LEGISLATIVE COUNCIL

Thursday 30 April 2009

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:04 and read prayers.

SITTINGS AND BUSINESS

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (11:04): I move:

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

Motion carried.

RIVER TORRENS LINEAR PARK (LINEAR PARKS) AMENDMENT BILL

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (11:04): Obtained leave and introduced a bill for an act to amend the River Torrens Linear Park Act 2006. Read a first time.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (11:05): I move:

That this bill be now read a second time.

The River Torrens Linear Park Act 2006 protects the integrity of the River Torrens Linear Park by controlling the sale or disposal of government land-holdings adjacent to the river to ensure land remains in public ownership. This act originally arose from the controversy surrounding the sale of riverfront land in the former Underdale campus of the University of South Australia to private interests by the former Liberal government.

The current act provides for a plan delineating the extent of the River Torrens Linear Park to be deposited in the general registry office by the minister, and provides that land within the park (as delineated in the GRO plan) cannot be sold or otherwise disposed of, except in accordance with a resolution passed by both houses of parliament.

The recently imposed urban growth boundary and current planning to significantly increase densities within the urban growth boundary have highlighted the need to extend the controls that apply in the River Torrens Linear Park to other significant waterways in metropolitan Adelaide to ensure the long-term protection of what will become increasingly important community open space assets.

This amendment bill will enable the government to extend those controls to government landholdings adjacent to other significant waterways, including Gawler River, Little Para River, Dry Creek, Sturt River, Field River, Christies Creek, Onkaparinga River, Pedlar Creek and Port Willunga Creek.

It is not intended that the controls will be utilised immediately. If parliament enacts the bill, the Department of Planning and Local Government will prepare detailed plans of the additional linear parks and the landholdings that will be protected for lodgement with the General Registry Office in close consultation with the relevant government agencies whose landholding may be affected. I am sure that parliament will appreciate the importance of protecting open space adjacent to our waterways for current and future generations of South Australians and, accordingly, I commend the bill to members. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *River Torrens Linear Park Act 2006*

4—Amendment of long title

This clause amends the long title of the Act in line with the measure's provision for the creation of a number of Linear Parks in addition to the existing River Torrens Linear Park.

5—Amendment of section 1—Short title

This clause amends the short title of the Act as it is proposed that the Act will be concerned with the creation and regulation of a number of Linear Parks including the existing River Torrens Linear Park. The short title of the Act will be *Linear Parks Act 2006*.

6—Amendment of section 3—Interpretation

This clause proposes to delete the current definition of *Plan*, that refers only to the River Torrens Linear Park, and insert the following new definitions:

- *linear park* is to be defined as being any linear park that is defined in a plan deposited in the GRO by the Minister for the purposes of the Act, and includes the current River Torrens Linear Park (as defined by the River Torrens Linear Park Public Lands Plan);
- *plan* is to be defined as any plan defining a linear park deposited in the GRO by the Minister, or the River Torrens Linear Park Public Lands Plan (that is already deposited in the GRO);
- *River Torrens Linear Park Public Lands Plan* means Plan No 13 of 2007 deposited in the GRO on 2 March 2007, as varied or substituted from time to time. This is the plan that currently defines the River Torrens Linear Park and will continue to do so.

7—Amendment of section 4—Variation of plans

Currently section 4 of the Act provides for the variation of the River Torrens Linear Park Public Lands Plan. This clause proposes to amend section 4 to allow for all deposited plans defining linear parks to be amended by instrument lodged in the GRO, as is the case currently for the River Torrens Linear Park Public Lands Plan.

8—Amendment of section 5—Sale of land

Currently section 5 of the Act provides that land within the River Torrens Linear Park may not be sold or otherwise disposed of except in accordance with a resolution passed by both Houses of Parliament or under subsection (2). This clause proposes to make the same restriction apply to land within any linear park that is defined under the Act.

9—Amendment of section 6—Special provisions relating to roads

Currently section 6 of the Act provides that an area identified as a *road area* in the River Torrens Linear Park Public Lands Plan will be taken to be a public road and to have been established in accordance with the *Roads (Opening and Closing) Act 1991*. This clause proposes to make the same provision with respect to a *road area* that is identified in any plan deposited for the purposes of the Act from the date of the depositing of the plan in the GRO.

10—Amendment of section 7—Effect of other Acts

Currently section 7 provides that the Minister may, by instrument deposited in the GRO, vary the River Torrens Linear Park Public Lands Plan to ensure consistency with the operation or effect of another Act (including an Act amending another Act) enacted after the commencement of section 7. This clause provides for section 7 to apply to all plans that are deposited for the purposes of the Act.

11—Amendment of section 8—Related matters

Currently section 8(1) provides that the River Torrens Linear Park Public Lands Plan may be varied by the substitution of a new plan. Clause 11(1) of the measure proposes to make that same provision for all plans that are deposited for the purposes of the Act.

Currently section 8(3) provides that the Minister and each council within whose area the River Torrens Linear Park is situated must ensure that copies of the Plan are kept available for public inspection at their respective principal offices and by discretion at other locations. Clauses 11(2),(3) and (4) propose to make that same requirements for all plans that are deposited for the purposes of the Act.

12—Amendment of section 9—Acquisition of land

Currently section 9 provides that the Minister may, subject to and in accordance with the *Land Acquisition Act 1969*, acquire land for the purpose of increasing the area of the River Torrens Linear Park. This clause proposes to make the same provision for all linear parks that are defined under the Act.

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

STATUTES AMENDMENT AND REPEAL (FAIR TRADING) BILL

Bill recommitted.

Clause 35.

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

Page 17, after line 8 [clause 35, inserted section 74I(2)]—After paragraph (e) insert:

and

(f) a statement containing any other information prescribed by regulation is made available to the consumer in accordance with the requirements prescribed by regulation.

This amendment has the same intent as the amendment I previously discussed in committee. It provides for a statement containing information prescribed by regulation to be made available to consumers via a waiver. The purpose of the amendment is to help consumers understand the law and their rights under the law.

As previously advised, the information provided will enable consumers to be informed about their legal rights under certain provisions. There can be little doubt that this bill deals with a complex and difficult area of law, and some consumers find it quite difficult to understand their rights in relation to those laws. As some members have said, consumers can only benefit from clear and accurate information. This amendment will help provide that information. Also, the information will be prescribed in regulation, so there will be further opportunity for parliament to scrutinise and have a say about that information to ensure that consumers are receiving clear information about their rights.

As previously stated, including this information as part of the waiver form itself means that everyone who signs a waiver will receive a copy of that information. This is to try to address the bluff factor—the turn of phrase the Hon. Ann Bressington coined in this chamber. The bluff factor is about our concern that, now the legislation is silent on the issue of waivers for children, we are concerned that insurance companies could pressure recreational service providers to routinely sign waivers, supposedly forfeiting the compensation entitlements of children.

We believe that understanding common law provisions and protections is important for people so that they do not inadvertently give up their rights and think they have given away their compensation entitlements when they may not have. This is an added protection to make clear to consumers what are their rights.

The Hon. A. BRESSINGTON: With this information that would be forwarded with the waiver, what would prevent insurance companies from developing a separate waiver for children? Is this information to be on the back of the waiver or is it a separate piece of information and, if it is on the back of the waiver, why would not insurance companies just develop yet another waiver specifically for children?

The Hon. G.E. GAGO: If, under regulation, it is determined that prescribed information will be included on the waiver—which is obviously what I am looking at—then any waiver form that does not contain that information in the prescribed way would not comply and would therefore be ineffective.

The Hon. A. BRESSINGTON: It is my understanding that a waiver for children is ineffective anyway, so how can an ineffective waiver be made more ineffective? Does the government intend to impose any kind of penalty if an insurance company should leave this information off a waiver?

The Hon. G.E. GAGO: The member is absolutely right; the advice we have received is that any waivers that are signed for children are ineffective because of common law provisions. However, as the honourable member knows, while they are ineffective under current legislation we know that some insurance companies do lean on recreational providers to pressure them to provide waivers as a condition of receiving insurance coverage at a particular cost. It is not an offence to do that so we cannot prevent it from happening, but we are concerned that, even though the form is ineffective, recreational services users may believe they have to sign it and may believe that in signing it they have forfeited their compensation rights.

We want to make it clear on the form that that is not necessarily so, in terms of their rights under common law. So it is to prevent people from being misled into believing that this might be an effective waiver and that they may have given up their compensation entitlements. The other part of the question related to whether there was an offence. There is not, and that is because of trying to protect people from inadvertently and unintentionally handing out these things.

The Hon. J.M.A. LENSINK: I am pleased that we are dealing with this clause this morning rather than Tuesday night. I think that was a fairly unsatisfactory process in many ways when dealing with a number of amendments, and I have to say that at times I was a little confused as to with which amendment we were dealing. We then had one dropped on us after dinner. I am

pleased that that one has been withdrawn, and I will make a few comments about that in a moment.

This amendment is quite different from the one the government tabled on Tuesday night. If one looks at clause 74I(2), one can see that there are five conditions which relate to the details of a waiver. As I read it, this clause adds a further condition. This particular clause is not the breakthrough in consumer protection that the minister would have us believe, but I think that the substance of subclause (2) already provides a number of conditions in relation to waivers. The existing clause provides that consumers must be made aware and must have agreed. I think that is entirely appropriate, and it is a much better model than exists in New South Wales, for instance.

These five existing clauses, with the addition of the sixth, make subclause (2) fairly comprehensive, and provide certainty—and, indeed, provide some certainty to recreational services providers as to what the requirement will be. I believe that is to be lauded, and we will be supporting this amendment. This clause provides that the regulations may prescribe further conditions, and I think that is a fairly standard one that we see many times in legislation which, I think, provides for issues which may arise or which have been overlooked.

I would like to make some comments about the government's previous clause. I do not wish to pre-empt anything that my learned colleague the Hon. Robert Lawson may state, but when we looked at this yesterday (and, again, thank goodness we did not make a decision on this Tuesday night, because it is ill-thought through) it appeared that its effect would be to change three of the existing clauses from being laid out in statute to coming under the whim, if you like, of the Commissioner for Consumer Affairs. I think that would have provided less certainty to recreational services providers, and we would not have supported that amendment. With those comments, I indicate that the Liberal Party will support this clause.

The Hon. R.D. LAWSON: I support the comments made by the Hon. Michelle Lensink. This is clearly a far better provision than that which the government suggested in the amendment tabled but not moved earlier this week. The government originally proposed that the terms of the exclusion include any other information that the Commissioner for Consumer Affairs thinks fit, an entirely inappropriate model. What the government was proposing—but, as I indicated, wisely the minister did not move—was that these matters not be the subject of any parliamentary scrutiny at all.

Fortunately, the clause that we have now moved requires the statement to be prescribed by regulation and, thereby, there will be an opportunity for parliamentary scrutiny. I think that is an extremely important principle with legislation of this kind. As the deputy leader has indicated, I will be supporting this provision.

However, I must put on the record that I am deeply sceptical of provisions of this kind. In relation to contracts for the sale of land, the sale of a business or even the sale of a motor car, it is all very well to have rather complex contractual documents—they are well understood—but when people engage in a recreational service, they do not expect to be confronted with documents in fine print—pages of material—containing information prescribed by regulations. They are in no mood, frankly, to be reading material of this kind. I think that information of this nature, which we are now insisting that recreational service providers provide, is really creating a bureaucratic nightmare.

It might be said that recreational service providers do not have to worry about it, that they do not have to give consumers anything at all unless they want to obtain the benefit of this waiver—and I suppose that is a fair point—but I believe that the model being adopted here will not ultimately work in practice, how ever well intentioned the government is in proposing it.

The Hon. A. BRESSINGTON: I want to put on the record that I do not necessarily agree with the Hon. Robert Lawson that people would take more care to read a contract for the purchase of land or a car than with a contract that had to do with their children's safety. I think that really does not say a lot for his opinion of parents and how careful they want to be with their children. If I was handed a waiver to sign regarding my seven year old, if there was information on the back about my rights as a consumer to protect my child, I would make sure that I read it thoroughly and understood it. We also have the backup of consumers being able to go to the website to clarify further information on their rights to protect their children. So, I indicate that I will be supporting the minister's amendment. I also congratulate the government on taking care with this bill to make sure that consumers are fully aware of their rights as far as possible.

Amendment carried; clause as amended passed.

Bill reported with a further amendment.

Bill read a third time and passed.

PUBLIC SECTOR BILL

Adjourned debate on second reading.

(Continued from 28 April 2009. Page 2075.)

The Hon. R.I. LUCAS (11:28): I rise to support the second reading of the bill and, in doing so, indicate that my overall approach to considering and ultimately voting on the bill has been guided—if I can put it as simply—by trying to see whether we as a parliament can develop as fair as possible a system for those employees in the public sector who work assiduously on behalf of the government of the day and the community generally, and also as fair as possible a system in terms of being able to manage an efficient and effective public service from the viewpoint of the current government. In so doing, I want to address a number of issues. There are significantly more issues that do need to be addressed which I (and other members, I am sure) will leave to the committee stage which, I suspect, will be an extended and extensive debate as, indeed, it should.

I have had the privilege of participating in debates going back a decade or so and other debates back in the 1980s in relation to similar legislation. It is obviously a matter of great interest not only to public servants and their association but, as I said, it ought to be of interest to the broader community as well. One of the issues or, I guess, the only issue that has attracted any public attention, in terms of media coverage in relation to this, is what I will call the hire and fire principle.

If I can refer to some of the media commentary, principally in *The Advertiser*, going back to 25 November last year, the bold headline was 'PS heads to hire and fire'. This was an article by Greg Kelton which stated:

> Radical changes to the Public Service including giving department heads the right to hire and fire will be introduced to parliament this week, 12 months after first being proposed. South Australia is the last state, apart from Tasmania, to give the power to chief executives to terminate employment.

It further states:

> It will be the biggest shake-up of the state's public sector in 20 years.

That article, principally, was a summary of the government's spin on the document and included government press releases. On 20 February this year there was another article under the bold heading 'Power to hire and fire the key, says Minister Jay Weatherill'. Without reading all the article, it has the minister saying:

> One change contained in the bill will attract criticism. This is our intent to give chief executives of government departments the power to hire and fire their staff. We expect a lot from our chief executives. In the past five years we have increased our requirements, given them more responsibilities and increased their accountability. This is as it should be. After all, these are well-paid positions but if we expect a chief executive to be truly accountable for their department we must also give them the ability to manage their own resources.

So says minister Weatherill. Then, on 20 March this year under the bold heading 'Threat to key reforms in the public sector'—again, an article by Greg Kelton and, again, based on government statements at the time—it was stated:

> Key reforms to streamline the state's public sector including giving chief executives the right to hire and fire are under threat in the upper house. The government is lobbying Independents to try to have the biggest public service reforms for the past 25 years passed.

I note that, between November last year and 20 March, these reforms have been the biggest for 20 years and now they are the biggest for 25 years. If we keep the debate going longer, it may end up being 30 and 35 years. The article continues:

> South Australia and Tasmania are the only states which do not give departmental chief executives the right to hire and fire.

Further on, Mr. Weatherill is quoted as saying, 'This issue was a vital element of public sector reform,' and he could not fathom why the Liberals were supporting the association—'the 'association' being the Public Service Association.

There were a number of other articles during that particular period. One, which I think might have been a leader article, stated 'Permanency must go in the Public Service'—that was in *The Advertiser* of 17 March 2009. I do not intend to read all the articles but, to summarise and give

the flavour, I think the only coverage in relation to this bill has been in relation to the issue of hiring and firing.

Of course, that has coloured other media commentary on the legislation—that is, the view being that this legislation was introducing, for the first time to chief executives, the power to hire and fire. It has also led to prominent business persons in the community indicating that they support the legislation because, for the first time, this gives chief executives the power to hire and fire.

I refer members and others who are following the debate to section 50 of the Public Sector Management Act 1995. There are a number of other sections, but this is the one that is most apt to this particular debate because it relates to excess employees. Section 50 of the act states:

(1) If the Chief Executive of an administrative unit is satisfied—

(a) that—

(i) the services of an employee have become underutilised; or

(ii) an employee is no longer required to perform, or cannot perform, the duties of his or her position,

because of—

(iii) changes in technology or work methods or in the organisation or nature or extent of operations of the administrative unit; or

(iv) loss of a qualification that is necessary for the performance or proper performance of the duties; and

(b) that it is not practicable to assign the employee under Division 1 to another position in the administrative unit,

the Chief Executive must refer the matter to the Commissioner.

I will not read the rest of section 50 of the act in its entirety, but a process was set up where, if there was an excess employee, the chief executive could refer the matter to the Commissioner for Public Employment and various things would have to be done as outlined under other subsections of section 50 but, ultimately, the power exists within the current act under subsection (2)(e), as follows:

...the Commissioner may—

(e) recommend to the Governor that the employee's employment in the Public Service be terminated.

Then subsection (3) provides:

The Governor may, on the recommendation of the Commissioner under this section, terminate an employee's employment in the Public Service.

Therefore, section 50 of the current act already provides a process, albeit cumbersome (and I accept that in relation to the required involvement of the Governor which is, in essence, Executive Council), whereby excess employees, under the act, can be identified and terminated.

As the Public Service Association and, indeed, everybody else knows, the simple fact is that the problem is not with the legislation; the simple fact is that this government and, indeed, previous governments, have, through enterprise bargaining arrangements, agreed to give up their right, in essence, to use these particular provisions—that is, they have agreed to a policy of no forced redundancy, and that has been written into various agreements. I will be honest with my friends or associates within the Public Service Association and indicate that it has not always been the case in the past that I as an individual have necessarily agreed with that policy. However, the view of this government and the view of the former government is that that was the policy, that is, that was an element of the enterprise bargaining negotiations.

Certainly, in our day, a name familiar to many, Paul Case, would come to the various cabinet committees and indicate that, as part of the negations, the view was put to the government that, if this was retained, a wage settlement package might be negotiated at a slightly lower level than if that particular provision was not in there. Whether that would have ever been the case, one will never know; it was part of the give and take or the argy-bargy of collective bargaining. The gory detail is not important; the essential point is that it is through the processes of enterprise bargaining that the policy of no forced redundancy has been enforced and implemented.

This publicity the government has sought and has managed to generate through the media—and has therefore encouraged some sections of the business community to also believe—is that, in some way, this will be a significant change in existing arrangements and is government spin at its best. However, frankly, it is a nonsense. Nothing is going to change so long as governments—this government, the past government and maybe future governments—continue to include the no forced redundancy provision in their enterprise bargaining arrangements.

So, these bold headlines of the power to hire and fire being held up by the Legislative Council and *The Advertiser* editorials that these are potentially major reforms or that they are the most significant reforms in 20 or 25 years, depending on the particular time of the article, count for not too much because, as I have said, we are, in essence, just talking about the legislation and not including the more important issue of the agreements entered into through enterprise bargaining.

We know, through the work of the Budget and Finance Committee, that witnesses from one department alone—the Department for Further Education, Employment, Science and Technology (DFEEST)—indicated at our most recent meeting that it already has 140 excess employees within that department. The Commissioner for Public Employment reported that he believed, on the latest figures in, I think, March, that there were 416 excess employees within the public sector more broadly, and that does not include the public servants who are unassigned; that is, they are in the Public Service but they have no assigned position to fulfil.

So, we already have a significant number of excess employees in the system. We already have within the act the capacity to terminate them, and the reason why it does not occur is the enterprise bargaining agreement in relation to no forced redundancies.

Essentially, the change included in the bill is relatively modest, and that is that the government is changing the act but has indicated that it will not change the enterprise bargaining arrangements. The government has indicated that the process that it is suggesting will be much shorter (that is, the decision will be taken by the chief executives); whereas the current act requires a process of going through the Commissioner for Public Employment and then, ultimately, the Governor or Executive Council.

I have already indicated that my personal view is that the notion of having to go to the Governor or Executive Council for the termination of an individual public servant in the Department of Education and Children's Service never seemed to make much sense to me and still does not. So, I do not personally have a problem with that particular provision being removed.

There is certainly going to be debate during the committee stage about whether it is our model or other models the Hon. Mr Parnell has floated already in relation to the involvement of the Commissioner for Public Employment as a protective mechanism in relation to someone whose position has been terminated. I think some of the options the Hon. Mr Parnell has raised, and certainly my own party has raised, are meritorious and deserve active consideration. However, the consistent theme of both models is that it would not just be the chief executive; it would include some degree of protection by including the Commissioner for Public Employment as well.

I want to raise some general questions before I move on to other topics. I note in the second reading reference to the Australian Government Executive Service. In the minister's response to the second reading—or perhaps in the opening of the committee stage debate in the next sitting week—I ask the minister to place on the record the total number of executives in the public sector. I also want clarified whether it is correct that all of our executives are in the South Australian Executive Service, or do we still have executives in the old EX range?

I also want clarified the exact date the policy of non-tenure for executives was introduced, and can the minister confirm how many executives with tenure did not give up tenure when that possibility was offered to them and have remained as executives? That is, they did not give up tenure with the benefits that were supposed to be offered to them but they have remained as executives nevertheless.

I also ask: how many executives have retained fall-back options to lower positions within the Public Service with tenure? My understanding is that some executives who might have been at the lower level of the executive range may have had fall-back options to the higher level of the ASO range, as it was then. It was ASO8; although I understand the classifications are different now. That is, how many executives have retained fall-backs to lower classification positions within the public sector?

Finally, in relation to the questions, how many new executive appointments, that is, since the date of the policy of non-tenure being introduced, have been made where those executives have been given tenure or permanency? Later on, I will be referring to some examples in the Department of Planning and Local Government where I will again highlight some of the concerns I have in this area.

The third general point I want to make is one of the general principles I have seen in relation to this legislation and the power balance between chief executives and the Commissioner for Public Employment over the past seven years. It seems to me pretty clear that this government, with the now Commissioner for Public Employment and the former chief executive of the Department of the Premier and Cabinet, Warren McCann, have supported a policy over the past five or six years of what they would term 'letting the managers manage'.

There is no doubt what Warren McCann's and the government's position has been. As he has said to the Senior Management Council and others, his philosophy on managers is that the managers should manage; he does not believe the commissioner should be there, in essence, as a second guessing body or individual. He also has a novel view that the managers themselves should manage within the agencies and should rely less often on HR managers within their own agencies. I am not suggesting that that necessarily has been reflected in the policy changes over recent years, but I do not think there is any doubt that it has been the personal policy of Warren McCann.

The government's views are obviously important, because we are seeing those in the legislation. Mr McCann's views are also important, because he has been the driver of policy change over the years and a not insignificant influence on public sector management. He has now happily plonked himself in the position of Commissioner for Public Employment. By saying 'happily plonked himself', I am saying that, on a salary of between $350,000 and $400,000, he went from a very senior position as chief executive of the Department of the Premier and Cabinet to be the Commissioner for Public Employment and retained the same salary package for that position.

When the former commissioner came before the Budget and Finance Committee he indicated that his officers and resources have been gutted so much that it was he and two other worthy souls in the commissioner's office who were working there. On any of the executive classifications there is no justification at all for an executive being paid between $350,000 and $400,000 a year for what is now an increase from the two staff that commissioner Walsh had. I understand that has now been increased up to 13, so Commissioner McCann has 13 staff; he is starting to build the commissioner's office up again.

In tracing that history, it is useful to put on the record that that was the government's and Mr McCann's initiative over the past five years: they abolished the former office for the commissioner for public employment; they commissioned the Speakman Payze report; and then the office of public employment which came out of that review was also abolished by the government on the recommendations and urging of Mr McCann.

During that period, the staffing for the office of the Commissioner for Public Employment was reduced from originally 60 before the first of two restructures, which I have just talked about in 2003-04. So just five years ago there were 60 staff in the office of the Commissioner for Public Employment. The first change saw a halving of that staff to a more modest level of 30, which I certainly would not have opposed in terms of a reasonable size, and the second restructure reduced the staff to five full time equivalents, and when commissioner Walsh appeared before the Budget and Finance Committee he said it was he and two other worthy souls at that time.

During the period when commissioner Walsh and previous commissioners had up to 60 staff, he had a salary in the region of $250,000, a level C remuneration package. As I said, the current incumbent has retained his level F and a salary between $350,000 and $400,000; I think it is $360,000, from recollection.

That is important in terms of considering this, because we have had a policy, supported by Mr McCann and the government, of gutting the office. Now that the commissioner has moved into the office we are seeing him now building the staff numbers up again. They have gone from two to 13, but we are seeing in what has occurred over the past few years decreasing responsibility for the commissioner and his office and, in the legislation we are about to vote on, if it is agreed as the government wishes, we will see a further diminution in the actual workload. The resources and responsibilities have been gutted over the past six years, and now, as we go through this

legislation, we will see a further reduction in the responsibilities of the commissioner's office if this chamber agrees with the government's proposal.

If that were to occur, how anyone could justify a position of $360,000 a year for essentially managing much of nothing is beyond comprehension to me as a member of this chamber and also as someone who is interested in the public interest of effective expenditure of taxpayers' money.

I now want to raise a number of issues and concerns I have with our current practices and procedures. My purpose is to consider the practices that are occurring under the current system, and then to consider whether or not the bill before us—if it becomes part of the law—will mean that we will see an increase or decrease in these examples of unfairness (as I would deem them), whether we will see any increase or decrease in accountability, and whether we will see any increase or decrease in transparency.

I will give examples, because it is important to understand that these things are happening at present. I have highlighted some of them previously in other debates, but it is an appropriate time to bring some of these practices together. I hasten to say I am sure that under all governments in the past, both Liberal and Labor, there have been examples of unfairness in public sector processes: I will be the first to indicate and acknowledge that. Obviously, it is my partisan view that much more of it is occurring under this administration, because of the arrogance of the Premier, ministers and others. It is a partisan view and I apologise for putting that partisan view during this debate.

It is important to highlight some of the practices that are occurring, and then as we go through the committee stage to look at whether, in essence, we will increase the possibility for these sorts of practices to continue and reduce the transparency and accountability for governments, essentially, and also senior managers in terms of their management processes.

Only this week I raised—as I did earlier this year in March—concerns about some Public Service processes within the Leader of the Government's own department, the Department of Planning and Local Government. As I have indicated previously, in essence we have a dumping ground for ex-Labor staffers, Labor friends and acquaintances being generated within senior and middle management levels of that particular department. I gave the example of four senior director level positions, currently held by George Vanco, Lois Boswell and Kaye Noske—there is another whose name escapes me—in that particular department.

I am aware of a number of other appointments in that department of people with close associations with ministers of the government and their officers or members of the Labor Party. The reason I raise this matter—and I will refer to it in more detail in a minute—is that honest, hardworking, competent but non-politically aligned—neither Labor nor Liberal—public servants in those agencies are furious because they see these prized positions being given to friends and acquaintances of the government.

Their view is that someone needs to highlight these sorts of practices. Last Saturday—on ANZAC Day—the department advertised these four senior executive level positions with a closure date of just nine days—next Monday. Job and person specifications were not available until Tuesday of this week—six days prior to the job applications closing.

Those members who follow the newspapers—*The Australian* and *The Advertiser*—will know that, in respect of senior director level positions, if you are trying to attract the best quality within South Australia or, frankly, Australia, most often there are advertisements in Career One in *The Australian*, if you are advertising beyond the public sector. These positions were limited to Public Service appointments only. These particular positions—and I have highlighted some other examples—were advertised as permanent positions; and this will relate to an issue which I will raise later and which is a question I raised earlier about whether people were meant to be appointed on five year contracts.

These people are in the positions at the moment, the jobs not having been advertised at all. These people were placed in the positions—head hunted, tapped on the shoulder, given a free ride (whatever euphemism one wants to use) into those positions.

The concern of other public servants within these agencies and observers is that this process has been constructed to stitch up the positions for the political appointments who are already there—to minimise it. For example, if you go to the Department of Planning and Local Government's own website, under the 'Careers' section it says, 'We encourage anyone who is interested in a career in planning and local government to apply for any vacancies listed

underneath'. Of course, underneath is a spot for all the current positions being advertised, but on Tuesday at lunch time, just before I asked this question, the website said words to the effect, 'No vacancies currently available'; I used the exact words in the question on Tuesday.

That website is controlled by an officer holding the position of director of communications. If the minister is wanting to be fair about this, if there are four director level positions and there is a section on the website to indicate positions available so people can apply, at the very least he would have ensured that those particular positions were being advertised. Sadly, in this particular case, that did not occur.

So, when you look at the legislation before us, in that sort of circumstance, will this bill, in essence, increase or decrease the chances of those sorts of occurrences? Will this bill mean that there will be fewer checks and balances within the system—through the commissioner's office, or elsewhere—in terms of being able to report publicly on these sorts of occurrences within departments and agencies? As we go through the committee stage of the debate, I will refer to this example, and to others like this, to ascertain whether or not we have enough protective mechanisms within the proposed legislation to try to minimise the capacity for that to occur—or, at the very least, ensure we are not making it easier for even more of these events to occur.

The second issue I want to raise is something that I raised a long time ago in this chamber, and it relates to the appointment of a chief executive, Mr Mark Johns, when he was appointed the chief executive of the department of justice. I hasten to say, as I did at the time, that governments of both persuasions (Liberal and Labor), particularly when they are just elected, have what might be euphemistically referred to as the night of the long knives, when chief executives are moved from an agency—

The Hon. B.V. Finnigan interjecting:

The Hon. R.I. LUCAS: I am delighted to have the assistance of the Hon. Mr Finnigan because, when he first came in, one of the now stars of this government, Jim Hallion, was moved immediately from his portfolio in industry and trade because the government did not have faith or confidence in his capacity to manage that portfolio. That was the night of the long knives of the government. Of course, subsequently, Mr Hallion found a position in PIRSA and is now a rising star under this current government and has been given even more increased responsibilities, I guess as a result of the government's taking off the ideological blinkers it might have had in relation to him and making its own judgments about his capacity to perform as a chief executive. So the point I make is that, at changes of government, that occurs.

However, once you go through a panel process for a chief executive, you are bound to follow the requirements of the legislation and the various Commissioner for Public Employment determinations. Without going through all the gory detail, a most recent example is in some of the details I gave on 25 March this year, but I first raised this issue back on 9 February 2005. To cut a long story short, there had been a long process to try to appoint a new chief executive of the department of justice, and I placed on the public record a very serious accusation that I made against the Premier back in 2005 that, after a number of panel processes which had not recommended Mr Mark Johns, Premier Rann had a meeting with Mr Warren McCann (Chief Executive of the Department of the Premier and Cabinet), Attorney-General Atkinson and one or two others, at which the Premier told Mr McCann (and I placed this on the record), 'You were told what to do to get Mark Johns up and you've failed.' I will repeat that: the Premier told Mr McCann at that meeting, 'You were told what to do to get Mark Johns up and you've failed.' At that meeting the Premier turned to the Attorney-General, Mr Atkinson, and said, 'Will you oppose his appointment?' and—surprise, surprise!—Mr Atkinson said no, he would not oppose the appointment of Mr Johns to the position of chief executive.

Mr Johns had very strong supporters for his appointment in the Premier's own office. Mr Nick Alexandrides, the now chief of staff, had been lobbying strongly for Mr Johns; Debbie De Palma, who was within the justice department and had contacts with the Premier's wife and others in the Premier's office, was lobbying for Mr Johns; and the Premier was lobbying strongly for Mr Johns to be made the chief executive of the department. Ultimately, of course, Mr Johns was made the chief executive.

Some of my Public Service friends have advised that the accusation that I was making was that, in essence, the Premier had breached section 15(2) of the Public Sector Management Act, which says under the heading 'Extent to which chief executive is subject to ministerial direction':

No ministerial direction may be given to a chief executive relating to the appointment, assignment, transfer, remuneration, discipline or termination of a particular person.

The point that I made this year was that, having made that accusation four years ago, Premier Rann or his representatives have said nothing in response to that. They have never denied it and they have never dignified the question with any sort of response at all. That is the sort of arrogance I guess those of us in this chamber have come to expect. So I highlight that as a second example of some of the processes occurring at the moment.

Again, I ask, as we look at this bill: are we increasing the chances of those sorts of things occurring if we continue to reduce the power of the Commissioner for Public Employment and his office through the sort of legislation that we have in this chamber? I think some of the amendments we are looking at are extremely helpful but, as I will outline today and also in the committee stage, it may well be that other amendments are required to ensure greater accountability and transparency—and I note that the Hon. Mr Brokenshire has flagged a series of amendments, and a number of us will obviously look at those with some interest.

The third example I want to raise relates to a particular whistleblower allegation, and I will outline the scenario that I am talking about. Back in November 2005 a whistleblower within a department alleged that the chief executive of that department was involved in—was being accused by the whistleblower, who had tried to resolve this issue within the department but had been unsuccessful and then resorted to the whistleblower legislation—bullying and inappropriate treatment of staff not being dealt with, an inappropriate overseas placement, and victimisation of the whistleblower, all of which the whistleblower alleged was influenced by a personal relationship the chief executive had with a female within that department. The whistleblower argued that this demonstrated maladministration in breach of the Public Sector Management Act, the Occupational Health, Safety and Welfare Act and the Whistleblowers Protection Act.

I will not go through all the details of the complaint, but to be fair in relation to this the former commissioner for public employment appointed Mr Graham Foreman, a former chief executive officer, as a delegate to investigate this complaint, and Mr Foreman reported in March 2006 in relation to the matter. Mr Foreman, the commissioner's delegate, reported:

Firstly, I cannot find evidence to support the victimisation. Secondly, I believe the overseas placement had merit and was not an improper use of public funds, but in making a decision on the matter the chief executive had a conflict of interest.

The investigation reported that the chief executive had a conflict of interest on this issue. He continued:

Thirdly, the bullying and treatment of staff problems were real OHSW issues and the departmental response was slow and ineffective. The female employee had been absent from the department since January 2005—

that is, since the female employee got the overseas placement—

and the whistleblower resigned in December 2005. Investigation into the disclosure points to a need to examine the Department of the Premier and Cabinet's policies, which is the department we are talking about, and training in relation to occupational health, safety and welfare, the code of conduct and performance management, and I so recommend. There may be learnings for broader application in the public sector about situations that may arise where officers are working with friends and decisions affecting those friends need to be made.

It is important to note that in some of the evidence taken the investigator, Mr Foreman, found that the chief executive indeed did have a friendship beyond the workplace with this particular employee and had a conflict of interest or patronage that needed to be managed. The widely-held perception by staff of the department of his relationship also led to a wide perception of a conflict of interest on his part. The investigator went on to say:

Where a conflict of interest or the perception of one is known to exist, it is incumbent on a public officer to step aside from the decision-making process.

The code of conduct for South Australian public sector employees states:

If your relatives or friends are the subject of a work matter for which you are a responsible decision maker, such as job selection, allocating training development opportunities, you must ensure that you are not improperly involved.

Further on the investigator said:

Given the relationship between the chief executive and the female employee, the decision involved the chief executive in a conflict of interest and was understandably perceived as such by many staff of the department.

I have not gone through all the gory detail of the complaints by the whistleblower and the investigation as what I have put on the public record is sufficient, but it was a most serious allegation made against the then chief executive of the Department of the Premier and Cabinet, Mr Warren McCann, who is now the Commissioner for Public Employment. This raises many questions, and not the least of course, in debating this legislation, is the fact that Mr McCann is now the Commissioner for Public Employment and this legislation is trying to ensure accountability and transparency in relation to a number of these issues.

I should have indicated that I think the Commissioner for Public Employment's new office name is now the Office for Ethical Standards and Professional Integrity. That is the new title for the office commissioner McCann is heading. The question that needs to be considered here is whether in the future, if a whistleblower within a department raises an issue with the Commissioner for Public Employment of a similar nature to the one I have just outlined, under the proposed legislation the Commissioner for Public Employment will be able to conduct an appropriate investigation. There is considerable doubt under the government's proposal, supported by Mr McCann, that that would be the case. If that is the case—and I will pursue this in committee—I will have considerable concerns.

I refer members to clause 13 of the legislation, functions of the commissioner, where under paragraph (g) it says that a function of the commissioner will be to:

> investigate or assist in the investigation of matters in connection with public sector employee conduct or discipline as required by the Premier or at the request of a public sector agency.

So, if the Premier requires you as the commissioner to conduct an investigation, you need to do so, but does this mean that, if an individual whistleblower was to approach the Commissioner for Public Employment with a similar concern against a chief executive within his or her agency, the commissioner has the power to initiate or respond to that particular inquiry? It is an issue we need to confirm in committee, but on the surface one could argue, as others have argued to me, that the way this legislation has been drafted, which changes this section significantly, it might mean that in the sort of circumstances I have outlined (and others, as this is not the only example) one might not have the capacity, unless the political master, the Premier, requires an investigation. As we have seen, unless it is absolutely required, the current Premier is not too keen on anything that might approach an independent investigation of a number of issues which have occurred within public administration in this state.

The fourth issue I would like to raise (and, again, I have spoken at length on this issue so will not repeat all the detail) is one I also raised on 9 February 2005. It relates to a reclassification issue where a female employee in the Attorney-General's office, Ms Loula Alexiadis (a friend at the time of Mr Nick Alexandrides, the now Chief of Staff to the Premier), in essence, wanted an upgrade in classification and higher pay. At that time I advised that I had been provided with details of the performance management assessments for Ms Alexiadis—obviously from someone who did not agree that she should have an upgrade. I did not put it all on the record, and I do not intend to do so today, but I summarise it by saying that it was quite clear, in terms of the various briefs, that those who managed the performance of this officer were very concerned about her performance, and strongly believed that it did not merit an increase in salary or classification.

Ms Alexiadis had the great advantage of having friends in high places (if I may put it like that), both in the Attorney-General's office and in the Premier's office, and there was an ongoing campaign, which was unsuccessful in getting a reclassification, with the former chief executive Kate Lennon. I understand that, very soon after Mark Johns was appointed chief executive, Ms Alexiadis received her classification upgrade. This was after political staff in the Attorney-General's office had written arguments in support of an upgrade of classification.

As I said, I will not go through all the detail again, but this is another example of what is currently occurring. When we look at the legislation we must ask whether we are creating a system that would allow even more of that, as well as less accountability and transparency in terms of being able to challenge that if need be through the work of the Commissioner for Public Employment's office, or a similar office.

In terms of the fifth issue, I refer to section 22(1)(d) of the current legislation. Currently, the commissioner can 'make binding determinations as to the cases or classes of cases in which selection processes will not be required to be conducted for appointments to positions in the Public Service'.

Now, there is a report each year that indicates the number of what are, in essence, non merit-based appointments of executives. So agencies are required, under the current legislation, to provide data to the commissioner on the use of section 22(1)(d). I note that the legislation actually says 'make binding determinations', and it may be that the commissioner has delegated some of these powers to chief executives as opposed to the raw reading of the legislation, and I seek the minister's advice on that. However, the commissioner's response says that they are required to provide data, namely, 'where the chief executive or appropriate delegates determine that merit-based selection processes are not required for appointment to executive positions'.

The most frequent use of section 22(1)(d) was when an employee on a temporary contract had the contract converted either to an ongoing contract or a one to five year contract, which was used in 366 instances. Previously, this would have involved a merit-based selection process. Other uses of section 22(1)(d) specified by agencies indicate that the delegation is being used in line with its intended purpose, and no instances of abuse have been identified.

I seek details from the minister, through the commissioner's office, of the other numbers in relation to the use of section 22(1)(d). In addition, on my reading of it, it appears that under the proposed bill there will be no transparency or accountability in relation to non merit-based selection processes. If that is the case I think it is wrong, and I believe there ought to be legislative change to pick up that particular provision. If executives are not using merit-based selection, for whatever reason, and if, in this legislation, all these appointments are essentially going back to the executives with little role for the commissioner, there needs to be some transparency and public accountability regarding the number of occasions executives are using non-merit based executive appointment processes, and the reasons for that.

Again, in part this comes back to the issues I raised within the Department of Planning and Local Government, where the original appointments were non merit-based; they were just people who were tapped on the shoulder. As I said, supposedly we are not going through a formal process, which I believe to be a stitch-up for the various positions, and I think it is important that we look at those issues.

There are many other issues that need to be raised in the committee stage of the debate. I note the submissions of the Public Service Association, and some of my colleagues in this chamber, as well as others, have raised a number of those in the debate. I will not repeat them at this stage, but I want to raise some questions about certain other aspects of the legislation.

In the bill, we have a novel concept of what is called an attached office, and I refer members to that. On the surface, it appears to me to be potentially supportable by all members of the chamber, but I think we need to explore exactly what restrictions, if any, there are. The minister's second reading explanation states that there are greater powers—and I am paraphrasing—for a direction on policy from the minister in relation to these new attached offices. I am not sure whether that is necessarily the case.

It seems to me that it is a vehicle for a number of these offices that we see plonked into large departments being able, in essence, to report to a different minister than the minister for the overall department. I am not sure whether I have this exactly right, but it may be that, if the Office of Local Government is in minister Holloway's department, but the Office of Local Government needs to report to minister Gago, or whoever the appropriate minister is, this may give minister Gago the responsibility in relation to the office and the employees as opposed to minister Holloway. However, I think we need to clarify that with the minister handling the debate on this. If that is the case, and it is clear as to which minister is responsible, we will not get a situation of minister Holloway pointing to minister Gago and minister Gago pointing to minister Holloway as being responsible.

The Hon. P. Holloway: Responsible for what?

The Hon. R.I. LUCAS: For the attached office. I think that is an issue that we need to explore in the committee stage. Clause 71—Appointment of other special staff—provides:

(1) The minister may engage—

(a) a person as a member of the staff of a member of parliament; or

(b) a person in employment of a class prescribed by the regulations, on conditions determined by the minister.

(2) A person employed under this section is not an employee in the Public Service.

If this is potentially to cater for the situation of the one staff member in the Leader of the Opposition's office in the Legislative Council and also the staff of the Independents in the upper house and possibly the lower house, I seek clarification from the minister if that is the case. If it is not the case, I seek clarification on exactly what the provision is intended to achieve.

I seek some clarification in respect of division 3 of the current Public Sector Management Act and the duties of corporate agency members. There are a number of provisions in relation to corporate agencies. In talking about conflict of interest, it refers to not just pecuniary interest but other personal interests of the senior officer. I think all these sections have now been removed from the new bill, and I stand to be corrected if that is wrong. If they have been removed, can I ask the minister to indicate why that is the case and where are these similar provisions intended to be? This is obviously in relation to corporate agencies.

For me, this raises the following question: under the current legislation, we appear to have requirements on chief executives for pecuniary interests as conflicts of interest and other personal interests of a senior officer conflicting with his or her duties. Do we have similar guidelines that relate to chief executives of current government departments and agencies within the general government sector? I assume that we do and, if we do, can the minister indicate where they are, and do they relate to the particular phrase, 'other personal interest of the senior official'? I would have thought that, if we had this issue of other personal interest—which may be a close personal friendship with an employee—the issue that I raised earlier in relation to a chief executive may have been picked up by that particular conflict of interest restriction. I flag that I will ask the minister to provide some response to that.

The first part of the minister's second reading explanation says that the Premier is provided with a new capacity to give directions to public sector agencies to obtain specified whole-of-government objectives and can direct that agencies collaborate with each other and share information. This was the other selling point that the government was using in terms of why the legislation was required; that is, the Premier was going to have a new capacity to give directions. I refer the minister to section 15(1) of the current act, which already provides:

> Subject to this section, the chief executive of an administrative unit is subject to direction—
>
> (a) by the Premier with respect to matters concerning the attainment of the whole of government objectives;

It is quite clear that under the existing legislation—and we were told at the time this legislation was changed—the Premier has the power to direct chief executives in relation to whole-of-government objectives. This was the State Strategic Plan, etc. So, that power already exists. I ask the minister to explain what the new bill does which is different to the powers which already exist within the current act.

Secondly, the minister's second reading explanation makes the claim that the bill also addresses public sector governance, making provision for the Premier to give directions to public sector agencies relating to structural arrangements in the public sector in the formation of new entities. This new capacity will be used to raise the standard and consistency of governance across the public sector. In relation to this new capacity for structural arrangements, can the minister indicate exactly what provisions exist in the new bill to give the Premier this new capacity, and exactly what new powers does the Premier have which do not currently exist?

Certainly my experience with this administration, and the past administration, is that, in terms of structural arrangements, almost anything seems to have been possible. One only has to look at the various structural changes that we have seen over the past decade or so to know that almost anything is possible, because it has actually been done.

I refer members to section 16 of the current legislation—the extent to which the commissioner is subject to ministerial direction. I note that—and this is consistent with the current act so I make no criticism—a ministerial direction to the commissioner must be communicated to the commissioner in writing and it must be included in the annual report of the commissioner. Given that the annual report of the commissioner sometimes does not occur until up to six months or more after the end of the financial year, if this ministerial direction is given to the commissioner at the start of the financial year, the first there could be any public knowledge of it might be 18 months later.

I wonder whether members who are interested in the point I am making in the chamber might not accept the view that perhaps there should be an additional provision (which exists in most legislation) that such a ministerial direction to the commissioner should be tabled in

parliament within six sitting days. So, at the start of the financial year, if a ministerial direction is issued to the commissioner to do something, within six sitting days of parliament it would be public knowledge, rather than waiting for the annual report of the commissioner which, as I said, may be up to 18 months later.

I refer members to the section 'Functions of Commissioner'. I raised one of these issues before about whether or not they could institute an investigation off their own bat. Subclause (1)(g) provides:

> ...to perform any other functions assigned to the Commissioner under this Act or by the Minister.

I have to say that I did not pick this up on my first run through. I have a concern about the commissioner or the minister just being able to add functions to the Commissioner for Public Employment without any reference to the parliament at all. In paragraphs (a) through to (g) we have all these functions of the commissioner and then we say, 'However, if the minister wants to make up a function at any particular time, the commissioner can have this additional function, as well.' I would have thought that, at the very least, we should look at having that reviewable through regulations so that, if an additional function is added by the minister to the Commission for Public Employment, parliament would have the opportunity to review that by way of the regulation review process. Again, I hope that other members will consider whether or not they believe that is an appropriate course of action.

I refer members to the definition clause in respect of a public sector agency and ask the minister to confirm whether the Ombudsman is a public sector agency under the current definition or the proposed definition in the bill. There is a public sector agency provision, I think, in the existing legislation. Is the Ombudsman a public sector agency and, under the proposed bill, will the Ombudsman be a public sector agency for the purposes of the proposed legislation?

Finally (and I am sure members will be delighted), I refer members to clause 32. I am not sure whether I have the appropriate clause, but I want to raise the issue of whether or not there should be appeals on the issue of reclassification. I raised an issue in relation to reclassification earlier. This is an issue that we ought to explore in the committee stage. It is an important issue for members of the Public Service in relation to what they perceive to be fairness or unfairness. There are arrangements under the current legislation where, if you have applied for reclassification and you have been knocked back, you can go through an appeal process.

My understanding is that that is probably not possible under the proposed legislation. If that is the case (and we need to confirm that with the minister, or have the minister confirm it), why does the government believe that that should be the case? I do not think there is any doubt that some of these processes are fraught with potential difficulty and that people may be disadvantaged because of the bias or perception of the chief executive (or the appropriate senior officer) in relation to a reclassification issue. If what we are being asked to do is to remove completely the capacity for an appeal process then, personally (I cannot necessarily speak on behalf of my party on this issue), I remain to be convinced about the merit of that position.

With that, I conclude my second reading contribution. As I said, I look forward to the minister's response in what I know will be an extended committee stage.

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) (12:35): By way of concluding remarks, I thank all honourable members for their contributions to this most important bill. Before dealing with particular issues about the bill, I will make some observations about some of the commentary, particularly from the opposition. As I listened to opposition members extolling the virtues of our public sector workers, I could not believe that it was the same opposition that proudly boasted at the last election of its intention to get rid of 4,000 public sector workers.

I cannot believe that this is the same opposition that hardly lets a week go by in this place without bemoaning the increase in the number of public sector workers under this government. Week after week we listen to members opposite groaning. I cannot believe it is the same opposition that developed the nasty habit of singling out, in parliament, public servants for personal ridicule and abuse. We saw the Hon. Robert Lucas in fine form yet again today doing exactly that—disgraceful and cowardly behaviour in singling out individual public servants, besmirching them in this place, discrediting them personally in this place when he knows that they are not able to come into this place and put their own version of events on the record. He knows that; he knows how it works in the public sector. It was disgraceful and cowardly behaviour, and he should be absolutely

ashamed of himself. I could not believe that it was the same opposition that has regularly besmirched those hardworking public servants, whose only crime in life is to earn $100,000 or more, by calling them 'fat cats'. I could not believe it.

I hope that this signals a new era, where those members opposite will really value our public sector workers and the work they do. I hope that we will see no more of the attacks on their character and their job security that have featured so prominently in the opposition's conduct up until now, but somehow I doubt it. I suspect that, when this bill is done and dusted and the PSA members are no longer carefully watching, we will quickly see the real opposition back in action.

I think we get a clue about what might happen by observing the proceedings in the other place. Just as in this chamber, during the passage of this bill in the other place, members of the Liberal Party expressed their reverence for public servants, but that reverence lasted just one day. On the very next day, the deputy leader could not help herself, reverting to type and calling public servants 'donkeys'. Of course, she was at it again just a fortnight ago, when she quite falsely accused ambulance workers of causing a kidney transplant procedure to fail because, she claimed, ambulance workers were too lazy or did not have enough time to attend, or something like that. It was disgraceful conduct.

I urge all public sector workers following this debate to be very cautious before accepting at face value the advances of members opposite. Perhaps they might want to test this apparently new approach by asking opposition members whether they will join us in our commitment to maintaining the no forced redundancy principle. Opposition members in both houses could not bring themselves to make that commitment, and they do not make that commitment now. Public sector workers might also want to ask why, even during this debate, the opposition continues to question the increase in public sector numbers under this government.

If the opposition really valued the work of public sector workers, this would be a cause for approval. If they really believed in the value of public sector workers, this legislation would be cause for approval. If they really believed in the value of public sector workers, they would see that this would mean better services for South Australians—but, no, an increase in the size of the public sector is cause for concern, according to those opposite. No matter how they dress up the issue, what opposition members are really about is taking away jobs from public sector workers. So, I find it the height of hypocrisy to feign an interest in job security while all the time they are steeling themselves for yet another attack on people's jobs.

Of course, unlike the opposition, we on this side of politics have always valued our public sector workers. We have always regarded them as a great asset, whose value should be maximised, and that is why we have introduced this bill. We want our public sector to be as effective and responsive as it can be, and as attractive a place to work in as possible.

The reforms set out in the bill are far reaching, and I welcome the fact that, perhaps with the exception of the Hon. Robert Brokenshire, there is generally widespread support for most of these reforms: a principle-based approach, with the principles we have chosen having an emphasis on one government; collaboration and information sharing between agencies; greater flexibility; performance management and development requirements; and the South Australian Executive Service, with its emphasis on leadership.

There were some matters of concern expressed by members, with which we agree. We agree that there should be protection from discipline for public sector workers who are participating in public affairs outside their employment, and I will be moving an amendment to the bill to that effect. Our amendment is different from the opposition's foreshadowed amendment in this regard. However, given that we all agree on the principle, I am confident that we will find the appropriate set of words; indeed, I understand that the opposition is prepared to support the government's amendment. We agree that rights of review for reclassification matters should be preserved. The government undertook some time ago that these rights would be protected, and I will be moving an amendment to secure that protection.

We agree that the default rule for suspension pending investigation is that suspension be with pay and that the discretion to suspend without pay be available only in limited circumstances, and I will be moving an amendment to make it clearer that this is indeed the case. We agree that, when appointing the commissioner or commissioners to the Public Sector Grievance Review Commission, the government should seek representations from unions and that the bill should set

out a required broad skill set for the commissioner or commissioners, and I will be moving amendments providing for these particular matters.

The issues left between us are few, but they are significant, and I will address the main ones now. In relation to preference for big unions, the Hon. Mark Parnell raised the issue of the opposition's amendment designed to provide preferences for unions, such as the PSA, over other unions. Opposition members have not dwelt on these provisions in their contributions. Surprise, surprise! This makes it a little hard to discern the justification for the amendments, and I will be interested to hear the debate relating to these amendments during the committee stage.

So that members are clear, the effect of the opposition's amendments is to provide that the government is required to consult only with those unions that, in the opinion of the Commissioner for Public Sector Employment, have a significant number of public sector employees. As some members would be aware, it is equivalent to the set of provisions in the current act which are being used by the PSA to try to frustrate the Health Services Union of Australia in its attempt to represent its public sector members.

It is extraordinary that the Liberal Party, in its desperation to embrace the PSA, its new best friend (for now; until the cameras are off and the crowds have gone), would be seeking that this chamber insert provisions designed to prefer some legitimate unions over other equally legitimate unions, and I am pleased other members here are be able to bring a more objective mind to this issue.

In relation to review rights, we have strengthened review rights for public servants. For the first time in serious matters they will be able to address the Industrial Relations Commission. The IRC will decide whether the decision being reviewed is harsh, unjust or unreasonable, and this will ensure a robust public appeal forum. For less serious matters public servants will be able to seek review by the Public Sector Grievance Review Commission, and I note the opposition's intention to require the commission to sit as a panel comprising a commissioner, an employee representative and an employer representative.

I am not sure whether there was an argument setting out the benefits of the panels, but the disadvantages are clear. The matters that will go to the PSGC will be many and varied, requiring a panel to be convened for each of them. Obviously, it will be time consuming, cumbersome and no doubt expensive and, as I understand it, no-one is suggesting that the IRC adopt a panel approach. A single IRC commissioner will hear unfair dismissal matters, so why would we require a panel approach with the PSGC, which necessarily is dealing with less serious matters?

In relation to termination powers of chief executives, during this government's tenure we have gone a long way towards requiring chief executives to be accountable to government for performance targets from areas as diverse as homelessness and reducing business red tape. However, if we are to require this accountability we must provide chief executives with the means to achieve their targets. To do this we need them to have all the tools they need to be able to effectively manage their staff.

Many of the features of the bill are intended to lead to the better management of staff, the strong employer of choice principle, stronger leadership through the SAES, greater mobility of employees and flexibility in their deployment and the requirement for performance management and development systems.

If we really expect chief executives to be accountable and to properly manage their staff, they must be given the power to terminate employment where they are faced with non-performing staff or staff engaged in misconduct. The government believes that withholding from chief executives the power to terminate employment has been a powerful disincentive for agencies to take responsibility for properly managing their employees.

This failure to properly manage employees is not widespread, but it does exist so, rather than being managed, employees are ignored or put into low priority jobs. This has a consequence for the morale of the employees directly concerned and can manifest in health issues and workers compensation claims. It has consequences for the morale of other employees as they see poor performance or misconduct ignored, and it leads to problems with redeployment. Managers and agencies become reluctant to take on redeployees as they perceive that the pool of excess employees is tainted by poor performers.

The government does not suggest that withholding from chief executives the power to terminate employment is the only cause of this failure and its consequences, but it is nevertheless

at least one of the causes, which is probably why in all other Australian jurisdictions except Tasmania the power to terminate has been given to chief executives. The government is not aware of any suggestion that this has led to any misuse of power. The PSA has certainly not suggested to the government that this is the case, but the government accepts that there are some misgivings about this, notwithstanding that all jurisdictions bar Tasmania have gone down this path with no apparent ill effect.

So, we accept that there is a need for balance to ensure that inappropriate use of power is discouraged and, where it occurs, remedied. Therefore, the bill creates a strong set of principles to guide decision making, frees up the commissioner to develop and ensure adoption of appropriate standards, guidelines and policies and provides for a robust public appeal forum. As I have indicated, for the first time public servants will be given access to the Industrial Relations Commission.

Finally, I draw members' attention to the recent Economic Development Board report, which made comment on these matters. In the report the board stated that it 'welcomes the provisions of the Public Sector Act that place explicit responsibility on chief executives for performance management' and further states:

> Chief executives must be held accountable for the financial performance of their agency, and accordingly must have authority and flexibility to shift resources within their portfolio to meet new needs and priorities.

This is an overdue reform and should be supported. Put simply, in the 21st century a chief executive should be able to dismiss an employee who, for instance, is guilty of serious misconduct. The consequence of not making this change is that the bill will be less effective in remedying the lack of proper management of staff that I alluded to earlier. Members need to understand that this will be the consequence if they continue to oppose this reform.

In relation to the commissioner's role, a number of members have raised the issue of the role of the Commissioner for Public Employment to act on his or own initiative in certain matters, and this is indeed an important issue, as is the issue of whether the commissioner should have the power to advise agencies or to conduct reviews of agencies or to investigate matters of employee conduct or principle on his or her own initiative.

The government believes that the role of the commissioner for public sector employment is to lead good practice in agencies by setting the appropriate standards across government, encouraging achievement of those standards and monitoring performance against those standards. We wanted to move the relationship between the commissioner and chief executives away from a relationship of command and control. That policeman or umpire role is to be played by the review bodies.

Consistent with this view, we believe that giving the commissioner a roving power to act on his or her own initiative tends to suggest that this is a relationship of overseer or policeman. We think it will make it more difficult to establish the engaging, influencing role that we think is the appropriate one. We recognise that there are some who think that, as greater powers are given to chief executives, this roving role of the commissioner is even more important. There is some force in this view, and we will listen to the debate around that particular issue. However, the government's present view is that the importance of getting right the relationship between the commissioner and the chief executive outweighs the additional comfort that the commissioner's roving role might bring.

The Hon. Ann Bressington foreshadowed amendments designed to improve the effectiveness of whistleblower protection in the public sector. The government agrees that we need to ensure that we are providing an environment in which public sector workers can feel confident to come forward with an issue of concern, but the government does not support the foreshadowed amendments. We have a Whistleblowers Protection Act which is a complete code relating to whistleblowing. It facilitates disclosure, provides means by which the disclosure can be made, requires action to be taken in respect of disclosure, and provides protection for people making disclosures. The government believes that no good purpose could be served by having two statutory regimes setting out the rights and obligations of people involved in whistleblowing matters. This is all the more the case where in some respects the foreshadowed amendments are inconsistent with the Whistleblowers Protection Act itself. We have issues as well with some of the particular amendments, which I will address in committee.

In conclusion, I think I have covered the main issues between us, but before I close I need to make reference to the suggestion that the government had inadequately consulted. Members

will be aware of the extensive public consultation on the draft bill during 2007 and 2008, but the Hon. David Ridgway stated that the minister had met only once with Jan McMahon, General Secretary of the PSA, about the bill. The clear implication of his remarks was that this was the full extent of government engagement with the PSA and, of course, that is completely untrue.

I am advised that, in addition to the extensive public consultation on the bill, the minister's office has met with PSA officers at least 15 times to painstakingly work through issues regarding the bill. The minister's office has met with PSA officers at least 15 times to work through the bill, right from the period when the bill was still being developed and after the public consultation phase, before and after the bill was finalised, and continuing since the bill's introduction. Draft bills have been shared, draft amendments have been shared, and there have been countless telephone conversations. Indeed, it is precisely because of this constructive manner of engagement that we have been able to introduce this far-reaching legislation, yet—

An honourable member interjecting:

The Hon. G.E. GAGO: Well, there are differences between us, and I have outlined those and we do not resile from them. We believe this is good public policy and is long overdue, but to say that disagreement constitutes lack of consultation is an absolute nonsense. The fact is that we have extensively consulted, which has resulted in agreement on a range of aspects. However, there remain some areas in which we still disagree. That does not constitute lack of consultation. Indeed, the PSA does not have everything that it has wanted from us, but it cannot be said it is because of lack of consultation. I look forward to those remaining issues being resolved, if we can do so, and to the committee stage.

Bill read a second time.

PETROLEUM PRODUCTS SUBSIDY ACT REPEAL BILL

Second reading.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (12:57): I move:

That this bill be now read a second time.

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

Leave granted.

The Bill I am introducing today removes redundant legislation from the State's statute books.

The purpose of the *Petroleum Products Subsidy Act 1965* was to administer the Commonwealth's former Petroleum Products Freight Subsidy Scheme in South Australia. The Scheme assisted consumers in eligible remote areas by off-setting the freight cost associated with transporting petrol, diesel, aviation gasoline and aviation turbine fuel over a long distance. All States had similar legislation in place to administer the Scheme on behalf of the Commonwealth.

The Scheme was introduced in 1965 and closed by the Commonwealth Government on 1 July 2006. As part of the transition the Commonwealth provided time for claims to be settled by 1 July 2007. The Commonwealth repealed the legislation establishing the Scheme from that date.

All eligible claims from South Australia have been received and paid and the Commonwealth has reimbursed the South Australian Government.

Subsequent to the closure of the Scheme, Queensland has amended its *Petroleum Products Subsidy Act 1965* to reflect the closure of the Scheme and the repeal of the Commonwealth Government funding legislation. The Queensland Act is due to expire on 1 July 2009.

In summary, the Act's purpose has expired and there is no other reason to retain it.

I commend the Bill to Honourable Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

Part 2—Repeal of *Petroleum Products Subsidy Act 1965*

2—Repeal of Act

This clause repeals the *Petroleum Products Subsidy Act 1965*.

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

ROAD TRAFFIC (MISCELLANEOUS) AMENDMENT BILL

Second reading.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (12:58): I move:

That this bill be now read a second time.

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

Leave granted.

The *Road Traffic (Miscellaneous) Amendment Bill 2009* provides regulation-making powers to enable the introduction of 2 national heavy vehicle initiatives (the intelligent access program and heavy vehicle speeding compliance); and makes several amendments to the requirements for declaration, notification and testing of speed and red light cameras.

Heavy vehicle speeding compliance

Better heavy vehicle speed management and the reduction of fatalities and injuries involving speeding heavy vehicles is an objective of the National Heavy Vehicle Safety Strategy 2003-10, which was approved by the Australian Transport Council (ATC), and has the commitment of the Commonwealth, State and Territory Governments.

Despite the presence of many responsible operators, speeding heavy vehicles remain a problem within the road transport industry from a road safety perspective. Available data shows that speed is a significant contributing factor in heavy vehicle crashes. Research has shown if a vehicle is travelling at, or below, the speed limit when an accident occurs, the result of the crash will be less severe than if the vehicle was speeding.

There were 12 fatal crashes in South Australia involving heavy vehicles (including rigid trucks and buses) in 2007 and 19 in 2008. The National Transport Commission (NTC) has estimated that if all heavy vehicles comply with speed limits, there would be a 29 per cent reduction in crashes involving them.

The NTC commenced a review of speed compliance for heavy vehicles in 2005, including the release of a formal discussion paper in October 2005. In December 2006, the NTC released a draft policy proposal. The proposal focussed on the off-road parties in the industry who, through their action or inactions, can have a major influence on heavy vehicle driver speed behaviour.

Following this policy proposal, the *National Transport Commission (Model Act on Heavy Vehicle Speeding Compliance) Regulations 2007* (the model speeding heavy vehicle legislation) were developed by the NTC in conjunction with State and Territory transport and enforcement agencies, and through extensive consultation with the road transport industry. On 21 December 2007, the ATC voted unanimously to approve the package. Under Intergovernmental agreements of the ATC and the Council of Australian Governments (COAG), jurisdictions are required to implement national road transport reforms approved by the ATC. This Bill realises that commitment by providing the head of power to make regulations that will embody the model speeding heavy vehicle legislation. Implementation of the model legislation will contribute to improved road safety and reduced deaths and injuries through increased compliance of heavy vehicles with speed limits.

The primary purpose of the model speeding heavy vehicle legislation is to adopt a chain of responsibility approach in relation to heavy vehicle speed compliance to ensure that those who are in a position to influence a decision to breach speed limits are held accountable for their actions. This means a person upon whom a duty to prevent a breach of speed limits is imposed must actively consider whether the way in which they intend to carry out their activities will satisfy that duty. This builds on the existing chain of responsibility framework for mass, dimension and load restraint and the driver fatigue compliance framework. A regulated heavy vehicle, for the purpose of this legislation, is a motor vehicle or trailer combination that has a gross vehicle mass greater than 4.5 tonnes.

The following are key features of the model speeding heavy vehicle legislation:

- the introduction of obligations on all parties in the transport chain to take positive steps to prevent breaches of speed limits;
- the chain parties identified in the legislation are employer, prime contractor, operator, scheduler, consignor, consignee and loading manager;
- drivers of heavy vehicles are not included under this legislation as there is already an existing framework and roadside enforcement that targets drivers. The focus of this chain of responsibility legislation for speed compliance is off-road parties;
- although the duties vary somewhat for each party, the core obligation remains the same, which is to take ‘all reasonable steps’ to ensure that the party’s activities will not cause, contribute to causing, or encourage a driver to speed;
- chain parties will be able to demonstrate that they have taken all reasonable steps by complying with an industry code of practice that has been registered with the road authority and developed and maintained according to Austroads guidelines;

- it will be illegal for companies to enter into contracts that result in speeding due to unreasonable schedules or deadlines;
- the application of existing general compliance and enforcement provisions, including stronger penalties and sanctions, for heavy vehicle speed non-compliance.

It is not proposed to vary from the model national provisions other than as required to accommodate South Australian drafting style and maintain consistency with the way in which other national heavy vehicle reforms have been implemented in our legislation.

The Intelligent Access Program (IAP)

The IAP framework provides a means to monitor, by global positioning satellite technology and in-vehicle measuring devices, the compliance of individual heavy vehicles, particularly Restricted Access Vehicles (RAVs), with various access conditions in an accurate and tamper-evident manner. It will allow the heavy vehicle industry increased productivity and provide improved protection for the road network.

RAVs currently operate under an exemption or approval arrangements pursuant to the sections 161A and 163AA of the RTA (i.e. by permit or in accordance with a notice published in the South Australian Government Gazette) on parts of the road network. Route access is provided according to certain restrictions (such as mass, vehicle dimension and time of travel). Within the competitive environment of the transport industry, some operators resort to non-compliance to improve productivity, at the expense of road safety and increased wear to the road network.

The probability of non-compliant behaviour being detected is very low using traditional enforcement practices. The successful implementation of national transport reforms has led to the greater use of larger and heavier RAVs and demands from industry for increased heavy vehicle mass limits and expanded access opportunities to the road network.

Numerous parts of the road network, especially local roads, cannot safely or structurally accommodate heavy vehicles. Councils are very concerned at the level of damage caused when these vehicles, in particular RAVs, travel on non-approved routes.

Within this new context, the ability of governments to administer and enforce heavy vehicle road law, while also promoting economic reforms within the industry and protecting the community and road infrastructure, becomes increasingly important.

The *Intelligent Access Program National Model Legislation* (the model IAP legislation) was approved by ATC on 2 December 2005. As with the heavy vehicle speeding compliance reform, implementation is an obligation under Intergovernmental agreements.

IAP uses an in-vehicle monitoring device to provide data for the vehicle. The data is relayed by satellite to an accredited third party data collection centre (called an IAP service provider). Location, speed and time of day are currently capable of being monitored, and in time, so will mass and vehicle configuration.

Operators who wish to operate under IAP apply to the relevant state road authority, and if accepted, enter into a contract with an IAP service provider. Agreed Intelligent Access Conditions are monitored and any deviation is automatically detected. Where this occurs, a Non Compliance Report is generated and forwarded to the relevant state road authority for processing, adjudication and/or prosecution.

The following are the key elements of the model legislation:

- powers for a state road authority to issue Intelligent Access Conditions when granting concessions to transport operators;
- duties of transport operators, drivers and IAP service providers—including the process for IAP service provider certification;
- privacy safeguards for heavy vehicle operators and drivers;
- auditing requirements for IAP service providers;
- obligations on IAP service providers to report certain types of breaches and any tampering with IAP equipment;
- provisions relating to non-compliance with Intelligent Access Conditions, including offences and defences;
- evidentiary provisions to assist the use of data to prosecute breaches of Intelligent Access Conditions.

It is intended that the model legislation will be adopted without variation by regulations made under the head of power provided in the Bill.

It has taken several years since the approval of the reform to develop rigorous ICT operational standards that applicant IAP service providers must comply with in order to be certified. Since March 2008, 2 providers have been certified and are offering services. Queensland, New South Wales and Victoria have now implemented the model IAP legislation, with the other jurisdictions expected to follow during 2009.

Passage of this Bill will enable recognition of IAP operators from the jurisdictions currently offering the scheme so that they will not have to comply with the paper-based requirements for monitoring access conditions in South Australia. It will also provide the advantages of IAP to South Australian operators.

Declaration, notification and testing of speed and red light cameras

Approval of Traffic Speed Analysers by Regulation

Section 53A of the Act provides that the Governor may, by notice published in the gazette, approve apparatus of a specified kind as traffic speed analysers. This is in contrast to approving apparatus of a specified kind as photographic detection devices, which the Governor may approve by regulation.

For consistency and greater transparency, the Bill requires that both apparatus be approved by regulation. In addition, as traffic speed analysers often form part of a photographic detection device, it makes sense to have the approval located in the same place.

Removing the requirement to gazette the locations where both red light and traffic speed analysers are installed

Section 79B(9a) of the Act requires that a photographic detection device must not be operated for the purpose of obtaining evidence of the commission of a red light offence and a speeding offence arising out of the same incident, except at locations approved by the Minister and notified in the Government Gazette.

This requirement was introduced in 2003 when cameras which could detect both speeding and red light offences were introduced so that the public would be aware of the locations and modify their behaviour accordingly. At that time, there were only 13 of these cameras rotating amongst 26 sites. Most cameras now operate as dual red light and traffic speed analysers and by the end of June 2009, there will be 86 sites.

The requirement to gazette these locations is thus becoming an onerous and administratively time-consuming task, and an incorrect identification of a site may lead to a prosecution failing on a mere technicality.

It is also unnecessary as signs are installed leading up to each of location advising road users that there are a red light and speed camera ahead and a list of all camera locations is available on the Department for Transport, Energy and Infrastructure internet site. This will continue. In addition, most street directories and many GPS tracking devices installed in motor vehicles display red light camera locations.

Extending the testing period - section 175(3)(ba)(i)

In proceedings for the commission of an offence detected by a traffic speed analyser, the Commissioner of Police or any other police officer of, or above, the rank of Inspector must certify that a specified traffic speed analyser was tested on a specified day and was accurate on that day and for the following 6 days. This will be taken as proof of these facts in the absence of proof to the contrary is proof of the facts certified, pursuant to of the Act.

South Australia Police (SAPOL) has requested that presumption of accuracy be extended from the following 6 to the following 27 days.

When the speed function of red light cameras was first activated in December 2003, SAPOL had no experience as to the volatility of induction loops for the purpose of providing evidence of speeding offences. Consequently, rigid testing procedures were developed. They require tests every 7 days to ensure that the device is operating correctly and detecting vehicles passing over the induction loop; correctly indicating the lane in which the vehicle is travelling; accurately indicating the speed of any detected vehicle; and correctly indicating the date, time and code for the location at which the photos are taken.

After 5 years of operation, SAPOL advises it has gained sufficient experience and evidence as to the stability and accuracy of induction loop technology and the seven day testing requirement is now regarded as too onerous.

The induction loops are calibrated pursuant to the *National Measurement Act 1960* (Cth) every 12 months by the Department for Transport, Energy and Infrastructure. The tolerance allowed before a site would be defected is 25mm between leading edges of the induction loops. Calibration results for 2003-04 and 2004-05 reveal that the maximum movement was 2.25mm, well within stability parameters. This provides a further indication that the induction loops of the speed detection device are stable and do not require seven day testing.

The manufacturers of the systems for speed and red light camera operations involving induction loops recommend testing to maintain the accuracy of the device at intervals of 30 to 90 days. Interstate jurisdictions test speed detection devices at monthly or longer intervals. In NSW the induction loops are tested every 30 days and so are the overall systems. In Victoria the induction loops are tested every three months and the systems are tested monthly.

Extending the presumption of accuracy to 27 days rather than 6 days will reduce the number of on-road tests, reducing the resource requirement spent on what SAPOL believes, on the basis of the above information, is unnecessary testing of accuracy and to provide consequent occupational health, safety and welfare benefits to both police officers and non-sworn members of the Traffic Camera Unit who perform these on-road procedures.

Other minor amendments—section 175(4)

The Bill also makes 2 minor amendments to the evidentiary provision in section 175(4) of the Act.

The first is to permit the presumption of accuracy in relation to traffic speed analysers found in section 175(3)(ba)(i) to be available where the analyser is fixed in a housing that is itself fixed to a permanent structure (such as a tunnel or underpass) rather than directly affixed to the ground by means of a pole.

The second amendment is consequential on the repeal of section 79B(9a) by this measure.

This Bill will provide mechanisms to assist the heavy vehicle industry improve its safety and productivity and will assist government efficiencies and protection of the road network.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Road Traffic Act 1961*

4—Substitution of section 53A

This clause substitutes a new section 53A of the Act, which allows the Governor, by regulation, to approve apparatus of a specified kind as traffic speed analysers, as opposed the old section 53A which allowed the approval to be given by notice in the Gazette.

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

This clause repeals section 79B(9a), a subsection that prevented the operation of a photographic detection device for the purpose of obtaining evidence of the commission of a red light offence and a speeding offence arising out of the same incident.

6—Insertion of sections 110AB and 110AC

This clause inserts new sections 110AB and 110AC into the Act as follows:

110AB—Speed

This clause provides a regulation-making power in relation to the establishment of a scheme for the management of speeding by drivers of certain heavy vehicles.

110AC—Intelligent Access Program

This clause provides a regulation-making power in relation to the establishment of a scheme to provide increased access to the road network for certain heavy vehicles (known as the *Intelligent Access Program*).

7—Amendment of section 173AA—Reasonable steps defence

This clause inserts new section 173AA(4) into the Act, which provides a regulation-making power allowing the regulations to set out circumstances in which a requirement under the Act to take all reasonable steps to prevent the occurrence of a specified offence will be taken to have been satisfied.

8—Amendment of section 175—Evidence

This clause amends section 175(3)(ba)(i) of the Act, extending from 6 days to 27 days the period within which certain traffic speed analysers will be presumed to be accurate following the day of testing.

The clause also amends section 175(4) of the Act to address traffic speed analysers that are fixed to permanent structures (such as tunnels or underpasses) rather than directly affixed to the ground by means of a pole.

Finally, the clause amends section 175(4) of the Act to correct an obsolete aspect of the subsection.

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

[Sitting suspended from 13:00 to 14:17]

WILLUNGA BASIN

The Hon. R.L. BROKENSHIRE (14:17): Presented a petition signed by 1,060 residents of South Australia concerning the Willunga Basin. The petitioners pray that the council will establish forthwith a statutory authority with powers to address major issues such as population growth and the adequate supply of public and private utility services to the said region and, further, to address issues of water security, food security, biodiversity conservation, landscape preservation, sustainable housing and the pursuit of sustainable employment opportunities through horticulture, agriculture, viticulture, tourism and any other enterprises compatible with the preservation and enhancement of the said region.

ANTI-CORRUPTION BODY

The Hon. DAVID WINDERLICH (14:18): Presented a petition signed by 14 residents of South Australia, concerning an anti-corruption body. The petitioners pray that the council will convey the community's desire for an independent anti-corruption body to the Premier, Mike Rann.

PAPERS

The following papers were laid on the table:

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

Tandanya—National Aboriginal Cultural Institute—Report, 2007-08
Death of Damien Paul Dittmar—Coroners Inquest Recommendations

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

Reports, 2007-08—
Central Northern Adelaide Health Service
South Australian Council on Reproductive Technology

NATURAL RESOURCES COMMITTEE

The Hon. R.P. WORTLEY (14:19): I bring up the report of the committee on Water Resources Management in the Murray Darling Basin: Critical Water Allocations.

Report received.

SWINE FLU

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) (14:20): I lay on the table a ministerial statement giving an update on swine flu made today in another place by the Hon. John Hill.

SELECT COMMITTEE ON SA WATER

The Hon. M. PARNELL (14:21): I move:

That standing orders be so far suspended as to enable me to move an instruction without notice to the Select Committee on SA Water.

The PRESIDENT: Is it seconded?

An honourable member: Yes, sir.

Motion carried.

SELECT COMMITTEE ON SA WATER

The Hon. M. PARNELL (14:21): In accordance with the resolution of this council passed yesterday, I move:

That it be an instruction to the Select Committee on SA Water that its terms of reference be amended by inserting after paragraph (i):

(j) Replacement of 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;

(k) The prescription of the quaternary aquifer beneath Adelaide with the inclusion of 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;

(l) Changing the water pricing structure by increasing the volumetric costs and charges to provide more incentive for water users to reduce their demand.

This is the formal motion that flows from the passage of the resolution yesterday to require the Select Committee on SA Water to investigate the matters that I have just read out, which were the subject of my motion yesterday. It is a formal matter, and I urge all members to support it.

Motion carried.

SELECT COMMITTEE ON CERTAIN MATTERS RELATING TO HORSE RACING IN SOUTH AUSTRALIA

The Hon. T.J. STEPHENS (14:22): I move:

That standing orders be so far suspended as to enable me to move a motion concerning the select committee and the appointment of a chairperson.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:22): I do not think it is appropriate without advising the government of the matter for which leave should be granted, so I oppose granting leave. Let us know what we are debating first.

The council divided on the motion:

AYES (12)

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

NOES (9)

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

Majority of 3 for the ayes.

Motion thus carried.

SELECT COMMITTEE ON CERTAIN MATTERS RELATING TO HORSE RACING IN SOUTH AUSTRALIA

The Hon. T.J. STEPHENS (14:27): In view of the fact that the Select Committee on Certain Matters Relating to Horse Racing in South Australia, at a meeting convened this day, was unable to elect a chairperson, I move:

That this council appoint the Hon. T.J. Stephens, as the mover of the motion that established the select committee, to be the chairperson of that select committee.

The Hon. P. HOLLOWAY: I rise on a point of order, Mr President.

The PRESIDENT: I do not think you can debate it.

The Hon. T.J. STEPHENS: I would like to speak to the motion. Members would be well aware that over a number of months there has been a rather large cloud hanging over racing in this state. The opposition's intention was to move for the establishment of a select committee to provide people with the opportunity to come along and have their say with regards to racing in an open and transparent way. Board elections are coming up, and we have a number of wonderful—

Members interjecting:

The Hon. T.J. STEPHENS: The Hon. Bernard Finnigan says that you, Mr President, cannot chair the committee. Well, Mr President, you were not nominated. Perhaps the Hon. Bernard Finnigan should be in the loop.

I can say that we have met, but have disagreed on who should be the chairman. Rather than further delay calling for submissions and witnesses, it is time that this committee moved on. Thought was given today to consider, throughout the whole month of May, who would be chairman and then coming back into parliament to thrash it out. However, the vote was tied at three all and neither party showed any indication that it was prepared to budge. So, for this select committee to move forward, it is time we took this step.

I will not delay the council. I look forward to the support of honourable members so that we can move forward and help to clear up the clouds hanging over racing.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:29): There has been a total lack of courtesy in this matter coming before the council. It is a private member's matter; it is in relation to the chairperson of a committee. The fact that it should be raised here on a Thursday in government business time without even giving the government the courtesy—

Members interjecting:

The Hon. P. HOLLOWAY: Look, why don't you just keep quiet? Why don't you actually function as a democracy? You keep talking about democracy. What don't you just shut up for a minute?

Members interjecting:

The PRESIDENT: The Hon. Mr Lucas will come to order. I am happy to inform the minister that I did not know that this motion was coming before the council.

The Hon. P. HOLLOWAY: The least that could be done is for the honourable member to give the government the courtesy—and not just the government, but I think all members of this parliament, as I am sure that there are members of the crossbenches as well who might have been interested—of indicating exactly what it was that was being moved, and to give them the opportunity to consider other options if in fact they wish to do so. That is the first point to be made.

An honourable member interjecting:

The Hon. P. HOLLOWAY: It really is, as my colleague says, an incredible and arrogant abuse of the numbers.

Members interjecting:

The Hon. P. HOLLOWAY: In other words, you can come in here and, without showing any courtesy, move resolutions without even telling anybody. I am sure members opposite would squeal like stuck pigs if this government were to seek to move any resolution in here without giving the opposition or other members the courtesy of informing them that we were doing so. That is the first issue that I think should be noted.

Secondly, surely this issue is one for the committee to resolve involving its own chair. It was only yesterday, after all, that this committee was established. I am sure that if we went back to the committee with appropriate discussion the committee would be able to come up with an answer. How ridiculous to bring it back within less than 24 hours! It is less than 24 hours and, without consultation, we hear that there is a motion here in this council trying to resolve an issue that relates to private members' business involving the chairperson of a committee.

I believe that we should reject this rather self-serving motion moved by the honourable member—'Appoint me! Appoint me!' Rather than that, we should reject the motion here and allow the committee to make its own determination. I think we should give it a little more than 24 hours to try to resolve the issue before this council should intervene in the matter.

I think, in accordance with good practice and common sense, we should at this stage reject the resolution. If the committee cannot come up with a resolution by the time we meet in a week's time, then that might be another matter. At this stage, surely we should give the committee a chance to come to its own determination.

The Hon. A. BRESSINGTON (14:32): I agree with the Hon. Paul Holloway that this entire debacle should be dismissed. I sit on a number of select committees with and without government support. In the past and right now, on those select committees the government is quite open to other people chairing a committee if that be the will of the committee. The Hon. Mark Parnell chairs his own inquiry into SA Water.

I have never seen this done at the opening of a select committee. The whole vote was taken; the select committee will happen. In three years here, I have never seen this manoeuvre before. I think that this is an absolute disgrace, and I also consider it to be a breach of parliamentary process for somebody to nominate themselves. In connection with these committees, there have to be nominations and it all has to be recorded in minutes and so forth. Why should we have this process now? Why should you break the tradition that I have seen operating for the three years that I have been in this place?

Members interjecting:

The Hon. A. BRESSINGTON: Excuse me! I have the floor. Why should we see a tradition that I have seen for three years now broken over this political select committee? I just think this is crap. I think we go back to what we have done in the past: leave it to the committee to decide and, if it cannot, then find a way.

The Hon. R.L. BROKENSHIRE (14:34): Whilst I acknowledge very much the relevance of the leader's point that proper notification was not given officially in the chamber, I think that this matter needs to be dealt with now.

The Hon. A. Bressington: Of course you do. Why don't you try sitting on the select committees you are already on?

The PRESIDENT: Order! The Hon. Ms Bressington has had her go.

The Hon. R.L. BROKENSHIRE: I have just a few points. First, the chamber needs to be advised that, now that this has been passed by a majority of the chamber, it must be debated. Two members of the government were told that this matter would be dealt with in the chamber, as I recall. That is my memory of the debate. The key points to this are simply that if this was a standing committee I would acknowledge that, in all instances, the government should have the right to chair. That has been the practice, as I recall, in the 14 or 15 years I have been associated with the parliament.

However, select committees are not government committees as such. They are committees that are set up and approved by a democratic process in the parliament. This is the people's parliament. This is not the government's parliament. This is the people's parliament, and democratically the people's parliament has decided that there will be a select committee. If the Hon. Russell Wortley or, indeed, you, Mr President, had moved for the establishment of a similar select committee, I would be voting with you, Mr President, the Hon. Mr Wortley or any other member that they chair it—

The Hon. A. Bressington interjecting:

The Hon. R.L. BROKENSHIRE: I would be, because the government would have moved for the establishment of the committee but, in this instance, it was not the government that moved for the establishment of the committee. Within the past 24 hours I have had representation that two members of the government wanted to chair the committee—two members of the government, not one. Two members wanted to chair it—two chairmen.

I simply say that we have got to get on with this. I am not interested in the politics of this, but I am interested in having a racing industry that can function, and at the moment the racing industry is dysfunctional. The only way to sort out this racing industry that is costing the taxpayers a hell of a lot of dollars is to have this select committee so that there can be an open and accountable select committee.

The fact is that, in this instance, the Hon. Terry Stephens moved to establish the committee. The committee was approved with an absolute majority by the Legislative Council. Members chair the select committee that they move to establish, just like I am chairing the taxi industry select committee because I moved it. There is no real angst that I am the chair of that committee.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.L. BROKENSHIRE: The problem now is that we have three members on one side and three on the other, and it is difficult. The fact is that the Hon. Terry Stephens moved to establish the select committee. It is a select committee set up by democratic process by the parliament on behalf of the South Australian people. I believe we need to resolve it in this chamber. I support the nomination because he is the person who did all the work to get the committee before the parliament.

The Hon. R.P. WORTLEY (14:37): Naturally, I oppose the motion, but I think that people have to look at the history of this matter. The opposition has attempted to manipulate this committee from the very beginning, and the way it has done that is that it had a committee set up for five members. It had it all worked out for those two and the Hon. Mr Brokenshire, who obviously had done the deal. The fact is that two Independents approached the Hon. Mr Stephens to join the committee and he told them, 'No, there's no room.' What happened from there is that, after

speaking to him, the Labor Party decided to support the Hon. Mr Darley, and the Independents indicated support for the Hon. Mr Darley.

Once we informed the Hon. Mr Stephens that we were supporting the Hon. Mr Darley and his nomination would not be supported, he then moved an amendment to have six members on the committee. So, this is all about the Hon. Mr Stephens and what he has done to manipulate this committee to ensure that he is the chairman. This is unprecedented. This will make this whole select committee a total farce. My advice to the Independents—it is no use speaking to the opposition—is that you voted to have this discussed but, at the end of the day, the committee must have time to work this out.

Our position on the select committee today is that we need to negotiate this and not come straight in here and try to work the numbers once again to ensure that the Hon. Mr Stephens is the chair. So, if anyone has been trying to manipulate this committee, it has not been us. Members opposite have treated the Independents with absolute contempt by telling them, 'There's no room, you've already got your person'—

The Hon. T.J. Stephens interjecting:

The Hon. R.P. WORTLEY: It is my right. I am not even going to argue about that. You are sinking down to the bottom of the barrel. When you run out of arguments you then turn to hypotheticals. The fact is that members of the opposition have attempted to manipulate this position. They have treated the Independents with contempt by the way in which they rejected their nominations and, when they found out that they did not have the numbers to get their person on the committee, they then moved for six. Out of the six, it split 50:50.

I ask the Independents to do the right thing, to reject this, and we will then as a committee eventually find a solution. Do not use an unprecedented motion. I do not know whether this has ever happened before, but do not sit there and set a precedent by endorsing this most self-serving motion. Reject the motion, and that will force us to sit down (and this is what we want to do all the time) and negotiate.

The Hon. I.K. HUNTER (14:41): Sir—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Hunter has the call.

The Hon. I.K. HUNTER: As a relatively new member of this parliament, I want to express my very deep concern about what I see as a last minute attempt to trammel the conventions of this place—as I know them, at least. The Hon. Mr Brokenshire said that two members of the government who are on the committee were told that this motion would be debated today. As far as I am aware, that has never been construed as being formal notice to the government or the opposition that something is coming up. That is not the courtesy that we normally practise in this place—or to the whips—as I understand it. Imagine the uproar had we tried to pull such a stunt today. The Leader of the Opposition would have been on his feet immediately calling this for what it is: a stunt.

My view is that it should be left up to the committee concerned to determine who will be chairing it. I was on a committee where the Hon. Mr Parnell wanted to be chair. The vote was deadlocked and we broke. Within, I think, two days we came back and, lo and behold, Mr Parnell became the chair of that committee because it had been worked out in between those meetings. I say it is incumbent on us to let the committee proceed with its work and try to break this deadlock and not force it through this council.

The PRESIDENT: Perhaps I will just clear up something. The two government members of the committee were not told that this would be debated in the council today.

The Hon. T.J. Stephens: Sir, I told you I was going to bring it to the council today. You said, 'No, you won't.'

The PRESIDENT: Order! I am on my feet. We were told by the Hon. Mr Stephens that he would be bringing it to the council.

The Hon. T.J. Stephens: Today.

The PRESIDENT: No.

The Hon. T.J. Stephens: Yes.

The PRESIDENT: The Hon. Mr Lawson.

The Hon. R.D. LAWSON (14:43): There has been some suggestion that conventions are being trammelled. That is absolute nonsense. The committee was established yesterday and the members were appointed. In accordance with ordinary practice, the committee met promptly today. The deputy clerk, as the standing orders provide, called for nominations. There were two nominations. There were two votes, and the votes were the same on both occasions. There was clearly a deadlock. Government members were saying, 'We should be able to negotiate this over the next couple of months. Come back at the end of May.'

So, there was a clear attempt on behalf of the government members—who, incidentally, had strongly and bitterly opposed the very establishment of this committee, whose party position is against ever hearing any evidence at all and who, clearly, were seeking to delay. So, the matter was promptly brought back to this council today, and the mover of the motion (Hon. Terry Stephens) indicated that it would be brought back immediately. You, Mr President, said, 'You can't bring it back today because there's no private business today.' You thought you had him by the short and curlies, Mr President, and that clearly shows that you knew it was coming back today. There has been no breach of convention.

The Hon. Ann Bressington suggested that there was something wrong in the mover proposing that he be the chair of this select committee. It is entirely appropriate that the mover of the motion be the chair. The honourable member herself acknowledged that there are a number of select committees where the mover of the motion has been appointed by this council as chair, and the Hon. Robert Brokenshire made exactly the same point. Let us have no further shilly-shallying about this; let the committee function properly and get on with its business.

The Hon. B.V. FINNIGAN (14:45): I oppose this motion, you will not be surprised to learn, Mr President. I say at the outset how disappointed I am in Family First, which is a party with which we do not always agree and often disagree, but it has a short history and is committed to its ideals. Whether or not we might agree with them, we can respect that they are the ideals it follows, as we do with the Greens and other parties. I certainly hope that the Hons Dennis Hood and Robert Brokenshire take a good look at themselves and their party and not allow it to be captured by the Liberal Party and turned into a tool for doing its bidding, because Family First has always approached things independently and assessed things on their merits and it is very disappointing to me to see that it is becoming just a tool of the Liberal Party.

What we see here is an utter abuse of process, demonstrating yet again that the only thing that matters to the Liberal opposition is getting its way politically. It does not matter how it gets there or goes about it; the conventions of this place, the history—none of that matters. All that matters is achieving a political objective.

We have seen already with this committee that the membership was at five and then, on motion of the Hon. Mr Dawkins, a member of the opposition himself, the committee was extended successfully to six members, with the support of the council. Now, members opposite are bringing it back to the council because they did not get the numbers to install their own chairperson, so why did they not leave it at five? Because politically it suited them to extend it to six, and now politically it suits them to come back here and ask the council to decide who the chairperson will be.

It simply indicates that the only thing members opposite care about is some political objective and that it has nothing to do with actually examining this issue and trying to get to the bottom of it or make any sorts of recommendations which would be of advantage to the racing industry.

We have seen this week how the opposition whinges, carries on and starts crying foul and talking about the end of democracy whenever the government tries to do anything without giving it notice or a week to think about it and, even when we move amendments in response to other amendments instigated and carried by members opposite, even when we try to clean up their inadequate amendments, that is enough to get them upset.

I would like to deal with this notion that a quiet word or exchange at a committee constitutes formal notice to the government or the other side of politics. I look forward to this principle now being followed. I will say, 'Well, I ran into the Hon. Mr Wade in the lift and said, "By the way, we're bringing in a new bill today to pave the streets with gold." We've informed the opposition; what possible objection could it have?'

The other extraordinary proposition we are getting from members opposite is that if you oppose the establishment of this committee it is therefore not proper or appropriate to serve on the committee or to want to chair it or contribute to it. What an extraordinary notion we now have, that only if you agree with everything this council does by majority are you then somehow bound or you can support or participate in it.

Apparently I can go out there and do anything I want, break any law I like and say, 'I didn't vote for it. I'm sorry officer; I didn't vote for this law. I never supported it. The majority of the people might have voted for a parliament that did; I might have sat here as a member of parliament and opposed it, but I don't support this law; I'm not bound by it. It's my conscience.' What is this? This is a recipe for total anarchy: if you do not have the numbers and you do not have the support of the floor of parliament then you abstain; you forget it, abandon it and have nothing to do with it, because you do not support it.

What an extraordinary proposition that the alternative government of this state is now putting: that if you do not support things in parliament yourself then you are not bound by the outcome. It does not matter if legislation passes by majority; it does not matter if the government was elected by the people; it does not matter that His Excellency the Governor has assented to it: you did not support it so you can abstain and not follow it. What an extraordinary proposition!

If we are now going to establish that the whole council should deal with all select committee matters, why have select committees meet at all? Let us have the council deal with the minutes, decide the dates of meetings and decide the witnesses. Why do we not bring in witnesses before the bar and have us all sit here and listen to them? That is what is being proposed here.

What is the point of appointing select committees made up of a group of members to do the work of the committee and report back to the council if every time there is a little spat, if every time within not even 24 hours there is a disagreement about a procedural matter before the committee, we come running back into the chamber and say, 'Well, now the whole council has to deal with it.' Let us grind the business of the state to a halt: no more legislation, no more government business, no more question time—who is going to chair my committee? 'I want my lolly', is what the Hon. Mr Stephens is saying.

That is what members of the opposition are now saying, that whether or not they get their way, whether or not the Hon. Mr Stephens is chair of this committee is the most important issue facing the state today. Do not worry how they will pay for the stadium or the rebuilding of the decrepit hospital at the end of the road. Do not worry about that or how they will pay for that. Do not worry about the forged documents that appear in their hands. What about Terry Stephens chairing this committee? That is the big issue facing the state.

This is a farce and an abuse of process and demonstrates yet again that members opposite are barely responsible enough to run a golf club, let alone this state. I oppose the motion.

The Hon. D.G.E. HOOD (14:52): In response to the Hon. Mr Finnigan's comments about Family First being 'a stooge of the Liberal Party', to be categorical about this, we have agreed with the Liberal Party on many issues in the past and disagreed with it on many issues and will continue to do that in future. We support it on this issue because we believe that it is the fundamental right of the mover of a motion to chair the committee, and for that reason we will support the motion.

Members interjecting:

The PRESIDENT: Order!

The council divided on the motion:

AYES (12)

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

NOES (9)

Bressington, A.	Darley, J.A.	Finnigan, B.V.
Gago, G.E.	Gazzola, J.M.	Holloway, P. (teller)

NOES (9)

Hunter, I.K.	Wortley, R.P.	Zollo, C.

Majority of 3 for the ayes.

Motion thus carried.

SELECT COMMITTEE ON CERTAIN MATTERS RELATING TO HORSE RACING IN SOUTH AUSTRALIA

The Hon. J.M. GAZZOLA (14:57): I move:

That standing orders be so far suspended as to enable me to move an instruction without notice to the select committee.

The PRESIDENT: Is it seconded?

An honourable member: Yes, sir.

Motion carried.

The Hon. J.M. GAZZOLA: I am giving you lot as much notice as you gave to us.

An honourable member: Were you at the select committee meeting? No.

The PRESIDENT: Order!

The Hon. J.M. GAZZOLA: Would you like an early minute?

The PRESIDENT: Order! The precedent has been set.

The Hon. J.M. GAZZOLA: That is absolutely correct. I agree with your ruling, sir, that the precedent has been set. Obviously, on the matter of who chairs this committee, we have gone through the whole debate about that. Certain allegations were made about who sat on what and who said what, and all that sort of stuff. The accommodation of six members on the select committee, as was pointed out in the debate—

The Hon. R.I. LUCAS: On a point of order, Mr President. Can you please explain what process is being adopted at the moment?

The PRESIDENT: The same process as the Hon. Mr Stephens adopted.

The Hon. R.I. LUCAS: What motion is before the chamber?

The PRESIDENT: The honourable member is about to tell you.

The Hon. R.I. LUCAS: No; he has not moved a motion. He actually has to move a motion. You might remind the honourable member, Mr President, that, under standing orders, he—

The Hon. J.M. Gazzola interjecting:

The Hon. R.I. LUCAS: Can you sit down, please? You actually have to move a motion before you can speak to it. It is a simple notion, and even the Hon. Mr Gazzola might be able to understand that.

The Hon. P. HOLLOWAY: On a point of order, Mr President, the Hon. Rob Lucas is being extremely disruptive in this place, and I ask that you bring him to order.

The PRESIDENT: The Hon. Mr Gazzola will move his motion.

SELECT COMMITTEE ON CERTAIN MATTERS RELATING TO HORSE RACING IN SOUTH AUSTRALIA

The Hon. J.M. GAZZOLA (14:59): I move:

That it be an instruction to the select committee that its terms of reference be amended to permit the committee to consist of seven members.

The council divided on the motion:

AYES (8)

Bressington, A.	Darley, J.A.	Finnigan, B.V.
Gago, G.E.	Gazzola, J.M. (teller)	Holloway, P.

AYES (8)

Wortley, R.P.	Zollo, C.	

NOES (11)

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

PAIRS (2)

Hunter, I.K.	Dawkins, J.S.L.

Majority of 3 for the noes.

Motion thus negatived.

SELECT COMMITTEE ON CERTAIN MATTERS RELATING TO HORSE RACING IN SOUTH AUSTRALIA

The Hon. B.V. FINNIGAN (15:04): I seek leave to make a personal explanation.

Leave granted.

The Hon. B.V. FINNIGAN: During debate yesterday on the motion to establish a select committee into certain matters pertaining to the racing industry, including the SAJC and the sale of Cheltenham racecourse, the Hon. Terry Stephens said:

> I was pleased to hear the Hon. Bernard Finnigan let us know that, once the police investigation and the OCBA investigations are completed, the Hon. Michael Wright will table the Lipman Karas report.

Having checked the *Hansard*, it is clear that I gave no such undertaking, nor did I allude to such an undertaking in my contribution to the debate. I request that the Hon. Mr Stephens withdraw his falsehood.

The PRESIDENT: I am sure that the Hon. Mr Stephens will apologise for that mistake.

QUESTION TIME

BHP BILLITON, DESALINATION PLANT

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:06): I seek leave to make a brief explanation before asking the Minister for Mineral Resource Development a question about the desalination plant planned for Port Bonython as part of the BHP Roxby Downs expansion.

Leave granted.

The Hon. D.W. RIDGWAY: Members would be well aware that tomorrow the environmental impact statement for the Roxby Downs expansion will be publicly released. I think it is an important day for BHP and also for the state to see that report out for public comment. The desalination plant planned for Port Bonython will produce some 240 megalitres a day, which is about 80 megalitres a day more than BHP needs for its processing and production at Roxby Downs and Olympic Dam.

Yesterday, during a question on the economy and small business, the minister reminded us again that one of the reasons that small businesses have closed in this state was the fact that we have been in drought for four or five years and that this one is the worst in our nation's history.

It is also interesting to note that the Premier has been an advocate for climate change and the fact that we are likely to have less water in this state for a significant amount of time. In fact, his first comments about climate change were back in 1989, so he has been an advocate of climate change and suggesting that we should be cautious going forward.

My question to the minister is: what is the government doing to facilitate the use of the extra 80 megalitres a day for the Upper Spencer Gulf communities?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:07): The honourable member knows that the environmental impact statement in relation to the Port Bonython plant and all the other features associated with the Olympic Dam expansion will be released tomorrow. I would have thought that, at the very least, the honourable member should read that part of the environmental impact statement to understand BHP's plans for it. Then I will be happy to answer the question.

It is coming out tomorrow, so I suggest that the honourable member wait 24 hours. This is the problem with the opposition: it cannot wait for 24 hours. It was the same with select committees before. This is the largest environmental impact statement this state has ever seen, including the issue of desalination, and there will be great detail in that environmental impact statement about exactly what BHP wants to do and why. I suggest that, rather than trying to pre-empt it, the honourable member should wait for less than 24 hours when that EIS will be available, and he can then read for himself what BHP Billiton intends to do in relation to water.

PRICE SCANNING

The Hon. J.M.A. LENSINK (15:08): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about price scanning accuracy.

Leave granted.

The Hon. J.M.A. LENSINK: On 23 April this year, in a press release entitled 'SA price scanners least accurate of Australian states' the minister stated:

> South Australian retailers need to get their act together after recording the worst performance of all the states in a recent national audit of price scanning accuracy.

She further states that offenders are 'on notice that any repeat behaviour will prompt enforcement action'. On examining media releases issued by the then minister, going back to 2006, South Australia was in fact the second-best performer; and, in 2007, South Australia was the best performer in terms of price scanning accuracy. In a media release issued on 28 April 2006, then minister Rankine stated:

> ...the survey reveals South Australian hardware stores and service stations were likely to cause greater consumer detriment by overcharging customers...if errors are again detected OCBA will consider prosecution action.

In 2007 the matter of enforcement action by OCBA was repeated. My questions to the minister are:

1. Since taking over this portfolio, to what does she attribute the fact that price scanning has taken us from the top of the list to the bottom?

2. Since those media releases were issued in the past two years, what action has OCBA taken for repeat offences, and has any prosecution action been successful?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:10): Although it was very disappointing to see that, in its most recent monitoring results, OCBA reported a decline in the price scanning accuracy of South Australian retail, it is worth pointing out that South Australia participates in a national audit. The national average for accuracy was, in fact, 91 per cent, and I am pleased to say that South Australia is sitting on the national average. However, it was disappointing that we had declined 1 per cent since the audit from the year before.

I believe these inaccuracies are occurring because, if you look at the data, almost half the number of inaccuracies were due to overcharging and half the number were due to undercharging. It would appear that retailers or traders are not deliberately trying to skim money off customers. They are not trying to rip off people in that way. In looking at the data, the analysis is that retailers are simply not putting in place the appropriate processes and systems to ensure that the price they have advertised, placed on shelves or outlined often in their catalogues is the same as that placed in the check-out computer system. Really, slack or shoddy retail practices and processes are attributed to this.

As I said, I am pleased to say that South Australia is still sitting on the national average in terms of accuracy, which is a good thing. I still believe that sitting at 91 per cent—which is almost a 10 per cent inaccuracy—is not good enough. OCBA has been conducting fair trading monitoring and education programs. I think they were introduced back in 1998 or 1999, with more than 10,000 retail premises being visited. The main focus of these programs, of course, is to try to

educate traders about their systems to make them aware of the importance of the accuracy of price scanning.

OCBA is not out there to try to put organisations out of business. It attempts to inform, educate and encourage people to do the right thing. Throughout 2008 about 600 items were scanned, covering about 25 different retailers. Each year OCBA tries to focus on those areas of retail that appear to have the greatest problems. I have just forgotten, but historically one area had been a problem but it had been doing really well so that it was not included in the audit this year. OCBA tries to tailor the audit to the problem end of the market, which I think is a really sound practice.

The objective is to warn initially. We also seek to gain assurances from offenders, because we know that if an assurance is breached that is an offence and we can then take further action. Of course, repeat offenders are prosecuted, and there are a number of prosecutions on record with respect to retailers that have been multiple offenders. I believe the last one was a service station that offended a number of times and did not take heed of warnings, and so action was taken.

MAJOR PROJECTS

The Hon. S.G. WADE (15:15): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about major project status.

Leave granted.

The Hon. S.G. WADE: On 24 April, the Local Government Association considered and passed a resolution in the following terms:

> ...that the Local Government Association express concern to the Premier and each Member of the State Parliament that the Major Project/Ministerial Development Plan Amendment provisions of the Development Act 1993 appear to have been used for the fast tracking of random projects. Accordingly the LGA seeks clarification from the State Government regarding the process and procedures for using these provisions which should incorporate consultation with Local Government as the local planning authority.

In commenting on the resolution the mover, the Mayor of Tea Tree Gully, Her Worship Miriam Smith, said:

> We want to understand what the State Government's agenda is regarding how they select projects, how they go about it and what their terms of reference are. We've had developers wanting to construct something banging their fists on the table and saying if we don't get this within timeframes they consider fair and reasonable they will take it to the State Government.

The Mayor of Unley, Richard Thorne, was quoted as saying:

> The residents are taken out of the loop, we as a council are taken out of the loop and it's very frustrating.

My questions to the minister are:

1. How often have the major project provisions of the Development Act 1993 been used by the responsible minister for each year since the Rann government was elected?

2. Why is the minister failing to consult with local government before he declares a project a major project?

3. What steps will the government take, including establishing appropriate consultation mechanisms, to ensure that applicants do not use the threat of a major project declaration to inappropriately influence local government in the discharge of its planning functions?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:17): I welcome the question from the honourable member. One of the extraordinary things about the motion that was moved by the Local Government Association was the fact that it was moved by the Mayor of Tea Tree Gully, because, certainly, in my time, there has been no major project—that is, a project under section 46 of the Development Act—in Tea Tree Gully. There may have been way back in the Golden Grove development days, I am not sure, but it would be many years ago. I find it rather extraordinary that the Mayor of Tea Tree Gully should have moved this motion.

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

The Hon. P. HOLLOWAY: She is talking from what she says is her experience of it. Given that there are no major projects in that area, I find it rather extraordinary.

The provisions that relate to major developments are set out in section 46 of the Development Act, and they are that if, in the opinion of the minister, a project is of major environmental, economic or social significance, a project can be declared.

The other great misnomer from the Local Government Association is to suggest that it is fast-tracked. We have had this debate in this place before. The processes under section 46 of the Development Act are anything other than fast-tracking, because what is required for a project to go through that process is that, first, the Development Assessment Commission assesses the proposal and determines what level of environmental impact assessment is required under the Development Act. It could be a development report, a public environment report or, at the top level, an environmental impact statement. They are the three levels.

Then, of course, the proponent has to go out and prepare an environmental impact statement, a development report or a public environment report. During that period, when it is completed, there is a public consultation period. A minimum period is established under the act. They must have a public meeting. They then have to respond to all the issues that are raised, not only by members of the public at the public meeting but also by government agencies that are consulted on it. They then have to prepare their report, then it goes to the minister and an assessment report is prepared to go to the Governor to make the final decision, so it is quite a complicated and detailed process. It is there for major projects.

One can look at the major projects since the Rann government has been in office; they are all listed on the Planning SA website and I have them in front of me now. There are about 20 of them—somewhere between 20 and 30 have been declared during the course of the Rann government. If one looks, one sees that there have been a number of marina proposals, and the reason they are under major project status is so an environmental impact statement could be made. We had one recently, for example, at Mannum. Also, the Bradken foundry was another one of them, and tomorrow the Olympic Dam environmental impact statement, which is the largest in this state and which has taken several years to prepare, will be released.

These are the sorts of projects that generally come under the major development process, but of course there are some other projects which have also been declared, for example, the lights at Football Park, because we once had a royal commission in relation to that. That was done, incidentally, in consultation with the local council, because in many of these projects they would not have the capacity to do it. Clearly, the reason that section is there in the Development Act is that there will be occasions when, because of their environmental, economic or social significance, developments will either fall outside the capacity of local government to assess them or in some cases not comply with development plans. So, to enable such developments to be considered one has section 46 of the Development Act to deal with such matters.

Perhaps the Mayor of Tea Tree Gully and other members of the Local Government Association are getting confused with section 49 of the Development Act, which relates to Crown developments, that is, those which are sponsored by the government and which include such things as major school buildings and the like and major government development. Possibly they are getting confused with that. As I said, the total number last year I think amounted to the whole number of two major projects declared within this state.

What is the purpose of discussing the matter with local government? I note that the Hon Mark Parnell has a bill to that effect on the *Notice Paper*, but what is the purpose of discussing these cases? The other big example was the desalination plant. What is the purpose in such matters of going to local government and saying, 'Will you let us make this a major development?' Quite clearly, projects of that nature are outside that scope.

Members interjecting:

The Hon. P. HOLLOWAY: Clearly, members opposite are not interested in the answer. Perhaps I can summarise and just advise them to go and read the Development Act; it is all there.

MAJOR PROJECTS

The Hon. S.G. WADE (15:23): As a supplementary question: do I take it from the minister's answer that it is not part of the established processes in declaring a major project that the local council be consulted and that it is not the government's intention to establish such a process?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:23): I get lots of approaches for declaring things major projects, and—

Members interjecting:

The Hon. P. HOLLOWAY: Do members opposite really want to hear? They ask these questions and immediately, as soon as they have asked the questions, they do not want to know the answer. What is the purpose of question time in this place if members opposite ask questions and do not bother to hear the answer? In relation to consultation with councils, clearly, if one was going to consult with councils in every case, for example, in relation to the Olympic Dam expansion or in relation to—

The Hon. S.G. Wade: There is no council there.

The Hon. P. HOLLOWAY: There is, actually. As a matter of fact, as Minister for Mineral Resources Development I appoint it.

The Hon. S.G. Wade: At Roxby Downs? I don't think there's one there, is there?

The Hon. P. HOLLOWAY: It is the Roxby Downs council, and it is affiliated with the Local Government Association. It does not have an elected council, but the administrator is appointed by the Minister for Mineral Resources Development. That is another issue. For something of that scale that covers not only one council but a whole range of councils, the environmental impact statement also covers the Northern Territory, and that is why there will be public meetings in Alice Springs and Darwin in relation to that, as members will see when it is released tomorrow. There are issues of transport that relate to the Northern Territory. Some of these projects go outside that scale.

I do get approaches, but in many cases they will be rejected or I will refer the proponents back to local government in the first instance to see whether it can comply. If a proposal is of major economic, social or environmental significance to the state, and deserves to be considered, if it clearly will not be approved under the relevant development plan, because it may be out of date or totally incompatible, what is the purpose of letting councils know in the first instance? They are involved in the process, have the opportunity to comment, are invited to comment and invariably do comment in relation to the public consultation period. There is that involvement from local government when major projects are being considered.

In the first instance, in relation to declaration, in most cases that have been before me I have either spoken to the council myself to determine its position on it or have encouraged proponents to speak to council in the first instance and let it know. There is no formal requirement (neither do I believe there should be) other than that consultation with local government take place during the assessment process. Why add another bureaucratic step into a process that contributes nothing? There will be consultation if something is declared a major project with local government as part of the process, but why add in another stage when in many cases it is irrelevant? If it is deemed to be relevant, I either encourage the proponent to speak to local council or I would do it myself, as I have done in a number of cases.

MAJOR PROJECTS

The Hon. M. PARNELL (15:27): By way of supplementary question, if the minister disagrees that major development declarations are fast tracking, does he accept that local councils like Unley have been side-tracked and bypassed by such declarations?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:28): Clearly the honourable member is talking about the project opposite the showgrounds within Unley. I have answered questions on this matter, but clearly Unley council is in the process of changing its development plan. Recently the government approved the Unley plan for its suburbs, where we have given Unley a level of character protection not available to other suburbs.

The Unley council originally approached us because it wanted to protect the character of Unley because it is a fairly unique suburb in that 70 per cent or more of its homes were built pre-1940. As part of that, the council has also undertaken to do a development plan amendment of its major corridors. I invite members to look at the front page of today's *Age* newspaper in Victoria, because Melbourne is going through exactly the same planning process. It is looking to consolidate its development in high density along corridors for the same good reasons that we are.

That is a diversion, but Unley was looking at that process and agreed to do it as a compatible development plan amendment to coincide with its residential character development, but that clearly had two or three years to go. From the statement of intent or the indications of Unley council, that was to permit a higher level and higher density of development along its corridors, but clearly if that proposal had been put by the proponent and assessed under current development plan amendments it probably would have been refused because of the height limits that currently exist, even though we know that Unley council has committed to a review over the next few years. It may well be that when its development plan is completed in several years, if it takes that long, that project will be compatible—but it will not be now.

In relation to the honourable member's question, certainly Unley's role in relation to that process will be through the major development process if it wishes to comment on that. Clearly, that will be considered as part of any due process. At this stage, in relation to that particular process, let me say that the final plans have not yet been submitted to the government. I think it was late last year that the government decided that we would agree to major project status. The actual detailed plans are now being worked up so that it can be presented to DAC, and DAC will set the appropriate level of environmental impact, and so on.

In that particular case, one needs to understand the history in relation to Unley council and, in that context, one will see that both the government's decision to declare this a major project and the way in which we have treated it is entirely logical and sensible.

MURRAY RIVER MARINA STRATEGY

The Hon. B.V. FINNIGAN (15:31): My question is to the Minister for Urban Development and Planning. Can the minister provide an update on the state government's response to public consultation sought on its houseboat mooring and marina strategy?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:31): Last October, the government published a draft houseboat mooring and marina strategy for the River Murray in South Australia for three months of public consultation. This consultative period included public meetings in Berri, Waikerie and Murray Bridge to allow people to speak to their submissions and seek further information about the proposed strategy. The key elements of this draft included: encouraging the development of off-river marinas to provide home ports for all houseboats; provision of site suitability criteria to ascertain the best locations for such marinas; and trialling a formal mooring network for touring houseboats to minimise river damage. Following this extensive consultative process, the government received a number of submissions, including submissions from the houseboat industry and local government.

Last month, I announced, in response to the submissions from the industry and community, that the government has decided to amend its strategy. To this end, the Department of Planning and Local Government will begin work on finalising the strategy for marinas. This will be achieved through a ministerial development plan amendment process that will include further opportunities for consultation with local councils and communities along the South Australian section of the River Murray. This process will allow the government to work closely with local government and the industry to identify potential areas suited for marinas.

The DPA will then allow the government to develop planning policies against which future development applications can be assessed and approved. At the same time, the Department of Water, Land and Biodiversity Conservation is to undertake further work to redevelop the houseboat and mooring elements of the strategy. In particular, operators have been advised, through the consultation process, that requiring vessels to be tied up in designated spots overnight would potentially damage the intrinsic tourism attraction of renting a houseboat for a river holiday. They have also outlined concerns regarding other aspects of the policy for houseboats.

This government wants to work with the industry and the community to improve the ecological health of the River Murray by reducing some of the environmental impacts of houseboats, large vessels, various mooring practices and marinas, and we want to facilitate a more sustainable houseboat tourism industry, thereby supporting and enhancing this industry and associated local economic opportunities. The state government aims to achieve these objectives by improving the quality of the houseboat fleet, facilitating improved infrastructure and facilities for the industry and users, and protecting and enhancing the landscape values of the river.

The government is aware of the challenges facing the River Murray community, especially during this prolonged drought. One of the things we can do is encourage more investment in

industries along the river that do not heavily rely on irrigation and water allocations but rather the intrinsic beauty of this important waterway.

South Australia's houseboat industry relies for its economic survival on retaining the character and natural environment of the River Murray. Encouraging industry to grow and develop will hopefully lead to increased investment in construction of new marinas and support services. We do not want to force existing marinas and houseboat operators off the river and out of business, but we do want to grow this important part of South Australia's tourism industry to provide even more jobs and more opportunities.

This marina strategy is not just wishful thinking. Developers are already looking to invest in the River Murray, with the state government last year providing conditional approval to a new residential marina development at Mannum in the mid-Murray as a major project (as I indicated in my answer to the previous question), for which a full and rather lengthy EIS was prepared. This residential marina project, proposed by Tallwood Pty Ltd, involves an initial investment of $15 million, which is expected to grow to $165 million once the project is fully constructed.

The Mannum Waters development sets a new benchmark for best practice marina and residential developments along the River Murray and is consistent with the marina strategy that we will continue to develop through the DPA process. This project shows that water quality can be safeguarded by providing secure houseboat moorings off-river and by adopting comprehensive waste water collection and spill containment.

Work associated with the marina project will also enhance stormwater and waste water treatment in the Mannum area and reduce pollution and improve the quality of inflows into the River Murray, something that the government hopes to replicate with other projects permissible under our marina strategy. Incidentally, to follow up on my answer to the last question, once you have the strategy and a development plan clearly defined, that will mean that they will not need to use the major project process as the first one required, which set the standards, and local government will be able to assess them. I think that is a very useful illustration to the previous question.

While the initial consideration of the Mannum Waters project pre-dates the draft marina strategy, many of the issues covered in the assessment process supported the development of a consistent strategy for the houseboat industry. I look forward to working with councils and the houseboat industry along the river to further develop the marina strategy.

WATER, LAND AND BIODIVERSITY CONSERVATION DEPARTMENT

The Hon. DAVID WINDERLICH (15:37): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations, representing the Minister for Environment and Conservation, a question about the provision of misleading information by the Department of Water, Land and Biodiversity Conservation.

Leave granted.

The Hon. DAVID WINDERLICH: In the past few years, the Department of Water, Land and Biodiversity Conservation has been accused by a number of parties, including the Natural Resources Committee of this parliament, of suppressing information or providing misleading information. In 2008, this was highlighted in an NRC report on Deep Creek. This council actually voted to condemn those officers who misled the committee and therefore the parliament or who failed to provide requested information to the committee. This experience was repeated in relation to the Upper South-East drainage scheme, where the NRC report 'To drain or not to drain', which was published in November 2008, found some lack of transparency in relation to the release of program documents. This is a polite way of describing attempts by program officers to prevent access to key documents by the committee and other parties.

I have now received reliable reports that officers of the Department of Water, Land and Biodiversity Conservation are claiming that water tables in the South-East are rising, and this is being put forward to justify the need to proceed with the construction of the Bald Hill drain. These claims are based on an analysis of rainfall over the three years between 2006 and 2008.

As members would recall, 2006 was the worst year of drought, so it makes sense that the water tables were low initially and then rose. I have received an alternative analysis, which is based on data from a government website, that shows a clear decline in water tables over 20 years in the Upper South-East, and that is consistent with the decline in rainfall of 20 to 30 millimetres a decade since 1970.

As I said, this data was obtained from a government website, so either the departmental officers are ignorant or they are being deliberately misleading. I have also stood in a wombat hole in Rocky Swamp recently, in the Parrakie wetlands in the Upper South-East. The wombats are digging for water because the floor of the wetlands are dry; figures can be fudged and consultants can be leaned on, but wombats do not lie.

This statistical debate is important because it is critical to whether or not we proceed with these drains. It is also important because it is absolutely vital that the minister, who must make a decision on this matter in the near future, receives accurate information. My questions are:

1. Will the minister inquire into whether departmental officers are either ignorant or have gone feral and are deliberately misleading the community, and possibly the minister, about the real state of water tables in the Upper South-East?

2. What action will the minister take if it is determined that departmental officers have been deliberately misleading the community and possibly the minister himself?

3. Given that there are now a number of serious allegations about either the honesty or competence of certain sections of this department, will the minister ensure that advice is obtained through a number of sources, and independent sources, in relation to the actual level of water tables and other environmental considerations related to the proposed Bald Hill drain?

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) (15:39): I thank the honourable member for his important questions and will refer them to the Minister for Environment and Conservation in another place and bring back a response.

COURTS

The Hon. T.J. STEPHENS (15:40): I seek leave to make a brief explanation before asking the Leader of the Government a question about court registry closures in regional South Australia.

Leave granted.

The Hon. T.J. STEPHENS: I was recently contacted by a constituent at Coober Pedy who had been advised that the Coober Pedy courthouse registry would shortly be closed, along with those at Kadina, Ceduna and Naracoorte Magistrates Courts. My advice is that no-one has been consulted about the closures in the affected communities.

Court registries will close from 1 August, meaning that full-time staff will have to find new roles elsewhere. Under the proposal, court staff would be flown in from Adelaide on court sitting days only. Unfortunately, this seems to be just another example of essential services being withdrawn from regional South Australia. My questions to the minister are:

1. Was there any consultation in the local communities affected by the impending closures?

2. Will the minister lobby to reverse these decisions and stop the jobs drain in regional South Australia?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:41): I thank the chairman of the SAJC select committee for his question. I will refer it to my colleague the Attorney and bring back a reply.

ANTI-VIOLENCE COMMUNITY EDUCATION

The Hon. I.K. HUNTER (15:41): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about anti-violence community education strategies.

Leave granted.

The Hon. I.K. HUNTER: Community awareness and education can make an important contribution to changing community attitudes on a variety of issues, as we well know. Will the minister provide more information to the chamber on the anti-violence community education strategy?

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) (15:41): I thank the honourable member for his important question. The 2008-09 state budget committed $868,000 over four years to the anti-violence public awareness campaign. The campaign aims to inform, educate and ultimately reduce rape, sexual assault, domestic and family violence in South Australia.

On White Ribbon Day, 25 November 2008, I announced the anti-violence community education grants 2008-09 as part of that anti-violence public awareness campaign. The anti-violence community education grants give organisations the opportunity to receive up to $10,000 towards anti-violence education programs. These grants are aimed primarily at organisations that are unlikely to be reached through other mainstream community education campaigns, and particular target groups include Aboriginal and Torres Strait Islander young people, young people living in rural and remote communities, and young people from newly emerging communities and refugees.

Grant applications closed on 27 February this year, and today I announced the first round of recipients. The five anti-violence community education projects equally sharing $50,000 in grants include:

- 'Changing the Face of Consent', YWCA of Adelaide, which uses young cultural experts from diverse communities as peer educators, using creative outlets;
- 'Expect Respect', Legal Services Commission, which trains educators to co-deliver drama-based community legal education to develop legal knowledge, attitudes and behaviours that promote respectful relationships;
- 'It's All About Respect', Multicultural Youth SA, which raises awareness through consultations, group workshops, individual support and resource materials delivered in cooperation with the Legal Services Commission, Muslim Girls Kollective, schools, and diverse community groups;
- 'Raising awareness of changes in legislation', Central Northern Adelaide Health Service, which creates art media that expresses an understanding of new laws and respectful relationships that will be exhibited in public places. It also has young people create radio advertisements specific to their culture that address the priority areas; and
- 'Vietnamese Anti-Violence Community Education Project', Vietnamese Community in Australia, SA Chapter, which builds on Vietnamese community capacity to prevent, identify and respond to violence amongst young Vietnamese people and their families, involving Vietnamese media outlets, youth groups, educational programs and bilingual resource development.

I had the pleasure today of presenting in person the cheque to the Vietnamese community. It was wonderful to meet this group, which is working to combat violence in the community, and also a large group of young Vietnamese people who were really delightful. Applications will open for the second round of grants later this year.

The Anti-violence Awareness Campaign and associated grants program complements the government's reformed rape and sexual assault laws which were passed on 9 April 2008 and which, along with upcoming reforms to domestic violence legislation, provide an opportunity to reinforce anti-violence messages to the community while informing people about the changes.

The campaign also complements the work of the National Council to Reduce Violence against Women and their Children, which yesterday released its major report and recommendations for a national plan titled 'Time for action'. The report makes recommendations designed to tackle the unacceptable levels of sexual assault and domestic and family violence in Australia, and gives all governments and the community clear directions about helping Australian women live free of violence within respectful relationships and in safe communities.

The Australian government has welcomed the report and has agreed to immediately progress 18 of the 20 recommendations and is considering the other two within the context of developing the national plan. The Australian government has announced that it will immediately invest $12.5 million for a new 24 hour, seven day week national telephone and on-line crisis service, and invest $26 million for primary prevention strategies, including $9 million to improve the

quality and uptake of respectful relationship programs for school-aged young people and $17 million for a public information campaign focused on changing attitudes and behaviours that contribute to violence.

The government also announced the investment of $3 million to support research on perpetrator treatment and nationally consistent laws, and asked the Australian Law Reform Commission to work with state and territory law reform commissions to examine the interrelationship of laws that relate to the safety of women and their children. Finally, it will establish the Violence against Women Advisory Group to advise on the national plan to reduce violence against women.

The Australian government will also work with the states and territories to enforce domestic and family violence orders across state borders through national registration, improve the uptake of domestic violence coronial recommendations and identify the best methods to investigate and prosecute sexual assault cases.

Australia must adopt a zero tolerance attitude to violence against women and children. I look forward to working with the Australian, state and territory governments to prevent violence and abuse perpetrated against women and children.

SWINE FLU

The Hon. D.G.E. HOOD (15:47): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations, representing the Minister for Health, a question about swine flu.

Leave granted.

The Hon. D.G.E. HOOD: I note that the World Health Organisation this morning raised its flu alert level to phase 5 out of a possible six, which signifies an imminent pandemic according to its scale. In response, Adelaide Airport will today install a machine capable of screening international passengers for elevated body heat, which can be associated with any type of flu.

Family First supports the introduction of these machines but is concerned that some members of the public may now have the misapprehension that Adelaide is protected. The information that I have received is that an infected person can easily pass through these heat sensors without detection, given that the incubation period for influenza ranges anywhere between one and three days. Yuen Kwok-yung, a top microbiologist at the University of Hong Kong, says of the virus:

> Flu is infectious one day before the onset of symptoms, which means you may not have symptoms but you are already infectious.

Mark von Itzstein, Director of the Institute of Glycomics at Griffith University in Queensland, has gone on the record to say:

> The scanners won't pick up everyone, especially if they are too early in the infection stage...you are incubating and infecting others without knowing it.

My questions are:

1. Does the minister agree with these experts that these machines are unlikely to pick up recently infected carriers who have entered Adelaide Airport?

2. If so, what other measures will the government introduce in order to protect South Australia from this outbreak?

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) (15:49): I thank the honourable member for his important questions. I am happy to refer those questions to the appropriate minister in another place and bring back a response. I draw the honourable member's attention to the fact that a ministerial statement was tabled not long ago in this council giving an update on the swine flu situation from the Minister for Health.

GOVERNMENT APPOINTMENTS

The Hon. R.I. LUCAS (15:50): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Premier, a question about government appointments.

Leave granted.

The Hon. R.I. LUCAS: In recent years, the government announced that all new executives appointed in the Public Service would be appointed on five year contracts. The minister would also be aware that the Hon. Mr Rann's former senior adviser, Mr Lance Worrall, was also recently appointed to head the new Public Service Performance Commission. My questions are:

1. Was Mr Worrall given a standard five year contract in accordance with government policy as publicly announced or was he engaged on the basis of being given permanency and the option of a fallback to another position in the Public Service should his contract either not be continued or he not be re-employed on a new contract?

2. Has the Rann government again appointed an overseas consultant by the name of Mr Geoff Tryens from Oregon to another nine month contract and, if so, what are the terms of his contract? Will South Australian taxpayers be paying any travel, meal, entertainment or accommodation expenses for Mr Tryens, and what tasks has Mr Tryens been given if he has been appointed on this nine month contract?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:51): I will refer those questions to the Premier and bring back a reply.

HOUSING DEVELOPMENTS

The Hon. R.P. WORTLEY (15:51): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about housing.

Leave granted.

The Hon. R.P. WORTLEY: Is the minister aware of any progress made in South Australia towards developing ecologically sensitive housing developments?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:52): I thank the honourable member for his important question. This month I had the great pleasure of attending the official opening of Australia's most ecologically sustainable residential display village at Hayborough, near Victor Harbor. Beyond, as the development is called, is a highly sustainable $160 million residential development, with more than 220 allotments, which also incorporates a newly-created 64 hectare stormwater catchment and wetland system overlooking Encounter Bay.

More than 75 per cent of the entire landholding is dedicated to wetlands, parks and reserves. The water-sensitive urban design used in developing this village maximises every bit of run-off within its streetscape, environments and reserves. I would like to acknowledge Steve Wright and his team at Environmentally Sustainable Developments (ESD), which is pioneering a new way of developing residential communities in this state. The display village at Beyond shows that new housing in this state can be offered in a way that not only provides comfortable and stunning environments to live near Port Elliot but also in a way that actually benefits rather than destroys the surrounding environment and ecosystem.

Creating an ecologically-sustainable state is a vision that Steve Wright and ESD shares with this government. This government has a strong commitment to environmental sustainability and awareness and realises the importance of good design to our state's sustainable future. By adopting international best practice in our building design and construction industries, as well as in policies and education, this government is ensuring that sustainability is incorporated into mainstream practices. Our built environment here in South Australia is a significant reflection of our commitment to live in a more sustainable fashion.

Good design can help transform that built environment, as well as influence the way in which we live, work and interact. South Australia's strategic plan recognises the importance of addressing issues, such as climate change, as well as the better use of natural resources, such as water, in many of its targets. These objectives include improved energy efficiency, both of private dwellings and government buildings. This government is also working with building owners to apply sustainable designs that will lift the environmental performance of their buildings.

As part of the 30-year plan for Greater Adelaide, the government is also looking at ways of promoting water-sensitive urban design, so that new residential developments are encouraged to adopt innovative and sustainable practices. I would also like to acknowledge the work of my predecessor in the urban development planning portfolio, the member for Taylor, the Hon. Trish White. Her role and that of her office was a key element in making the Beyond project a reality for

South Australia. The display village at the Beyond site at Hayborough provides a showcase to demonstrate energy-efficient homes well above legislated requirements.

All homes within this development are built to stringent sustainability guidelines that include mandatory renewable energy systems, solar hot water systems, a minimum of 10,000 litres of rainwater catchment, high levels of insulation, high quality glazing, good orientation, cross ventilation and energy efficient principles. In developing the Beyond wetlands, ESD has aimed to restore and create 64 hectares of native wetland, native forest and estuarine ecosystem. This wetland is the basis of a 'water smart' stormwater project to collect, bio-filter and reuse stormwater from the surrounding residential townships and commercial and industrial areas—a catchment area of some 20 square kilometres.

It also aims to use extensive plantings of native provenance species, including native trees, grasses and reintroduced plant and fish species as 'seed banks' for other environmental restoration projects in South Australia. Complementing this native environment has been the donation of land for a two kilometre interpretive bike and walk trail for community use across and through the wetlands that will link with the Port Elliot-Victor Harbor bikeway. As someone who has been on that, for anyone who wants a great trail, that encounter bikeway really is a great facility for this.

Every home built within Beyond will be highly efficient, providing residents with a modern and comfortable living environment that will cost little to live in. Almost every allotment within the development shares at least one boundary with a park or reserve. This creates micro-climates that improve air flow, air quality, natural shading and light. I am certain that this new housing project will provide a benchmark for future ecologically-sustainable developments within this state and assist this government in achieving the environmental objectives set out in South Australia's State Strategic Plan.

NON-ALCOHOLIC BEVERAGES

The Hon. J.A. DARLEY (15:57): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about non-alcoholic beverages in licensed venues.

Leave granted.

The Hon. J.A. DARLEY: In November 2008, the government issued two separate media releases in relation to the dangers of alcohol consumption, particularly in relation to excessive alcohol consumption during 'schoolies' week', and issuing a warning to moderate drinkers who might indulge themselves during the festive season. In addition to these warnings of alcohol abuse, the federal government has launched a campaign aimed at young adults entitled 'Don't turn a night into a nightmare', which aims to educate young adults about the dangers of binge drinking and excessive alcohol consumption.

With these warning messages against alcohol, it would be logical for the government to encourage licensed premises to promote designated driver schemes. These schemes usually entitle a designated driver to free or discounted soft drinks to encourage those who wish to socialise responsibly. We often see happy hour specials in pubs and clubs where patrons are able to purchase an alcoholic drink—usually beer, wine or champagne—for as little as $2. However, we seldom see soft drinks or any other non-alcoholic beverages included in these promotions.

I was recently contacted by a constituent who was appalled to pay $5 for a soft drink when, in the same establishment, four standard drinks could be purchased for $10. In this circumstance the cost of a non-alcoholic beverage was twice that of an alcoholic drink. I understand that most licensed premises provide free tap water to patrons on request. However, it is not mandatory under the Liquor Licensing Act. This clearly does not promote or encourage those who are trying to do the safe and responsible thing on a night out. Given the recent community attention on binge drinking, my questions to the minister are:

1. What is the government doing to promote and encourage designated drivers?

2. Does the minister believe it is fair that those choosing not to consume alcohol are punished by exorbitant prices on drinks?

3. Is the government working or planning to work with the Office of the Liquor and Gambling Commissioner to address binge drinking?

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) (15:59): The

honourable member has raised a number of very important policy issues around the matter of the responsible drinking of alcohol on licensed premises, and there are a number of things that this state government has done in relation to that. I was interested to hear him talk about the designated driver scheme that is being tested at the hotel. I was not aware of a scheme of that nature. I know of designated driver schemes that we promote through our road safety campaigns. I also know, as the former minister for substance abuse, that we looked at a number of responsible drinking schemes. They included promoting things such as when groups of young people went out for a night on the town they ensured that they had a designated driver for the night. I think there were a number of television advertisements promoting that at some time, but I do not have the dates when that occurred.

When I visited Scotland I was shocked to drive past a liquor store where a bottle of wine was cheaper than a bottle of water, and I think that cost incentives and price points are a really important issue for us to look at. I am happy to look further into this and obtain further information from the honourable member in terms of the designated driver schemes that he is proposing. I think that anything that promotes the safety of young people being able to travel home safely after a night out is a really positive thing. I am not sure what some of the implications of that would be, in terms of staffing and cost, and what effect it might have on a licensee. However, I am keen to look into that and to investigate it further.

In terms of the pricing of drinks, the honourable member would know that we have a competition policy and legislation that is very strict about doing anything to interfere with free and open competition. So, we have to work within those parameters. The open market and open trading would say that, irrespective of where they are, a retailer has the right to set their prices at whatever they deem as a fair and reasonable price level. There is very little that we can do about that, given the ACCC and associated legislation. However, this government is very keen to promote the availability of free water at a wide range of events, particularly where alcohol is served.

In terms of binge drinking, in March 2009 the National Health and Medical Research Council released Australian guidelines to reduce health risks as a result of drinking alcohol. Those guidelines make a number of recommendations, including certain standards of drink that the council believes reduces the risks associated with drinking.

Responsible consumption of alcohol initiatives developed and promoted by the Office of the Liquor and Gambling Commissioner include the Next Drink initiative, a campaign to remind drinkers that every extra drink increases their risk. We also have a Safe Partying initiative, which is information provided to assist parents, families and communities to develop harm minimisation strategies that address alcohol consumption at parties or special events. That has been developed collaboratively with agencies such as SAPOL, DECS and DASSA.

Manufacturers such as Coopers and retailers such as Woolworths have been encouraged to include a responsible consumption message in their advertising and on liquor packaging. There is also a wallet card providing information about alcohol and the law and promoting the responsible service of alcohol for young people, the promotion of the responsible consumption of alcohol messages at festival events and *Teenage Parties and Alcohol*, which is a parent's guide brochure featuring party tips and outlining legal responsibilities, which is widely circulated to schools, council offices and police stations.

The Office of the Liquor and Gambling Commissioner is also involved in developing the South Australian Alcohol Action Plan, in conjunction with SAPOL, DASSA and representatives from a number of government agencies. The priorities of that plan reflect and are consistent with the National Alcohol Strategy, which includes reducing the incidence of intoxication amongst drinkers; enhancing public safety and amenity at times and places where alcohol is consumed; improving health outcomes among individuals and communities affected by alcohol consumption; and facilitating safer and healthier drinking cultures by developing community understanding about the properties of alcohol and through regulation of its availability. So, they are some of the things that we have participated in and contributed to in terms of helping to reduce the harmful effects of binge drinking.

MENTAL HEALTH BILL

In committee.

Clauses 1 and 2 passed.

Clause 3.

The Hon. J.M.A. LENSINK: I move:

Page 6, after line 37—

After definition of community treatment order insert:

community visitor means—

(a) the person appointed to the position of Principal Community Visitor under Part 8 Division 2; or

(b) a person appointed to a position of Community Visitor under Part 8 Division 2;

This is the first of a number of amendments; I will address the others as they arise. This is to support a community visitor scheme, which was a key recommendation of Ian Bidmeade's report from his review into the 1993 mental health act entitled 'Paving the way'. I quote from that report on pages 79 and 80; point 21.2: community visitors. He states:

All States, apart from South Australia, have community visitor schemes to provide external monitoring of mental health and disability services. While the Health and Community Services Complaints Commissioner (recently established by legislation but not yet in operation)—

and bearing in mind that it was 2005 that this was reported—

will be able to investigate complaints, community visitor schemes offer the opportunity for ongoing checking of what is happening on the ground. The Victorian Mental Health Act 1986 for example empowers community visitors to inquire into:

- the adequacy of services for assessment and treatment;
- facilities;
- opportunities for recreation, training, etc;
- the best possible care in the least possible restrictive environment; and.
- complaints made by consumers to a community visitor.

The scheme in Victoria is administered by the Public Advocate. A similar scheme of official visitors in New South Wales is administered by the New South Wales Ombudsman (Community Services Division).

Similar schemes for South Australia have been suggested in the past and have been endorsed in submissions to the Committee. An inter-departmental committee administered by the Mental Health Unit of the Department of Health is investigating the concept at the present time in relation to people with a mental illness, or intellectual disability.

So, here we are four years later and the government does not have anything on the table. The report continues:

One obvious issue in a Small state like South Australia is whether the people involved in such schemes could play other roles, such as advocacy, or assistance to consumers coming before the Guardianship Board. Another is whether the visitors should be looking at standards of care, or be more focused on a personal supportive relationship with individual consumers. We support any such scheme being housed with the Public Advocate to emphasise advocacy and synergy with other advocacy roles.

The recommendations are:

21.1 The act should provide for an involuntary patient to be supported by a relative, friend, carer, guardian or advocate during assessment, detention and treatment where possible.

21.2 There is a need to evaluate further how the advocacy needs identified in this report can be met. It should involve advocacy agencies and the commonwealth...

21.3 The Committee [which is the relevant recommendation in this section] supports work being done to establish a community visitor scheme in the mental health area.

Those recommendations are some four years old.

This clause inserts a definition of community visitor into the definitions at the front of the bill. Also, in support of a community visitor scheme we have the Carers Association, which I think has written to all honourable members. I will not read that into the record, for the sake of time. Also, I note that Mr Geoff Harris, who is the CEO of the Mental Health Coalition of South Australia, has been extensively involved in community visitor schemes in former appointments in the Northern Territory.

The Mental Health Coalition has provided its submission to the South Australian budget 2009-10. Its 11th recommendation is that an official visitor scheme be included. It states that, on its estimations, in 2009-10 the cost would be $1 million; in 2010-11, $1.1 million; and in 2011-12,

$1.2 million, which is a very small amount of funding in order to provide for the human rights of people with mental illness who are in South Australian institutions.

Most telling, on page 21 of the submission in Appendix 1 is a table, and again I will not read all of this out; I think it has probably been circulated to a number of members. The Victorian system is outlined there, which ours is modelled on; New South Wales has an official visitor scheme; Queensland has a community visitor program; WA has a council of official visitors; Tasmania has an official visitor scheme; the Northern Territory has a community visitor program; and the ACT has an official visitor program. South Australia has—in big, bold capital letters—no program.

It is our belief that the current provisions that the government has provided are completely inadequate. It says it is working on something; it has taken some time to develop this bill and for some four years now it has been in its genesis, and I would have thought that in that context enough work done could have been done on a visitor scheme to have produced something to put before us. I commend this amendment to the committee.

The Hon. G.E. GAGO: The government does not support this amendment. The amendment and subsequent amendments regarding a community visitor scheme are not supported. The reason for this is that a scheme of this type, in which a number of ministers and their agencies have an interest as well as a range of non-government agencies and consumers, needs to be given much greater thought before it is established in a bill or in any other form.

The government response to the review of the health and community services complaint acts was tabled in the House of Assembly on 3 March 2009. This is what the government said in response to a recommendation that the community visitor scheme should be established: 'Supported in principle'.

The government acknowledges that some consumers in receipt of health and community services are vulnerable or unwilling to raise concerns about their care fear of retribution. This may be the case for children in care, people with a disability, people with a mental illness and the aged living in government and non-government residential care.

The government will investigate the feasibility of establishing a community visitor scheme for vulnerable service users. This work will involve examining those schemes currently operating in other jurisdictions to determine the most appropriate model for this state. There is also the interaction with other schemes that are currently operating in the state, such as those already in place in nursing homes run by the Australian government, and the most appropriate governance arrangements and auspicing.

Members will note that the government has given support for a community visitor scheme. The government will ensure that a range of work is undertaken in consultation with stakeholders and come up with a scheme that will provide a more comprehensive coverage of the vulnerable population groups in the community than the scheme that is the subject of these amendments. It is a comprehensive scheme that is required and not one that focuses only on those facilities and consumers covered by the Mental Health Bill.

While there is much to commend the scheme anticipated by the amendments, it will not provide the flexibility that will be required to meet the needs of all those with an interest in a scheme of this type. The scheme before parliament assumes that the current or former medical practitioners and psychologists know about mental health issues by virtue of the fact that they are a medical practitioner or psychologist. Some will but many will not, and it is therefore not appropriate to single out these professions as potentially contributing more to a community visitor scheme than a mental health nurse or social worker with extensive experience in the mental health system. No one profession meets all of the needs of the people in the mental health system; therefore, no profession should be singled out as potentially able to contribute more.

The government has agreed in principle to the development of a suitable scheme. The Mental Health Bill has anticipated the development of the scheme by including provisions that enable one to be established in the regulations. When the work I have previously referred to is undertaken, it will help to determine precisely the provisions that need to be included in the regulations. People have requested a community visitor scheme for many years now. This government has agreed in principle to establishing one, which accommodates the views of a range of different groups. Work can commence now that the government has made its views clear and with its response to the review of the Health and Community Services Complaints Act.

The Hon. M. PARNELL: The Greens will support this and subsequent amendments that relate to the community visitor scheme. In my second reading speech over a month ago I said that, unless the government came up with an alternative model, I would support the Liberal amendment. I have not heard anything from the government, other than a repeat yesterday and again today of the minister's position that the government supports in principle the establishment of a community visitor scheme and that it is committed to undertaking consultation.

In my second reading contribution I referred to some of the final words of the outgoing public advocate, John Harley, who expressed the view that one of his biggest disappointments was leaving the office before such a community visitor scheme had been established. In the absence of any more concrete proposals from the government, I will support this particular community visitor scheme.

The Hon. DAVID WINDERLICH: I also put on the record that the Democrats will support the opposition's amendment for the same reasons advanced by the Hon. Mark Parnell. It is a valuable support in the functioning of the mental health system and also a means of ensuring some sort of accountability and contact with the outside world to have a structured visitors scheme for people who are in detention.

Amendment carried.

The Hon. A. BRESSINGTON: I move:

Page 8, after line 21 [clause 3, definition of prescribed psychiatric treatment]—After paragraph (b) insert:

(ba) the prescription, supply or administration of a drug containing atomoxetine or methylphenidate or other prescribed substance as a treatment for mental illness of a child who has not attained 12 years of age; or

This amendment is necessary because, as I said in my statements on the bill last night, now ADD/ADHD will be included in DSM-IV as a mental illness. I also stated that the number of signs and symptoms used to determine ADD/ADHD are far-reaching and there are a great variety of them. I have a number of FOIs—I will not read through all of them—obtained through the Therapeutic Goods Administration on the adverse affects of the drugs I am talking about—Strattera, Ritalin and other dexamphetamines—and the adverse effect these drugs have on kids.

I am also aware that none of these drugs has ever been approved for anyone under the age of 18 years, yet we are finding them being prescribed for kids two, three and four years old. I am seeking to have that practice prohibited and hope that common sense prevails in the chamber.

The Hon. G.E. GAGO: The government opposes the amendment. The issue of prescribing of drugs falls under the scope of the Controlled Substances Act and not the Mental Health Bill. Secondly, it is not the place of the politicians on the floor of parliament to dictate clinical decisions a medical practitioner should be making after assessing a patient and after many years of appropriate training and education. Finally, the Minister for Mental Health and Substance Abuse has pre-empted this issue and only last week advised the Ministerial Council on Drug Strategy of South Australia's intention to lead research to be carried out by Drug and Alcohol Services SA (DASSA) into the prescribing of drugs for the treatment of ADHD, and we believe that is the more appropriate pathway to go.

The Hon. A. BRESSINGTON: If these drugs have never been approved by the TGA to be prescribed to anyone under the age of 18 years, how is it that the state does not see that it has a duty of care?

We have an authority in place (the Therapeutic Goods Administration) that is saying that these drugs are not approved for anyone under the age of 18, and then doctors are allowed to prescribed these same drugs to two, three or four year old children. We have four year olds on Zoloft, and that is not included in this, sadly. I just want to know why it is not within the jurisdiction of this parliament to make sure that decisions of a higher authority than the medical profession (that is, the Therapeutic Goods Administration) are upheld, when those determinations are backed up by research.

The Hon. G.E. GAGO: I understand the member's passionate interest in this particular area, but it is outside the purview of this legislation. As I have said, the prescribing of drugs falls under the scope of the Controlled Substances Act, not the Mental Health Bill, and the approval of medications and their classification all come under commonwealth legislation. We are aware that there are problems around ADHD, and we believe that pursuing it through the federal ministerial forum is the appropriate course of action.

The Hon. M. PARNELL: The Greens do not support the amendment, because we believe that these clinical decisions are more properly in the realm of professional medical decision-makers rather than the parliament.

The Hon. DAVID WINDERLICH: The Democrats will not be supporting this amendment, because we believe it relates to a clinical decision. I do want to say that I share the Hon. Ann Bressington's concern about this issue and her scepticism about the medicalisation of many aspects of mental illness. The ADHD issues is probably only the tip of the iceberg. So, even if we were to support this amendment, it would really address only one small part of the problem. However, as I have said, as it relates to clinical judgments and because the problem is not clearly defined enough, I will not be supporting it.

The Hon. J.M.A. LENSINK: I concur with the comments made by the minister. I think it is beyond the scope of this legislation. I think we all understand and share the honourable member's concerns about ADHD and so forth, but it really is within the realm of other legislation and jurisdictions to make a determination on this particular matter.

Amendment negatived; clause as amended passed.

Clauses 4 to 9 passed.

Clause 10.

The Hon. DAVID WINDERLICH: I move:

Page 12, line 10 [clause 10(1)(b)]—Before 'harm' first occurring insert 'serious'

I have moved this amendment as a test. If the committee is supportive of this amendment, that will be an indication of whether the remainder of my amendments will succeed. The insertion of the word 'serious' seems very simple, but it has attracted some fairly strong opinions.

The Carers Association is opposed to this, because it is concerned that it will mean that mental illnesses will have to deteriorate before they can be acted upon. I have sought to amend the bill in this way because we are talking about fairly fundamental infringements on a person's liberties, and I believe that is also the view of the government.

In relation to detention, which relates to clauses 21 and my amendments Nos 5, 6, 7 and so forth, I think people understand that issue more clearly, that is, that detention is a major infringement on someone's liberty and that it should be approached with some caution. The idea of community treatment orders seems more benign, but community treatment orders often involve very powerful drugs with very powerful side effects. Therefore, I think the threshold for intervention should not be too low. The threshold at which you begin to lose your ability to say no to certain treatments or to face detention should be fairly high.

The effects of some of these drugs have been described in one research paper prepared by some researchers from Queensland University, the Program of Psychosocial Health Research at the Central Queensland University, the Department of Psychiatry at the University of Queensland, and Bayside Health Services District Hospital in Cleveland. Several authors have prepared this report, and I will quote some of the comments: ' a very individual thing.'; and 'findings on drug therapy and psychiatry from the perspective of Australian consumers.'

The consumers who were asked about the effects of the drugs they were administered gave the following accounts:

- Agitation that was pretty hard to deal with. I remember smacking quite a few doors not long after I came out of hospital.
- Restlessness. I heard it was something like induced Parkinson's disease, and I had a lot of that.
- Weight gain. I put on 18 kilos.
- I didn't quite know how to deal with how I felt about these pills.
- Thirstiness. I was thirsty all the time and did not feel like myself.
- Heart condition, and I believe to this day that the weakness in my heart is what caused me to have ventricular tachycardia because I was put on those heavy drugs.
- Lack of motivation.

- I'd go into hospital. They would over-sedate me again, and I'd find myself not being able to work and not being able to apply myself and lapsing back into the lounge chair and smoking cigarettes and drinking coffee, and that's my existence.
- You don't have enough motivation to have a shower in the morning.
- All my teeth were rotted out from overdosing.
- I couldn't wake up.
- I used to have a sense of humour, but I've lost that. It's trapped somewhere. I don't know; haven't laughed in years.

In fact, some of these symptoms could probably be described as mental illnesses in themselves, except they are the result of drugs to treat mental illnesses. Understandably, people want to be able to say no to them, particularly once they become used to the effects of certain drugs—and the point of that research paper is that it is very individual. So the point at which we deny people the right to say no to drugs that have those sorts of effects becomes fairly important. There is also a view (again, in this research paper, and it is a view I have had reported to me by an advocate for the mentally ill here in South Australia) that prescription of drugs is virtually automatic, or at least extremely common. The same report from which I quoted before states:

> A strong common theme reported by all participants is the idea that there is an automatic use of drugs within the psychiatric system, creating immediacy and pressure for the consumer to embrace a drug-based response to their illness. As the following statement indicates, doctors and psychiatrists were described as having a therapeutic imperative to use drugs: 'I understood that there's this process. He needed to, because he was a doctor, to go through and try medication.'

I am sure there are many exceptions to this, but it is certainly a widely reported problem. I believe that the government will argue that the word 'serious' is too subjective and will not allow a preventative approach; however, we use the word 'serious' in legislation all the time. We have a Serious and Organised Crime (Control) Act, and we have an amendment before us in relation to the Public Sector Bill and provided by the government that talks about serious breaches of the codes of conduct, or words to that effect. So it is a word we use very frequently in legislation. Dr John Brayley, former director of the Mental Health Unit and now the Public Advocate, knows this issue from both sides. He has said:

> The proposed criteria refer to protection from harm without qualification of the probability of harm or the level of harm. It is recommended that South Australia return to the criteria described by Ian Bidmeade in *Paving the Way*, which are based on United Nations mental-health principles...

And that United Nations mental health principle 16 uses the word 'serious'. If we have a blueprint on mental health it is the Bidmeade report, and that report itself discusses the concerns raised by the government and by carers in the following way:

> Apart from mental illness, a crucial basis for compulsory orders such as detention or treatment orders is that the person is unable to look after his or her own health and safety. Some doubts about what this means have been raised. Does it allow intervention not only at a point of crisis such as attempts at suicide, but also to prevent deterioration to that point? The Victorian act was amended in 1995 to deal with this issue. It provides for a person to be detained or ordered to have treatment 'for his or her own health and safety (whether to prevent a serious deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public.

So the Victorian act uses the word 'serious', and it also uses the words 'health and safety', which are stronger than 'harm', which is proposed in this bill. Bidmeade then goes on to recommend:

> It should be clarified that a mentally ill person can be detained or ordered to have treatment where there is a serious likelihood of immediate or imminent harm to the person or others, or serious deterioration in the person's physical or mental condition.

So, a range of experts in this area see no problem with the word 'serious'. The amendments I have moved relate to community treatment orders at several levels. They also relate to detention. However, to summarise, we are talking about very significant incursions on people's civil rights and on their liberties, and it seems to me that we need a reasonable threshold if we are to start to infringe on people's rights and liberties that way.

A general description such as 'harm' seems to me to be too open, so I have proposed the word 'serious', which is also the word advocated by Dr John Brayley, which is also in the Bidmeade report, and also in United Nations principle 16, which states that the involuntary detention should only be on the basis that because of the illness 'there is a serious likelihood of immediate or imminent harm to that person or to other persons' or serious deterioration. So, there are ways to

have this threshold at the appropriate level and still allow for a preventative approach. It is a fairly simple check on the risks posed by setting the threshold of intervention too low.

I believe it is also worth reflecting on some of the points that have been made about the way in which mental illnesses are diagnosed and the way the industry functions. It is a very complex and flawed area, and there is vigorous debate about the extent to which commercial interests are driving the diagnosis of mental illness, and the ability to prescribe, manufacture and sell drugs that flows from that. This is by no means a black and white area; it is very complicated.

I should also say that I have a mentally ill friend. I spent last weekend with that person, and she said to me, 'If it were not for the drugs, I couldn't get up in the morning.' So, I am also fully aware that there is absolutely a role for that form of treatment, but there is a lot of history of concerns, documented abuses, excesses and excessive medication. If we combine that with the powers envisaged under this bill, then we need to have some safeguards in place. In this case that would simply be to increase the threshold at which intervention could take place by inserting the word 'serious' in these half dozen clauses.

The Hon. G.E. GAGO: This is an area into which a great deal of work and consideration has gone. It has been agonised over by some of our best technical, medical and legal minds, and we believe what the bill proposes is the right balance. It provides a wide range of checks and balances while still allowing intervention to occur early in the piece, and we know the importance of having the capacity to intervene early and prevent acute and catastrophic episodes of mental illness. The government very strongly opposes this amendment, and I urge members to think very carefully about this provision.

According to the dictionary, the word 'serious' can mean anything from 'more than trifling' to 'critical'. Bearing in mind that this act will be interpreted in the courts, we want it made very clear that the harm which may be suffered by a person themselves or other people does not have to be critical. This fits with the government's policy agenda to ensure that people with mental illness receive early intervention in their illnesses which, as I said, can prevent those acute, catastrophic episodes.

The policy objectives of the mental health bill reflected in the objects of the act include: facilitating the recovery of a person through the provision of a comprehensive range of services; enabling the person to retain their freedom, rights, dignity and self-respect to the extent compatible with protecting the public and the individual; and enabling people to make orders to achieve these objectives.

In keeping with the first objective, facilitating the recovery of the person, the current criteria for involuntary intervention reflect the following principles which are supported by research evidence: the earlier a person is treated for mental illness, the better the outcome; untreated mental illness can lead to irreversible damage to the brain; and a person with untreated psychosis is significantly more at risk of self harm or committing a crime than a person whose illness has been treated.

If a person with a serious mental illness is not willing to voluntarily accept treatment, mental health legislation establishes a threshold for the criteria for involuntary intervention. The criteria for involuntary intervention contained in the bill specify the conditions that must be satisfied before a medical practitioner or authorised health professional can make an order. The psychiatrist or authorised medical practitioner can confirm that order.

Determining the precise threshold for involuntary treatment in any mental health legislation is a matter of balancing the competing interests in a manner that is acceptable to stakeholders and achieves policy objectives. The competing interests are essentially: the right of the individual to autonomy and self-determination; the desire to protect mentally ill people from harming themselves; the right of the public to protection in the small number of cases which involve violent behaviour directed at others by a mentally ill person; the recognition that a mentally ill person does not generally have the capacity to make decisions in their own interests; and that treatment can be of benefit to people.

I stress that the criteria for making an order in this bill aim to ensure that an order can be made when a person is so unwell that they will not accept treatment and they need the treatment to protect themselves or others. That is what the criteria aim to do. We do not define the extent of the harm necessary for qualifying. We do this because we believe that these sorts of protections are enshrined in the fact that all the criteria have to be considered in that decision, such as, the least restrictive environment, and all those things that I put on the record last night.

It is not just one criterion, and I think that is what the honourable member is doing: he is just taking one criterion out and looking at that in isolation. There is a range of criteria that have to be applied in consideration of these very important decisions, and I believe that they, in totality, provide and afford adequate protections to the rights of that individual while still protecting public interest and the health, safety and wellbeing of that particular individual.

The other protection is the fact that, even if all those criteria are met, this bill provides only that an order may be made. It is not required to be made; discretion can still be applied by the appropriate professionals. Being a former healthcare professional and having had some experience, albeit limited, in this area, the other really important aspect of this is that there are often well-known patterns of behaviour from the person's own history that we have on record.

For instance, early onset psychosis in young people tends to have particular characteristics and take a particular form and it can end up, as I said, in profoundly acute psychotic, catastrophic episodes—catastrophic in terms of not just what it does to that individual in terms of brain damage and the length of time required to recover but also the impact that it has on the family. There are some well-known patterns.

This provision allows for a professional to be able to make those assessments, to look at patterns of behaviour, to look at the past history of that person and to be able to require a person to make an order early in the piece when they suspect that there is a pattern or course of action that that person is undertaking that could lead to very profound and damaging results, without the person having to travel down the path of becoming seriously ill and demonstrating these very serious signs and symptoms.

I urge members to think very carefully. One of the things that has had us hamstrung in the past has been that we have not had the legislative support to be able to intervene early in the interests of the welfare of that particular individual and the welfare of the community generally. This is one of those very important provisions that enables early intervention and, therefore, protection and prevention. It is a fundamental part of the proposed reform before us.

The Hon. J.M.A. LENSINK: I think that the minister has very well articulated the argument against this amendment, and I would like to endorse all her comments. I understand where the honourable member is coming from. Indeed, the Liberal opposition had a look at these suggestions, which I think probably arose from the Human Rights Committee of the Law Society. This whole bill is such a balancing act in terms of the rights of people who will be subject to involuntary orders—whether they are in the community or in a treatment centre—versus the best interests of their health and their outcomes.

We all acknowledge that there have been some absolutely appalling practices. People with mental illness have been subject to some really horrible treatment in the past, and there is therefore a concern that we never want to revisit those days. This amendment would increase the threshold of one of the criteria. We need to reach the stage where, if those who are in a position to detain someone are in doubt, they are supported in relation to admitting a person. I think that the minister outlined some very disturbing research that came out of New South Wales about first episode psychosis, and the statistics relating to people in their first episode.

Given that some people may never have demonstrated or been known to a mental health system in the past and therefore have no impact with the mental health system, we really need those people to receive treatment as soon as possible, as the minister has outlined. We need to give a clear message to the mental health system that its decisions are driven by the best interests of the patient, their treatment and recovery, rather than feeling like there will be some retribution from an act of parliament that not all the criteria have been fulfilled to the letter of the law.

We will not be supporting these amendments, although I do understand where this suggestion is coming from. I would like to add another reason why we need a community visitors' scheme to protect people in this situation and also why we should have a review date set for the act so that we can look at all these issues: in four years' time the chief psychiatrist will be in a position to have access to a great deal of data which should be able to drive any future amendments to the legislation as we go forward.

The Hon. A. BRESSINGTON: Before I direct a question to the minister, I would like to make a brief explanation. In my second reading contribution to this bill, I quoted research that showed that a high percentage of people diagnosed with schizophrenia and bipolar are found to have been infected with certain viruses and pathogens that cause inflammation of the brain, similar to encephalitis, which brings on the signs and symptoms of schizophrenia/bipolar. When people

are treated with a course of certain antibiotics, those signs and symptoms go as the viral infection clears up.

How many schizophrenia/bipolar diagnoses have been made in South Australia within the last 18 months, and how many of those people diagnosed in the last 18 months have been subject to the sort of testing that would be required to identify whether those pathogens are present—or even, as the research suggested, a lumbar puncture may also sometimes be necessary. Is that sort of testing conducted prior to the prescription of antipsychotic medication or prior to anyone seeking an order to have a person detained because of these diagnosed illnesses?

The Hon. G.E. GAGO: In terms of the numbers, I do not have that information here, and I do not know whether the information is available. If it is, we can attempt to get it. In terms of what the honourable member is alluding to, in fact, she is quite right: there are lots of things we do not know about mental illness, including the causes of schizophrenia. There are many different theories around the causation of schizophrenia, but that has been a similar pattern right throughout medical history, not just in terms of mental illness but of other illnesses.

They often start off as theories and are not proven by science for many years. Sometimes they are proven to be right and, of course, sometimes they are proven to be wrong. There is lots of evidence in our history where we have got it wrong, as we have found with science developing and technologies improving. I understand the point the honourable member is making, but those judgments about what tests are appropriate, the amount of research that should be done on various areas and the sorts of tests that should be conducted are matters of clinical judgment and assessment, and they are based on the best science available to us at this point. That is not always adequate but that is the best that we can do, and that is the best we can expect our medical professionals to do.

The Hon. A. BRESSINGTON: Given that the minister did not actually answer my question, I will repeat it. All I am asking is: do we test people who are diagnosed with schizophrenia or bipolar for any pathogens? It is a simple blood test to ascertain the presence of these viral infections. Do we do that at any stage with people who are diagnosed with schizophrenia or bipolar? I was not alluding to anything: I quoted viable research, which indicated that almost 60 per cent of people who participated in quite a large study were found to be infected with these viruses and pathogens. Do we test for anything else? Do we try to find the origin of the behaviour that we are seeing in order to provide the right treatment?

The Hon. G.E. GAGO: I do not know the answer to that question. As I said, the decisions with respect to what profiles are done and what diagnostic tests are conducted on patients, in terms of trying to identify and diagnose and then treat, are matters of clinical judgment and assessment and they are based on the best scientific information available.

The Hon. M. PARNELL: I think this is an important debate for us to have, because in clause 10 we are looking at the first of the coercive orders. I think that what needs to be driving us as a parliament is that we do not want to put in place laws which are unnecessarily coercive and which unnecessarily intervene in people's lives, whether it is through orders or detention.

The question that then arises is whether the level of harm to the individual or to another person is a valid consideration, and I think the answer would have to be that it is a valid consideration. There is a very big difference when we consider someone who might be hearing voices that are urging them to go and hurt someone compared to someone who might just have very unusual personal behaviours that may not be mental illness. So, I think the level of harm is a relevant consideration.

However, the honourable member's amendment goes further than that. It proposes a threshold where only serious harm triggers the intervention of community treatment orders and, in the subsequent amendments, detention and treatment orders as well. So, the question then becomes: is that the appropriate test, that only serious harm to the person or to someone else is the threshold? I think the answer to that question is no.

I do not think it is inconsistent. I think that the potential for harm is a very relevant consideration in the making of all of those coercive orders. However, to constrain decision makers so that only serious harm triggers intervention would mean, as the minister eloquently described, that opportunities for early intervention could be missed.

It also raises the important question, when we are talking about harm to third parties as well as harm to the person with a mental illness: why only 'serious'—two broken arms versus one

broken arm? What level of harm should we as community members have to put up with before the mental health system intervenes?

I think that the honourable member's amendment is important for us to debate, and there are other amendments that we will look at as well about appropriate checks and balances. As the level of intervention escalates, we need to be much more careful to make sure that we do not unnecessarily intervene in people's freedoms. For those reasons, I will not be supporting this amendment.

The Hon. DAVID WINDERLICH: I have a question about the advice sought in the consideration of this issue. I would like to read a fairly brief extract from the advice I have received from John Brayley, the Public Advocate, because the key matter that he raises is that there is an issue of civil liberties. There is also an issue of what is going to make for a best treatment system. He said:

The minister has given the example of first episode psychosis in her second reading speech as a basis for broadening detention criteria. This information is not disputed. However dedicated early psychosis services generally emphasise engagement and early intervention through psycho education. If involuntary care is needed, the new scientific evidence that has been cited in the speech—

that is, the minister's speech—

can be used to support an argument that the person is at a significant [serious] risk of harm.

I inserted the word 'serious'. He did not use the word, but I cited earlier his referring to the word 'serious'. He went on to say:

This is a practice issue in recognising the risk, not an issue requiring broadening of legislation.

He continued:

The proposed criteria are similar to existing criteria in Victoria. I understand in that state it is difficult for people to have a community treatment order ceased when they are stable due to the deterioration clause. The criteria also allow ready readmission. The frequent use of such criteria can lead to a breakdown of relationships between services and some patients who then do not engage in care in the long run, perpetuating risk.

It is relevant to note that the evidence base for the benefit of community treatment orders is very limited... In contrast, there is strong evidence for the use of proactive community mental health services that go out to people and actively engage consumers. The strategic emphasis needs to be on accessible services that engage people rather than making larger numbers of people receive services they do not want. Broad involuntary criteria may act as a negative strategic driver to mental health reform as it removes an incentive to provide services that proactively engage people into care.

To formulate that more clearly, there is a clear view from someone who is an expert in this field on both sides that you can have a negative effect by focusing more on involuntary treatment; therefore, you try to engage people rather than detain or mandate treatment. I am wondering whether the minister has in her consideration of this bill looked at the possible negative consequences upon treatment of a focus on involuntary approaches to treatment.

The Hon. G.E. GAGO: I agree with the honourable member insofar as there are clearly different views about this by different professionals. For instance, our chief adviser in psychiatry, Dr Margaret Honeyman, does not agree with those views that the member outlined. He attributed them to John Harley, but he may have meant Dr John Brayley.

The Hon. David Winderlich: I did.

The Hon. G.E. GAGO: Yes, I thought so. Dr Margaret Honeyman does not agree with the views of Dr John Brayley. However, I accept that there are different views. As I said, we have agonised over this provision to try to ensure that we get the balance right, because whenever you infringe on people's rights it must be for an appropriate reason, and the appropriate risks must be outweighed. We believe that they are, for the reasons I have already put on the record.

With respect to another issue, the honourable member outlined the engagement of the client in the treatment. These provisions do not exclude that; in fact, it is best practice that that type of engagement would occur, and that would continue to occur even if these provisions were not put in place. A number of elements were put in place to provide protections. One matter which I have not mentioned and to which I will just draw your attention now is that I understand the opposition will put forward an amendment for a review after four years. The government will support that amendment. We think it is a very good idea and that it does afford certain protections and enables us to scrutinise and tweak the system and make sure we get it right after four years. If there are

problems that eventuate around the way the criteria operate and are applied, they will be identified with that review and we would look at changing them.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 12, after line 16—

After subclause (1) insert—

(1a) In considering whether there is no less restrictive means than a community treatment order of ensuring appropriate treatment of the person's illness, consideration must be given, amongst other things, to the prospects of the person receiving all treatment of the illness necessary for the protection of the person and others on a voluntary basis.

In my second reading contribution I foreshadowed that I thought an amendment like this was necessary, because I wanted to make sure that decision makers put their mind to the likelihood of whether a person would or would not voluntarily undergo treatment. In other words, even though the wording of the bill talks about doing things in the least coercive way possible, I wanted to make sure that decision makers drew their minds to whether or not a person would voluntarily cooperate.

I notice that I did make a mistake in my second reading speech; I referred to section 19: in fact, it is section 20. I say at the outset that the intent of my amendment is to incorporate into this bill one of the considerations that are already in the Mental Health Act. Section 20 of the current Mental Health Act that the Guardianship Board has to be satisfied that a person has refused or failed or is likely to refuse or fail to undergo the treatment. Those words, as I understand it, can cause some difficulties, in terms of whether a person is first entitled to be given a chance to do something voluntarily and then fail before a coercive measure can be put in place.

It seems to me that we can incorporate that concept in the current bill in the way that I have done it in this amendment. My amendment proposes that, when decision makers are considering whether there is no less restrictive means, consideration must be given—amongst other things, so not exclusively—to the prospects of the person receiving all treatment of the illness necessary for the protection of the person and others on a voluntary basis.

I have introduced these identical words into five different parts of the bill, that is, community treatment orders levels 1 and 2; then we get the more onerous orders, the detention and treatment orders levels 1, 2 and 3. Last night, in answering the questions that we had all put on notice, as it were, in our second reading contributions, the minister basically said that she believed it was already a relevant consideration. She said:

> Determining whether or not a person is likely to comply with voluntary treatment is part of the range of factors that need to be addressed when an order is being considered.

What my amendment effectively does is to put into legislative form the words of the minister last night, namely, that one of the factors that you have to take into account is whether or not the person is likely to undertake their treatment voluntarily, so this does not introduce any element into the decision making that is not already in the mental health system, and it is naming something the minister agrees will need to be taken into account anyway.

In those circumstances it does seem to provide clarity. It is not seeking to insert some additional consideration that is new or novel or has not been put there before, and I do not think it does any harm, but that is not the test. The test is whether or not it improves the legislation, and I think it does improve the legislation, because it goes to that question of people being able to have more of a say in their own treatment without coercive measures coming into effect if that is a possibility for them. If there is a likelihood that they will comply with their medication, for example, let them have that chance.

These are sensible amendments. Rather than saying this one is a test for all the others I will reserve my rights on that because, as we get to the more onerous levels of detention and treatment, I think the need for a provision like this becomes more important. For now, I am proposing to insert that additional subclause (1a) into the community treatment order, level 1 clause.

The Hon. G.E. GAGO: The government supports all of these amendments in relation to that issue. We believe that this helps clarify the intent of the bill and therefore we will be supporting them.

The Hon. J.M.A. LENSINK: I have also given this consideration. It clarifies what might be slightly ambiguous, and it is a laudable provision to include in the legislation.

Amendment carried; clause as amended passed.

Clauses 11 to 15 passed.

Clause 16.

The Hon. M. PARNELL: I move:

Page 15, after line 19—After subclause (1) insert:

(1a) In considering whether there is no less restrictive means that a community treatment order of ensuring appropriate treatment of the person's illness, consideration must be given, amongst other things, to the prospects of the person receiving all treatment of the illness necessary for the protection of the person and others on a voluntary basis.

I understand that the government might support this amendment as well, so, for exactly the same reasons that I thought it was appropriate for level 1 orders, I think it is appropriate for level 2 orders.

Amendment carried; clause as amended passed.

Clauses 17 to 20 passed.

Clause 21.

The Hon. M. PARNELL: I move:

Page 17, after line 31—After subclause (1) insert:

(1a) In considering whether there is no less restrictive means than a detention and treatment order of ensuring appropriate treatment of the person's illness, consideration must be given, amongst other things, to the prospects of the person receiving all treatment of the illness necessary for the protection of the person and others on a voluntary basis or in compliance with a community treatment order.

I move the amendment for the same reason as before.

Amendment carried; clause as amended passed.

Clauses 22 to 24 passed.

Clause 25.

The Hon. M. PARNELL: I move:

Page 20, after line 25—After subclause (2) insert:

(2a) In considering whether there is no less restrictive means than a detention and treatment order of ensuring appropriate treatment of the person's illness, consideration must be given, amongst other things, to the prospects of the person receiving all treatment of the illness necessary for the protection of the person and others on a voluntary basis or in compliance with a community treatment order.

Amendment carried; clause as amended passed.

Clauses 26 to 28 passed.

Clause 29.

The Hon. M. PARNELL: I move:

Page 23, after line 8—After subclause (1) insert:

(1a) In considering whether there is no less restrictive means than a detention and treatment order of ensuring appropriate treatment of the person's illness, consideration must be given, amongst other things, to the prospects of the person receiving all treatment of the illness necessary for the protection of the person and others on a voluntary basis or in compliance with a community treatment order.

Amendment carried; clause as amended passed.

Clauses 30 to 38 passed.

Clause 39.

The Hon. J.M.A. LENSINK: This is the first clause that refers to treatment-in-care plans. I ask the government about the scope for private psychiatrists who may have been seeing

somebody in the community to have some input into treatment-in-care plans when somebody is treated, whether voluntarily or involuntarily in an approved treatment centre.

The Hon. G.E. GAGO: We expect that to occur and it would be deemed good practice.

Clause passed.

Clauses 40 and 41 passed.

Clause 42.

The Hon. J.M.A. LENSINK: I move:

Page 29, line 24 [clause 42(8), penalty provision]—Delete '$20,000' and substitute '$50,000'.

I have had a series of amendments drafted relating to changes to fine regimes. The Mental Health Act 1993, passed some 15 years ago, contained what were deemed division 4 and division 5 penalties. Division 4 was four years or a $15,000 fine, and division 5 was two years or an $8,000 penalty. The four years and two years remain the same, and we understand the reasons for that, but the division 4 fine has increased from $15,000 to $20,000 over a 15-year period.

I propose that in the comparable penalties that that be $50,000. Furthermore, where the government has increased it from $8,000 to $10,000 I propose that it be $15,000. I am not sure why we in this state do not automatically update those sorts of penalties, but clearly a penalty that was $15,000 in 1993 is not comparable to $20,000 in 2009, and nor is a fine of $8,000 comparable with $10,000, which is why I have sought to increase them. This will be a test clause to determine whether the committee is happy with it.

The Hon. G.E. GAGO: The government does not support the amendment. The fines contained in the bill are primarily to provide a disincentive to people, both professionals, such as psychiatrists, and members of the community, doing the wrong thing. Nobody has ever been prosecuted under the provisions of the current Mental Health Act and it is not the intention that people should be criminalised under this bill.

The fines are significant as they stand: $20,000 is generally seen as a large amount of money to most people. The best way to obtain compliance with the provisions of the bill is to train and educate professionals about how the new act should be administered and to educate the community about its provisions. Fining people will not achieve this; therefore, the government does not support the amendment or the subsequent amendments concerning fines.

The Hon. M. PARNELL: The Greens will not support the fine increases proposed in the honourable member's amendments or the subsequent increases. We accept the reasons given by the minister and particularly the fact that this is not an area that is rife with prosecutions. These amounts are very much set there as a deterrent to improper behaviour, and they have succeeded to date at the levels they are at and do not need to be increased.

The Hon. D.G.E. HOOD: Family First supports the amendment. The Hon. Ms Lensink put it well: the original amounts were set some time ago and it is simply a matter of updating them.

The committee divided on the amendment:

AYES (10)

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

NOES (7)

Bressington, A.	Gago, G.E. (teller)	Gazzola, J.M.
Holloway, P.	Hunter, I.K.	Parnell, M.
Wortley, R.P.		

PAIRS (4)

Dawkins, J.S.L.	Zollo, C.

PAIRS (4)

Lawson, R.D.	Finnigan, B.V.

Majority of 3 for the ayes.

Amendment thus carried; clause as amended passed.

Clause 43.

The Hon. J.M.A. LENSINK: I move:

Page 30, line 7 [clause 43(3), penalty provision]—Delete '$20,000' and substitute '$50,000'

Amendment carried; clause as amended passed.

Clause 44.

The Hon. J.M.A. LENSINK: I move:

Page 30, line 16 [clause 44(3)]—Delete '$20,000' and substitute:

$50,000

This amendment is consequential.

Amendment carried; clause as amended passed.

New heading.

The Hon. J.M.A. LENSINK: I move:

Page 30, after line 19—Before clause 45 insert: Division 1—Patients' rights and protections

To advise the committee, this is a drafting issue. It means that the section has had to be renamed. It relates to part 4. Clause 45 provides for the assistance of interpreters and so forth. The entire part is entitled 'Further protections for persons with mental illness'. This is where some aspects of the community visitor scheme have been inserted, so it is a drafting issue and it is consequential on one's support for a community visitor scheme.

Amendment carried; new heading passed.

Clauses 45 and 46 passed.

Clause 47.

The Hon. J.M.A. LENSINK: I move:

Page 32, lines 6 and 7 [clause 47(2)(d)]—Delete paragraph (d) and substitute:

(d) a community visitor;

Again, this is a drafting matter relating to a community visitor scheme in that the existing legislation, which is clause 47(2)(d), provides that patients who may be supported include in that list a person made available under a community visitor scheme established under the regulations. Because the community visitor scheme will be established within the substantive act, that clause would be deleted and replaced by 'a community visitor'.

Amendment carried; clause as amended passed.

Clause 48.

The Hon. J.M.A. LENSINK: I move:

Page 32, after line 38 [clause 48(3)]—After paragraph (e) insert:

(ea) a community visitor;

Again, this is consequential—very similar to that which we have just dealt with.

Amendment carried; clause as amended passed.

Clause 49.

The Hon. J.M.A. LENSINK: I move:

Page 33, line 7 [clause 49, penalty provision]—Delete '$10,000' and substitute:

$25,000

Amendment carried; clause as amended passed.

New clauses 49A to 49E.

The Hon. J.M.A. LENSINK: I move:

Page 33, after line 7—

After clause 49 insert:

Division 2—Community visitor scheme

49A—Community visitors

(1) There will be a position of Principal Community Visitor.

(2) There will be such a number of positions of Community Visitor as the Governor considers necessary for the proper performance of the community visitors' functions under this Division.

(3) A person will be appointed to the position of Principal Community Visitor, or a position of Community Visitor, on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.

(4) However, a person must not hold a position under this section for more than 2 consecutive terms.

(5) The Governor may remove a person from the position of Principal Community Visitor, or a position of Community Visitor, on the presentation of an address from both Houses of Parliament seeking the person's removal.

(6) The Governor may suspend a person from the position of Principal Community Visitor, or a position of Community Visitor, on the ground of incompetence or misbehaviour and, in that event—

(a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and

(b) if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the person's removal has not been presented to the Governor, the person must be restored to the position.

(7) The position of Principal Community Visitor, or a position of Community Visitor, becomes vacant if the person appointed to the position—

(a) dies; or

(b) resigns by written notice given to the Minister; or

(c) completes a term of appointment and is not reappointed; or

(d) is removed from the position by the Governor under subsection (5); or

(e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or

(f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or

(g) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or

(h) becomes, in the opinion of the Governor, mentally or physically incapable of performing satisfactorily the functions of the position.

(8) The Minister may appoint a person to act in the position of Principal Community Visitor—

(a) during a vacancy in the position; or

(b) when the Principal Community Visitor is absent or unable to perform the functions of the position; or

(c) if the Principal Community Visitor is suspended from the position under subsection (6).

49B—Community visitors' functions

(1) Community visitors have the following functions:

(a) to conduct visits to and inspections of treatment centres as required or authorised under this Division;

(b) to refer matters of concern relating to the organisation or delivery of mental health services in South Australia or the care, treatment or control of patients to the Minister, the Chief Psychiatrist or any other appropriate person or body;

(c) to act as advocates for patients to promote the proper resolution of issues relating to the care, treatment or control of patients, including issues raised by a guardian, medical agent, relative, carer or friend of a patient or any person who is providing support to a patient under this Act;

(d) any other functions assigned to community visitors by this Act or any other Act.

(2) The Principal Community Visitor has the following additional functions:

(a) to oversee and coordinate the performance of the community visitors' functions;

(b) to advise and assist other community visitors in the performance of their functions, including the reference of matters of concern to the Minister, the Chief Psychiatrist or any other appropriate person or body;

(c) to report to the Minister, as directed by the Minister, about the performance of the community visitors' functions;

(d) any other functions assigned to the Principal Community Visitor by this Act or any other Act.

49C—Visits to and inspection of treatment centres

(1) Each treatment centre must be visited and inspected once a month by 2 or more community visitors.

(2) 2 or more community visitors may visit a treatment centre at any time.

(3) For the purposes of any visit to a treatment centre, at least 1 of the community visitors is to be a medical practitioner or registered psychologist or a former medical practitioner or registered psychologist.

(4) On a visit to a treatment centre under subsection (1), the community visitors must—

(a) so far as practicable, inspect all parts of the centre used for or relevant to the care, treatment or control of patients; and

(b) so far as practicable, make any necessary inquiries about the care, treatment and control of each patient detained or being treated in the centre; and

(c) take any other action required under the regulations.

(5) After any visit to a treatment centre, the community visitors must (unless 1 of them is the Principal Community Visitor) report to the Principal Community Visitor about the visit in accordance with the requirements of the Principal Community Visitor.

(6) A visit may be made with or without previous notice and at any time of the day or night, and be of such length, as the community visitors think appropriate.

(7) A visit may be made at the request of a patient or a guardian, medical agent, relative, carer or friend of a patient or any person who is providing support to a patient under this Act.

(8) A community visitor will, for the purposes of this Division—

(a) have the authority to conduct inspections of the premises and operations of any hospital that is an incorporated hospital under the *Health Care Act 2008*; and

(b) be taken to be an inspector under Part 10 of the *Health Care Act 2008*.

49D—Requests to see community visitors

(1) A patient or a guardian, medical agent, relative, carer or friend of a patient or any person who is providing support to a patient under this Act may make a request to see a community visitor.

(2) If such a request is made to the director of a treatment centre in which the patient is being detained or treated, the director must advise a community visitor of the request within 2 days after receipt of the request.

49E—Reports by Principal Community Visitor

(1) The Principal Community Visitor must, on or before 30 September in every year, forward a report to the Minister on the work of the community visitors during the financial year ending on the preceding 30 June.

(2) The Minister must, within 6 sitting days after receiving a report under subsection (1), have copies of the report laid before both Houses of Parliament.

(3) The Principal Community Visitor may, at any time, prepare a special report to the Minister on any matter arising out of the performance of the community visitors' functions.

(4) Subject to subsection (5), the Minister must, within 2 weeks after receiving a special report, have copies of the report laid before both Houses of Parliament.

(5) If the Minister cannot comply with subsection (4) because Parliament is not sitting, the Minister must deliver copies of the report to the President and the Speaker and the President and the Speaker must then—

(a) immediately cause the report to be published; and

(b) lay the report before their respective Houses at the earliest opportunity.

(6) A report will, when published under subsection (5)(a), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.

This is consequential. These proposed new clauses outline in somewhat more detail how the community visitor scheme would operate. They have been filed for some time and I think I have forwarded them to honourable members. I am more than happy to answer any questions that members may have. I commend them to the committee.

New clauses inserted.

Clauses 50 to 54 passed.

Clause 55.

The Hon. J.M.A. LENSINK: I move:

Page 37, line 11 [clause 55, penalty provision]—Delete '$10,000' and substitute '$25 000'.

Amendment carried; clause as amended passed.

Clauses 56 to 73 passed.

Clause 74.

The Hon. J.M.A. LENSINK: I move:

Page 45, after line 33—After subclause (3) insert:

(4) If a review under this section relates to a patient to whom a treatment and care plan applies, the Chief Executive must cause a copy of the plan to be submitted to the board at or before the commencement of the board's proceedings on the review.

This is a separate issue to the one we dealt with before, and I note that the government has identical amendments on file. This is a recommendation which comes from the Law Society, and I think that at some point it may have been overlooked in the transcription from the Bidmeade report to the draft of the act, in that these clauses require that all reviews with the Guardianship Board require the presentation, by the director, of the patient's treatment and care plan.

For those who are not familiar with the operation of the Guardianship Board, when it reviews whether or not someone should continue to be on an order I believe it makes good sense that it has access to the treatment and care plan, which is a new initiative of this act. If one exists then it makes common sense to provide it.

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

Page 45, after line 33—After subclause (3) insert:

(4) If a review under this section relates to a patient to whom a treatment and care plan applies, the Chief Psychiatrist must cause a copy of the plan to be submitted to the board at or before the commencement of the board's proceedings on the review.

The government supports the intent of the opposition's amendment. The bill creates an administrative system based on the chief psychiatrist rather than the chief executive. For this

reason, 'chief executive' has been changed to 'chief psychiatrist'. The remainder of the amendment reflects that filed by the opposition.

The Hon. J.M.A. LENSINK: I apologise; I erred in my comment that this was identical. I slipped over the fact that the chief executive and chief psychiatrist are actually quite different persons. I seek leave to withdraw my amendment, and indicate that I will be supporting the government's amendment in this regard.

Leave granted; amendment withdrawn.

The Hon. G.E. Gago's amendment carried; clause as amended passed.

Clause 75 passed.

Clause 76.

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

Page 46, after line 20—After subclause (2) insert:

(2a) If an appeal under this section relates to a patient to whom a treatment and care plan applies, the Chief Psychiatrist must cause a copy of the plan to be submitted to the board at or before the commencement of the board's proceedings on the appeal.

Amendment carried; clause as amended passed.

Clauses 77 to 86 passed.

New clause 86A.

The Hon. DAVID WINDERLICH: I move:

Page 50, after line 15—After clause 86 insert:

86A—Annual report by Chief Psychiatrist

(1) The Chief Psychiatrist must, before 30 September in each year, present a report to the Minister containing—

(a) in respect of each level of community treatment order and detention and treatment order—

(i) information about the number and duration of the orders made or in force during the preceding financial year; and

(ii) demographic information about the patients, including information about areas of residence, places of treatment and, in the case of detention and treatment orders, places of detention; and

(b) in respect of administration of part 10 (Arrangements between South Australia and other jurisdictions)—

(i) a statement of the number of occasions during the preceding financial year on which powers have been exercised under each of the following provisions:

(A) section 61(1) (South Australian community treatment orders and treatment in other jurisdictions);

(B) section 64 (Making of South Australian community treatment orders when interstate orders apply);

(C) section 65(1) (Transfer from South Australian treatment centres);

(D) section 66 (Transfer to South Australian treatment centres);

(E) section 69(1) (Transport to other jurisdictions when South Australian detention and treatment orders apply);

(F) section 70(2) (Transport to other jurisdictions of persons with apparent mental illness);

(G) section 71(12) or (4) (Transport to other jurisdictions when interstate detention and treatment orders apply);

(H) section 72(1) or (3) (Transport to South Australia when South Australian detention and treatment orders apply);

(I) section 73 (Transport to South Australia of persons with apparent mental illness); and

(ii) information about the circumstances in which the powers were exercised.

(2) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

This provides for an annual report from the Chief Psychiatrist. The amendment effectively requires that the Chief Psychiatrist provide, before 30 September in each year, a report to the minister that outlines information about the community treatment orders and detention orders, in particular the number and duration of the orders, and demographic information about the patients including information about areas of residence, places of treatment and, in the cases of detention and treatment orders, places of detention; and then, in relation to arrangements between South Australia and other jurisdictions, the number of occasions during the preceding financial year on which powers have been exercised under a range of clauses that relate to transport to and from other jurisdictions.

This report must be laid before parliament within 12 days of its receipt by the minister. There are two reasons for this. One is again an issue about ensuring scrutiny over the exercise of greater power and protecting the rights of vulnerable people—the mentally ill—in doing this. As many of us have articulated, we are talking about significant infringements on people's rights and liberties, forcible detention and forcible treatment. It seems to me axiomatic that, whenever we do that, the exercise of such powers should be open to some sort of scrutiny.

This would simply ensure that we were made aware of how these powers are being exercised. This is not just a theoretical issue. We do have a case cited by Jennifer Corkhill, who is a solicitor who acts for mentally ill people and who is also a member of the Human Rights Committee of the Law Society. In an article in the *Law Society Journal* in December 2007, she states:

I represented a man from Perth who was about to be transferred from South Australia back to Perth against his will. He had been travelling through South Australia on his way to New South Wales where he planned to live when he became mentally unwell. He had no family connections in WA and wanted to return to his childhood home in New South Wales. His wishes about where he lived and his lack of connection with Western Australia, which he had repeatedly expressed and which were clearly recorded in his clinical case notes, were totally disregarded by those who were making decisions about his transfer.

Although he had been on an order when he left Western Australia, he was not on any orders in Western Australia at the time of the proposed transfer and had been held in an acute psychiatric ward in South Australia for many months pending transfer arrangements, although he was well enough to move to community care and should not have remained detained. The transfer was due to take place the next morning by a Qantas commercial flight.

The clinical case notes show that the arrangements had been made to medically sedate the man in advance of the transfer. Surely, without legal basis for the transfer, the medication would have been an assault, not to mention a breach of medical ethics. No-one making decisions about this man in South Australia seemed concerned about my representations regarding the fact that there were no orders in place in Western Australia permitting his detention when he arrived on the tarmac in Perth and he was no longer subject to the South Australian detention order.

He would have been sedated, so on examination on the plane an immediate detention would not have been possible, let alone desirable. His planned restraint and transfer to a Perth hospital would surely have been unlawful and thus amount to false imprisonment and probably assault. Fortunately, following urgent representations to the minister's office, the transfer did not take place, and he was quickly released into community accommodation in South Australia. It was only by chance that I came to hear of this man's predicament, and I was made aware at the time that the case was not an isolated one.

I think the point there is very explicitly about transfer between jurisdictions, but it also raises a number of other problems about the operation of a mental health system and how it can disregard the wishes of a person and make decisions that do not seem to be in the interests of that person. In a way, I think it adds weight to the sort of scrutiny that is envisaged under each element of this amendment.

The Public Advocate, John Brayley, has also spoken about the interstate transport provisions. I am quoting selectively here in order not to take up too much time. Mr Brayley states:

Under the new legislation transfers are approved only at local director level. Informal inquiries elsewhere suggest that there may be some debate about the merits of transfer in up to a fifth of cases proposed by treating staff. Certainly, such major decisions should be the subject of a high level review on all occasions and appeal be available. There is an absolute finality to transfer. Once it is done it is done. There is also potential for misuse in the forensic setting where it could be a convenient alternative to extradition. These existing transfer provisions could be enhanced if there is a requirement that transfers be approved by the chief psychiatrist at the recommendation of the local director; that the transfer must, in the opinion of the chief psychiatrist, benefit the patient; and that there is access to immediate appeal to the Guardianship Board prior to leaving the state.

In addition, there is a new provision for the transport of people with apparent mental illness who live in border regions straight to an interstate facility. For example, a person who lives in the APY lands might be admitted to Alice Springs rather than Adelaide, which can be a desirable outcome for many consumers and their families. However, this provision should be limited to specific areas in border regions as its intent or otherwise may be misused for other purposes. There would be an extra protection if there is a requirement that the interstate centre be geographically closer to where the person usually resides than the South Australian centre they might otherwise be admitted to. An alternative would be to declare by regulation certain parts of South Australia as recognised catchment areas for interstate centres so these provisions can be in these areas only.

The key point in all that is that the Public Advocate recognises the potential for abuse and misuse of these sorts of provisions. He did suggest some specific ways of dealing with that. I am not proposing any amendments to that effect. All I am proposing is that the exercise of these powers be subject to some sort of scrutiny and accountability by being the subject of an annual report by the chief psychiatrist which the minister then presents to parliament.

It is simply a case of being able to monitor the operation of the system rather than significantly changing any of the provisions of this bill. That is the first reason; it is to do with rights and liberties. The second—

The Hon. G.E. Gago interjecting:

The Hon. DAVID WINDERLICH: The minister is supporting it? I did not know that. In that case, I think I will probably conclude my remarks.

The Hon. G.E. GAGO: For the record, the government will be supporting this amendment. We believe it improves the transparency in relation to the administration of the act and ensures public accountability.

New clause inserted.

Clauses 87 to 94 passed.

New Clause 94A.

The Hon. DAVID WINDERLICH: I move:

Page 52, after line 14—Before clause 95 insert:

94A—Representation in proceedings before board.

(1) In proceedings before the board under this act, the person to whom the proceedings relate is entitled to be represented by counsel in accordance with this section.

(2) If a person chooses to be represented by counsel, he or she is entitled to be represented by a legal practitioner provided under a scheme established by the minister for the purposes of this section, being a legal practitioner—

(a) chosen by the person himself or herself; or

(b) in default of the person making a choice, chosen by a person or authority contemplated by the scheme.

(3) A legal practitioner (not being an employee of the Crown or a statutory authority) who represents a person under this section is entitled to receive fees for his or her services from the minister, in accordance with a scale prescribed by the regulations, and cannot demand or receive from any other person any further fee for those services.

(4) Nothing in this section derogates from the right of the person to whom the proceedings relate to engage counsel at his or her own expense, or to appear personally or by the Public Advocate or other representative in accordance with the Guardianship and Administration Act 1993.

If the minister is not supporting this amendment, I will speak to it. This amendment relates to representation in proceedings before the Guardianship Board. People currently have a right under the Guardianship Act to have representation on application to the Guardianship Board, but this relates only to appeals and not initial hearings before the Guardianship Board, and it does not make any provision for legal representation—I am looking up every now and then in case the minister supports it—to be paid for by the government.

I am informed that it is at the initial hearings that the main problem occurs. This is a situation where the person is all alone and the doctors, the medical staff and often the family may be against them. They may well be sick and trying to make out their case. The doctors will have the volumes of case notes which contain the case against the person; and, if that person is not legally represented it is highly unlikely they will have seen what is in there or heard it until the hearing,

when it is too late for them to get any evidence themselves to rebut the assertions made in the notes. I think that is the argument from a legal practitioner in the system.

We often pose this dichotomy of the dangers of bringing legal arguments into a medical setting. I think the point has been made (but it is worth making again) that we are not talking about a lawyer arguing the toss about whether someone has a broken leg or something as clear-cut as that. We are talking about mental illnesses, and there is still considerable debate as to how scientifically based they are. The process for designating something a mental illness is that it goes into the Diagnostic and Statistical Manual of Mental Disorders, and that is done by a majority vote of American Psychiatric Association members.

One psychologist, Renee Garfinkle, has described this as being on the same scientific level as one would choose a restaurant, which is probably a little derogatory. Nonetheless, the point is that we are talking about significant decisions with respect to people's lives in complex settings in relation to illnesses that are themselves contested.

To give some very brief examples, I think internet addiction is being proposed for inclusion in the new DSM manual. There are things such as caffeine addiction, and 'religious or spiritual problem' is currently in that manual. There are mental illnesses in there that I think everyone would absolutely agree should be there, and there are mental illnesses in there that benefit from drugs and from a medical approach. However, we are talking about the most complex, least clear area of medicine and we are talking about making fundamental decisions with respect to people's lives in this setting.

It seems to me that in that setting people should have some sort of representation so they can argue their case. They would be entitled to that if they were being charged with a criminal offence. They are not entitled to that because they may have, or it is thought they may have, a mental illness. It seems to me to be a basic principle of equity and justice for them to have some sort of representation.

The other element of this is that at the moment we have a highly inequitable system where those with the resources can obtain legal representation at points in the system and those without cannot. So, we have an extremely unequal system that will work against the poor and the less educated and people who are less able to state their case or hire someone to state their case and, to me, that also seems to be fundamentally flawed. I commend the amendment. It would simply ensure that people in hearings before the Guardianship Board had help in making their case.

The Hon. G.E. GAGO: The government does not support this amendment. There would appear to be a misunderstanding about the role of the Guardianship Board. It is not a court with an adversarial process but a tribunal-like body that hears from both sides in an inquisitional manner. The role of the board is to safeguard the rights of protected and vulnerable people. Part 8 of the Mental Health Bill makes explicit that a patient has the right to be supported by a guardian, medical agent, relative, carer, friend or advocate.

The matter of the 93 year old man referred to by the Hon. David Winderlich was, in fact, a Guardianship and Administration Act matter, not a Mental Health Act matter. The grand-niece referred to also made a confidential submission to the Bidmeade review in relation to the Guardianship and Administration Act.

New clause negatived.

Clause 95 passed.

Clause 96.

The Hon. J.M.A. LENSINK: I move:

Page 52—

Line 29 [clause 96(1), penalty provision]—Delete '$10,000' and substitute:

$25,000

Line 39 [clause 96(3), penalty provision]—Delete '$10,000' and substitute:

$25,000

Page 53—

Line 8 [clause 96(4), penalty provision]—Delete '$10,000' and substitute:

$25,000

Line 13 [clause 96(5), penalty provision]—Delete '$10,000' and substitute:

$25,000

Amendments carried; clause as amended passed.

Clause 97 passed.

Clause 98.

The Hon. J.M.A. LENSINK: I move.

Page 53, line 24 [clause 98, penalty provision]—Delete '$10,000' and substitute:

$25,000

Amendment carried; clause as amended passed.

New clause 98A.

The Hon. J.M.A. LENSINK: I move:

Page 53, after line 24—

After clause 98 insert—

98A—Harbouring or assisting patient at large

(1) A person who, knowing or being recklessly indifferent as to whether another is a patient at large, harbours the patient or assists the patient to remain at large is guilty of an offence.

Maximum penalty: $25,000 or imprisonment for 2 years.

(2) In this section—

interstate patient at large has the same meaning as in Part 10;

patient at large has the meaning assigned by section 3, and includes an interstate patient at large.

This clause creates a new offence. There are a number of offences, as we would all imagine, in relation to those who have access to confidential information and who would use that improperly or to provide that certain treatments should not be used inappropriately and so forth; I think all of those things are to be expected.

Within the current Mental Health Act, which has been adopted in the new bill, there are other clauses which relate to matters like removing patients from treatment centres, and this clause arises out of a coronial inquiry. It is ironic that the government's response to that inquiry was tabled today in parliament. I will not go through it great detail, as I think I addressed this during the second reading debate, but it related to a man by the name of Damien Paul Dittmar, who died on 16 May 2006.

The history of this matter is that he clearly had suicidal ideation and had been detained at the Queen Elizabeth Hospital. He absconded, went to a friend's place and stayed there overnight; the friend then dropped him at his grandmother's place, and the following morning he committed suicide.

The Coroner had some fairly strong words to say about this case and the gaps it has shown within our system. He looked at whether under the criminal law there could be any possible prosecution for someone who had assisted a person who had absconded and, based on the information the parliament has been provided today, that is clearly not the case. I will quote from this paper, which was received today:

Coroners Inquest recommendations into the death of Damien Paul Dittmar

On 24 April the State Coroner in an inquest into the death of Mr Dittmar made four findings. Only two of these findings require a police response.

Further in it states:

If it was found that the Crown Solicitor's Office determined that application of Section 254 of the Criminal Law Consolidation Act could not be applied, the coroner recommended that the Hon Attorney-General and the Hon Minister for Health consider legislative change to provide such a provision within the Mental Health Act.

Crown Solicitor's Office advice was provided and confirms that Section 254 of the Criminal Law Consolidation Act cannot be applied. Further advice was received that no similar provisions as allowed in Section 254 of the Criminal Law Consolidation Act were available in the current Mental Health Act.

I assume that this means that the government will be looking at this. In the meantime, I have had this clause drafted which creates a penalty so that someone who knowingly or being recklessly indifferent harbours or assists a patient at large would be guilty of an offence. I echo the words of the Coroner, who stated that one may do this for compassionate grounds, and if that were the case it would be taken into consideration if the matter were brought before a court. It is important that people who are in treatment do need that treatment, and clearly in this case it resulted in tragedy. I commend this amendment to the committee.

The Hon. G.E. GAGO: The government does not support the amendment for the following reasons. The bill and the current act both contain offences for removing a person from a treatment centre or aiding their removal without lawful excuse. Clause 55 provides for an offence of hindering an authorised officer, that is, a person who may be trying to return a patient at large to a treatment centre. A mental health patient should not be likened to prisoners who escape. SAPOL actively searches for patients who unlawfully leave a treatment centre and they are not just classified as missing persons.

A person who knows or is recklessly indifferent to whether another is a patient at large and harbours the patient may not appreciate the full significance of their actions. Many members of the community may equate being placed on a detention and treatment order with being imprisoned for committing an offence and, while this is clearly a misguided perception, educating people about why orders are sometimes necessary is preferred to criminalising members of the public who may believe they are doing the right thing in harbouring a patient.

Harbouring is a term that most people associate with criminal activity. The draft of the bill circulated publicly for comment had the language revised as the views were strongly put that the language was inappropriate in a non-criminal context. People with mental illness can have all sorts of trains of thinking, thoughts, delusions and paranoia. A mental illness does not necessarily impact or affect the intelligence of a person. A person who is mentally ill can spin a very good yarn about the predicament and circumstances they are in and can be very believable and convincing.

This amendment potentially impacts on the families, friends and partners of those with a mental illness, who are obviously easily influenced by what the patient might say and the particular perspective they might put, and they may not be able to appreciate the full significance of their actions. People with a mental illness can be very convincing and compelling in the way they present themselves, so I urge members to think strongly about this matter.

This amendment potentially whacks those people who are already suffering considerably with a loved one in this situation, and it is usually to the doorstep of a loved one, a family member or a good friend that they go looking for protection and assistance. This amendment whacks those people who do not deserve it.

The Hon. M. PARNELL: In my second reading contribution I said that I did not think it was appropriate to attach criminal liability to those who seek to help people with mental illnesses, even if such help is misguided or counterproductive, and my view has not changed. The minister referred to the fact that it will be friends and family that they turn to. It is not difficult to imagine a scenario where a family member might wish to encourage the person to return to their treatment: stay the night, but tomorrow talk about going back. Maybe it will be a case of staying two nights or the weekend.

The way the amendment is worded, it relates to 'any person who assists the patient to remain at large', so the offence is committed, one would think, the instant the person does not immediately dob them in.

I know the mover has said that, of course, courts would look at it, and they would take a compassionate view and would not be seeking to make criminals out of people who are not criminals. Nevertheless, I think it would probably be best to keep this provision out of the legislation.

I want to make one brief observation about coronial inquiries. Coroners, when they come across hard cases, feel the need to make recommendations; it is a natural response. They do not always, but they feel the need to make them. It is a common saying in law that hard cases make bad law. Sometimes bad things just happen and, with no disrespect to the Coroner for having recommended this as an approach, I think that, whilst it might have proved beneficial in the case that the Coroner was looking at, a great deal of harm could be caused elsewhere in the community if this became part of our general law. For those reasons, I do not support this amendment.

The Hon. DAVID WINDERLICH: I strongly oppose this amendment. We always have to be very cautious when we move down a coercive path, because we start to find coercive solutions, which is not to say that there is never a place for them, and then, as further problems emerge, we look for more coercive solutions.

I think what this sort of amendment could do is open up the mental health field to the same knee jerk, tough on crime approach. I know that is not at all the intention of the mover, but I think that is what it could do, because some crisis would occur in mental health, there would be some act of violence or a death and, all of a sudden, this area is opened up to the same knee jerk, tough on crime approach, and I think this would be the worst area in which you could do it.

The question of who it penalises has been touched on, but it is worth enlarging on. We are talking about friends and family, and we are probably also talking about people whose support base may well be other mentally ill people, because they may have been abandoned by most other people. So, they may band together with and find support from other mentally ill people.

So, now you are talking about a group of people whose whole experience of life, in very many cases, is that they do not trust the system—they are screwed by the system and they are screwed by the authorities—so, why would they not take the word of one of their peers who comes to them with a story which may, in fact, be true, but it may not, about the sorts of drugs and the effects and the sort of treatment they are getting and so forth?

These are people who are not just engaged with the mental health system and experiencing the worst of that; they are probably experiencing the worst of the welfare system and every other bureaucracy which we have which manages the life of people who bump along on the bottom of society without money or resources or friends. So, those are the sorts of people you are also very likely to penalise.

I guess the other important matter to think through is not just that issue of fairness, fundamental though it is, but the question of what it will mean for the operation of the system. Earlier, I read some extracts from the Public Advocate, John Brayley, where he talked about the need to focus on engagement in a positive way and the need to minimise the coercive aspects, because you could have counterproductive effects if you get the balance wrong. So, if we now move towards this approach and penalise that pool of people whom in many ways we need to engage to treat and support, that could be counterproductive down the track.

I draw the following comparison, and it is possibly not the best comparison, but it is the best one I can think of, and I guess it relates to the arguments around harm minimisation and how we treated the AIDS epidemic in Australia, which was very successful in international terms, and the case of needle exchanges. People were breaking the law with their drug use. We could have been locking them up all the time but, instead, it was realised that it was vitally important to engage those people to stop the spread of the epidemic, so things like needle exchanges were established. That same principle of engagement, even where people might be breaking the law, probably applies in this area of mental health.

I think this amendment is fundamentally unfair and harsh to a group of people who could least withstand that kind of harshness and who least deserve it and, in all likelihood, it is probably counterproductive to the functioning of a really effective mental health system.

The Hon. D.G.E. HOOD: Family First does not accept the argument that this is an unfair amendment. In fact, given that this amendment, as I understand it from the explanation given by the Hon. Ms Lensink, originated from the recommendations of the Coroner himself, it seems that neither does the Coroner. The context here is that people who have been subject to one of these orders, which can be quite draconian, have been for one of two reasons; that is, they are perceived to be of potential harm to themselves or others in the community. By its very definition, those who seek to harbour these people—that is, to use the term used in the amendment—therefore, are placing this individual or the community at risk, and that is something that we certainly will not be part of. For that reason, we will be supporting the amendment.

The committee divided on the new clause:

AYES (9)

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

NOES (8)

Bressington, A.	Gago, G.E. (teller)	Gazzola, J.M.
Holloway, P.	Hunter, I.K.	Parnell, M.
Winderlich, D.N.	Wortley, R.P.	

PAIRS (4)

Lawson, R.D.	Finnigan, B.V.
Dawkins, J.S.L.	Zollo, C.

Majority of 1 for the ayes.

New clause thus inserted.

Clause 99.

The Hon. J.M.A. LENSINK: I move:

Page 53, line 30 [clause 99(1), penalty provision]—Delete '$10,000' and substitute:

$25,000

Amendment carried.

The Hon. DAVID WINDERLICH: I move:

Page 54, after line 26—After subclause (4) insert:

(4a) Subsection (2)(c) does not authorise the disclosure of information about the treatment that a person has received or is to receive except to a carer of the person.

Essentially, this amendment inserts a new clause that limits the disclosure of information about treatment a person has received, or is to receive, to a carer of that person. The point of this is that, the way the bill is currently written, if you are under a treatment order it looks as though disclosure about pretty much anything can be made to virtually everyone. The qualifying subclause (2)(c) prevents disclosure contrary to the expressed wishes of the person, but subclause (4) provides that subclause (2)(c) does not apply if people are on orders.

This is a difficult one, and I have to say that the Carers Association opposes this because the line between when someone is a carer and when someone is another family member blurs and changes. I do understand that point; however, it seems to me that there still needs to be some minimal protection of the right of a mentally ill person to privacy and confidentiality. They should be able to have some sort of say in what information about them is shared. There is also the issue of the occasional abuse of that information by family members, and the case of the 93 year old that both I and the minister referred to earlier is one such case.

I have some misgivings about why a person who is not an identified carer needs to know, or has a right to know, details about treatment of a person who is mentally ill. I can fully understand why they would want to know information such as where a person is and whether they are well so that they just do not disappear from the face of the earth and the family member or friend has no way of finding out if they are okay. However, specific information about treatment details seems to be something that should be more restricted. One way to do that, and also keep the focus on the rights of the mentally ill person and the rights of the carers, is to restrict that information to a carer of the person.

The Hon. G.E. GAGO: The government opposes this amendment. Although I am sympathetic to the general intention behind the honourable member's amendment, I think the unintended effects of this outweigh those sympathies. As the honourable member pointed out, the Carers Association does not support this amendment. Its view is that it will unnecessarily complicate the administration of the act.

The amendment is also likely to unreasonably impact on Aboriginal people and may disadvantage them because of their complex kinship relationships, which often include obligations to care for a range of relatives. The proposed advanced directives act will allow a person, when well, to nominate a specific person to assume different responsibilities; restricting release of that

information to carers may only impact on a patient's care and treatment if the carer is hospitalised or goes on holidays. It would create pressure to formally identify and register carers, thus creating what could be a very inflexible and administratively burdensome system.

The nature of mental illness is that it tends to be episodic. There may be a sudden onset, and a person who becomes sick may suddenly be left unsupported or care treatment affected, especially if he or she has changed their primary carer—for example, if he or she has a new partner. So, as I said, I do have sympathy for the intention of the amendment, but I believe that the adverse impact outweighs those sympathies.

Clause 99(2)(c), under 'Confidentiality and disclosure of information', provides that disclosure of information can only occur if the disclosure is reasonably required for the treatment, care or rehabilitation of the person and there is no reason to believe that the disclosure would be contrary to the person's best interests. We believe that protections are afforded there in terms of the nature and type of information that can be released.

The Hon. J.M.A. LENSINK: That is an important point that the minister outlined. Again, this is an area on which we were lobbied by the Law Society Human Rights Committee. I do understand the concern that, in layman's terms, we would not want any old busybody, who purports to be a friend of the person detained, to go snooping around to try to find out what sort of treatment the person is receiving.

I also point out that the term 'carer' refers back to the Carers Recognition Act, which is quite narrowly defined. It provides that a carer is someone who provides ongoing care or assistance. It specifically excludes people who may be providing care under a contract, which is either paid or voluntary. It also contains this provision:

A person is not a carer for the purposes of this Act only because the person—

(a) is a spouse, domestic partner, parent or guardian of the person to whom the care or assistance is being provided;

This is a really vexed issue, particularly in relation to parents. I know a few parents who have been in that invidious position, and they say that when their adult child (for whom they do not fulfil the criteria of being a formal carer) is at home they pick up the pieces when they are discharged from hospital, but they are not provided with any information and the hospital puts up the shutters; whether or not that is because of their interpretation of the act, for whatever reason they cannot have any information once that person is admitted to hospital, particularly if it is someone who has schizophrenia or an illness with delusions.

It can be very difficult for those families to manage their affairs. I do understand where the honourable member is coming from, but I think it would narrow it unnecessarily. I also understand that it would be in conflict with the provisions of the Health Care Act, which would then create legal ambiguity. It is often people working within the hospital system who interpret these things. I think we need to make it as transparent as possible so that they can understand the legal position and are in the best position to apply it appropriately.

Amendment negatived; clause as amended passed.

Clause 100.

The Hon. J.M.A. LENSINK: I move:

Page 54—

Line 34 [clause 100(1), penalty provision]—Delete '$10,000' and substitute '$25,000'

Line 41 [clause 100(3), penalty provision]—Delete paragraph (a)

Amendments carried; clause as amended passed.

Clauses 101 and 102 passed.

Clause 103.

The Hon. J.M.A. LENSINK: I move:

Page 55, lines 40 to 42 [clause 103(2) (a)]—Delete paragraph (a)

Amendment carried; clause as amended passed.

New clause 104.

The Hon. J.M.A. LENSINK: I move:

Page 56, after line 15—after clause 103 insert:

104—Review of Act

The Minister must, within four years after the commencement of this Act or any provision of this Act—

(a) cause a report to be prepared on the operation of this act; and

(b) cause a copy of the report to be laid before each house of parliament.

This amendment inserts a review date. It is a considerable time since this act was reviewed. It is an effective modernisation of the act which will serve us well going forward, but there are many aspects about which members have expressed concern. Therefore, it would be appropriate to review the act in four years, with the benefit of statistical information to which the chief psychiatrist will have access as also, indeed, will the parliament—thanks to the Hon. David Winderlich's amendments.

The Hon. G.E. GAGO: The government supports this amendment. A review of the act after four years will enable any areas that can be improved to be identified and amended as necessary.

New clause inserted.

Schedules and title passed.

Bill reported with amendments.

Bill read a third time and passed.

At 18:16 the council adjourned until Tuesday 12 May 2009 at 14:15.