Australian economy from the worldwide downturn that is currently being experienced in the wake of the collapse of the Lehman Brothers investment bank.

To support the housing industry the government needs to identify areas that can provide a suitable supply of land. While we have included more than 2,000 hectares of new land suitable for residential development in the urban growth boundary, this government is committed to identifying a 25 year rolling supply to meet the demands of a growing population and changes to the traditional family unit. This means looking beyond the urban growth boundary.

One of the areas already in demand as an attractive place to live that is close to the metropolitan area is Mount Barker. As part of the planning strategy adopted by this government consultants are investigating its projected optimum size and growth for the next three decades. This government is also working closely with local government on draft proposals for Mount Barker, and will make any proposals available for public consultation later this year.

The need to protect agricultural land for production is most certainly being taken into account when investigating potential growth areas. One of the central reasons for identifying growth areas and planning for growth during the next 30 years is to allow the government to plan well in advance for infrastructure investment, transport needs, schools and public works. It also allows the government—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: You do not put infrastructure there until you actually start building; it is actually a greenfield site. What you have to do is plan for it, and that is exactly what this government is doing with one of those sites in Buckland Park, and infrastructure will be looked at as part of the 30 year plan. It also allows the government to require developers to share in the cost of this improved infrastructure as part of any proposed redevelopment or development, as the case might be.

The honourable member asked whether I was aware of any alternative views regarding the imperative to plan for growth, and indeed I am. In fact, I was most concerned the other morning when I opened up *The Courier* newspaper to see the headline, 'Liberals say no more growth'. Below that headline, the article quotes from the member for Kavel, who I think is a shadow minister in the other—

An honourable member interjecting:

The Hon. P. HOLLOWAY: He's not?

An honourable member: No.

The Hon. P. HOLLOWAY: Well, it's probably not surprising.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Just a backbencher. Below that headline, the article quotes the local member outlining his opposition to any new homes in the Hills. In the newspaper article, he is quoted as saying:

> Our position is that we don't allow any further rezoning of residential land, or any new land, to be opened up for residential purposes.

So, there we have it: the Liberal Party has run up the white flag on development. Earlier today, we had the Leader of the Opposition raising concerns about a port going ahead in Port Lincoln.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Indeed; they seem to be anti any sort of development whatsoever, other than a stadium—and they seem to be addicted to that. If you want to build residential housing, including affordable housing, it seems that, wherever you go around the Adelaide area, the Liberals will be playing politics with it. So, there we have it: the Liberals have run up the white flag, and 'Not in my backyard' seems to be the new Liberal creed.

This government supports economic growth and the jobs it creates and maintains. If we do not have reasonable growth, particularly with the ageing population and the economic crisis, we will be in for declining living standards—and that might be what members opposite want to achieve, but it is certainly not what this government wants. We want South Australians to have the opportunity to work and earn an income and to be able to raise their families in a prosperous economy. We do not want to dictate to them about where they should and should not live. Instead, this government is committed to using the planning strategy to ensure that South Australians can make the choice of where they want to call home by providing choice and affordability in an economical and sustainable way.

We appreciate that Adelaide is landlocked between the gulf to the west and the hills face zone to the east, and that is why there is enormous pressure to develop land to the north and south. We are also in the process of rolling out planning reforms that will encourage greater urban infill to ease the pressure to release new greenfield sites. So, it is all part of our comprehensive plan.

This government is also carrying out the hard work needed to identify suitable land outside the metropolitan area—and, indeed, that is the function of the Greater Adelaide Plan. What we will not do is allow this state to stagnate or to burst at the seams because we have decided that some

areas should be 'no go' zones or that we should be driving people further out of the city because of the lack of affordable housing.

Certainly, some members of the Liberal opposition have said that they do not want to be part of the 30 year plan for Greater Adelaide, and I think it is sad that the Liberals have again failed to embrace an opportunity to adopt a long-term vision for this state. It appears that that is being sacrificed at the very first opportunity on the alter of narrow self-interest.

URBAN GROWTH BOUNDARY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:04): I have a supplementary question. What additional public transport services will be provided to the Mount Barker area?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:04): As I said in my answer to the question, we are going through a 30 year strategy. What you do first of all is work out—

Members interjecting:

The Hon. P. HOLLOWAY: You don't want to listen, do you?

Members interjecting:

The Hon. P. HOLLOWAY: Are you going to listen?

Members interjecting:

The Hon. P. HOLLOWAY: Members opposite obviously do not want me to answer the question.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Winderlich has a supplementary question.

URBAN GROWTH BOUNDARY

The Hon. DAVID WINDERLICH (15:05): As part of its planning, has the government identified any shortfall between the projected number of people and the projected supply of water?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:05): I am pleased the honourable member asked that, because an important part of the 30-year strategy is the work that is now being done by the Commissioner for Water Security. That will be a key part of it. This 30-year plan is all about tying up infrastructure, which will include water supply. Of course, the government has undertaken a number of initiatives in relation to securing the water supply.

First of all, there is a desalination plant and its associated pipelines. Also, of course, with all the major new subdivisions, which have been built in recent years and which will be built in the future, we require a much greater level of water sensitive urban design. When the 30-year strategy is released—

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

The Hon. P. HOLLOWAY: Well, perhaps you should wait and see. It is amazing how these people—

The Hon. J.M.A. Lensink: Have you been there?

The Hon. P. HOLLOWAY: Yes, of course I have been there. I suggest that the honourable member waits to see the plan and the environmental impact statement that comes out before she sticks her neck out. This government is planning, for the first time in probably 40 or 50 years, for the growth of Adelaide, but we are doing it comprehensively. We are not just identifying the areas where an extra half a million people will be able to live in this city. We are doing it in a way that will minimise the environmental impact; so, it will be on land that has minimal environmental sensitivity. We will again seek to minimise the impact on high value agricultural lands. We are doing this so that we have maximum use of our existing infrastructure, particularly transport. The plan will also—

Members interjecting:

The Hon. P. HOLLOWAY: I think honourable members should withhold their comments until they see it. Obviously, part of it is a move towards, over the course of this 30-year plan, a situation where, at the end of that, 70 per cent of all new development is in high density areas, particularly along the existing corridors of Adelaide, within the existing boundary, so that less pressure is put on those fringe areas. Of course, that will also help in minimising water consumption.

Again, we have to move to a much more water efficient city. To get back to the original question, the amount of water that is consumed by domestic residents is relatively small. The total consumption of Adelaide, including industrial consumption, is about 200 gigalitres a year. Other consumption—for example, irrigation—would, in a normal year, use more than triple that sort of volume of water. Clearly, we must have a much more sensitive design, which will mean more efficient water use within the home and, in particular, the garden.

We will need the open space that, again, will use water efficiently. We will need to better collect it around the home and, of course, we will need some external provisions such as the desalination plant. We need all of that. Water sensitive urban design will be a key part of the project. I expect that, at the time we announce this, we will also be producing the report from the Commissioner for Water Security, which will tie up these things. It is an important question that the honourable member asks, and it is clearly one that will be addressed as part of the government's overall strategy.

URBAN GROWTH BOUNDARY

The Hon. DAVID WINDERLICH (15:09): Do I take it from the minister's answer that the government has started the process of identifying water supplies but does not yet know whether there will be enough water for the projected increase in Adelaide's population?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:09): We know that we will in the sense that one only has to look at the consumption of the current population. As I said, the water that is used in urban living for residential use is significantly less than that used by industry and irrigation in particular. However, we can make it a lot more efficient and, clearly, in our development of new suburbs we will have to use water more efficiently. We can do that—we know how to do that—and it is a matter of building that into all our new developments, as well as, where possible, retrofitting it within our existing suburbs to ensure that we use water more efficiently. In comparison with other capital cities, I believe that we are at the upper edge in relation to water efficiency. So, we should be able to use it more efficiently.

We can make more use of treated water, and this government is now spending tens of millions of dollars, in terms of using that recycled water, in particular, for parks and gardens and the like. So, we can use water much more efficiently and we will increasingly be using other sources, not only desalination and, with respect to industry, we can make greater use of treated water and water stored in aquifers.

RESTORATIVE JUSTICE

The Hon. DAVID WINDERLICH (15:10): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development, representing the Attorney-General, a question about restorative justice.

Leave granted.

The Hon. DAVID WINDERLICH: In September last year Premier Mike Rann, while launching the Repay SA initiative in Elizabeth, said that the program to which the state government had committed $543,000 'is restorative justice in action'. Monsignor David Cappo, the Commissioner for Social Inclusion, has also said:

> Restorative justice was a theme that I heard over and over again and one that makes strong sense to me...Restitution and reparation to the community are fundamental to the conciliation process...Looking to international research there is a growing body of evidence to support the benefit that such an approach has on reducing the long-term cost that youth crime poses to the community. Equally as important, this type of approach provides young people with an opportunity to see things differently and provides them with new-found hope for their future.

However, it appears that the Attorney-General is setting his own policy agenda. He is reported to have said at a Uniting Church forum on prison overcrowding in February that the principles of

restorative justice were in opposition to the tough law and order policies of the Rann government. My questions to the minister are:

1. Does the Attorney-General share the commitment of the Premier and commissioner David Cappo to restorative justice?

2. Has the Attorney-General denied any application for funding for restorative justice projects?

3. Has the Attorney-General prevented any commonwealth funded restorative justice projects from going ahead in South Australia?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:12): I will refer those questions to the Attorney-General for his response. However, rather than putting words into the mouth of the Attorney-General, if the Attorney said something, the honourable member could perhaps at least quote his words in their proper context rather than just make some interpretation of what he said. I do not necessarily accept from the question as it was put that that accurately reflects the Attorney's views, but I will leave it up to the Attorney to explain himself.

PUBLIC-PRIVATE PARTNERSHIPS

The Hon. R.I. LUCAS (15:13): I seek leave to make a brief explanation before asking the minister representing the Treasurer a question about public-private partnerships.

Leave granted.

The Hon. R.I. LUCAS: Last year, in evidence to the Budget and Finance Committee, senior officers from the education department indicated that, in relation to the super schools PPP, they expected that final bids would be lodged at the end of September last year. They also expected that the financial close for the PPP process would be in the very, very early part of 2009, with schools to open in 2010—although, to be fair to the departmental representatives, Mr DeGennaro, Director of Finance, said:

> Again we are planning for the schools to open in 2010—as soon as possible in 2010. It will be subject to proposals that come in whether the first two schools are available in term one, 2010.

So, it was clear that he was doubtful about a start early in 2010 even if there was financial close very, very early in 2009.

On 24 March, the Treasurer, in answer to a question in another place (and I briefly summarise his response), said that the government expects to reach contractual close in June this year. Rather than early 2009, he has now indicated that there is a delay of up to six months in contractual close. Industry sources have informed me that, when the final bids were accepted at the end of September 2008, none of those bids was accepted and that all three consortia bidding for the contract were told to go back and rework their bids. A final bid date was extended to February 2009—a delay of almost six months. My questions to the minister representing the Treasurer are as follows:

1. Given that the final bids were lodged in September 2008, why did the government and its representatives require all of the consortia to review their bids and to lodge revised and final bids in February 2009?

2. During this particular period, did the government negotiators change the government's bidding position in relation to the government's negotiating position with the bidding consortia?

3. Given the apparent six months' delay for financial close for these bids, will the Treasurer now confirm that it will be improbable that any of these super schools will be built, operating and open for the start of term 1, 2010?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:17): I will refer the honourable member's questions to the Treasurer and bring back a reply.

ALCOHOL CONSUMPTION

The Hon. R.P. WORTLEY (15:17): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about responsible drinking at Easter time.

Leave granted.

The Hon. R.P. WORTLEY: At Christmas time the Office of the Liquor and Gambling Commissioner undertook an education campaign about the potential dangers of drinking more than one should. Will the minister advise what is being done this Easter to educate the public about the potential dangers and risk of alcohol consumption?

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) (15:17): I notice that all members opposite are sitting up to attention. Prior to Christmas last year the Office of the Liquor and Gambling Commissioner commenced a campaign entitled 'One more drink could cost you more than you think'. The campaign targets the group of people not targeted in the more graphic and hard-hitting campaigns that advertise the dangers of excessive alcohol consumption. The 'One more drink could cost you more than you think' campaign reminds people that every drink increases the risk of negative health and social outcomes, including traffic accidents, assault, violence, negligence, falls, fires, drowning and sports or recreational injuries.

This Easter the Office of the Liquor and Gambling Commissioner is again reminding people that they should think carefully about the alcohol they are consuming. Starting today and running until 18 April, community service announcements, highlighting that drinking compromises safety of all forms of activities and that it is important to keep track of your drinks, will be aired on all metropolitan and regional radio stations. Postcards and posters will be distributed through the office inspectors and Clubs SA throughout the period. The Autumn 2009 edition of the Office of the Liquor and Gambling Commissioner licensee updates publication features an article on the campaign.

While on the topic of responsible drinking, and given that it is nearly Easter, I take this time to advise members of the steps taken to ensure that the potential harm from alcohol at the Oakbank Racing Carnival is minimised while maximising people's potential to enjoy the event incident free. As in previous years, the Oakbank Racing Club applied for a limited liquor licence for the carnival. The parties agreed on extensive licence conditions, with the aim of ensuring robust management of the carnival.

Agreed licence conditions include supervision of each bar or marquee and main entrances to the racecourse by approved responsible persons, employment of licensed security and approved crowd controllers, development of emergency evacuation and liaison procedures, adequate toilet facilities, and signage (including minor signage). Also, I have been advised that the carnival will be attended by local police officers and officers from SAPOL's licensing enforcement branch.

On a subject that might be more appealing this Easter, I take this opportunity to advise members that product testing of Easter eggs this year has shown that chocolate lovers will be getting the quantity they paid for (and I can see that everyone here is heaving a great sigh of relief at the prospect of not being underdone in terms of their Easter egg quantities).

The Hon. I.K. Hunter: It's not quantity; it's quality.

The Hon. G.E. GAGO: I tried to test for quality but they would not let me. When the Office of Consumer and Business Affairs advised that it was testing Easter eggs, many people volunteered their assistance. However, once they found out that the testing did not involve eating the eggs but, rather, checking the correct weights and labelling, they were more than happy to let the inspectors go about their business.

More than 700 items have been tested by Office of Consumer and Business Affairs officers, and all have passed the weight test—unlike some of us after Easter, I suspect. This testing also showed that eight products failed labelling requirements, and traders are being given warnings in those cases. It is pleasing to see that most products made specially for this time of year are manufactured to a standard that will mean everyone will have a chock-full Easter.

RAIL STOCK

The Hon. D.G.E. HOOD (51:21): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations, representing the Minister for Transport, a question about the maintenance of South Australia's rail stock.

Leave granted.

The Hon. D.G.E. HOOD: In a recent reply to a question on notice, I was advised that the state government intends to purchase four additional trams. Although Flexity trams are mentioned, other statements made in the reply were that whatever trams can be purchased will be bought (assuming their suitability for our infrastructure), including 15 dual voltage tram-trains and 50 electric railcars.

Given that the minister has taken the unusual step of providing Adelaide with a part-diesel (on the Belair line, for example) and a part-electric train network, this means that by about 2010 our public transport system will have, on my count, a vast number of different types of rail stock all in operation at the same time. A few examples are: a number of 3000 series and possibly 2000 series diesel railcars operating on the Belair and Gawler train lines until they are upgraded; 50 electric railcars operating on the Noarlunga and Port Adelaide lines; 15 dual voltage trams; a number of already existing Flexity trams operating on the line to Glenelg; some old H class trams that will still be in operation (although few of them); and an unspecified type of additional light rail vehicles. On top of this, we also have the O-Bahn fleet. My questions to the minister are:

1. Given that other cities make do with two types of rail stock (that is, all cities in Australia, as I understand it)—a standard type of train and a standard type of tram—why does Adelaide need seven different types of rail vehicles?

2. Does not having such a large number of quite different forms of physical stock simply add to the cost of maintenance, repairs and administration unnecessarily?

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 am happy to refer those questions to the appropriate minister in another place and bring back a response.

ANSWERS TO QUESTIONS

GAMBLERS REHABILITATION FUND

In reply to the **Hon. J.M.A. LENSINK** (29 October 2008).

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): The Minister for Families and Communities has provided the following information:

The restructure of gambling help services began in March 2008 after a review of the service structure to provide improved client outcomes and greater service efficiencies.

The competitive open submission process is now complete and the restructure of the gambling help services will be completed by early 2009.

It should be noted that three of the state regions did not have a preferred applicant and an invited submission process is underway.

The government's contribution to the Gamblers Rehabilitation Fund is currently fixed under the Gaming Machines Act 1992 at $3.845 million.

GAMBLERS REHABILITATION FUND

In reply to the **Hon. D.G.E. HOOD** (11 November 2008).

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): The Minister for Families and Communities has provided the following information:

1. The submissions from prospective service providers have been assessed. The successful and unsuccessful applicants have been notified.

2. In 2006 small grants were offered to community organisations to help with exploring special issues for problem gamblers. The Aids Council of SA applied for a small one-off grant to assist sex workers who were caught in a gambling debt cycle. Encouraging the sex workers to seek help from gambling help services was the focus of the project. The project commenced 1 September 2006 and concluded 31 August 2007.

PARENTAL RIGHTS AND CHILD PROTECTION

In reply to the **Hon. A. BRESSINGTON** (25 November 2008).

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): The Minister for Education has provided the following information:

The issues raised by Ms Bressington pertain to a dispute between the parents of a student. This matter is the subject of family court orders and the ongoing jurisdiction of the family court, where such issues should be resolved.

SEATBELT EXEMPTIONS

In reply to the **Hon. D.G.E. HOOD** (27 November 2008).

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): The Minister for Road Safety has advised:

Rule 267 of the Australian Road Rules provides a number of circumstances where drivers or their passengers may be exempt from wearing a seatbelt. Specifically, rule 267(2) states that a person in or on a motor vehicle is exempt from wearing a seatbelt if they are engaged in the door to door delivery or collection of goods, or in the collection of waste or garbage, and are required to get in or out of the vehicle or on or off the vehicle, at frequent intervals; and the vehicle is not travelling over 25km/h.

Post office boxes are usually located some distance apart. On this basis, collections from post office boxes cannot be classed as 'door to door delivery'. The distance between post office boxes would also mean that many postal vehicles would most likely travel at speeds greater than 25 km/h when travelling between post office boxes. This speed would also exclude the operation of rule 267(2). Australia Post workers are not generally covered by the exemption provision unless they can meet the criteria laid down in rule 267(2).

In view of the distances frequently travelled between post office boxes, the driver is exposed to the same risk of being involved in a crash as all other road users and failure to wear a seatbelt would significantly increase the risk of death or serious injury.

Rule 313 of the Australian Road Rules provides specific exemptions to allow postal vehicle drivers to carry out their responsibilities (such as allowing postal vehicles to stop in a loading zone or taxi zone or double park etc). These exemptions are specifically tailored to the needs of postal drivers. They make no reference to the rules dealing with the use of seatbelts.

Based on the information provided above, it is the view of the Department for Transport, Energy and Infrastructure that the drivers of postal vehicles are not generally exempt from the need to wear a seatbelt when driving unless they meet the criteria of rule 267(2).

MATTERS OF INTEREST

CHAPMAN, MS V.A.

The Hon. B.V. FINNIGAN (15:24): I rise to draw honourable members' attention to a media release issued yesterday by Ms Vickie Chapman MP, the Deputy Leader of the Liberal Party in another place and shadow minister for health. The press release is headed, 'Kidney Wasted as Ambos Sleep'. The allegation made by Ms Chapman was that an elderly Mount Gambier resident who needed to be flown to Adelaide for a kidney transplant did not receive the transplant because he or she was driven to the airport in a taxi instead of an ambulance, and the reason for that was because they did not want to disturb on-call ambulance officers during the night and, therefore, organised a taxi.

Vickie Chapman, as shadow minister for health, has alleged that ambulance officers in Mount Gambier were more interested in sleeping than in ensuring that a patient in need received a new kidney. It is bad enough that that allegation was made, but it turns out, as with so much of what the opposition tells us, that this was entirely incorrect. In fact, the Minister for Health has informed the other place that the patient did catch the flight, was taken to hospital, underwent the kidney transplant and is recovering well.

I do not know this person; I certainly wish them well and all the best for their recovery. However, what is extraordinary here is not only that Vickie Chapman as shadow minister for health was alleging that their sleep was more important to the ambulance officers in Mount Gambier than saving patients but also that this media release appears to have been issued after the Minister for Health in the other place was able to correct the record.

This matter was first raised by the member for Bragg in the other place as a question at 2:47. The minister, as I understand it, did not have the details to hand and got back to the house fairly promptly at 3:13. Yet, the stamp on the fax indicates that, at 3:49, Vickie Chapman was sending this press release to the media in the South-East.

The ACTING PRESIDENT (Hon. J.S.L. DAWKINS): You did use the right practice in saying 'the member for Bragg in another place' earlier, so you ought to continue to do that.

The Hon. B.V. FINNIGAN: I am much obliged, Mr Acting President. So the shadow minister for health, the member for Bragg in the other place, has indicated that ambulance officers were more interested in sleeping than saving a patient or ensuring that a patient was able to get to a flight so that they could receive a kidney transplant. Not only was that disgraceful slur on our health professionals bad enough but it transpires that this information was provided to the media after the Minister for Health (Hon. John Hill) was able to put the facts of the matter on the record in the other place.

It will come as no surprise, I am sure, to members that there is a large number of people awaiting transplants and that there is a very careful process to select who will receive transplants. However, not everybody who is going to undergo a transplant is currently in hospital undergoing care just waiting for the transplant because, obviously, the nature of transplants is such that we do not know when the organs are going to become available in most cases. People will be required at short notice to get to the hospital in order for the transplant to occur, but that does not necessarily mean that they are laid up in hospital and have to be transported by ambulance.

This was a disgraceful slur by the member for Bragg in the other place on the ambulance service and our health professionals in general, and it is extraordinary that, even after she was informed in the other place of the facts, she released this incorrect information to the media. I think the local Liberals in Mount Gambier must certainly be wondering who are their friends and who are their enemies because they are saddled with an opposition that is making these kinds of false accusations, an opposition, which has, as the centrepiece of its policies, building a stadium in Adelaide that nobody wants. The AFL has not indicated that it will play there.

Members interjecting:

The ACTING PRESIDENT: Order! The honourable member ha s the call.

The Hon. B.V. FINNIGAN: Cricket Australia has not indicated that it wants to play test cricket there but, nonetheless, the opposition's centrepiece policy is to build a billion dollar stadium. That is certainly an embarrassment to Liberal supporters in Mount Gambier.

Time expired.

FREQUENT FLYER POINTS

The Hon. R.I. LUCAS (15:29): Before turning to what I was principally going to speak about, the Hon. Mr Finnigan refers to accuracy in statements made by members. I would remind the member to have a look at the humiliating, red-faced U-turn delivered in the other place yesterday by the Treasurer in relation to the possible sale of a building here in the CBD as part of the most recent Mid-Year Budget Review.

When the question was asked of the Treasurer in the last session, in typical bully-boy fashion he sought to belittle the question that was asked by indicating that of course he knew what he was talking about, and his advice was that the government was able to sell this particular building. I would refer the Hon. Mr Finnigan to one of his factional bosses and the Treasurer's contribution yesterday. It was a humiliating and embarrassing statement for the Treasurer of the state to have to make—a treasurer who is only the second treasurer in the state's history to lose the state's AAA credit rating for the state of South Australia. He may well join another Labor treasurer as the only treasurers in the state's history to lose AAA credit ratings on behalf of the people of South Australia.

The Hon. B.V. Finnigan: What a proud record you have!

The Hon. R.I. LUCAS: Never lost a AAA credit rating, Hon. Mr Finnigan, and did all the hard work in preparation for the AAA credit rating.

Members interjecting:

The ACTING PRESIDENT: Order! The Hon. Mr Finnigan has had his turn, and the Hon. Mr Wortley will cease interjecting.

The Hon. R.I. LUCAS: So, as I said, if the Hon. Mr Finnigan wants to start correcting and pointing out what he believes are the errors of other members of parliament, he would do well to look in his own backyard first, and he can point out to the chamber the errors, misstatements and misleading of his own Treasurer in relation to what was a critical question in relation to the Mid-Year Budget Review.

I was going to speak today in relation to one issue of the government's continuing refusal to answer questions on notice, and that was that some questions that I have put to the government over a number of years now in relation to frequent flier points accumulated on overseas travel. Time will not permit me now to go through all the detail of that that today—perhaps I will return to that on another occasion—but, to highlight it again, Premier Rann, Treasurer Foley and the overwhelming majority of Labor ministers for some reason want to keep secret the number of frequent flier points they have accumulated on their overseas travel.

Between them, Premier Rann and the Treasurer have accumulated approximately 40 overseas trips over the past five or six years, and members would be aware that, if they have had 40 overseas trips between the two of them and countless interstate trips, they would be running out of space on their frequent flier points calculator as to how many frequent flier points they have.

The federal Labor finance minister Lindsay Tanner indicated recently that he believed federal politicians were redeeming frequent flier points for personal use, and loyalty scheme expert Clifford Reichlin was quoted as saying that airline points were almost as good as cash, because they can be exchanged for vouchers, holidays, travel or goods.

For some reason, the Premier and Treasurer and the overwhelming majority of Labor ministers are refusing to answer these questions in relation to the accumulation of frequent flier points. I think a useful innovation for an incoming Liberal government would be to take up the practice of the federal parliament, where all federal members are required to provide details on the frequent flier points they collect on official travel, and that information is included in an annual report which is tabled in the parliament. That would be an improvement in the accountability of ministers. Why do the Premier and Treasurer continue to refuse to indicate how many frequent flier points they have accumulated and what they have done with them?

CORRECTIONAL SERVICES AWARDS

The Hon. CARMEL ZOLLO (15:34): Prior to my resignation as Minister for Correctional Services I had the opportunity to present the now annual Department for Correctional Services awards on 9 February this year. As then minister I was able to place on the record of this parliament the recipients of individual awards, and today I would like to recognise the work of those who received the team excellence awards on the day. The Team Excellence Awards recognise teams or work units for their contributions to the achievement of the department's goals in leadership and management, innovation and productivity, partnerships and service, systems or project development, and facilitating continuous improvement through corporate and stakeholder focus. The team recipients were:

- the Adelaide Remand Centre education group. This group has worked tirelessly and consistently in producing outstanding results in offender education. The team has far exceeded the expectations of all performance targets, and its innovative approach, hard work and dedication to offender education has enabled the prisoners to achieve exceptional results. The award recognised the team for its outstanding commitment, selfless and exceptional service, and standards in offender education;
- the Adelaide Women's Prison trainee correctional officer performance review and assessment teams. These teams have been highly successful and committed to the performance review and assessment of trainee correctional officers. The team-based approach is growing to be a best practice model for other institutions, providing holistic input from a broad range of members by ensuring that trainee correctional officers are given every opportunity to skill themselves;

- the Berri Community Correctional Centre. The team at this centre has developed a high standard of professional expertise and forged strong and enduring relationships and partnerships with stakeholders in the justice and community service sectors in the Riverland and Southern Country Region of community corrections. The award recognises the team's high standard of work, leadership, initiative and dedication in ensuring the success of its projects and initiatives;

- the Leadership Management and Culture Team, Organisational Development Branch. This team, within the Organisational Development Branch, has worked tirelessly over the past two years in developing and delivering a highly professional and innovative development and learning program for all staff who are, or who aspire to be, operational supervisors in the prisons. The team must be commended for its outstanding efforts in supporting the department's goals through developing such a program to enhance, develop and extend the leadership and management knowledge and capabilities of supervisors in our correctional services department who will be managers in the future;

- MOWCamp. The MOWCamp unit at the Port Augusta prison has been in operation for 12 years and undertakes several projects a year in various national parks for the Department for Environment and Heritage. The ongoing working relationship has been cemented into a memorandum of understanding between the two departments. The work undertaken by prisoners rotating through various camps ranges from environmental improvements, maintenance work to restore assets to original working order, construction of walking trails, and restoration of heritage buildings. It has brought significant benefits for both departments, as well as the prisoners and the community. This has been achieved by the highly dedicated team who are all extremely committed to this successful program, which is very much appreciated and held in high regard by the communities connected to the national park locations; and

- Port Adelaide Community Correctional Centre. The team at this centre has been extremely committed and dedicated in the implementation of the department's assessment tool, the Offender Risk Needs Inventory—Revised (known as ORNI-R in community corrections). The staff has demonstrated exceptional leadership and vision by embracing change and role modelling to allow for a smooth transition in the introduction of ORNI-R. This best practice assessment tool is accepted as an essential part of case management of offenders in the community.

I thought it important to include on the public record the recognition of all staff in the Department for Correctional Services who are recognised by their outstanding professionalism and conduct. I know I am joined by the now minister in the other place, the Hon Tom Koutsantonis MP, in congratulating all those staff members who were recognised on the day, both individuals and team members. I thought it important to also recognise these Team Excellence Awards in addition to the individual awards already placed on the record. All recipients, whether individuals or members of teams, have in common their outstanding commitment.

Time expired.

REGIONAL DEVELOPMENT BOARDS

The Hon. J.S.L. DAWKINS (15:39): In December last year, I called on the state government to consult widely before making any decision to alter the current structure of South Australia's regional development board (RDB) network. My insistence came after the Commonwealth Parliamentary Secretary for Regional Development, Hon. Gary Gray, wrote to the then South Australian regional development minister, the Hon. Rory McEwen, implying that South Australia's RDBs would merge with federal government area consultative committees under the Regional Development Australia program.

Mr Gray outlined the need to 'transition from the existing four area consultative committees (ACCs) and 13 RDBs, to form seven integrated regional development organisations (RDAs)'—and those RDAs would be based around the new South Australian Strategic Plan boundaries. At the time, I publicly stated my concern, as follows:

> Clearly, this is the model the Rudd government wants to roll out in South Australia, but no-one I have spoken to is clear about what is being offered, how it will be offered, when it will be offered or even why it is being offered. No-one can tell me what it means for the current resource agreements or staffing and funding arrangements. Any change must not diminish the strong local focus and emphasis on service delivery which are hallmarks of the South Australian RDB framework.

Six months ago [in May 2008], after more than two years of indecision, the RDBs secured funding for five years, under their respective resource agreements, and now we are looking at possibly starting again.

At that time, I also emphasised that consultation must include RDBs; regional local government bodies and their respective peak organisations; the Local Government Association; and Regional Development South Australia. Four months later, we are no closer to a finalised memorandum of understanding, with work ongoing on at least the 10th draft. The MOU is apparently no longer talking about consultation; instead, it talks about implementation of Regional Development Australia by 1 July 2009, less than three months away. The language has changed. It is as if the merger is a fait accompli. Speculation is rife that the delay in the MOU being finalised is a political ploy by the Rann government to foist forced amalgamations on the boards.

The consultation period has been farcical. Even at this point, volunteer board members and employees do not know what the situation is. There is certainly inherent pressure on boards to amalgamate, and I think that a lot of the boards, whilst they will not reject amalgamation out of hand, are not sure that they want to amalgamate with other boards in the same South Australian government strategic regions.

Other questions have been asked by the boards, such as what will happen to their existing budgets and staffing levels or, indeed, what communities they will be serving come 1 July this year. It is not in the best interests of regional South Australian to have these changes lumped on them without due process, and I hope that the Hon. Paul Caica, the sixth regional development minister in seven years, will intervene and clean up this mess.

I welcome the convening of a forum by the Local Government Association on 24 April this year to canvass all the views of local government, as the important funding partners for the RDB network. I think it is also important to acknowledge the effect that this uncertainty has had on area consultative committees, boards and staff. The uncertainty for staff made by decisions like this is something we have seen in this state with the business enterprise centres and, of course, the regional development boards.

The regional development system in South Australia is not perfect. However, from my studies of other parts of Australia and overseas, I think the model that we have here with the funding partnership between the state and local government is as good as I have come across. The government needs to sort out this mess very soon, and I urge the Hon. Paul Caica to get on and make sure that we know where we are going, as 1 July is approaching very quickly.

Time expired.

EASTER

The Hon. R.L. BROKENSHIRE (15:45): I rise to briefly talk about a timely matter, which our party would like to put on the agenda today—Easter. The prayer that you read, Mr President, every sitting day is a reminder of the strong continuing Christian heritage of this great state and nation and the fact that the parliament is built upon a Christian foundation. The prayer is that which Jesus taught his believers to pray (I refer to both Matthew 6 and Luke 11). All four gospels record, as historical fact, the birth, miracles, ministry, death and the resurrection of Jesus.

Today, two billion adherents world wide make Christianity in its various forms the world's largest religion. Of Australians, 63.9 per cent described themselves as Christian in the 2006 census. The National Church Life survey reported, in its 2001 census, that 81 per cent of Christians attend church service or mass weekly, or more often.

However, internationally, not all Christians can celebrate Easter freely. We remember their struggle for life and freedom overseas. On the website, www.persecution.org, 33 countries are listed as being countries which have violated human rights because of persecution or severe discrimination against Christians and, sadly, this is a growing list.

We see plenty of politics played out in the Bible, not the least of which is during the account, in St Luke's Gospel (chapter 23), of Christ's trial. Jesus knew about the injustice that would happen, and even warned his disciples many times that it would be so. He also predicted his resurrection from the dead, which is commemorated, of course, from Maundy Thursday onwards, over the Easter period. Honourable members will hear plenty more about that during this Easter weekend in any church service they may wish to attend. I encourage them to get along to hear more of the true Easter message.

Points which I particularly want to raise with respect to Easter, and which concern me personally, include what appears to be increased commercialisation to the point where we are seeing Easter eggs and hot cross buns on the supermarket shelves almost as soon as the Christmas decorations and Christmas presents are taken down. However, beyond the hot cross buns on the shelves and beyond the commercialism and the business drive is the true meaning of Easter.

One only has to look to the selfless example of sacrifice and the new life Jesus offers to every man, woman and child to see that he paid the ultimate price. Whilst commercialism and business viability are paramount to the wellbeing of the community, there are times when we should pause and reflect, rather than being concerned about making a dollar, and I often wonder whether a line can be drawn in the sand in this respect without commercialising one of the two most important parts of the Christian year—Christmas and Easter.

Having said that, I hope there will be a refocus during Easter. As a younger person and, indeed, up until recent years, I recall quite a lot of media attention being given to the real meaning of Easter. In fact, documentaries were often featured on commercial television throughout most of the Easter weekend. It is interesting to note that this Easter there appears to be only one movie on the ultimate sacrifice that our Lord made for us, and that happens to be on at about midnight on a commercial station.

It is important that people enjoy the four-day holiday, that they rekindle their opportunity to spend precious time with their families and friends and recharge their batteries. However, I would encourage all people who can highlight the importance of Easter, in particular the media, to focus on the real intent and meaning of Easter to help heal and further build the better community spirit and fabric that we desperately need in these troubled times.

CHELSEA CINEMA

The Hon. J.A. DARLEY (15:49): I rise today to speak about the Chelsea Cinema. As many would know, there has been recent community outcry regarding the proposed sale of the Chelsea Cinema. This issue came to my attention by chance when I attended a Burnside council meeting, when a representative of the Save the Chelsea Cinema Action Group rose to speak about the importance and significance of this historic building. I rise today, hopefully, to mirror their passion and raise awareness of this issue to a broader audience.

The Chelsea Cinema was originally built in 1925 and is South Australia's oldest purpose-built cinema, which is still operating as a cinema today. In 1941, it was refurbished to its current art deco appearance and it began operation as a modern cinema in 1955. The cinema was saved from demolition in 1964, when it was purchased by the Burnside council, and it has been operated by Wallis Cinemas for nearly 40 years since it took over the lease in 1971.

The cinema stands as a rare example of an operating picture theatre surviving from the silent film period, with the interior and exterior of the cinema added to the heritage list in 1983. The Chelsea is still an integral part of the community today, with over 150 groups utilising the unique space for fundraising events as well as its renowned school holiday schedule for vacation care programs in schools. With such strong ties to the community, many people were outraged by Burnside council's recent economic rationalist approach to sell the cinema.

Whilst the building and interior would be retained, it would be a great loss to see this site used as anything other than a cinema. The character and charm of the site would be lost or, at least, greatly diminished should it be used as offices or retail space. The location of the site is not suited for commercial development and, given the current economic crisis, should the site be offered for sale for use other than as a cinema I doubt whether there would be much interest.

Public interest in the Chelsea Cinema has been so strong that there are currently over 3,000 members in the Save the Chelsea Cinema Facebook group. However, I understand that the council only circularised residents living within a 500 metre radius of the cinema. This limited consultation has exacerbated community outrage at the prospect of having the cinema sold purely for financial gain.

Following the increased interest in the community, Burnside council decided to pass a motion to engage in a level 4 community consultation process, which involves two further public meetings. I am pleased that the council has decided to engage in a more consultative process. However, I believe that this should have been the method used from the start.

Although currently operating, the cinema is in a state of disrepair and requires moderate refurbishment for restoration. The most favourable outcome would be to conduct these restorations in conjunction with the development of the site, which would involve expanding the complex to include adjoining properties to establish a viable multi-screen cinema complex. I understand that the council already owns the adjoining properties.

This development could be completed for less than $10 million. It would not be unreasonable for Burnside council to explore a number of funding options, which may include the state government, Wallis Cinemas and other interested parties. Additional screens could see the site developed into an entertainment complex and solve many problems that Wallis Cinemas currently faces associated with single screen cinemas. These include the restricted distribution of films from suppliers due to the limited number of showings a single cinema can have and uneconomical staff arrangements.

This development would not only restore the Chelsea Cinema and retain its heritage character but it would also assist the cinema to run as a viable economic asset as well as ensuring that the theatre will remain as is for many years to come.

Time expired.

CHILD RESTRAINT LAWS

The Hon. M. PARNELL (15:53): Today I wish to speak about the new child restraint laws and some of the unintended social and environmental consequences that flow from those laws. Last year, former road safety minister Zollo announced a new mandatory size appropriate child restraint system in passenger vehicles, to take effect from the second half of 2009. This was part of a national road rule change that was approved by state and territory ministers. The changes have been announced but we have not yet seen the detail tabled in parliament.

These new laws endorse the proposals of the National Transport Commission that children up to six months old must be restrained in a rearward facing infant capsule, a forward facing child seat until the age of four and a booster seat from the age of four until seven. Children must also be in the rear seat, where there is one. According to Dr Geoff Potter, the National Transport Commission's Senior Manager for Safety, 500 children up to the age of 10 are killed or seriously injured every year in car accidents, with 2,300 sustaining minor injuries. However, I think there is an argument that these laws represent an overreaction when we look at the statistics for South Australia and some of the unintended consequences.

The South Australian government has cited the statistic that 60 children under the age of 12 years were killed or seriously injured, yet, according to the federal government's Australian road fatality statistics, in South Australia in 2007 only two children aged seven years and under died in car crashes, one being a one year old and one a four year old.

In the group most affected by these changes, that is, the five, six and seven year olds, there were no fatalities. I say this group is most affected because these children are starting or in the early years of school and starting to engage in sporting and social activities. The impact I see arising from these laws is, potentially, to kill off car pooling. We are all aware of the situation where we minimise the use of cars by taking each other's kids around. One parent will take the kids to soccer and another parent will bring them all back. It is the same with playing at different children's homes and weekend activities.

The obligation for every driver to have an age appropriate child restraint in the car means that, more often than not, you will not be able to take other children, because you will not have a stock of various car seats and capsules that are age appropriate. That is a disincentive to car pooling. The natural consequence is more cars on the road, more danger, more pollution and disruption of our communities.

To give a brief example, if you are running late picking up your child from school, the common thing for people to do at the moment is to ring the parent of some other kid at the school and say, 'I'm running late, I've been held up at work, can you pick up little Johnny?' You might ring up your parents, the children's grandparents, but under these rules you will not be able to do that unless they have a spare age-appropriate seat. But you can ring a taxi and have your child taken home, perhaps to an empty house, in a taxi with a driver they have never met before, because taxis are exempt.

I ask the government to look at an option that does not unnecessarily risk the safety of our children but imports commonsense into this debate. We could have a system that imposes

obligations on primary caregivers, in particular, parents—we want parents and primary caregivers to have the right seat for their children—but have an exemption similar to the taxi exemption for those situations where the child is travelling with someone else. That will not unduly endanger our children, given the statistics that I put before, but it is a good way to send a message to the community that car pooling is not just acceptable but something to be encouraged.

It may be that people will have multiple car seats, but most will not. When we consider that it costs about $200 each or more for proper car seats—not cheap Chinese ones—it becomes an expensive impost. The Greens say that soccer mums and netball dads should be able to give their child's team mates a lift without risking a fine or having to fork out hundreds of dollars for a spare booster seat.

Time expired.

BUSHFIRES

The Hon. C.V. SCHAEFER (16:00): I move:

That the Natural Resources Committee inquire into and report on any proposal, matter or issue concerned with bushfire.

This is the same motion that the Hon. Iain Evans moved in another place. I move the motion as a member of the Natural Resources Committee because we have, in fact, already had a number of witnesses with regard to bushfires and bushfire management come to our committee, and the majority of us, I believe, would like to continue at least an oversight role. However, because the Hon. Iain Evans moved this in another place, I will use a number of quotes from his original speech.

This motion has been moved as a result of not only the Victorian bushfires but I guess also as a result of the Eyre Peninsula and Canberra bushfires. I think it is easy for us to imagine that bushfires are going to affect heavily wooded areas away from dense populations, but we need to remember that not so very long ago Canberra lost a number of homes and, I think also, tragically, some lives. I think the tragedy in Victoria brought home to all of us that we are not prepared for what is almost inevitable in South Australia again. As the member for Davenport said:

Parliaments all round Australia tend to wait for a bushfire to occur, express great sorrow and regret about the impact of the bushfire, and then basically let the agencies proceed along their merry way without the parliament having any great oversight of what they are doing and why they are doing it.

He talks in his speech about a community which is generally becoming de-skilled with regard to bushfire management, and a parliament which is becoming de-skilled and ignorant of the measures needed to prepare for bushfire and to work against that happening to our communities again. Indeed, I agree with the Hon. Iain Evans that as people become more urbanised they are, indeed, de-skilled and almost immune to the effects of bushfires and lacking any real understanding of how they should manage if we were to have the misfortune of experiencing another major bushfire in South Australia, particularly in the Adelaide Hills.

The Natural Resources Committee recently had the mayors from two of the most affected councils—the Mitcham and Adelaide Hills councils—speak to us. They showed us some overhead slides of homes with native bushland growing not just up to but actually over the top of the roofs of these houses. They spoke of the assumption of a lot of those people that they would be saved by the MFS or CFS. Frankly, they could not be saved. In a bushfire there would be no way that anyone could possibly save them. As Iain Evans points out, in Belair there are 15 CFS units and 9,000 homes.

Again, the CFS and the MFS do a wonderful job, but they cannot be expected to defend dense populations against a bushfire unless people have done some preparation themselves. The two mayors spoke to us of areas where there is only one road in and out and chicanes and where people live very comfortable and beautiful lives. However, if people are in fact asked to vacate, to leave those areas—and we are constantly being told that you must decide whether you are going to stay and fight or leave—they have a genuine fear that they could not get those populations out in time because there are simply not the double-sided roadways for them to get out.

There is a popular view at the moment that bunkers installed in many of those high risk homes may be the answer and, indeed, they may be. I have seen patterns of bunkers which are very impressive but, again, unless there are standards met and unless the people understand not only what those standards are but what they have to do in order to use the bunkers should they

have one, those very same bunkers could have the effect of being ovens and slowly cooking the people who are inside them.

I believe that there is a need for a committee (and this particular reference is to the Natural Resources Committee) to take an oversight, to find out where, if you pardon the pun, the hotspots are, to find out what can be done, to look at our facilities and our education opportunities, to speak to the relevant departments and services, and to report back to the parliament so that we may at least be informed as to how we can get a proper response and proper planning.

One of the other issues that the Hon. Mr Evans has raised is the fact that each local council has a fire response plan, but fire, like other natural resources, does not recognise local government boundaries, and he believes that there is a need for a much broader regional plan to be invoked in times of high risk.

As a member of the committee, I believe that we have an opportunity to make relevant inquiries and report back to the parliament so that we can indeed have both a state-wide and region-wide plan that, while it may not save every life (and it probably will not), will hopefully see us better equipped when—it is when and not if—we have another major bushfire in South Australia.

The Hon. R.P. WORTLEY (16:08): I rise on behalf of the government to oppose the motion. This government has in the past seven years demonstrated an ability to respond in a proactive and strategic way to bushfire risks. Examples that are relevant to this proposal include the 2003 Premier's Bushfire Summit, the 2003 Emergency Services Review chaired by the Hon. John Dawkins AO, the 2005 independent review of the Wangary bushfire by Dr Bob Smith, the 2007 Minister for Emergency Services' review of bushfire mitigation and management and the 2008 review of the Fire and Emergency Services Act 2005 by Mr John Murray.

As you can see, there is a long history of activity in regard to this issue. The 2003 Premier's Bushfire Summit called on South Australians to provide ideas and raise any concerns about bushfire preparedness across the state. Out of that, 15 initiatives were identified, all of which have now been addressed by the government.

These included the establishment of a Native Vegetation Council fire subcommittee, which has resulted in the streamlining of permit requests for native vegetation clearing for fire risk management. CFS representatives are on this committee, including the deputy chief officer. This representation enables clearance approvals to be expedited for the fire risk management works.

In relation to development and land use matters, the initiatives recognise the need to review the bushfire policy framework and development plans, to update development controls in designated bushfire prone areas and to consider extending the number of bushfire prone areas. It was also recognised that the Country Fire Service should have powers of direction on development proposals in designated CFS referral areas to ensure development is appropriate for the bushfire risk in those areas.

Subsequently, a development assessment framework has been established comprising planning policies, building rules and powers of direction to the CFS in high risk areas for determining the appropriateness of development in these areas. Other significant initiatives to come out of the summit included the following:

- an extension of the Community Fire Safe program. In this program encourages residents living in high risk areas to form small action groups. Within these groups people learn how fires behave and how they destroy lives and homes. With this understanding they are able to develop the best strategies for themselves and their local community—strategies that work because they have communicate ownership and support;
- the introduction of a rural addressing system across South Australia; and
- the development of strategic bushfire management plans by regional and district bushfire prevention committees.

I am pleased to say that, of the other reviews I have mentioned, all recommendations from them are complete or close to the final stages of completion. Since the devastating fires in Victoria, the state government has also announced:

- a review of current arrangements for managing the interaction of native vegetation and bushfire, with a particular emphasis on developments near urban areas and townships;

- a review of bushfire protection areas to determine whether the risk ratings need upgrading; and
- fast tracking the implementation of an all-risk telephone based warning system.

In addition, most recently the government announced the formation of a specialist task force consisting of experts in various fields who will be working side by side to bring South Australia to a new level of bushfire preparedness. They will analyse key issues arising from the Victoria bushfires and look into immediate, medium and long-term solutions needed to improve bushfire management practices and strategies in South Australia. The task force is headed by CFS Chief Officer, Mr Euan Ferguson, and will focus on:

- defining 'upper extreme' bushfire risk;
- improving timely and accurate information to the community during emergencies;
- investigating new technologies and ways of providing up-to-the-minute information such as SMS;
- identifying the new vulnerabilities of critical infrastructure which could be at risk of bushfire in upper extreme conditions;
- engaging the local government agencies to coordinate timely messages;
- considering Victorian bushfire royal commission findings as they emerge before the next bushfire season;
- considering any evidence and lessons from the Victorian experience and royal commission as they emerge;
- analysing our readiness for upper extreme bushfire risk events;
- revising the state's bushfire hazard plan to take into account new risk; and
- developing standards for the construction of bushfire bunkers.

This government is in partnership with local government, and the community at large is getting on with the task of bushfire management and mitigation. There is no need for a further inquiry by the Natural Resources Committee. Additionally, I point out that the Natural Resources Standing Committee already has the powers to inquire into bushfire mitigation if it so desires, as evidenced in its recent deliberations on the safe management of bushfire risks, and a referral to it on this matter is superfluous.

This motion, if supported, has the potential to place significant workload burdens on our fire and emergency services, forcing them to use their valuable resources in preparing for committee hearings rather than getting on with their primary tasks, which are the protection of life and property. I urge all members to vote against the motion. I noticed that during the whole speech the actual mover of the motion was not listening; they were over there lobbying for support, so they are obviously not interested in the good work that is being done.

Debate adjourned on motion of Hon. C.V. Schaefer.

WHISTLEBLOWERS PROTECTION (MISCELLANEOUS) AMENDMENT BILL

The Hon. DAVID WINDERLICH (16:15): Obtained leave and introduced a bill for an act to amend the Whistleblowers Protection Act 1993. Read a first time.

The Hon. DAVID WINDERLICH (16:16): I move:

That this bill be now read a second time.

Whistleblowers stand up for all of us when they raise their concerns about misconduct, corruption, wrongdoing and maladministration. The current whistleblowers act relies on reporting to delegated authorities breaches of public trust or corruption, but sometimes those authorities are implicated in the corruption or maladministration or they are controlled by higher officials who are implicated in the corruption or maladministration. Sometimes the authorities are innocent at the time but, to avoid embarrassment, still desire to cover up, or have an interest in covering up, the misdeeds of earlier administrations.

The Democrats have a commitment to open and honest government. In 2008 the Democrats questioned why a critical report on the health of Lake Bonney, which highlighted the

need for an additional 20 gigalitres of water, was kept secret; we questioned why the Natural Resources Committee, when looking into Deep Creek forestation, omitted key scientific findings that were embarrassing to the government and a hindrance to its plans. In the federal sphere, Democrat Senator Andrew Murray campaigned strongly for greater protection of whistleblowers through his private member's bill, introduced in 2001 and reintroduced in 2002 and 2007. The current federal parliament commissioned a report in February this year that supports the amendments proposed by Senator Bartlett.

My bill adds two main provisions, in particular, to the Whistleblowers Protection Act. One relates to scientific misconduct, which needs to be recognised as an important area for protection for whistleblowers, because the complexity of the modern world creates two potential sources of maladministration and corruption around scientific misconduct. One of those relates to the greater temptations created by the increasing commercialisation of research, which creates incentive for people to overly promote or downplay the results of their research. The other area of potential threat to the public good is the increasing reliance of government decisions on expert scientific advice. The environmental impact statement for the Pomanda weir is one example where it is essential to have independent, credible scientific advice. In processes like that, anyone who is aware of maladministration or corruption, suppression or distortion of findings, should feel entirely secure in coming forward to expose that.

Another critical area is to give protection to people who go to the media. The media should not be the first port of call; there should be a system of delegated authorities to which whistleblowers can go, but there are times when whistleblowers do not have confidence in those delegated authorities—for very good reasons. My bill makes it possible for whistleblowers to go to the media where they have good grounds to believe that that is the best way to actually expose the corruption or maladministration and highlight their concerns.

Whistleblowers do us all a service and, in fact, often protect us. A very good example of that is the case of Allan Kessing. In June 2007, Allan Kessing was given a nine-month suspended prison term after being found guilty of leaking a 'protected' report that exposed ongoing security problems at the airport. Kessing had blown the whistle in 2005, after the report was provided to *The Australian* newspaper. The report, which he had written as an Australian customs service officer, identified a range of serious security breaches at Sydney Airport. It highlighted the employment of baggage handlers with criminal records, the theft of luggage and drug trafficking. It had been buried within the department and reportedly was not sighted by the minister until it was leaked (an action for which Kessing denies responsibility) some 30 months after it was written.

The furore was addressed by the government commissioning a report from a UK security expert, Sir John Wheeler, which confirmed Kessing's findings, and this prompted the government to announce the investment of over $200 million to boost airport security. It was one of the most extensive improvements to Australian airport security ever, and it was brought about by a whistleblower.

Crown prosecutor Lincoln Crowley argued that a prison sentence was necessary to deter other potential whistleblowers amongst the Public Service. Kessing's barrister argued that there was nothing wrong in exposing a government agency to criticism if that criticism was justified by maladministration and/or incompetence, and I think that would be very much the view of the ordinary person on the street. Justice James Bennett indicated:

> Whether or not it is appropriate to view the offender in the heroic light in which he has been bathed by some...there is no justification for communicating the contents of the reports.

Hence, Kessing's gaol sentence. Prior to the sentencing, Kessing had commented that the trial:

> ...basically shows that anybody who knows of maladministration or corruption either in the private or the public sector, would be well advised to say nothing, do nothing, keep your head down and look after your career and your mortgage. It takes away the individual's responsibility and participation in what was once a constitutional democracy. We are being governed by fear at the moment; it's what the government wants and everybody else has to just—you know, head down, tail up...

The South Australian government's party colleagues at federal level have recognised the need for greater accountability within the public sector and the need to widen the scope of the federal whistleblower legislation to include breach of public trust, scientific misconduct, wastage of public funds, danger to public health and safety, and dangers to the environment, all of which I have proposed in this bill. Rejection of this bill by the South Australian Labor government would be a clear indictment of federal Labor policy.

The government has a very familiar mantra, which we hear in many contexts. It says that, if you have nothing to fear, you have nothing to hide. This bill, which is one of a number I will be introducing, is based on the very same premise; that is, if you have nothing to fear, you have nothing to hide. If the government indeed believes this and applies this mantra to itself, it will support this bill; to do otherwise would prove the government to be soft on corruption. The Democrats will attempt to continue to be a thorn in the side of governments which refuse to address corruption. I commend the bill to the council.

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

COMMONWEALTH NATION BUILDING PROGRAM

The Hon. M. PARNELL (16:24): I move:

That the regulations under the Development Act 1993 concerning Commonwealth Nation Building Program, made on 26 February 2009 and laid on the table if this council on 3 March 2009, be disallowed.

The effect of these regulations is to fast-track various forms of development that have been identified as Commonwealth Nation Building Program projects. The regulations seek to fast-track these developments in two ways: first, by removing environmental standards; and, secondly, by removing consultation provisions. I want to explore both those aspects of these regulations, because they are at the heart of my motion to disallow these regulations.

I should say at the outset that I do not mean any criticism of the nation building program itself. I am not going to say anything about the merits or otherwise of that program, but I am concerned that we are abandoning our development assessment system, environmental standards and our consultation regime in the interests of fast-tracking these developments.

The first matter that I am concerned with is the amendment to regulation 6A, concerning significant trees. We have debated significant trees in this place on many occasions. These laws, whilst they may benefit from some fine-tuning, are generally accepted as an important part of our suite of environment protection measures.

We have all seen the hundreds of years old river red gums that are deserving of our protection. They provide a great amenity value, they provide nesting hollows for animals, and if it was not for significant tree laws they would not be protected, especially in the metropolitan area, because they are not covered by the Native Vegetation Act.

This new regulation effectively provides that the significant tree laws, the protections, do not apply if:

...the tree is located at a site where it is proposed to undertake development that has been approved by the State Coordinator-General for the purposes of the Commonwealth Nation Building Program, other than where the site is a site where a State heritage place is situated.

In effect, it provides that, if it is one of these Commonwealth Nation Building Program developments, if there is a significant tree in the way, that will not enter the consideration of whether or not the project should go ahead. There will be no requirement to consider that significant tree.

The second aspect of these regulations is that they undermine the extensive referral mechanism that exists under the development regulations. Just to explain that to members, there are various classes of development that clearly impact on more than just the local council that might be considering it. For example, if you want to build a development on a major highway, clearly, there will be access arrangements, so you would have to consult with the Commissioner for Highways in the transport department.

If you want to build something that has a potential environmental impact, you may need to consult with the EPA. If you want to build something on the coast, you have to consult with the Coast Protection Board. If you want to build something on the River Murray floodplain, you have to consult with the Minister for the River Murray. These referrals are all set out in schedule 8 of the development regulations. In some cases, these referral agencies have a power of direction; in other cases, they have the power to give advice only.

These new regulations basically provide that schedule 8, in other words, all of these referrals, does not apply to any development that has been approved by the state coordinator-general for the purposes of the Commonwealth Nation Building Program. To remind members, here are some agencies that would normally be consulted in relation to development. There is the Environment Protection Authority and there is the South Australian Country Fire Service. I will

emphasise that one. We were talking a little while ago about bushfires. Schedule 8 provides that, if you want to build something in a bushfire-prone area, you have to consult with the CFS, and that makes absolute sense. Under this regulation, which is currently in effect, if it is for the purposes of the commonwealth funded Nation Building Program, you do not have to consult with the CFS.

I mentioned the Commissioner for Highways and the Coast Protection Board, but there is also a range of ministers and CEOs of agencies who will now no longer need to be consulted about development. These include: the minister administering the River Murray Act, the Aquaculture Act, the Public and Environmental Health Act, the Natural Resources Management Act, the Mining Act, the Heritage Places Act. All these ministers and agencies are built into schedule 8 as agencies that must be consulted in certain circumstances. Of course, you do not have to consult all those agencies in every circumstance, but if it is on the coast you have to consult with the Coast Protection Board.

The reason why I say that these regulations should be disallowed and reconsidered is that we are effectively saying that, depending on where the money comes from for a particular development, our environmental and consultation laws will not apply. So, we do not have any say as a state parliament over what is or is not included in the commonwealth nation building program; that will be up to the commonwealth and state ministers. We had been talking about school gymnasiums and school halls, and people probably think, 'Great, we need more school halls and gymnasiums.' We also have affordable housing.

But let us think about it. We are talking about major building works and houses which ordinarily would have to comply with the significant tree laws and which normally would have to go through the consultation process of government agencies. However, for the simple reason that the money has come from the commonwealth under this program, we as a state are saying that we throw out the window our environmental and consultation laws.

I think that these regulations are out of line. As I have said, it is not a criticism of the commonwealth nation building program per se: we can have a debate at another time about how much money is involved and how it is being spent. But let us not allow the state and commonwealth governments to collude in throwing out our development assessment system, with all its checks and balances, under the excuse of having to spend this money so quickly that we cannot afford to consider things such as significant trees or the proper input of our public agencies. I commend this motion to the council.

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

DEVELOPMENT (MAJOR DEVELOPMENTS) AMENDMENT BILL

The Hon. M. PARNELL (16:32): Obtained leave and introduced a bill for an act to amend the Development Act 1993. Read a first time.

The Hon. M. PARNELL (16:32): I move:

That this bill be now read a second time.

This is a very simple bill, which seeks to amend that part of the Development Act that deals with major projects. The operative provision of the bill is only a couple of lines long, so I will just read it out. Basically, my bill says that if the minister (the Minister for Urban Development and Planning) proposes to make a declaration under this section (the declaration here is a declaration that something is a major development or a major project) in respect of a development or a project that will, if the development or project succeeds, be situated wholly or partly within the area of a council, the minister must consult with the council before making the declaration. So, the bill is saying that, before a minister declares something a major project, the minister must consult with the local council.

To explain why that is important, I need to go back to some basic principles. The first thing to note is that, under our Development Act, the decision whether or not to declare something a major project rests with the minister. The minister simply has to be of the opinion that a development is of major social, economic or environmental significance and that, as a result, a significant level of assessment is required and, having formed that view, the minister simply declares it to be a major project. That is a different regime to that which exists in other states. In some states they have a list of the type of developments that would automatically trigger a major project, for example, oil refineries, chemical works and large proposals. Here it is at the whim of the minister and it is an unfettered discretion.

There are good reasons why some developments should be declared major projects. The main good reason is that the major project declaration is the only way to trigger an environmental impact statement. In other words, the highest level of assessment, the EIS, cannot be triggered by a local council but only by the minister. For genuinely big projects, with genuinely serious implications for the environment, the economy or for society, it is appropriate that the minister declare something a major project.

However, there are a range of what I would call very poor reasons why some ministers declare certain projects to be major projects. One would be to avoid having to deal with a difficult local council. Another would be that the zoning for the land is completely inappropriate for the type of development proposed. Another reason would be that the project is so controversial that they know the community will try to appeal against it, so they short circuit the project and make it bullet proof or appeal proof. They are poor reasons for declaring something a major project.

The trigger for my introducing this bill has been some little while coming. We now find a number of case studies that lead me to the conclusion that we need law reform in this area. The first situation is that in the Unley council, where the government has declared a major project for the site across Goodwood Road from the showgrounds. To read a couple of sentences from *The Advertiser* of 17 December last year, under the heading '$300 million makeover for Goodwood Road at Wayville', the article by Russell Emmerson states:

> The state government has bypassed Unley council's planning processes by directly granting major development status to a $300 million project at Wayville. The project would involve a complete makeover for the streetscape opposite the Adelaide showgrounds, which itself has undergone a significant upgrade over the past 18 months. The Wayville [as it is being styled] development proposes a boutique hotel, shopping mall, apartments, retirement living units and underground parking. The large site combines multiple properties between 43 and 51 Goodwood Road at Wayville between Young Street and Le Hunte Street that are owned or controlled by the group. It will be a mixed use development of six above-ground levels with retail shops, food outlets, a supermarket, boutique hotel and apartments, medical consulting rooms and retirement village, with more than 100 units with courtyards and common areas and three basement levels for car parking with almost 900 spaces.

The article goes on to describe the project. It may well be that it is a big project and maybe it is deserving of major project status. I do not need to go into the merits of it, but it concerns me that the local council was not consulted. The local council will have to deal with this development if it goes ahead, it will have to service the development as it is in its municipality, and it will have a major impact on the council in terms of extra residents, visitors and the provision of services, yet it was not consulted. The article by Russell Emmerson goes on:

> The minister can declare a project a major development where he or she believes it is appropriate or necessary for its proper assessment, but it is usually linked to contentious projects which have run afoul of council planning process, such as the Makris Group's $150 million Le Cornu development in North Adelaide. City of Unley mayor, Richard Thorne, said no application had been lodged and the developer had only had preliminary discussions with council planners.

Quoting the mayor, the article continues:

> 'They (the developers) don't want to have to deal with council or development applications; they just want to get something up and going, but there has to be some democracy', he said. 'We would have been quite happy for Paul Holloway to get in touch and then we could have discussed it.'

So, that is the crux of my bill. My bill says that, before the minister makes the declaration of a major project, he or she should consult with the council.

Unley council has issued a press release of its own in relation to this development, and I want to refer to a small part of that because it provides a lot of the argument as to why this bill is necessary. The media release is dated 18 December 2008 and headed 'Concern raised over the granting of the major project status for the Wayville development'. It states:

> Unley council is disappointed this developer has requested the state government to grant major [project] status to this proposed Goodwood Road development and even more disappointed that the state government has apparently provided immediate major status to this proposed project without prior reference or discussion with Unley council,' Mayor Thorne said.
>
> Mayor Thorne said: 'There has been neither a development application lodged nor a refusal of development so there is no justification for state government intervention by awarding major status to bypass the council.
>
> We have had a good and successful relationship with this developer who has lodged and had two sizeable projects approved without any problems by the council; one on King William Road, Hyde Park and another, corner of Unley Road Wattle Street.

There have been preliminary discussions with our planning department and myself about possible redevelopment of this Wayville site. During this we advised that the site is ripe for development and there would be flexibility about the high density suggested because of the bulk and scale of the recently built Goyder pavilion opposite the Wayville Showgrounds.

In these circumstances it is hasty and unnecessary for the state government to grant major development status without prior consultation with the council and I am sure this will not be appreciated by councillors or residents.

We believe this location is suitable for retirement village and/or a hotel to service the showgrounds and commercial development but we have not been given a go by this unprecedented intervention.

The City of Unley's media release then lists five problems that it sees with the way the government has proceeded. First, there are no appeal rights for residents. As members may know, if someone is proposing a development that is out of sync with the relevant zoning, it will probably be a noncomplying development, which means that if it is assessed on its merits it can also be challenged on its merits. Declaring something a major project basically makes a project bullet proof: no-one is allowed to appeal it. That is one of the reasons developers like major project status; it gives them that security.

The second reason the council gave is that it will receive no building fees. In other words, it will not get the application fee for assessing the development. Members might think that is just the council being money-grabbing, but the council will still have to monitor this development. It will still have to devote considerable staff, time and resources to ensuring that the development fits in with the infrastructure fabric of the council. It will have to service it with rubbish collections and roads, yet will receive no recompense from the developer at the assessment stage.

The third reason is that limited consultation with the community will occur. Under a major project declaration there is a form of community consultation. An EIS, or similar, is produced and people have the right to comment on it. However, there is usually less opportunity than if the council was conducting it itself.

The fourth problem the council sees is that the development will not be assessed against the development plan. This in some ways goes to the heart of the problem with the major project declaration because, as well as making it bullet proof and bypassing the council, major project status also enables the government and the developer to bypass the relevant zoning. That is because under the Development Act the zoning or the development plan for the area is one of a number of factors that has to be taken into account but it is not conclusive.

If you go through the normal process, you have to make sure the development is appropriate for the zone and, if it is not appropriate, you fix up the zoning or say no to the development. This is a way of basically pretending that the zoning does not exist. It undermines proper planning. The fifth reason that the council gives as to why this is a problem is stated as follows:

We would have preferred coordinated development of the area rather than ad hoc intervention by the state government.

That also is one of the reasons why developers like it: they do not necessarily care about the overall development of an area or a municipality; they just want their project up. However, the responsibility of local councils is to make sure that developments are properly integrated, so undermining local councils undermines that integration.

The issue of the Unley development was discussed on ABC radio on 4 March on the Abraham and Bevan show on 891. At the conclusion of a discussion, which I will not go through because it was basically the mayor repeating some of the problems that I have just identified, Matthew Abraham says:

It's an interesting one to watch and I'm sure many councils and ratepayers will be watching as well...Thank you for talking to 891 Mornings.

The mayor concludes:

That's okay. I think it's a bit over the top...because we haven't been given a chance. A number of mayors are concerned that this has been more prevalent. We've just had one over at Stansbury for a marina which the council and residents weren't even consulted or anything and it's just gone major development status. It seems to be happening far too frequently.

I will come back in a second to the Stansbury marina because I had the great pleasure of visiting that site on Monday. Matthew Abraham concludes:

Richard...thank you...and Minister Paul Holloway is unavailable this morning but a spokesman says the Minister is comfortable with the decision to grant the hotel on Goodwood Road major project status.

I should hope he is comfortable: he made the decision. It would be quite remarkable if the minister were not comfortable with a decision that he has so recently made.

The mayor mentioned Stansbury, where the Stansbury marina project has been declared a major project. You can get details from the Planning SA website but, in a nutshell, it involves an area of not pristine but undeveloped coastline. It is an area of around 600 metres by 800 metres where there are a few fishing boats and a couple of old oyster leases where it is proposed to dump millions of tonnes of rock and soil that have been carted from a few kilometres away into the marine environment, on top of the leafy sea dragons, and to then build 200 houses on what was marine environment and which will be reclaimed land for a marina.

This is to occur in an environment where the marina just down the road at Port Vincent, which has been there for six or seven years, is still about three-quarters empty. It is a project that has very little merit and really, in my view, does not deserve to be seriously considered, but that is not the question. The question is about the process that the minister went through. Did the minister consult with the local council? No; the local council finds out that the project has been declared a major project when the media contacts council members. They read it in the paper or they hear it on the radio.

People might think, 'Well, if it's offshore then it's probably not in the council's area.' That is not true, because the access road and the beach up to the high watermark is in the council area and, if the marina is approved, it will then be incorporated into the council area. It is the key player here. The council is going to have to manage the consequences of a marina if it goes ahead and yet it was not even consulted before the major project declaration was granted.

The third and final example that I will give is the case of Victor Harbor and the Makris shopping centre proposal on the outskirts of Victor. When that was first declared a major project, I recall that my first reaction was, 'That's odd. I thought the council was part way through a comprehensive planning exercise to work out where new shopping centres should be built.' In fact, the council was halfway through that process, and had identified where the shopping centres should be built, but it was not the Makris land. That did not get to the top of the list as the best spot for a shopping centre, so Makris goes to the state government and gets it declared a major project.

Two things flow from that. First of all, it undermines the work that the council had been doing over several years: a thorough study of the retail shopping needs of Fleurieu Peninsula and where shopping centres should be built, so it basically undervalues that work, but also it completely sidelines the council from the assessment process for this new supermarket. I do not need to go into the merits of whether or not that is a good project, but the point is that the council should not find out about these things through the media: it should find out because the minister consults.

In summary, I have given the reasons why I believe the system is not currently working. An amendment like this should not really be necessary, because you would expect that ministers would be working with local councils, which still have overwhelming responsibility for development but, in the absence of governments doing the right thing, I think we do need law reform.

My amendment simply provides that a minister cannot declare a major project without consulting with the local council. I have not specified the form of the consultation; I have not specified a period of time over which it could take place. At the very minimum I guess it might be the minister ringing up the mayor. I would think that is not the appropriate way for consultation with the council to work; I would expect it to be in writing, and I would expect that there be an opportunity for dialogue as well.

I am not seeking to be overly prescriptive; I am simply seeking to put into the legislation the principle that local councils should not be insulted by planning ministers declaring major projects without first consulting with the council. I commend the bill to the council.

Debate adjourned on motion of Hon. J.M. Gazzola.

VICTIMS OF ABUSE IN STATE CARE (COMPENSATION) BILL

The Hon. R.L. BROKENSHIRE (16:53): Obtained leave and introduced a bill for an act to establish a scheme for the determination of claims for payment of statutory compensation to persons who have suffered abuse or neglect while in state care. Read a first time.

The Hon. R.L. BROKENSHIRE (16:53): I move:

That this bill be now read a second time.

There are only some technical drafting alterations to the bill I introduced last sitting week, and the second reading speech I made to the council then is still totally relevant to this bill. This is just a technical drafting matter, and I thank parliamentary counsel and the Clerk for the work they did for me on this matter.

The PRESIDENT: I understand that the previous bill, which was withdrawn, was a money bill: this is a different bill. The honourable member should make his second reading speech. He could have it inserted into *Hansard* without his reading it.

The Hon. R.L. BROKENSHIRE: Thank you for your advice, sir, and that of the Clerk. I will start my remarks, but I give notice that I will seek leave to conclude those remarks on the next Wednesday of sitting.

This is a very important bill because not only Family First but also many of our parliamentary colleagues have been very concerned about the difficult and disastrous situation in which many wards of the state have found themselves, through no fault of their own. Whilst there has been an apology in the parliament, the Mullighan inquiry, and work done by the former member for Family First (Hon. Andrew Evans)—whose place I took as a casual vacancy—which was supported by the parliament and which ensured that many paedophiles are now locked away in prison and unable to harm other young people in South Australia, it still remains that many wards of the state of South Australia need proper redress.

More important to them than money is a written apology and general support to allow them to get on with their future, but I will talk more about that later in the debate. At this point, suffice to say that, if the bill is supported by my colleagues in this place and then passed in the other house, it will either push the government into accelerating its endeavours to pay proper compensation to these victims—as has already been done in some other states; in fact, one has finished paying out their wards of state and another is well on the way to doing that—or ensure that the law is there for them to be able to get straightforward due process, financial support and a proper written apology. With those few words I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

VICTIMS OF CRIME

The Hon. J.A. DARLEY (16:57): I move:

That the Legislative Review Committee inquire into and report on:

1. The effects on the court system and its participants of extending the right for victims to deliver a victim impact statement in any court to cases where the defendant has been convicted of a summary offence that has caused serious harm, that being harm that endangers, or is likely to endanger, a person's life, or harm that consists of, or is likely to result in, loss of, or serious and protracted impairment of, a part of the body or a physical or mental function, or harm that consists of, or is likely to result in, serious disfigurement.

2. The current effects and consequences for the court system and its participants of allowing a victim to submit a victim impact statement in the court for an indictable offence.

3. The types of systems, facilities and services that should be in place to aid and assist victims involved in the criminal justice system.

4. Any other relevant matters.

I would like to start by acknowledging the many victims of crime who have contacted my office and the office of my predecessor, the Hon. Nick Xenophon, who had the courage to speak out about their experience with the criminal justice system at a time when they were often still dealing with the shock and grief of the trauma they suffered through the criminal actions of others.

This motion is aimed at inquiring into the best possible way that this parliament can ensure that there are laws and policy directives in place to ensure that victims have, and continue to have, a voice.

Members would be aware of the long and drawn out history of the several attempts to introduce further rights for victims in court, particularly surrounding the issue of who is entitled to present a victim impact statement in court. Most recently, in June 2008, I moved amendments to a government bill which entitled a victim to read a victim impact statement in cases of a summary offence which had caused death or serious harm, serious harm being harm that endangers or is likely to endanger a person's life, or harm that consists of, or is likely to result in, loss of or serious

and protracted impairment of a part of the body, or a physical or mental function, or harm that consists of or is likely to result in serious disfigurement.

The government's reason for not supporting this in the past has been that it will open the floodgates and clog up the court system, with too many victims presenting statements in court. I do not buy the argument proffered that my amendments would clog up the court system. That is really what the first term of reference for this inquiry aims to address. I would like to hear from the courts, victims and victim support groups, and practitioners and participants in the criminal justice system in other jurisdictions, both nationally and internationally, where this wider scope of victim impact statements has been in place. We need a clearer picture of how these extended rights have worked or not worked, as the case may be, and whether it is appropriate and feasible to implement them here in South Australia.

I think it is absolute hypocrisy on the Attorney's part not to even try to negotiate an outcome on the issue of victim impact statements for the benefit of victims, especially given the fact that his ministerial website biography makes reference to his having 'authored a bill to allow victims of serious crime to read their victim impact statement to the court before sentencing the offender'. I had previously thought that it was the Hon. Chris Sumner, a former Labor attorney-general, who had authored the victim impact statement legislation. Further investigation by my office and the Library found both statements to be correct.

The Criminal Law (Sentencing) Act 1988 was introduced by the then attorney-general (Hon. Chris Sumner). Section 7 of this act provides that a prosecutor must furnish the court with a report on the impact of injury or loss resulting from the offender's conduct. This report was to be in writing and was the very first victim impact statement in that sense to be tendered to a court in this state, even though the statement was to be delivered by the prosecutor and not the victim. I note that section 7 is still currently in operation. At the time, a victim could only present a statement orally to the court (presumably with the special leave of the judge) if at all.

In 1997, in an attempt to expand the law surrounding the victim impact statement, the then member for Spence, and now the Attorney-General, introduced a private member's bill, the Criminal Law (Sentencing) (Victim Impact Statement) Amendment Bill 1997. The bill aimed to allow a written victim impact statement to be presented orally in court by the victim for sentencing of offenders found guilty of indictable offences. This private member's bill was agreed to by the then Liberal government and was amended in the upper house by the then attorney-general (Hon. Trevor Griffin). This became section 7A of the Criminal Law (Sentencing) Act and commenced in 1999.

I will quote from the second reading speech of the member for Spence, as he then was, on the intent of the operation of victim impact statements because it reveals that the effect on victims is the same today as it was in 1997, and the need for an inquiry such as the one I am proposing. He said:

> I do not think that many victims will want to take up this right—

that is, the right to deliver a victim impact statement—

> but for those who do I think their participation in the trial in person will be most therapeutic. It would be a stronger, more dignified intervention in the trial by the victim and would give the victim a sense of having played a real role in the trial. The victim would be able to tell his or her story. Of course, the accused would be present in the dock during the oral submission by the victim.

If only the Attorney would stand by his words and the commitment to victims he made almost 12 years ago. These words are even more relevant in 2009, where we have seen a steady development of the law relating to victims and their need to be heard in cases where crime has had a very serious impact on their lives.

I find it astonishing that the Attorney would not entertain a private member's bill introduced by the Hon. Nick Xenophon in 2006 or my amendments to widen the circumstances in which victims are able to give statements, aimed at bringing our law into the 21st century, when he himself attempted to update the law on behalf of victims in 1997 and was supported by the then government.

This government wants to be known as the friend of victims and the champion of their rights when, in actual fact, it has not listened to good ideas and the pleas of victims to get the law right in favour of promoting it own agenda. That is why I believe this inquiry is so important. It will provide an opportunity to look at the specific provisions surrounding victim impact statements and

the laws relating to how victims are treated by the criminal justice system in general in a forensic and thorough way, hopefully, without the political grandstanding that has surrounded this issue for so long.

The second and third terms of reference allow for a broader consideration of victims' rights in the criminal justice system, including the police investigation stage. I know that the original intent of section 7A of the Criminal Law (Sentencing) Act, which provides for the right to deliver a victim impact statement, was for the defendant to be present when the impact statement was presented. This was because section 7A applied only to indictable offences.

As honourable members may remember, this is currently not the case in the Magistrates Court, where, for summary offences such as driving without due care or causing death by dangerous driving, a defendant need not be present. Ms Julie McIntyre, whose son Lee was killed in a motor vehicle collision in 2004, was devastated by the fact that she never had the opportunity to read her victim impact statement to the defendant and express to him the devastating impact Lee's death had on her and her family.

Again, I think this issue is important to explore in terms of facilitating victims' participation in the criminal justice system and the government and, indeed, the parliament legislating to ensure that those affected by criminal behaviour are not left out in the cold and forgotten by the system.

In conclusion, the terms of reference for this inquiry are quite simple. The first deals specifically with the effect of extending the circumstances in which victims can deliver an impact statement to the court. The second aims to review the current system of the delivery of victim impact statements in the court, with a view to investigating improvements or alternatives to the status quo.

The third is much broader and aims to consider the way victims are treated by the criminal justice system in general. Often, a victim's involvement in the justice system starts well before anyone enters a courtroom, and I think any inquiry should look at the process as a whole.

I urge all honourable members to support this important inquiry, which will hopefully continue South Australia's tradition of being a leader in victims of crime legislation.

Debate adjourned on motion of Hon. J.M. Gazzola.

RACING INDUSTRY

Adjourned debate on motion of Hon. T. J. Stephens:

1. That a select committee of the Legislative Council be appointed to inquire into and report upon—

   (a) the sale of Cheltenham Park Racecourse;

   (b) the rezoning of Cheltenham Park Racecourse;

   (c) the relationship of decisions made in connection with the sale of Cheltenham Park Racecourse with proposals for the redevelopment of Victoria Park;

   (d) matters of corporate governance within the South Australian Jockey Club up to and including March 2009;

   (e) the role of Thoroughbred Racing SA in relation to the above matters; and

   (f) any other relevant matter.

2. That standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.

3. That this council permits the select committee to authorise the disclosure or publications, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being presented to the council.

4. That standing order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

(Continued from 25 March 2009. Page 1732.)

The Hon. R.L. BROKENSHIRE (17:09): I will not talk for a great deal of time about supporting this select committee, but I give notice on behalf of Family First that we very much support this select committee investigating the racing industry, and I will have more to say in due course. Therefore, I will not retrace what the Hon. Terry Stephens and others have said about this matter in the council.

In our opinion, it is important to scrutinise any claims of corruption in any area, including in racing. To put this in perspective, just across the border last August an independent review found that criminal activity within the Victorian racing industry was rampant and 60 recommendations for reform of the industry were sought, including the appointment of a racing integrity commissioner. So, it is important to understand that we already have the situation just across the state border where problems have occurred with the racing industry.

I have sat around numerous cabinet and party room tables that have received representations over the years from the racing industry. It was always coming up with a proposition to the government of the day, hoping for support from the parliament and lobbying parliament and government for more taxpayer money and then reassuring the community, the government and the parliament that, if it received this package, everything would be fine for the racing industry and that it would not need the additional ongoing support of taxpayers through government.

Of course, at the same time, over the many years that this was occurring—even in my first years in the parliament back in 1993, 1994 and probably 1995—it was always put to me by those colleagues who were very much pro the racing industry that it was the third largest industry in the state and it therefore needed all this support because of the jobs and everything else that it created. Today it is not anywhere near that level, which is unfortunate, but it is still the situation that a lot of taxpayers' money goes in but there are major problems with the industry.

I want to touch on the sale of the Cheltenham racecourse. I believe it is very important that this select committee, independent of the racing industry, government and any other individual organisation or representation, an absolutely independent select committee of the parliament of the people of this state, is supported to do its work.

I, for one, was very concerned about the sale of Cheltenham and the issues regarding the work leading up to the proposed sale agreement. I was concerned that there seemed to be such a rapid push to do this work between government, the South Australian Jockey Club and others with respect to the sale of Cheltenham at a time when very strong representations were being put forward by the Cheltenham Park Residents Association, which I see as a professional, genuine, bona fide group of local citizens, desperately trying to ensure that open space, stormwater harvesting and proper recreational opportunities were implemented with respect to that land if, indeed, it was to be something other than a racetrack facility. In fact, one only has to look back through the history to see that it was never intended for there to be housing development on that land. I also became concerned about the behaviour of litigants towards the association in relation to the racecourse sale and rezoning, which is of great concern.

A lingering issue with respect to the Lipman Karas report involves the draft report. This is one of the many really important reasons why, in our opinion, this select committee needs to be approved by the Legislative Council. It is alleged in the draft report but not in the final report that there were issues relating to many of the matters around the sale of the Cheltenham racecourse. That part was removed, and I think it is very important to find out why it was removed and who initiated its removal. These are questions that the community would want answered.

There are also membership stacking allegations, including people being invited to join through Facebook, and other coercion, and those allegedly involved in those matters. I understand that the Norwood Community Club has some involvement in those matters. Family First was involved in a battle at West Richmond for some of our constituents there against a new pokies venue that was to be a joint venture between the SAJC and the Norwood Community Club. I would be interested in asking questions about the SAJC's relationship with the club, as I understand some of the rise in membership is being blamed on some sort of alliance with this particular club. Interestingly, when you initially looked at the application for this super pokie machine venue, it appeared that it was for the Norwood Community Club, but when you actually delved into it a joint applicant was the South Australian Jockey Club.

Concerns were raised last Thursday about whether or not Thoroughbred Racing SA (TRSA) acted upon matters put to it some time ago, involving the handling of payments to lobbyists and increases in fees for those on Thoroughbred Racing boards. I advise my colleagues, in case they have not had a chance to look on their desks this afternoon, that I have an amendment to allow the select committee to consider governance issues within Thoroughbred Racing and not just in relation to its actions concerning the SAJC. Racing is a subject of considerable wagering and on-course and off-course betting, and this Easter weekend we will see the Oakbank Racing Carnival, which is always a good family event, where the sort of successful management of a racing carnival that one likes to see will be in evidence.

To make a couple of other brief points, we saw rushed legislation on racing last November, involving the Authorised Betting Operations Act. That was specifically directed at integrity agreements, another oversight for the racing industry. That bill, interestingly enough, turned out to be flawed and the government has had to come back to us this week with a new urgent bill. We have to ask whether this was sloppy work by the minister. A situation came about with national headlines, where the racing minister made an announcement that SA Police would investigate the SAJC, and appeared on television indicating concern about the matter—yet the same minister is the Minister for Police. We note that there are fresh board elections on 13 May, but at this point there is no guarantee that the problems encountered will be resolved. A new board is no protection against conduct of the past being repeated.

I will finish with a couple of media quotes. All sections of the media—whether it be print, radio or television—have expressed enormous concern on behalf of the community about the events around allegations involving the SAJC and Thoroughbred Racing to the point where I cannot remember more media focus on an issue in recent years than there has been on this issue. Clearly the media believe there needs to be an independent inquiry on this matter. I will quote a few transcript pieces that are important to consider in support of this committee. A transcript from ABC 891 states:

> This program can confirm to our listeners that concerns regarding Mr Ploubidis' travel arrangements were put to Mr Bentley more than a year ago, but our source tells us that it appeared nothing was done following a meeting to discuss these issues. We also understand that these concerns were never brought to the notice of Thoroughbred Racing's governing board, even though it is alleged that Mr Ploubidis put to Mr Bentley, the Chair of Thoroughbred Racing, issues regarding travel arrangements. These concerns were, however, raised again with the Lipman inquiry into the jockey club. That inquiry resulted in Mr Ploubidis being sacked. Mr Ploubidis has denied doing anything wrong, and is suing the jockey club, TRSA and Mr Bentley for unfair dismissal.

The transcript continues:

> This program has also been told that one of the first things Mr Bentley did on being appointed Chairman of Thoroughbred Racing was to take steps to increase the Chairman's fees from $25,000 to $50,000. Regarding payment to lobbyists last week, we revealed that former Labor MP, Nick Bolkus, this year has been paid more than $130,000 by the jockey club for his work regarding the sale of Cheltenham Racecourse. We're now aware that Mr Bolkus has been paid about $35,000 by Thoroughbred Racing for his work in lobbying the state government for taxation relief. That payment, we understand, was disputed by a previous TRSA board, but it was approved by the current Thoroughbred Racing board.

It then concludes:

> While our source does not want to be identified, we understand the source is prepared to give evidence to the forthcoming parliamentary inquiry into racing.

The ABC 891 program is prepared to come out with those serious matters on public radio, and that source is indicating they are concerned and want to give evidence. They say that the only way to do that is through a parliamentary select committee inquiry into racing.

I want to put another couple of points on the public record to strengthen our support for this, and I will refer to several more quotes, as follows:

> We haven't been given the opportunity to interview Mr Bentley. Instead we've been sent a statement and we'll read that to you, it's about a page, because it's important that you hear what Mr Bentley has to say on these matters. It says—'The following is prepared for ABC Morning Program in response to claims made on air this morning. In response to claims that TRSA chairman, Philip Bentley, did not act on information regarding travel reimbursement for Jockey Club CEO, Steve Ploubidis, Mr Bentley was made aware of the information around March 2008 by the then TRSA Chief Executive Officer and CFO, but was led to understand that the Jockey Club had taken the appropriate action with regard to this information. As such, Mr Bentley did not feel it appropriate to inform the Thoroughbred Racing Authority's board. The CEO chose not to inform the board either.'

I quote again from one of the presenters, who says:

> The release goes on—'In response to claims that one of Philip Bentley's first acts as TRSA chairman was to increase the chairman's fee…

Again, they are confirming that the chairman moved allegedly to double their fee. The response from the chairman was:

> This is untrue and really raises views about the motives of the person making that claim. A committee comprising a representative of the South Australian Racing Club's council, a representative of the Jockey Club, and an independent representative made a decision to increase the remuneration fees for the seven directors to $200,000 per annum. Mr Bentley was consulted over the composition of the amounts for the chair, deputy chair and directors. He recommended an adjustment to their scale, which involved lowering the proposed chairman's fees and increasing the deputy's fee. The chairman is remunerated at $43,000 per annum.' Again we don't have an opportunity to interview Mr Bentley on this, but it's my understanding that is still an increase of close to $20,000. The

statement goes on—'In response to claims that a former TRSA board refused to pay an invoice to Nick Bolkus and that this was subsequently paid by the current TRSA board. The TRSA board inherited a contract between the company and Mr Bolkus from the previous board and as such was legally obliged to honour this contract.

It goes on and on. I just highlight those points and put them on the public record because of everything else that has already been said in the media and the general concern out there. I do not know what other members have been hearing when they are out and about throughout South Australia, but I have had quite a lot of representation from constituents in rural regions who have rung and said, 'We strongly support the concept of a select committee into the racing industry. We have concerns and we believe it is time there was a thorough independent investigation into this.' They have lobbied me as a member of the Legislative Council to support the committee. When you go to other functions or you are just out generally, people talk to you about what really is happening with the racing industry.

Frankly, it is not healthy for the future of the racing industry to have this cloud over it, and there is an opportunity now for a select committee to be formed to investigate this and come up with recommendations that I hope will see a racing industry that all South Australians can be proud of and that will be able to grow in the best interests of the industry without the innuendo, allegations and all the other references that are certainly very damaging to all those bona fide people involved in the racing industry. I move:

To amend subparagraph (f) of the motion, as follows:

Insert after the words 'any other relevant matter' the words 'and matters of corporate governance within Thoroughbred Racing SA up to and including March 2009'.

The Hon. J.S.L. DAWKINS (17:25): I move:

To amend paragraph 2. of the motion, as follows:

Insert before the words 'That standing order 389' the words 'That the committee consist of six members and that the quorum of members necessary to be present at all meetings of the committee be fixed at four members and'.

I support the motion in its amended form.

The Hon. M. PARNELL (17:26): If the allegations of membership rigging and other improper conduct only related to a local pony club, then it might be appropriate just to let the organisation deal with it itself. However, it seems that the allegations in relation to the SAJC have far more significance for the people of South Australia than if it were a small private concern. The terms of reference for this inquiry highlight a couple of those: Cheltenham and Victoria Park.

We are yet to see the full extent of the allegations—the Lipman Karas report has not been made public—but, if it turns out that there was invalidity in the processes of the jockey club and members were allowed to vote who were not entitled to, then decisions may have been invalidated as a result. It seems to me that there are those two important issues, one of which was saved and one of which is at more risk, that we can revisit.

Regarding Victoria Park, fortunately, the proposal for the multi-purpose facility or the big grandstand did not amount to anything, but when it comes to the sale of Cheltenham, its rezoning and its subdivision for housing, then clearly we need to make sure that we get to the bottom of it. I think that we owe it to, in particular, the people of Cheltenham and the western suburbs to have a look at the decision-making process to see whether their loss of open space was, in fact, a valid decision.

However, we owe this to more than just the people of the western suburbs. We owe it to all of the people in Adelaide to investigate whether or not the decision to sell and subdivide for housing could be reversed and we could revisit the question of using Cheltenham as a water resource area, in particular, for stormwater capture, cleansing, aquifer recharge and then recovery later on. It is the last remaining area in the western suburbs of sufficient size for that type of project to go ahead.

I think this inquiry is timely. The issues of Cheltenham and its rezoning would suffice as stand-alone issues and are deserving of inquiry in their own right but when you combine it with the fact that the decision-making bodies have all these question marks hanging over them, allegations of illegality, then I think it makes it even more important a genuinely independent inquiry to be undertaken, and I cannot think of a better body to do it than a select committee of the Legislative Council.

Debate adjourned on motion of Hon. J.M. Gazzola.

SELECT COMMITTEE ON PROPOSED SALE AND REDEVELOPMENT OF THE GLENSIDE HOSPITAL SITE

Adjourned debate on motion of Hon. J.S.L. Dawkins:

That the report of the select committee be noted.

(Continued from 18 February 2009. Page 1332.)

The Hon. I.K. HUNTER (17:33): I will speak very briefly on the report of the Select Committee on Proposed Sale and Redevelopment of the Glenside Hospital Site, following on from the contributions of the Hons Mr Dawkins and Ms Lensink. While I may live to regret this, I speak on behalf of myself and the Hon. Mr Finnigan. We are both very pleased—

The Hon. B.V. Finnigan: I'm always very pleased to speak on your behalf.

The Hon. I.K. HUNTER: I know you are, Bernard, and I'm returning the favour today. We are both very pleased with the conduct of the inquiry and with the subsequent report, with some exceptions, which we note in our dissenting report, which I will come to presently.

First, I thank the staff of the committee, Mr Guy Dickson and Ms Geraldine Sladden, for their wonderful resourcing of this inquiry, and I also thank all the committee members for what I thought was a very useful exercise and all those who took their time to contribute to the process by making submissions.

Briefly, I would like to address some of the areas on which the Hon. Mr Finnigan and I differ from the views of the majority of the committee. It was a very narrow majority, I should say. Neither the Hon. Mr Finnigan nor I believe that the members received in any way of evidence sufficient information or expert advice to determine how many beds should be provided in a relocation of the facilities, as outlined in recommendations 4 and 6. Some general statements of claim were made to the committee, but they were not in our view backed with the necessary expertise and, as such, the committee recommendation that the number of beds should be doubled appears to be an arbitrary decision. It was very easy to make such a recommendation, but we do not believe the committee members had sufficient information before them to do so and, as such, recommendations 4 and 6 are in our view completely arbitrary.

The Hon. Mr Finnigan and I concur in expert evidence given to the committee by Monsignor David Cappo that the Victorian era style of stand-alone lunatic asylum is no longer the preferred model of service delivery for mental health and, therefore, plans to integrate mental health services as much as possible into normal life should be supported. To be fair to the other committee members, I think they also agree with this proposition. However, local community politics being what it is, some of them became enmeshed in community opposition to the sale of the land.

To our minds—that is, the Hon. Mr. Finnigan and myself—there was no real basis for recommendation 7, which calls for the retention of the asylum orchard. Frankly, I believe that was just silly. No orchards are kept indefinitely; fruit trees become old and diseased and are replaced with hardy varieties over time, and it is absurd to say that this old, diseased and dying fruit orchard should be retained for posterity—even if its location is better placed for some public mental health provisions. This demonstrated the nonsensical level some opposition has reached and in which, I believe, some members of the committee have, perhaps, been caught up.

I think it is fair to say that the major concern raised with the committee—or at least the concern raised by most people, which could be a decidedly different thing—is the sale of some parts of the site for residential and commercial redevelopment. I believe this concern lies at the heart of claims of inadequate consultation. Frankly, I do not believe that such a charge can be sustained and, while I understand that those people out there who outright oppose the Glenside site redevelopment might feel that their opinions have not been sufficiently heard and weighed, I cannot help but think that the claims of inadequate consultation are merely a result the fact that their views were not reflected in the final outcome. This is a natural and understandable reaction, but let us not make more of it than that, and let us not forget that the previous Liberal government also sold off some of this land for residential development, and that has worked extremely well.

Having said all of that, and notwithstanding our dissent with the majority report, the Hon. Mr. Finnigan and I are happy to associate ourselves with the inquiry and the remainder of the report. I commend the motion to the council.

Motion carried.

CONSUMER CREDIT (SOUTH AUSTRALIA) (PAY DAY LENDING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 18 February 2009. Page 1313.)

The Hon. A. BRESSINGTON (17:37): I rise today to indicate my strong support for this bill, and I congratulate the Hon. Dennis Hood for bringing this very important issue back into the parliament's focus. I also wish to acknowledge the member for Flinders for the work she did in this area—in particular, her private member's bill of 2006, which also proposed a 48 per cent cap but which, unfortunately, was not passed.

Payday lenders charge mind-boggling effective interest rates for fast, no-questions-asked loans—anywhere from $300 at a whopping 1,900 per cent. They are not covered by the consumer credit code as the loans are for under 62 days. Customers are usually charged a flat fee rather than an interest rate, but over just two weeks a loan as small as $100 can work out to an equivalent interest rate of about 650 per cent.

I find it extremely disturbing that virtually anyone, including unemployed persons, can easily access these kinds of loans. Of particular concern to me is the apparent link between fringe credit and substance abuse. There are about 20 payday lenders operating in Adelaide, and just about all of them are located in lower socioeconomic areas in the north and south. Many are located within close proximity to gambling facilities, and social welfare groups have advised my office that they have heard many reports of people using these loans to gamble or buy drugs and alcohol.

In his second reading explanation the Hon. Dennis Hood said that Jeremy Brown, the director of Marion Life Community Services and state chair of Emergency Relief Services, indicated that he was aware of bikies and other groups involved in criminal activity that were in this industry. Other feedback from around town seems to collaborate this. A spokesperson for another social welfare group (who wishes to remain anonymous) told my office that a man who had taken out a loan, and who was physically assaulted by bikies over an unpaid debt, had visited them on a number of occasions seeking help.

Karen Grogan, the Executive Director of the South Australian Council of Social Services and a long-time critic of payday lenders, told my office that, although she was unaware of any link between bikies and payday lenders, she was concerned that there was a large concentration of payday lending around Hanson Road, Arndale, an area which she says is notorious for drugs and prostitution.

It is said that society should be judged by how it treats its most vulnerable, and as a social justice person I completely agree. These loans are targeted at low income earners who are unable to access mainstream credit, and payday lenders cold heartedly exploit their desperation and helplessness. As long as these predatory lending vultures are allowed to feast on struggling South Australians, we should hang our head in shame. As representatives of the people, it is our duty to act in their best interests.

We are in a global recession because of dangerous and highly risky and poorly regulated credit practices. Obviously, the issues this bill seeks to address are on a much smaller scale to the ones that have wreaked havoc on global financial markets, but the basic consequences for everyday people are the same: default expenses and bank charges are causing them be trapped in an inescapable cycle of poverty and debt. Has what has happened over the past few years taught us anything at all?

Before I progress any further, I put on the record that it is certainly not my intention to destroy this industry. There is a place for these types of loans, most notably in cases of emergency, such as when a person's car breaks down or when an essential household item, such as a refrigerator, needs replacing. However, they need to be properly regulated. I believe the limit proposed by the Hon. Dennis Hood of 48 per cent will prevent this industry from being financial viable.

In his second reading explanation, the Hon. Dennis Hood noted that Victoria, New South Wales and the ACT already cap the interest rate of their lenders at 48 per cent. Indeed, it was the aim of the member for Flinders to bring South Australia into line with these states. In October 2006, the then minister for consumer affairs announced that the government intended to reform the industry, and a discussion paper was released. This was largely in response to criticism in the

media, and, the minister was, of course, well aware of the member for Flinders' intention to better regulate the industry.

Welfare and community groups that had spoken out about these loans, such as the South Australian Council of Social Services and the Central Community Legal Service, seemed to have good reason to finally believe that something would be done. Well, here we are 2½ years down the track, and what has the government actually done? As the Hon. Dennis Hood said, the Rann government put out a press release on 21 October 2007 promising to crack down on payday lenders and impose a maximum interest rate but, to the best of my knowledge, to this day the government has not introduced any legislation.

I am bemused that the government has apparently backflipped on this very important policy. I could not believe my ears when the Hon. Dennis Hood said that, on 25 November 2007, the member for Mawson presented a petition to the House of Assembly, signed by 4,562 South Australians, urging the government to abandon its proposal to cap interest rates in order to ensure greater choice in the marketplace for financial solutions. It is hard to believe that so many South Australians did not want some kind of regulation of these payday lender cowboys, who are currently 'acting in a legal no mans land', as the Hon. Dennis Hood put it.

Remember that it is not being proposed to get rid of this industry but merely to cap effective interest rates, which is a very important distinction. In fact, I really have to wonder whether those signing the petition were sure about what they were signing. However, even harder to believe is that the member for Mawson apparently rolled his own cabinet minister's policy of capping interest rates to protect those in desperate financial circumstances from these predatory payday lenders.

I think it is particularly damning that a discussion paper on this subject, which was released in August 2003 by the Ministerial Council on Consumer Affairs, was a key factor in other states passing legislation that capped effective interest rates at 48 per cent. This government has had the opportunity to do the same and originally seemed to be doing this, but it has lacked the political will to follow it through.

On this note, I again want to place on the record my complete frustration with the government's spin over substance and media management strategy. We hear all the time that politics is apparently all about perceptions, that as long as the government is seen to be doing something that is all that counts when it comes to staying in power.

One thing I have noticed since being in this place is that, in the climate of politics, memory is often very short. Today's issue is swept under the carpet so that it is forgotten about tomorrow. Problems seem to be serious to this government only when they blow up in the media, and they are quickly forgotten once the spotlight shifts onto something else. But, what happens to the people who are suffering? Their plight is forgotten and ignored.

This issue is a particularly good example of that. Is it any wonder that so many people are apathetic when it comes to politics, and becoming increasingly more so. Karen Grogan told my office that a key problem is that many of these consumers get themselves into trouble because they simply are not aware of the extreme charges for these loans when they sign up for them. It is important to understand that many of these people do not have high levels of education, or the desperateness of their situation clouds their judgment.

I believe the words of Ms Margaret Davies from the Salvation Army Community Support Service, which the Hon. Dennis Hood cited in his second reading speech, to be extremely consistent with the feedback my office has received. She states:

> Anxieties around the urgency of the debt means that they do not fully research the product they are being offered.

I mentioned earlier that my office has been informed by social welfare groups that people are accessing these loans to gamble to buy drugs and alcohol. This government needs to understand that people who are addicts often do not make rational decisions when it comes to getting their next hit.

Returning to the substance of the bill, one notable difference between this bill and the one introduced by the member for Flinders is that it also limits other fees and charges so that this cap of 48 per cent cannot be exceeded as has occurred interstate. The Hon. Dennis Hood asserted that this would give South Australian families the highest level of protection within Australia. As for the effect of the rate proposed—48 per cent—I believe that it is reasonable. I do not believe it needs to be any higher. That rate is already much higher than what is paid on credit cards.

With unemployment forecast to rise as a result of the global financial crisis, it is reasonable to assume that more South Australians will be tempted to access these loans and get caught up in this net. We cannot afford to wait any longer.

I have said most of what I want to say on this bill but, finally, I also wish to note that the federal government has been looking into the new legal structure to cover all consumer credit, including personal loans, credit cards, payday lending and micro-loans. In researching this bill, I came across an article from July last year on *Adelaidenow*, entitled 'New rules to protect borrowers'. This article stated that, at the Council of Australian Governments meeting on 3 July, regulation responsibilities changed hands and that the practices of payday lenders, in particular, would come under intense scrutiny. However, at this time there are yet to be any significant developments. With that in mind, I say, 'Let's just get it done.' If, in future, this legislation is superseded by that of federal governments, that is fine, but we cannot afford to wait.

In summary, I once again congratulate the Hon. Dennis Hood on introducing this bill. Legislation to strengthen consumer protection in this area is long overdue, and I strongly encourage members to support his bill.

Debate adjourned on motion of Hon. J.M. Gazzola.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE: DESALINATION PLANTS

Adjourned debate on motion of Hon. R.P. Wortley:

That the interim report of the committee, on desalination plants, be noted.

(Continued from 4 March 2009. Page 1509.)

The Hon. M. PARNELL (17:49): I rise very briefly to support the noting of this interim report from the Environment, Resources and Development Committee. I want to specifically refer to three of the 13 recommendations, which I proposed to the committee, and I was very pleased that they were accepted. The first recommendation highlights the fact that desalination plants are clearly not regulated enough under our pollution laws. It would surprise many members to know that the list of licensable activities in schedule 1 of the Environment Protection Act does not include desalination plants. The only way that the EPA can licence such a plant is if it is triggered through some other mechanism. So, I think that is a very sensible recommendation.

With the popularity of desalination plants, both large and small, growing in South Australia it is high time that we had a specific head of power in the Environment Protection Act that required these plants to have an EPA licence. Of course, in relation to the Port Stanvac plant, which is the subject of our interim report, it would not necessarily have made that much difference given that it was a major project. Whilst the EPA would have been consulted, it would not have had the effective right of veto that I think it deserves for these types of projects—that is not to say that it would have chosen to exercise that right, but I think we need to put its role front and centre through a schedule 1 listing of desalination plants.

The final recommendations, Nos 12 and 13, I think, are most important. Recommendation No. 12 is that the government prepare a comprehensive water security strategy for Adelaide, incorporating all water supply and demand options. That recommendation was supported by the committee, because I believe the committee accepted that the desalination plant was not part of an holistic plan for water security for Adelaide, even though the government described it as one part of four measures. The existing Water Proofing Adelaide strategy is clearly out of date and does not provide the level of guidance that is needed.

I understand, from discussions we have had with the Commissioner for Water Security, that we will have another version of a water security plan probably in about June, and I will be very keen to see where desalination is positioned in the overall strategy. I remind members (as I think I mentioned during question time yesterday) that Maude Barlow, the water adviser to the President of the United Nations General Assembly, has said that the three Ds—desalination, dams and diversions—are not the way to provide water security in Adelaide, Africa or, in fact, anywhere else.

The government often talks about the proportion of water that is recycled in Adelaide and triumphantly announces what a high percentage it is and that, in fact, it is the highest in the country. However, it is convenient that it always combines reuse of wastewater from sewerage works with recycled stormwater. When we look at the stormwater component, we find that in fact we are doing very poorly: only some 2 per cent of our stormwater is recycled. If we improved that

rate considerably, as we must, projects the size of the Port Stanvac desalination plant are seen to be uneconomic white elephants when faced with the more economic and sustainable alternatives.

The final recommendation, No. 13, basically deals with the problem that the Western Australian government had in relation to its desalination plant, which was to spruik its carbon neutral credentials only to be caught out by its Auditor-General for making incorrect carbon claims. The reason why I think it was important for the ERD Committee to put it in its report is that the Premier is on the record many times as saying, 'We are going to power our desalination plant at Port Stanvac the same way the Western Australians do.' Yet the Western Australians were caught out for dodgy carbon accounting.

This recommendation invites the government to work within the energy guidelines of the South Australian Strategic Plan to make sure that all the energy for this energy-hungry desalination plant comes from renewable energy sources. I think they need to be new renewable energy sources, and we need to acquire the renewable energy certificates, because we do not want to find ourselves in the position in which the Western Australian government found itself in terms of dodgy carbon accounting, where in fact others had claimed the credit for the green energy and not the government. With those brief words, I recommend this report to members. It is an interim report. We will have another look perhaps at Port Stanvac, but we will certainly look in some detail at the Upper Spencer Gulf proposal, the desalination plant proposed for amongst the giant cuttlefish, and we will have a second report hopefully in the not too distant future.

Motion carried.

WATER RESTRICTIONS

Adjourned debate on motion of Hon. M.C. Parnell:

That this council—

1. Notes—

   (a) the increasing frustration of South Australians with the inequity of household water restrictions that limit outside use, whilst allowing unlimited use within the home;

   (b) the significant potential for abuse of water restriction rules and the reliance of householders dobbing in their neighbours as an enforcement strategy;

   (c) the increasing need to reduce water demand in the face of the declining health of the River Murray which supplies up to 90% of Adelaide's potable water during dry years; and

   (d) that those with access to the quaternary aquifer that underlies the Adelaide plains are able to extract unlimited amounts of water for domestic use; and.

2. Calls on the government to—

   (a) replace the water restriction regime with a household allocation based on occupancy and quarterly meter readings to allow citizens to choose where and how they use their water;

   (b) prescribe the quaternary aquifer beneath Adelaide and include domestic bore extraction within the household allocation, whilst continuing to exclude water sourced from rainwater tanks to encourage the uptake of domestic rainwater collection systems; and

   (c) change the water pricing structure by increasing the volumetric costs and reducing other charges to provide more incentive for water users to reduce their demand.

(Continued from 26 November 2008. Page 936.)

The Hon. J.A. DARLEY (17:56): I rise to support the motion of the Hon. Mark Parnell, although I would like to make a few comments regarding the particular terms he has raised in his motion. I am one of the very frustrated South Australians referred to in the text of the motion who just do not understand how the current regime of water restrictions encourages people to use less water. It is ridiculous that a person can be penalised for watering their garden, yet can use their washing machine or dishwasher or leave the tap running all day without penalty.

I have some concerns regarding the idea of replacing the water restriction regime with a household allocation based on occupancy. I refer to the absolute disaster created by the Thatcher regime in the UK in the early 1990s, when she tried to use a poll tax based on the occupancy of dwellings. There were mass riots and political commentators attribute Thatcher's resignation eight months later to the uproar over the tax. It would be difficult to keep track of who was living in which dwelling at any one time.

A better way of working out how much water households use was outlined by Professor Mike Young on radio earlier this year, using the quarterly billing cycle we are now subjected to in South Australia as a means of determining an accurate reading of household water usage. His idea (and I paraphrase) was, first, to work out the true household water consumption by taking the average domestic water consumption per day over the winter quarter, when presumably people are not watering their gardens, and multiplying this by 365 to give an average household daily water usage figure. Any water over this amount could be bought at a premium cost for watering gardens. If people did not use their full household allocation they could sell it to someone else who wanted to use more water. This seems to be a commonsense approach to water usage, one that encourages people to think about how much water they use.

On the issue of including bore extraction, any charges for water extraction should exclude the cost of installation and maintenance of infrastructure paid for by the owner. I am supportive also of the suggestion of changing the whole water pricing structure by increasing the volumetric cost and reducing other charges to provide more incentive for water users to reduce their demand, so long as it is based on the actual cost of supplying and maintaining infrastructure and the cost of supplying water. I hope this motion prompts a more commonsense approach to water policy that does not take into account the drought situation that we are experiencing now but, rather, the water situation well into the future.

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

OMBUDSMAN

The House of Assembly agreed to the Legislative Council's resolution.

[Sitting suspended from 18:00 to 19:45]

ELECTRICITY (FEED-IN RATES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 October 2008. Page 468.)

The Hon. J.M.A. LENSINK (19:47): I rise to indicate that the Liberal Party supports this bill. The feed-in scheme passed through the parliament in February last year, and I think the benefits of solar electricity installation on private homes and, indeed, on other places as well is fairly well understood by many people. However, my understanding is that this bill relates principally to households.

Solar electricity is a much more environmentally friendly alternative to other options on the grid. It avoids transmission losses, because the transfer is very local. It is peak friendly, unlike wind power, which unfortunately often tends to be generated in the winter months when our peaks are clearly in the summer months. Unfortunately, it is costly and, therefore, incentives need to be provided to assist people to take that extra step to install solar panels.

I am told that the premium of the feed-in scheme at 44¢ equates to a 15 to 20 year payback on installation. Feed-in tariffs are very important to provide not only an upfront incentive for householders but also to decrease the payback time, which is a critical factor in people deciding whether or not to install these solar panels.

The Clean Energy Council has provided me with some information from an Access Economics report, which the council commissioned into gross feed-in schemes as being a net. They state that, given the economics of solar PV, complementary measures such as a gross national feed-in tariff program will be necessary to bring forward investment in the technology. They also state that Spain, France, Italy and Korea have enjoyed considerable growth in 2007 because of similar schemes and, in particular, Germany is an outstanding example globally because of the incentives it has provided. Indeed, since the implementation of a gross feed-in scheme in 2000, Germany has experienced the highest rate of growth of solar PV in the world. During that same time frame, Australia's share of global PV has dropped considerably.

Unfortunately, after the bill was passed last year, many retailers stopped paying for solar electricity themselves and instead allowed ETSA to pay the 44¢ per kilowatt to householders for their solar electricity. On-selling the electricity generated by households back to other consumers is now being seen by retailers as a windfall, which I think is quite bizarre. If retailers are trying to claim that they are good corporate citizens, this is clearly a rebuttal of that.

AGL and Origin were paying 16¢ to 24¢ per kilowatt hour for electricity being fed into the grid prior to the bill. If they were to continue with that regime, they would receive up to 68¢ per kilowatt hour for their solar electricity. The information that we have received from the Clean Energy Council is that AGL does not provide any extra, Origin is paying 6 per cent per kilowatt on an incremental basis, and TRUenergy pays the highest level of 20¢.

In a letter to the editor, Chris Hart refers to the feed-in scheme. He says that he finds himself at odds explaining to his solar customers how they have to shop around to find a retailer who continues to pay the base rate for solar of 18¢, as a number of retailers did before the advent of the 44¢ feed-in tariff. He says:

> Surely such an anomaly should be cleared up to avoid all the unnecessary confusion that is now associated with the FiT.

I have also received personal emails from various constituents urging us to support this bill. These are clearly people who have installed the panels with a view to being able to access the feed-in tariff. One chap—I will not name him because I have not sought his permission—is from Salisbury Heights. He says:

> When the government introduced the rebate of 44¢ KWh AGL, my supplier, ceased to pay me anything for the power I fed back into the grid. I only received the 44¢ KWh courtesy of all the domestic electricity consumers. AGL and Origin are getting the free electricity fed into the grid by our solar generators and then on selling it to consumers at the full going rate. They are ripping us off and selling the free electricity to their customers and making large profits. I urge you to vote in favour of the... bill.

One couple at Berri who have emailed Mr Conlon have forwarded the email to us. It states:

> I understand that a bill is before parliament proposing that ordinary household people... be remunerated for power that they push back into the grid as a result of power generated by their solar panels that the householder at their own expense has erected...if you are concerned about global warming, seriously interested in conservation and wanting fair play...you will support a proposal that [forces] power companies to pay the daytime rate (because that is when solar power is manufactured and pushed back into the grid) to the solar power households that push power back into the grid.
>
> In June 2008 I put 32 solar panels on my roof at a personal cost of $14,000. At the time AGL were paying almost the daytime rate that they normally charged for power that I pushed back into the grid which was in addition to my daytime requirements. I understood that other AGL customers were being the same and I expected that to continue. AGL had not given any indication that this 'policy' was to change. But from July 1 AGL stopped paying the customer for power that they received from solar powered households and only passed on the government funded amount. They, by stealth, were now stealing my manufactured power that went back into the grid.

It is fairly obvious that there was an intention that this parliament made clear in that bill which was passed in February last year. Unfortunately, consumers who have installed panels at great expense to themselves are not now getting the benefit of that. I think it is quite bizarre that, since the passing of the bill, a number of these retailers have decided unilaterally that they will pocket the amount—I think the proponent of this bill said it was a windfall of some $350,000. So, I think this is a sensible way to clarify the intent of the parliament, and I urge all members to support the bill.

The Hon. I.K. HUNTER (19:55): I rise to advise that the government will not be supporting the Hon. Mr Parnell's Electricity (Feed-In Rates) Amendment Bill 2008 at this point in time. The government believes that the scheme should be reviewed before being overhauled in the manner described.

The Hon. Mr Parnell notes that, currently, some big retailers are essentially getting something for nothing which, of course, was not the intention of this legislation when it was introduced. Some of the large energy providers in South Australia are using the implementation of the feed-in tariff scheme as a pretext for failing to continue to pay their customers who are exporting electricity produced by their solar panels back into the grid.

One could understand the feelings of the Hon. Mr. Parnell and members of the community; if you like, they might be being ripped off slightly. However, we must remember that the act was only declared in July 2008, not even 12 months ago. Before any amendments are proposed, surely it would be prudent to undertake a thorough review of the scheme.

The Minister for Energy has promised to conduct a review of the feed-in scheme when the capacity of installed solar electricity reaches 10 megawatts. The tariff has been so successful that we expect to reach that target in the coming months. The government has already begun discussing that review and will be considering the issues that the Hon. Mr. Parnell has raised in his bill as part of that review.

However, we need to be realistic. We need to make sure that any obligations that are placed on retailers will not deter them from offering contracts to small customers, including those with solar energy that they might feed back into the grid. Competition for customers, who have solar electricity systems, is still in its infancy. It is true that only some of the companies offer packages to these customers. It is also true that the packages differ from retailer to retailer.

As the Hon. Mr. Parnell noted in his original speech on 29 October 2008, TRUenergy is one company that has continued to pay for the electricity that it receives in this manner. I for one encourage customers to shop around for the best package of price and services to meet their needs. It is this sort of competitive behaviour that will encourage retailers, one hopes, to adjust their offer to consumers.

When the tariff was introduced, we were not proposing to include an obligation on retailers to purchase energy; but, if that is what is going to make them competitive in the marketplace, it is up to individual companies to determine for themselves. As a retailer-based obligation would act as a barrier to entry into the retail energy market and thereby potentially impact on the competitiveness in that market, the government adopted a distributor-based model to avoid these issues.

In implementing the scheme, the sustainability and climate change division of the Department of the Premier and Cabinet has strongly encouraged electricity retailers to continue to pay a fair price for the excess electricity that they receive, in addition to passing on the solar feed-in payment to solar customers.

The government is watching the situation very closely, but we believe that, at this stage, it is too early to agree to any new amendments to the feed-in law prior to the government reviewing the legislation. Therefore, as I said, we will not be supporting the bill at this point in time.

The Hon. M. PARNELL (19:58): I will conclude the second reading. I would like at the outset to thank the Hon. Michelle Lensink for her contribution and the Liberal Party for its support for this bill. I would also like to thank the Hon. Ian Hunter, although, it will come as no surprise to him that I am disappointed with the content of his contribution.

I would also like to put on the record my thanks to the Clean Energy Council, and particularly Andrea Gaffney, who has helped with a great deal of the research, which effectively just told us what we already knew: that our electricity retailers are exploiting a loophole in the legislation, and they are ripping off the owners of solar panels by not paying for them for the electricity that they use. It is electricity which they effectively on sell to someone else, or at least they avoid having to go back into the market to buy other electricity, so they are making a windfall profit.

I will briefly comment on the Hon. Ian Hunter's reasons as to why the government cannot see fit to support these sensible amendments at this stage. The point he makes is that it has promised to review the legislation. It will be reviewing it when it reaches the 10 megawatt mark, which it expects to happen shortly, and then it will start the review.

He points out that the scheme has not been in operation for even a month. However, we knew after one month and we were certain after two months as to what the energy retailers were doing: they had shifted from a position of paying the owners of solar panels for the electricity that they produced, to a position of not paying for that electricity. Certainly, one company (TRUenergy) continued to pay about 20¢ a kilowatt hour but the two big providers (Origin and AGL) did not. As a result of the Greens campaign to put pressure on these retailers, we now have Origin paying 6¢ a kilowatt hour, which is better than nothing but it is certainly not the price that they are charging their customers to buy electricity from them. AGL is still not paying anything.

The honourable member talked about disincentives to people entering the marketplace in South Australia. I do not accept that for one minute. I think that we are proposing a very level playing field where everyone who wants to do business in this state is obliged to pay the people who own solar panels an amount for their electricity which is more or less equivalent to the amount that we pay them to buy their electricity.

I do not see that this is any form of market distortion at all. However, I think the heart of what the Hon. Ian Hunter says is that the government knows that we are right and the government knows that this bill deserves support. That is why he said the government is strongly encouraging retailers to do the right thing and to pay for the electricity they are collecting from these rooftop solar panels.

The government's strong encouragement has not worked because we still find these companies ripping off consumers and not paying them. We come back to the fact that it was good enough for these companies out of their own pocket to be paying the small electricity producers before 1 July yet, magically, they stopped after 1 July because the legislation was not clear enough as to what they had to do. Their compliance people, no doubt, got onto them and said, 'There's a loophole. The parliament simply requires that we pass on the 44¢; it doesn't require us to pay for the electricity separately and, therefore, we won't.'

I think it is very disappointing that the government now wants to vote against this bill and come back in a very short period of time, with probably the identical bill, by which time it will be their initiative—and that is fine; we do not want to be precious—but every day that goes by before this loophole is plugged is a day that people are being ripped off by not being paid for the electricity from their solar panels.

I think it is appropriate for us to pass this bill now. It has been professionally and conservatively drafted. It does no more than I have said it does. We know that it is workable and it simply forces companies to do the right thing. I urge all members, including those who have not yet spoken, to support this bill.

Bill read a second time and taken through its remaining stages.

SUPPLY BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (20:06): I move:

That this bill be now read a second time.

This year the government will introduce the 2009-10 budget on 4 June 2009. A supply bill will be necessary for the first three months of the 2009-10 financial year until the budget has passed through the parliamentary stages and the Appropriation Bill 2009 receives assent.

An additional allowance has been included in this bill to cover the impact of the revised funding arrangements with the commonwealth. Under these revised arrangements, funding that was previously provided to agencies will now be paid into the Consolidated Account and then appropriated to agencies as required.

In the absence of special arrangements in the form of the supply acts, there would be no parliamentary authority for expenditure between the commencement of the new financial year and the date on which assent is given to the main appropriation bill. The amount being sought under this bill is $2,750 million. I commend the Supply Bill to the council.

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

STATUTES AMENDMENT AND REPEAL (FAIR TRADING) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1898.)

The Hon. R.D. LAWSON (20:08): I will be supporting the second reading of this bill and, subject to an important amendment, I will be supporting the passage of this amended bill. There is significant background to some of the issues in this bill and, in particular, those relating to recreational services. I propose to limit my comments on the bill to those of its provisions that deal with recreational services.

In 2002, as a result of the so-called insurance crisis at that time, and following the recommendations of the Ipp report, legislation in the commonwealth parliament and all state parliaments was changed. Prior to that time, the supplier of recreational services owed a duty of care to all users of those services and, if the supplier of those services was in any way negligent or in breach of contract, the supplier was liable in damages to the person injured. However, it was then claimed that recreational service providers would not be able to obtain insurance cover unless that law was modified, and it was modified. For example, in South Australia we passed the Recreational Services (Limitation of Liability) Act of 2002. Section 7 of that act, which is currently in operation, provides that, if a consumer of recreational services—and I will not go into the definition—suffers personal injury, the provider of those services is 'only liable in damages if the

consumer establishes that a failure to comply with a registered code caused or contributed to the injury'.

The act provided for the establishment of so-called registered codes, which were to set out the standards which the suppliers of recreational services were required to meet; standards such as training provisions for staff members, the safety of equipment compliance with occupational health and safety regulations and such other matters as might be appropriate to the particular activity. This scheme was fine in principle, but in practice it was extremely difficult and, despite the attempts of a number, only one company or organisation we are told could obtain a registered code, notwithstanding that some had tried hard to do so.

That may have been difficult because of the restrictions or difficulties imposed by the minister who had to improve the code (I am not laying any blame there). There may have been a difficulty because it was an absolutely new and a novel provision. I know, for example, that a business called Swimming with the Dolphins that operates in Baird Bay on the West Coast sought to get a code and I think may have received a code as a private business, but the sports organisations and groups, apart from one, were unable to obtain a code. So, the scheme did not work.

South Australia entered into that scheme full of hope and expectation that it would work, that it struck a fair balance between the rights of consumers to have appropriate safeguards and the rights of business operators and sports associations to conduct their activities effectively. This scheme adopted in South Australia was not adopted in any other state or in the commonwealth parliament.

It is proposed in this bill that the Recreational Services (Limitation of Liability) Act of 2002 be repealed, and I certainly support its repeal. It has not been an effective measure and it has not achieved any of its objectives. The question then becomes: what has to be put in its place? Should we return to the position that prevailed prior to the introduction of any of these laws? Should it simply be left to contract between the parties, so that recreational service providers can put whatever terms they like in a contract and that contract will be enforced against the user? That would be one solution, but one of the difficulties about that solution is that it does not address the rights or interests of minors who are unable to enter into binding contracts, except in circumstances which do not really apply here. Or, should we adopt some other scheme?

What the government has chosen to do with this bill is to adopt another scheme. It is basically the scheme that has been adopted, first, in the commonwealth but more recently in the Victorian parliament. There is another model that is reflected in the New South Wales Civil Liability Act, but the government has not chosen to pursue that particular route.

However, this bill does contain a significant difference from the Victorian legislation, and that particular difference has given rise to a great deal of agitation and concern in the community, concern which I must say is justified. The amendment of which I spoke in my opening remarks is to remove a particular provision of this bill which makes it different to that which applies in Victoria.

I mention the Victorian legislation so that members have some understanding of where I am coming from in relation to this. The Victorian legislation is, in fact, contained within the provisions of the Fair Trading Act of that state. Section 32N of that act is headed 'Limitation of liability in relation to the supply of recreational services.'

The Victorian legislation contains a provision which implies in every contract for the supply of services, including recreational services, a term whereby the services will be fit for the purpose and that due care will be used in the provision of those services. That is a general provision that applies to all services, whether it is the services provided by a plumber, an electrician or a builder. Although in Victoria there are some particular provisions relating to services provided by qualified architects or engineers, it is unnecessary to examine those.

Generally speaking, if you supply services you are required to meet the warranty, and the act provides that, if there is any term in the contract by which the supplier seeks to exclude, modify or restrict liability, that provision is void. However, a special provision applies in relation to contracts for the supply of recreational services.

There are circumstances in which a supplier, in Victoria, can exclude liability, but they are limited. One of the important limitations is that a supplier cannot exempt himself or herself from a reckless conduct. The act provides, in section 32(3)(b):

> The act or omission was done or admitted to be done with reckless disregard or without consciousness for the consequences of the act or omission.

So, in Victoria there is a limitation on the capacity of the supply of a recreational service to reduce or exclude liability.

The Victorian provision applies only to contracts. It, therefore, applies only to dealings between suppliers and adults or persons of full legal capacity. The act is quite silent on the question of whether a child can have their liability excluded or modified by one of these terms. The fact is that a child cannot, at common law, because (a) a child cannot contract and (b) apart from what are termed 'necessaries' someone cannot enter into a contract on their behalf. So, the position in Victoria in relation to children is that the common law has not been modified. A child who is injured as a result of a negligent act of a recreational service provider is entitled to recover damages, if damages are suffered.

In the commonwealth parliament, a similar model was adopted in relation to this question. Section 74 of the Trade Practices Act provides that all services provided by a corporation in trade or commerce carry with them an implied warranty that the services will be rendered with due care. Section 68 of the Trade Practices Act provides that the warranty cannot be excluded. However, section 68B was inserted in 2002 to allow a special exemption in relation to the supply of recreational services. It provides that the service provider can exclude, restrict or modify liability so long as the exclusion, restriction or modification is limited to liability for death or personal injury and that it related to the supply of recreational services.

The act is entirely silent on the question of the rights of infants, with the common law right—namely, the right not to have one's capacity to recover compensation for injuries—removed. In New South Wales, a somewhat different model was adopted. In that state, the provisions of the Civil Liability Act were changed; some, erroneously in my view, suggest that that the model adopted in that state would provide a better scheme than that now proposed by the government.

In New South Wales, the Civil Liability Act was amended in 2002. Section 5M provides that there is no duty of care for recreational activities if there is a risk warning and that a service provider does not even owe a duty of care to another person to take any care in respect of the person if the risk is the subject of a risk warning. It also provides that if a person is a minor, and is unable to contract but is accompanied by an adult, parent or guardian, the risk warning can be given to the parent.

The significance of this is not that it is waiver—it is not at all a waiver—it is just the fact that a risk warning can be presented and that no duty of care arises in such a case. Section 5L of that act also provides that there is 'no liability for harm suffered from obvious risks of dangerous recreational activities'. So, on the one hand, no duty of care arises but, when one goes to section 5N, one finds a special provision about waiver, as follows:

> Despite any other written or unwritten law, a term of a contract for the supply of recreation services may exclude, restrict or modify any liability to which this Division applies.

That is a very wide-ranging contractual provision about waivers and, of course, it does not apply to persons who do not have contractual capacity. It does not apply to the contract that a minor might enter into when it engages recreational services and engages in them. Whilst the position in New South Wales is that there is no duty of care at all in relation to activities where there is a risk warning, the cases suggest that the courts do not give the recreational services providers the break that that might suggest.

For example, in the most recent case decided and reported on this subject, an adult who was a user of a gymnasium engaging in an exercise known as lunging had previously signed a waiver saying that, despite anything, the customer would not sue for negligence. The court held that, in effect, the waiver was not worth the paper it was written on.

I think a number of New South Wales cases illustrate the resistance of the courts to waivers and their desire to interpret them or to interpret the legislation in a way that alters the pre-existing common law to the minimum possible extent. I should mention a couple of those cases.

For example, in the case of Smith against Perese, decided in 2005, the claimant was a person on a spearfishing expedition and was badly injured when the boat on which they were travelling drove over him. His leg had to be amputated. There was a disclaimer of liability from the provider. The judge allowed the claim and held that spearfishing was not a dangerous recreational

activity and, furthermore, that the risk of being run over by a boat when spearfishing was not an obvious risk. In other words, the provider was liable.

In the case of Dederer against the Roads and Traffic Authority, also decided in 2005, a 14 year old boy dived off a bridge despite a 'No diving' sign and suffered paraplegia. He had seen others diving off the bridge. The judge held that the risk of being injured by hitting the bottom was not an obvious risk. Once again, the plaintiff succeeded. In the case of Edwards against Consolidated Broken Hill, also decided in 2005, it was held by the court that cycling was not a dangerous recreational activity and that the Civil Liabilities Act did not apply.

I mention those cases not because they are directly relevant to the question of waivers, but because I think they illustrate the approach of the court to these questions. They are difficult questions. Is cycling a dangerous recreational activity? Most would regard cycling on main roads as something that is dangerous, especially when conducted by young persons and children, but it depends very much on the circumstances.

I have received—as, I am sure, have other members—a large amount of correspondence in relation to this bill and, in particular, to the fact that it contains an explicit provision that recreational service providers are not permitted to obtain a waiver from or on behalf of a child. This provision is found within section 74I. Proposed section 74H of the South Australian Fair Trading Act (which is now to be modelled, more or less, on the Victorian and commonwealth models) will provide that the warranty of due care and skill will be implied into a contract for recreational services, whatever the contract says. In other words, the law will insert those warranties into the contract.

Section 74I makes a special exemption in relation to recreational services. It says that an adult can exclude, restrict or modify the liability of the supplier for personal injury. It goes on, however, to say that such an exclusion cannot extend to injuries suffered as a result of the recklessness of the provider. It also provides explicitly that a waiver of rights by or on behalf of an infant is ineffective.

Section 74I(3) will stipulate that this provision does not exclude, restrict or modify the liability of a supplier for significant personal injury suffered by the consumer or any third party consumer if it is established that reckless conduct of the supplier caused the injury. Section 74I(2)(b) provides that the consumer and any third party consumer are each of full age and legal capacity.

The question then arises as to whether or not the law of South Australia ought allow parents to give a waiver in respect of the negligent performance of services. I do believe in parental responsibility and I do believe that the law ought to respect the significant rights and duties of parents. I accept that as a general proposition parents should exercise proper parental responsibility when allowing their children to engage in any activity, especially dangerous activities. This is not a one-size-fits-all situation. There are vastly differing circumstances. What might be suitable for a 16 year old may be highly unsuitable for a child aged eight. What might be perfectly suitable for a 12 year old of average intelligence and physical capacity may be entirely unsuitable for a child with disabilities. So parents have to make judgments about whether activities are appropriate, and that is an important responsibility.

The question here is not whether parents should allow their children to undergo activities—and I must say that, obviously, my wife and I have allowed our children to engage in adventure activities, to go mountain climbing, to go on bike hikes and other activities where the possibility of injury is ever present, and any responsible parent does the same thing. The question here is whether I, as a responsible parent, should say on behalf of my child, 'If that child is injured, perhaps made a paraplegic or a quadriplegic as a result of the negligence of another, I have the right to take away from that child the right that it enjoys—with every other citizen—to be compensated if it is injured by the negligence of another.'

I do not believe that parents have that right. That, in my view, is a bridge too far—in fact, far too far. A lot of legislation that we address requires us to strike a balance between competing interests. Now, what are the competing interests here in relation to this question of waivers? On the one hand there is the interest of business and organisations to conduct their activities and to obtain insurance to enable them to do that, and insurance at a competitive rate. They want to conduct their activities, which may be socially beneficial. If it is a business for profit, they actually want to make a living. So, that is one side of the ledger that we are balancing.

On the other side of this ledger is the legal right, which the common law grants to every citizen, for redress from a person who is negligent and whose negligence results in their suffering injuries. The injuries might be minor, it might be a bruise or a broken arm, and there might be little monetary compensation. In fact, under our more stringent laws these days there may be no compensation at all because we now have both limits and caps in relation to what is recoverable. They might be minor on the one hand, but they can also be permanent, serious and quite devastating.

The idea that someone, any parent, would actually sign away their child's rights, something which is the parents to give but which is the child's right, is certainly obnoxious to the common law and it is obnoxious to every principle of law of which I am aware. If it is a question of balancing between the right of a business to conduct an adventure activity and the right of an injured child to recover compensation, I believe the balance must be very strongly in favour of the child ahead of the business.

There are misconceptions about these things. Very often children who are seriously injured do not make a claim because their symptoms do not settle for many years. They have in our law until they are three years past their 18th birthday to make a claim. Some child injured at the age of five by the loss of a leg does not have to make a claim for, maybe, 18 or 19 years, by which time their circumstances might well have changed. Imagine the disappointment of that child when consulting a solicitor about the fact that he is unable to get any employment, when the solicitor says, 'Well, I'm sorry son, but your parents foolishly signed away for all time your right to make any claim.' I do not believe that anyone would accept that.

Sometimes people say, 'Well, a parent is actually able to sign a consent to medical treatment, and if they are able to sign a consent to medical treatment which might involve a life threatening operation, surely they must be able to consent to waive the child's right to compensation for damage.' However, these are two entirely different things. On the one hand, there is a consent—a consent to perform some medical service that is clearly in the child's best interests. That is one thing—a consent to do something that is in the child's best interests—but how can it be in the child's best interests to sign not only a consent but also a waiver?

The consent might say, 'I consent to Dr X operating on my child. Here is the consent,' but it is another thing then to add the clause stating, 'And, Dr X, I hold you harmless for any negligence that you might commit. If you leave a swab in the child after operating on it and it suffers septicaemia, I have signed away its rights. If you forget to apply the anaesthetic appropriately and it suffers permanent brain damage, I waived its rights ever to claim any compensation.' The difference between a waiver and consent is that a consent is only valid to do something that is in the child's best interests, but a waiver is not actually to do something that is in the child's best interests. It can be against the child's interests, and invariably it would be against the child's interests to sign away its rights to be injured as a result of the negligence of another person. Bear in mind that we are only talking about negligent people here. No liability arises at all if the service provider is not negligent.

One of the important issues is the question of insurance. I believe—and everyone here believes, I am sure—that children ought to be able to engage in activity, some of which will be dangerous. We would all agree that service providers should not be negligent and certainly not reckless as to the safety of the children. There are cases, and plenty of them, in the books. Let us take horseriding. We have all received submissions from people associated with the horseriding industry—a great activity. However, there are cases of situations where a child has been given an unsuitable mount, a horse that bolted the previous three days running and threw other people to the ground, yet was given to a novice rider.

The Hon. A. Bressington interjecting:

The Hon. R.D. LAWSON: There are a number of cases in the books and countless others would have been settled. It is not so common that you expect it to arise every week, but those cases do arise, and we have to face up to the fact that they will arise. It is entirely understandable that they do arise. The proprietor of the business might be the most careful person in the world, but they might be away or there might be some new staff member. All sorts of difficulties can arise. Fortunately, on most occasions, serious injuries do not inure, but sometimes they do.

A number of the objections that have been raised in relation to the bill, I believe, are misconceived. I might mention a couple of them. The Australian Lawyers Alliance (previously called the Plaintiff Lawyers Association) has put in a helpful submission, and I thank them for it. The

Australian Lawyers Alliance does not believe that the common law of negligence ought ever have been changed. That is their strong position because they believe that the laws have been changed to restrict plaintiffs' rights—and, as their name suggests, their very purpose is to support plaintiffs. As the recreational services act, the Civil Liability Act, this bill, and every other piece of legislation that has been passed since 2002 has the effect of restricting, to some extent, a plaintiff's rights—this particular bill does because, as I said, it allows adults to waive their rights, as it ought—the Australian Lawyers Alliance does not approve it. It says:

> That the legislation at both a state level and a federal level is extremely disadvantageous to those who are injured in the course of recreational pursuits.

The alliance is not interested in giving protection to recreational service providers; quite the contrary. Its brief is to ensure that injured persons recover more compensation than they do under our current law. It says:

> That the law of negligence would adequately cover the situation of recreational services providers as it did prior to the Ipp reforms.

The alliance also says:

> It is completely unfair that the commonwealth act excludes essentially all claims for personal injuries arising from recreational services which obviously negates the need for insurance in relation to them.

I come at this problem from a different perspective. I believe we do have to balance the rights of plaintiffs and defendants, and this legislation does create a balance.

I turn now to the Insurance Council of Australia. It has been said that the legislation, which we have modelled on the Victorian legislation, will lead to insurance difficulties. Well, it has not in Victoria to any demonstrable extent, nor has it in other states. The insurance council, representing insurers, says, in an email sent by Rowena Gilbertson of the Insurance Council of Australia in Sydney:

> The insurance council and our members support the government's proposal to repeal the act and insert provisions in the Fair Trading Act which are similar to the provisions in other civil liability legislation across Australia. However, section 74I(2) of the bill specifically precludes a parent or guardian from providing a waiver on behalf of a child, thereby creating unlimited liability to recreational service providers for injuries suffered by children. Section 74I(2) is not reflected in civil liability legislation in other...jurisdictions.
>
> Our members report that the likely effect of section 74I(2)...if enacted, is to see a significant increase in the price of public liability insurance for providers of recreational services to children and the potential for some insurers to withdraw from this market. This appears to be at odds with our understanding of the bill, which is to promote the availability of insurance for recreational service providers in South Australia.

If, as the insurance council says on behalf of its members, this particular clause will create an insurance difficulty in South Australia, I believe that the clause ought to be removed. As they point out, it is not reflected in the civil liability legislation of any other Australian jurisdiction, and I cannot see why it should be included here, especially if the effect of its inclusion will mean that recreational service providers will not be able to obtain insurance, or not obtain insurance at the same rates as those enjoyed by those elsewhere. I believe that the removal of that particular clause from the legislation will substantially address the concerns of those who are worried about the effect of this legislation.

My attention was drawn—and I imagine it was also drawn to others by Ms Sarita Stratton, who is engaged in the horse industry—to a number of issues, one of which was the suggestion that the inclusion of the word 'reckless' in the exclusion would put insurance at risk. She quotes a provision from the policy of Affinity Insurance Brokers/Liberty International Underwriters as follows:

> This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with...any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by...this Policy.

Some have suggested (I cannot believe seriously) that this exclusion, which is a standard exclusion not only in public liability insurance policies but also in many other forms of risk insurance, covers reckless conduct. It does not cover reckless conduct or negligent conduct because it simply does not say that. It talks about fraudulent, dishonest, malicious, wilful criminal acts, which are quite different from reckless or negligent acts.

If an exclusion of this kind which, when read strictly, is to apply to reckless acts, the insurance company would be required to include a specific exclusion to that effect because recklessness, which is a more serious degree of negligence, is not of the same species of wrong

as fraud, dishonesty and criminal behaviour. I believe that particular contention was something of a red herring, and I am happy to bury it.

Another claim that has been made in relation to this legislation is that waivers are already included in the terms and conditions of entry for many activities. Ms Stratton provided me with the terms and conditions of entry for the 2009 Skoda Breakaway Series. It contains a purported release. As one would expect, these types of entries have always included releases and, in relation to adults, they may have some effect. In fact, they rarely do, but they may have some effect and they are included, just as when you see a sign on a car park which says 'Enter at own risk', practically every car park says that.

What does that mean? Is that a risk warning? Is that a waiver? No. The effect of it would depend upon the circumstances, and the car park owner who puts up a sign which says 'Enter at own risk'—which does not apply, for example, to an infant or a child—commits no crime or civil wrong by simply posting that notice any more than does the conductor of an event like the Breakaway Series commit any wrong or engage in any misleading or improper conduct by simply inserting a standard form of consent, waiver and indemnity. I believe that the suggestions made that, for some reason, some illegality is being conducted by the organiser of these events are wrong.

It is true, however, that, if this bill were passed in unamended form without the removal of section 74I(2), there could be a suggestion that the organisers were directly flouting the law which specifically provides that a waiver may not be given on behalf of an infant. It is for that reason that I believe those provisions ought be removed. I urge the government to accept the suggestion made by the Insurance Council that it be removed, and we certainly will have an amendment to that effect.

Yet another objection raised to this bill is the fact that the discussion paper issued by the minister's department in relation to this matter stated that there would be no exclusion for conduct which amounted to gross negligence. What we now find in the bill as drafted is that the expression 'gross negligence' is not used, but the exclusion applies to reckless conduct.

The suggestion that the word 'reckless' is somehow or other unknown to the law in relation to claims is something I reject. First, recklessness is a matter of a dictionary definition. There have been a number of court decisions which establish a meaning for 'reckless' in particular circumstances. The inclusion of a term such as 'reckless' does not invite litigation any more than the inclusion of the term 'gross negligence' would invite litigation. For example, in 1954, Justice Devlin (or Lord Devlin, as he later became) said in a case, Reed and Company versus London and Rochester Trading:

> The term 'recklessly', I think, does not really give rise to much difficulty. It means something more than mere negligence or inadvertence. I think it means deliberately running an unjustifiable risk. There is not anything necessarily criminal, or even morally culpable, about running an unjustifiable risk; it depends in relation to what risk is run; it may be a big matter or it may be a small matter.

Yet another judge, a famous English judge, Justice Megaw, in a case decided in 1961, Shawinigan versus Vokins, said:

> In my view, 'recklessly' means grossly careless. Recklessness is gross carelessness—the doing of something which, in fact, involves a risk, whether the doer realises it or not; and the risk being such having regard to all the circumstances, that the taking of the risk would be described as 'reckless'.

He later said:

> Each case has to be reviewed on its own particular facts...my understanding of the ordinary meaning of the word is high degree of carelessness...Would a reasonable man, knowing all the facts and circumstances which the doer of the act knew or ought to have known, describe the act as 'reckless' in the ordinary meaning of that word in ordinary speech?

So, I do not believe the inclusion in the bill of the expression 'reckless', notwithstanding the fact that it is not the word that was used in the discussion paper, is of any great significance. I think it is appropriate that there be no possibility of exclusion for reckless conduct. Recklessness might be the same as gross negligence; I do not really enter into that debate. I do not believe that the expression 'gross negligence' would be appropriate to include in legislation. It has overtones of moral culpability, which is inappropriate in modern statute.

I am somewhat concerned, however, and I ask the minister to comment on the expression 'significant injury'. Section 74I(3) provides that a warranty cannot exclude liability where a person suffers significant injury through reckless conduct. There is no definition of 'significant injury', and I

agree with the comments made by Mr John Daenke (solicitor) in a helpful paper referred to earlier by my colleague the Hon. Michelle Lensink. Mr Daenke correctly notes that the term is vague and uncertain, and there would have to be a court case to determine its meaning. I think we could usefully avoid those consequences by having a definition. The one suggested by Mr Daenke relates to provisions of the Civil Liability Act, in particular section 52 of that act, which actually prescribes various monetary standards which could usefully be adopted.

I commend Mr Daenke on his paper. It is a sensible and reasoned commentary on the legislation. Nothing he says, however, directly contradicts anything that I have suggested in relation to minors. Indeed, he is fairly silent on that subject, merely mentioning the fact that at common law it is not possible to waive the rights of the child.

Mr Daenke raises the question about whether or not these amendments would make any significant difference to the availability or affordability of insurance. It appears that he was not given the same information that we have been given by the Insurance Council of Australia in relation to that matter. Some might say it would be appropriate to go to insurance companies to see if they will give us assurances about the availability and cost of insurance. I believe that that would be a futile exercise. They would say that their capacity to make insurance available depends upon all sorts of factors and that the cost at which that insurance is available also depends upon factors like claims history and the like. I doubt that they will go beyond what the Insurance Council itself has said, namely, that they are perfectly happy with the system that prevails elsewhere. They suggest that we should adopt that, and that the amendment to which I have referred should be passed.

I ask the minister to indicate why the government has not chosen to include a definition of 'significant injury'. I note the suggestion by some that the bill should perhaps go to a committee, but I doubt that that is necessary. We do not ordinarily send bills to a committee. I note that some of the information provided by Miss Stratton and others suggests that, in order to defeat the bill, we ought to delay it. I do not believe that we should either defeat or delay it. I doubt that an inquiry by a select committee would reach any different conclusion to the matters that have been raised in this debate.

I should also add that I have had discussions with persons in significant positions within the scouting movement. I understand entirely the concerns that the Scouts have. I myself am a former Boy Scout, and I do believe that the Scouts and other organisations like the Scouts provide an invaluable service to our community; they are providing it at the moment. However, I think the real concern of the Scouts movement is that, in the future, insurance might not be available for certain activities. It has not yet happened in other jurisdictions, and I cannot see any reason why it necessarily should, so I do not believe that the their concerns should be addressed by insisting that the rights of infants be sacrificed.

If my children were to go to the Scouts I would be very happy to sign consent forms, but I would not, and I do not believe any responsible parent would, sign a blank cheque and say, 'If you are negligent and if you cause injury to my child, on behalf of that child, I will waive the child's right to receive compensation for all time.' As I say: a bridge too far.

The Hon. A. BRESSINGTON (21:07): I rise to indicate that I also support the second reading of this bill and, depending on amendments, I would also support the passage of the bill. The Statutes Amendment and Repeal (Fair Trading) Bill, introduced by the Minister for Business and Consumer Affairs in November last year, proposes several changes to the regulation of business and consumer affairs in the state. Notably, there are increased penalties for breaching the Fair Trading Act, expanded powers of investigation for authorised officers, and increased powers for the commissioner to temporarily suspend some traders' licences.

Just on the latter, it is often a point of frustration that the dodgy dealers or builders exposed on programs such as *A Current Affair* and *Today Tonight* are still able to continue trading long after the show has gone to air. It is hoped that the new provision permitting the commissioner to suspend the licence of certain traders prior to the completion of disciplinary proceedings, which often occurs long after the traders' offending, will lead to proactive consumer protection.

On my understanding, many of the remaining provisions are simply codification of the present common law of contractual relations between supplier and consumer. I know this is an issue that sparks much emotion amongst members in this place, not to mention the legal fraternity, and these are issues that we will be working through during the committee stage.

I will focus on what I believe to be the main point of contention among ordinary South Australians, involving the repeal of the Recreational Services (Limitation of Liability) Act 2002 and

its proposed replacement, section 74I. Prior to looking at the proposed solution, I would like to first turn to the problem as we find it.

This problem has its roots in the so-called public liability crisis at the start of this decade. As occurred in the '70s and '80s, insurance providers began increasing the premiums or withdrawing public liability insurance coverage nationally, particularly for those activities involving inherent risk, such as contact sport and horse riding. Examples of severe spikes in premiums and service providers lamenting their inability to procure public liability insurance frequently appeared in the media, both nationally and here in South Australia.

The cause of the crisis has been the subject of much speculation, with two distinct schools of thought emerging. One argues that a mix of global and domestic economic conditions, including the collapse of HIH Insurance and poor investment practices by insurance providers, led them to attempt to recoup losses and avert risk.

This school of thought proceeds on the premise that insurance providers are primarily orientated towards investment and, as such, any market turbulence will affect profit margins. Put forward by insurance providers and supported by some in the legal profession, the other dominant argument attributed to the crisis is to the significant yet steady increase in the total cost of claims in the years prior which had not been reflected until then in premiums paid.

This argument was given credence by the Australian Competition and Consumer Commission which, in the first of many monitoring reports, detailed a 75 per cent increase in the average cost of claims settled between 1997 and 2002, with the average duration of time taken for claims to settle also increasing 34 per cent in roughly the same period. While in hindsight it is hard to ignore the influence of the economic conditions, especially the collapse of HIH Insurance, it seems that insurance providers impressed upon state and federal governments the need for reform of liability of recreational service providers and personal injury more broadly.

From research undertaken I believe the first significant response came from the ministerial meeting on public liability insurance, which commissioned the Hon. Justice David Ipp (formerly of the Western Australian Supreme Court) and others to thoroughly investigate tort liability and possible reforms. The subsequent report entitled 'Review of law of negligence: final report', known as the Ipp report and also referred to by the Hon. Rob Lawson, proposed several reforms to tort law generally, many of which have now been incorporated into the Civil Liability Act.

This government, like its interstate counterparts, also moved to limit the liability of recreational service providers and, hence, increase their ability to procure public liability insurance and reduce the premiums they pay by the introduction of the Recreational Services (Limitation of Liability) Act 2002. For limitation of liability under this act a recreational service provider is required to draft and submit a safety code which, provided it is accepted by the Office of Consumer and Business Affairs, the minister and parliament, would then limit their liability to injuries arising out of conduct outside of that permitted by that code. Notably, this act limited the legitimacy of signed waivers to those issued by recreational service providers who have a registered safety code.

From my understanding, the concept underlying this act was a point of great pride for the government in 2002. However, in operation the reality is that, six years on, only one safety code has been registered, submitted by the Miniature Horse Society at a cost of $35,000, which I have had confirmed. The Miniature Horse Society is the only provider of recreational activities in South Australia protected by the 2002 act. I would also like to know—and the minister can answer this in the committee stage—what recourse the Miniature Horse Society has now to regain the $35,000 expended on the presumption that the 2002 act was what they were stuck with and that they had best make the most of it by submitting a code. As one can imagine, they are hardly an affluent organisation and the commitment of this money was a significant drain on its frugal savings. Now, six years on, it was all for nothing. Will the government reimburse the Miniature Horse Society for funds wasted through no fault of its own?

As was highlighted by the Hon. Iain Evans when introducing the private member's Civil Liability (Recreational Services) Amendment Bill 2008, the fact that only one code has been registered is not solely the fault of service providers. Five other providers submitted codes to the Office of Business and Consumer Affairs only to have them sat on for years. It cost the each of the aforementioned organisations that submitted codes (so Iain Evans informed the house in the other place) about $7,700. I have been informed that, in total, nine codes have been submitted to the Office of Business and Consumer Affairs.

I am reliably informed that a majority of the codes had been drafted with the assistance of government grants. One such example is a code submitted for trail riding by Horse SA. After extending approximately $16,000, generously provided by drafting the code, Horse SA, like the others, was constantly told that the code submitted was not adequate due to a requirement that it be narrowly defined.

As one would presume, this became increasingly frustrating, because it required many unpaid hours by volunteers, and eventually Horse SA, like the others, came to the conclusion that the act was unworkable and gave up. Its code has been sat on since—although the Office of Consumer and Business Affairs can be forgiven, because it seems that the code was lost for a portion of this time.

As a matter of interest, I have also been informed that the Office of Consumer and Business Affairs has expressed the view that the sole code registered is not satisfactory and that, if this scheme were to continue, it would have to be reviewed. So, in effect, there would be no registered safety codes at all. Also excusing service providers is the fact that many report legal advice against initiating the costly process of having a code drafted and submitted, for it offers little to no protection. Like the bill before us, it does not apply to minors, with whom most recreational service providers engage at some level.

In addition, the requirement that the safety code be narrowly defined meant that service providers would be walking on an eggshell to remain within its scope. Importantly, several service providers have reported to me that they received legal advice to move interstate, because only there would they have the necessary protection under the law.

One of the great offences inflicted so far on recreational service providers, other than the failed law, is the suggestion that it is service providers who should bear responsibility for the failure of the 2002 act. In a recent feature article that appeared in *The Courier* newspaper, the minister said that the new bill 'addresses a situation that recreational service providers told us was cumbersome'—no apportionment of responsibility and no recognition that it is their current act that is the complete failure (as the Australian Lawyers Alliance called it), and not service providers failing to comply.

While I am sure the government is more than willing to allow the perception that it took several years for the flawed nature of this bill to become apparent, that is simply not the case. The report of the Economic and Finance Committee which reviewed the operation of the 2002 act, which was furnished in this and the other place in 2005, highlighted that 'certain categories of insurance have now been either prohibitively priced or are just not being offered'. The report also states that 'the social impacts remain serious and sometimes insurmountable'. The report further revealed that premiums payable in South Australia and nationally have been increasing at a rate far greater than the consumer price index and yet no action was taken to repeal the failed act.

One service provider and vocal lobbyist, Ms Sarita Stratton, has stated that in early 2003 she was invited by the then commissioner for consumer affairs to his office to inform her that the new law would not be achieving its goal of placing downward pressure on premiums. So, in early 2003, this government knew that its attempt to improve the access to public liability insurance for recreational service providers had not hit the mark. Now, nearly six years later, we are finally doing something about it. And let us not forget the legislative exemption that this government granted itself so that participants of the Masters Games could sign waivers that were legally binding, despite no safety code being developed.

The Recreational Services (Limitation of Liability) (Miscellaneous) Amendment Bill 2005 provided a period of two years where waivers were again effective. This was done under the guise of recognising that uptake of the protection provided by the 2002 act was non-existent and the two year period was to provide an incentive to develop a code in this time. However, the cynic would clearly see that the true impetus was the refusal of the insurer of the Masters Games to provide coverage unless safety codes were submitted. This was obviously too difficult a task, so the government instead opted to legislate out of the act.

Is there a greater testament to the failure of the law than the government itself, with all its resources, finding it too difficult to comply? But more importantly, what a slap in the face to those providers who had been struggling to remain viable, paying exorbitant public liability premiums, or who had been forced to bear the weighty risk of operating without insurance because they were unable to procure it—or, sadly, those who had folded as a result of either of those circumstances—

or because of this government's slowness to act on its knowledge that the Recreational Services (Limitation of Liability) Act was flawed.

On a slight tangent, if the government sincerely desired the success of the 2002 act, it could very well have extended its vast resources to the development of safety codes for all the sports conducted during the Masters Games, which subsequently could have been applied by recreational service providers.

For small organisations to whom the act was intended to apply, this would have alleviated the significant burden of developing those safety codes. Further demonstrating the failure of this act, and more broadly the failure of the Office of Consumer and Business Affairs to educate and regulate, is the fact that many organisations have—and continue to this day—waivers signed by participants and, yes, this includes children, despite such waivers being unenforceable.

Examples of such organisations believing waivers to be effective are too numerous to mention. However, an example can be found in the waivers that participants in the 2009 Skoda Breakaway Series—the amateur sub event of the Tour Down Under—were required to sign. As I am aware that members have been provided with a copy of the terms and conditions for this event, I will avoid reading clause 36(g) in its entirety. However, in part it reads:

> I release all persons or corporations associated directly or indirectly with the conduct of the event from all claims, demands and proceedings arising out of my participation, and I hereby indemnify them against all liability, including liability for their negligence and the negligence of others, for all injury, loss or damage, arising out of or connected with my participation in this event.

This event was partly organised by the South Australian Tourism Commission—a government body. So, even if the Tourism Commission did not draft the terms and conditions, it is definitely possible, if not presumable, that it would have at least sighted the waiver that participants would be required to sign.

Another example that I know has been circulated to members is a Motorcycling SA waiver that purports to limit the organiser and venue providers for any injury arising from any action or omission. As members would have noted, the waiver circulated is specifically for parents to sign on behalf of their children. Clearly the aversion felt in this place to parents signing waivers is not shared by the community at large, and I will address this later.

It must be acknowledged that not all service providers are having waivers signed naively. I am aware that members have received an open letter of sorts from a local businesswoman who, under compulsion by her insurance provider, was required to have quite an explicit waiver, purportedly absolving her and, as a result, the insurer from any liability arising from injury or death, signed by all participants. As the majority of her consumers were children, this woman was directed by the insurer to have the waiver signed by the children's parents.

This woman knew from her colleagues in the industry that the waivers were not worth the paper they were printed on but, if having them signed was the difference between coverage for public liability and not, she was more than willing to comply. However, when one organisation that had made a booking made a decision that their participants would not sign the waiver, this woman was forced to appeal to her insurer to allow her to operate without the waiver. Despite the waiver having no legal effect, and that cancelling the booking would severely affect the woman's business, the insurer was adamant that the waivers must be signed and that, if she was to proceed with the booking, she would be doing so without public liability insurance. Needless to say the booking did not proceed.

How the Office for Business and Consumer Affairs, the Commissioner for Consumer Affairs and the minister can allow such a situation to develop and go unchecked is beyond me. But, alas, for seven long years little intervention occurred and instead now we find ourselves in 2009 debating a bill to finally repeal the old act and replace it with yet another novel scheme. The news that the government would finally be addressing this issue was understandably met with a sigh of relief amongst those who were actually aware of the Recreational Services (Limitation of Liability) Act 2002. These people have been paying inflated premiums or have been unable to procure public liability insurance since the crisis and have desperately awaited reform. Reform is what they were promised by this bill.

Just prior to exploring the proposed solution, I make clear my understanding of the intent of this bill. As was the intention in 2002, this bill ultimately seeks to provide greater access to and reduce the premiums payable by recreational service providers. As the Hon. Kevin Foley stated when introducing the 2002 legislation, this is achieved by giving some certainty to the provider as

to what the law requires of him or her and to the consumer as to just what safety measures he or she can expect. He continued:

> This should assist insurers in actually assessing risks and setting premiums at a realistic level, reflecting actual risks rather than the less predictable risk of being found negligent.

It is the last quote that strikes the fundamental intention of the 2002 act, that is:

> ...to limit the liability of recreational providers which, in turn, limits the actual risk of insurance providers, resulting in a reduction in premiums payable.

While the bill before us takes a very different approach to the 2002 act, the objective of this bill is again to place downward pressure on insurance premiums and to encourage the provision of public liability insurance.

The introduction of this bill is a clear recognition of the need for an additional measure for recreational service providers and due to the inability to extract figures from the insurance industry—a common complaint, I might add—we must rely on the government's assessment of this need.

Of course, there is a competing objective that cannot be disregarded, that being the interest of plaintiffs, for any limitation on the liability of service providers will, in turn, limit the ability of those who suffer injury to access monetary compensation. In our haste to ensure the viability of recreational service providers, we must ensure that we do not overtly impact on the right of plaintiffs to recoup damages for injury sustained by the fault of a recreational service provider, and so the balance between the two competing interests becomes the objective.

This bill attempts to achieve that objective by introducing a new test, that of reckless conduct, by which a court is to determine whether a recreational service provider is to be held liable at law and, hence, monetarily responsible for an injury sustained during the provision of that recreational service.

It is envisaged that this test is to be of a slightly higher threshold than that currently applied by the common law test of negligence, and this will decrease the number of viable claims against service providers and subsequently reduce premiums paid. The new test's ultimate effectiveness will, of course, be determined by the judiciary and we are asked to simply trust that the bill will work.

However, we can, like the minister, attempt to predict the outcome, although this is made difficult, as much of the language of the new test of reckless conduct, like the safety codes under the present act, is a first in Australia. Just on that, I find it remarkable that the government is willing yet again to allow recreational service providers to play the lab rats in a legislative experiment. Clearly, lessons are not learnt easily.

From my understanding, the reckless conduct test can adequately be summarised as: a recreational service provider will be held liable to damages if they cause a non-trivial injury, if the service provider was aware that there was a non-trivial risk that the injury would occur and proceeded to operate without adequate justification.

The minister, when introducing this bill, provided an example of what is to be considered reckless conduct, that being a horse riding instructor who proceeds with a lesson despite knowing that a snake was around earlier and fails to cut all grass. This is an affront to lovers of horses and, I would say, to rationality in general.

Many horse properties, if large enough, grow their own feed and, regardless, long grass on horse properties or riding trails is a common feature. As for snakes, these are a part of life in this country and while too often killed, their presence is, in the main, accepted. To suggest that a provider of riding lessons or trail rides should cease to operate because a snake was sighted, for fear that it may later re-emerge from long grass, is unrealistic.

To provide this as an example to guide the courts on what is reckless conduct makes one question whether the objective mentioned shall be achieved. I am no lawyer but I have been informed by several that you would struggle, on these basic facts, to hold the recreational service provider liable for negligence, yet the minister, through her second reading explanation, basically instructed the courts to hold them liable for reckless conduct.

Concerns have also been expressed about the minister's example of a significant injury. A significant injury is defined in the bill as not nominal, trivial or minor and was translated by the minister into the practical example of a broken arm. The significant injury element is supposedly

intended to reduce the number of viable claims by avoiding those where the injury was nothing more than scratches or bruises.

I know that we have become an increasingly litigious society, but I did not think we had reached the point of a heavy burden of claims arising from mere scratches and bruises. I ask the minister to provide details of how many claims will now be denied by this requirement.

While I am willing to be proved in wrong, I find it highly unlikely that anyone, or at least a significant number of people, has alleged negligence where only scratches and bruises were sustained. However, I can see the significant injury requirement having an effect for mental and nervous shock if the common law, and now the Civil Liability Act 1936, by section 53, did not require the mental affliction sustained to be a recognised psychiatric injury in a claim for pure mental harm.

The liability of defendants is further restricted by section 33 of the Civil Liability Act, which limits a defendant's liability to where a reasonable person would have foreseen that a person of normal fortitude would, in the circumstances, suffer a psychiatric illness. This section also compels a court, when hearing a claim for mental harm, to have regard to whether the mental harm suffered was the result of a sudden shock, whether the plaintiff witnessed another person being killed, injured or put in peril, the relationship between the plaintiff and this person, and whether there was a pre-existing relationship between the defendant and the plaintiff.

However, it seems that section 33 may not apply on a technicality in the reckless conduct test. As section 33 resides in part 6, negligence, I have been advised that it will be open to a plaintiff's lawyer to argue that the normal fortitude element and the other requirements mentioned do not apply. While it is possible that section 33 of the Civil Liability Act 1936 will still be drawn on by the courts when assessing a claim of mental harm, there is, however, nothing in the bill to compel it, and we cannot be certain that this will be extensively litigated by any plaintiff's lawyer whose claim would otherwise fail. To give guidance to the courts, I ask the minister to confirm prior to the committee stage whether it is intended that the elements in section 33 apply.

There is also concern that the inclusion of 'contributes to' in the new statutory definition of 'the cause' has the potential to undermine the fundamental element of the causation as applied in claims for negligence. Causation requires a plaintiff to demonstrate not only that the defendant's negligence was a necessary cause of the injury but also that it is appropriate to hold the defendant liable for injury sustained. The concern is that the proposed wording 'contributes to' is hardly the necessary condition required by causation. This concern is further compounded by the wording of section 34 of the Civil Liability Act in which the present principle of causation is codified, stipulating that it is to apply to an assessment of negligence only.

In the light of this, I will move amendments that, firstly, remove the definition of cause from the bill and direct the courts to apply the principle of causation when determining whether the reckless conduct of the service provider caused significant injury. I acknowledge that the minister has indicated her support for these amendments, and I also thank her and her staff for being available to discuss the issues I have raised tonight and to help us find a resolution that will work for service providers, for people who are injured and also for insurance companies.

The issue of the application of section 33 would lose all potency if the test of negligence is to be applied prior to the test of reckless conduct. I have received contrary advice on the order of argument, and I seek clarification from the minister prior to the committee stage on when exactly during proceedings the courts will hear argument on the reckless conduct test. Will they first turn their attention to the waiver signed to determine its legal efficacy and, if it is found to be valid, then proceed to apply reckless conduct in absence of negligence, or will the courts first hear argument on negligence and, providing this is successfully navigated, turn their attention to the waiver signed?

If it is the latter, the concern about the application of section 33 would be negated as the plaintiff, who would be denied compensation under negligence, will accordingly be denied regardless of the waiver signed. This would also mean that the present certainty that has evolved with the test of negligence will not be discarded—something that will do much to settle the nerves of service providers about this bill.

Being able to clearly determine plaintiffs who succeeded at negligence but who failed due to not being able to demonstrate reckless conduct will also enable this parliament to gauge the efficacy of the bill. However, this becomes somewhat perverted when one realises that it will also

make it very clear in the mind of an injured plaintiff why it is that they were denied compensation for their injury.

Prior to moving on, I have one remaining question for the minister. It has been conveyed to me that the hopes of this clause rest upon the words 'without adequate justification', that is, where a service provider proceeds despite a significant risk without adequate justification. I received advice to the effect that this phrase will largely come to resemble the present test of remoteness as applied when determining negligence, which is now largely codified in section 32(2) of the Civil Liabilities Act 1936. I ask for the record: what difference is the minister expecting between the 'without adequate justification' and the 'test of remoteness'?

Next, I turn to an issue that I know most members present have had brought to their attention. Many stakeholders have raised the possibility of the new reckless conduct provision conflicting with the present terms and conditions of public liability insurance. The concern is that insurance providers exclude, that is, refuse to cover, conduct amounting to reckless conduct.

I have been able to obtain a copy of one insurer's public liability policy, and for the benefit of members, I quote the relevant section:

> 7. This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:
>
> 7.25. Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by Definition 2.5 of this Policy.

As a reckless conduct test requires a plaintiff to allege that the recreational service provider was aware of a significant risk that proceeding with the conduct could result in significant injury and did so without adequate justification, this could be considered a wilful, if not malicious, act of the service provider, meaning that the insurer would be under no obligation to pay. In fact, as the policy quoted uses the words 'any alleged or actual', it is possible that the insurer would be under no obligation to even defend the claim.

I know this issue was raised with the Commissioner for Consumer Affairs in early February where a promise was made to investigate it further, and it has since been raised with the minister on several occasions. I just want to know from the minister what the advice from insurance providers and others has been and whether such a conflict does exist. I am inclined to believe that it does because, when I raised this issue in the briefing provided, the response I received was essentially, 'Well, insurers will just have to change their policy.' That was in the very first briefing, I might add.

Has the minister received a commitment from the Insurance Council of Australia and others that this conflict between the bill and present policies will not be exploited, or are we just trusting that insurance providers will change their policies as was suggested to me in the briefing provided? I would also like to raise the issue of one-off events. Many charitable and community-minded citizens have expressed severe disappointment that one-off events will not be covered by these reforms.

The minister in her second reading explanation made it very clear that one-off events are not intended to be covered, yet the bill itself is silent on this issue. An example of such an event would be the cattle run that was held several years ago or a one-off community fundraiser, and I would like the minister to provide the rationale for why these are not to be covered.

The last issue that must be addressed is that of waivers and minors. I initially filed an amendment to charge parents with the responsibility of observing the risks involved in the activity, determining whether the activity is fitting for their child and signing the waiver permitted under section 74I accordingly. However, as I mentioned earlier, the objective of this bill must be the balance between the interests of the plaintiffs and the interests of recreational service providers and, following extensive consultation, I have withdrawn that amendment.

I have nearly finished, and I am sorry I have taken so long. I would like to thank the minister for her cooperation with this, and I do believe that we have been able to reach some sort of agreement on some amendments. I inform members that I did file another amendment this afternoon that I would like them to consider, and I will discuss it with the minister. That amendment would provide that, where recreational service providers are required by their insurer to have waivers signed, the Commissioner for Consumer Affairs will post on a website an explanation of the legality of that waiver so that these recreational service providers can download it and print it so that, when they are forced to have a waiver signed by insurers, they can also provide their

consumers with an explanation that the waiver actually does not negate their legal rights to claim compensation under the Civil Liability Act if serious injury occurs through negligence or reckless conduct.

What has concerned me in regard to waivers is that this is the big lie that the insurance companies want to perpetrate, and it is a bluff. By posting this on the website of the Office of Consumer and Business Affairs people will be better informed, if they are required to sign a waiver, that they still do have some legal rights. I think that is very important. It will also, as I said, dispel the big bluff of the insurance companies. The hope is that people will sign waivers and then truly believe they have no right to make any claim for injuries under the Civil Liability Act. That is the bluff.

If members of the general public are sufficiently well educated to believe that they still have those rights, even though service providers are forced to have waivers signed, this will go a long way to assist service providers and also people who may have been injured during an activity. Also, we are not compromising the rights of children. I thank members for their patience. I look forward to the committee stage of this debate, and I believe that there is still more to learn.

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) (21:42): By way of concluding remarks, I thank all honourable members for their very valuable contributions, a number of which were quite extensively researched and provided very good quality information. I acknowledge the contributions of the Hons. Mr Darley, Mr Parnell, Mr Brokenshire, Ms Lensink, Mr Lawson and Ms Bressington.

Recreational and sporting activities are obviously of great benefit to the community and the state, and this is an important and complex area of law. The guiding principles throughout the development of these reforms has been a desire to promote sporting and recreational activities in a way that protects the interests of both consumers and service providers. There will always be argument about whether the government has the balance right. Some members of the community will argue that the pendulum has swung too far in favour of service providers at the expense of consumers. Others will argue that the bill does not go far enough to modify the liability of service providers and that further changes, including changes to allow the rights of minors to waive, should be made. Overall, however, the government believes that the bill does strike the right balance.

As for specific concerns that have been raised by members, I will start with the concerns about the impact of the bill on insurance premiums. Some service providers have expressed concern that the new law will increase the cost of insurance. We are moving from a law that does not allow recreational providers to modify, exclude or restrict their liability for personal injury (except by a safety code) to a law that does allow recreational service providers to modify their liability in certain circumstances. The bill will therefore reduce, not increase, the liability of service providers and their insurers. It does not make sense to suggest that a bill that will result in reducing liability will lead to an increase in premiums. However, these are matters which will be determined in the market economy.

Concerns have also been raised about the impact of the new law on minors. Some service providers have urged the government to allow minors (or parents, on their behalf) to waive their rights to have services supplied with due care and skill.

Children are some of our most valuable and often most vulnerable members of our community. Unlike adults, children are not in a position to question the action of service providers when things seem out of place, nor can children properly assess the risk of continuing to participate in an activity. Children cannot always be supervised by parents or an adult 100 per cent of the time when they are participating in the wide range of recreational activities that are available to them, and that is why the common law does not allow children or parents on their behalf to waive their common law right to sue for negligence.

It is also why the government has chosen not to allow children to waive their statutory right to have a service supplied with due care and skill. This applies to the government, the organisers of the Tour Down Under and every other recreational provider in this state. Attempts under this bill to waive either a child's common law or statutory right to have service supplied with due care and skill will not be effective. Some members have questioned whether we should simply rely on the common law of negligence and not make changes to the Fair Trading Act. The liability of recreation providers is, and will continue to be, governed by the common law.

There are, however, a range of other laws of general application that impose obligations on service providers. Fair trading laws are one example. Under the Consumer Transactions Act and now the Fair Trading Act, service providers have a statutory obligation to supply services with due care and skill. That requirement cannot be modified or excluded. If the government were simply to repeal the Recreational Services (Limitation of Liability) Act and do nothing more, recreational providers would not be able to modify or exclude the statutory warranty that requires services to be rendered with due care and skill.

Some may argue that this is an acceptable outcome. It would place recreational providers in the same boat as any other service provider in the state. In response to the concerns of recreational providers, however, the government has chosen to allow those providers to waive their statutory obligations to provide services with due care and skill in certain circumstances. That is the balance we have pitched, and we believe that is a fair and reasonable balance in terms of addressing the range of interests that are affected. A number of other questions were asked of me, some of them quite specific, others more general. I am happy to take those on notice and to provide answers during committee. I therefore commend this bill to members.

Bill read a second time.

MENTAL HEALTH BILL

Adjourned debate on second reading.

(Continued from 26 March 2009. Page 1781.)

The Hon. A. BRESSINGTON (21:50): I warn members in advance this is quite lengthy—I have culled it—and if I seek leave to conclude, you all know why. I rise to speak to this most important bill, the Mental Health Bill 2008. This bill states that this is for an act to make provision for the treatment, care and rehabilitation of persons with serious mental illness with the goal of bringing about their recovery as far as is possible; to confer powers to make orders for community treatment, or detention and treatment, of such persons where required; to provide protections of the freedom and legal rights of mentally ill persons; to repeal the Mental Health Act 1993; and other purposes.

I have researched the aims and objectives of this bill and compared it with science, and I must say I have some serious reservations about what is being proposed; what has been amended from the 1993 bill; and also the medical premises that have been used to put into legislation how mentally ill individuals could be treated under this law. The most disturbing part for me is that we will now include children under the age of 16 in the Mental Health Act. Time and again, we are told in this place that we must look to the evidence, yet when evidence is produced and is contrary to the intention of the state, the evidence seems to be ignored. The evidence shows that early intervention produces the best results. The evidence shows that the least invasive form of treatment will often produce better outcomes for those with a mental illness. The evidence shows that a community visitors' program is also effective and is best delivered by the non-government sector.

I notice that these matters are not dealt with in the bill and I am concerned that there is little differentiation between a person who is at serious risk, as opposed to a person who is perhaps a little eccentric and who can be placed on a community order at the request of a family member, with no compelling directive to ensure that adequate legal representation is provided to the person whose mental capability is being questioned. It is fair to say that a society can be judged by how it treats its most vulnerable—and that is the second time I have mentioned that tonight.

After we debate this bill, we should be able to feel as though the best interest of the individuals has been served by the deliberations of this parliament. If shortfalls are identified, then this bill should be the tool with which we are able to address these shortfalls so that fewer people fall through the cracks. We should be taking steps to ensure that those who are at serious risk to themselves and others receive appropriate intervention, support and treatment, and if detention is necessary for the safety and wellbeing of those individuals, that a safe and secure environment is provided for them. Those who do not require detention should still be able to rely on the services being funded appropriately and adequately so as to allow them to live within the community, and they should be encouraged to be as independent as possible, but also have access to intervention and support when things go pear shaped for them.

We cannot promise that now. In fact, community confidence in government run operations such as this is at an all time low. One only has to take a trip to Semaphore and sit outside with a

cuppa to see just how many times they are approached for money and cigarettes—and the locals know that the people doing this are part of the mental health system and that they are floundering. These are people who have been put out into the community to live independently and who, for the most part, have been left to their own devices. I cannot help but wonder, if the non-government sector were financed sufficiently and the many services that already exist were able to extend their services for practical support, counselling and the biosocial aspect of mental health needs, how much different our current landscape would look.

At this point I would like to include the recommendations of the Office of the Public Advocate in the record. The paper was released on 1 May 2006 in relation to developing a community visitors' program, the same as programs implemented in other states and specifically in relation to the program in Victoria that has seen many successes in ensuring that Victoria's mentally ill are receiving an appropriate level of care and that their rights are respected.

In November 1995, Judy Clisby, a student of the School of Social Work and Policy, University of South Australia, as part of the parliamentary internship scheme under the supervision of the Hon. Robert Lawson MLC produced a research report 'Community Visitors in South Australia: A strategy for ensuring high standards of care and protecting the human rights of people with mental illness'. The research strongly recommended as follows:

- Recommendation 1: that a community visitors program be set up in South Australia to monitor standards of care and protection of rights in public and private sector institutions offering psychiatric in-patient services. Features of the community visitors program must incorporate functions of monitoring, investigation of complaints, advocacy and support, independence from funding bodies and service providers, a statutory basis, annual reports to both houses of parliament, regular meetings with key officials in health and with the Minister for Health; adequate resources with secure funding that does not detract from existing funding for services, and appropriate criteria for the recruitment, training and support of volunteers;

- Recommendation 2: that a working party be established to consult extensively with consumers, consumer groups and service providers to develop a model suited to unique South Australian conditions, to ensure that consumer focus is the primary consideration governing the program, to investigate the target population services of the program, linkages between the community visitors program, community advocacy agencies, commonwealth funded schemes for nursing homes and hostels, and the supported residential facility scheme; and

- Recommendation 3: that the working party report in sufficient time for its recommendations to be incorporated into the review of the Mental Health Act 1993, the Guardianship and Administration Act 1993, and the Supported Residential Facilities Act 1992.

In this same report the location of the service was canvassed between the Office of the Public Advocate, Health Advice and Complaints, and the Ombudsman, and concern was raised about the lack of advocacy provisions for monitoring standards of care and protection of rights for government, non-government and private services, except under the provisions of the Office of the Public Advocate.

The Clisby report supported the Office of the Public Advocate as the most appropriate location for a community visitors scheme in South Australia, and the Public Advocate at the time saw it as augmenting the functions of the office under section 21 of the Guardianship and Administration Act 1993 and providing an external system of monitoring standards of care and right to protection in both the public and private sectors. The most compelling factor in choice of location was the independence of the auspicing agency. A significant proportion of respondents recommended the Attorney-General's Department with its dual advantage of independence and access to legal advice. Those are the main points of the study; I will not read out the rest because it is late.

The area of mental health is one that is of wide concern not only to those who need to be provided with effective services but also to those who treat the mentally ill, those who care for them and those in the community who, for whatever reason, are impacted by decisions made in the delivery of those services. It concerns medical practitioners, people who care for those with mental illness issues (both professional and family carers), as well as members of the wider community who are concerned themselves, because of misperceptions surrounding those whose mental health is not all we would hope it would be.

The interesting thing about mental illness is that there is no true measure to detect it. It depends greatly on the interpretation of behaviours as being abnormal, and this is where I see a problem with diagnosis, because there is more to mental illness than the demonstration of eccentric or even bizarre behaviours. There is no medical examination, there is no genetic test to show a predisposition or risk of incurring a mental illness. Some very well-known psychiatrists have jumped ship on the practices of modern psychiatry because they say that psychiatrists are nothing more than the distributors of legal drugs to the unsuspecting.

Thomas Szasz is Emeritus Professor of Psychiatry at the State University of New York Health Science Centre, and is internationally acclaimed as one of the most important writers in present-day psychiatry. In 2002 he stated:

> There is no blood or other biological test to ascertain the presence or absence of a mental illness, as there is for most bodily diseases. If such a test were developed, then the condition would cease to be a mental illness and would be classified, instead, as a symptom of a bodily disease.

The aim of that statement by Professor Szasz was to point out that there are a number of contributing factors to why an individual may experience a psychotic break, or even why a person may suddenly appear to be less psychologically functional. The causes can range from allergies to certain preservatives found in our food to brain tumours and hormone imbalances. In fact, recent science has revealed that that the very medications we use to treat low-level mental disorders such as depression and sleep disorders can themselves contribute to the illness and hurl a person into a full-blown suicidal ideational episode.

An article from *Medical News Today* reveals that a test is now available to determine whether or not a person's genetic make-up would be a contraindication to the use of a certain antidepressant medication. NeuroMark (a Boulder, Colorado company) has announced the immediate availability of a genetic test to identify people at risk of suicidal ideation (thoughts of committing suicide) when prescribed an antidepressant drug. The test, called the Mark-C test, is expected to help restore public confidence in antidepressant medication and help to reduce a recently announced spike in suicide rates amongst US youth. Kim Bechthold, NeuroMark's CEO, said:

> This is an exciting example of the power of genetics to address a critical need and make important drugs safer for patients worldwide.

In September 2007, the Centre for Disease Control (CDC) announced that, in 2004, there was an 8 per cent rise in suicide rates among 10 to 19 year olds—the year the FDA issued public health warnings linking antidepressant drugs with suicidal ideation and behaviour. The largest percentage increase in rates from 2003 to 2004 was among females aged 10 to 14 at 75.9 per cent, followed by females aged 15 to 19 at 32.3 per cent, and males aged 15 to 19 years at 9 per cent, according to the CDC. In a statement the company said:

> We feel a sense of responsibility, given the current climate, to provide the test to physicians immediately so that they may identify patients who would benefit from closer monitoring or even a change in therapy. It is our hope that this early test will encourage more people to consider an antidepressant drug treatment who would benefit from it.

It is interesting that, during the trial of that test, some 37 per cent of people showed an adverse reaction to this drug, which is one of the most widely prescribed antidepressants in the western world. About 37 per cent of people who were tested for the genetic contraindication for this drug developed symptoms such as suicidal ideation and attempts at suicide and, when they were taken off the drug, those particular side-effects abated, and it was put down to the fact that it causes brain inflammation and it also has serious physical side-effects for them.

We have become a nation looking for quick fixes, and those quick fixes are usually in the form of medications. Knowing that this test now exists I think should be a compelling argument for this country—particularly, this state—to enter into research into this test. It would make a physician's job far easier when they are prescribing these drugs for their patients to know that they are genetically compatible with them and that the risk of their patients 'going off' and trying to commit suicide would be greatly reduced, and that means that the people who are compatible with antidepressants will get the help they need and, for the people who are not, we can look for other sorts of treatment for them, whether that be another kind of antidepressant or another kind of therapy altogether.

It could be argued that a person should be administered medication only when all other therapies have failed and the person's condition either does not improve or deteriorates to the point where they are at risk of serious harm to themselves and others. While I am no expert on mental

health, I have seen some situations that raise concerns as to how mental health treatment in the first instance has become almost entirely medication based and how a person's life experiences and emotional state are pondered little, if at all, by some in the field of psychiatry. Indeed, for state governments, the prescribing of medications could be seen as a cost shifting exercise, because those medications are almost always made available on the federally funded pharmaceutical benefits scheme.

It is a sad state of affairs indeed when people who are prescribed heavy duty medications become addicted to them and are then left to their own devices. I have seen this happen many times, and I have seen the human tragedy of a system that resorts to medication as a first, second and last port of call. It is true that getting to the core emotions of an individual is a time-consuming and labour-intensive exercise and, again, the issue of a duty of care to those in the mental health system does come into question.

We have seen a shift away from institutionalised care and a move towards encouraging independent living within the community. As the best care scenario, we would all choose the latter where and when possible. Unfortunately, with the noble ideal of independent living, there is an expected increase in responsibility for government to ensure that those who are placed in the community have an acceptable quality of life, which would also eliminate the risk of exploitation, violence and discrimination against them.

This would mean that those who have been netted into the mental health system and live independently still require a level of monitoring and support to assist them to be the very best they can be. Sadly, I see no moves in the bill before us to identify that there are a variety of persons who need a variety of support mechanisms. This, of course, applies not only to those who will be detained but also to those who roam the streets and are unable to make decisions in their own best interests, for whatever reason.

Our body is a complex piece of work, and it is regulated by our psychological wellbeing and our emotional status at any given moment. Of course, all of this is determined by the chemical stability of our central nervous system. The brain and its functions are the least understood, and the connection between our brain and our emotional wellbeing is influenced by many factors. Stress and trauma reduce our resilience to cope, and this in itself creates a situation where our body will produce a number of hormones in an effort to counter the emotional, physical and psychological effects of that stress and trauma.

Of course, early intervention and support at the onset of stress and trauma would be desirable, and such interventions should include counselling and various kinds of practical assistance and mechanisms that would see a problem solved or at least a solution realised, but that does not happen in most cases. In fact, the age at which our children are being introduced to quick fixes is as disturbing as the number of adults on medications. Antidepressants and anti-anxiety medications are prescribed like lollies, and for our young people this can create a lifetime of problems. I seek leave to have inserted in *Hansard* a one-page statistical table without my reading it.

Leave granted.

Attachment A

Table 1. Number of patients who had at least one prescription filled for a PBS/RPBS listed antidepressant drug in the 2007-08 year, by age and State/Territory.

Patient Age	State[2]								
	NSW	VIC	OLD	SA	WA	TAS	NT	ACT	Australia
0 to 1 years	12	16	12	*	8	*		*	48
2 years	22	13	14	6	8	6	*	*	69
3 years	38	11	18	7	10	*	*	*	84
4 years	33	18	37	5	9	11	*	*	113
5 years	73	46	69	19	18	14	*	*	239
6 years	102	68	117	25	21	14	*	*	347
7 to 10 years	901	512	1,007	192	188	122	21	40	2,983

Patient Age	State[2]								
	NSW	VIC	OLD	SA	WA	TAS	NT	ACT	Australia
11 to 15 years	3,130	1,882	2,818	563	775	324	53	142	9,687
16 to 18 years	5,206	4,100	4,047	1,255	1,582	620	46	280	17,136
19 years and over	447,927	360,853	308,515	128,707	143,778	43,892	5,891	19,178	1,458,741
Age unknown[1]	161	95	86	39	50	9	*	8	448
TOTALS	457,605	367,614	316,740	130,818	146,447	45,012	6,011	19,648	1,489,895

[1] 'Age unknown' is where the Departments administrative systems do not contain enough information to accurately determine a patient's age.

[2] Patient State/Territory is the first State/Territory of the patient in the year. If a patient moves within a year then the data reflects their initial State/Territory.

* indicates that a table cell was 3 or less and has been suppressed for confidentiality reasons. Suppressed cell values have not been included in totals.

Table 2 contains information by generic drug name, As patients may have received more than one of the indicated drugs within the year, the individual drug totals will not add to the total number of patients.

Table 2. Number of patients who had at least one prescription filled for a PBS/RPBS listed antidepressant drug in the 2007-08 year, by generic drug name, age and State/Territory.

Drug name	Patient age	State								
		NSW	VIC	OLD	SA	WA	TAS	NT	ACT	Australia
AMITRIPTYLINE HYDROCHLORIDE	0 to 1 years	*	*	*	*	*	*	*	*	*
	2 years	*	*	*	*	*	5	*	*	5
	3 years	5	*	9	*	*	*	*	*	14
	4 years	5	*	18	*	*	10	*	*	33
	5 years	10	6	28	11	5	9	*	*	69
	6 years	19	*	48	10	*	13	*	*	90
	7 to 10 years	138	47	321	62	19	65	*	6	658
	11 to 15 years	294	126	503	123	74	64	*	10	1,194
	16 to 18 years	248	185	222	109	107	49	*	7	927
	19 years +	59,999	40,145	38,775	20,874	19,688	7,360	854	1,698	189,393
	Age unknown	26	13	11	5	6	1			62
AMITRIPTYLINE HYDROCHLORIDE Total		60,744	40,522	39,935	21,194	19,899	7,576	854	1,721	192,445
CITALOPRAM HYDROBROMIDE	0 to 1 years	*	*	*	*	*	*	*	*	*
	2 years	*	*	*	*	*	*	*	*	*
	3 years	*	*	*	*	*	*	*	*	*
	4 years	*	*	*	*	*	*	*	*	*
	5 years	5	*	*	*	*	*	*	*	5

The Hon. A. BRESSINGTON: The table outlines how many of our young, state to state, are on antidepressants of one kind or another, and it is a staggering figure indeed. Antidepressants were never meant to be used long term, yet I know many people who have been prescribed these medications for decades where the original cause was never identified. We may have a grasp on the minimum mechanical functions of the major organs, but there is still a lot to be discovered about the intricate crossover of systems that keep our body and mind healthy. What fascinates me about the entire topic of mental health is that the emotional experience of an individual is skipped over as if of no consequence to our emotional state and how that impacts on us physically and mentally.

We all remember some years ago when the medical profession was disputing the addictive properties of Valium and Serapax and, after many thousands of women had been prescribed 'mother's little helpers', as they were called, it was discovered that they were, in fact, highly

addictive and were being widely abused. These particular medications remain a problem for many, and the effect those medications have had on the body's regulatory systems of hormones, etc., has been devastating.

At the drug rehab centre where I used to work, 90 per cent of our clients last year were middle-aged housewives who had been battling with an addiction to Valium and Serapax for decades. Those women had been on those medications for most of their adult life, and they are only now realising the effect that has had on their ability to function day to day. These people have a great struggle ahead of them when coming off these medications. None of them could remember why they were actually put on them in the first place—they were not sleeping, they were new mums, and all they needed was some sort of social support network to get them through some difficult periods in their life that were new to them.

Many of our generation remember the saying, 'Have a Bex, a cuppa and a lie down.' For so many years, as a society we greatly underestimated the side-effects of medications. At the same time, our mental health services rely heavily on the use of drugs as treatment, when in actual fact the compliance rate of drugs to treat, say, schizophrenia and bipolar is sometimes as low as 15 per cent. Despite the low compliance with mediaeval treatments, we seem to ignore the ever-increasing research showing that bio/psycho/social approaches, such as cognitive behavioural therapy, and others that target a person's adverse life experiences, often produce better long-term results than any medication.

I make it clear that I am not advocating total abstinence for those who have been diagnosed with a true mental illness. I am advocating that the one-size-fits-all approach we currently have in the name of treatment needs serious revision.

Renée Garfinkel, who wrote an article called Marketing Mental Illness: The way to sell drugs is to sell psychiatric illness, made the comment that 'disorders to be included in psychiatry's diagnostic and statistical manual of mental disorders (DSM), published by the American Psychiatric Association, are chosen by a majority vote of APA members and is on the same scientific level as you would choose a restaurant'. She also states:

> When the American Psychiatric Association published the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) in 1952, the book contained only 112 entries. That figure has more than tripled over the past 50 years. The disorders listed in today's DSM and the mental disorders section of the World Health Organisation's International Classification of Diseases include: reading disorder, disruptive behaviour disorder, disorder of written expression, mathematics disorder, caffeine intoxication and nicotine withdrawal disorder.

These are all now classified mental illnesses. These publications comprise a grab-bag of billing terms for the mental health industry. This also accounts for the growth in the number of disorders contained in the DSM. Some believe it has been motivated by purely economic principles.

The first increase took place in 1968, coincident with US government insurance becoming available to the mental health industry. That year, the number of disorders in the DSM jumped from 112 to 163. By 1980, the DSM-III edition added another 61 disorders, for a total of 224. With the publication of the DSM-III-R in 1987, mental disorders increased to 253. In 1994, the total had risen again, this time to 374. But the money trail goes deeper.

A study published in April 2006 by public health researchers from the University of Massachusetts and Tufts University in Boston disclosed that every psychiatrist expert involved in the development of the mood disorders listed in the DSM-IV had financial ties with drug companies before or after the book was published. This report was the first to officially document the wide-ranging and incestuous monetary relationship between the pharmaceutical companies, psychiatrists and other mental health industry personnel responsible for the manual.

Depicted as diagnostic tools, the DSM and the International Classification of Diseases (ICD) mental disorders sections are used not only to diagnose mental illness and prescribe treatment but also to resolve child custody battles, discrimination cases based on alleged psychiatric disability, to support court testimony, to modify education and much more. All this, and yet there is no science to this diagnosis system, and insurance companies estimate that the cost of treatment for disorders that cannot be physically proven is two times greater than for general medical conditions.

In 1995, after more than $6 billion of taxpayer funds had been poured into psychiatric research, psychiatrist Rex Cowdrey, Director of the NIMH, admitted:

> We do not know the causes of mental illness. We don't have methods of curing these illnesses yet.

Psychiatrist Colin Ross points out:

> The way things get into the DSM is not based on blood test or brain scan or physical findings. It is based on descriptions of behaviour, and that's what the whole psychiatric system is.

I have long been sceptical of some of the mythology used to diagnose mental illness, especially with individuals who have a known history of substance abuse. I do not believe that enough attention has been paid to the signs and symptoms of addiction. I also know that the mental health system and the drug and alcohol system do not talk to each other and do not work cooperatively together, and this bill will not improve that situation. In fact, in conjunction with federal initiatives, this bill will see most drug addicted people referred, by their treatment providers, to mental health services for assessment. I guarantee that those drug and alcohol services will not see those clients again.

I have heard the statistics about drug users and the high level of comorbidity. The question is: if those in the mental health industry were trained adequately in the effects of drugs on an individual, they would also be able to better distinguish between a person who is truly mentally ill and a person who is caught in the grip of addiction, and there would be a clear and definite difference in how they were treated.

Anyone who knows addiction knows addicts exhibit some quite bizarre behaviours while using mind altering drugs. That is actually why they are called 'mind altering drugs'. I have personally seen many people of various age groups, the youngest being 14 at the time and the oldest 57, who were misdiagnosed with schizophrenia and bipolar, or manic depression, as it used to be known. When I say misdiagnosed, the impact that this misdiagnosis has had on the individuals and their families should be realised.

Being caught in the mental health system is not a flash in the pan experience, and for some the long-term physical effects of misdiagnosis is as devastating as the decline in their quality of life. I am not sure how psychiatry became the profession that was considered to be the supreme power, but I will state for the record that I have seen more harm done to some by the policies that are driven by psychiatry.

The reliance of this profession on medication is profound. Probably the one that stands out most is a 37 year old man, who was a methamphetamine addict, who was literally trapped in a psychotic state for five long years. His psychosis would ease when he did not use meth multiple times during the day, but he would slip into psychosis when he would be able to afford to use more regularly.

He was married, with four young children, and his wife did not know that he was using drugs. This man, husband and father of four had been able to hide his drug use, and his wife put his odd behaviour down to stress, overwork and his consumption of alcohol, which, by her own admission, was less than one stubby per day. She believed that the combination of all of these things was responsible for his odd and erratic behaviour and his mood swings.

He gradually became worse over time and, eventually, his psychosis became so obvious that over the period of four years he spent time in and out of Glenside, where he was put on medication, detained for a short period of time, and released into the care of his wife. He would cease his medication because it would make him feel too dopey, and within days his merry-go-round would begin again because he would start using his illicit drug.

His behaviour became more frequently erratic, and his admissions to Glenside became more frequent for longer periods, but nothing had changed—nothing—in how he was handled. Even though absolutely no progress was being made, in fact, if we were to be honest, his behaviour had deteriorated with more frequent psychotic episodes lasting longer; but the treatment never varied.

Eventually, this man became more and more violent until he ended up on the wrong side of the law after five years. When he went to gaol his family approached DrugBeat and me, and the program manager and I went to visit him in Yatala. He admitted that he had been using methamphetamine and smoking dope and that he had been a recreational drug user since the age of 12. Now he was looking at a lengthy stint in gaol. Isn't it just a little peculiar to members here, as it is to me, that a question was never asked, that a drug test was never taken, and that he was prescribed heavy duty anti-psych medication in hospital and also as an outpatient, without ever being tested for the presence of drugs known to induce psychosis?

I guess it is the lack of imagination that staggers me in this case. We managed to negotiate home detention for this man under court order to attend the program for 15 months. He has now been drug-free, alcohol-free and psychosis-free for three years. I have left out a lot of the detail of his five-year reign of terror on his wife and children. However, just as an example, on one occasion he was sure his wife was having an affair and that her lover was living in their wardrobe. He removed and burnt all the clothes from the wardrobe because he believed that this lover of his wife was also wearing his clothes when he was not home. He removed the doors from the wardrobes and would not sleep with the light out.

His wife was not allowed to sleep in another room and he would sit and watch her all night to make sure she did not leave the room. If she needed to go to the bathroom he would follow her. He became so obsessed with this lover that he erected a glass shed in his backyard so that he could see everything and everyone who went through the house. He controlled the electricity from the shed and he would run secret missions during this time at home to plant what he believed were microphones all through the house and randomly turn the electricity on and off during meal times and while the kids were watching TV, and their life was absolute mayhem.

He also believed that his wife had put a tracking device in his telephone so that she would know when he was coming home and she could hide her lover in the wardrobe. He threatened his wife with an axe and had her pinned down in the backyard in front of his children. This went on for almost all the five years and the only relief was when he would be admitted to the hospital for a couple of days.

That entire family was traumatised by his drug-induced psychosis, and his family could not get the help they needed. He would stop taking his medication because it made him dopey and he was even more aggressive on the medication once he started to come down from it. The wife made many inquiries of the treating psychiatrist and she stated to me that she felt as though he thought she was just making all this up in order to get her husband admitted.

This man was coming closer and closer to hurting someone and the family was held to ransom. When things got really bad and Families SA stepped in, guess what was required? He was required to go to anger management classes and the mother was required to go to parenting classes because her children were acting out in day care and at school. That was the total sum of assistance and, if things did not improve, the department was going to take out an order on their four children. No-one questioned why his behaviour was so bizarre; no-one offered to have him drug tested and put into a program.

This family, as well as the extended family, were isolated and devastated. When he was released on a court order to attend, he was placed on medication, which he did not take for the entire time. He made good progress over the 15 months and went regularly to visit his psychiatrist, who put his progress down to his medication—and just remember, he was not taking his medication at all. Not once did the treating psychiatrist ask me, the program manager or this person what therapy was being used, nor did he ask the client how it was working for him. At the end of 15 months of detention and after showing numerous clear drug tests, he was taken off home detention and resumed his normal working hours.

He went back to the psychiatrist for his final visit and asked how long he would need to be on the medication that had been prescribed for him, and he was told, 'We will see about reducing it in about 12 months but it is my recommendation that you stay on that medication for quite some time yet.' When he informed the psychiatrist that he had not been taking the medication at all and that what had helped him to get his life together was the various programs that he had undertaken, was the psychiatrist curious as to what had assisted his client? No; he was not. Did he inquire as to what the client thought had been useful for him in particular in that 15 month period? No, he did not. What he did say was, 'I could have had you thrown back in gaol for not taking that medication,' that being included in the court order, 'and I have a good mind to report you.'

This is not an isolated case study of people who have been diagnosed with a mental illness while under the influence of illicit drugs and who have had their recovery complicated by taking antipsychotic drugs that were not necessary after they had stopped taking their drug or drugs of choice. I often wonder whether in fact that is why the non-compliance rate is so high. I do not want to sound cynical, but surely these practices need revision and evaluation.

I discussed these matters with the minister in the hope that some guidelines could be put in place but was told by her that the medical profession would laugh at us for trying to direct medical experts in the area of treatment.

My argument is that we could significantly reduce the number of people in the mental health system with some commonsense expectations that a diagnosis is carried out on individuals who are not under the influence of substances that by their very nature can affect their psychology and behaviour. This measure, along with the implementation of the test mentioned earlier, could see better outcomes for individuals who struggle to keep their head above water because the system drags them down rather than assisting them to rise above it.

This man, his wife, his mother, his father, his two sisters, his brothers-in-law and his children lived every day in fear of what might happen for five long years, and it took his getting arrested for anyone to find the core issue behind his repeated psychotic episodes. And, as I said, it is not an isolated case. Both the program manager and I tried on numerous occasions to meet with the psychiatrist to discuss the process of recovery that this man had undertaken and perhaps set up a link with him and his practice. However, no interest was shown. So, eventually, we just accepted that we have a system in place that is content sometimes to do more harm than good. It seems that we have two treatment options for people with substance abuse issues and what appears to be mental illness: gaol if they commit an offence or medication.

I would also like to draw the attention of members to at least three cases where members of the public have been put at risk. The first is the case of the two men who were attacked by their neighbour and stabbed numerous times. Their neighbour knocked on their door and then proceeded to viciously attack them with a knife, telling them, 'The pain will be gone soon. Soon you will be dead.' The perpetrator was a person with a history of substance abuse who was also involved in the mental health system.

Another was the case of the young man who attacked his elderly next door neighbour in the backyard with a hammer and killed him. He was also a known drug user. I had many conversations with this young man's mother, and she was beside herself. She could get no assistance for this young man, and he ended up killing his elderly next door neighbour. He was also involved in the mental health system.

Even more recently, there was the case in Davoren Park, where a man stabbed his two year old son to death, attacked his 15 day old baby and then stabbed himself to death. This man, according to his neighbours, had a long history of substance abuse and was also involved in the mental health system. I implore members and the minister to recognise what is the common denominator here.

In 2002, Dr John Anderson of the neuroscience clinic at Westmead spoke of the correlation between the use of antidepressants, marijuana, suicidal tendencies and psychosis. His studies revealed that a person using marijuana who was also being prescribed antidepressants had a 75 per cent increased chance of tipping over the edge because of the chemical interaction between marijuana and prescription medications. He also stated that a person using marijuana should only be prescribed doses of medications at around 25 per cent of the usual dose. If that applies to antidepressants and marijuana, surely it is not a long bow to draw to understand that the chemical interaction between amphetamines and antipsychotic drugs needs close attention.

People with a genuine mental illness are rarely a threat to others. They may have odd behaviours and they may make some people feel a little uncomfortable, but the behaviours that are being exhibited by some labelled as mentally ill are giving mental illness a bad reputation. Frances Nelson QC went public with the fact that she had notified the mental health system on five occasions of the risk that the man at Davoren Park posed. She also stated that she knew of about 150 people who also concerned her as being a risk to themselves and others. The Attorney-General, the Hon. Michael Atkinson, stated on radio at approximately 9.15 am that what she said made sense and that legislation could be passed within two weeks to address her concerns.

I know that applied to the Parole Board, but these people are diagnosed with mental illness and, according to my information, also have a history of substance abuse. If the Hon. Frances Nelson QC can see they have correlation that they are a risk to themselves and others, and we are doing nothing about it, this bill in its entirety is not going to solve this problem.

Obviously what we are doing is not working and, if we are not prepared to up the ante and change our approach, then more tragedies like that I have already mentioned will continue to occur and I believe the number will increase to a point where the government cannot ignore the signs any longer.

The questions we need to ask are: what is the difference between true mental illness and drug induced psychosis? How can an accurate diagnosis be made if a person's mind is altered by

either licit or illicit drugs at the time of assessment? How long will it take for our mental health and health systems to collapse under the pressure while we ignore what to many are just common sense action steps?

Over a 12-year period I learnt a great deal about addiction, mental illness and about the systems in place, and over the years I became more and more disgusted that millions of taxpayer dollars literally are used to churn over an industry of human misery. It is like a machine that chews them up and spits them out, and the people in that machine are like drones. They have come to rely fully on medication, whether or not it works. I have waited for three years for an opportunity to tell this truth in this place, and this speech has actually been that long in the making.

I have here a paper that I would like to table for members to look over, if there is any slight interest in how this bill would be used. It is called 'Infectious Agents in Schizophrenia and Bipolar Disorder', written by Dr Robert H. Yolken, MD and E. Fulle Torrey, MD. I read this study probably six or seven weeks ago and it was quite revealing. It states:

> The idea that schizophrenia and bipolar disorder might be caused by infection is not new. This was a prominent hypothesis in the early years of the last century. For example, an article entitled 'Is insanity due to a microbe?' was published in Scientific American as early as 1896. Research to test this hypothesis by identifying causative viruses was already being conducted by the 1930s, when data were reported from experiments in which cerebrospinal fluid (CSF) from patients with schizophrenia was injected into rabbit brains.
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> New research in the field continues, aided increasingly by impressive technologic advances in microbiology and virology. As recently as the past decade, reports documented the presence of influenza virus, rubella virus, bovine disease virus, and other infectious agents in patients with schizophrenia and bipolar disorder, as well as the presence of other infectious agents in childhood paediatric autoimmune neuropsychiatric disorder associated with streptococcal infections (PANDAS) and obsessive-compulsive disorder.
>
> In this article we briefly highlight the background of this research; discuss our own research on Toxoplasma gondii, herpes simplex virus (HSV)...
>
> Background and rationale
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> Why should we look for infectious agents in schizophrenia and bipolar disorder? Such a hypothesis is consistent with the known genetic contributions to these disorders. Indeed, a genetic predisposition is well established for most chronic infectious diseases, including tuberculosis, malaria, polio, AIDS and peptic ulcers caused by Helicobacter pylori. The hypothesis is consistent with the role of neurotransmitter abnormalities in schizophrenia and bipolar disorder, because specific infectious agents have been shown to alter dopermine, serotonin, glutamate, amino butric acid and acetyl coline in animal models. The hypothesis is also consistent with neurodevelopmental models of schizophrenia and bipolar disorder.

This goes on to say that there are, in fact, a number of viruses that a person can have and can contract that would lead to signs and symptoms of schizophrenia that may not manifest until their early teens, and rarely are these viruses tested for.

People start to show these symptoms of schizophrenia or bipolar, are diagnosed on their behaviour rather than on the pathology, are then put on medication and those medications can actually aggravate the condition and make them far worse, physically and mentally, and make them quite psychiatric, and that could be a permanent condition, whereas a simple antibiotic, if these things are traced, could actually remove those signs and symptoms within weeks and they could be restored to full mental and physical health in no time at all, but we do not do these tests.

An additional important reason to look for infectious agents in schizophrenia and bipolar disorder is that CNS infection by specific pathogens frequently mimics the clinical symptoms of primary psychiatric diseases, for example, Carofen College reviewed 108 cases of psychiatric disorders resulting from suspected or confirmed CNS viral infections. In 62 cases a specific virus was implicated, including HIV, HSV1, HSV2, Epstein-Barr and CMV, and measles, mumps, coccidia and influenza viruses. Among bacteria, the fact that the spirochaete of syphilis can cause the symptoms of schizophrenia was well known to psychiatric commissions of an earlier era. More recently, infection with the spirochaetal organism borrelia—

The Hon. P. Holloway interjecting:

The Hon. A. BRESSINGTON: Just let me get through this word first—borrelia burgdorferi has also been associated with schizophrenia-like symptoms in some persons.

The Hon. P. Holloway interjecting:

The Hon. A. BRESSINGTON: Mr President, I do have quite a bit more to go. I know this is probably boring for most, but it is—

An honourable member interjecting:

The Hon. A. BRESSINGTON: Well, you know, I am seeking leave to conclude because I do want to read the rest of this onto the record because I think it is very important to the debate. If we are debating a mental health bill then we should actually be knowing what we are dealing with, or what we could be dealing with. I seek leave to conclude my remarks later.

Leave granted; debate adjourned

At 10:38 the council adjourned until 28 April 2009 at 14:15.