LEGISLATIVE COUNCIL

Tuesday 2 June 2009

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:17 and read prayers.

CROSS-BORDER JUSTICE BILL

His Excellency the Governor assented to the bill.

ANSWERS TO QUESTIONS

The PRESIDENT: I direct that the following written answer to a question be distributed and printed in *Hansard*.

MINISTERIAL STAFF

132 The Hon. R.I. LUCAS (4 May 2006) (First Session).

1. Can the Premier advise the names of all officers working in the Minister for Social Justice's office as at 1 December 2004?

2. What positions were vacant as at 1 December 2004?

3. For each position, was the person employed under Ministerial contract, or appointed under the Public Sector Management Act?

4. What was the salary for each position and any other financial benefit included in the remuneration package?

5.

(a) What was the total approved budget for the then Minister's office in 2004-05; and

(b) Can the Minister detail any of the salaries paid by a Department or Agency rather than the Minister's office budget?

6. Can the Minister detail any expenditure incurred since 5 March 2002 and up to 1 December 2004 on renovations to the then Minister's office and the purchase of any new items of furniture with a value greater than $500?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business): The previous Minister for Families and Communities has provided the following Information:

There was no Minister for Social Justice during the time period referred to.

PAPERS

The following papers were laid on the table:

By the President—

Auditor-General—Supplementary Report, 2007-2008—Agency Audit Reports and a Matter of Specific Audit Comment, June 2009

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

Judges of the Supreme Court of South Australia—Report, 2008
Regulations under the following Acts—
- Bills of Sale Act 1886—Bills of Sale
- Community Titles Act 1996—Plans and Maps
- Daylight Saving Act 1971—Revocation
- Legal Practitioners Act 1981—Fees
- Real Property Act 1886—General
- Strata Titles Act 1988—
  - Fees
  - Plans and Maps
- Workers Rehabilitation and Compensation Act 1986—Claims and Registration—Registration of Employers

Dangerous Area Declarations—1 January 2009 to 31 March 2009—Return Pursuant to Section 83B of the Summary Offences Act 1953
Road Block Establishment Authorisations—1 January 2009 to 31 March 2009—Return Pursuant to Section 74B of the Summary Offences Act 1953

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

Reports, 2008—
Flinders University
The University of Adelaide—Part One: Annual Review
The University of Adelaide—Part Two: Financial Statements
Maralinga Lands Unnamed Conservation Park Board—Report, 2007-08
Regulations under the following Acts—
Road Traffic Act 1961—Crossings
Approved Licensing Agreement between SkyCity Adelaide Pty. Ltd. and the Minister for Gambling—Third Amending Agreement
Codes of Practice under Acts—
Authorised Betting Operations Act 2000—
Advertising (Inducements)—Variation
Responsible Gambling (Inducements)—Variation

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

Regulations under the following Acts—
Liquor Licensing Act 1997—
Bordertown High School
Dry Areas—Long Term—Mannum
Deputy Coroner Findings of Death—Minister for Consumer Affairs Response dated 18 May 2009

RENEWABLE ENERGY

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:22): I table a copy of a ministerial statement relating to 'South Australia: Australia's Renewable Energy Powerhouse' made earlier today in another place by my colleague the Premier.

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) (14:23): I table a copy of a ministerial statement relating to swine flu made earlier today in another place by my colleague the Minister for Health.

QUESTION TIME

ROYAL ADELAIDE HOSPITAL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:25): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about planning advice.

Leave granted.

The Hon. D.W. RIDGWAY: The government has had a program called the Thinkers in Residence since shortly after coming to office. In that time three of the thinkers in residence—Mr Charles Landry, Mr Herbert Girardet and, more recently, Ms Laura Lee—have been experts in urban design and architecture. Some two years ago it was leaked out, and became part of the 2007 budget, that the government proposed to build a new hospital on the rail yard site, formerly known as the Marjorie Jackson-Nelson hospital but later changed to the Royal Adelaide Hospital. My question to the minister is: did he or any other member of the government seek advice on the location of that hospital from any of the three thinkers in residence or any other urban design practitioners that they may have contacted?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:26): The question in respect of the location of the hospital is really for my colleague the Minister for Health, and I will refer it to him.

ROYAL ADELAIDE HOSPITAL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:26): I have a supplementary question.

The PRESIDENT: How do you get a supplementary out of that? Give it a try.

The Hon. D.W. RIDGWAY: Did any other member of the government seek any advice?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:26): The point is that the location of the hospital clearly is going to be most significant to—

Members interjecting:

The Hon. P. HOLLOWAY: No; the hospital will be the property of the people of this state. I am sure it will be an asset that they will greatly value. Obviously, the location of the hospital is the responsibility of the Minister for Health, and appropriately so, just as one would expect that if one were to locate a transport interchange, for example, that would be a matter for the Minister for Transport, and, if you are going to locate a prison, one would think it would be a matter for the Minister for Correctional Services, and so on. Obviously, these are cabinet decisions ultimately, but the original proposal and proposition was put by the minister responsible, and that is why I will refer the question to him to obtain exactly what advice he did seek.

CHELSEA CINEMA

The Hon. J.M.A. LENSINK (14:27): I seek leave to make an explanation before asking the Minister for State/Local Government Relations a question about the Chelsea Cinema.

Leave granted.

The Hon. J.M.A. LENSINK: The Chelsea Cinema, as members may be aware, is the property of the City of Burnside. It was purchased by a previous council, I believe, in 1964 and has been leased by Wallis Cinemas since 1971. In 1983 the building itself was heritage listed, but that does not preserve it as a picture theatre.

A number of members attended a meeting on 18 May at the theatre following the council's contested decision to sell the theatre and the adjacent property with a house on it and as part of the council's decision to subsequently consult on its decision. For the benefit of honourable members, there are four particular sites there and only one of them is listed as community land, that being the parking lot immediately behind the theatre at 35 May Terrace.

Honourable members may be aware that, in order for that community land to be changed in use, it would need to go through a consultation process with council, and then the minister's approval would have to be sought. It was made apparent at that meeting that Wallis Cinemas would be unable to purchase the theatre itself and would be able to continue operations there only if it was able to purchase the car parks as well, which would mean a change of the community use and, therefore, it has declined to do so. My questions to the minister are:

1. Has she had representations from people on this matter?

2. Is she aware of any application by the Burnside council to change the car park use?

3. Would the government favourably consider a revocation of that car park to enable the Chelsea to continue to operate as a single theatre?

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) (14:30): I thank the honourable member for her important question. This very important landmark on Adelaide's landscape is a cinema that I have enjoyed attending in the past as well, so I have to declare a personal interest in the matter. In February this year, the City of Burnside took a decision to initiate the process of disposing of the Chelsea Cinema and to undertake a community consultation process.

In 1999, councils had to determine whether their land holdings fell into the community land category or the operational land category for the purposes of the Local Government Act 1999, as the honourable member has alluded to. For those holdings that were deemed community land, the legislation provides a fairly prescriptive process for revoking the community land title over that land and then disposing of the land or using it for a purpose different to its current use.

In 2001, the Burnside council took a decision to classify the Chelsea Cinema as operational land, so my understanding is that it is not community land. Councils are required to seek the minister's approval to revoke the status only of community land. The requirements for the disposal of operational land are not prescriptive. The processes that would apply to the disposal of operational land fall back into the strategic planning process of councils and their adopted policies as they might relate to tendering, seeking expressions of interest, sale and disposal of land, and community consultation, etc.

Nevertheless, inherent in that strategic planning process is, obviously, community consultation expectations. Councils are expected to plan well enough ahead so as to know, during their strategic and business planning processes, that they are thinking of disposing of a particular property or properties. You would expect a responsible council to be able to do that. When they consult with the community on their business plans, their intentions regarding the prospective sale of those sorts of assets should be outlined in their business plans.

In accordance with the Local Government Act 1999, councils have to conduct at least one public consultation meeting in addition to seeking public comment on their business plan, and at that time the community has an opportunity to comment and give feedback. Circumstances arise during the course of the financial year that obviously might, on occasions, necessitate a council deciding to dispose of an operational land holding. However, in such circumstances, the processes for ensuring that the interest of the community is protected should be covered in the council's policy that I have just outlined. One might expect that, from time to time, there would be such exceptional circumstances.

In the case of the Chelsea Cinema debate, I recently received a complaint, and I have asked my officers to make appropriate inquiries about the council processes that have been involved and are anticipated to be involved. Obviously, I need more information about what the Burnside council is doing in relation to this matter before I can offer a further comment or opinion in relation to the council's processes themselves.

Most recently, I am advised that the current operator, Wallis Cinemas, informed the council that it did not wish to submit an offer to purchase the cinema site within the 120 day period offered by the council. Previously the council had offered the current operator the opportunity to submit an offer prior to council going to an open bidding process. As a result, I understand that, on Tuesday 29 April, the council decided to halt the sale process until after it considered the outcomes of the community consultation process—a mighty fine idea, indeed, in light of the interest that the proposed sale has generated.

I understand that it is anticipated that a report outlining the results of the community consultation will be presented to council at the council meeting on 16 June. Obviously, to the best of my knowledge, no requests have been made to proceed with any revocation processes. Even if there were, that process requires extensive public consultation. Obviously, I will watch with great interest to see the outcome of the final consultation process and the council's response.

CHELSEA CINEMA

The Hon. J.M.A. LENSINK (14:36): I have a supplementary question. Do I take it from what the minister has outlined in her answer that she holds concerns that the council decided to sell the site prior to public consultation?

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) (14:36): The advice I have received is that there was some level of community consultation. As I said, I have asked for details. I have asked officers certainly to inquire into the details of the processes that the council has undertaken. I do not have that information as yet, but my belief is that some level of consultation took place. Whether or not that was adequate, at this point in time I am not in a position to say. Clearly, if you read the public response to the proposed sale, it would appear that it could have perhaps been more extensive than what it was.

ANDAMOOKA

The Hon. S.G. WADE (14:37): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about the Andamooka community.

Leave granted.

The Hon. S.G. WADE: On 14 May, the minister answered a question from the Hon. Ian Hunter about the assistance the government might be providing to the Andamooka community. The minister indicated that, coincidentally, she had recently visited Andamooka. In her answer she said:

> Prior to my visit, the Office of State/Local Government Relations spent time with these groups to discuss region needs, and it has become apparent that a community manager based in Andamooka could play an important part in contributing to APOMA's local direction and advice, aiding in the good governance of the region. I have listened to the needs of the community and also recognise the potential the right appointment can offer by way of secure long-term sustainability for Andamooka.

Further in her answer she said:

> For this reason I urged the trust to make the important resource of community manager available within the Andamooka community. Having seen fit to do so, I commend the Outback Areas Community Development Trust for this initiative that plants a seed for this renewed partnership that it is fostering with APOMA.
>
> I am advised that the community manager position should be filled around mid year, utilising state and commonwealth funds.

In 2007, the then minister for state/local government relations (Hon. Jennifer Rankine) also visited Andamooka. On 4 July 2007, she issued a press release which, in part, reads:

> Minister for State/Local Government Relations, Jennifer Rankine, has announced that a development officer will be provided to the Andamooka community.
>
> This is a direct result of the Minister's recent tour through the Outback with members of the Outback Areas Community Development Trust and the Local Government Grants Commission.

Is the community manager position she has announced a new position, in addition to the development officer announced by minister Rankine, or is this another case of the government re-announcing funding as a cover for the lack of ongoing funding for outback communities?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:39): Indeed, a development officer was put in place a number of years ago by the former minister. I do not have the details of that position, but it was established to assist the community in managing some of the pressures around its development. My understanding (if I can remember correctly) is that the position was structured to work with the Andamooka Progress and Opal Miners Association (APOMA), which they did for a number of years. That position, if you like, was then absorbed; so the position was not removed but absorbed back to Port Augusta where these services are centrally managed. The position was relocated to the Port Augusta office—I am happy to check the details and amend them if I need to—while still providing support services to the Andamooka community.

I became minister and listened to the concerns of representatives from APOMA. Obviously, I was aware of the ever increasing pressures on that particular community in relation to its being able to manage its infrastructure to support a burgeoning community. I felt in light of that, and having spoken with the Outback Areas Trust and APOMA, that we needed to restructure that position and relocate the position substantially back into the Andamooka community. I think they do some work from the Port Augusta office, but the substantial component of the work is done from Andamooka itself—which APOMA is very pleased about.

We have restructured the position to provide greater clarity in terms of its role, responsibility and accountability for that position, which I think needed to be improved significantly in relation to the previous development officer position. They are different positions, but they are closely related and some of their functions do overlap.

MINING PROJECTS

The Hon. CARMEL ZOLLO (14:42): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about new mining projects within South Australia.

Leave granted.

The Hon. CARMEL ZOLLO: Less than eight years ago, there were only four operating mines in South Australia. It seemed to many that the worldwide commodities boom that had helped to boost the economies of Western Australia and Queensland was going to pass us by. That seems to have changed in recent years. Investment in mineral exploration has surged to a record $355 million. There are now 11 operating mines in South Australia and a strong pipeline of projects that will set up this state for decades to come. My questions are:

1. Will the minister provide details of the most recent mining project to officially begin production?

2. What does this sort of investment mean to jobs and exports for the state?

3. Are there any other projects on the horizon that might provide further support for this state's economy?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:43): I thank the honourable member for her most important and very timely question. I am delighted to inform the council that only last week the Premier took part in the official opening of South Australia's newest mining project at Prominent Hill near Coober Pedy. While copper and gold were first uncovered in 2001 by Minotaur Resources using data collected by the state government, the expeditious process by which this operation has evolved from exploration to production has been impressive by any measure—just six years to go from exploration to production.

It is a testament to the dedication of OZ Minerals and its predecessor Oxiana and the efficiency of PIRSA's minerals section that it took just five months from the time its mining lease application was lodged until mining was underway. I acknowledge at this point the contribution made by Dr Paul Heithersay and the team at PIRSA's minerals section in helping to steer this project through our state's regulatory approval process. Is it any wonder that the 2008 resources stock worldwide risk survey rates South Australia as the best place in the nation and the second best jurisdiction in the world for investment in mining?

Prominent Hill is expected to reach full capacity by the end of this year, and the copper concentrate it will yield is the highest grade of any concentrate being traded on the open market today. The mine is expected to produce up to 100,000 tonnes of contained copper and up to 70,000 ounces of gold this year. During its expected mine life, which is conservatively estimated at 10 years, Prominent Hill will deliver export earnings of about $6 billion. Recent exploration results show outstanding prospects for an expansion of the existing site, with a possibility of the mine life being extended until at least 2030.

This project is also providing other significant economic and social benefits, particularly for people in South Australia's regional and remote communities. At the height of construction, Prominent Hill provided employment for 1,500 workers, including a large number of contractors from country areas and Adelaide suburbs. OZ Minerals is also to be congratulated and recognised for its commitment to providing employment and training opportunities for local people in this area. Of its current staff of 580, about 75 per cent are South Australian.

The company's award winning pre-employment training program enables indigenous and non-indigenous participants with no experience in the mining industry to gain skills needed to win jobs in the sector. Since the program was launched in 2006, 34 trainees have successfully completed the course and taken up full-time roles with OZ Minerals. The fifth training program begins this month and is specifically designed for people from the Antikarinya community. During the past three years, OZ Minerals is estimated to have injected about $500 million into this state's economy, including $25 million in regional South Australia and $4 million in Coober Pedy.

Should shareholders approve the sale of OZ Minerals' other major assets to China Minmetals, Prominent Hill and nearby exploration leases will constitute the core holdings of the new-look OZ Minerals. Given that concentration of its operations in South Australia, this government is hopeful that OZ Mineral's new management team will give some serious thought to relocating the company's head offices from Melbourne to Adelaide.

Prominent Hill is one of a range of world-class mineral projects due to begin production within the next year. This month the government announced the final go-ahead for our newest mining project, Iluka Resources' heavy mineral sands deposit in the Eucla Basin on the state's West Coast. The Jacinth Ambrosia venture is considered the most significant new source of zircon found in four decades and signals the beginning of a significant shift in production of this resource

away from Western Australia to South Australia. Iluka's investment in this project will contribute more than $470 million to the state's economy. Importantly for the future of heavy mineral sands mining in South Australia, Iluka and its partners continue to make exciting discoveries at other prospects within the Eucla Basin, such as Dromedary and Tripitaka.

PIRSA also recently offered a mining lease to Centrex Metals to develop its iron ore project at Wilgerup near Lock on Eyre Peninsula. Centrex Metals plans to develop a two million tonnes per year hematite mine with an estimated capital expenditure of $50 million at Wilgerup. Centrex expects to directly generate 120 to 150 locally recruited jobs and contracts, with an indirect employment multiplier of about three to one.

These are just a few of the world-class mining projects that are coming on line in South Australia. These projects are creating thousands of jobs in economic development for this state's regions and providing a valuable new area of support for South Australia's economy, alongside defence and technology. They are further evidence that this government's pro-business, pro-investment policies are continuing to pay dividends even as we face the tremendous challenges created by the global financial crisis.

MINING PROJECTS

The Hon. R.L. BROKENSHIRE (14:48): I have a supplementary question, Mr President. In the minister's comprehensive answer there was one answer that was not given, and that was the amount of royalties being generated. Can the minister advise the council of the amount of royalties in dollar terms?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:48): One of the ways in which this government has encouraged mining in South Australia was to develop a royalty regime which encouraged new investment in mining, and that royalty regime passed this council four or five years ago, if I recall correctly. The royalty rate is 1.5 per cent for the first five years for a new mine (and, of course, Prominent Hill is very much a new mine). Thereafter, the royalty reverts to 3.5 per cent which, for base metals, is on a par or in about the middle of the levels elsewhere in Australia. So, the royalty rate will be 1.5 per cent for the first five years of production, increasing to 3.5 per cent. That is based on the value.

As for the actual dollar value, clearly, that will depend on the level of production. If the honourable member wants further information, I will take that on notice.

CORRECTIONAL SERVICES

The Hon. A. BRESSINGTON (14:50): I seek leave to make a brief explanation before asking the minister, representing the Minister for Correctional Services, a question about confidentiality practices within correctional services.

Leave granted.

The Hon. A. BRESSINGTON: As members may be aware from the article appearing in the *Sunday Mail* of 23 May 2009, I recently travelled to Port Lincoln prison to visit an inmate by the name of Tony Grosser. As was detailed in the article, the intention of my visit was to focus on Mr Grosser's efforts of self-representation in his 10-month retrial and the difficulties he encountered in this regard. Given the contentious nature of Mr Grosser's many allegations of impropriety and corruption, I made all efforts to be as discreet as possible regarding my intentions to visit him in an effort to allay any concerns that I was going to launch a 'Free Tony Grosser' campaign.

To my surprise, Mr Nigel Hunt from the *Sunday Mail* contacted me within the week prior to my trip and requested a meeting to discuss Mr Grosser. At this meeting Mr Hunt not only was aware of my intention to visit Mr Grosser but also informed me of the date I intended to do so. My questions of the minister are:

1. Does any person within corrections have the authority to disclose to the media visiting arrangements of a member of parliament with an inmate?

2. Will the minister give an undertaking to discover who within corrections leaked the details of my impending trip and why and what disciplinary action could be taken?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:51): I will refer

the honourable member's question to the Minister for Correctional Services in another place and bring back a response.

REGIONAL AIRSTRIPS

The Hon. T.J. STEPHENS (14:52): I seek leave to make a brief explanation before asking the Leader of the Government a question about regional airstrips.

Leave granted.

The Hon. T.J. STEPHENS: Last month I was fortunate enough to accompany the member for Stuart, the Hon. Graham Gunn, on a trip through parts of his vast electorate. We met with a number of constituents who were keen to share some of their very serious concerns with us. I have raised this issue in the past, but a number of people spoke to me about the state of country airstrips. The former Liberal government set about a program of sealing airstrips in regional areas, but the process seems to have come to a standstill under the Rann government.

Concerns were raised by people in William Creek, Blinman and Bollards Lagoon about their unsealed airstrips—airstrips used by the Royal Flying Doctor Service and, for this reason and many others, vital to regional communities. When it rains, these airstrips become inoperable. For essential services, tourism and safety reasons, these regional towns really need sealed airstrips. Does the Rann government have any program and time frame in place for the gradual sealing of these vital airstrips?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:53): I will refer that question to the minister in another place. I am aware that this government recently provided money through regional development in relation to improving the Innamincka airstrip, but across the board this government has increased spending on transport and transport maintenance massively compared with the level it was six years ago. There has been a massive increase in spending on transport generally, but clearly even where airstrips have been sealed there is always the demand from local communities to increase these facilities. It is also important that the commonwealth government provide information, as it is the level of government with principal responsibility for air transport in this country.

BLIND CORDS

The Hon. R.P. WORTLEY (14:54): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about blind cords.

Leave granted.

The Hon. R.P. WORTLEY: Earlier this year the minister informed the council of a new standard with which traders needed to comply in relation to blind cords. Will the minister advise the chamber how traders have been adjusting to these new requirements?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:54): Most unfortunately I have to report that some retailers have shown complete disregard for children's safety and the new mandatory standard brought in earlier this year. Five big name curtain and blind retailers have been found selling banned pre-packaged blind products, with one retailer offering three non-compliant products for sale.

These safety requirements have been in place for nearly five months now, so businesses have had ample time to ensure that they are compliant. We are not talking about small businesses here; the non-compliant retailers are large traders that should have in place processes to effect these very important changes. It is extremely poor that three of the businesses were warned by OCBA four months ago about stocking non-compliant products; they were given a fair go then, yet here they are again selling banned items.

The retailers have stocked products without the correct warning labels or instructions, a critical part of the safety requirement, as recommended by the Coroner. Blind and curtain cord products that do not comply with labelling safety requirements are considered dangerous goods and are, effectively, banned from sale and supply in South Australia. OCBA is investigating non-compliance and taking the next steps in the legal process with a view to prosecution. Retailers caught selling banned products despite previous warnings could be subject to fines of up to $10,000 under the Trade Standards Act 1979.

Since 2000, the deaths of at least 10 toddlers in Australia have been linked to looped blind cords, and the new bans were brought in to protect children through tighter regulations on the sale of potentially hazardous blind cords. Information about the requirements for blind cords and curtains can be found on the website of the Office of Consumer and Business Affairs.

I take this opportunity to remind traders that the ban requires the bottom of looped blind or curtain cords to be at least 1.6 metres from the base of the blind or curtain; alternatively, safety devices must be fitted. These devices can include the two-pronged hook or tension device for the cord or a cord break-away device. Warning labels must also be attached to blinds or curtains that are sold or installed.

STONY HILL VINEYARD

The Hon. DAVID WINDERLICH (14:57): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations, representing the Minister for Environment and Conservation, questions about the impending bulldozing of South Australia's oldest commercial vineyard, Stony Hill at Old Reynella.

Leave granted.

The Hon. DAVID WINDERLICH: The *Sunday Mail* of 31 May reported that Stony Hill at Old Reynella is set to be bulldozed to enable the construction of just 41 homes. Stony Hill was established in 1839 by John Reynell and was planted with 32 hectares of cabernet sauvignon vines. Only two hectares of this vineyard remain.

According to Onkaparinga council, the vineyard was removed from the state heritage list by the Department for Environment and Heritage. This is a very strange decision, because the vineyard clearly meets at least three of the seven criteria for listing under the state's Heritage Places Act: it demonstrates important aspects of the evolution or pattern of the state's history; it is an outstanding representative of a particular class of places of cultural significance; and it has a special association with the life or work of a person or organisation or an event of historical importance.

To delist such an important part of our history for such a small gain, 41 homes—we are not talking about this vineyard blocking the development of Roxby, for example—raises the concern that nothing is safe. It also raises questions about the integrity of the heritage listing process. My questions are:

1. Why was the Stony Hill vineyard taken off the state heritage register?

2. Was the minister aware that the Department for Environment and Heritage had removed Stony Hill from the state heritage register?

3. If the minister was not aware, will he undertake an investigation as to why the Department for Environment and Heritage made this bizarre decision?

4. Will the minister step in and prevent the bulldozing of the Stony Hill vineyard until he has completed an investigation as to the reason for its removal from the state heritage register?

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) (14:59): I thank the honourable member for his important questions. I will refer them to the Minister for Environment and Conservation in another place and bring back a response.

AGRICULTURAL EDUCATION

The Hon. C.V. SCHAEFER (14:59): My questions are to the minister representing the Minister for Employment, Training and Further Education. Does the government have a strategic plan for post-secondary education for those wishing to engage in agriculture in this state? If so, is it published? Where can it be accessed? What input, if any, did the government have in the decision to remove agricultural training and the ag science degree from Roseworthy campus? Is there any intention to use the residential facilities at Roseworthy campus and, if so, what will they be used for and by whom?

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) (15:00): I thank the

honourable member for her important questions and will refer them to the Minister for Employment, Training and Further Education in another place and bring back a response.

NORTHERN SUBURBS DEVELOPMENT

The Hon. I.K. HUNTER (15:00): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about demand for new housing in Adelaide's fast-expanding northern suburbs.

Leave granted.

The Hon. I.K. HUNTER: Until recently there has been limited access to significant parcels of land to be used to develop large-scale residential areas in the Gawler and Barossa council areas. The realignment of the urban growth boundary in December 2007 created an opportunity to increase the number of houses and associated community facilities in these areas. The growing demand for housing in Adelaide's north reflects the region's resurgence led by projects such as the Edinburgh Parks and the pending arrival of the 7th Army Battalion.

As I understand it, the government has also been encouraged to identify a 25-year rolling supply of residential land, with a 15-year supply already zoned and ready to go, following a review undertaken by the Planning and Development Steering Committee. Part of the land added to the urban growth boundary in late 2007 included a parcel to the east of Gawler. Will the minister provide details of what steps the government is taking to prepare this land, which is currently zoned as rural, for future development as residential housing? Further, will the minister advise what role the community can play in the process of rezoning land so that their views can be taken into account?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:02): I thank the honourable member for his important question. Adelaide's north remains one of the fastest-growing regions in this state, and that means there is constant pressure to identify new areas for housing and community services. The realignment of the urban growth boundary in 2007 did provide this government with an opportunity to identify parcels of land in the Playford, Gawler and Barossa council areas that are suitable for future residential housing development.

Slightly more than 2,000 hectares of additional land was then included within the adjusted urban growth boundary (that was 18 months ago) with more than 1,300 hectares of the new land, or about 65 per cent, in Adelaide's north. That new land included 79 hectares at Evanston Gardens, 173 hectares at Playford North, 112 hectares at Blakeview, 130 hectares at Penfield, 500 hectares at Concordia and 320 hectares at Gawler East.

The next step in the process of identifying this land for residential growth is to update the zoning by amending the relevant development plans which councils use to guide growth in their areas. A draft development plan amendment for the land at Gawler East is now available, and public comments are being sought on this proposed rezoning. The proposed rezoning affects about 400 hectares of land encompassing portions of the suburbs of Gawler East, Evanston Park, Gawler South and Kalbeeba and also includes a disused quarry that has been earmarked for rehabilitation.

The proposed rezoning envisages the construction of 2,500 houses which is expected to take about 10 years to develop and will boost the residential capacity of the Gawler area by about 25 per cent. However, any development needs to be carried out in a way that does not detract from Gawler's heritage and the country feel of this historic town. The rezoning will unleash millions of dollars to be invested in the Gawler East housing development and associated retail and community centres.

This investment will importantly generate jobs within South Australia's building and construction industry throughout the coming decade. It is the people of Gawler and the surrounding areas who will live next-door to this development, so it is of vital importance that every effort is made to ensure that their views are heard during the consultation process. That is why I urge members of the public to have their say about the proposed rezoning during the two-month community consultation period. Members of the public, local government, industry and community groups and government agencies have until 16 July to lodge submissions with the Department of Planning and Local Government.

A public meeting is to be held at 7pm on 30 July 2009 in the Reserve Room at the Gawler Arms Hotel where members of the community can speak to their submissions. I urge people, if they wish to be heard at that meeting, to make submissions before the 16 July deadline.

Housing developer Delfin Lend Lease is currently working with both the Town of Gawler and the Barossa Council to develop some 219 hectares of land affected by this rezoning. Delfin, as most members will recall, has a long association with quality housing developments in this state, including West Lakes, Golden Grove and Mawson Lakes. Another key element of the proposed development plan amendment is the rehabilitation of the old Cemex Australia sand quarry on Calton Road.

The main changes proposed by the development plan amendment are to introduce policies which will provide for a range of housing types, including compact and affordable residential allotments; enable the establishment of supporting commercial, retail, educational and community facilities; provide for the incorporation of suitably located and sized areas of public open space that will serve a variety of functions, including passive and active recreation, pedestrian and cyclist links to surrounding facilities, biodiversity and habitat and buffers to adjoining activities; and support for the inclusion of wetlands and stormwater management initiatives within the proposed open space network.

Copies of the draft development plan amendment are available online from the Department of Planning and Local Government website at www.planning.sa.gov.au. Hard copies of the development plan amendment can also be obtained from the department's city office at Roma Mitchell House, North Terrace, and from the Town of Gawler, the Barossa district council, the City of Playford and the Light Regional Council.

To inform the community consultation process, the state government has also established the Gawler Growth Areas Transport Framework, which can be found online at the Department for Transport, Energy and Infrastructure website. The framework has been developed in collaboration with the Town of Gawler, the Barossa Council and the Light Regional Council to identify transport improvement needs to cater for urban growth more broadly across Gawler.

The proposed amendment to the development plans of the Corporation of the Town of Gawler and Barossa Council proposes to provide the conditions needed to enable the orderly and economical expansion of the Gawler township and enable a new masterplanned community; to provide opportunities for additional community educational, recreational and commercial and retail facilities to support the new population; provide appropriate links with the established community without affecting the existing infrastructure; and encourage and facilitate best practice in terms of urban development, urban design and sustainable development.

Once again, I strongly encourage members of the public, local government, industry and community groups and government agencies to lodge their submissions by the 16 July deadline.

NORTHERN SUBURBS DEVELOPMENT

The Hon. J.S.L. DAWKINS (15:07): As a supplementary question, has the minister personally inspected the route outlined in the transport framework which he mentioned and which is designed to take traffic from the new Gawler East development south towards Adelaide without going through the already congested Murray Street, Main North Road and Adelaide Road precincts?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:08): My role as Minister for Urban Development and Planning is essentially to ensure that the process of rezoning the land at Gawler East is undertaken in an appropriate manner, but it was the government's view that because transport matters are a key issue in Gawler—and have been for many years, as I am sure the Hon. Mr Dawkins would understand—it was considered appropriate that, simultaneously with the release of the DPA, the report in relation to transport issues should be released. However, they are essentially matters for my colleague the Minister for Transport.

As the planning minister, it was certainly my view that we could not adequately address or have the public consider the new development plan without an indication, as has now been provided, of the government's transport policies for that area.

NORTHERN SUBURBS DEVELOPMENT

The Hon. J.S.L. DAWKINS (15:09): I have a further supplementary question. What, if any, progress has been made by the minister's department in relation to the Concordia area and the proposal by the Barossa Council to make the Concordia area a separate township within its council boundaries?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:09): I think the preamble of the question asked by my colleague referred to the planning and development steering committee's recommendation that there should be a 25-year rolling supply of residential land, with 15 years' supply ready. The rezoning of the area at Gawler East is really a step in achieving that process. Clearly, with the land that was added to the urban growth boundary in December 2007, if all that land had been rezoned ready, there would be 15 years of land, but given the recommendation of the steering committee (which the government has accepted) that we should move to 25 years, there is a need to look for further land.

However, that has to be seen in the context of the government's policies. I have referred to these policies in a number of answers where we would seek to achieve a target that, by the end of the 30-year period which the government is now investigating through its 30-year target, at least 70 per cent of that new housing should come from infill, high-rise development or brownfield development (as the case might be) within the current boundary. We would see as an objective that, towards the end of the period, no more than 30 per cent of new development would come through greenfield, and that is necessary if we are to contain urban sprawl within the community. At present, I point out that it is a 50-50 split between greenfield development and development through infill, high-rise or brownfield development.

They are the targets at which the government is looking, and that has come about as a result of the planning review. Clearly, that means that further sites are being looked at, and when the 30-year plan is released (hopefully, within the next month or two), as a result of the works being done the targets that would be most appropriate to accommodate this future development will become clear. That report will also look at how that might be achieved consistent with all the other requirements for sustainability, including transport, water, and so on.

To refer specifically to the honourable member's question, he asked about Concordia. Clearly, future growth areas will be considered as part of the 30-year plan, but at this stage, in achieving the rezoning, we have been looking at this particular development at Gawler East. We have certainly had discussions under the 30-year plan review with Barossa council in relation to Concordia—and that will be done at some future stage—but at present it is urgent that the government rezone enough land to keep the pressure down on spiralling land prices.

We have been involved in a number of exercises to do that and, in particular, Gawler East is one of the first of those rezoning exercises that will, within the current boundary, put a significant parcel of land on the market to help achieve that goal, but Concordia will be a later stage.

NORTHERN SUBURBS DEVELOPMENT

The Hon. M. PARNELL (15:13): I have a supplementary question. Will the minister confirm whether the firm of development advisers, Connor Holmes, was engaged by the Department of Planning and Local Government to help prepare the Gawler East ministerial development plan amendment? Will the minister confirm whether that same firm is also engaged by Delfin Lend Lease, which intends to develop the land; and will the minister explain why that is not a conflict of interest?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:14): Mr President, given that the honourable member has given notice that this is an issue which he intends to raise, is it appropriate to address it at this stage?

Members interjecting:

The Hon. P. HOLLOWAY: Because he has already given notice.

The Hon. R.I. Lucas: What are you hiding?

The Hon. P. HOLLOWAY: I am not hiding anything.

The Hon. R.I. Lucas: You don't know what he is going to raise.

The Hon. P. HOLLOWAY: He just raised it.

The Hon. R.I. Lucas: You can read minds, can you?

The Hon. P. HOLLOWAY: I have been in this place long enough to know what people like you are like, Mr Lucas. One can read you like a book because you only come from one dimension

all the time. Just look at question time today—a bit of sleaze around and you come to life. See a sewer and he is the person who is the first one right in there, gulping mouthfuls of it.

In relation to this matter, clearly the honourable member has made up his mind—just like he has with Olympic Dam and all the other issues he is moaning about. The answer to the question is that the honourable member should look at the statement I made at the time announcing who was involved. A consortium of consultants in this state was involved in the consultancy work in relation to the planning strategy.

Connor Holmes was one of a number of companies who tendered for that particular matter. Given their interest in particular developments—and that is not surprising, given that there are only a handful of large consultancies in this state involved in such matters—I took steps to ensure that within that consultancy organisation there would be a separation between the people involved.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Listen to members opposite! They have made up their mind. It is just impossible when you get these sorts of questions. The Hon. Rob Lucas comes alive. He just loves it. He just loves throwing muck; he wallows in it. Of course, we have repeatedly seen this tactic in the council. The honourable member has been doing it for years. As soon as a question is asked about a serious matter, he immediately interjects because he does not want to hear the truth or get a straight answer. You can never answer these sorts of questions because you continually get the sorts of interjections we are getting from the member opposite. In relation to the question, special steps were taken to ensure that there would be—

Members interjecting:

The Hon. P. HOLLOWAY: What's the point?

The PRESIDENT: Order! I am very pleased that the government's Dorothy Dixers create more interest in the council than any other question.

NORTHERN SUBURBS DEVELOPMENT

The Hon. DAVID WINDERLICH (15:17): I have a much less exciting supplementary question. What proportion of the water for the new development will come from the River Murray, and what proportion will come from other sources?

The PRESIDENT: I do not think the minister mentioned water.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:17): In relation to water, clearly that is an issue that the government has been considering at length and will be answering in its water security statement when it is made. Obviously, if we are going to increase the size of the desalination plant to 100 gigalitres per year—which is half of all the water consumed in the metropolitan area—any increase in housing will be well catered for, without putting pressure on existing sources, by the development of that desalination plant, which will be available within the next 18 months or so. Of course, the particular reservoir or any particular type of water an individual development will take is a matter for SA Water, and it will depend on what is most convenient.

In relation to growing demand, this government will have not only 100 gigalitres, which is about half the current supply available through desalination, but also greater use of both stormwater stored in aquifers for alternative uses and also treated water for parks and gardens, and the like, and potential industrial use. Clearly, the amount of water we will be using from the River Murray overall in coming years will be greatly reduced. The sort of detail in which the honourable member is interested will be available when the government makes its water security statement.

HOMELESSNESS

The Hon. D.G.E. HOOD (15:19): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development, representing the Premier in his capacity as Minister for Social Inclusion, a question about homelessness in South Australia.

Leave granted.

The Hon. D.G.E. HOOD: The St Vincent de Paul Society Winter Appeal for 2009 has just begun. As part of that appeal, Vinnies has asked hundreds of men, women and children,

overwhelmed by homelessness and life's hardships, to contribute to what they call a 'collective journal', describing their lives in words and pictures. The result is a powerful document detailing the loneliness, depression and fear that can accompany homelessness and poverty. The entries include a picture by a young girl who has drawn her family home within a love heart that is overshadowed by dark clouds. One entry is from a father who has provided a rubbing of the 35¢ he was left with to feed his family, and a 16-year old girl drew a picture of a tear swimming with the words 'abused', 'alone', 'unwanted', 'useless' and 'abandoned' around it.

The Australian Institute of Health and Welfare last week published a report entitled 'Demand for accommodation by homeless people 2007-08', which has put some facts and figures to the despair of homelessness in our community. Of concern to Family First was the finding that nationwide, on average, 654 people require new and immediate emergency accommodation daily. Of these, 269, on average, are accommodated and 385 people are turned away; that is, approximately 59 per cent, on average, every day are turned away. Most concerning to us is the figure of 77 per cent, involving couples with children who are refused shelter each day, and 83 per cent of the time this was because there was simply no room available: that is, no room in the inn, if you like. My questions to the minister are:

1. How do these national figures compare with South Australian data; that is, are we doing better or worse than average?

2. What is South Australia doing to ensure that there is enough accommodation available for homeless South Australians during this cold winter period, particularly those with children?

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) (15:21): I thank the honourable member for his important questions and will refer them to the relevant minister in another place and bring back a response.

SUPREME COURT BUILDINGS

The Hon. R.D. LAWSON (15:21): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Attorney-General, a question about the Supreme Court report.

Leave granted.

The Hon. R.D. LAWSON: In the annual report of the judges of the Supreme Court tabled here today (notwithstanding that it was dated 10 March this year), the Chief Justice again returns to the subject of the inadequacy of Supreme Court buildings. He highlights on this occasion an aspect not previously mentioned, that is, facilities for the public and for persons with disabilities. He says, for example, in relation to courtrooms 1 and 2 that there are no suitable waiting areas; the nearest public toilets can be reached only by leaving the building and walking 100 metres to public toilets at the back of the building; there is a lack of appropriate spaces for witnesses and other people waiting; hot water is not available in all the toilets; the buildings do not meet disability access standards; and there is disability access to only four of the 12 courtrooms, while only one of those 12 courtrooms provides disability access to the witness box. Previously when these matters have been raised, the government has rejected them on the ground that the judges are seeking the building of a Taj Mahal.

The report goes on under the heading of technology to speak of the fact that the court cannot effect efficiencies because of lack of technology infrastructure. The report notes that they are considering using electronic transcripts for civil trials in Full Court hearings, subject to sufficient funding being available, the clear implication being that it is not currently available. The Chief Justice notes that the Courts Aboriginal Reference Group, established in 2007, has been abandoned for the time being, a matter about which people who are concerned about Aboriginal issues in justice would be deeply concerned.

It is noted that the land and valuation rules have not been changed since enacted in 1970. The present rules are outdated and in need of revision. The judges do not have the time or the resources to undertake a comprehensive review. The judges say it is hoped that an appropriate budget allocation can be made to undertake this task.

Finally, the judges note that in the Probate Registry the backlog of applications awaiting a grant has increased substantially. I am advised that it is now taking two months for probates to be

granted, with consequent delays and inconvenience to families of deceased persons. My questions to the Attorney are:

1. Is he concerned by the continuing difficulties, delays and inefficiencies in the courts' system, which are highlighted in the judge's report?

2. What action or steps has he taken to remedy these defects?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:25): From my understanding just this week there was an announcement about new court facilities opening up in Sturt Street, but I will refer the question to the Attorney in another place and bring back a reply. I make the comment that this or any future government after the next election will be free to offer to spend money on whatever priorities they like. Members opposite have already said that they will spend hundreds of millions of dollars of taxpayers' money on building a new sports stadium. If they are going to do that, I hope they tell us which areas they will be cutting. Members opposite tell us that they want new prisons, new courts and all these other—

The Hon. D.W. Ridgway: We will get advice on the location, unlike you lot.

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: So, he is going to give us advice on where the new courts will be, but what they really need to tell us is what areas of other government expenditure they will cut because, in case members opposite are not aware, we are in the middle of the worst global financial crisis the world, not just this state, has faced—

Members interjecting:

The Hon. P. HOLLOWAY: They say that that is our excuse for everything. Members opposite need to come up with a credible proposal. They want more money spent on building courts, and they want a new football stadium, new prisons, new roads and airstrips sealed. Just today they wanted airstrips sealed and all these other things. They will have to pay for these things in an environment in which finances are much more difficult to obtain than they have been for many decades.

Members opposite need to say how they will fund these projects. Will it mean new taxes? Either it will mean substantial new taxes—I notice that they are promising to cut them as well—massive increases in taxes under members opposite, or else they will literally have to cut billions of dollars from other projects to pay for these things. Let them put up. I will refer the specific question to the Attorney.

ANSWERS TO QUESTIONS

GUN AMNESTY

In reply to the **Hon. D.W. RIDGWAY (Leader of the Opposition)** (5 March 2009).

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

The terms and conditions of this and other amnesties held in South Australia allow people, with or without a firearms licence, to surrender any firearm (whether registered or not), firearms parts or ammunition in their possession without fear of prosecution.

People surrendering a firearm, firearm part or ammunition during the amnesty are invited to complete a surrender notice which includes name and address details. However, this is not compulsory and checks are not conducted either at the time of surrender or at a later date to verify the person's details.

The underlying philosophy is to encourage people who may otherwise be hesitant to come forward to surrender as many unwanted or questionable firearms, parts and ammunition as possible to the safety of police. Amnesties allow for members of the public who may be outside the standard legislative framework to surrender either illegal or unwanted firearms without fear of prosecution. To conduct criminal checks on persons surrendering firearms would be likely to alienate this element of the community from the surrender process. Every firearm surrendered is a positive in terms of prevention of firearms entering the illicit firearms market.

With regard to bikies, I am advised that since November 2007, SAPOL's Crime Gangs Task Force (CGTF) has independently seized 115 firearms as part of investigations undertaken by that area. These have predominantly been from Outlaw Motor Cycle Gang (OMCG) members.

POLICE UNIFORMS

In reply to the **Hon. T.J. STEPHENS** (25 March 2009).

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

The Commissioner of Police has advised me that SAPOL established a project team in November 2008 to identify any desirable changes to the general duties uniform, including the carriage of personal equipment and badging, taking into account:

- organisational needs into the foreseeable future;
- the need to present a professional and unified image;
- the functional requirements of the workplace;
- occupational health and safety considerations; and
- forms of personal recognition and identification that might be incorporated into the uniform.

The project will assess the extent of any change needed. A consultative mechanism and committee has been established to facilitate comment and views from the broader SAPOL employee base and interested parties. The Police Association of South Australia is represented on that committee.

Recommendations made by the working group will be considered by a Steering Committee.

WATER METERS

In reply to the **Hon. J.A. DARLEY** (11 November 2008).

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

1. The reading of SA Water water meters was contracted to AMRS Pty Ltd in October 1998. The cost of the contract is based on the number of meter readings undertaken.

2. For 2008-09 the cost is $1.5 million based on 2,400,000 meter readings.

3. Incorrect reading can occur due to faults in the meter, e.g. if the meter is stuck or poor visibility due to condensation within meters. In 2007-08, 2,548 letters advising of incorrect readings were sent to customers. This represents a misread rate of 0.2 per cent of total meters read (meters read 6 monthly).

Under the contract AMRS need to achieve a meter reading accuracy rate of 99.75 per cent.

4. Checks currently in place to detect misreads include:

- on site—meter reader alarmed (via hand held device) if entering a reading which is outside of normal usage parameters;
- office checks—checks are undertaken on readings outside of normal usage parameter. Site visits to re read meters can be generated by this check;
- extreme high water use scenarios followed up by SA Water.

SA Water has a process in place to amend water use if readings are queried by customers.

STATUTES AMENDMENT (PUBLIC HEALTH INCIDENTS AND EMERGENCIES) BILL

Adjourned debate on second reading.

(Continued from 12 May 2009. Page 2270.)

The Hon. J.M.A. LENSINK (15:28): I rise as the Liberal Party's lead speaker on this bill. We on this side of the chamber are sceptical as to both the scope and timing of this bill. I would

describe the timing of the introduction of this bill as fairly opportunistic. In the face of the potential fear of swine flu—

The Hon. C.V. Schaefer interjecting:

The Hon. J.M.A. LENSINK: I am quite sure I do not have swine flu. People may expect some legislative response to deal with those matters. I have had a good opportunity to examine the second reading contributions from another place, which took place on 12 May—all in one day—which, given the circumstances, was not warranted. I understand that a number of these measures were discussed at departmental level for a matter of years in response to the avian flu. Bringing them in under the guise of the sudden need for new measures is rather cynical on the part of this government. I would like to ask, on the record, for a formal response from the minister at some stage regarding what was the legislative response to the avian flu outbreak.

I think we all recognise (particularly with the popularity of air travel) that capacity for the rapid spread of infectious and very serious diseases has escalated, and I will not recount the comments made by Dr Margaret Chan of the World Health Organisation which I think the minister quoted in his second reading explanation. A number of members would also be familiar with the Emergency Management Act passed several years ago, and the government states that these measures are required to add to that and, therefore, link in with a state emergency plan.

At a state level the four stages of strategies are: first, delay; second, contain and sustain; third, control with vaccine; and, fourth, recover. I was advised by the department that we are currently somewhere between the second and third stages, and I think we are all grateful that at the moment the number of infections is small, that it has not thus far led to serious cases of the flu—certainly not to any deaths—and that people have voluntarily cooperated with self-quarantine. The commonwealth also has a role in terms of quarantine, and honourable members would be aware of the scanners that have been placed at airports. There is also some national health security legislation.

To my mind, the crucial parts of the bill are contained in clause 9, which expands the powers of the state coordinator and authorised officers acting under the Emergency Management Act. I think it is fairly sensible to expand some of those powers to include directing persons who may potentially have an illness but who have not yet actually demonstrated signs of such illness. I believe that is well recognised, and an example was given of someone who may have been over the border at Mildura. However, I think we also recognise that, with so much international travel taking place, there may be threats from overseas that are not yet on our borders and that, with incubation periods during which people do not demonstrate any symptoms, they may still be a risk to others. This is not recognised under our current provisions.

Clause 6 increases the major emergencies period from one not exceeding 48 hours to 14 days, and disasters from 96 hours to 30 days. Our health spokesperson in another place expressed some concern that that may be excessive, but that remains to be seen. When these measures are actually in force it may be required, and I note from the minister's second reading explanation that it was very clear that such measures would be used only in the most extreme cases. However, we need to be careful that we do not just collapse and agree to any proposed measure without examining it carefully and deciding, on balance, whether or not it is worth having as a last resort.

Clause 8 refers to a new section 24A of the Emergency Management Act which would allow for the referral to Health (rather than by measures taken under the Emergency Management Act) of public health incidents and emergencies.

Clause 9, to which I referred briefly before, extends the powers of the state coordinator and authorised officers. I am advised that the first three—that is, new section 25(2) and paragraphs (ba) to (c)—were requested by SAPOL, and the others relate to those who are undiagnosed and, I note, includes a rather peculiar law-breaking provision in relation to medical supplies.

The advice I received during a briefing was that, for those who are undiagnosed, it cannot be done at present within the Emergency Management Act, so my question would be whether, if this clause succeeds, this new provision would just be in the Emergency Management Act. I think it has been flagged that, in the Controlled Substances Act, we will certainly have amendments to this particular provision, which is clause 11 of the bill. I concur with my colleague in another place (the Hon. Vicki Chapman) that this language is too broad, so we will be moving amendments in relation to that to make it more specific.

There are a number of amendments to the Public and Environmental Health Act which adds clause 24 to the bill, a new Chief Medical Officer, and particular definitions for public health emergency and public health incident. Clause 25 refers to emergency officers who would be appointed by the CE of the Department of Health. That particular issue has been raised as a concern.

We had some possible examples provided to us by the government but, at this stage, I do not think we are satisfied that it is appropriate that these emergency officers be within Health. We believe that the powers of authorised officers are completely separate—that is, a police-type role rather than a health role. Those who are within our health system ought to be focused on their core business—that is, they should be delivering health services rather than policing incidents where people may be in some distress and may need to be controlled in a physical way.

With those remarks, I indicate that we will support the second reading but flag that we will have a considerable number of amendments when this bill is debated further.

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

WATERWORKS (RATES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 May 2009. Page 2396.)

The Hon. S.G. WADE (15:40): I rise to indicate that the opposition will be seeking to amend this legislation. The bill basically proposes to change the rating procedures under the Waterworks Act. Under South Australia's current legislation, water meters are read each six months with water use billed within six weeks of each reading. Water is priced on a financial year basis, and this means that, where a person's meter reading straddles two financial years, they are charged the price of the latter year for the entire period.

The government's failure to appreciate this fact led to public controversy on SA Water billing in July 2008. Treasurer Kevin Foley announced that the government would move to quarterly meter reading and billing to (in his words) 'smooth out' water billing throughout the year. To this end, on 29 April the Minister for Water Security in another place introduced the bill that we now have before us today.

As part of the introduction of quarterly billing, the bill changes the application of water pricing so that new prices commence at the beginning of a financial year, and these prices must be gazetted prior to 1 June each year. This aspect in particular, we believe, is an example of the government taking a disingenuous opportunity to avoid a political risk.

Under the current legislation, the government would need to announce its pricing for the 2010-11 financial year by 7 December 2009. However, under this bill, the government would not need to announce those prices until 1 June 2010. For those who have not heard, there is a state election scheduled in South Australia on 20 March 2010. Lo and behold, this bill, as it stands, would have the government avoiding public scrutiny of its water pricing decisions.

There might be some people who are charitable (I appreciate that there are some people on the crossbench who, from time to time, have been far too charitable) and who might say, 'Well, the government's being clear.' Water security minister Maywald has warned of significantly higher water prices. We have been told, in broad terms, that water prices will double over a five year cycle.

However, water prices are much more than the headline rate. There are the kilolitre provisions on thresholds, the rates that are charged on different sorts of dwellings such as country versus metro, and the price structure itself, where the government has, for example, introduced another step into our inclining block tariff regime. The government might well be planning further changes.

The opposition is of the view that it is very important that South Australian electors have the opportunity to see what the government is proposing going forward—not just the headline prices, but the price structures and the price thresholds. We need to see the decision as a whole. That is, if you like, the political aspect.

I would also argue that there are good water conservation reasons for the government to be more frank and to maintain the December announcement period as has been the long established tradition of this state. Water consumers will often make price-related decisions, and it is

important that we give them the opportunity to respond to that. For example, if you tell a water consumer that the price will rise in December, they might well choose to take steps—for example, to make an investment in water saving technology—that would mean that they can reduce the impact of that price rise.

If they have six months' notice of a price rise, they can take those steps. If they have one month, they have little opportunity to respond before the price rise is imposed. I know the government will say, 'Well, it would be better for us to have the price setting decision made closer to the implementation of that price.' In fact, that was an argument put to us by government advisers during the briefing. Again, I remind those trade-all members of the crossbench that this is highly unlikely in a practical sense.

Over the years, both Liberal and Labor governments have taken significant amounts of revenue out of SA Water. Those dividends, those tax equivalent payments, those equivalent local government rates together are a very important input into the budget making process. That process starts relatively early in the financial year. My understanding is that it starts in November or December in any financial year. To ask the Treasurer and the government to have decided by December what their water price will be is no impost because they would have already decided how much they were intending to draw down from SA Water revenue.

I would argue that to leave the decision until very late in the financial year actually opens up SA Water's customers to the risk of being used as the hollow log that the Treasurer can dip into at the last minute to deal with some short-term political imperative. At least having the decision made early in the budgetary process means that it is more likely to be rational and more likely not to be used as a short-term revenue fund.

Continuing with other provisions of the bill, it also contains transitional arrangements for the move to quarterly billing, which will require the regazettal of prices which are beginning on 1 July 2009. The consumption period will become the period between meter readings, rather than the financial year. As a result, some customers' consumption periods will straddle financial years. If this occurs, where the rates are different for the two financial years, SA Water will charge the average water consumption for that period over a daily basis and charge each day according to the price of the financial year in which it falls. The bill does not propose any changes to property related billing.

In conclusion, I reiterate that the government argues that quarterly billing will deliver significant benefits, including enabling customers to better manage their finances by spreading water charges across the year, and it will assist households to better manage their water use by clarifying correlation between water usage and billing. The opposition has expressed similar concerns in relation to the billing system over the years and we support that general principle, but, at the committee stage, we will be moving amendments that have already been filed in my name.

First, we will attempt to maintain transparency in water pricing by maintaining the December announcement time frame. We will also be taking the opportunity to enhance transparency by making other amendments in relation to the pricing process, and also to continue the theme of the bill in terms of information for consumers by promoting the use of individual meters. I will address those issues in more detail at the committee stage.

The Hon. M. PARNELL (15:49): The Greens support the second reading of this bill, which facilitates the move to quarterly water meter reading and billing for SA Water customers. I put on the record my thanks to the minister for her personal briefing in relation to this bill. Quarterly meter reading makes sense because it provides more information to householders about how much water they are using, and it gives them this information in a more timely manner so that it has a greater chance of influencing behaviour, particularly in relation to water conservation.

This bill is consistent with a motion that we recently passed in the Legislative Council in relation to certain matters that were referred to the Select Committee on SA Water. Members might recall that one of the items we referred to that committee was to 'replace the water restriction regime with a household allocation based on occupancy and quarterly meter readings to allow citizens to choose where and how they use their water'. While my original motion called on the government to simply implement such a policy, we decided here in the Legislative Council to refer that to the select committee—and that work is underway.

Certainly, the government bill does not do everything that the Greens believe should be done in relation to water pricing, but we can be thankful at least for this small mercy in that we will move to quarterly billing. What else does the government need to do? The answer is that it needs

to do a lot, especially if the government is serious about waterproofing Adelaide and serious about doing it in an ecologically sustainable manner.

There are two aspects of water pricing on which I want to focus in my contribution today. The first aspect is the use of inclining block tariffs and the proportion of the water bill that comes to us in the form of fixed costs. At present, for residential properties the fixed component or supply charge is $39.35 per quarter or $157.40 per year. That is an amount you cannot avoid, regardless of how efficient you are in your use of water and regardless of any water-saving measures you might have introduced into your home.

Many people manage to be self-sufficient, even in the metropolitan area, through the use of rainwater tanks for much of the year, and they rely only on mains water during dry periods, particularly in summer. There is no recognition for the effort those people make in relation to the supply charge because the amount is fixed.

Members might be familiar with a regular series of publications put out by Professor Mike Young, which go by the name of 'Droplets'. Mike Young's Droplet No. 10 is entitled 'Pricing your water: is there a smart way to do it?' I will refer to a couple of the points that Professor Young makes in this document. One of the things he points out is that governments tend to use water pricing regimes to achieve a number of objectives; that is, equity, environmental, revenue and economic efficiency objectives. They seek to do it simultaneously. Droplet No. 10 states:

> This approach violates a golden rule in policy development, to avoid conflicts—use a separate instrument to achieve every objective and, once an instrument is assigned to one objective, don't try to use it to achieve another objective.

When it comes to the price for urban water, the professor points out that different principles apply in times when water is plentiful compared to times when water is scarce. It continues:

> When it unexpectedly gets or stays dry, water supplies have to be rationed. There are two ways to ration water use. One is to introduce water restrictions which impose indirect costs on many people. The other way is to increase the price.
>
> Economic research keeps on pointing to the fact that water users respond to price increases. Pragmatic as ever, Quentin Grafton recommends that the best way to set a scarcity price is to estimate the amount of water in storage every quarter and charge accordingly. As dam storage goes down the price goes up. To drive home the scarcity message, meters need to be read and bills sent, at least, quarterly. In the USA many utilities read every meter every month.

This bill does not propose that our water prices change according to the volume of water in storages, but at least we are moving to quarterly meter reading.

In relation to keeping the price of water fairly low, it is generally accepted on the grounds of equity. In relation to equity, it continues:

> Many people think that water, especially non-discretionary water use (water used inside houses), should be supplied at an 'affordable' price. This is why there is so much interest in inclining block tariff regimes. 'Affordable' is code for not having to pay for the full cost of the water delivered. The idea is that the first amount of water you use should be cheap. Those who use lots of 'discretionary' water (gardens, pools, etc.) should have to pay more for it. The result is a cross-subsidy from large water using households to small water using ones. At first glance, this may seem reasonable.
>
> But when you dig a bit deeper, it becomes clear that inclining block tariff regimes transfer money from disadvantaged households to richer ones which, as a result of the block regime, gain access to cheap water. Concerned that inclining block systems are inequitable, John Quiggin has shown that, if you want to help disadvantaged households, it is better to set a uniform charge and then pay rebates to everyone or only to those in need. In short, use separate policy instruments to chase every objective you are interested in. Remember, however, that typical per capita household use is around 46 kilolitres per year. At current prices, the cost of this water is less than the cost of running an old fridge in your garage.
>
> Inclining block tariffs are inequitable also because most of them are implemented on top of a fixed service charge.

He goes on to say:

> The real reason water supply utilities set fixed charges is that this guarantees them a revenue base. These utilities are monopolies but it is hard to argue that they should not be subject to the same pricing disciplines as other businesses. In summary, inclining block tariff systems represent a clumsy attempt to achieve efficiency and equity objectives simultaneously. We believe they should not be used.

The professor concludes his short paper with the following recommendations. He believes that the water pricing regime should be changed to:

1. Send an efficient price signal to everyone by charging them the same for every kilolitre of water they use.
2. Send a scarcity signal to all water users. Read meters and send out a bill quarterly. Expect unmetered apartments to start applying for meters.
3. Inclining block tariff systems should be phased out—they are...inequitable.
4. Fixed water service charges should be phased out—for a monopoly, revenue protection is unnecessary.

They are the first four of eight principles that the professor sets out.

The second pricing issue I want to raise in my contribution relates to the price of sewerage. Towards the end of last year, in his Droplet No. 14 entitled 'Yucky business: paying for what we put down the drain', Professor Young argued for a similar volumetric regime for water out as we have for water in. The professor basically makes the point that in most of our cities and towns we have water meters so we know how much water is going into homes. We know that at different times of the year a certain proportion of that water leaves our home via the sewerage system. Therefore, it is possible to extrapolate and incorporate a volumetric charge. In winter, for example, it would be expected that about 90 per cent of the water in leaves the premises as sewerage out. The professor says:

> ...we see a case for pricing reform on both sides of the water supply equation. All cities and towns need to get the price right for what goes in and what goes out.

Finally, I raise the issue that the shadow minister raised, and that is the question of the timing of the announcement of water price increases. My understanding of the transitional arrangements is that, if this bill passes, the government will be re-gazetting the last lot of water price increases before the end of this financial year and then gazette the next lot of increases by 30 June 2010. Normally we would have had an announcement in the first week of December as to what water pricing would be for the following consumption year. If this bill goes through in its present form, the next announcement of a water price rise will be before 30 June, which, conveniently, will be three months after the next state election. I do not believe that we should wait until next June to find out what the water price increase will be. The government is well advanced in its planning and its costings for the Port Stanvac desalination plant. It will certainly know by December this year how much water rates will need to rise to pay for this massive expenditure.

My question of the minister is: will the government commit to announcing in December this year what the water rates will be for the 2010-11 water consumption period? If the government will make that commitment, there may be an argument to say that no further amendment to the act is necessary, and maybe we could just look at it as a transitional arrangement, although we need to take on board what the shadow minister said about businesses needing as much notice as possible to plan their expenditure and that maybe a permanent December announcement is the way to go. I look forward to the committee stage on that point.

At a bare minimum I would see that a transitional provision, to get the best of both worlds—the best of the old and new systems—would be to tell us in December this year what will be the water price so the people of South Australia can go to the election knowing at least in part what the legacy of the desalination plant will be in terms of our hip pockets. The Greens will support the second reading of this bill, and we look forward to the committee stage.

The Hon. R.L. BROKENSHIRE (16:02): I support the second reading of this bill. Family First thinks that the bill is well intentioned and we will support it through the second reading. However, I give notice that we will table some amendments to be moved in committee. Water use is a matter of high importance and concern to families as we go through the present drought. The family water bill is one way in which families monitor their usage in terms of their concern about both the environment and their own family budget.

As information systems improve, Family First believes the more information families can receive on water usage the better to track their improved efficiency. Quarterly billing, therefore, is welcome, with one qualification that I will go into in a moment. Not only does it enable better tracking of water use, for instance, working out whether you have a leaking tap, but also it spreads the cost of water use. This water use will be much higher with desalination because this government has been reluctant to look at more cost effective ways of providing necessary and urgent water supply to our state, namely, stormwater harvesting, which the evidence we have indicates is a far cheaper alternative and certainly better when it comes to greenhouse emissions than the high energy impacts and higher costs associated with desalination.

The increasing cost of water use can be spread for family budgets over four quarters. Cynics may say that quarterly use is intended to soften the anger over the rising cost of water under desalination as it may slip more easily under the nose of people concerned with the family budget. We are not saying that desalination is necessarily a bad thing; the way that South Australia is existing now, we realise there needs to be a fallback position for the state with desalination.

We know that there will be a considerably increased cost for water through the expensive process of desalination. We want to see transparency with respect to those increased costs and therefore concur in this regard with our colleagues on the cross benches and with opposition members. We are seeking transparency when it comes to water pricing prior to the next election, so that people can see exactly what is occurring with desalination and the government's costs involved therein, particularly when we consider that with the economic stimulus package there has been a significant bonus to the South Australian state government from the commonwealth government through the provision of millions of dollars to allow that desalination plant potentially to double in size.

The qualification to Family First's support on quarterly billing is that we want to be sure that people effectively will not be billed for five quarters rather than four initially. I ask the minister to put on record in committee whether the change in billing periods will not mean that families will be hit with a substantial unbilled portion. This extra impost may come in through the re-gazetting measure for pricing, and I ask the minister to provide case studies showing what will happen to families in terms of costs when the new billing mechanism is put in place.

I turn to the important issue of shared water meters, on which Family First will move amendments. I have no clear indication from Housing SA on its timetable for introducing individual billing for all its sites, and now that this legislation is before us it is timely for the Legislative Council to get something concrete for the future of Housing SA tenants when it comes to the operation of water meters. We have an unfair situation at the moment where usage at a given site is simply divided between all users. You may have an elderly, water conscious person using hardly any water, but they are subsidising the water usage of less efficient water users or bigger families. Whilst we feel for the cost of running larger families, we still need to look at equity.

Growing numbers of people are complaining to Family First and other MPs about this situation. Surely in this high technology era we can ensure that a Housing SA family is billed for actual use, just as they would be in private accommodation. I ask the government, in the interests of accountability, to support Family First's amendment mandating a time frame for transition of shared water meters to individual meters for almost 18,000 families and individuals who are Housing SA residents throughout South Australia. With respect to this initiative, I want to touch on Parliament House and place on the public record my congratulations to the Clerk and the President, as well as other executives involved in the administration of this place. It is pleasing to see that someone here has been watching the water bills because we have actually seen the water usage at Parliament House going down. Those people are to be commended.

That it is the opposite of what has happened when the decision-making occurs through the Department of the Premier and Cabinet—namely the State Administration Centre, where usage is going up. It was interesting to see the government's response to that when I was involved in a story on *Stateline* about more people working at the State Administration Centre—and I would like to know what those people are doing there at a time when we will, unfortunately, see 1,600 public servants made redundant. However, the government also said that the other reason for the increase in water consumption at the centre was that more people were riding bikes to work and they had to shower. Well, they must have long showers or a lot of them must be riding bikes, because here at Parliament House we have a bike room that is full of bikes these days (and I commend those who live close enough to ride them); those people also have showers, yet we have not seen an increase in water consumption here but rather a net reduction. So it is interesting what is happening at the State Administration Centre.

I cannot let this bill pass without saying that I find it disturbing that families are being asked to pay more for water when day after day we hear, on the traffic reports, about burst water mains. I understand that SA Water thinks it is within the national parameters for mains bursts and repairs compared with other capital cities, but I think it is paramount that this state be the national leader in terms of being proactive with respect to maintenance and upgrades of water mains, particularly with the old infrastructure that we now have—and I believe some of it is close to 100 years old. Clearly not enough effort is going into proper replacement and I ask the minister to advise, during question time or at the summing up of the second reading debate, how much of the cost of

repairing old infrastructure and burst mains is ultimately passed on to the consumer through their water bills. That is, what component of water bills relates to maintenance works by SA Water?

I would like to touch on state residential water usage and would appreciate it if the minister would provide an update on the residential water usage of South Australian families. I recall hearing that there was some concern that usage had gone up after mammoth savings. Family First congratulates all the water-conscious families in South Australia; however, having said that, during this debate we would like put on the public record the current situation with respect to residential water usage. I would also like to say that, at a time when we are talking about water, there is still only a flippant commitment given to address the major water users—namely, industrial water users—in this state when irrigators and general residential water users in South Australia have been subject to incredible restrictions.

South Australia is a water cash cow, and I think it is appropriate to say that the South Australian people are overwhelmingly of the view that the days are numbered for South Australian water being used as a cash cow for government general revenue. People pay their water bills and expect to see fewer mains bursts, quality drinking water in their communities, sufficient water for them to be able to go about their business and also, for those who are keen gardeners, to enjoy the opportunity to garden. Many have not been getting much of an opportunity to do that in recent years, and that has also had an impact on the value of their residences.

People pay their water bills, and they expect to see individual meters to all properties in the state and a fair go and some equity for the South Australian community in this whole issue of water management. People would like to see—and Family First is very keen to see—SA Water taking a different approach, through policy implementation by the government, where it actually looks at genuine water conservation and genuine alternative water initiatives. The government talks a lot about partnerships, and I would like to think that the government would enhance partnerships with experts and people such as Colin Pitman rather than just the engineering solutions we continually see put up by SA Water. We have gone past that these days; we have to look at innovative and partnership approaches to better water supply, sustainability and delivery.

Finally, I would like to mention Point Sturt and Hindmarsh Island. We talk about the fact that some homes do not have water meters and how we want that addressed, but I am very concerned for and frustrated on behalf of the residents of Point Sturt and Hindmarsh Island. One of those constituents has seven children and, twice a week, has to cart water from way out at Point Sturt just to be able to provide potable water for their children. They have also had to destock their property.

There is $13.5 billion in overall water initiatives that the Howard government initially funded and which has been continued by the Rudd government, and there is $120 million being spent around the Lower Lakes. We have seen all this engineering—which is absolutely necessary—going on on the Narrung peninsula and in the Raukkan community, and we see these huge pipelines going into Langhorne Creek and Currency Creek. However, where is the equity and fairness when the government has not shown the endeavour or thrust to look after the people of Point Sturt and Hindmarsh Island? They are important too. At the moment those people are not even guaranteed any potable water pipeline availability, even though they will be the only two communities in the whole Lower Lakes system that will not have potable water or any economic contribution from the commonwealth and the state government. It is outrageous and unfair.

I place on the public record that I heard some comments from the Hon. Dean Brown, who is doing some work for the government. I do not agree at all with his comment that this government has done a good job with water—in fact, far from it; very far from it. It has been ad hoc and mismanaged, and a classic example of that is that Point Sturt and Hindmarsh Island residents have waited five frustrating months but still have not received an answer.

I put the challenge to Dean Brown (a person who has great ability and for whom, overall, I have a lot of respect) to put pressure on this government to deliver that water for the people at Point Sturt and Hindmarsh Island. Again, from Family First's point of view, we do not see this government doing anywhere near enough comprehensively to provide an adequate water supply for irrigators and residents of South Australia, and for sustainability. The government has been far too late off the mark and has missed out on a lot of opportunities that have been given to other states. Victoria is still way ahead.

I will not be giving credit to this government for water management until I see some real results. People are hurting right around this state; they have not had the results delivered for water

that they should have had. I am happy to debate this matter with anybody involved in managing water processes at this time, be it government ministers, members or, indeed, people employed by or on behalf of government to address these matters. I am pretty passionate about this matter. We cannot be flippant and dismiss the pressures that this state is under because of a lack of vision over a period of time when it was known that we needed more water.

Service delivery should be a priority from SA Water revenue, which should not be directed as funding for some other waste which governments are prone to do—and this government is no exception. As I said at the beginning, overall, the intent of this billing procedure does have quite a lot of merit, and we will be supporting this bill as a general principle, subject to our amendment and subject to some questions that we have put on notice for the minister.

I conclude by mentioning the debacle that occurred last year regarding water overcharging invoices. Let us not forget that overcharging scandal. We are now going into an even more comprehensive billing process, and I want the minister to assure this chamber (or at least assure me, if the minister wants my vote) that we are not going to see a debacle like the one involving water overcharging which caused so much concern to many communities last year. The government had better get this right, because South Australians deserve a billing system that is fair and reasonable.

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

MOTOR VEHICLES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 May 2009. Page 2398.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (16:18): I rise on behalf of the opposition to speak to this bill, which was introduced by the Minister for Transport in another place and supported by the opposition in that place. It makes two amendments to the Motor Vehicles Act. Under that act, the fees for professional, medical and other services rendered to those injured in motor vehicle accidents had been linked to the fees under the Workers Rehabilitation and Compensation Act. That act was amended last year, and one of the changes made was that the scale of charges for the above services was to be set out by ministerial notice rather than by regulation. On 1 July this year transitional provisions will end and the regulations will have no effect.

The bill changes references to the scale of charges prescribed by regulation under the Workers Rehabilitation and Compensation Act to references to the scale of charges applying under the Motor Vehicles Act. The second amendment in the bill relates to the proof of service of notices of disqualification from holding or obtaining a driver's licence. In 2007 parliament passed a bill with the same title, requiring a person receiving a notice to attend a customer service office or a post office to acknowledge receipt of the notice. If the person did not respond to the notice a process server would serve it professionally. The amendment was to prevent someone from claiming that they had not received the notice, and the opposition supported the bill at the time.

The current bill provides that the cost of those requirements is to be borne by the driver. If someone attends to acknowledge the notice then the fee is $24 but, if a process server is to be engaged to deliver it, it is a $60 fee. If no contact is made by the person through either measure the Registrar of Motor Vehicles can refuse to transact any business with the person until they pay the $60 and acknowledge receipt of the notice.

Consultation with industry stakeholders, including the RAA, indicated that they did not have any problems with this particular piece of legislation and were happy to support it. With those few comments, the opposition supports the bill.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (16:22): I thank all honourable members for their most important contributions to this bill and I look forward to it progressing expeditiously through the committee stage.

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

SOUTHERN STATE SUPERANNUATION BILL

Adjourned debate on second reading.

(Continued from 14 May 2009. Page 2360.)

The Hon. R.I. LUCAS (16:23): I rise to speak briefly to the legislation. I had not intended doing so until I received an email yesterday morning from a gentleman who is a regular contributor to debate in relation to public sector superannuation legislation. The gentleman's identity would be known to the government's advisers. As I said, he has been a regular contributor both on his own basis and on behalf of the association that he represents, and on virtually all other pieces of public sector legislation in recent years he has offered commentary, suggested amendments or, indeed, provided support to proposed government changes.

I received the email only yesterday and I had an opportunity only this morning to try to quickly understand the particular issue that was being raised. I will raise the issue during the second reading debate and hope that the government's advisers are either already familiar with the issue and have a ready answer or, even if they are unfamiliar with the issue, will still have a ready answer for the minister, so that we will not delay the passage of the legislation. My correspondent refers in particular to clause 6—'Participating employers', which provides:

> (2) An arrangement under subsection (1)—
>
> (a) may modify the provisions of this Act or the regulations in their application to, or in relation to, employees to which the arrangement relates (but not so as to put those employees or their spouses in a more advantageous position than other members or spouse members);

That is the relevant part of clause 6 which is raised for consideration here. This person mentions that he is not a member of the Triple S scheme but is a member of the state pension scheme which was established under the Superannuation Act and notes that clause 6 of this legislation currently before us is analogous to section 5 of the Superannuation Act.

In the past few moments I have had a look at section 5 of the Superannuation Act 1988 which indeed provides:

> (1a) An arrangement under subsection (1) may modify the provisions of this Act in their application to, or in relation to, employees to which the arrangement relates but not so as to put those employees in a more advantageous position than other contributors.

What is being raised there is that the provision in the bill before us is exactly the same as the existing provision in the Superannuation Act. This gentleman says that he became interested in section 5 of the Superannuation Act recently, 'after it became known to me that the arrangements authorised by section 5 of the Superannuation Act include arrangements which alter the definition of salary'. I think that is his threshold point.

I will expand on why that is important, but he contends that he became aware recently that the arrangements authorised by section 5 of the Superannuation Act include arrangements that alter the definition of salary. He goes on to state:

> The role that salary plays in all superannuation schemes where the members are employees of employers associated with the scheme is fundamental. Looking at the definitions of salary set out in both the *Southern State Superannuation Bill 2009* and the *Superannuation Act 1988* it is difficult to imagine how any alteration to the definition of salary would not put the member, to which the change applied, at an advantage over other members. So I have a concern that the words I have underlined in sub-section 2(a) above may not be having their intended effect.

His email continues:

> If members of the schemes established under the *Superannuation Act 1988* are getting an advantage over other members as a result of the change in the definition of salary, it is, at least, their employers that are bearing the cost and not other members. This will not necessarily be the case with changes to the definition of salary for members of the SSS.
>
> The SSS scheme is funded entirely from contributions made by members, and the defined contributions made by employers. If some members get an advantage over other members from a change in the definition of salary (or any other change) this advantage is at the cost of other members.

He then goes on to make this general point:

> I believe that all arrangements which involve changes to the rules of superannuation scheme should be published in the Annual Report of the relevant Board and, for Government Schemes, in the Government Gazette.

He then encourages me thus:

> If you see merit in this I hope you will attempt to have this become the case for the SSS scheme. This should assist to have the same change made for the other South Australian public sector superannuation schemes.

He indicates that he has sent a copy of this email to other members, evidently, in this chamber as well. In relation to that latter point, the lateness of the hour is probably going to preclude me delaying the legislation on this occasion to seek to engage in a debate with the government on that particular issue. I will flag that, when next the legislation comes before us, as inevitably it will, perhaps that is an issue on which we should seek a response from the government as to whether it would have a problem with the sort of proposal that is raised by this gentleman.

In essence, that is the subsidiary issue. The question which I put to the government's advisers and on which I seek a response at the reply to the second reading or during the committee stage is the essential point that this particular person is raising; that is, he is saying that these exact same words are in the Superannuation Act. He contends that he has become aware recently that the arrangements authorised by section 5 of the Superannuation Act do include arrangements which alter the definition of salary. Is his contention in that respect correct, and can the government's advisers indicate to us the detail of that and how that has occurred?

As I said, he then makes the essential point: if that is indeed the case, 'I have a concern that the words I have underlined in subsection (2)(a) above may not be having their intended effect'. He is saying that these words are meant to be giving solace to existing members of superannuation schemes that the new members will not be in a more advantageous position than the existing members, and the words in their ordinary meaning would lead you to believe that. He is arguing, given what he has outlined in relation to those same words in the Superannuation Act 1988, that whilst it appears that they give that solace, maybe in practice they do not. If that is the case—his argument in relation to the Triple S scheme—then the existing members of the Triple S scheme perhaps ought to be having some concern about this particular provision and how in practice it is being interpreted. With that, I conclude my contribution. I look forward to the minister's response.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (16:32): I thank members for their contribution to this debate. I believe that we can answer the question then asked by the Hon. Mr Lucas during the committee stage. I again thank members for their contribution and indications of support for the bill.

Bill read a second time.

In committee.

Clause 1.

The Hon. P. HOLLOWAY: I intend to answer the question, as I understood it, asked by the Hon. Mr Lucas. I gather that, as it relates to clause 6, we can always deal with it further then, if it is necessary. It is my understanding that there is no intention to allow any modification of definition of salary used for the purposes of the act. I am advised that the intention of the clause is to allow an employer who becomes a participating employer under this scheme to apply only 9 per cent of salary and not the extra 1 per cent that the government may pay for someone contributing 4.5 per cent. There is no intention to allow modification of salary used for the purpose of the act. Rather, the intention of the clause is to allow an employer who becomes a participating employer only to be required to pay 9 per cent of salary and not the extra 1 per cent that the government may pay for someone contributing 4.5 per cent plus.

The Hon. R.I. LUCAS: The contention from this particular person is that these exact same words and arrangements appear in the Superannuation Act 1988. This person is claiming that he has become aware that in recent times those exact same arrangements authorised in section 5 of the act had included arrangements which did alter the definition of salary. Can I clarify that with the minister? First, is that claim correct; that is, the same words and the same provisions in the Superannuation Act have led to alterations in the definition of salary as contended by this particular correspondent?

The Hon. P. HOLLOWAY: The same words are used, but here it is applied to a different scheme, to an accumulation scheme. I understand that the issue raised by the correspondent related to a defined benefit scheme. Under those defined benefit schemes it may be possible for someone to have had a previously higher salary with a previous employer. That arrangement would have changed the definition of salary under that previous scheme, under a defined benefit scheme, but that is not the case in relation to the accumulation scheme—which we have here.

The Hon. R.I. LUCAS: Therefore, in relation to the Superannuation Act 1988 position that the correspondent has claimed, I think the minister's adviser has now confirmed that in those circumstances it either has occurred or could occur—I am not sure what the actual situation is. The words in the Superannuation Act provide that, in essence, that change can occur but not so as to put those employees or their spouses in a more advantageous position than other members.

How has that particular provision operated in the Superannuation Act? My correspondent is arguing that if you can change the definition of salary (which has occurred in the Superannuation Act), clearly there must be an advantage. Will the minister reply to that? He is arguing that if you look at these words they should prevent there being an advantage to new members compared with the old members. I am seeking from the minister whether or not his advice is that that is, indeed, the case?

The Hon. P. HOLLOWAY: My advice is that it is to stop people being made worse off. Under the Superannuation Act—and we are talking here about defined benefit schemes—if someone previously had a higher salary, if they were not to keep the benefit of what they had accrued on their previous higher salary, they would be worse off. When they come to the new employer they will be accruing benefits only on their new lower salary, so it was to address that issue. The point is that they would not have been in the more advantaged position.

The Hon. R.I. LUCAS: I thank the minister and his adviser for that response. I take it from what the minister has said that, in relation to this act and this particular scheme, there is not an intention under these arrangements to alter the definition of salary. That is now on the public record, and I will relay that information to this particular interested party.

This person has raised the general issue of whether all arrangements involving changes to the rules of the superannuation scheme should be published in the annual report of the relevant board and for government schemes in the *Government Gazette*. He is arguing that that should be the case with the Triple S scheme. Will the minister indicate the government's position on that matter as a possible future change? I do not intend to seek to delay passage of this legislation in order to try to achieve that, but I am wondering whether the minister through his adviser could give a response. Is there a government position on that? Is it prepared to consider that in relation to future amendments to the legislation which, inevitably, will come before this place?

The Hon. P. HOLLOWAY: There is not a government position on that, but we are happy to consider the matter that was raised before it comes forward again. When it does arise we will have a considered response one way or the other.

The Hon. M. PARNELL: My second reading contribution focused, not surprisingly, on the question of ethical superannuation options. I posed a question in my second reading contribution, but perhaps it was not worded as clearly as it could have been that I was interested in an answer from the minister. I will take the opportunity to ask the question again. I pointed out that the Triple S managers had written to people who they knew were interested in ethical superannuation options. I posed the question: who else have they contacted?

In the absence of a full-blown campaign to make people aware of this new option, schemes such as this could fail. My question is: how has the new ethical option been promoted? What efforts have been made by the fund managers to promote its existence?

The Hon. P. HOLLOWAY: I thank the Hon. Mr Parnell for his question, and I am sorry I did not address that earlier. My advice is there is a notice on the Super SA website in relation to that. I am also informed that that information is to be distributed to all members in forthcoming newsletters, so that will be the other method that will be used to advise members of those provisions.

I can give the honourable member some advice in relation to the socially responsible investment option. The option was introduced on 1 March. As at 31 May 2009, 57 members of Super SA invested their money in the SRI option. Of those, 36 members are in Triple S, seven members are in the state lump sum scheme, and 10 members have a flexible rollover product in terms of section 47B of the Southern State Superannuation Act. The total amount of money involved in the option amounts to $3 million. There are also four members who have an allocated pension or income stream product in terms of section 47B of the Southern State Superannuation Act.

The Hon. M. PARNELL: I thank the minister for his answer. I think it is most important that all members be made aware that this is now an option, and the fact that 57 members have taken it

up with minimal promotion I think is a good sign. My next question is: what process did the fund managers go through to choose the ethical option that was eventually settled on, the AMP managed option? What process did they go through? Was there a tender process? Was there an investigation of the products in the market? What process was adopted?

The Hon. P. HOLLOWAY: That is a decision that, obviously, was taken by Funds SA, and it is difficult for us to answer that. If the honourable member wishes, we can perhaps seek a response and provide it to him later.

The Hon. M. PARNELL: I thank the minister for offering to chase that information, which I think is important. As I pointed out in my second reading contribution, as well as the big oil companies represented in this socially responsible investment option we find companies such as James Hardie. I personally struggle to understand how a company with that record, especially with its moving offshore and the controversy over its fund to compensate asbestos victims, would end up in such an option. I would look forward to a response to the question of how that particular fund was chosen. Could the minister extend his inquiries to ask, in particular, about how a fund was chosen that has shares in James Hardie? I would appreciate that as well.

The Hon. P. HOLLOWAY: I think the honourable member just indicated the issues you are always going to get when you establish these types of funds—the definition of what is socially responsible and what is not. I know we have had that discussion at great length during previous debates, and I think the difficulties are highlighted by that. If there is any further information we can get in relation to that, I will provide it. I imagine the number of products available is not necessarily very large, so one has to take options from what one gets. If there is any more information we can provide on that, we will do so.

Clause passed.

Clauses 2 to 23 passed.

New clause 23A.

The Hon. DAVID WINDERLICH: I move:

Page 16, after line 16—After clause 23 insert:

23A—Participation in other schemes

(1) The regulations must make provision for members, or members of a particular class, to elect to enter into alternative superannuation arrangements with a complying superannuation fund.

(2) Regulations made for the purposes of this section—

(a) must make provision for the payment of contributions to be made by an employer of a relevant person to the person's specified fund in accordance with the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth in order to avoid having an individual superannuation guarantee shortfall in respect of the person within the meaning of that Act; and

(b) may do one or more of the following:

(i) prescribe procedures for making elections;

(ii) provide for the cessation of a relevant person's membership of the scheme;

(iii) make provision in relation to a relevant person's liability to make payments, or eligibility to make contributions, under this Act (including by providing for the cessation of the liability or eligibility);

(iv) make provision in relation to a relevant person's eligibility for invalidity or death insurance or income protection provided through the scheme;

(v) provide for the carrying over of amounts standing to the credit of accounts maintained by the Board in the name of a relevant person to his or her specified fund and for the closure of those accounts;

(vi) provide that an election is irrevocable;

(vii) make provision for a relevant person to vary an election;

(viii) prescribe terms and conditions, and make provision for related or ancillary matters, connected with the entry by a relevant person into

alternative superannuation arrangements with a complying superannuation fund.

(3) A regulation under this section will have effect in accordance with its terms despite any other provision of this Act.

(4) In this section—

complying superannuation fund has the meaning given by section 45 of the SIS Act, but does not include a self managed superannuation fund;

relevant person means a person who has made an election to enter into alternative superannuation arrangements with a complying superannuation fund;

self managed superannuation fund has the same meaning as in the SIS Act;

SIS Act means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

specified fund of a relevant person means the complying superannuation fund with which the person has elected to enter into alternative superannuation arrangements.

This amendment has three key parts. The only significant one is the first part, which is that the regulations must make provision for members, or members of a particular class, to elect to enter into alternative superannuation arrangements with a complying superannuation fund. The rest is really consequential on all that, and the argument is very simple: it is an argument for choice (which is generally supported by the government and the opposition). Giving members the ability to choose their superannuation fund would achieve some of the objectives that the Hon. Mark Parnell is seeking in his dogged attempts to introduce an ethical investment option into public servants' superannuation. If members are allowed to choose other superannuation funds—if they decided they saw one with a better spread of ethical offerings—they could leave this one. The Triple S would then start to wonder why it was losing members and might do a bit of a survey and find out they wanted a better ethical offering. So you can get a better social or environmental outcome out of offering competition in this context.

The other one relates to giving members the opportunity to build a better nest egg and earn a better return elsewhere, and here it is worth contrasting the performance of Triple S with some other superannuation funds. I have been to the SuperRatings website and it states:

SuperRatings look at every part of a super fund's business as part of our research to decide which funds will receive our silver, gold and platinum ratings awards.

By comparing fund with fund, we are able to see the funds that perform best in the key areas of investment returns.

Here are the Top 10 returns for popular balanced funds (in this case, funds with between 60 per cent and 76 per cent invested in growth-style assets) over 3 years.

There is a little bit more text, which is not very important. However, the important thing is that it goes through the top 10. We get MTAA Super—Growth, Military Super—Balanced, Buss(Q)—Balanced Growth, Statewide—Aussie Choice, LGsuper Accum—Balanced, Club Plus Super—Balanced Option, MTAA Super—Balanced, HOSTPLUS—Balanced, Catholic Super—Balanced, Vision SS—Balanced. Triple S is not in the top 10.

If we look a little more closely and compare a couple of investment options, in 2007-08 Triple S high growth returns declined by 13 per cent and in balanced by 9.26 per cent. It has not been a great year, necessarily, but if you look at REST, the matching figures are minus 8.15 and minus 2.93, so that is significantly better on one count.

If we look at Australian Super, we get minus 5.78 for balanced and minus 8.36 for high growth—again, below Triple S. If we look at MTAA we get minus 2.3 for balanced and plus 2.97 for growth. So, it is clear that there are opportunities for better returns elsewhere. I believe public servants should have the opportunity to make a choice, whether on ethical grounds, because they want their investment to go into socially or environmentally better outcomes, or whether it is simply to maximise their returns.

Interestingly enough, we have had a little petition circulating around the Legislative Council in respect of Carlson Wagonlit Travel, and there are a lot of signatures on it. The argument seems to be that members want a choice because they think they will get a better outcome if they exercise that choice rather than have their travel arrangements decided on a monopoly basis. We should consider giving that same choice, which we value when confronted with a monopoly, to public servants so they can make a choice to take their super elsewhere.

The Hon. P. HOLLOWAY: First, I indicate that the government opposes the amendment. In relation to the returns one gets on a superannuation fund, in the current financial environment I am not sure that looking at one 12-month period necessarily gives one an accurate picture of returns over a longer period. I am well aware that in the past some of the better performing funds in one particular year may be much more ordinary if you look at them over a longer period. One could debate the merits of that for a long time.

The main reason the government is opposed to this amendment is that it would result in a one-way street choice arrangement. In other words, government employees and existing members would be able to move to other schemes, resulting in a loss of membership by Triple S, but Triple S would not be able to compete for membership from non-government employees. The government is not prepared to allow Triple S to compete for members from the general public and non-public sector employees. The government does not believe it should be in the business of running a public offer superannuation scheme. It is one thing to have a scheme for the employees of government but another to run it as an organisation with public offer superannuation schemes: we do not believe that that is an appropriate role of government.

To prevent the possibility of Triple S losing a sizable portion of its membership, and not having the ability to counter the loss by recruiting members from the general public, the government believes that the most appropriate position is that government employees not have access to a fund choice arrangement. If Triple S were to lose a sizable portion of its membership, it would place pressures on its low cost of administration to the disadvantage of those members who elect to stay in Triple S.

One of the other problems associated with a fund choice arrangement being made available for government employees is that it would place significant administrative pressures and create administrative efficiencies from Shared Services having to deal with potentially 20 or 30 different superannuation schemes compared with generally one at the moment. One is producing inefficiencies. For that reason the government believes the amendments should be opposed.

The thought occurred to me, when the honourable member was comparing specific funds, that obviously in any given year one will get a better return from one particular type of superannuation fund, even offered by the same body, than one might get in other years. In the current climate, when you have had a significant drop in the equities market, funds dealing in equities clearly will have a different performance than those that have a higher proportion of cash or property, or whatever the case may be. Again, I would have thought that any member of those funds would need to make their decision over a much longer period of time than just on 12-month figures.

The government does not believe its fundamental business should be running public offer schemes, so we oppose the amendment. If we were not to do that, this amendment if carried would result in a loss of membership to the detriment of all other members of the scheme.

The Hon. D.W. RIDGWAY: The opposition has thought long and hard about the Hon. Mr Winderlich's amendment and understands its intent. Our spokesman, Stephen Griffiths, spoke to Mr Deane Prior about this amendment and Mr Griffiths indicated that, given the potential costs, we would not be able to support it at this stage.

The Hon. M. PARNELL: Of the two arguments the Hon. David Winderlich advanced for this amendment I agree with the minister's response in relation to the rate of return. I do not see that that is necessarily relevant, but the question of choice is fairly fundamental. The reason I have pushed for so long for an ethical superannuation offer option for public servants is that they do not have the ability to go outside and get their superannuation somewhere else. Now that we have what we call a socially responsible investment option, the scheme has come part way to meeting the concerns I have had and that many people who have contacted me have had, which was the reason I asked those questions in clause 1.

I need to understand exactly how ethical this option really is and the process Funds SA went through in selecting this ethical option, because it seems that if it is a substandard option then people will still want the option to go outside the Triple S scheme and choose a genuinely ethical superannuation option out in the private sector. However, it is a difficult matter. The minister has pointed out that it would be a one-way scheme that invites public servants to leave but invites no-one else to come back in, and I concede that there is a difficulty with that.

I come from a fairly old school group of people who, when there was choice in the marketplace, would bank with a state bank and insure with a state insurer; I would go for the public option. Although I am generally supportive of the honourable member's desire to offer choice, one concern I have with his position is that the profit motive of the private sector, with the advertising campaigns it would run, could encourage many people out of what is, in fact, a better scheme to one that has higher overheads and administrative costs. I also accept the argument that the cost of administering the scheme would proportionately fall more heavily on a smaller number of members if people did abandon the scheme.

From members' contributions to date it is clear that the amendments will not succeed, but I would like to congratulate the honourable member for bringing it to our attention because I think our public servants are entitled to choice, and I hope that through the Triple S scheme they will be offered more choice than the ethical option currently available. I have by no means abandoned my campaign for genuine ethical investment, and I have congratulated the fund managers to a certain extent for having got us to this stage, where there is at least an option. I do not believe it is the best option, but I look forward to better ones being offered by Triple S in the future.

The Hon. R.I. LUCAS: Before I address the specific amendment, I would like to ask the minister whether members of parliament have an ethical investment option under their scheme. I would certainly be very keen for the Hon. Mr. Parnell to have the option of putting all his money into one of those choices. Do the current arrangements for the parliamentary superannuation scheme allow for a member to take up such an option?

The Hon. P. HOLLOWAY: My advice is that the PSS 3 does have an option.

The Hon. R.I. LUCAS: Excellent; in the near future I will ask the Hon. Mr. Parnell whether he has transferred all his money into an ethical option.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: That is right, but we can certainly ask the Hon. Mr Parnell whether he has transferred all his money into an ethical option, given his undying commitment to the cause. In relation to this amendment, the Hon. Mr Ridgway and Mr Griffiths, in another place, have outlined the opposition's position, but I would like to make a few brief comments.

I thought it ironic that the Hon. Mr Winderlich moved an amendment to bring the chill winds of private sector competition to the government superannuation scheme. He is championing the cause of an almost de facto privatisation option, where public servants can flee the state scheme to private sector schemes. Speaking personally, I have some sympathy for the position put by the Hon. Mr Winderlich, but the advice given by Mr Prior to the government, the opposition and others is cautionary. If people are allowed to flee the scheme, I believe the issue will be whether people will also be allowed to come into the scheme.

In the original debate, when the Hon. Mr. Parnell first raised the issue of socially responsible investment, I said that whilst the opposition did not support it at that time I suspected it was an inevitable evolution, that eventually that option would occur, and it has occurred sooner rather than later. I suspect we will see an inevitable evolution in fund choice in relation to these issues, but it probably will not be in exactly the form moved by the Hon. Mr. Winderlich today. There may well be some to-ing and fro-ing, and the option of moving in and out of the scheme. Hopefully, if it is a good scheme, if you lose members you can also attract other members because of the schemes' lower costs and better-run nature, and because of the good performance of the state run scheme—if that is, indeed, the case.

The Hon. Mr. Parnell spoke passionately about his support of state banks and state insurance companies, and I interjected most inappropriately, 'Look what happened to those, even with the Hon. Mr Parnell's support.' I think that is the issue, and I believe the Hon. Mr Winderlich is raising it—that is, whilst he has not used the words, state-run financial organisations have not had a very good history. Through his amendment the Hon. Mr Winderlich is canvassing the fact that if someone wants to flee the state-run schemes they should be given that option, if they see better schemes out in the real world in the private sector. Why should they not have that particular option? It is their money and their retirement, and they should be given the private sector option, which the Hon. Mr Winderlich is championing.

In a few years down the track when this inevitably happens, the Hon. Mr Winderlich—whether or not he is still here—will be seen as the champion of this particular amendment, having moved it first in this chamber. Although it appears that it will be unsuccessful on this occasion, as I

said, speaking personally, I suspect that some version of this will inevitably enter the arrangements for public sector superannuation.

New clause negatived.

Remaining clauses (24 to 30), schedule and title passed.

Bill reported without amendment.

Bill read a third time and passed.

ROAD TRAFFIC (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 April 2009. Page 2177.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (17:08): I rise on behalf of the opposition to speak to this bill. This bill was scheduled for debate last time we sat. When it was debated in the House of Assembly the opposition supported it. At that time the opposition had not had a response from the South Australian Road Transport Association. Since we last sat we have had an opportunity to speak with the Road Transport Association. I indicate from the outset that there were some components of the legislation that were supported in the House of Assembly. However, as a party, we have now arrived at another position and will not be supporting a couple of components of this bill.

The amendment bill is proposing the introduction of two heavy vehicle initiatives: the Intelligent Access Program and Heavy Vehicle Speeding Compliance. It makes several amendments to the requirements for declaration, notification and the testing of speed and red light cameras. As I said, initially we had several concerns and we felt that new sections 110(ab) and 110(ac) in clause 6 of the bill should be amended to include details which would otherwise be included in the regulations. It appears that the new sections provide no information on the powers and obligations that are clearly going to be part of the implementation of this bill.

New section 110(ac) provides no details of obligations and powers. This program is supposed to be for monitoring and dealing with the speed of heavy vehicles and to ensure they do not deviate from approved roads. There was a concern within the industry that the bill and subsequent regulations could lead to factors being used to limit the access to the Intelligent Access Program, such as a requirement to meet vehicle emission standards.

Thankfully, I met with staff from minister Conlon's office late last month and we were able to clarify some of the concerns that we had, certainly with regard to section 110(ab), which provides that the regulations will list certain obligations of parties in the heavy vehicle chain of responsibility.

We appreciate that this is a measure to protect drivers by creating a duty for parties like loaders and other people in the chain of responsibilities to abide by business practices and curtail possibilities for speeding. There were, in this advice we were given, no additional obligations for drivers as they are already subject to infringement notices and demerit points. The power was also created for police officers to enforce these measures, just as they would apply to drivers. They feel this adequately addresses the concerns that were raised between the two houses.

New section 110(ac) provides for the establishment of the Intelligent Access Program. This is one area where we do have some concern. By regulation, the scheme would be enabled to provide for all aspects of the program. The Freight Council, in an initial consultation, conveyed concerns that the Intelligent Access Program may be used for tracking carbon emissions. However, the model provisions are concerned more with mass, speed and route and, at this point, not with emissions. There is a capacity to extend this legislation to the tracking of carbon emissions, but these changes do not provide for that, and the minister's advisers indicated that there was no current intention for that, so we do not believe that is a concern at this stage.

As I said, we have since had contact with the Road Transport Association, which has raised some significant concerns about the cost of implementing the program. Although the Road Transport Association supports the concept of the Intelligent Access Program, it envisaged that it should be a voluntary program and not a mandatory one. That is for a number of reasons but particularly in respect of compliance costs.

The Road Transport Association estimates that the cost per vehicle will probably be between $3,000 and $4,000 per vehicle and that approximately 10 per cent of 320,000 vehicles

nationwide will be affected. As one can see, there are some 320,000 heavy mass vehicles that could be potentially captured by this legislation, and at $3,000 or $4,000 per vehicle it is a significant impost on small business. Some of the business operators in the transport industry are quite large, but there is also a significant number of small businesses. These people, by and large, are law-abiding transport operators.

The bill also provides that service providers will be engaged to report noncompliance to the state government. Service providers are going to be private companies which have applied for certification from Transport Certification Australia (TCA). My understanding is that this will be a monitoring body. A truck will have a GPS sender to identify where it is and what particular route it is travelling along, and these vehicles will be monitored by the service providers. One really has to question the cost of this both to the government and to the private sector. The government will be responsible for all the information received on noncompliance of vehicles under the scheme, and we wonder about the administrative burden that places on the scheme.

The legislation provides that vehicles under this scheme will be penalised if the vehicle loses satellite coverage so, potentially, through no fault of the driver of the vehicle, he could be penalised. Also, we are not quite sure of the effectiveness of that if somebody sticks some sort of blanketing device (a tin can or something) over the top of the satellite sender which means they could cheat the system, and the penalties may not be sufficient to override that cheating. I will come back to that in a moment, because there are some more areas that I want to explore and perhaps put some questions on the record so that the minister can answer them before the committee stage of the bill.

Another small issue that this bill also addresses is the change in intervals, from six to 27 days, at which the accuracy of the speed function of red light cameras is tested. We were intrigued as to why it should be expanded from six days to 27 days. SAPOL attended the briefing and confirmed that it was really just due to the rostering cycle that it be done once every 28 days.

In Victoria, it is done every 30 days and, given that this is actually testing of the accuracy of the induction loops that are buried beneath the road and the distance between them does not change more than a millimetre or two with hot weather or ground movement, the opposition certainly sees that it is a reasonable amendment to allow that to be pushed out to 27 days.

I will come back to some of the comments that the Road Transport Association has made to me, and the first point is that, in its view, there is no demonstrable cost benefit to support this initiative. The association says that the cost per vehicle is probably close to $3,000, and would have to deliver a benefit to the operator of at least that amount. It would need to provide new access or new routes, not just be applied retrospectively to existing routes or otherwise operators would not be able to derive benefit.

For members who do not understand, this program is for higher mass vehicles going on a designated route. I am sure members will all be aware of the tragic accident a couple of weeks ago where a young girl sadly lost her life in an accident with a B-double. They are the types of vehicles that we are talking about: big trucks and vehicles on designated routes. If it is just to monitor people on existing routes, the industry cannot see any cost benefit and, as I said, the vast majority are law-abiding transport operators who do not break the rules.

The cost benefit needs should be assessed by the business that would have to implement it and not according to a theoretical concept based on assumptions made by bureaucrats somewhere in government departments. The focus of most ministers, or at least the focus of the advice from the officials, would seem to indicate that they believe that the Intelligent Access Program would ensure compliance, or at least greater compliance, by keeping operators under constant surveillance. It is very much like Big Brother to me.

The Intelligent Access Program is reasonably easy to defeat, according to advice from the Road Transport Association. All that government or third-party providers would know is that a truck is off the radar and, even if a penalty is imposed for that, it would not offset the benefit that the minority of the industry who cheat—those who are targeted by the program—would derive by going off the approved routes.

Many operations, such as higher mass limit trips (when a truck carries more than a statutory mass limit but only on an approved higher mass load accreditation scheme), do not involve the entire journey, so an Intelligent Access Program would be needed for the initial part of the trip when it is fully loaded. When the first delivery is made en route, thus lowering the mass, the truck may not have to stick to the approved route because it has a lower mass. It would be very

difficult for the system to know that the operator had taken 5 tonnes of product off the back of his truck and was now at a lower mass.

This is one of the questions that I would like to ask the minister to respond to: how will this be monitored? If a person is driving a vehicle along a higher mass route and takes off some of their produce or their load, how will the system know without the driver of the vehicle having to log in via a Blackberry or a laptop or some other method to actually advise the system that they have taken some load off? It makes me wonder about the cost of compliance and the onerous task on the truck operators.

Of course, if that is the case and the minister is proposing that the truck operator will grab their Blackberry and send a text message or a little email to the system, it will not stop one of the cheats in the system—the minority—from sending an email to say, 'I've just dumped 10 tonnes and now I'm able to go on this particular other route.'

It raises a number of questions as to how that would really work. If the compliant operators—all 90-plus per cent of them—pay the price of this Intelligent Access Program, their cheating competitors will, of course, always get a competitive advantage if they are able to thwart the systems.

It seems that it is a particularly large administrative burden on our trucking industry at a time when we have—as the minister often says and has said even today in question time—an economic crisis the like of which we have never seen before. It really does call into question the need for this measure at this point in time.

Certainly, the Road Transport Association is very much opposed to a mandatory Intelligent Access Program. It does, however, support a voluntary option, but only where it is genuinely optional. That is not the case in New South Wales where, the association says, it was falsely claimed that it was optional but, in fact, was mandated for a wide range of route access in a retrospective fashion.

The desire of the Department for Transport, Energy and Infrastructure and the South Australian government to impose the Intelligent Access Program at any and every opportunity, such as for low-loaders carrying bulldozers, as a means of facilitating access to various restricted routes (that is, those that are not gazetted already) is impractical because they have not understood the cost per truck which is simply not justified for the very limited use that the low-loader operators would actually make of it.

The Intelligent Access Program should be seen as a tool that could be a way of facilitating various improvements in monitoring by operators themselves and by government, but first the government must sit down with industry and work out an effective way to operate and manage an intelligent access program which will deliver real and sustainable benefits for those who have to pay the substantial costs, who, of course, will be the operators. Incidentally, in relation to the New South Wales' scheme in which many operators have been forced to pre-enrol in the Intelligent Access Program to get access to the routes, more than 80 per cent of operators have withdrawn as they do not see that it will deliver any cost benefit to them.

With those comments and in supporting the Road Transport Association concerns, the opposition has quite a number of concerns about, first, the cost imposition on transport operators—and I would certainly like the minister's feedback when we get to the committee stage of the bill—and, secondly, the cost of service providers. If you have a body or an organisation monitoring all these vehicles, who will pay for that? Will the cost be borne by government and the broader taxpayers or will it be borne by the industry? What does the minister see as the benefit to the community for the cost? The industry estimates that in excess of 90 per cent of operators operate within the law, so why do they see this as being an important step, especially at this time, given the financial crisis and the pressure that is on pretty much every one of our small and large business operators in Australia at present?

With those few words, I indicate that we will be supporting all but the clause relating to the Intelligent Access Program. We think that is inappropriate and does not provide a real cost benefit to the industry or to the community.

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

MENTAL HEALTH BILL

The House of Assembly agreed to amendments Nos 1 to 13, 15 to 23 and 25 to 29 made by the Legislative Council without any amendment; disagreed to amendment No. 24; and agreed to amendment No. 14 with the amendment as indicated in the following schedule:

New Clause 49C–Delete subclause (3)

Consideration in committee:

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

That the council agrees to the amendment made by the House of Assembly to the council's amendment No. 14.

The vast majority of the provisions of the Mental Health Bill 2008 have received support from both houses of this parliament. It is a very important bill which provides a contemporary framework for the provision of mental health services. The bill will enable a different model of service delivery to be implemented and therefore is central to the reforms currently under way in the mental health system. If people in rural and regional South Australia are able to be admitted and treated in limited treatment centres out in the regions, then obviously it is important that this bill is passed. If medical practitioners and authorised health professionals are to be able to consider community treatment orders as a first option in treatment, then this bill must be passed, and if South Australia is to have a chief psychiatrist with the necessary powers to ensure that the mental health system is both accountable and transparent in its functioning powers, then this bill must be passed.

Members of the council have made significant contributions to the bill through the debate and the amendments which the government has accepted. We are now in a position where there is only one amendment that is in contention, and this is the amendment concerning establishing an offence of harbouring. We are accepting the amendments around the community visitor scheme and I think other issues around penalties and such like. The government has accepted all those. There is only one now in contention, and that is harbouring. The impact of this particular clause is to make the family and friends of patients who leave a detention centre without permission liable to prosecution if they harbour the patient.

In the other place the deputy opposition leader argued that the Mullighan inquiry recommended that an offence of harbouring be established in the interests of more effectively protecting children. This matter is currently being considered by the government. However, Mullighan's recommendation is not directly transferable to this bill. His intention is to ensure that, if a child under the guardianship of the Minister for Families and Communities runs away and stays with someone who is not considered appropriate for a variety of reasons, that person may be prosecuted.

The situation with people who leave a treatment centre without permission is obviously different. Rather than protecting the patient, the harbouring offence would criminalise the people harbouring them, which is most likely to be friends and family members. The context is quite different from that dealt with by Mullighan who is trying to protect vulnerable young people from exploitation.

We believe that family and friends of patients do not need to be prosecuted for providing accommodation overnight for someone they know should be in a treatment centre because they are on an order. Most family and friends want the very best for their family member or friend. They may think that, if they provide assistance overnight or some period of time for instance, the next day they might be able to talk the person—once they have calmed down—into returning to the treatment centre.

They may not speak English as a first language and they may not understand the mental health laws in South Australia. While some people need to be placed on an order to receive treatment, the patient, in effect, may tell them that they have been allowed to leave from the treatment centre or discharged.

Although I am not suggesting that these scenarios would necessarily be captured by the amendments proposed by the opposition, nevertheless they do provide a general context. Families and friends, who are likely to provide accommodation or other support to patients in this situation, are likely to be doing it because they consider it to be the best thing to do under the circumstances.

If someone has left a treatment centre without permission it is important that they are returned as soon as possible. Educating the community about why this is important and why

people sometimes need to be placed on orders is likely to be more effective in the long term than criminalising the family and friends of people with mental illness.

Stakeholders are not supportive of the provision. Bidmeade, who wrote the report 'Paving the Way' (on which the bill is based), is not supportive of this harbouring amendment. He said:

> The last thing families dealing with this stress of mental illness need is the threat of prosecution for the very human behaviour of trying to protect a family member albeit inappropriately. The legislation needs to reflect an understanding of the traumas of mental illness and avoid being punitive.

Other groups, such as the Australian Nursing Federation, Carers SA and Health Consumers Alliance, have expressed similar views.

The bill already contains two offences which are relevant. First, clause 98 makes it an offence to remove or aid the removal of a person from a treatment centre. Secondly, clause 55 makes it an offence to hinder or obstruct a police officer or authorised officer in exercising their powers under the act. Therefore, if a police officer or an authorised officer were to go to a house with the aim of returning a patient to a treatment centre and family or friends of the patient hinder or obstruct them, this action may form the basis of an offence. It is already provided for.

The establishment of the offence of harbouring is not necessary or desirable. The government has accepted a number of amendments, and I ask members of the committee to reconsider and support the passage of the bill without the harbouring amendment.

The Hon. J.M.A. LENSINK: The Liberal Party believes that this subclause should be retained. I should add that we are very pleased that a number of other clauses we successfully moved in this place have not been fought by the government. The deputy leader in another place spoke about the issue of harbouring through the Mullighan inquiry. This harbouring aspect was brought to our attention through the State Coroner in relation to a particular incident; and I will refer to that in a moment.

In relation to the claim that this particular clause criminalises aspects of the bill, the bill and the existing act already contain such clauses and sections in relation to removing patients from treatment centres. Clause 96 of the bill is much the same as section 33 in the Mental Health Act, which provides:

> A person who, without lawful excuse, removes a patient who is being detained in a treatment centre from that centre or aids such a patient to leave the centre…

It carries a maximum penalty of $10,000 or imprisonment for two years. This harbouring amendment addresses the issue once a person has absconded in that they may abscond by themselves and be at a particular place where someone knows they have absconded, yet they do not make any effort to return them to the treatment centre. I think it is merely an extension of the existing legislation.

I want to read something which I may have read during my second reading contribution or when moving an amendment to the bill. It relates to the death of Damien Paul Dittmar who absconded from the Queen Elizabeth Hospital. At paragraph 10.7 the Coroner states:

> Whatever the legal position may be, it is my recommendation that the act of knowingly assisting an absconded detained patient to evade apprehension should be criminalised. The legislature might quite understandably be reluctant to criminalise the mere harbouring of a detained patient because the activity might be undertaken for purely compassionate motives and what are thought to be the best interests of the patient.

I think that is the position that the minister has outlined. It continues:

> However, it is difficult to see why the criminal law should be coy about punishing a person who knowingly and deliberately sets out to assist a detained patient to avoid being apprehended and returned to his or her place of detention.

In that regard, I think we ought to be aware of the best interests of the patient. In this case, quite tragically, he then committed suicide. But there may well be many other cases where someone really is in desperate need of treatment and may be psychotic to the degree that they do not believe they need treatment, and there ought to be some penalty for someone who does not assist to return them to a treatment centre. The Coroner goes on to state:

> Having regard to the underlying reasons that lead to a person being detained under the Mental Health Act, one would have thought that such activity ought to be heartily discouraged.

I think that is a sensible approach. We do not want to have people harbouring persons who really need to be in a treatment centre and stopping them receiving treatment. As I have stated before in

this place, this is not something that would be applied lightly: I think the court would consider the circumstances of the situation. However, for someone who does not take someone back to a treatment centre, in spite of the fact that they may be in desperate need of treatment, I think there ought to be some penalty that should be applied. I do not accept that this is criminalising mental health at all, because we already have such provisions in relation to taking someone from a treatment centre in the first place.

The Hon. M. PARNELL: I do not believe that the Legislative Council should insist on this amendment. I opposed the amendment when we debated it originally and my view has not changed. The situations the minister described in her response were similar to the situations that I described when we debated this in committee last—that is, a fairly predictable and, I would say, typical scenario where a person leaves without permission and goes to a loved one (a family member or a friend) and that person, who may have the best interests of the person at heart, may form the view that they have run away and should not have, but they will let them calm down and put them up for the night and tomorrow they will talk about going back to hospital. Whilst we could take the view that we would trust our law enforcement authorities not to pursue cases such as that, the point is that, if this amendment does go through, it will be open to our law enforcement authorities to take that view.

The test is a fairly severe one. The person has either to know or be recklessly indifferent as to whether the person is a patient at large. The reckless indifference would come into it if, for example, you get a knock on the door and it is a son or a daughter who has left a mental health institution and you say to them, 'I am surprised to see you here. Did they let you out?' And the answer would probably be, 'Yes.' You may well know that that person's condition requires more treatment, and you would probably form the view that, 'They are telling me they were let out, but I bet they weren't.' I think it would not be difficult for any prosecutor to say that, with that level of knowledge, you would, in fact, have been recklessly indifferent.

It may be that they tell you the truth that they were not given permission to leave and they just left. Still, a compassionate response of a family member may be to say, 'Stay the night. Tomorrow we will talk about going back.' The difficulty, of course, is that this amendment is born out of a Coroner's recommendation and we need to take all recommendations of office bearers such as coroners seriously, but the point I made previously is that hard cases often make for bad law.

The Coroner, quite naturally, feels the need to come up with recommendations that may have avoided the situation that was presently before him. That was one case and it was a sad case, but not all cases are the same. To put into the statute book a general criminal offence that will potentially catch many people who are trying to do the right thing by their patients and loved ones I think is the wrong approach.

The final thing that I will say is that I did receive some communication today from the Mental Health Coalition to affirm its position that it is opposed to this subclause and urge all of us not to insist on its remaining in the bill.

The Hon. DAVID WINDERLICH: I am passionately opposed to this provision. I indicated as much when we discussed it earlier. I think there are a number of points to make. First, when we talk about the mental health area, there is furious debate, even amongst the psychiatric profession, about how much of the treatment and medications work. There are even quite authoritative figures who question that. So, we have an area of health the effectiveness of which is contested.

Secondly, we have all sorts of coercions in that area of health, and we have proven very unpleasant side effects of medication. So, even if you accept the medications are necessary, there are many instances of very negative side effects that arise out of research into mental health consumers.

Thirdly, you put that together with the fact that the mentally ill are often the most disadvantaged and alienated and you have a group of people who have less trust in the system that is seeking to treat them, often by coercion, than many of us would have in the standard medical system. It is understandable that they have less trust. So, you put all those things together and then envisage a situation where someone escapes and they go to family or friends; if they go to friends, there is a fair likelihood that the friends are also mentally ill people because often, when they start to lose contact with the rest of society, they end up with similar people.

If you put those things together—a system that can be very coercive and where the treatments can be very unpleasant, and a system that is not regarded with a great deal of affection

by many of the people going through it—but then say to someone that if they harbour this person who is either seeking to escape or even, as the Hon. Mark Parnell said, almost seeking a form of respite they can then be subject to criminal sanctions, you put that person in an impossible position. If it were a member of my family or a friend, I do not know how I would react. I would have to be fairly convinced that what they were going through justified returning them, and with the mental health system I might not always be convinced that that was the case: sometimes I might be and sometimes I might not. I would have to be fairly careful about whether I would turn in that person and breach my duty of trust with that person, even if I thought it was the best thing for them. I might not rush into that decision.

We put those in contact with the mentally ill in an impossible position by doing this. The point has often been made that, because of inadequate treatment services, many mentally ill people end up in gaol. This kind of provision will mean that not only the mentally ill but also their friends and relatives will end up in gaol.

Finally, there is no demand for this. I do not see from where the demand or evidence for this comes. Everything we have done in terms of mental health, the Bidmeade report and everything else, points in a very different direction. Dr John Brayley, the Public Advocate and former director of mental health, has made some very clear points about the need to engage this group. If you do not try to engage them in their treatment you can have counterproductive effects. Something like this, where we criminalise someone who is harbouring or sheltering—what you call it depends on the circumstances—is completely counter to the notion of engaging them. It is cruel, and I think it would be counterproductive.

There are many areas of health where we emphasise the need to engage. The classic one has been in the area of AIDS, hepatitis, and so forth, where we took the approach—our society was enlightened, although I do not know whether we would do it now—that even though people were engaging in illegal activities, such as needle use and injecting drugs, rather than arresting them at every opportunity we set up things like needle exchanges. That is the notion of harm minimisation. That kind of philosophy needs to come more into the mental health area, in particular, where we have a vulnerable population, rather than bringing down the heavy hand of the law when there is no demand for it from anyone and no evidence it will work. It is a knee-jerk, tough on law and order measure of the type we see in so many situations now, but applied against the most vulnerable people in the community, their friends and loved ones. As I have said, it is cruel, counter productive and I cannot understand why the opposition is pursuing it.

Motion carried.

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

That the council do not insist on its amendment No. 24.

The committee divided on the motion:

AYES (9)

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

NOES (10)

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

PAIRS (2)

Wade, S.G.	Holloway, P.

Majority of 1 for the noes.

Motion thus negatived.

[Sitting suspended from 17:55 to 19:45]

PUBLIC SECTOR BILL

In committee.

(Continued from 14 May 2009. Page 2394.)

Clause 2.

The Hon. G.E. GAGO: A number of questions were asked by honourable members during debate on clause 1, and I have brought back answers to those questions.

Members interjecting:

The Hon. G.E. GAGO: If honourable members would shut up I will; let us get on with it. When this bill was last in committee the Hon. David Ridgway and the Hon. Robert Lucas asked some follow up questions that arose from answers that the government had provided to their earlier questions, and I can provide the following response. They asked for an explanation regarding the difference between figures relating to public sector workforce numbers provided by me derived from the budget papers and, so they asserted, as stated by the Commissioner for Public Employment. The figures provided by the government were provided by the Office of the Commissioner for Public Employment and showed an increase of 10,959 employees, or 9,945 full-time equivalents, between June 2002 and June 2007.

The Hon. David Ridgway stated that for the same period the budget papers showed an increase of 12,085 full-time equivalents. This assertion appears to be based on a comparison of total public sector FTEs printed in the 2002-03 and the 2007-08 budget papers. The honourable member made the same assertion in this council on 23 July last year in debate on the Appropriation Bill. The answer provided to him on 29 July last year was that the comparison is spurious as the FTE data on the two budget papers covers a different scope of entities, and that remains the answer to his assertion.

The Hon. David Ridgway also asserted that the Commissioner for Public Employment had said that 17,017 extra positions had been created between 2002 and 2007. Again, he made this assertion on 23 July last year; again, he had been given an answer on 29 July last year that the government had not been able to source the statement attributed to the commissioner, and we are still unable to do so. So, the explanation for the difference in the figures I provided is correct. One of those asserted by the opposition is based on a misreading of the budget papers and the other is perhaps a myth, but at any rate it cannot be sourced.

Finally, the Hon. David Ridgway asked me to explain how we could have a 450 to 500 per cent increase in the number of employees over and above what was budgeted for. This seems to be derived from the same misreading of the budget papers that I alluded to earlier.

The Hon. Robert Lucas asked me a number of questions about the data regarding executives in the public sector, the Public Service and the South Australian Executive Service. As members would be aware, the Public Service comprises those employees appointed under the Public Sector Management Act. The public sector comprises those employees plus those appointed by the government under specific legislation, such as the Education Act, the Police Act, etc., or those engaged in government controlled entities, such as SA Water, the Motor Accident Commission and suchlike.

In response to an earlier question, I had provided the number of executives in the public sector based on June 2007 figures. The 2007 data showed that 1,191 executives were employed in the public sector. The Hon. Mr Lucas asked why I had relied on those figures as opposed to more up-to-date ones. The Commissioner for Public Employment informs me that the establishment of a new mechanism for data collection in the financial year 2007-08 has resulted in delays; therefore, data for executives across the whole of the public sector as at 30 June 2008 is not yet available.

I was able to provide more up-to-date data regarding the number of executives in the Public Service, which showed that, as of March 2009, there were 552 executives in the Public Service; of those, 428 have accepted a South Australian Executive Service contract. The South Australian Executive Service will be made available to public sector executives outside the Public Service in due course.

The Hon. Mr Lucas also sought greater explanation regarding the September 2004 decision not to make fallback available to executives. In 1994, the previous government made the policy decision to appoint executives only on contracts. This policy position was subsequently reflected in the Public Sector Management Act 1995; however, executives could be offered fallback provisions whereby, if they were not reappointed, they had a right to fall back to another position. The effect of this government's September 2004 decision was that, from then on, fallback provisions were not to be offered for either new executive appointments or for reappointments of existing executives—that is, executives would only be offered appointments on contract.

The Hon. Mr Lucas also queried why no data had been collected regarding the number of executives who had declined to give up tenure or their fallback right. Of course, in these circumstances, a position of executive would be offered to an employee. That employee may decline the offer, but they could do so for a variety of reasons that may or may not be related to the government's policy on tenure. Reasons for accepting or not accepting an executive position are not recorded in the payroll system; therefore, there has been, and currently is, no mechanism for gaining this information.

The Hon. Mr Lucas also asserted that the number of employees he identified might have been appointed as executives but with tenure. This assertion is inaccurate. All the employees he identified—I emphasise that: all the employees he identified—had been appointed either in acting positions, which are necessarily temporary, or on time-limited contracts. The Hon. Mr Lucas also questioned whether any executives had been appointed with some form of tenure since September 2004. He asked how this could be the case, given the government's current policy position. I am advised that, because of administrative law, in exceptional cases chief executives might be authorised to provide some form of tenure to an executive. I am advised that this has occurred extremely rarely, generally associated only with a short-term contract.

Finally, on the topic of executives, the Hon. Mr Lucas asked for an explanation of the EX, EL and MLS classifications of executive. The EX classification executives were the new class of executives arising out of the PSM Act 1995; EL executives are the class of executives from the act preceding the current PSM Act 1995; MLS executives are managing legal service executives. The Hon. Mr Lucas also asked about the changes to the legislation in respect of merit selection processes and whether these changes would lead to an increase in non-merit-based appointments. A merit-based appointment is, of course, one of the cornerstones of Public Service employment principles. The PSM Act gives the Commissioner for Public Employment the authority to determine categories of appointment or circumstances where merit selection processes are not required. I provided earlier in the committee stage a table setting out those categories and the numbers appointed pursuant to the different categories.

The chief executives then determine, in a given case, whether the case falls within any of the categories determined by the commissioner and so determine whether merit selection processes should apply. The bill removes the capacity for the commissioner to determine these categories. Rather, only where the bill itself or the regulations made under it so authorise can selection be other than by merit selection process. Therefore, the government does not expect that the legislative changes will lead to an increase in the number of employees appointed other than by merit selection process.

In relation to the Commissioner for Public Employment continuing to produce figures regarding merit-based selection, I am advised that the commissioner is currently undertaking work to determine effective reporting requirements in line with the proposed Public Sector Bill. I am not aware of any decision not to produce these figures. I believe that this answers all the follow-up questions asked by the Hon. David Ridgway or the Hon. Robert Lucas.

The Hon. D.W. RIDGWAY: I would like clarification of the minister's statement relating to the figures I have quoted from the budget papers. I think she said that they were a different scope and related to different entities. Can she just clarify the statement she made in relation to those figures?

The Hon. G.E. GAGO: I have been advised that it refers to the fact that different types of entities may not necessarily have existed or may have changed during that period. For instance, the addition of NRM into DEH means a significant increase in the number of FTEs that applied or were attributed to DEH employment in a very short period that previously could not exist as part of that entity.

The Hon. D.W. RIDGWAY: Nonetheless, if they appear as public sector employees and they did not exist in 2002—and I accept that the NRM boards were not established and the NRM employees were not in the system in 2002—they are counted as public sector employees today. Are you saying the budget figures are not accurate?

The Hon. G.E. GAGO: No; what I stated was that the comparison that you made from data from the two different budget papers covered a different scope of entities.

The Hon. D.W. RIDGWAY: I do not understand. This budget paper from 2002-03, in table 3.1, refers to public sector employment numbers, estimated full-time equivalents as at 30 June 2002, 66,933. Then, in table 216 from the 2008-09 budget papers, estimated full-time equivalents at 30 June 2008 were 81,775. I do not understand the minister saying that they are different entities. It is still the same public sector and Public Service. It is still the South Australian taxpayer paying the bill, yet we have gone up nearly 14,000.

The Hon. G.E. GAGO: The advice that I have been given is that, for instance, in terms of the scope of entities that I referred to, both the NRM and ambulance employees were previously outside the scope of the public sector, so they did not previously exist and now they do. They are two examples that I have been given.

The Hon. D.W. RIDGWAY: We have a number of amendments to deal with, so I will not go on for much longer. I am just surprised that those figures may well be included in the 2008 estimated figures, but we have had an increase—and I know you will dispute the actual numbers, so I will not drill down to the exact numbers—of many thousands over and above what was budgeted in the budget papers over the last seven years.

What I find disappointing, as I said in my second reading speech, is that I am yet to get any explanation of how a government can table a set of budget papers and then, over seven years, end up with an increase that the minister would say is somewhere between 6,000 or 7,000 employees more than were budgeted for. I would argue that it is probably closer to 10,000 more than were budgeted for; nonetheless, a significant number were not budgeted for.

From the very early stages of the second reading contributions, I have said that I want an explanation from the minister as to how that can happen in a modern government that says that it is a sound financial manager. I expect the Treasurer will tell us all on Thursday that he is a hero again and has done a wonderful job with our state's finances. I want to know how on earth you can allow the public sector to grow out of control the way this government has.

The Hon. G.E. GAGO: In terms of some of the other factors operating to distort the figures that are being given, the Treasury figures that have been given are, in fact, an estimate for that financial year, whereas the commissioner's figures are taken from payroll and are a single snapshot, if you like, of a specific point in time. They are measuring slightly different things, and it is not surprising that there are some differences.

The Hon. D.W. RIDGWAY: I accept that there will be some differences, but how on earth can it grow beyond what it has?

The Hon. G.E. GAGO: I have given you all the information I have.

The Hon. D.W. RIDGWAY: Is the minister telling me that she has no explanation as to why the numbers have grown beyond budget? We have a bill before us which has a number of amendments. Clearly, the government wants this bill passed so that it has a mechanism to help reduce the size of the public sector, yet it has not once come up with any reason or valid explanation, or even an admission, that they have let it grow beyond a level that they are happy with and it needs to be reduced. We have never heard that. Is the minister saying that she cannot explain how the public sector has grown beyond what has been budgeted?

The Hon. G.E. GAGO: A question was asked concerning an explanation about figures that were given. I have provided an explanation for that, so I have provided the information that was requested of me in terms of the scope of the entity. As I pointed out, we have questioned the figures that the Hon. David Ridgway has given in relation to the scope of that and also the manner in which the figures are collected.

The Hon. R.I. LUCAS: I thank the minister for the further responses to questions asked both during the second reading debate and at clause 1 of the committee stage. In putting some further questions, I remind the minister and colleagues that the context of this important debate on the Public Service is occurring as the state public sector is looking at a further round of budget cuts

of 1,600 full-time equivalent public servants. That comes on top of almost 1,000 announced in the 2008-09 budget and 1,571 announced in the 2006-07 budget. In three tranches since the 2006 election, this government has announced job reductions of approximately 4,300 or 4,400 full-time equivalents in three separate announcements and, of course, that does not forecast what might happen on Thursday, as well.

That is the context of much of this particular debate, and within that context and following on the seeking of further information by the Hon. Mr Ridgway, I note—and I will not pursue an argument with the minister because the minister has obviously given the best answer her advisers have been able to give her—that it just seems extraordinary that, in answer to a simple question as to how many executives there are in the Public Service in South Australia, the best this government, the Premier and his advisers can do is give me a number for two years ago—June 2007.

When you ask any business a simple question as to how many executives it has, if the chief executive said, 'I'm sorry, I can give you a number from two years ago as to how many executives we had in our business in BHP Billiton two years ago', you would be laughed out of business.

The Hon. D.W. Ridgway: It took them 12 months extra to get the detail of all those.

The Hon. R.I. LUCAS: We are told that in June 2007—we knew at that stage, two years ago—we had 1,191 executives in the public sector. Not many members in this chamber may have operated businesses—certainly the Hon. Mr Ridgway did—but, as I said, it seems extraordinary that we could have a situation such as this when you ask a simple question. This is a critical bill. It is important information to know how many executives there are in the public sector.

The minister rightly drew the distinction between the number of 1,191 executives and the other number she was able to provide of 552 executives, because in the South Australian executive service, under the Public Sector Management Act, it does not include all the executives in the health and education sector. So, all those executives sitting in the education department, health department and some of the other departments and agencies are not included in that particular number.

When one looks at the fact that education and health probably account for 55 to 60 per cent of the total of Public Service spending, as I said, to have a situation where they say, 'We've just got no idea of the total number of executives in the education portfolio or in the health portfolio, but we are able to tell you the number of executives in these other areas, and that is about 500. However, we can tell you that two years ago there were 1,191 executives in the Public Service in South Australia', that is just a failure of corporate governance. It is a failure by a government, by a Premier, by a Premier and cabinet, by the Commissioner for Public Employment's office, wherever the buck stops in relation to these issues.

As I said, I thank the minister for some of the further answers that she provided. However (and maybe I have not understood completely; I confess that I am not an expert on all issues in relation to the Public Sector Management Act), when I asked the minister whether or not people were being offered executive contracts with tenure she previously had indicated, 'They don't collect that information, so we don't know how many there are.' Tonight she indicated, 'Well, in very rare circumstances.'

I am not sure how we know that if we are not collecting information. It seems to be inconsistent logic if, in the first case, you say that you are not collecting information but tonight you are saying, 'It is only in very rare circumstances; there are only very few of them.' The minister said something to the effect that, in very rare circumstances, the Chief Executive could offer positions with tenure, but they tended only to be short-term contracts.

My understanding of tenure, as opposed to being offered a contract position, is that if I am offered tenure I have permanency in the Public Service; that is, I cannot be removed. I have a job for life—provided that I do not commit criminal acts and all those sorts of things. So, how do you get offered a position with tenure, which to me is permanency, and yet the minister's reply (and I accept that it was drafted for her) was that they tended to be only for short-term contract positions? I seek from the minister a response to that aspect of her answer.

The Hon. G.E. GAGO: I have been advised that there is no tenure for executive positions. If they fall back to a non-executive position there may be some tenure for that non-executive

position. If they fall back to an executive contract—which they can hold at the same time, usually at a lower level—they can then be guaranteed a further contract.

The Hon. R.I. LUCAS: Is the minister acknowledging that her previous advice to the committee was incorrect? Her previous advice to the committee was that chief executives could offer persons tenure, but they tended to be short-term contracts. She is now saying that is not the case. Can I clarify that she is now retracting her earlier advice in relation to whether or not chief executives can offer persons executive positions with tenure?

The Hon. G.E. GAGO: When I made reference in my answer to the fact that chief executives might be authorised to provide some form of tenure, my use of the word 'tenure' was in relation to the fact that they might have some right to further employment which might be ongoing if at a non-executive level. I believe that the Hon. Robert Lucas is using the word 'tenure' to mean a permanent form of employment in all cases.

The Hon. R.I. LUCAS: I think that is correct, and I thank the minister for her clarification. Rather than arguing whether or not her earlier advice was correct, and let us leave that argument to the side, I understand that the current advice—and I am not being critical of the minister because she is relying on advice of her advisers in relation to this—she is now giving to the committee is that the government or the chief executive can offer a person tenure. However, they might have a short-term contract as an executive, but if they are not reappointed as an executive after five years they still might have tenure at an ASO8 level, or whatever that position is now called—a senior admin position—but they still have tenure. They are permanent public servants, but they might not be executives.

The Hon. G.E. GAGO: The advice I have received is that what the honourable member says is true. However, normally, we give that further employment right only for shorter-term contracts.

The Hon. R.I. LUCAS: Yes, I understand for short-term contracts but, if the minister is saying that someone has been offered a job as an executive on a two-year contract (a short-term contract), but nevertheless would be offered a permanent Public Service job and security at a non-executive level, whatever the senior administrative level is called now, they nevertheless have permanent Public Service status or tenure and that security after their two-year contract, for example.

The Hon. G.E. GAGO: I have been advised that what the Hon. Robert Lucas says is so in some cases, but they are fairly uncommon. I have been advised that they tend to exist only where that person has had previous employment on an ongoing, long-term basis.

The Hon. R.I. LUCAS: The minister earlier in her replies indicated in answer to the questions that I had raised about a number of appointments (I raised a question about Mr Lance Worrall's appointment and also three director level positions within the planning and local government department)—and I do not have the exact words before me but she does—that all the positions I had referred to (she did not indicate by name) had not been appointed on tenure. Is that what the minister said?

The Hon. G.E. GAGO: I am quoting from my answers to questions. I stated that the honourable member's assertion that a number of employees that he identified might have been appointed as executives but with tenure was inaccurate and that all employees he identified had been appointed in either acting positions (which are necessarily temporary) or on time-limited contracts.

The Hon. R.I. LUCAS: So, given the recent clarification we have had about the advice about tenure, am I to understand from what the minister is saying that these persons are not going to have tenure back at the administrative level, the non-executive level? That is, when the minister is saying they do not have tenure, she means they do not have tenure in relation to an executive position or permanency in the Public Service?

The Hon. G.E. GAGO: I have been advised that those acting may have tenure in their previous positions but the others do not have tenure.

The Hon. R.I. LUCAS: I have only raised questions about four, I think, so the three I understand in the Department of Planning and Local Government were acting and are now going through some sort of a process in terms of a further appointment. I understand the minister's answer to mean they may, but when she says 'the others', the only other one I have referred to is

Lance Worrall. So the minister is saying that Lance Worrall has not been offered tenure at a non-executive position in the Public Service?

The Hon. G.E. GAGO: I have been advised that the staff member that the honourable member refers to does not have any ongoing employment rights and is on a fixed term contract.

The Hon. R.I. LUCAS: I am pleased to hear that. Can I clarify this? I am a couple of years out of date. The senior administrative level position beneath the executive service used to be ASO8. What is that position now?

The Hon. G.E. GAGO: I have been advised ASO8.

The Hon. R.I. LUCAS: The minister gave an indication relating to officers going into the South Australian executive service, and I think the minister indicated it was intended that similar offers are going to be made to the broader public sector at some stage in the future. In regard to the officers in the South Australian executive Public Service at the moment, when the government made its change of policy in September 2004 it offered these contracts, with some attractions in terms of signing the contracts and, I assume from the minister's answers, that they had to give up tenure to accept the South Australian executive service contracts. I assume a number of people did not take up the offer of an executive contract and reverted with the fallback position into the administrative sections (the non-executive sections) of the Public Service. I understand the minister has said that no information was collected on those numbers, but I want to clarify that there were, indeed, a number of executives—whilst it is indeterminate as to exactly how many there were—who looked at that option and decided they did not want to take up that option and reverted to their fallback position within the administrative sections of the Public Service.

The Hon. G.E. GAGO: I have been advised that there were a number but that we do not have the data on the exact figures.

The Hon. R.I. LUCAS: I would have thought that that would be something that would be useful to collect, but I am not critical of the minister: it is obviously not her responsibility to have collected that information. Is the minister in a position to indicate the government's policy relating to when it might extend the South Australian executive service-type provisions to education, health and other elements of the public sector?

The Hon. G.E. GAGO: I have been advised that no decision has been made as yet.

The Hon. R.I. LUCAS: In relation to the further information that the minister provided in her answer, which was the number of non-merit-based appointments, the minister answered the question and I think indicated—I am not quoting her exactly—that she did not believe that there would be any increase in the number of non-merit-based appointments as a result of this bill.

In the information that the minister has provided as to how it currently operates, I think that the minister has said that, as at 30 June 2008, 580 employees have been appointed pursuant to section 22(1)(d) of the Public Sector Management Act. In relation to the first category that the minister refers to there, we are told, 'The person to be appointed was clearly the best person for the position based on an assessment of merit and, therefore, the selection process would be an unnecessary procedure.'

If the selection process is an unnecessary procedure—and in relation to a merit-based appointment they go through a selection process—it says here, 'The person to be appointed was clearly the best person for the position based on an assessment of merit.' Can the minister say who makes that assessment of merit in relation to these 88 executives who were appointed?

The Hon. G.E. GAGO: I have been advised the chief executives and their advisers.

The Hon. R.I. LUCAS: What the minister is clarifying there is that the chief executive decides that among the number of people in his or her department one particular person is the best person for the position based on the chief executive's assessment of merit and, therefore, that person does not have to go through a selection panel process.

One of the issues, I guess, as we go through the committee stage—with the increased powers for chief executives and the significantly reduced role for the Commissioner for Public Employment—will be to see whether or not there is, in fact, going to be an increase in what I would call non-merit-based appointments.

Certainly, a lot of people mouth, in relation to public sector governance, that merit ought to be the basis of selection, with selection panels and other processes. There has, indeed, been

significant criticism—and, to be fair, I think under governments of all persuasions—relating to favourites or people being tapped on the shoulder by chief executives within various government departments and agencies.

So, that particular group of almost 100 appointments as at 30 June are being assessed by chief executives just saying, 'I think you're the best person for the job and you can have it,' which is the way that, in many respects, the private sector operates. So, we will see whether or not that particular number grows under the changes that the government has introduced here.

A number of other categories are listed, but the one on which I wanted to seek further clarification was the category of 65 appointments where the appointment was required 'to ensure that whole of government workforce policies can be effectively implemented, such as management of excess and work-injured employees'. I am wondering whether the minister can explain what processes are used there. I assume in relation to excess employees that the chief executive just nominates the person for a particular job, but in relation to work injured employees what is the process the chief executive has been using in relation to these particular non-merit based appointments?

The Hon. G.E. GAGO: These particular employees have priority in accessing suitable further employment.

Clause passed.

Clause 3.

The Hon. D.W. RIDGWAY: I move:

Page 7, lines 25 to 27 [clause 3(1), definition of *public sector representative organisation*]—Delete:

'means an association registered under the *Fair Work Act 1994* or the *Workplace Relations Act 1996* of the Commonwealth that represents the interests of public sector employees' and substitute:

—see subsections (5) and (6).

Page 8, after line 29—After subclause (4) insert:

(5) If the Commissioner is of the opinion that an association registered under the *Fair Work Act 1994* or the *Workplace Relations Act 1996* of the Commonwealth represents the interests of a significant number of public sector employees, the Commissioner must, by notice in the Gazette, declare the association to be a public sector representative organisation for the purposes of the Act.

(6) If the Commissioner is of the opinion that a public sector representative organisation has ceased to represent the interests of a significant number of public sector employees, the Commissioner must, by notice in the Gazette, revoke the declaration of the organisation under subsection (5).

I indicate my disappointment in the government having introduced this bill and now we are dealing with amendments to it. The Hon. Ann Bressington has an amendment between my second and third amendments, but my first two amendments are consequential and the third is related. I am disappointed that neither this minister nor any other member of the government has had the courage to say they have got it wrong over the past seven years and that there is a need for these amendments and changes to the Public Sector Management Act. I have great pleasure in moving these amendments.

The government states that the intent of the provisions of the bill is to expand consultation. The opposition's amendments restore the current position of the Public Sector Management Act 1995. We support proper consultation, and we should look at what it does in this bill. When the government expands consultation what is it really doing, given its track record on consultation? We have seen across a range of projects decisions this government has made where it has intended to consult, but we know that consultation is usually just telling the community after it has done it.

Currently, consultation under the act was required with the organisation representing significant numbers of employees. Enterprise agreements provided for wider consultation. What is this bill really doing? By requiring consultation with all existing recognised organisations, the government is ensuring that the ALP-affiliated unions, with relatively small numbers in the public sector, are brought in to offset criticism by the large non-affiliated public sector unions. It is interesting to note that the Australian Services Union (ASU) and the HSUA (Health Services Union of Australia) are both affiliated with the ALP.

The opposition amendment maintains the status quo and is not about giving the Public Service Association a favoured position, as any organisation with significant numbers must be consulted under the current act and under these opposition amendments. Smaller bodies representing a limited number of employees may be consulted or, where they are parties to an enterprise agreement, they will be consulted. We should not mandate the involvement of all the ALP-affiliated organisations within the limited numbers of the public sector. I am happy to move these two amendments.

The Hon. G.E. GAGO: The government opposes all three of the opposition's amendments. The definition of public sector representative organisations in clause 3 of the bill is an association representing the interests of public sector employees registered under the Fair Work Act 1994 or the commonwealth Workplace Relations Act 1996. The requirement to consult with representative organisations on matters that affect public sector employment is now contained within the Public Sector Principles, part 3, clause 5, under 'Employer of choice', section 5.

The principles provide a broad, general obligation that requires public sector agencies to consult public sector representative organisations on matters that affect public sector employment. This provision replaces section 7(6)(b)—16 and 24—of the Public Sector Management Act by stating the requirement to consult with representative organisations up front in the principles rather than leaving them hidden in individual provisions. The requirement is given greater prominence.

Revision to the wording equivalent to the existing wording of the Public Sector Management Act is not supported. The suggested wording narrows the requirement to consult. It does so because it confines the definition of 'representative organisation' to an organisation that represents the interests of a significant number of employees. This excludes organisations representing a smaller number of employees. A good example of this is the Health Services Union of Australia, a perfectly legitimate union which, despite having possibly hundreds of members in the public sector, is an organisation with which the government is not, under the current provisions, obliged to consult.

Effectively, what the opposition is seeking to do is provide a preference for some unions over others. The government does not believe that this parliament should be enacting those sorts of preferences and is surprised that the opposition is doing so. Also, the proposed wording narrows the circumstances in which there is an obligation to consult. The bill's wording provides a broad obligation to consult on matters that affect public sector employment. The proposed wording confines this to circumstances where a significant number of employees will be affected. I am not sure what the argument is that would support such a narrow view.

The Hon. M. PARNELL: In my second reading contribution, I said I would be opposing these first two Liberal amendments, and nothing has happened in the meantime to make me change my mind. This is a very simple matter of whether or not we support the right of freedom of association. The idea that the Commissioner for Public Employment can decide who are valid worker representatives, I think, is most inappropriate. It is up to workers to decide who they want to represent them. They will join a union based on a range of factors, including the area of work, coverage, any benefits and advocacy services offered. I do not think it is appropriate to limit in the way proposed by these amendments the range of unions that can represent workers in the public sector.

The Health Services Union of Australia is one union that has already been mentioned. My information is that there are some 580 publicly employed health professionals covered by that union, but it might not be a majority of their total membership. Similarly, we have the Association of Professional Engineers, Scientists and Managers who would have difficulty being recognised under this regime.

I do not pretend to be an expert on which unions are affiliated with the Labor Party and which are not: that is not the issue. The issue is that workers should be entitled to choose their representatives, and I do not think it is appropriate for us to put barriers in the way of legitimate unions representing their workers in negotiations with their public sector employer. So, that covers the first two amendments.

I will consider the third of Mr Ridgway's amendments when we get to it, but it relates to a different issue, so we can look at that one separately. However, these two amendments relate to the definition of 'public sector representative organisation'. If the will of the committee is not to interfere with that definition, maybe the Hon. Mr Ridgway's third amendment can stand on its own, and we will deal with it then.

The Hon. DAVID WINDERLICH: I also will not be supporting these two amendments. I think that there is a fundamental point of freedom of association. I think it is strange that the Liberal Party is seeking to have some unions more equal than others. Imagine if we followed this logic about significant numbers in other areas of government policy. Would we only consult with significant communities? Would we stop consulting with small towns? Would we perhaps not ask the Eyre Peninsula, because it is not a significant number of the population? Either we are consulting or we are not; we should not put limits around it or infringe the rights of workers to form unions as they see fit and then exercise their rights and have a say in negotiations with governments as they see fit. I believe this is a very illiberal move by the Liberal Party.

The committee divided on the amendments:

AYES (8)

Brokenshire, R.L.	Dawkins, J.S.L.	Hood, D.G.E.
Lawson, R.D.	Lucas, R.I.	Ridgway, D.W. (teller)
Schaefer, C.V.	Wade, S.G.	

NOES (9)

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

PAIRS (4)

Stephens, T.J.	Zollo, C.
Lensink, J.M.A.	Holloway, P.

Majority of 1 for the noes.

Amendments thus negatived.

The Hon. R.I. LUCAS: Can I have a clarification from the minister? Under the definitions in clause 3, there is a new definition of misconduct. Was that previously covered in some other piece of legislation? If it was not, what were the reasons for its introduction in the Public Sector Management Act?

The Hon. G.E. GAGO: I have been advised that the bill before us is very differently structured to that of the PSM Act and that we need to have a new definition of misconduct which then allows us to rely on the code of conduct.

The Hon. R.I. LUCAS: I take it from what the minister is saying that, under the current act, there is no definition of misconduct and it is being introduced for the first time in this legislation.

The Hon. G.E. GAGO: I have been advised that the PSM Act did not need a definition of misconduct because it was outlined in division 8, section 57 under General Rules of Misconduct. That outlined a number of conditions, if you like, in relation to failure in the provision of acts; things like neglect or indolent in the discharge of duties, absent from duty, guilty of disgraceful or improper conduct, etc. It was structured in a different way so that, although there was no specific definition of misconduct, it did not need it because conduct that was not acceptable was described under those rules.

The Hon. R.I. LUCAS: The only point I make in relation to that is that misconduct is a broader provision in the current Public Sector Management Act because, for example, if you were to dismiss a Commissioner for Public Employment one of the grounds is being guilty of misconduct. So, the notion of misconduct spreads not just at the levels of public service employees but right through to the Commissioner for Public Employment and the grounds on which a commissioner can be dismissed. That is why I was asking the question as to the definition that has now been included in the legislation for the first time. I note the minister's reply that it was not structured that way in the current act but, in saying that, the simple response is that there is no definition of misconduct under the definitions clause in the current act. This has now been included for the first

time and, as I said, it is a broader provision because it does relate also to dismissal provisions for the Commissioner for Public Employment.

I do not seek to pursue an argument on that; I just wanted to clarify it. The term 'misconduct' does include, however, making a false statement in connection with an application for engagement as a public sector employee. Is it the minister's advice that that already exists, as well, or is that now a broader provision that has been included in the definition of misconduct?

The Hon. G.E. GAGO: I have been advised that there has always been an area of uncertainty around false statements in applications. There was a level of uncertainty around it and the new provision clarifies it.

The Hon. R.I. LUCAS: I thank the minister for that. I asked about the definition of 'public sector agency' in the second reading and the minister provided a reply that the Ombudsman was a public sector agency for the purposes of the Public Sector Management Act. I assume, therefore, it is intended to be an agency under this bill, as well. Can I just confirm also that the Auditor-General's Office is also a public sector agency?

The Hon. G.E. GAGO: Yes to both of those.

The Hon. R.I. LUCAS: The definition of public sector agency has what is, to me, a small but curious additional element. On my reading, paragraph (b) of the definition includes for the first time 'a chief executive of an administrative unit'. If one looks at the Public Sector Management Act at the moment, chief executives are not listed as public sector agencies.

I ask the minister to clarify whether that is indeed the case and, if my reading of the bill is correct, will the minister indicate why the government has included 'a chief executive of an administrative unit' under the definition of 'public sector agency' for the first time?

The Hon. G.E. GAGO: I have been advised that aspects such as the right to terminate or take disciplinary action are conferred on the public sector agency and therefore need to include the chief executive.

The Hon. R.I. LUCAS: This covers later provisions, I assume, because the right to terminate provisions is a matter of some contention and may be subject to proposed amendments later in the debate. There are current procedures in relation to a role for the Commissioner for Public Employment, for the Governor and for the Executive Council. This government, as I understand it, wants to move this back to agencies.

I understand the minister to be saying that the government is now seeking to define all chief executives of administrative units as public sector agencies because they are going to be given the power to terminate. Where the bill may well refer to the public sector agency having the power to terminate, that is to be interpreted, in those cases, to be the chief executive of that particular administrative unit. That is, as I understand it, what the minister has just outlined to the committee; we can explore that later when those particular clauses come before the committee.

I think it does raise a curious notion that, in essence, you are going to have the transport department as a public sector agency and the chief executive, Mr Hallion, will also be a public sector agency by himself. So, the chief executive is a public sector agency, his department is a public sector agency and possibly other sections are as well when we look at other provisions of the bill.

Under paragraph (f), 'public sector agency' means a body corporate that is subject to control or direction by a minister. A body corporate like Funds SA, for example, has reasonably general control and direction provisions from the minister but with significant restrictions; that is, the minister is not able to direct Funds SA in relation to issues such as funds investment, which is obviously an important part of Funds SA.

Will the minister clarify through advisers whether bodies such as Funds SA (and there are others), where there is a general control and direction provision with a significant restriction on that general control and direction, will be defined as public sector agencies?

The Hon. G.E. GAGO: I have been advised that there are no changes to that provision; they are identical.

The Hon. R.I. LUCAS: I understand that, but what I am asking is: are bodies like Funds SA, for example, with that restriction, public sector agencies for the purposes of this legislation?

The Hon. G.E. GAGO: You are right, yes, they are included, but that does not override their independence, which is prescribed under other legislation and which remains unchanged and unaffected by this.

The Hon. R.I. LUCAS: Thank you for that clarification, minister. Under the existing act there is a provision which says 'under the definition of public sector agency', but does not include a person or body declared under subsection (2) not to be an agency. Given that I suspect we are unlikely to finish the committee stage this evening, I am wondering whether the minister and her officers could provide to the committee a list of any bodies that have been so declared not to be public sector agencies under this provision. I am happy for the minister to take that on notice, if she is prepared. I ask the minister in her reply to also address the issue that, under the new definition, there is a new paragraph (i). Paragraph (j) mirrors the existing legislation, but for some purpose the government has included a new paragraph (i) which says:

> but does not include—
>
> (i) A person or body declared under an act not to be part of the Crown or not to be an agency or instrumentality of the Crown.

When paragraph (j) already exists in the legislation and is proposed in the bill, what purpose does paragraph (i) serve, and is a particular problem being addressed by this new paragraph in the definition?

The Hon. G.E. GAGO: I have been advised that that change picks up bodies like the Legal Services Commission and the Aboriginal Lands Trust, which would otherwise be potentially covered and it makes it clear that they will not be covered.

The Hon. R.I. LUCAS: Just for clarification, surely under the current act they would be excluded under the paragraph in the current drafting, would they not—a person or body declared not to be a public sector agency?

The Hon. G.E. GAGO: They would need to make a declaration.

The Hon. R.I. LUCAS: In relation to the definitions for remuneration and remuneration level, can the minister clarify that remuneration still allows government decisions in relation to performance bonuses and retention allowances?

The Hon. G.E. GAGO: I have been advised that it does not stop or prevent those allowances.

The Hon. R.I. LUCAS: The substantive remuneration level definition reads as follows:

> substantive remuneration level of an employee of a public sector agency means a remuneration level determined by the public sector agency in accordance with the regulations.

It comes back to what I was asking earlier, that is, the curious definition that the chief executive is a public sector agency. Are we to read into this that the chief executive substantive remuneration level means a remuneration level determined by the chief executive, so that the chief executive will have the power to determine the substantive remuneration level because the government has for the first time included chief executives as a public sector agency?

The Hon. G.E. GAGO: No is the short answer.

The Hon. R.I. LUCAS: Can the minister indicate on what basis that is incorrect, because the minister clarified earlier that they have included for the first time that a chief executive of a department is a public sector agency. So, Mr Hallion in transport is a public sector agency. The 'substantive remuneration level' definition makes it clear that a substantive remuneration level means 'the remuneration level determined by the public sector agency'. The Chief Executive, Mr Hallion, is the public sector agency under the definitions in the act. So, the substantive remuneration level, under what this government is proposing, can mean that the chief executive determines the substantive remuneration level for individual employees.

The Hon. G.E. GAGO: Section 34, 'Conditions of executive's employment', makes it clear, under subsection (1), that the employment of a chief executive of an administrative unit is to be subject to a contract made between the chief executive and the Premier in consultation with the unit's minister.

The Hon. R.I. LUCAS: I think the minister is missing the point. Section 34 talks about the conditions of, for example, Mr Hallion's employment. I am not interested in Mr Hallion's employment. What 'substantive remuneration level of an employee of a public sector agency' is

talking about is that Mr Hallion has, say, 500 employees. We are not talking about what Mr Hallion's employment contracts are under section 34 because, as the minister has outlined, that is a contract between the minister and Mr Hallion (and I am not singling out Mr Hallion, but he was a witness at the Budget and Finance Committee meeting yesterday). The 'substantive remuneration level' definition here provides that the substantive remuneration level of an employee of, say, the transport department (the 500 people) means the remuneration level determined by the public sector agency. That can be Mr Hallion, the Chief Executive, in accordance with the regulations, and so on. If the minister is saying that my interpretation is wrong, how is it wrong, given her answers to the earlier questions in relation to the chief executive?

The Hon. G.E. GAGO: Yes, that is so.

The Hon. R.I. Lucas: What is so?

The Hon. G.E. GAGO: If the member gives me a chance, I will explain. The chief executive does set the remuneration for employees, but also in accordance with appropriate regulation and industrial awards and agreements.

The Hon. R.I. LUCAS: It pays to be consistent in this committee, because the first answer was no, full stop, and now it is yes. In the space of two minutes we go from no to yes. I can only advise other committee members, if they are interested, to perhaps persist with their questions. They may well get the answer eventually.

The Hon. G.E. Gago interjecting:

The Hon. R.I. LUCAS: The question was very clear. I read the definition to the minister. Anyway, the minister is now standing by her latest—and, I think, more accurate—response. This issue of the public sector agency and the definition does have flow-on implications in other provisions of the legislation, and that is why I am raising it in the definition clause, because I indicated that, in my view, it was a curious provision that the government had introduced into the legislation. It has wider ramifications when one looks at other provisions in clauses within the bill, and this is but one of them.

There is a new definition. As best as I can see, there does not appear to be a current definition for what is deemed to be a term employee. A term employee means an employee engaged for a specified term or for the duration of a specified project. Can I clarify whether that is what most of the rest of the world and we would refer to as a contract employee, or is a term employee different from someone who has taken a contract position?

The Hon. G.E. GAGO: It is analogous to a fixed term contract.

The Hon. R.I. LUCAS: Under the current act there is a definition of what is called a temporary position, which does not appear to be reflected in the bill. The act provides:

> temporary position means a position—
>
> (a) with duties that—
>
> (i) are of a temporary nature; or
>
> (ii) are required to be performed urgently without the delay involved in conducting selection processes; and
>
> (b) with a term of employment not exceeding 12 months;

That definition has been removed from the bill. Will the minister indicate the government's thinking in relation to the removal of the capacity for temporary positions?

The Hon. G.E. GAGO: I have been advised that it has been replaced by 'term employees'.

The Hon. R.I. LUCAS: I will not persist in relation to that. It seems a curious change. 'Temporary position' has a term of employment not exceeding 12 months. If term employees are reflecting, as the minister has confirmed, the contract positions, well, contract positions can be for less than 12 months or 12 months but up to five years. I do not know whether they are longer than that, but my understanding is up to five years. I do not intend to pursue that difference at this stage.

Clause passed.

Clause 4.

The Hon. R.L. BROKENSHIRE: The bill provides:

The objects of this act are as follows:

(a) to promote a high performing public sector that—

- focuses on the delivery of services to the public;…

(b) …

- a code of conduct to enforce ethical behaviour and professional integrity in the public sector;…

(c) to ensure the public sector is viewed as an employer of choice;

(d) to encourage public sector agencies and employees to apply a public sector-wide perspective in the performance of their functions;

(e) to make performance management and development a priority in the public sector;

(f) to ensure accountability in the public sector;…

Given the opportunities for nepotism, bullying and harassment, and the fact that with the overall framework of this bill there will be a diminishing proactive response from the public sector, how does the minister believe the objects of this legislation will be achieved?

The Hon. G.E. GAGO: The chief underlying assistance or guidance for this will be within the code of conduct. Generally, though, it is a statement of principles that are adhered to, as well as general guidelines that are generally enshrined within the code of conduct.

Clause passed.

Clause 5.

The Hon. DAVID WINDERLICH: I move:

Page 10, after line 12 [clause 5(5)]—After dot point 5 insert:

- ensure public sector employees are provided with an adequate level of resources for the tasks they are required to undertake;
- ensure public sector employees are not unreasonably disadvantaged as a result of relocation.

The amendment is very simple, obviously so. My first amendment simply makes the point that a public sector can implement a government's resources in a timely manner only if there is some relationship between the resources it has and the response required. Without those resources there will be a lack of responsiveness or an overworked Public Service that breaches the much-touted work/life balance apparently valued by the government. Therefore employees are entitled to have the necessary resources to deliver policies of the government of the day.

These are not matters about which we can be precise in legislation, but we can give some direction and that is what these principles seek to do. The second of the principles, again, recognises that there is a necessity to relocate public sector employees from time to time, to enable the government to respond to changes in priorities and to more efficiently manage resources, but that the public sector employees should not be unreasonably disadvantaged or suffer harm as a result of such relocation. The interests of the public servants in this is obvious but there is a broader community interest.

The implementation of shared services is a very good example of where the relocation of public servants would have caused significant disadvantage not just for the employees but also for the communities in regional South Australia where they live. The government policy outlined in the 2006 budget would have caused enormous disruption to the employees and would have adversely affected the communities and the economies of which they were a part. This shows that these issues are not just about the Public Service itself, although that is important, but also it contributes to the employment and the economic base of communities.

The Hon. G.E. GAGO: The government does not support this amendment. I am not sure whether this is an intended consequence of the suggested amendment, but its effect is to give a positive right to an employee group or public sector union to challenge a budget decision on the grounds that it provides inadequate resources for his or her task. The already difficult tasks of prioritising between a range of initiatives will become contingent on an employee's acceptance of the adequacy of resources provided to them. If a budget decision is overturned and additional resources are compelled to be provided to the particular employee, from where are those resources to come?

The notion of adequate resourcing is inherently ambiguous. Given an identified task we would probably all come up with a different notion as to what constitutes adequate resourcing, and that is if we were faced with only one identified task. We would come up with radically different views if faced with 100 tasks and a set amount of resources. So, how would we expect a court or tribunal to determine whether or not resourcing was adequate? Just as importantly, why would we want to? Resourcing is classically a policy decision which should be left to government and is not a matter for the courts.

The amendment presumably is not intended to have some of these consequences but rather is intended to protect employees from action being taken against them for non-performance where the explanation for the lack of performance is that they simply cannot do the task assigned to them with the resources at hand. If that is the case it is unnecessary. Any decision regarding an employee can be appealed. If appealed it will be overturned if harsh, unjust or unreasonable.

If the adequacy of resources is relevant to the circumstances leading to the decision, it can be considered in deciding whether the decision is harsh, unjust or unreasonable. If the inadequacy of resources with or without other factors renders the decision harsh, unjust or unreasonable, the decision will be overturned.

It is theoretically possible that a decision might be made regarding the performance of an employee in circumstances where the employee had been given adequate resources but that in all the circumstances the tribunal finds that the decision was not harsh, unjust or unreasonable and so declines to overturn it. But that is as it should be. All the circumstances should be taken into account, not just one of them.

In terms of the second part of the amendment, the government does not support it, either. The principles are intended to be of general application. The employer-of-choice principles are to be applied in respect of employees regardless of the nature of the decision being made. The point of the principles is to obviate the need for specific rules, so to identify one type of decision (relocation) and elevate a rule specific to it in the principles runs completely contrary to the purpose of the principles.

The suggested amendment is also unnecessary. Amongst other things, the principles require that an agency treat employees fairly, justly and reasonably. This will apply to any decision regarding relocation, and any decision regarding relocation can be reviewed and, if reviewed, will be overturned if it is found to be harsh, unjust or unreasonable. So, adequate protections already exist in the bill. They are the right protections.

If a decision regarding relocation is harsh, unjust or unreasonable, it should be overturned, but if a decision regarding relocation is not so, it is difficult to see why it should not stand. Yet the amendment is apparently intended to allow for a decision that is neither harsh, unjust nor unreasonable to be overturned. Put another way, the amendment is apparently intended to allow a decision that treats an employee fairly, reasonably and justly to be set aside, and this does not make much sense.

The suggested amendment will also cause confusion. What is reasonable disadvantage? More importantly, what will it be construed to mean so that it adds to the requirement of fair, just and reasonable treatment or so that it adds to the requirement that the decision not be harsh, unjust or unreasonable? I would ask the Hon. Mr Winderlich to explain what it does mean that is different from those requirements.

I would also like him to explain why he has selected relocation of all the decisions that might be made in respect of any employee. Why not termination or demotion, etc.? All these could conceivably give rise to unreasonable disadvantage, whatever that is construed to mean. Is he really saying that it is okay to suffer unreasonable disadvantage as a result of any of these decisions, not just relocation? I am sure he is not saying that, but that is an inevitable construction of the suggested amendment. These are just some of the problems with the amendment and show why it ought not to be supported.

The Hon. D.W. RIDGWAY: I rise on behalf of the opposition to indicate that, while we have tremendous sympathy for the second component of the Hon. Mr Winderlich's amendment in relation to the government's policy of shared services and a range of positions being taken out of country areas or the position being transferred away and people having to move to the city to retain their employment or lose their position, we concur with the government about the first dot point of the Hon. Mr Winderlich's amendment where it could present an opportunity for someone to appeal against a decision that was actually a budget decision. While it has some small merit, we are

unable to support the amendment on the basis that we are unable to support the first component of the amendment, notwithstanding the tremendous sympathy and support we have for the second part.

The Hon. M. PARNELL: The Greens support the amendment. I do not hold the same fears for its potential application that the minister does. It seems to me that the honourable member's amendments add a couple of extra dot points to a list in subclause (5) under the heading 'Employer of choice', which presumably is a list of things that the public sector agency should seek to do to help encourage people to join the public sector.

I do not accept that this list of things in any way interferes with the government's ability to set a budget, and I doubt very much whether these dot points would be justiciable or, in any event, not any more justiciable than anything else that is in these dot points. For example, what is already in the bill under the heading of 'Excellence' is, 'The public sector is to move resources rapidly in response to changing needs.'

Presumably someone who does not think that that is occurring could go to court and try to sue the government for not moving resources rapidly in response to changing needs, in the same way that the government is fearful that someone could try to bring legal action under the Hon. David Winderlich's amendment to say that they have not been provided with an adequate level of resources for the tasks they are required to undertake.

I do not believe that either of those situations is really going to give rise to a spate of legal proceedings. I think that what we are really doing in this legislation is setting broadbrush objectives about what we require of our public sector. I do not think that we need fear the inclusion of these items. Regarding the choice of the honourable member to pick out relocation amongst a range of things that might disadvantage an employee, again, relocation is at the more radical end of possible outcomes for a worker, involving things that might result in their having to give up their job if they have to move.

So, I have no problem with the honourable member including that under this list headed 'Employer of choice'. I think that these two additions both add to the flavour of the bill without giving rise to the potential for costly additional legal action. I will be supporting the amendment.

Amendment negatived; clause passed.

Clause 6.

The Hon. R.I. LUCAS: I have not read it but I assume there is a current public sector code of conduct which can be made available to members of the committee.

The Hon. G.E. GAGO: Yes.

The Hon. R.I. LUCAS: I thank the minister for that. Future changes in the public sector code of conduct, I assume, are entirely the prerogative of the government of the day, or is there some process that the public sector code of conduct has to go through before it can be changed?

The Hon. G.E. GAGO: The maintenance and review of the code of conduct is the responsibility of the commissioner under clauses 13 and 14, and the changes to that come under his or her responsibility.

The Hon. R.I. LUCAS: So, if the minister has that current copy of the Public Service code of conduct, do I take it that that has been issued by the current or previous commissioner? Has current commissioner McCann issued the code of conduct the minister will provide to us, or was it issued by the previous commissioner?

The Hon. G.E. GAGO: I have been advised that it was the previous commissioner.

The Hon. R.I. LUCAS: In relation to the public sector code of conduct, given the provisions and changes in the role of the Commissioner for Public Employment and the powers the Premier has given in a number of provisions—I have not had a chance to link them all together, but I will try to do it overnight—does either the minister or the Premier under this proposed bill have the capacity to direct the commissioner in relation to the code of conduct?

The Hon. G.E. GAGO: I have been advised that, yes, the commissioner is subject to the direction of the Premier and minister as per clause 16(3)(a), under which it must be communicated to the commissioner in writing and must be included in the annual report of the commissioner.

The Hon. R.I. LUCAS: Under clause 16, the minister rightly points out that the minister can direct the commissioner. The minister has to communicate it in writing and the commissioner can then include it in the annual report. What is clear from this then is that this particular provision provides that public sector employees must observe the public sector code of conduct. So, the minister and any future government—or, indeed, this current government—can direct the commissioner in relation to the public sector code of conduct. Having then directed the commissioner to change provisions, redraft it, put something else in there that he or she objects to—whatever—every public sector employee must observe the public sector code of conduct.

I have not discussed this with my colleagues, so I can only speak personally. I think that is a worrying set of circumstances. In essence, there is no obvious role for the parliament in relation to this. The legislation provides that public sector employees must observe the public sector code of conduct. There is no notion of it having the equivalence, say, of a regulation where it is disallowable if some future government or minister, for example, were to introduce unreasonable or onerous provisions into the public sector code of conduct through this mechanism and direct the commissioner to make these particular changes. The code of conduct then has to be changed by the commissioner and that is it—there is no role for the parliament.

I am not sure whether members of the cross benches and others are interested in the point that I am making. The fact that we are obviously not going to conclude the debate on this tonight I think may well be a cause for some reflection in relation to a combination of clause 6, the commissioner's roles and functions and also the extent to which there is a ministerial direction.

The other issue that I raised in relation to that ministerial direction, which we will get to eventually, is that there is no requirement to have that ministerial direction tabled within six sitting days, which I think was an issue that was discussed earlier.

I thank the minister for indicating that she will provide a copy of the current public sector code of conduct. I do not speak on behalf of the party in relation to this particular concern, but I will just flag on a personal basis that it is clear as to how this could be amended. I think it is an issue that ought to be at least considered by members of the committee.

The Hon. G.E. GAGO: I have been advised that this provision—this capacity for the minister to be able to direct the commissioner—is substantially the same provision that currently exists and would have existed under the Public Sector Management Act when the former government was in power. It obviously did not find that there were any problems with such a provision. It is quite astounding that the previous government found this arrangement quite acceptable and did not find any reason to make changes, yet suddenly it is finding reason for change.

The Hon. R.I. LUCAS: Can the minister indicate whether there is in the current act an equivalent provision to clause 6, which provides that public sector employees must observe the public sector code of conduct?

The Hon. G.E. GAGO: The short answer is yes, under section 6E(a).

The Hon. R.L. BROKENSHIRE: I flag that I will move that we reconsider this clause at the end of the committee stage, because I do not believe it is relevant whether or not the provision was set up like this in the existing act or the new act; the fact is that all bets are off when you bring in a bill. There is an opportunity to consider improvement to the legislation and given that, in my opinion, this legislation is more draconian than the current situation, I think there probably does need to be some check and balance for the parliament in the future when it comes to public sector codes of conduct.

The Hon. G.E. GAGO: I cannot help but comment that it is the very same allegedly draconian legislation that was in place when the honourable member was part of the former Liberal government.

Clause passed.

New clause 6A.

The Hon. A. BRESSINGTON: I move:

Page 11, after line 2—After clause 6 insert:

6A—Whistleblowing

Each public sector agency must—

(a) ensure that a public sector employee (with qualifications determined by the Commissioner) is designated as a responsible officer for the agency for the purposes of the *Whistleblowers Protection Act 1993*; and

(b) ensure that the Commissioner is informed of any disclosure of public interest information made to such a responsible officer under that Act if the person making the disclosure consents to the Commissioner being so informed; and

(c) ensure that an investigation of a disclosure of public interest information to such a responsible officer under that act is completed within 28 days of the disclosure.

This amendment seeks to ensure that public servants are made aware of the existence of the Whistleblowers Protection Act 1993 and to make it directly relevant to their employment in the public sector by linking the two acts.

In discussions on this amendment the minister argued that this was not necessary because we have the Whistleblowers Protection Act that stands on its own; however, I have heard many comments in the hallways here that the Whistleblowers Protection Act is not worth the paper on which it is written. So I believe this particular amendment is necessary in response to the many complaints and the many contacts that my office has had with employees in the public sector who have wanted to expose inappropriate conduct by their supervisors or fellow workers, only to have been bullied or intimidated in the process and some moved out of their positions as a result of their efforts. It also places the onus on the commissioner to enforce the requirement under the Whistleblowers Protection Act that agencies appoint a responsible officer to receive public interest disclosures.

According to some public servants, what is happening at present is that if they want to make a disclosure about a manager or supervisor the only person they have to make that disclosure to is the person about whom they have concerns, and this puts them in an untenable situation. This amendment seeks to ensure that embattled public servants know that they are entitled to appropriate remedy should they be wrongly or unlawfully sacked or disciplined or should they experience reprisals in the workplace.

The Hon. G.E. GAGO: The government opposes this amendment. The Whistleblowers Protection Act 1993 provides a complete code for disclosure of public interest information by a public sector worker, including the means by which disclosures may be made, the obligations of those to whom the report is made, and appropriate protections for those making disclosures. The government believes that no good purpose would be served by having two statutory regimes setting out the rights and obligations of people involved in whistleblower matters. This is all the more the case where, in some respects, the foreshadowed amendments are inconsistent with the Whistleblowers Protection Act itself.

Turning to these particular amendments, paragraph (a) is opposed because section 5(4) of the Whistleblowers Protection Act already provides for responsible officers. If there is any issue regarding their appointment or their qualifications, that is classically a matter for the Whistleblowers Protection Act.

Paragraph (b) is opposed. It requires that in all cases the responsible officer inform the Commissioner for Public Employment of the nature of the disclosure, but there will be many occasions where it will not be appropriate for the commissioner to be informed. His role relates to public sector employment. Disclosures relating to police matters, for instance, would rarely be appropriate to be disclosed to the commissioner.

Paragraph (c) is opposed because a 28 day time limit on completion of an investigation takes no account of the complexity and sensitivity of some of the matters raised in whistleblowers' complaints. An arbitrary time limit like this will lead to hasty and botched investigations which can be in no-one's interest. The nature of disclosure and subsequent investigations being often sensitive and complex suggests that such disclosures are not routine.

This highlights the need for an appropriate level of expertise and careful consideration for the way in which responsibilities for investigations are configured. This has been contemplated by the Whistleblowers Protection Act 1993, which lists circumstances and the appropriate corresponding authority. The provision of clarity of disclosure paths is important, and there is no anecdotal or recorded evidence to suggest that the current path provided under the Whistleblowers Protection Act is inadequate.

The Hon. A. BRESSINGTON: Given that all is well and good in the world of the whistleblowers, can the minister provide to this chamber the people who have been nominated as responsible persons in each government department to receive public interest disclosure statements made by whistleblowers, how long they have been in those positions and how many public interest disclosure statements they have received over the past 18 months to two years?

The Hon. M. PARNELL: If the minister wants to consider her answer, I will ask a very similar question. The minister's objection to paragraph (a) was that this is a duplication because the honourable member's amendment basically requires that each public sector agency has to ensure that a public sector employee is designated as a responsible officer. If I understood the minister's first response, she said that such people already exist. The honourable member has asked who they are and whether there a list somewhere. That is my question as well: do they exist? If they do not exist in practice, then I think relegislating to create those positions is not a bad thing.

The Hon. G.E. GAGO: I am happy to take that question on notice and bring back a response. I do not have those details with me.

The Hon. D.W. RIDGWAY: I indicate that the opposition has always been a strong advocate of open and accountable government. Certainly, we think that this is an important principle to support. I indicate that we will be supporting the amendment.

The Hon. R.D. LAWSON: In addition to the comments just made by my leader, I welcome this amendment from the Hon. Ann Bressington. It highlights a grave deficiency in the Whistleblowers Protection Act. I see the Hon. David Winderlich has a bill to amend the Whistleblowers Protection Act by providing for disclosure to the media in certain circumstances, rather than to the hierarchy presently required, and I think there is a good deal to commend that.

It is all very well for the government to say that this is already covered in the Whistleblowers Protection Act, but the minister is unable to indicate the responsible officers under that act. She may eventually be able to when she finds it. The Whistleblowers Protection Act, although it was introduced in 1993 amongst much heralding, has really been an abject failure. It provides certain protection to people who make disclosures—for example, it protects them from civil or criminal liability for so doing—but it has hardly encouraged whistleblowers to come forward. Whistleblowers, I suspect, simply do not believe that they will receive the protection which the act gives them. They accept that they will not be civilly or criminally liable, but they do not accept and they would be fools to accept the proposition that they will not be subject to reprisals from superiors when they make disclosures of this kind.

The reason that the legislation has not been a success is (a) that the structures I do not believe are there and (b) that the incentives are not there. We need an anti-corruption commission in this state but we also need a more effective whistleblowers act. This government is not going to open that act for debate. Here is an opportunity to improve the whistleblower system by introducing it into the public sector legislation, and I am glad we are supporting it.

The Hon. R.L. BROKENSHIRE: I rise to indicate that Family First will also be supporting this. I cannot understand the minister's answer on behalf of the government. It is similar to the answer we get in here when those of us, especially on the cross-benches, advocate an ICAC bill. The government says, 'We already have all these provisions in place and checks and balances. We don't need it.' However, with the changes in this bill—and these changes are vast, to say the least, when compared to what we have been dealing with—I do not think that public servants should be subjected to intimidation, threats and other factors when they are trying to be open, honest and accountable.

On the other hand, from a government point of view (this government and future governments) I would have thought it was in their best interests, especially when a government says that it wants to be open, honest, accountable and transparent, to advocate and support this amendment. We will certainly be supporting it.

The Hon. DAVID WINDERLICH: I will also be supporting the amendment. I think it is a very good amendment and it highlights a central problem which is that the whistleblowers have to blow the whistle to people above them in a cascading hierarchy of possibly guilt at some stage, in some cases right up the ladder, and that is a fundamental flaw in the bill.

I do have an amendment bill which I have introduced in the Legislative Council but that will almost inevitably be defeated when it goes to the lower house—if it gets that far. This set of amendments has some prospect of getting through. I think it is a very good set of amendments and

very strategically placed. I commend them as one small step towards improving transparency in South Australia.

New clause inserted.

[Sitting suspended from 21:59 to 22:30]

Clause 7 passed.

Clause 8.

The Hon. R.I. LUCAS: Given that the government's new definition of a public sector agency includes a chief executive, I want to clarify the provisions regarding flexible arrangements to transfer within the public sector. Under subclause (3), a public sector agency may transfer an employee of the agency to other employment within the public sector on conditions that maintain the substantive remuneration level of the employee or are agreed to by the employee.

Subclause (4) provides that the public sector agency cannot transfer employees without the agreement of another public sector agency and, under subclause (6), the transfer of an employee under this section does not constitute a breach of the person's contract of employment or affect the continuity of the person's employment.

In essence, given that the public sector agency is now to be interpreted to include a chief executive, under this particular provision, the chief executive of the transport department, Mr Hallion, can transfer one of his employees to SA Water (because that is within the public sector) on the conditions that the substantive remuneration level, which he sets, is maintained. On that basis, there does not have to be an agreement by the employee as long as the substantive remuneration level is maintained and as long as the head of the other public sector agency—SA Water, or whichever one it happens to be—agrees to the transfer.

So, the government intends that the CEO of transport can transfer an employee; as long as the remuneration is maintained, the employee has no capacity to object to that and, as long as the new agency agrees, that transfer can occur. Is that an accurate reflection of what the government intends under clause 8?

The Hon. G.E. GAGO: I have been advised that this particular arrangement is substantially the same as that outlined in section 44 of the current act. Currently, the commissioner has the powers to transfer, but, in fact, in practice, he delegates that authority to the chief executive. Finally, an employee would be able to seek review of this decision under section 58 by the Public Sector Grievance Review Commissioner.

The Hon. R.I. LUCAS: Under the proposed bill the employee, if he or she objected to this transfer, could seek a review under what, clause 58?

The Hon. G.E. Gago: Clause 58.

The Hon. R.I. LUCAS: That is under the proposed bill?

The Hon. G.E. Gago: Yes.

The Hon. R.I. LUCAS: And those review provisions are substantially the same as the existing provisions in the current act.

The Hon. G.E. Gago: Yes.

Clause passed.

Clause 9 passed.

New clause 9A.

The Hon. D.W. RIDGWAY: I move:

Page 11, after line 38—After clause 9 insert:

9A—Consultation with employees and representative organisations

(1) Before making a decision, or taking action, that will affect a significant number of public sector employees, a public sector agency must, so far as is practicable—

(a) give notice of the proposed decision or action—

(i) to the employees; and

(ii) if a significant number of the members of a public sector representative organisation will be affected by the proposed decision or action—to the organisation; and

(b) hear any representations or argument that representatives of the employees or the organisation may wish to present in relation to the proposed decision or action.

(2) Nothing in this section limits or restricts the carrying out of a function or exercise of a power by the public sector agency under this Act.

Given the lateness of the hour, I will not speak at length. This amendment deals particularly with agencies notifying employees and their organisations of proposed decisions and to hear representations and arguments from them in relation to changes that may be made in respect of their employment. They must consult before decisions are made taking any actions against it, which will affect a significant number of public sector employees. This government has had a poor track record on consultation. We think this amendment enhances the bill and enshrines in legislation a more adequate level of consultation.

The Hon. M. PARNELL: Effectively, this proposed new clause 9A is the same as existing sections 4(3) and (4) of the current Public Sector Management Act. The first two amendments by the Leader of the Opposition I did not support because, in my view, they represented an effective restriction on the rights of workers to choose who their representatives should be. However, that does not mean that I cannot support this amendment, and, in fact, I will be supporting this amendment, because even though it still refers to the concept that was in the honourable member's first two amendments, it does it in such a way that I think that any public sector employee who is affected by a decision will be consulted and will have the right for any representative of their choosing to represent them in negotiations with the government.

The reason I say that is that the amendment basically requires that, having given notice to employees or to public sector representative organisations, the agency must hear any representations or arguments that representatives of the employees or the organisation may wish to present in relation to the proposed decision or action. Those words 'representatives of the employees', is separate from the other concept of representative organisations. Therefore, any union that may even have one publicly employed member would find that, if the member chooses to have their views represented by that union in negotiations, then that is what will happen. This does not restrict the ability of workers to choose who represents them, even though it does include the reference to the public sector representative organisation which, in any event, the committee in its wisdom has chosen not to amend in the way that the Leader of the Opposition sought to do with his first two amendments. On those grounds, I think it is a consistent approach for the Greens to take to support the current amendment.

The Hon. G.E. GAGO: The government opposes this amendment. The proposed wording narrows the circumstances in which there is an obligation to consult, and the bill's wording provides a broad obligation to consult on matters that affect public sector employment. The wording confines this to circumstances where a significant number of employees will be affected, and we do not support that narrower view.

The Hon. A. BRESSINGTON: I also indicate my support for this amendment. I go back to my previous life as a chief executive of a non-government organisation, where this type of consultation and representation would be required of us under the service excellence framework that the government set up for non-government organisations as a matter of team building, organisational function and accountability. I think that the government would have difficulty in opposing this amendment for the public sector when it is part of the service excellence framework that was developed for the non-government sector to function better.

The Hon. DAVID WINDERLICH: I will also be supporting the amendment.

New clause inserted.

Clause 10 passed.

Clause 11.

The Hon. A. BRESSINGTON: I move:

Page 12, after line 34—After subclause (7) insert:

(7a) The report must state the number of occasions on which public interest information has been disclosed to a responsible officer of the agency under the Whistleblowers Protection Act 1993 during the financial year to which the report relates.

This amendment will ensure that there is a mechanism by which the public interest disclosures can be tracked and monitored for evaluation purposes through the system, and that the parliament is kept informed in relation to the performance of the public sector in ensuring that misconduct, bullying and intimidation is being effectively monitored and reported. One of the problems with the application of the Whistleblowers Protection Act is that people can make public interest disclosure statements and send them up the line to their supervisor, and up further, and somehow they get lost in the system.

Public servants who have come to me have lodged public interest disclosure statements which have been floating around in the ether for anything up to 12 or 18 months and which have never been addressed. This amendment would ensure that a report would be handed in on a 12-monthly basis and it would list the number of public interest disclosure statements that have been made. The parliament would then have the opportunity to review that report and, if a lot of public interest disclosure statements have been lodged, that should raise concerns in this place about the treatment of public sector employees. Conversely, if there are none, I would think that we should also be a little suspicious.

This is just a reporting mechanism to make sure that the parliament is kept in the loop as regards the management of the public sector and the employees, who quite often are left hanging out to dry when they find themselves in difficult situations in the workplace.

The Hon. G.E. GAGO: The government opposes this amendment. I have spoken at length on and around the Whistleblowers Protection Act, so I do not think I need to say anything further.

The Hon. D.W. RIDGWAY: I indicate that we support the intent of the Hon. Ann Bressington's whistleblower amendments. We also support amendment No. 2.

The Hon. R.L. BROKENSHIRE: I indicate that Family First will be supporting this amendment. I have a question for the minister. We have a requirement for agencies to report annually. What processes will be in the act to ensure that they do report annually? The health complaints commissioner is responsible for Families SA. We are paying something like $600,000 a year to run that particular structure, yet it has not reported once to parliament. When I have highlighted the matter to the government, there has been no response. I think that is against base principles of law and also in contempt of parliament. I want the minister to explain what will happen if there is not an annual report from an agency.

The Hon. DAVID WINDERLICH: I indicate that I will be supporting the amendment. If the government has nothing to hide, it has nothing to fear from an amendment such as this.

The Hon. M. PARNELL: The Greens will be supporting the amendment.

The Hon. G.E. GAGO: As was pointed out, there is a requirement to report annually. If there is a failure to do so, the minister is then held accountable to the parliament.

Amendment carried; clause as amended passed.

Clause 12 passed.

Clause 13.

The Hon. D.W. RIDGWAY: I move:

Page 14, line 6 [clause 13(1)(e)]—After 'agencies' insert:

or on the Commissioner's own initiative.

This amendment provides for the commissioner to undertake an investigation on their own initiative. We think this provides an opportunity for more public confidence and the impartial umpire (the commissioner) to become involved, if they feel they need to. We think it further strengthens the provisions in the bill. I commend the amendment to the committee.

The Hon. G.E. GAGO: My comments pertain to the Hon. David Ridgway's amendments Nos 4, 5 and 6. The quality assurance role of the commissioner needs to be employed with a light touch. At the same time, however, this must be matched by an increased capacity for monitoring

and reporting upon the performance of public sector agencies to make it clear that this increased flexibility comes with an increased obligation to perform.

The suggested amendments relate to the functions of the commissioner acting on his or her own initiative, including provision of advice on employment matters, provision of advice on and conducting reviews of public sector employment or industrial relations matters, and to investigate or assist in the investigation of matters in connection with public sector employee conduct or discipline.

These amendments seek to continue to involve the commissioner in individual employee matters. This is at odds with the fundamental objectives of the new legislation, which aim to streamline processes, make chief executives more accountable, elevate the role of the commissioner away from transactional matters and enable the commissioner to focus attention on establishing or maintaining standards and practices to be applied across the public sector. Therefore, we oppose all these amendments.

The Hon. M. PARNELL: The Greens will be supporting this amendment. That will come as no surprise, because I have identical amendments on file which I will not need to move if these amendments are passed.

The Hon. DAVID WINDERLICH: I seem to recall in the Equal Opportunity Act that we had some debate about the commissioner being able to initiate investigations. It seems to me that a similar logic applies, so I will be supporting the amendment.

The Hon. A. BRESSINGTON: I will also be supporting this amendment.

The Hon. R.I. LUCAS: I will be supporting the amendment, too, Mr Chairman. I am particularly referring to the third of the amendments to be moved by the Hon. Mr Ridgway. I want to make the point that I think it is indeed critical to that issue, as I highlighted in my second reading contribution, and I gave the example of the investigation by the previous commissioner into allegations against the CEO of the Department of the Premier and Cabinet and how that investigation came about.

Unless the commissioner has the capacity to initiate those sorts of investigations, you have the situation in paragraph (g) where, if there is an allegation or a complaint of nepotism, personal patronage or a variety of other conflict of interest provisions against a chief executive, unless it is required or agreed by the Premier there may well not be an investigation, as has occurred under the current Public Sector Management Act. I am delighted to hear that the majority of members in this chamber are supporting what appears to be all the amendments, and I will not therefore proceed with any further debate on it.

Amendment carried.

The Hon. R.I. LUCAS: I noted that the Hon. Mr Brokenshire indicated that, at the end of the committee stage, he was going to seek leave to reconsider one of the earlier provisions. I raised this issue of subclause (2) in my second reading contribution. Again, I hasten to say that I speak on a personal basis in relation to this. It was not something that I picked up prior to our party room discussion on it so I do not profess to speak on behalf of the party. This provision is creeping into a number of pieces of legislation. On one or two previous occasions we have opposed it. Subclause (2) provides:

> The commissioner has any other functions assigned to the commissioner under this act or by the minister.

As I said, other provisions in the past have sought to do this, but in essence we are saying, 'Okay, here are all these wonderful functions for the commissioner, but in the future if the minister decides to add any other function he or she can do it.' That seems to be an extraordinary provision to give a minister without any capacity for the parliament. We are passing this legislation. We are agreeing to paragraphs (a) through to (g) in terms of the functions. We have amended them, yet as a committee we are potentially leaving this provision in there.

As I said, I speak on a personal basis, but I think that it ought to be an issue that should not be able to be handled by the minister. There should be parliamentary oversight in relation to any change in function that is contemplated by any future minister. I urge the Hon. Mr Brokenshire and any other Independent member to contemplate their views on this issue and, if we are going to reconsider one or two clauses at the end of the committee stage tomorrow, potentially that is something that might be further considered.

The Hon. D.W. RIDGWAY: I move:

Page 14—

Line 8 [clause 13(1)(f)]—After 'Minister' insert:

or on the Commissioner's own initiative

Line 11 [clause 13(1)(g)]—After 'agency' insert:

and investigate such matters on the Commissioner's own initiative

These are consequential on the first amendment.

The Hon. A. BRESSINGTON: I move:

Page 14, line 11 [clause 13(1)(g)]—After 'agency' insert:

and investigate such matters on the Commissioner's own initiative (including on receipt of public interest information under the Whistleblowers Protection Act 1993)

This amendment enables the Commissioner for Public Employment to investigate allegations of misconduct or wrongdoing under the Public Sector Bill as consistent with the powers afforded the commissioner under the Whistleblowers Protection Act.

Again, during discussions about this particular amendment, the minister's advisers spoke about extending the powers of the commissioner and giving the commissioner the right to initiate an investigation. As the Hon. David Winderlich said earlier, we did that in the equal opportunities bill and it would seem a little bit hypocritical, I think, that we can do it for one particular bill and not another, and for one particular sector and not another. I commend this amendment to the committee.

The Hon. D.W. Ridgway's amendments carried.

The CHAIRMAN: The Hon. Ms Bressington's amendment could be added if the committee so desires—that is, the words in brackets '(including on receipt of public interest information under the Whistleblowers Protection Act 1993)' could be added to the end of the words inserted by the Hon. Mr Ridgway.

The Hon. G.E. GAGO: The government opposes this amendment.

The Hon. D.W. RIDGWAY: The opposition supports the proposed amendment of the Hon. Ann Bressington.

The Hon. A. Bressington's amendment carried; clause as amended passed.

Clause 14.

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

Page 14, lines 20 to 22 [clause 14(2)]—Delete subclause (2) and substitute:

(2) The code will be taken to allow a public sector employee to engage in a private capacity in conduct intended to influence public opinion on an issue, or promote an outcome in relation to an issue of public interest, except if—

(a) it is reasonably foreseeable that the conduct may seriously prejudice the government or a public sector agency in the conduct of its policies given the relative seniority of the employee, the extent to which the issue is relevant to the role or a previous role of the employee and the nature and circumstances of the conduct; or

(b) the conduct involves—

(i) disclosure of information in breach of intellectual property rights; or

(ii) disclosure of information contrary to any law or to any lawful instruction or direction relating to a specific matter; or

(iii) disclosure of information with a view to securing a pecuniary or other advantage for the employee or any other person; or

(iv) disclosure of information of commercial value the disclosure of which would diminish its value or unfairly advantage a person in commercial dealings with the government or a public sector agency; or

(c) the conduct is disgraceful or improper conduct that reflects seriously and adversely on the public sector.

(2a) Subsection (2)(a) does not apply in respect of conduct engaged in by an employee in the employee's capacity as a matter of the governing body of a public sector representative organisation.

The government agrees with the desire to make clear that there is no intention to unduly restrict the conduct of employees outside their employment; however, the amendment to subclause (2) as proposed by the opposition and the Hon. Ann Bressington to not restrict participation by public sector employees in community activities that are unrelated to employment is ambiguous and will create confusion.

What are the community activities? The community activity might encompass just about anything that takes place outside work. More importantly, I doubt that the suggested provision in fact provides the protection those advancing it seek to provide, because it will not protect someone legitimately engaging in conduct outside of work that does somehow relate to their employment.

To enact the principles and practices of clause 5(6) underlying the bill, I think that we all would accept that there should be some limits on this freedom to engage in public activities critical to the government by virtue of the fact of being a public servant. There will be circumstances in which the participation by some public sector employees in certain community activities should be restricted; for example, the chief executive of DECS publicly lobbying the government for changes to carer/child ratios is probably something that we would not regard as legitimate entry into public debate.

What the government has put forward is a sound policy proposition, giving guidance to public sector employees to assist judgment in what is appropriate public conduct. The government proposes a new subclause that sets out boldly and clearly that the code of conduct will not prevent employees from engaging in conduct intended to influence public opinion or promote an outcome in relation to an issue of public interest.

The clause then sets out sensible limitations on the right to public participation in recognition of the particular position of public servants. This clause both extends the protection to the right circumstances and provides sensible limits on the freedom to engage in public affairs.

The Hon. D.W. RIDGWAY: I indicate that the opposition will be supporting the government amendment, but at the same time I indicate that we will be moving our amendment. Even though they are similar we think that the next amendment adds further strength to the provisions outlined in the amendment.

The Hon. M. PARNELL: This particular item was the main focus of my second reading contribution, which I will certainly not repeat now, but it does raise this fundamental issue of what we as a society do when we engage public servants. I believe that we engage their time and their expertise, but we do not buy their souls. They are entitled, in their private lives, to do what they will in the community sector.

That sometimes includes activities that may be counter to government policy. They may be embarrassing; they may be aimed at changing corporate behaviour or government behaviour, and I think we need to put in place every measure to give our public servants freedom.

I have had a number of discussions with the minister's office around how we might best deal with this, and we will have to consider shortly whether the government's amendment, which I will be supporting, can sit with the Hon. Ann Bressington's amendment and also the Hon. David Ridgway's amendment.

I wanted to say at the outset that what I particularly like about the minister's amendment is that the starting position is one which basically enshrines the right of free speech and then considers some exceptions to that rule. The proposed words start with:

The code will be taken to allow a public sector employee to engage in a private capacity in conduct intended to influence public opinion on an issue, or promote an outcome in relation to an issue of public interest...

And then there are the exceptions. That is an important starting point. The default position is that public servants are allowed to engage. We then need to work out what should be the exceptions to that position. We need to be clear that public servants are allowed to engage in areas of their portfolio, but the degree of their engagement will depend on a number of factors, including their level of seniority. We should have no problem with teachers on the steps of Parliament House advocating for a better education system, and the minister referred to child care workers. We have had nurses advocating for a better health system. The fact that their activity is related to their area of employment should not be any embargo to their engagement in public debate.

The minister's amendment recognises that. The exceptions the minister's amendment refers to is conduct that may seriously prejudice the government. We do not know entirely what that means, but we know it is serious rather than just a person being a member of a crowd on the steps urging a change in government policy: that would not be serious of its own right, so that is okay. The minister's exception also refers to the relative seniority of the employee, so we will not see chief executives with a megaphone condemning government policy from the steps of Parliament House, but I would like to think that people a bit lower down the rank might have that freedom. There is a certain ambiguity built into this, but that is not necessarily a bad thing.

In terms of the amendment before us, the Greens will support the government's amendment and I would be interested to hear the debate shortly about how the other two amendments on this topic would fit in within the government's framework.

The Hon. R.L. BROKENSHIRE: Family First by and large supports the intent of this amendment. I have a question following from what the Hon. Mark Parnell outlined. We have seen a situation where certain members of the nursing or medical fraternity have come out on television and other media supporting the government's policy of relocation of the Royal Adelaide Hospital to a greenfields site. If a senior nurse, senior medical officer or a senior public servant from the health department happens to not agree with that policy, and comes out the other way opposing it, is that a serious breach with respect to the government's policy and, if so, what ramifications would there be for that person?

The Hon. G.E. GAGO: I have been advised that it would be assessed on a matter of fact and degree, so things like the seniority of the staff member, what they said, the context they said it in, and the effect on government policy would be taken into consideration, and it would be assessed primarily by the chief executive and could result in disciplinary action, depending on the severity of the action.

Amendment carried.

The Hon. D.W. RIDGWAY: I move:

Page 14, after line 22—After subclause (2) insert:

(2a) The code of conduct may not restrict participation by public sector employees in community activities unrelated to their employment except so as to ensure that public sector employees conduct themselves in public in a manner that will not reflect adversely on the public sector.

The opposition believes this adds a little more to the amendment moved by the minister, notwithstanding the extent of the minister's amendment and what it does. We think this amendment adds a little more weight to the code of conduct and, in particular, to the activities of public sector employees—especially in community activities unrelated to their employment—to ensure that members of the public sector always conduct themselves in public in a manner that does not reflect adversely on the public sector. I know it is a slight duplication, but I think it strengthens the provisions already included by the minister.

The Hon. G.E. GAGO: The government opposes the amendment.

The Hon. M. PARNELL: I had thought there might be a little more debate on how the two would fit together. The first thing to note is that we have just incorporated a new subclause (2a), so presumably this would be renumbered (2b) or something like that. My view is that there is some duplication, which does complicate it a little, but I think the starting point still is sound in that it provides that the code of conduct may not restrict participation; in other words, it reinforces the fact that the default position is less rather than more restrictive.

I have some nervousness around the incorporation of the phrase 'unrelated to their employment' in case it might be interpreted in the reverse in that, if it is related to their employment, then it is not on for a public servant to comment. That is not the intent of the government's amendment, which is a question of degree, including seniority. At the moment my position is to support the amendment. If legal advice is that the two amendments do not sit together comfortably, perhaps we can revisit it later; however, for now I support this amendment.

The Hon. G.E. GAGO: The government believes that its provision and the opposition's amendment are in conflict. One provides broader protection to participate in public affairs but provides sensible limits; the other provides a narrower protection for community activists unrelated to employment but provides no sensible limits in the way in which the employee engages in their activity. We believe the two are hopelessly in conflict.

The Hon. R.L. BROKENSHIRE: I have a question for the Leader of the Opposition. The leader has drafted the wording 'conduct themselves in public in a manner that will not reflect adversely on the public sector'; as a point of clarification, can the leader provide an example of what would be regarded as an adverse reflection upon the public sector?

The Hon. D.W. RIDGWAY: I suppose they are more matters of illegality—illegal behaviour, behaviour at a public demonstration that reflects adversely on the public sector, public behaviour of that nature—

The Hon. A. Bressington interjecting:

The CHAIRMAN: Order! The question was asked of the Leader of the Opposition.

The Hon. R.L. BROKENSHIRE: As a further point of clarification, if the person is at a local football match and happens to have a few too many beers and makes some statement about how they feel about the public sector, or if they happen to wear a T-shirt protesting about issues around some aspects of the public sector, are they going to have a problem?

The Hon. D.W. RIDGWAY: I guess it is always up to interpretation. Any behaviour that reflects badly on the public sector would be captured by this amendment.

The Hon. R.I. LUCAS: I am not sure how other members are going to vote, so there would appear to be some prospect of the amendment at least proceeding to the next stage, and I think that is a reasonable proposition. I think the position the Hon. Mr Parnell has foreshadowed is a reflection. We are going to recommit other clauses anyway so, if there is subsequent legal advice, that can be tidied up.

The only question I would raise, having now looked at the government's amendment and our own amendment, is that this amendment is talking about activities unrelated to their employment. With the government's amendment, the test there is ultimately 'disgraceful and improper conduct that reflects seriously and adversely on the public sector', whereas the test and the wording in our amendment is 'will not reflect adversely on the public sector'.

If this goes through, and if we refine the drafting to make it consistent, it may well be useful to have the same test (or a similar test) in relation to the reflection on the public sector. There seems to be a much higher test in the government's amendment, albeit that it refers to a different range of circumstances, whereas our amendment refers to any activities unrelated to their employment, and then it is just anything which reflects adversely on the public sector. I think that issue might need to be covered in any reconsideration of this matter should it pass to the next stage.

The Hon. A. BRESSINGTON: I am a little confused. I am wondering whether in the past, without this amendment, public servants were required to submit to some sort of disciplinary action or misconduct hearing perhaps because of their conduct at a football game. I am also worried that, if this amendment goes through, we are now putting in legislation a consideration that has previously not been an issue. Is that the minister's take on this?

If there is nothing in legislation about conduct outside of work and unrelated work matters, then it is not a point of law. But once we actually put it in as such, then we are creating a situation where, as the Hon. Robert Brokenshire said, a public servant could be reported for going to a footy game and having a couple of drinks too many and yelling a bit too loud or using an obscenity. I want to be clear on whether that is the concern of the government as well because, if it is, then perhaps we are putting the public sector under more of a microscope than we need to.

The CHAIRMAN: I remind honourable members that they should not be consulting people in the galleries.

The Hon. G.E. GAGO: The current provision in section 57 states that employees are liable to disciplinary action if they are guilty of disgraceful or improper conduct in an official capacity or guilty in a private capacity of disgraceful or improper conduct that reflects seriously and adversely on the Public Service. So, it is a fairly serious test as you can see.

The Hon. D.W. RIDGWAY: By way of clarification, I think my amendment adds to the minister's amendment. First, the code allows community participation and then my amendment additionally allows absolute clarity that, if an activity does not relate to their own agency, they can take action as long as it is not bad conduct.

The Hon. M. PARNELL: It might assist members that I have in front of me the current Code of Conduct for South Australian Public Sector Employees dated March 2005 which I obtained in the 10 minute break that we had earlier on the assumption that it is a similar sort of document that will be in place under this new arrangement. Under the heading Conduct in Public, the current code of conduct states:

> As a public sector employee you must consider the impact of your actions in public whether on duty or not. For example, you should still behave to the same standard if you are at an office social function after work hours. If you have permission to work in another job you must ensure that the work you do and your conduct upholds the principles expressed in this code of conduct and does not adversely affect your work in the public sector.

It does not actually touch on very many of the issues that we have been discussing at all, which have been in relation to protests and demonstrations. The current code of conduct, on my quick reading of it, is fairly silent at present as to the standard expected, so there will, necessarily, be an element of speculation on our part. However, what I do like about the amendments that we are considering is that the default position is that public servants can engage, and there has to be a good reason to stop them engaging.

The committee divided on the amendment:

AYES (9)

Bressington, A.	Dawkins, J.S.L.	Lensink, J.M.A.
Lucas, R.I.	Parnell, M.	Ridgway, D.W. (teller)
Stephens, T.J.	Wade, S.G.	Winderlich, D.N.

NOES (8)

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

PAIRS (4)

Schaefer, C.V.	Zollo, C.
Lawson, R.D.	Holloway, P.

Majority of 1 for the ayes.

Amendment thus carried.

The Hon. A. BRESSINGTON: I move:

Page 14, before line 23—Before subclause (3) insert:

> (2b) The code will be taken to require that an employee of a public sector agency may report actual or suspected maladministration or misconduct in the public sector to the Commissioner or an executive employee of the agency (or both), or participate in an official inquiry into such maladministration or misconduct, without suffering discrimination, disadvantage or adverse treatment in relation to his or her employment.

This amendment seeks to prohibit the behaviour of some senior departmental executives giving direction to, threatening or prohibiting public servants from giving evidence to an inquiry into any government department and affirms the right of public servants to make reports of public sector wrongdoing or misconduct to parliament as well as utilise the services of their elected members.

In the past, staff from some agencies have been dissuaded and cautioned against giving evidence to inquiries such as the Families SA committee. Staff in other agencies have been threatened with disciplinary proceedings and investigation for breach of the Public Sector Management Act.

This amendment will ensure that public servants are aware of their right to give evidence to public inquiries without fear or favour. It seeks to make clear that activities that may embarrass the government, especially where those activities are unrelated to their employment, cannot be deemed to be in conflict with the role of the Public Service or the duties of a particular public servant or their capacity to exercise their job in the most professional and lawful manner.

The Hon. G.E. GAGO: The government opposes this amendment. We have already expressed our view around whistleblower matters, and that is on the record.

The Hon. D.W. RIDGWAY: I indicate that the opposition will be supporting the Hon. Ann Bressington's amendment.

The Hon. M. PARNELL: The Greens support the amendment.

The Hon. DAVID WINDERLICH: Nothing to hide, nothing to fear—I support the amendment.

The Hon. R.L. BROKENSHIRE: No surprise on this one—we also support the amendment.

Amendment carried; clause as amended passed.

Clause 15 passed.

Clause 16.

The Hon. R.I. LUCAS: This is a matter I have raised before so I will not argue the case again, but I just ask for the minister's response. Does the government have a problem in principle with a provision being inserted in clause 16 which would require that any ministerial direction be tabled within, say, six sitting days?

The Hon. G.E. GAGO: No, we do not support that proposal. The Commissioner for Public Employment is subject to ministerial direction, except that no ministerial direction may be given to the commissioner requiring material to be included in or excluded from a report that is to be laid before parliament. The bill proposes a provision similar to section 23 of the Public Sector Management Act 1995, with adjustments resulting from the changing role of the commissioner.

No evidence exists to suggest that the lag reporting in the past has been inadequate to safeguard inappropriate direction, and I do not think the former Liberal government saw that as creating any problems when it was in government. If it did, it certainly did not bring it to anyone's attention or make any attempt to make changes. In addition, circumstances may exist where it is not in the interests of the role the commissioner is undertaking to be tabled immediately.

Clause passed.

Clauses 17 to 19 passed.

Clause 20.

The Hon. A. BRESSINGTON: I move:

Page 16, after line 34 [clause 20(2)]—After paragraph (b) insert:

(ba) state the number of occasions on which public interest information has been disclosed to the Commissioner under the Whistleblowers Protection Act 1993; and

Basically, this amendment is a repeat of an earlier amendment. This amendment seeks to monitor and track public interest disclosures in order to evaluate the effectiveness of protections offered under the Public Sector Bill and the Whistleblowers Protection Act.

The Hon. G.E. GAGO: The government opposes this amendment for the same reasons we have outlined previously.

The Hon. D.W. RIDGWAY: I indicate the opposition will be supporting the Hon. Ann Bressington's amendment.

Amendment carried; clause as amended passed.

Progress reported; committee to sit again.

At 23:33 the council adjourned until Wednesday 3 June 2009 at 14:15.