LEGISLATIVE COUNCIL

Wednesday 23 September 2009

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

CARNIE, HON. J.A.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:17): I move:

That the Legislative Council expresses its deep regret at the recent death of Mr John Carnie, a former member of the House of Assembly and the Legislative Council, and places on record its appreciation of his distinguished and meritorious public service; and, as a mark of respect to his memory, that the sitting of the council be suspended until the ringing of the bells.

I was saddened by the news of the passing of John Carnie who died on 10 September, aged 82. John Carnie, like me and the Hon. Mr Brokenshire, had the rare distinction of serving in both houses of this parliament. He worked devotedly for the betterment of South Australia and particularly for rural communities and constituents on the state's West Coast.

He first arrived in parliament as a member of the Liberal Country League, representing the electorate of Flinders from 1970 to 1973. Mr Carnie was prominent in the Port Lincoln community as the local pharmacist, although he was brought up in the Riverland, having worked in most parts of the state, after receiving a diploma in pharmacy. It was this experience that, no doubt, provided his affinity with rural areas of the state and the issues that affected country voters. After the LCL split and the formation of the Liberal Movement, Mr Carnie returned to parliament as a Legislative Councillor from 1975 until 1982. John Carnie is perhaps best known for his role as a founding parliamentary member of the Liberal Movement.

John Carnie was born in Barmera, in the heart of the Riverland, on 30 March 1927, the same year that Australia's original Parliament House was opened in Canberra by the Duke of York. He was schooled at Barmera Primary, and then Kings College in Adelaide, before attending the University of Adelaide, where he graduated with a Diploma of Pharmacy. He also travelled to England, where he studied at the University of London in 1951 and 1952 and earned a Diploma of Biochemical Analysis.

In 1955 John took up a position as a pharmacist in Port Lincoln and soon became involved in the community and in the political life of Eyre Peninsula. He served for several years as a committee member with the Port Lincoln Chamber of Commerce, including a year as its president. He also served two years as president of the Port Lincoln branch of the Liberal and Country League before being elected as the member for Flinders in May 1970.

He used his maiden speech as the member for Flinders to outline the issues that mattered most to him and his constituents in the regional centres and communities on our state's West Coast. Among them were his concerns about school facilities and curricula, the state of country roads, the need for improved police services, the surety of electricity and water supplies and the ongoing viability of the fishing industry, particularly in the Port Lincoln area.

John Carnie made no secret of his opposition to the Dunstan government's one vote, one value policy that was aimed at ending South Australia's rural gerrymander. In his maiden speech John argued that such a move would significantly dilute the political influence of rural South Australia.

John Carnie was a keen supporter of former Liberal premier Steele Hall, joining his Liberal Movement and standing as an LM candidate at the 1973 election. History shows that he lost the seat of Flinders to the National Party's Peter Blacker. It was a result that led him to opine that South Australia probably needed a country party looking after the country and a Liberal Party seeing to city interests, and relying on a coalition to form government. While one might suggest that this has been successfully achieved at the federal level, the coalition envisaged by Mr Carnie is yet to take shape in South Australia.

John Carnie returned to state parliament as a member of this chamber at the July 1975 election. Despite a threatening call warning him to stay away from a vote on a bill to reform country rail services, John Carnie confirmed he was a politician of character, as well as man of courage, by recording his vote in this place.

Mr Carnie was also an advocate for removing most restrictions on shopping hours in South Australia. His advocacy within the Liberal Party put pressure on the then Labor government to set up a royal commission into trading hours. Of course, trading hours in South Australia are a lot less regulated than they were back in the 1970s. While ours are not completely unfettered in this state, we on this side of the chamber believe that the current restrictions on shopping hours strike an acceptable compromise between the retailers' interests and the need for employees to balance work commitments with family life.

On behalf of all members on this side of the council, I extend my condolences to John's wife Bernice, his children Grant and Jane, and all his family and friends.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:22): I rise on behalf of the opposition to make some comments about the Hon. John Carnie. He was one of the few members who served in both houses: as the member for Flinders from 1970 to 1973 and then as a member of the Legislative Council from 1975 to 1982. He was educated at Barmera Primary School, Kings College, Adelaide University and London University, gaining diplomas of pharmacy and biochemical analysis.

Mr Carnie was a pharmacist throughout South Australia, eventually remaining in Port Lincoln for some time where he continued to work in the health sector and enjoy great involvement with the local community. His passions were sailing and golf, and his love of the country community is apparent when reading his words throughout his incumbency as the Liberal member for Flinders.

John had an understanding of South Australia's reliance on the farming sector, which is arguably shared only by those who have lived and worked in country communities. He never understated the contribution of a relatively small country population to the overall economy of the state.

In 1973 the Liberal Party was going through the formation stages of the Liberal Movement. The National Party, through Peter Blacker, successfully capitalised on the strong differences of opinion in the Liberal Party during that period. Mr Carnie was defeated at the election and subsequently served here in the Legislative Council.

He provoked the issue of shopping hours to an eventual establishment by the government of a royal commission into trading hours, the findings of which caused the government to amend the trading hours legislation. This was one particular issue where John was adamant in supporting city businesses, as well as country businesses.

He set out to change restrictive bans placed on bakers in Adelaide. They were not allowed to bake from 6pm on Friday until midnight on Sunday, yet bakers in country towns had no such restrictions placed on them.

Most other states at that time did not have the restricted regimes for trading that South Australia had. It was apparent that John championed opportunities for success and enterprise in business. His hard work was a precursor to the Liberal Party's adoption of flexible trading hours as party policy. John said that too much governmental control was the best way in which to kill individual enterprise and that it was his mission to prevent that from happening. Although I never met him personally, the opposition leader said that he was very humble, he was not inclined to impose his view on new members and he incited a particular level of respect.

Mrs Redmond lives in the area where he resided, and she would run into him from time to time. He struck her as someone who was content with the life he had lived, and I hear that this was especially apparent, as he remained cheerful and content throughout his final days. John passed away at his home on 10 September this year, aged 82. I acknowledge and commend the Stirling hospital staff for their care throughout the final stages of John's life, and I offer my condolences on behalf of the Liberal Party to his wife Bernice and his children, Grant and Jane.

The Hon. R.I. LUCAS (14:26): I rise to speak briefly to the condolence motion. I support and endorse the remarks that have been made by the Leader of the Government and the Leader of the Opposition on the motion. I indicate that, perhaps unlike other members, I knew John Carnie, I would not say super well, if I can use a colloquial expression, but certainly I knew him from his period here in the Legislative Council. As the leader has indicated, the early part of John's political career coincided with a period of enormous turmoil, if I can perhaps understate the description, for the Liberal Party in South Australia.

The ructions that occurred during that period, with the formation of a separate party within a party—the Liberal Movement within the then Liberal and Country League—had strong supporters

and equally strong opponents and, inevitably, there were casualties of that conflict at the time. As I have said, the formation of the Liberal Party of Australia (SA Division) coincided with John's early days in parliament. The position of the party in South Australia in that period in 1976 was the start of the party which seeks to represent both city and country interests within one party here in South Australia.

I agree with the comments made by the Leader of the Opposition in another place in relation to John Carnie the person. He certainly had strong views on certain issues, but he was not the sort of personality that sought to impose those on everyone else. He listened to the views of others. He certainly did have passionate views on shopping hours. He, with one of his colleagues, the Hon. Martin Cameron, at varying stages in this chamber, led debates not only on freeing up hours in relation to bakeries, as the Leader of the Opposition in this chamber indicated, but he, in the early stages, and, of course, the Hon. Martin Cameron and others in the latter stages, looked to remove some of the restrictions in relation to red meat sales in the metropolitan area during the weekends. Freeing up trading hours was a passion for a number of these members.

I guess it is a salutary lesson to us all that it is really only just over 20 years ago that you could not buy fresh red meat from butchers on weekends and you had these sorts of restrictions not more than 25 years ago in relation to bakeries. Of course, general trading hours were enormously restrictive in relation to what people in Adelaide could and could not buy on weekends, and people such as Martin Cameron, John Carnie and others within the parliament at that particular time were at the early stages of advocating for radical change, which is now accepted.

I think the Leader of the Government would accept that his party traditionally, with its close associations with the STA these days and its predecessor associations, has not always been at the forefront of freeing up trading hours in South Australia. It has tended to be people from the other side of the political fence—people such as Martin Cameron, John Carnie and others—who have taken up the battle and have been joined by others. Of course, to be fair, eventually the Labor Party, in recent times has assisted the process of freeing up shopping hours as well. So, in speaking briefly to the motion, I pay credit to the activism of John Carnie and others on this particular issue.

John Carnie's political career in the Legislative Council ended in 1982. The Hon. Peter Dunn, the Hon. Diana Laidlaw and I were the new members elected by our state council at that particular time. The Hon. John Carnie was unsuccessful during that particular preselection process; nevertheless, he accepted the decision of our state council, as most people expected that he would, and it was to his credit that he continued to be a quiet supporter of the Liberal Party during subsequent years.

I indicate, on behalf of a number of former members of this chamber, and I am sure others who served with or knew John Carnie well, that we pass on our sympathies and condolences to his family and to his acquaintances.

The PRESIDENT: I ask all honourable members to stand in their places and carry the motion in silence.

Motion carried by members standing in their places in silence.

[Sitting suspended from 14:31 to 14:47]

LEGISLATIVE REVIEW COMMITTEE

The Hon. J.M. GAZZOLA (14:47): I bring up the 26th report of the committee.

Report received

The Hon. J.M. GAZZOLA: I bring up the 27th report of the committee.

Report received.

MAGILL TRAINING FACILITY

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:49): I table a copy of a ministerial statement relating to the Magill Training Centre made earlier today in another place by my colleague the Premier.

QUESTION TIME

30-YEAR PLAN FOR GREATER ADELAIDE

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:51): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the 30-Year Plan for Greater Adelaide.

Leave granted.

Members interjecting:

The Hon. D.W. RIDGWAY: Mr President, I ask for your protection.

Members interjecting:

The PRESIDENT: Order! The honourable members of the government will come to order.

The Hon. D.W. RIDGWAY: I was at a function in Munno Para Downs a couple of weeks ago and met some people who live on Andrews Road in Munno Para Downs. They raised some concerns with me about land they owned which appeared in the Plan for Greater Adelaide as being a green zone. They had a copy of a map but, unfortunately, they were not able to give it to me. I have since been able to look at the Plan for Greater Adelaide and at the map on page 175 (Map F6 Barossa Directions) and the particular area is shaded a very pale green, next to an existing green belt.

The particular owners of the land contacted Planning SA and asked what the status of the land was and Planning SA informed them that this was now a green belt. You can imagine their dismay when they had not been consulted at all by the government in relation to this change of land use to a green belt. You can also understand their reaction when they received, at about that same time, a letter from a developer asking to contact them about the said piece of land, which now, under this plan, is a green belt. I will read from an email I received from one of these people:

> I spoke to you yesterday at the function...where you wanted me to fax the copy of the letter I, along with others, received. I will do that, however the letter is basically asking us to ring (the developers). Upon ringing them, that is when I found they wanted us to sign contracts for $80,000 an acre to push for residential, and if it goes through, then whatever they can sell the land for, after the $80K is deducted to be split between us!

My questions are:

1. Will the minister explain how this land appears in the new Greater Adelaide plan as a green belt with no consultation with the landowners?

2. Will he explain how a developer now is offering $80,000 an acre for land that, in his plan, is zoned as a green belt?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:53): In relation to the last matter, I have no idea at all; that is up to the developer. It has nothing to do with me. In relation to the green belt, this government made a decision some time ago as, indeed, I think did the former government. When we came to office we committed ourselves to a green belt between the Gawler and Munno Para boundaries. We promised then, and we have maintained the promise, that we would keep a green belt between Munno Para—

The Hon. D.W. Ridgway: There is already an existing green belt.

The Hon. P. HOLLOWAY: Yes, that is right, and we are going to keep it. We are not expanding it. We are going to keep it as a green belt. There were proposals where a number of people were advocating that this government should extend the area and it should start to close the gap between Gawler and the existing outskirts of the Munno Para region.

We have simply committed to keeping that green belt. All that means is that the current zoning, whatever it is in that region, will remain in place. There was some slight expansion of that area in 2007, when adjustments were made to the boundaries. There was some regularising of that area south of Gawler.

The Hon. D.W. Ridgway: The member for Light's family home.

The Hon. P. HOLLOWAY: That is a disgraceful suggestion. In fact, it has been addressed before.

Members interjecting:

The Hon. P. HOLLOWAY: That is just not the case. We have dealt with that issue before. What I will say about the member for Light (Tony Piccolo) is that he has been absolutely assiduous in campaigning to keep the green belt between Gawler and the existing area, and the government has delivered on that because the member for Light has been so assiduous in pressing the case.

That is why we are maintaining the status quo. We are preserving the green belt between the existing extent of metropolitan Adelaide where it goes to, I think, the suburb of Munno Para, certainly just past the Munno Para Shopping Centre. That is the current extent. We will maintain the green belt between that area and Gawler so that Gawler will maintain its town and country reputation. That is something that the people of Gawler—

Members interjecting:

The Hon. P. HOLLOWAY: We have been talking to them. The member for Light has been talking to them. The member for Light is a former mayor of the area. There is no local member of parliament in the other place who is more diligent in representing the interests of his electors than the member for Light. He is a former mayor for the district and he has been absolutely—

The Hon. J.S.L. Dawkins: I hope he enjoys his last 5½ months.

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: The member for Light has been absolutely assiduous in protecting his constituents and preserving the green belt. That is all we have done. If somebody else wants to buy that green belt land, that is entirely up to them and there is no reason why—

The Hon. D.W. Ridgway: You're expanding and changing it without consultation.

The Hon. P. HOLLOWAY: There is no expansion of the green belt.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: Apart from the changes that were made in the 2007 urban growth boundary and subsequent changes, there has not been a change. I understand that there have been some proposals within that green belt to look at the appropriate density. There is a size of block to protect the green belt. In fact, one of the issues that is often raised is that, if you have blocks of five or 10 hectares, it may actually be less of a green belt than if you have them of a somewhat smaller rural living area where people are more likely to grow trees on their block and therefore make it more of a green belt.

I know that those matters have been a constant issue. I am always being lobbied by people who live in that area around Kudla to rezone that area to allow a higher density but still a rural living density which would be consistent with a green belt. The council has been looking at those issues, as I understand it, and of course it is essentially up to it to initiate them. The point is that, whatever density or whatever minimum allotment size is decided, it is the government's view that it should remain as a green belt—in other words, that those holdings in that area would be sufficient to ensure that it maintains a rural character.

Members interjecting:

The Hon. P. HOLLOWAY: All I can say is what has happened in relation to the boundary changes there. There were areas—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: Apart from the 2007 urban boundary adjustments, there has been no change to the urban growth boundary in that region.

TRAVEL COMPENSATION FUND

The Hon. J.M.A. LENSINK (14:58): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about the Travel Compensation Fund.

Leave granted.

The Hon. J.M.A. LENSINK: The Travel Compensation Fund is one of the areas that the Ministerial Council on Consumer Affairs has been discussing and, in its release of May 2009, the federal minister (Hon. Chris Bowen) stated that a review of the Travel Compensation Fund is long overdue. Further in that communiqué, he states:

> The ministerial council has directed the Standing Committee of Officials of Consumer Affairs to undertake the review, in consultation with industry and consumer stakeholders.

He goes on to say:

> The MCCA has also suggested that the Council of Australian Government (COAG) may wish to add travel licensing arrangements to the National Trade Licensing System when the opportunity arises.

The Australian Federation of Travel Agents has been quite vocal in its criticism of the Travel Compensation Fund and has issued a discussion paper in which it recommends a direct consumer funded financial protection scheme, the abolition of the TCF, a new streamlined licensing body and new accreditation. It also recommends that the licensing body should get rid of the eight regulatory regimes, which I assume to mean the state and territory bodies.

The CEO of AFTA says that in the event of a major failure pressure would fall on the state and federal governments to bail out the industry and consumers under their proposed regime. My question is: does the minister have a timetable for completion of the ministerial council's review; and does she have concerns with the adequacy of the current scheme in relation to providing adequate consumer protection?

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 think the honourable member raised a question around this or similar issues some time ago. That particular ministerial council has not met for some time. If I recall, it is one that meets, I think, three times a year. It might be four, but I think it is three, and I will check that.

A number of issues have been raised in relation to concerns around the Travel Compensation Fund which, as the honourable member has outlined, have been sent off to an officers' standing committee to look into those matters. My understanding is that it is still with that committee which, to the best of my knowledge, has not yet reported to the ministerial council. I am not aware of a specific time frame that has been set for that, but I will check and bring that information back when I am able.

Regarding the adequacy in terms of consumer protection, that is why this matter was sent off to a standing committee to investigate and review the current provisions. It was deemed that there were issues of concern and that they needed addressing. As I said, I will bring back any further information that I have.

LOCAL GOVERNMENT, CEO REMUNERATION

The Hon. S.G. WADE (15:02): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about the remuneration of local council CEOs.

Leave granted.

The Hon. S.G. WADE: An article published in *The Advertiser* of 20 September noted that local government CEOS were given an average pay rise of 7 per cent over the past year. The local government sector claims that the increases are driven by market forces in spite of the fact that, on average, wages increased by 4 per cent in the same period.

All of the state's metropolitan CEOs are earning a minimum of $220,000 a year; the top salary of $335,000 is $3,500 more than the salary of the Prime Minister. The council involved, the Adelaide City Council, has a population area of about 20,000, while the Prime Minister runs a country with a population of 22 million.

In light of community concern, the opposition spokesman for state/local government relations (Mark Goldsworthy) has called for an independent review of salaries of council chief executives. The minister has stated in response that she has no power to investigate the salaries of council CEOs. Presumably, she is referring to the Local Government Act; however, she has every right to commission a review as opposed to an investigation. My question is: as the government is legislating to set allowances, will the minister establish an independent review of the salaries of local government CEOs?

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) (15:04): Obviously, the size of the remuneration of local government CEOs has been the subject of considerable media attention recently. Under the Local Government Act councils are required to appoint a chief executive officer, and the terms and conditions of those contracts are matters for the individual council and the appointee.

The legislative provisions applicable to the appointment of a chief executive officer of a council are covered in chapter 7 of the Local Government Act 1999. Section 96 of the act provides that every council must have a CEO, and section 98 of the act sets out the appointment procedures. The council—that is, the body of elected members—makes the appointment to the office of chief executive. It is recognised that selecting and appointing the chief executive officer is one of the most important tasks elected members may undertake during their term of office.

Choosing the right person for the job and ensuring it is the appropriate person with the appropriate skills and the appropriate experience is critical to the success and the ongoing activity of that council. It is essential that correct processes are followed so that applicants are given every opportunity to put forward appropriate information so that the council can choose the most suitable person for the job. When elected members appoint a CEO, the council is entering into a contractual relationship with the CEO and, as such, the processes used by the council in this area obviously are extremely important.

To this end, the Office for State/Local Government Relations has recently produced a guidance paper for councils on appointing a chief executive. The purpose of that paper is to provide councils with guidance on the legislative requirements and better practices when selecting and appointing a CEO. Councils, like many other organisations, would seek advice on the appropriate terms and conditions of their CEO, and from time to time review those particular conditions. Like other employers, the council can also decide to apply performance targets, if it so chooses, and also to adjust salaries from time to time, depending on those targets or any other performance objectives that that particular council might set out. However, how it does that is a matter for that particular council and between it, its employees and its CEO.

A council must not make an order to prevent the disclosure of the remuneration or conditions of service of the CEO after a contract has been signed. There are clear requirements around that in the legislation. A register of salaries is also required. The issue of the transparency and openness of CEOs' salaries is provided for within legislation; that is not hidden. CEOs' salaries are on public record and they are published, and people have the right to access that particular register. As I have said, it is a very open process.

In terms of the ministerial powers of investigation, I have outlined those in this place. Clearly, they relate to breaches in legislation, and I have outlined the legislative provisions. That is why I took a little time outlining the particular legislative provisions around CEOs' appointments and salaries. My investigation powers only pertain to when there is a potential breach in legislation. Clearly, as I have outlined, nothing would indicate that there has been a breach in relation to any parts of that legislation. Therefore, I am not able to initiate those investigatory powers. I believe that, ultimately, the decision about the success of a council's performance, the measurement of a council's achievements and whether it has used ratepayers' moneys in the best interests of the council and ratepayer services and amenities is determined at the ballot box, so to speak. Each council is held accountable to its ratepayers for the decisions it makes within the parameters of its legislative powers—which they are currently doing. It is fundamentally evaluated at the polling booth, just as we are as state members of parliament.

LOCAL GOVERNMENT, CEO REMUNERATION

The Hon. S.G. WADE (15:10): I have a supplementary question. Does the advice of the state government, which is issued to local government in relation to the setting of salaries, suggest principles by which a salary might relate to community expectations or current market rates or salaries?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:10): My understanding is that the guidance paper deals mainly with best practice around appointment and selection processes. The paper is available on the website, so I encourage members to look at it.

My understanding is that it deals with matters such as the recruitment process, the development of a position description and selection criteria, advertising of a vacancy, interview process, issues around confidentiality, and those sorts of administrative matters. My understanding is that those sorts of matters are dealt with in the guidelines.

SEAFOOD, PREPACKED

The Hon. R.P. WORTLEY (15:11): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about recent testing on prepacked frozen seafood by trade measurement inspectors.

Leave granted.

The Hon. R.P. WORTLEY: The Office of Consumer and Business Affairs regularly tests packaged foods for correct weight but has not previously tested prepacked frozen food. Will the minister advise the council about the results of recent testing of frozen seafoods' weight by trade measurement inspectors from the Office of Consumer and Business Affairs?

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) (15:12): I admire the honourable member's ongoing interest in important policy areas around seafood and prawns, and so on. South Australia has an envied reputation as a supplier of quality seafood and, equally, a well deserved reputation as a great consumer of seafood.

I am disappointed, however, to inform the council that recent testing of prepacked frozen seafood by trade measurement inspectors from the Office of Consumer and Business Affairs found that almost half the products tested weighed less than that advertised. Some 102 prepacked products from a variety of metropolitan supermarkets, stores and fishmongers were tested and—Mr President, I know that you would be personally disappointed if it was your packet of prawns—46 were underweight. The frozen packs tested included popular products such as prawns, squid, fish cakes, fish fingers and frozen fish fillets.

This is the first time that frozen seafood has been tested by trade measurement inspectors in South Australia. New uniform testing procedures, which allow the actual seafood content to be measured rather than the surface ice content, were followed. This is a means of ensuring consistency of measurement throughout Australia.

The test results are clearly not good enough, and every seafood lover has a right to be disappointed—and no doubt they are. While the average underweight pack was less than 2 per cent underweight, nevertheless the greatest shortcoming was in a one kilo packet of frozen prawns, which was 100 grams underweight; so that is a couple of prawns that did not make it to the barbie.

As Christmas approaches, seafood sales are likely to increase—everyone loves seafood at Christmas time—so it is important that we address these issues now, before the lead-up to the Christmas festive season.

Retailers have stopped selling those underweight packs, and OCBA is working with its interstate counterparts in relation to the seafood wholesalers. Those involved with these particular underweight products are wholesalers who were found interstate, so they will be followed up through our interstate counterparts.

We will also be randomly following up each of the retailers that were caught selling underweight here in South Australia. We will randomly follow up and visit those outlets. They were given a warning to start with. However, if they are found to be repeat offenders, we will look at prosecuting them, and prosecution attracts a maximum penalty of up to $20,000.

As this is the first time that frozen seafood has been tested, we are very keen to use this round as a means of informing and educating outlets here. We are reminding retailers that they need to lift their game—to lift their weight, so to speak. I urge all retailers and wholesalers of seafood to make sure that their products are not sold underweight. I once again remind the council that this is a government that is committed to a fair marketplace, where consumers can be confident they will get what they pay for.

PUBLIC SECTOR EXECUTIVE CONTRACTS

The Hon. J.A. DARLEY (15:17): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations, representing the Minister Assisting the Premier in Cabinet Business and Public Sector Management, a question about executives and high level public servants in the public sector.

Leave granted.

The Hon. J.A. DARLEY: The recently passed Public Sector Act was introduced by the government in an attempt, amongst other reasons, to enhance careers in the public sector. Whilst it is important to promote career enhancement in recognition of individuals who have excelled within their position, I believe it is equally important that career progression is conducted in conjunction with performance reviews in order to determine the best person for the position. Further, I believe that performance reviews are imperative for staff at both an operational as well as executive level. My questions are:

1. What staff performance reviews are conducted for executive staff prior to the expiry of a contract and before re-appointment?

2. Who conducts these reviews?

3. How many senior executives and/or statutory officers have had their contract extended or renewed without a comprehensive performance assessment in the past three months?

4. Does the Premier intend to counsel his ministers where a recommendation for a renewal of contract has been made without such a comprehensive performance assessment?

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) (15:18): I will refer the honourable members' questions to the appropriate minister in another place and bring back a response.

SMALL BLOCK IRRIGATORS EXIT GRANT SCHEME

The Hon. C.V. SCHAEFER (15:18): I seek leave to make a brief explanation before asking the minister representing the minister for primary industries a question about the Small Block Irrigators Exit Grant scheme.

Leave granted.

The Hon. C.V. SCHAEFER: I recently received a press release headed 'Wineries angered by scrapping of irrigator exit grants' and stating:

> The wine grape industry says that it is disappointed and surprised by the federal government's decision to scrap the Small Block Irrigators Exit Grant. The grants of up to $150,000 were due to finish this year, but growers expected strong demand would see the scheme extended for another year. Irrigators in the Murray Valley have heard that won't be happening. Mark McKenzie from the Wine Grape Growers of Australia said the decision will hurt growers hoping to leave the industry.

I think we have all seen examples in our Riverland of the decline of the economy and the need for small and unviable irrigators to be able to exit with some dignity.

At the Budget and Finance Committee meeting when PIRSA was questioned on 29 June, I sought some details on the various exit schemes that are available. It is my understanding that, while they are commonwealth grants, they are administered by the state government. I have been recently provided with the answers in writing.

As of 30 June this year, in South Australia, there were 254 applications for small block irrigator exit grants. Of those, none have been approved. The statistics further go on to show that 125 applications (less than half) were approved but not finalised, 58 applications were rejected, and 71 applications (nearly one third of all applications) were still being processed at the end of the financial year. So, in fact, no small block irrigators who have applied for that grant, as I see it, have any idea of whether they have it or not, and less than half have any chance of getting it.

My question to the minister is: what representations has the state government made to the federal government seeking that it speed up the process and seeking clarification as to why no approvals have yet been granted in this state? I also seek information as to a comparison between

the approvals in this state and the approvals in other states for these small exit grants. Finally, does the state government intend to represent our small block irrigators in a more positive fashion?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:21): I will refer that question to my colleague the Minister for Agriculture, Food and Fisheries in the House of Assembly and bring back a reply.

TRADE MEASUREMENT INSPECTIONS

The Hon. B.V. FINNIGAN (15:21): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about recent trade measurement inspections in the South-East.

Leave granted.

The Hon. B.V. FINNIGAN: Trade measurement inspectors from the Office of Consumer and Business Affairs periodically check the measuring instruments of businesses to ensure that they deliver correct measurements for consumers and traders alike. Will the minister advise the council of recent actions taken to ensure that weights and measures used by retailers in the state's South-East are accurate?

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) (15:22): It is obvious that members opposite do not care about the sorts of consumer protections that we put in place to make sure that people are not taken advantage of—they do not care at all.

As part of the Office of Consumer and Business Affairs' monitoring program of regional areas, trade measurement inspectors recently visited 29 traders in the South-East to check that measuring instruments, such as scales and rulers, were accurate. Similar to recent inspections in the Riverland, the inspections focused on pharmacies, jewellers, delicatessens and automotive and hardware retailers.

I am disappointed that once more hardware stores were the worst performers, with inspectors finding 12 instances where incorrect length measures were being used. Not all incorrect length measures were to the benefit of hardware stores, with the retailers also found to be short-changing themselves, in some instances, by giving customers more than they paid for. Food retailers were also found in breach of trade measurement laws, with three examples of prepacked fruit and vegetables being found to have no weights marked on their labels.

Following the recent inspections in the South-East, warning notices were issued and follow-up visits will be undertaken to ensure compliance. Traders who continue to flout this state's trade measurement laws by selling underweight or undersize products can face a penalty of up to $20,000.

I will continue to inform this council about the results of OCBA's monitoring exercises. Clearly, ripping off customers, through intent or ignorance of the law, is not acceptable to this government or the South Australian community, and inspectors of the Office of Consumer and Business Affairs will continue to hold traders to account.

OLYMPIC DAM EXPANSION

The Hon. M. PARNELL (15:25): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development questions about the dust risk from the Olympic Dam expansion.

Leave granted.

The Hon. M. PARNELL: All members would be aware of the incredible dust storms that have been sweeping across the eastern states. It has been raining mud in Sydney, and the snowfields are now red with dust. There are reports that much of this dust originated in the Northern Territory and South Australia. This highlights the risk of dust exposure related to the Olympic Dam expansion, not just for the workers there and the residents of Roxby Downs but also for the wider community.

The Olympic Dam EIS outlines an intention to create the largest and most toxic radioactive tailings dam in the world and, on top of that, there will be an enormous waste rock facility—neither

of which will be capped for decades, exposing thousands of hectares of toxic material including, according to the EIS, arsenic, lead and, of course, uranium. The EIS states:

> Members of the public most exposed to radiation from the expanded operation will be the residents of Roxby Downs. As noted earlier, current doses to members of the public are low, however, it is expected that doses would increase as a result of the expansion.

It goes on to say:

> The major exposure pathway is the inhalation of radon decay products from radon emanation from the mine, the rock storage facility (RSF), the tailings storage facility (TSF) and the metallurgical plant.

I note that the government's own submission to the Olympic Dam EIS points out that the National Air Quality Standards will be exceeded at Roxby Downs on approximately 10 days per year, which is double the recommended exposure in that health-based standard.

During the operations at Olympic Dam, a dust suppression program will temporarily inhibit the airborne transport of acidic and radioactive material, but there are a number of problems associated with the management of dust. One is that the acid drainage from the rock stockpile has a timescale of a few hundred years, while radioactive material has a timescale of a few hundred thousand years, and it is not clear how long BHP Billiton proposes to manage on-site dust.

The EIS acknowledges that air quality compliance will be a challenge, and this presents a serious health threat to Roxby Downs residents, on-site workers and all living things. My questions to the minister are:

1. How will you guarantee that Olympic Dam workers and residents of Roxby Downs will not be exposed to potentially toxic dust storms picking up and dumping tonnes of radioactive and other toxic material from the Olympic Dam site?

2. Will you commit to guaranteeing that the health of Roxby Downs residents will not be affected by exposure to toxic materials transferred by dust storms similar to the one that we have seen this week?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:28): We have gone through a process of consultation on the environmental impact statement for the expansion of Olympic Dam. There were over 4,000 submissions, including those from government agencies, and the government itself prepared a whole-of-government response to that EIS in which it required answers. That process is now under way. BHP Billiton will have to prepare a supplementary EIS in which it will address the sorts of issues that the honourable member has raised.

Obviously, issues of dust can become a problem but they can also be addressed and adequately resolved. BHP will have to assure the state authorities that it can do so before it will get permission. But, clearly, we are going through that process at the moment where BHP will be required to respond to that and to a number of other issues which have been raised by members of the public and by the government agencies themselves.

SOUTH AUSTRALIAN SPORTS INSTITUTE

The Hon. T.J. STEPHENS (15:29): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Minister for Recreation, Sport and Racing, questions about the South Australian Sports Institute (SASI).

Leave granted.

The Hon. T.J. STEPHENS: Recently, I have been contacted by constituents who are concerned about the facilities at SASI and the levels of funding it receives from the Rann government. I have been told that the SASI budget has not kept up with CPI for years. One constituent has complained that the lack of support for elite sport—specifically, Olympic and Commonwealth Games athletes—has forced South Australia's most successful athletes such as champion swimmer Hayden Stoeckel to move interstate. In an interview published in *The Australian* of 16 September, Hayden said:

> The last straw for me was my shoulder rehabilitation...I couldn't get the support I needed from SASI (South Australian Sports Institute), they just don't have the money for that.

Stoeckel said that he was sorry to leave his Adelaide coach, Peter Bishop, but felt that the AIS was now his best option if he was to add to his international medal tally.

Clearly, South Australia is losing elite athletes due to the condition of training facilities and the lack of funding and support these elite athletes need. My questions to the minister are: why is SASI underfunded, and will the minister raise the issue in cabinet and rectify the situation?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:30): I would have thought that, in relation to swimmers, one of the areas that is most handicapping their progress in this state has been the lack of a proper facility.

This government is spending well over $100 million (that is the total cost of the project, with money from the commonwealth government as well) to build a new swimming centre that will be up to FINA standard. That is a massive commitment from this government in relation to sport, so that we can have a FINA level aquatic centre in this state.

Those facilities do not come cheap; they cost a lot of money, and this government is providing it. I think the basic assumption underlying the honourable member's question is incorrect, because this government is supporting the sports industry in South Australia and, in particular, with the significant amount of money that it is putting into the aquatic centre.

There is an election in six months and the honourable member (who, I think, is a shadow minister now—everyone on that side of the chamber is) can say, 'Our government will commit extra funding for elite athletes.' Of course, they will have to balance the books and tell us where that funding will come from.

COMMERCIAL DEVELOPMENT

The Hon. CARMEL ZOLLO (15:31): My question is to the Minister for Urban Development and Planning. Will he provide an update on Adelaide's progress in attracting investment in commercial developments, and how are we ensuring that our modern office blocks meet high environmental standards?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:32): I thank the honourable member for her question. I had the great pleasure last month of attending a ceremony to mark the beginning of construction of a new commercial property near the Adelaide Parklands station at Keswick. WorldPark:01 is a $150 million, five-star Green Star development that will demonstrate leading technologies in water and energy conservation. When fully completed, it will be an innovative campus-style development that will revolutionise working environments.

This government has made it very clear that it wants buildings of this quality becoming part of the mainstream culture in this state. Demand is growing for buildings that are not only pleasing to the eye but that tread lightly on the planet, are cheaper to run and provide healthy places for people to spend time. The fact that stage 1 of WorldPark:01 has been fully pre-committed highlights this growing demand and is a strong endorsement of the development and its design.

The community in general are becoming more aware of the relationship between up-front and ongoing costs and that water and energy inefficient buildings may be cheaper to build but that they are more expensive to operate on a day-to-day and year-to-year basis. Buildings such as that of WorldPark:01 constitute one step towards achieving this government's vision of an Adelaide that is recognised worldwide as liveable, competitive and resilient to climate change.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Of course, they are the objectives of the 30-year plan for Greater Adelaide. To come back to the Leader of the Opposition's interjection, yes; it does fit in with the 30-year plan.

The government wants to encourage development that allows Adelaide to retain the features that South Australians love, such as open space and the ambience and charm of rural centres, but a city that is vibrant and family friendly. We want to encourage places with a sense of local community, modern and efficient public transport services and walkable neighbourhoods through our support for transit-oriented development. Of course, the 30-year plan for Greater Adelaide currently out for consultation provides the vision that looks out beyond 2037, the bicentenary of Colonel William Light's plan for Adelaide.

Governments and the private sector are often criticised for being shortsighted or not looking far enough into the future and of only focusing on the bottom line. It has become clear that we need a new approach and a new way of thinking. By ensuring innovation, creativity and

leadership coming together in a built form, such as our commercial properties, we can create something unique here in Adelaide. Supporting innovation is essential if this generation is to leave a legacy of sustainability for South Australians to come. I look forward to working together with the commercial property sector to deliver the objectives of the 30-year plan as we continue to strive to meet the challenges of maintaining Adelaide's reputation as the number one place to live, work and play.

HOUSING SA

The Hon. R.L. BROKENSHIRE (15:35): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Minister for Housing, a question about Housing SA.

Leave granted.

The Hon. R.L. BROKENSHIRE: I have been working with a constituent, Mr Brian Atkinson of Mansfield Park, for several months now. Mr Atkinson has continually raised issues regarding the management of Housing SA, disruptive tenants and the lack of protection for many Housing Trust tenants in his area.

As an advocate, he has been actively out there raising concerns and issues but is now very concerned that (1) he has received a formal warning from the Housing SA regional manager at The Parks office; and (2) he has been advised by a local councillor that Housing SA has been interviewing tenants well away from his own residence and neighbourhood, asking whether they have been asked to sign a petition.

His concerns are very common at the moment, with Housing SA possibly attacking those who are advocating for Housing Trust tenants who may not be in a position to fend for themselves. My questions are:

1. Is it a policy of Housing SA to try to intimidate tenants who advocate for a fair go for other tenants?

2. Will the minister look into this situation on behalf of Mr Brian Atkinson at Mansfield Park to ensure that there is no untoward activity by Housing SA in relation to my constituent?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:36): I am sure the answer to the first question is no. In relation to the second, I am sure that, if the honourable member provides the details to the minister, she will investigate the matter.

MAJOR PROJECT DEVELOPMENTS

The Hon. R.I. LUCAS (15:37): My questions are directed to the minister representing the Minister for Transport, Infrastructure and Energy. Did any bidder or successful tenderer for the following projects—the Northern Expressway, South Road-Anzac Highway project or the extension of the tramline to the Entertainment Centre precinct—provide either to the project director or to members of the panels established to decide the successful tenderer for each of those three projects any hospitality, entertainment, travel or accommodation benefit in the 12 months leading up to the tender decision? If the answer is yes, I ask the minister:

1. What was the nature and dollar value of the benefit received?

2. Who received the benefit and who provided the benefit in each case?

3. Was this benefit disclosed at the time and, if so, to whom?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:38): I will refer that question to the Minister for Transport.

SMALL BUSINESS

The Hon. I.K. HUNTER (15:38): My question is to the Minister for Small Business. Will the minister provide information to the chamber about any innovative approaches being undertaken in South Australia to better inform and educate our small business community?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:38): I thank the member for his question. The small business sector continues to make a significant contribution to this

state's social and economic development as well as its wellbeing and character. With South Australian small businesses employing a large proportion of the total non-agricultural private sector workforce, it is vital that the government provides support during the current economic downturn.

The Rann government acknowledges the valued contribution of small business in South Australia and is strongly aware of the obstacles and challenges confronting them, particularly in the face of the current downturn. This government is working hard on a number of fronts to make sure that South Australia's business environment becomes even more conducive to investment and growth as we better position ourselves for the global recovery.

Despite the global financial crisis, in the first quarter of this year South Australia was the only state or territory to experience economic growth. Opportunities for growth in mining, defence and ICT industries, coupled with strong performance from our traditional primary industries, are placing us in a strong position to weather the recent global trends.

Maintaining the health of small business will be the key to minimising any job losses in this state. One of the ways we have been supporting small business is through our network of business enterprise centres and regional development boards. One of the business enterprise centres in the western suburbs has come up with some innovative ways of getting its message across to small business.

I was delighted to attend earlier this month the launch of a community television series that also harnesses the new social tools of the internet such as Twitter and Facebook to communicate with its audience. Developed by the Inner West Business Enterprise Centre, the TV program *Business Bites* began earlier this month and concludes during October's Small Business Month.

The Business Enterprise Centre Network works tirelessly for South Australia's small business community, and the Inner West BEC is to be applauded for this initiative. *Business Bites* is currently being aired on community station C31 on Wednesday nights. It comprises six episodes, each dealing with a small business theme. As most small business operators are time poor, the opportunity to access information at the workplace or at home is invaluable.

This TV series is being produced on a shoestring budget, thanks largely to the hard work of volunteers. The program's companion website can be found online at www.businessbites.org.au where people can download podcasts and watch streaming videos if they are unable to catch all six episodes on channel 31.

I commend the *Business Bites* program to all small business operators and again congratulate the Inner West BEC Manager, Susan Devine, and her team on this community led production.

DISABILITY FUNDING

The Hon. A. BRESSINGTON (15:41): I seek leave to make a brief explanation before asking the minister representing the Minister for Families and Communities questions about disability funding.

Leave granted.

The Hon. A. BRESSINGTON: On 4 June 2009 I asked a series of questions regarding the lack of care and support being given by Disabilities SA to a severely disabled seven year old child and his family who have been left on a waiting list that is outrageous to say the least. My questions have not been answered to date. This week I received an email from another desperate family. It states:

I have a child with cerebral palsy, vision impairment and developmental delays. He is very dependent on us and our lives are challenging but this story is actually about my cousin's little boy who suffers from autism. It was apparent from the age of about one that his concentration was very limited and he was eventually diagnosed with autism. There are many, many tragic events that the family have had to endure such as erratic behaviour, broken windows, broken walls and unfortunately he now hits out at people at the age of 10.

Four years ago, my cousin and his family was forced out of suburbia by neighbours as his son was causing distress to them by constant yelling and throwing of objects over the fence. They purchased land in the hills and built a home for their family so he had 'room to move'. This was effective for a while but as he gets older his tantrums are also growing. He has now caused substantial damage to the home and surroundings. My aunty and uncle are fortunate enough to be in a financially secure situation so they have offered to purchase land for my cousin's family in the middle of nowhere so they can build a shed furnished with basic necessities so they can relax on weekends without the worry of more damage. Too make matters worse their respite funding has been cut and any respite they do have carers don't want to return as he is too hard for them to manage.

We need more and better respite—not a couple of hours here and there. As it is, we are expected to schedule well in advance when we think we will be falling apart emotionally, physically, and mentally. what on earth would happen if we all handed our 'special' children like these over to the government?!! We love our children but we need a better partnership if we are going to keep these children living in the community.

My questions to the minister are:

1. What is the budget allocation for goods and services for families with a disabled child?

2. What does that money equate to per head?

3. How are families' needs assessed and evaluated to determine whether they deserve those goods and services?

4. How does the current budget allocation compare with the years 2002 to 2004?

5. Will the minister investigate this urgent matter and the one raised on 4 June 2009 and provide an answer before the end of this session of parliament?

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) (15:44): I thank the honourable member for her questions and will refer them to the Minister for Families and Communities in another place and bring back a response.

RETAIL TRADERS

The Hon. R.D. LAWSON (15:44): I seek leave to make an explanation before asking the Minister for Consumer Affairs a question about retail traders.

Leave granted.

The Hon. R.D. LAWSON: On 9 September this year, the minister issued a press release headed 'Stores caught misleading shoppers during mid-year sales'. This press release was issued some 53 weeks after a similar release in 2008. This particular release quoted the minister as saying:

Some traders clearly did not understand their legal responsibilities when it came to fair trading. Just because items are on sale it doesn't mean that stores can become lax about providing correct information to customers.

The minister claimed that retailers were displaying incorrect refund signs, with statements such as 'No exchange on promotional or end of season stock items'.

Members and consumers are aware that some traders do allow customers to return goods, especially clothes, either in exchange for a different size, or to return for a credit or a refund if the consumer has changed his or her mind. However, there is no obligation to exchange, repair or replace goods which are not defective and, if traders do provide cash exchanges and returns, that is not a legal obligation in all circumstances.

Members and traders are also aware that traders are bound to honour statutory warranties that goods are fit for purpose and are of merchantable quality. My questions are:

1. Will the minister acknowledge that she engaged in misleading and deceptive conduct by issuing a statement saying that it was unlawful for a retailer to display a sign 'No exchange on promotional or end of season stock items'?

2. What steps will the minister take to ensure that traders and consumers are provided with accurate information about their rights and responsibilities?

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) (15:47): Indeed, the matters to which the honourable member is referring are the statutory warranties that apply to all goods and services that ensure that goods and services are fit for the purpose intended. Obviously, as long as they are used in the way that they are intended to be used and not abused in any way and if the warranty is breached, that is, the item is defective in some way, whether or not it is a sale item, the consumer does have the right to redress, and the right of redress entails a right—

The Hon. R.D. Lawson: Not in all cases.

The Hon. G.E. GAGO: If the item is faulty and it breaches its statutory warranty; that is, it is fit for purpose and the item is not fit for purpose. Obviously, we are not talking about exchanges because a person gets the item home and does not like it or the person returns it because their partner or child does not like it. The statutory warranty does not apply to that. However, to put up a single sign saying that no refunds or returns are available without qualifying that there is a statutory warranty provision that no-one can remove is incorrect. The sign is incorrect because, if the item is not fit for purpose, the person is entitled to redress, and the redress can take the form of a refund, repair or replacement, and that is required under the law.

Therefore, a sign that does attempt to remove the statutory warranty by stating that there is no provision for exchange or replacement is incorrect. Under the statutory warranty provisions a person, if the item is not fit for purpose and is faulty, is legally entitled to redress. No-one can take away that right. Whether or not it is a sale item, no-one can take away that right, so a sign that proposes that is unlawful.

VIBE ALIVE

The Hon. J.M. GAZZOLA (15:50): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about efforts to educate school students of the harm caused by alcohol usage at a young age.

Leave granted.

The Hon. J.M. GAZZOLA: While welcoming students from all backgrounds, the Vibe Alive festival focuses on encouraging positive life choices for students from Aboriginal and Torres Strait Islander backgrounds. Will the minister advise the council about the recent Vibe Alive festival held at Port Augusta and the opportunity it afforded to educate young people about the harms of under-age drinking?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:51): Vibe Alive is a two-day festival for young Australians of all backgrounds. It combines music, sport, art, education and healthy living in a high energy, youth friendly setting. Vibe Alive allows students to sing, dance, play, create and learn in an environment where they can express themselves, share their talents and celebrate Aboriginal and Torres Strait Islander cultures. Participants also have the opportunity to explore healthy living and career options, as well as boost literacy and numeracy skills.

Last month's festival was held at Port Augusta on 5 and 6 August. It was a sell-out success, with 1,600 students attending from across South Australia—from as far afield as Coober Pedy and Alice Springs. Representatives from the Office of the Liquor and Gambling Commissioner and DASSA attended the festival and had an opportunity to engage with students in a friendly and relaxed environment. They were able to talk about the dangers of alcohol usage at a young age.

The students were provided with plenty of giveaways, such as wrist bands, iPod holders, and so on. To demonstrate how alcohol can affect everyday life, students were given 'beer goggles', which simulate a blood alcohol reading of 0.05, and were then asked to participate in interactive games. The games involved computer car racing games (where students had to stay on track) and throwing stress footballs to each other. The students reported great difficulty in achieving the tasks with the goggles on and were surprised at how much a blood alcohol content of 0.05 could affect their functioning.

Supported by the state and commonwealth governments, the Vibe Alive festival was produced by Vibe Australia, an Aboriginal media, communications and event management agency that organises festivals throughout Australia. The Vibe Alive festival was a great success and, given the opportunity, this government will support future festivals.

ANSWERS TO QUESTIONS

TRANSPORT DEPARTMENT

In reply to the **Hon. T.J. STEPHENS** (24 September 2008).

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises,

Minister Assisting the Minister for Transport, Infrastructure and Energy): The Minister for Transport has advised:

1. The Kateena Street, Regency Park roadworthy inspections facility had 16 positions for vehicle inspectors at the OPS-3 classification. In September 2008, 10 were occupied, with another two inspectors on temporary secondment to the vehicle emissions testing facility.

A further six inspectors were recruited in 2009.

2. The reason for the shortfall of inspectors back in September 2008 was largely due to the healthy state of business and the attraction of some inspectors to positions in the private sector prior to the recent downturn of the economy.

Waiting times for heavy vehicles, including buses, have reduced to less than five days consistently since December 2008.

INSURANCE AGGREGATORS

In reply to the **Hon. J.M.A. LENSINK** (12 May 2009).

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): I am advised:

The provision of insurance services by Insurance companies is regulated by the Australian Securities and Investment Commission (ASIC). Insurance aggregators are relatively new entrants to the insurance industry and ASIC are keen to hear of any practice that appears to be deceptive or misleading.

Where such matters come to the attention of OCBA, my officers will refer these to ASIC where appropriate. I have also written to the Commonwealth Minister for Competition Policy and Consumer Affairs to draw his attention to this matter.

With respect to whether I would issue any public warning or notification, this would best be undertaken by ASIC as they are the regulator and would be the agency gathering complaint information on this alleged practice. As more consumers begin to rely on the internet for information, I have suggested that if ASIC had evidence of misleading practices that consideration be given to issuing a warning.

I am advised that no formal complaint has been lodged with the Office of Consumer and Business Affairs (OCBA) against an aggregator.

FAMILY DAY CARE

In reply to the **Hon. D.W. RIDGWAY (Leader of the Opposition)** (17 June 2009).

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy): The Minister for Early Childhood Development has provided the following information:

Family Day Care has a total of 20 policies for staff and care providers. These policies are required by the national Family Day Care Quality Assurance system. Family Day Care Quality Assurance requires policies to be reviewed regularly, within a 30 month cycle.

Policies must be reviewed in consultation with families, care providers and staff. It is also essential that information provided by recognised authorities form the basis of policies, in particular those relating to children's health, safety and wellbeing. Families, care providers and staff have a number of avenues for feedback on the policies including email, fax, mail and local consultative meetings. Policy officers are also available to speak with stakeholders at any time.

In 2008 Family Day Care undertook a review of all of the policies. Numbers of feedback sheets received from providers for each policy were:

Safe Practices in FDC	34
Health and Hygiene in FDC	30
Medication in FDC	25

Ultra Violet Radiation Protection in FDC	6
Animals in FDC	7
Smoke Free Environments in FDC	6
Healthy Food Choices in FDC	4
Water Safety in FDC	3
Drugs and Alcohol and FDC	5
Inclusive Practice within FDC	2
Complaints and Grievances for FDC Providers	2
General comments	5

There were also a large number of letters from parents, mostly relating to Health and Hygiene, Medication and Safe Practices.

In March 2009 the Health and Hygiene, Medication and UVR Protection policies were updated and where appropriate changed, taking into consideration the feedback received from care providers. Most of the feedback related to nappy changing, hand washing and medication management for children. Family Day Care has received a small amount of feedback on these new policies and generally, providers are happy with the changes.

The Safe Practices policy is currently being updated in consultation with the Injury Surveillance Unit in Health SA due to the large number of comments about play equipment. It is anticipated this policy and accompanying fact sheets will be implemented in 2009.

Family Day Care has also established a continuous review cycle that meets the requirements of the national quality assurance system. To meet this requirement, four policies will be reviewed every four months. Providers offer feedback through their local consultative groups and are encouraged to provide feedback individually on any policy at any time.

MATTERS OF INTEREST

WATER SECURITY

The Hon. R.P. WORTLEY (15:53): I rise to speak about the important issue of water, which has caused quite a bit of grief for South Australians, in particular those living in regional communities. With the 2010 election at the forefront of the minds of those opposite, it is evident that they are trying to paint the Labor government as failing to act to help our irrigators and secure water for this state.

Many regional businesses are struggling to meet the challenges of climate change and water security. Our government has been providing exceptional circumstances assistance to many of these people, in part to demonstrate our concern for river communities and businesses. We are also fortunate to have a willing partner in the federal government working with us to improve conditions in the Murray-Darling Basin and assist our nation's river communities. It has facilitated and funded action by the Murray-Darling Basin states to improve water management.

The Australian government's $12.9 billion Water for the Future program works in conjunction with our government's Water for Good program to fund programs that will deliver water security for all South Australians.

Nearly a year ago in this chamber, I spoke on the Water (Commonwealth Powers) Bill, and I said that there would be no 'quick fix' to the problems of water security. Twelve years of the Howard government's inaction on water and climate change denial meant that water management in this country did not receive the policy attention or the funding it needed.

People should be very wary of an opposition that promises a quick fix to water security, after 12 years of the Howard government failing to address the issue. The Liberal's slow pace of tackling over-allocations and acknowledging climate change means that this government must now fix the Liberal's legacy of water insecurity.

The Leader of the Opposition recently demonstrated her failure not only to understand water trade policy but fiscal responsibility. The Leader of the Opposition proposed that the state

government underwrite irrigators' allocations. This is equivalent to writing out blank cheques from the bank of false hope. In an irresponsible attempt to garner—

The Hon. C.V. Schaefer interjecting:

The Hon. R.P. WORTLEY: You've woken up? Thank God for that. It is the first time I have heard an objection. Well done! This is equivalent to a blank cheque from the bank of false hope. In an irresponsible attempt to garner electoral support, she is proposing to pour fiscal responsibility down the drain during the worst global economic conditions since the Great Depression and in an environment of escalating water prices.

A promise to write a blank cheque for irrigator water, without consideration of the economic conditions of the day, is the sign of an electorally motivated party that will put populist rhetoric before responsible economic management. These irresponsible proposals come after a mind-boggling history of Liberal inaction on the River Murray. Riverland voters should be very wary of the Liberal Party's election promises.

Labor is reducing the strain on the Murray by using evidence-based water management. We cost our policies and spend responsibly so that we can avoid putting too much pressure on water prices. Our government has also stepped in to negotiate the purchase of water licences from those who were unsuccessful in selling to the over-subscribed federal government program. These water licence buyback programs offer a much needed option for people in distress looking to exit their properties with dignity because they can no longer afford to purchase enough water to run a successful business. With Labor's demonstrated commitment to investing in water security for the future, as well as providing—

Time expired.

AGEISM

The Hon. C.V. SCHAEFER (15:58): Mr President, you may notice that I am wearing a fairly bright scarf today. This is in an effort to be seen, because I find that I am, in fact, becoming invisible. I am, sir, very much the victim of the last, we hope, form of discrimination within South Australia and Australia, and that is ageism.

The reason for my thinking about this and deciding to speak to it today is a column written by Susan Mitchell in the *Sunday Mail* of 9 August, from which column I propose to quote somewhat extensively. She says:

> Forget the insult of four-letter words. They are nothing compared to the obscenity of a three-letter word beginning with O and ending with D.
>
> This word should be banned from everyday usage...Because this word condemns us to live on the margins of our society. To have this word hung around your neck like a noose means that your opinions are no longer respected, your experience is disregarded and your opportunity for employment is non-existent...We have attacked discrimination against women, against race, against religion, against disability...However, there is still one last taboo that needs to be banished. And that is the taboo of ageing.
>
> Who determines when we are considered too [old] to continue to work? Who determines what is the number that tips you over into the world of disrespect and invisibility?...In terms of employment, according to Age Discrimination Commissioner Liz Broderick [who is 45], 45 is now the starting point for being labelled a 'mature age worker'. How absurd is that?
>
> We live in a country obsessed with youth and therefore terrified of ageing. Australia has lower workforce participation rates for 'mature workers' than most OECD countries. South Australia has the highest percentage of people over 50 in the country. What does that make us, a retirement village or the largest repository of wisdom, skills and experience? If we viewed maturity in people as highly as we viewed it in wine, we would be the envy of the nation...the facts are that thanks to medical advances most of us will live well past 80.
>
> At the beginning of the 20th century few women lived beyond the age of 50. Now...most women 50 or over will live for at least another 30 or more years. In fact, those women about to turn 50 have a 40 per cent chance of living until they are 100.

The Hon. A. Bressington interjecting:

The Hon. C.V. SCHAEFER: The Hon. Ann Bressington will be pleased to know that that does not apply to smokers. Susan Mitchell continues:

> We have been brainwashed into believing that after 50 our physical and mental powers will gradually decline and that life will hold no new challenges, no new excitements. We have been taught to fear ageing because the older we become, the more worthless we are made to feel. It is time to confront these lies…When someone asks you how old you are, lie. And continue to lie until they stop asking. It's not relevant. And it's none of their bloody business.

I intend to leave this place in the near future, but I do not intend to sit in a rocking chair and dribble. I have a number of things that I want to do. I must say that I find it fascinating that we are continually told that we must have younger members for almost every phase of society, every sport and every profession. No longer does anyone seek a balance of ages and experience.

I remind those who are hell bent on seeing the end of me and many like me from this place and other places that my generation will be the largest proportion of the population of South Australia and Australia until we die. Personally, I do not intend for that to be any time soon, if I can avoid it. For those who have asked, I am presently alive, literate and breathing.

The PRESIDENT: Although five minutes older.

CHARLES DARWIN

The Hon. I.K. HUNTER (16:02): What astonishing hypocrisy we have just heard from the Hon. Ms Schaefer. I cannot let this go. She rises to speak about her hopes of it being the last remaining form of discrimination in this state, when on three occasions, in my memory, she has voted in this very chamber to support discrimination—in the last week on IVF and lesbians.

When we were voting to remove discrimination against gays and lesbians in hospitals and nursing homes whom did she vote with? Family First—to extend discrimination once more. What hypocrisy, Mrs Schaefer. I cannot believe you could get up and talk about that. You mentioned women, race, disability and ageing as areas of discrimination. Did you mention homophobia? No, not once. I just cannot believe it.

Onto happier subjects. This year marks the 200th anniversary of the birth of one of the world's greatest scientists, Charles Darwin. This anniversary comes in the same year of the 150th anniversary of the publication of *On the Origins of Species by Means of Natural Selection*, a text which changed forever the way that biology is understood.

The Victorian era must have been an amazing time to have lived through, for some—the wealthy and educated, and the Hon. Mrs Schaefer, possibly. The developed world was modernising and long-held beliefs were being overturned. Against such a backdrop, it is hardly surprising that Darwin's views created debate and controversy and, indeed, in some parts of the community they still do.

Darwin's dogged following of a single thought through to a logical conclusion precipitated so much of modern scientific understanding, for from his theory of evolution we have our modern-day understanding of biology and genetics. How would we view the human past and how it relates to the wider universe would be almost incomprehensible today without Darwin's legacy. In fact, one could claim that Darwin and his now accepted fact of evolution has not only changed what we think about when contemplating the world and nature but also how we think about the world and nature.

This revolution in thinking is based on a number of fundamental discoveries in diverse fields such as physics, cosmology, chemistry, geology, biology, archaeology, palaeontology, psychology, mathematics, anthropology, history, genetics and linguistics. The revolution is this: these various fields are now coming together to tell one story about the natural world. I am currently reading a book called *A Terrible Beauty* by Peter Watson which, on page 3, states:

> This story, this one story, includes the evolution of the universe, of the earth itself, its continents and oceans, the origins of life, the peopling of the globe, and the development of different races, with their differing civilisations. Underlying this story, and giving it a framework, is the process of evolution.

In the words of the American philosopher Daniel Dennett, Charles Darwin's idea about evolution was 'the single best idea anyone has ever had'. He was not the first to talk about evolution but he was the first to contextualise it and provide it with the evidence base that it needed to be taken as a legitimate, plausible scientific paradigm.

One of the truly amazing things about Darwin and his discovery of common descent was that he was not the only person to see the birds, the turtles and the variety of other fauna that led him to these conclusions, but he was the first to see them in terms of the new idea of evolution. That is the beauty of science. It opens our eyes to that which is before us, making us see things anew and afresh, from an entirely different standpoint. Darwin, like the great scientists before and after him, did just that. He connected the human condition to the wider world in a very direct way.

Significantly for his time, Darwin was thinking about all humans. Darwin believed in the common descent of all humans, not just white English-speaking humans. He did not accept his contemporaries' belief that black men and white men were of different species. He looked at the

experiences of slavery from his travels and was appalled at how one fellow human being could treat another. These sentiments were radical in their time.

Significantly, Darwin inspired others. His experiences showed others that challenging traditional wisdom could reap enormous reward—if not personal, then for society as a whole. His example has encouraged people to explore, question and strive for further understanding. He did not just challenge those in his intimate circles with his beliefs; he tackled the prejudices of an age. The result of his labours was a theory that went on to be accepted as fact and is a fundamental paradigm of science.

He has informed today's understanding of genetics, which is something he had no comprehension of, and this is a magnificent example of the power of his theory. It predated and gave great power to a new field of science—the discovery of the unit of inheritance, the gene.

Before I conclude, I offer members of the chamber a quote from the great man. It is from the introduction to Darwin's 1871 text *The Descent of Man, and Selection in Relation to Sex*, which states:

> Ignorance more frequently begets confidence than does knowledge: it is those who know little, and not those who know much, who so positively assert that this or that problem will never be solved by science.

It is something the Hon. Ms Schaefer might well do to ruminate upon.

Time expired.

AUSTRALIAN CHARTER OF RIGHTS

The Hon. R.D. LAWSON (16:08): I want to speak about the proposed Australian Charter of Rights. The current federal government has announced that it proposes to introduce such a charter and established a consultative committee which is to report shortly. That committee is chaired by Father Frank Brennan, who has given varying signals as to his personal attitude in relation to the introduction of such a charter.

The model involves two elements which I will describe briefly—first, a description or an enumeration of the so-called human rights and, secondly, a procedure under which courts can make a judgment on the compatibility of parliament's legislation with so-called human rights. I, personally, have two major objections to this charter of rights. I am a little concerned that I seem to be in the same camp as the Attorney-General, the Hon. Michael Atkinson, and former Labor premier Bob Carr, but I do believe that these objections are principled and well founded.

First, I have concerns about the rights themselves which are to be contained in such a charter of rights, if it is based as expected upon the Victorian model or even on the model of a charter which currently applies in the Australian Capital Territory. Those rights themselves are expressed in vague and aspirational terms rather than in terms of a legal statute. For example, what the charter refers to simply as a 'right to life', without wider enumeration, elaboration or definition, leaves room for discussion, debate and controversy and does not really resolve the extent of that right.

Take also the right for the freedom of religion. My concern is that freedom of religion becomes freedom from religion, so that one cannot have a holiday described as a Christmas holiday because that is offensive to persons who are not Christians; one cannot mention God in an Anzac Day service because that is offensive to atheists; and one cannot have Easter holidays because that is offensive to Jews, Muslims and other persons. So, what is termed simply as freedom of religion becomes freedom from religion.

My second principal objection is that the charter invites the judiciary to make political decisions and, thereby, politicise the judicial process, and that will ultimately undermine confidence in the integrity and independence of our judiciary. I accept that there are many constitutional judgments which might be termed as political but they are not political in the same way that these are.

I commend to the council an excellent book recently published under the editorship of Julian Leeser, entitled *Don't Leave Us With the Bill*: *the Case Against an Australian Bill of Rights*. I do believe, however, that the appropriate mechanism for monitoring whether our laws measure up to the international norms (to which we aspire) is through the parliament itself. I personally favour using a parliamentary committee with members of parliament to examine legislation to see whether or not we are meeting what we believe to be appropriate levels of political and civil rights.

The advantage of this system is that the questions stay within the political process, where they appropriately reside. It means that the community, through its representatives (the people in the parliament), retains control over the debate and the political issues that ought to be debated in parliament rather than in our courts of law.

MID-MURRAY REGION

The Hon. DAVID WINDERLICH (16:13): I rise to speak about how this government and this parliament is letting down the people of the Mid-Murray. This region has been forced onto the agenda by a meeting on a sandbar near Swan Reach on 19 August. The meeting was attended by the Hon. Robert Brokenshire, myself, Adrian Pederick (member for Hammond) and more than 300 other people. The River, Lakes and Coorong Action Group also organised a bus to show their support, and I organised one from Adelaide.

However, I realised that I knew nothing about this area and so, last Thursday, I visited the Swan Reach Bowls Club to meet with local farmers and growers and learn more about the impact of drought and over-allocation on them and their families.

Some parts of South Australia are flooded with MPs on fact-finding tours, consultants and consulting bureaucrats–but not the Mid-Murray. They told me I was the first MP ever to visit them and sit down and talk to them one to one—me, a city-based MP from what has traditionally been a city-based party. That is an indictment on Labor ministers and Liberal members. They said that not so much as a project officer had been out their way. That is an indictment on several government departments.

The Hon. R.P. Wortley interjecting:

The Hon. DAVID WINDERLICH: You didn't go to Swan Reach.

The Hon. R.P. Wortley interjecting:

The ACTING PRESIDENT (Hon. I.K. Hunter): Order! The Hon. Mr Winderlich will ignore interjections.

The Hon. DAVID WINDERLICH: And I think that is a very good example of the attitude they told me about. Your interjections confirm the fact that you did not go there and you are defensive about it instead of being apologetic.

The Hon. R.P. Wortley interjecting:

The ACTING PRESIDENT: Order!

The Hon. DAVID WINDERLICH: Apparently, we have an indictment of a parliamentary committee as well. This area of the river has been completely forgotten by the state government and by the members of parliament who are supposed to be representing it.

The Hon. R.P. Wortley: We've been there, done that.

The Hon. T.J. Stephens: Make sure you recognise his interjection so that it ends up in *Hansard*.

The Hon. DAVID WINDERLICH: Yes; thank you to the Hon. Mr Wortley. I will double-check—

The Hon. R.P. Wortley interjecting:

The ACTING PRESIDENT: Order!

The Hon. R.P. Wortley interjecting:

The ACTING PRESIDENT: The Hon. Mr Wortley will come to order or I will remove him.

The Hon. DAVID WINDERLICH: I can confirm, having been on that same committee, that we did not go to Swan Reach. This complete neglect is apparent in the flawed policies at government levels. Take the federal exit grants: to be eligible for those grants, you must have a property of 40 hectares or less. David Peake, of the Coalition of Concerned Communities, is not eligible because his property is over 40 hectares in size, but he farms only 10 hectares—or he used to before the dropping river level left his pumps high and dry.

Mr Peake cannot farm most of his property because it is riverfront, but he had to purchase it and has to maintain it. These growers and their communities face some serious challenges.

House prices are plummeting and houses are staying on the market for extended periods of time. The Mid-Murray Football League may fold next year if Cadell-Morgan cannot field a team. The price of water has tripled, making it harder for growers to remain viable.

These challenges, combined with a complete lack of attention from ministers, bureaucrats and members of parliament, has led to a nagging concern that they are not wanted. There is agreement that the government does not want any irrigation below Lock 1. These growers are very patient people. If this were France, they would have been blockading the Stuart Highway and setting fire to the local PIRSA office except, of course, there is no local PIRSA office.

They were not even angry about the fact that they might be seen as surplus to requirements. What they found intolerable was the lack of clear direction from the government. To paraphrase their views, 'If you want us to stay, help us. If you want us to leave, help us leave, but don't just leave us in limbo.'

I heard a very similar sentiment from a Riverland grower today, and these people are absolutely right. Everyone knows that times are tough along the river. Everyone knows that some people will have to leave their farms and their blocks and that this will make it tough for many communities. The government cannot make it rain, but it can provide some direction and some certainty so that people can plan whether to stay or whether they should make preparations to leave.

We, as members of parliament, have limited power but we can at least make the effort to visit some of these communities and listen to their stories and let them know that, even though we cannot solve their problems, we have not abandoned them and we will not do so. That is the least we can do and, apparently, that is too big an ask.

The Hon. R.P. Wortley interjecting:

The Hon. DAVID WINDERLICH: And Berri is not Swan Reach. It is not even the Mid-Murray.

SOUTH AUSTRALIAN SPORTS INSTITUTE

The Hon. T.J. STEPHENS (16:18): The South Australian Sports Institute (SASI) is a very important organisation in our community. As shadow minister for sport, I would like to put on the record the opposition's respect for the great work the organisation carries out. SASI conducts programs and services to identify, develop and support athletes with the potential to perform at the highest national and international levels of sport.

I have only admiration for the great work that SASI's coaching staff carry out for the young SASI athletes. However, I also want to talk about the challenges that SASI currently faces. SASI is facing a difficult period as some of its elite athletes have decided to leave the institute because it has been unable to provide sufficient facilities and support.

Over a long period—and we go back to 1982—SASI has produced young athletes who go on to achieve their goals and get to the top of their game. Losing such talented athletes to other states due to lack of support and funding is just unacceptable. South Australia has many world-class coaches, but how are they to continue training quality athletes in South Australia when these athletes understandably seek better facilities, support and funding that other states are able to provide? We also, regrettably, lose some of these coaches interstate.

One of South Australia's most successful athletes, champion swimmer Hayden Stoeckel, has recently decided to leave Adelaide and train in Canberra. I quote from an article in *The Australian* of 16 September:

> The last straw for me was my shoulder rehabilitation...I couldn't get the support I needed from SASI (South Australian Sports Institute), they just don't have the money for that.

I do not know about other members but I find that incredibly disappointing to read and yet, at the same time, Mr Stoeckel's position is completely understandable. Stoeckel is extending his career to the 2012 London Olympic Games and needs to train in the very best of facilities. Clearly, South Australia is losing elite athletes due to the condition of our training facilities and a lack of funding and support that is essential to the career of these athletes.

Constituents contact my office to complain about the tragedy of the Stoeckel situation and others like it, and I cannot argue with them, it is just not good enough. State Liberals and people involved in sport in this state, people in the know, such as the chief executive of Sport SA, have

pointed out that we are currently facing a facilities crisis. That is why a future state Liberal government will undertake a comprehensive audit of our sporting facilities.

It is clear that the Rann government either is not listening or is dragging the chain. The state Liberals called for the running track at Santos Stadium to be resurfaced for months before this government bowed to pressure and finally did something about it. I can remember athletes complaining about injuries caused due to the surface and stating that they would have to leave this state to train elsewhere if something was not done.

I raise the issue of swimming. Swimming facilities for our elite athletes have not been good enough in this state for as long as I can remember. The new State Aquatic Centre, which was first announced in 2006, still has an incredibly long way to go. I understand SASI was Australia's first state sports institute, and that is something to be proud of, but, sir, I ask you: are we still proud of it? When we see our elite athletes packing up and moving interstate to train, I think probably not.

A central location such as in a sporting and cultural precinct like the state Liberals have proposed in City West may well be the best option for SASI and something that could be considered in the near future. Sufficient funding to SASI is crucial for our young South Australian athletes. It is vital that governments provide organisations such as SASI with the funding they need to upgrade their facilities. South Australia should not be behind the pack; we should be on par at least with the rest of Australia.

With appropriate funding and support, this state can still mould some of the most talented young athletes in Australia. By not providing the best support, we will make it exceptionally difficult for our young athletes to successfully compete on the world stage. State-of-the-art facilities, innovative equipment, medical support, and much needed funding behind each athlete are all fundamental ingredients to ensure that our athletes compete against athletes who are already accustomed to such things.

I constantly receive feedback in the community that sport is not receiving the funding that it needs and deserves from the Rann government. I am led to believe that funding for SASI has not increased with CPI for years and years. I really hope that the Rann government starts to get the message. I am sure the Premier will be happy to cling on to any successful athlete without actually putting in the hard work to work with them in the first place.

YOUTH OPPORTUNITIES PROGRAM

The Hon. A. BRESSINGTON (16:22): I have been informed of a personal leadership program called Youth Opportunities which I am advised has been used by some schools to support and maximise the potential of students nominated for the program. The Youth Opportunities Association (SA) Inc. is a not-for-profit organisation established in 1997 but works in partnership with schools and other organisations to provide young people with personal leadership training.

The personal leadership training works as a catalyst for identifying and fulfilling personal potential. The personal leadership training program involves an intensive 10 week seminar series and ongoing follow-up for two years after completion of the program. The intensive 10 week personal leadership program is delivered by two trainers working one day per week for a school term with a group of 12 to 20 students.

Currently, Youth Opportunities is available through some schools on request by individual schools. Children are nominated for the program by the school body based on a variety of factors which may not necessarily revolve around the risks to the student, such as family trauma, substance abuse or other signs of potential dysfunction, but may also include students with a high potential requiring some mentor support and direction.

The benefits of the course are more motivated students with a positive, confident attitude that results in better marks at school and better school retention rates and relationships with peers, teachers and family members. The personal leadership training coaches young people in the knowledge and skills to become leaders of their lives, independent of their circumstances and adversity.

An important part of this has been to demonstrate to young people how they can take charge of their own lives by assuming responsibility for their own choices, actions and expectations. It enables youth to develop their emotional maturity, appropriate language and critical thinking skills to assertively meet their needs. Parents, in particular, have found this to be a breakaway form the usual blame the parents approach to child/parent conflicts commonly seen in child protection workers.

It is my understanding that then minister Trish White used the program to help solve a well publicised problem at Craigmore High School with outstanding results and improvements in retention rates, and that DECS investigated the program outcomes and was very impressed with the results. I have heard testimonials from parents and children that the course has had a dramatic effect in turning the lives of young people around.

Suicidal teens and teens who might have turned to truanting, experimenting with drugs and antisocial or offending behaviour have reported significant breakthroughs in their academic results, quality of personal relationships within their school and at home, and greater overall hope for a bright future. One young woman who completed the course said, 'If every teenager had access to Youth Opportunities, there would be no need for therapy.'

Youth Opportunities is not available to many needy children and their families, as it is reliant on corporate support to help subsidise this program so that it can be delivered free to those youth identified as needing the program. Currently, government funding contributions are insufficient to enable wide enough community access to this very important initiative, and I would strongly urge every business in the community to seriously consider providing financial and in-kind support to this unique and worthwhile program.

SERIOUS AND ORGANISED CRIME (CONTROL) (MISCELLANEOUS) AMENDMENT BILL

The Hon. DAVID WINDERLICH (16:26): Obtained leave and introduced a bill for an act to amend the Serious and Organised Crime (Control) Act 2008. Read a first time.

The Hon. DAVID WINDERLICH (16:27): I move:

That this bill be now read a second time.

This is a consolidated version of an earlier bill which I introduced, the Serious and Organised Crime (Control) (Close Personal Associates) Amendment Bill. This bill replaces that bill and adds to it other categories of association and protection of association, including the provision of association on the grounds of community or church volunteering as a defence, and limits the operation of association to a member of an outlawed gang or a declared organisation (which under the current act applies that indefinitely—anyone who has ever been a member of a declared organisation could be subject to the provisions of the Serious and Organised Crime (Control) Act)—to a two year limit.

In May last year, the government's Serious and Organised Crime (Control) Act was passed. All of you would be aware of my strong opposition to these laws. Among other things, they remove the presumption of innocence by putting the onus of proof on the defendant, remove judicial discretion and undermine the rule of law by categorical discrimination. This act has been condemned for its human rights violations and as a flawed attempt at fighting crime by former police commissioner Christine Nixon; the Victorian Attorney-General, Rob Hulls; the Australian Capital Territory's Human Rights Commissioner, Helen Watchirs; the ACT Attorney-General, Simon Corbell, and the United Nations Regional Centre for East Asia and the Pacific Office on Drugs and Crime.

These are just a few of the international agencies that have come to believe that South Australia's so-called 'tough on crime' approach (as exemplified by this act) does little to address criminal behaviour and is wholly unjust. At a more practical level, there was opposition to this bill from the very beginning and concern since its implementation from groups such as the Longriders Christian Motorcycle Club and workers in church community organisations.

Although I would dearly like to see this draconian legislation removed in its entirety, for now I am focused on amending just one aspect of it, that is, the provisions which inhibit freedom of association. The Serious and Organised Crime (Control) Act bans association between the general public and anyone who is a member of a declared organisation or those under a control order. In fact, the law strictly bans the public from associating with people who are former members of a declared organisation and may have had no involvement with the organisation for 30 or 40 years or more.

Just as concerning are restrictions on what most people would call close family members associating with a person who is a member of a declared organisation or has a control order against them. It is currently an offence for cousins, uncles, aunties and even some partners to see their loved ones six or more times a year if one or the other is a member of a declared organisation or the subject of a control order. This effectively forbids Christmas family get-togethers, family fishing trips and the celebration of birthdays with family members.

Furthermore, the current law makes it an offence for volunteers to have any contact with someone who is a former member of a declared organisation or the subject of a control order. It makes sitting in church at least six or more times a year with a former Fink or another person who is the subject of these laws an offence. It makes it a potentially criminal act to serve a person subject to these laws at a soup kitchen.

Volunteers at a homeless shelter, fundraising barbecue, school fete or Rotary Club event, or collecting for the Red Cross Appeal or some other charity event, are currently engaging in criminal activity if they associate six or more times a year with someone who is a member or a former member of a declared organisation or the subject of a control order. In fact, by having any interaction with a person who is subject to these laws, an innocent person becomes potentially subject to criminal sanctions.

While at first glance these laws might appear to be making former members of declared organisations or people who are the subject of a control order outcasts, there are no provisions which penalise them from associating with the public. Instead, community and family members who engage with them are subject to penalties—which could mean they are liable for up to five years' imprisonment. Prosecutors need no evidence of criminal behaviour: it is up to these community and family members to prove their innocence.

The government has complained loudly that motorcycle clubs have been a law unto themselves and that they have tried to establish themselves outside society—and, indeed, that is true of a number of them—but its own laws are actually helping to further that distancing from society by cutting off members of motorcycle organisations from the rest of society, including their loved ones and support networks to which they would otherwise turn in order to turn around their life, if they are so inclined, such as religious and community organisations.

Further, it uses a broad brush to socially alienate people who have turned away from organised violence decades earlier in the same way it penalises those who police suspect still engage in criminal activity. It makes no distinction. There is little incentive to try to reintegrate with society, even for those members of motorcycle gangs who want to do so.

My amendments would only scratch the surface of correcting the vast array of unethical and discriminatory legislative provisions within the Serious and Organised Crime (Control) Act. The first part of the bill provides a clearer definition of membership in order to limit it to those who have been involved in one way or another with an organisation for two years prior to the application for its listing as a declared organisation. No doubt, this begins what will be a long process to address just one of the numerous concerns that the United Nations Office on Drugs and Crime has with the legislation.

The second focus of my amendment bill is to provide greater protection to volunteers involved in community and religious service delivery, who otherwise may inadvertently be penalised for what the government deems to be criminal activity, such as the seditious soup kitchen, cupcakes at a fete, asking for donations for a charitable cause or going to church.

The actual criminality of the actions is irrelevant to the government's thinking; the possibility of criminal activity is all that matters. My proposed changes add 'associations occurring in the course of gatherings of a religious or spiritual nature or gatherings of individuals who share membership of a group that is religious or spiritual in nature' and 'associations occurring in the course of voluntary work in the community' to the list of reasonable associations.

I understand that the government actively and consciously excluded church services from acceptable associations when creating this legislation, fearing that churches could be a haven of serious and organised criminal activity. This overturns a long Christian tradition of welcoming the outcasts. On one level it is a restriction of religious liberty and, on another level, it is a surprising lack of faith in faith by a parliament with many Christian members, including the Attorney-General who is a committed Christian.

As I have said before, I come from a Christian tradition, being the son of a Lutheran minister. The operating theory in my circles is that exposure to the word of God is good for people. We would actively go out to the dispossessed and outcast to expose them to the word of God and we would welcome them into church services. The strange thing about this act is that it completely overturns that tradition in that only respectable people may apply to participate in religious activity. I think that is a strange inversion of the Christian ethos.

The third focus of my bill is to include what most people would think is common sense. The exclusion of these common sense measures is, unfortunately, unsurprising, considering the other provisions contained in the act. However, my amendments would add—and this was the subject of my previous bill—cousins, uncles, aunts and intimate relationships to the list of reasonable associations.

The effect of this change would mean that these close family members are not automatically found to be guilty of criminal association, and the prosecution would have to prove the association was of a criminal nature. By the way, until recently this used to be par for the course in our legal system and our general culture, our understanding of how the law operated and our rights under the law.

I realise that the notion of proving something wrong took place before convicting someone of a charge is a novel concept to the government, but I assure members it is very much needed in this case and in the other scenarios mentioned previously. I look forward to members' support in this first step towards bringing back the presumption of innocence, the rule of law and freedom of association.

Debate adjourned on motion of Hon. T.J. Stephens.

LEGISLATIVE REVIEW COMMITTEE: AQUACULTURE VARIATION REGULATIONS

The Hon. J.M. GAZZOLA (16:37): I move:

That the report of the committee be noted.

In March 2009, the Legislative Review Committee resolved to inquire into the Aquaculture Variation Regulations 2008 and, in particular, the effect the regulations had on the oyster industry. The inquiry was in response to concerns raised by the oyster industry about the new fee scheme imposed by the Department of Primary Industries and Resources SA (PIRSA).

The fees for the oyster industry increased dramatically from previous years due to PIRSA's decision to move to a full cost recovery model. Prior to the formulation of the 2008 regulations, PIRSA undertook consultation with aquaculture industry representatives and developed a business plan. The plan included all the activities PIRSA undertook to maintain aquaculture leases and licences and the cost of providing those services. PIRSA then developed a cost recovery model to distribute these costs across all industries monitored by PIRSA.

The model moved away from allocating costs on a per hectare basis to allocating costs on a per site basis. PIRSA argued that this resulted in a better alignment of fees to the services it provided, as smaller leaseholders were not contributing enough to cover the true cost of supporting their lease and some sectors of the industry bore a disproportionate cost burden as a result. The change in the model of cost recovery was also in response to the recommendations made in the Productivity Commission's 2001 report on cost recovery by government agencies.

Members of the oyster industry, represented by the South Australian Oyster Growers Association, questioned the costs associated with the new cost recovery model. They argued that changing from a per hectare model to a per site model was fundamentally unfair and would result in an increase in fees for some growers of up to 1,000 per cent. They also contended that they were not adequately consulted about the new model and were given no specific information as to the cost being recovered until after the regulations came into effect. Members of the oyster industry therefore argued that they did not have an opportunity to consider and rebut PIRSA's costings before PIRSA sought to recover these costs.

In May this year, a new set of regulations—the Aquaculture Variation Regulations 2009—were introduced, providing an interim relief measure for the oyster growers and reducing their fee contribution for the 2008-09 financial year until further negotiations on the cost recovery model could take place.

In undertaking its inquiry, the committee was keen to make sure that any concerns about the new cost recovery model were thoroughly canvassed. To this end, the committee advertised this inquiry in local and regional newspapers on 21 March 2009, inviting submissions. In all, the committee received 10 written submissions, including submissions from several concerned oyster growers, the South Australian Oyster Growers Association and PIRSA.

The committee also heard evidence from Ms Heather Montgomerie, the Acting Executive Director of PIRSA, and Mr Bruce Zippel, President of the South Australian Oyster Growers Association. Ms Montgomerie, on behalf of PIRSA, outlined a range of activities that PIRSA

undertook to maintain leases and licences, including environmental monitoring, zoning, processing applications and monitoring licensing conditions. Ms Montgomerie indicated that there had been consultation on the new cost recovery model with all industries affected by the regulations.

Mr Zippel, on behalf of the Oyster Growers Association, in his evidence expressed his very strong opposition to the cost recovery model used by PIRSA. In his view, this model was implemented without proper consultation. He also expressed concern that PIRSA was using its total cost for maintaining the aquaculture division and dividing it among all industries, which led to an unfair cost burden on oyster growers compared with others in the industry.

The committee found that the consultation undertaken by PIRSA was less than adequate. PIRSA's failure to provide a breakdown of costs to the oyster growers and other industry representatives resulted in dissatisfaction within the oyster industry. However, the committee also noted that PIRSA was critical of the oyster industry's failure to clearly put its position during negotiations before the regulations came into effect, a fact acknowledged by the oyster growers in their evidence. The committee was told that negotiations between the minister, the oyster growers and PIRSA are ongoing. The committee recommended that these negotiations should be allowed to proceed, in light of the issues raised in the committee's report.

In conclusion, I thank the organisations and individuals who made submissions and gave evidence to the inquiry. I also acknowledge the contribution made by members of the committee: in this chamber, the Hon. Robert Lawson and the Hon. John Darley; and in the other place the now Leader of the Opposition (Mrs Isobel Redmond), Mrs Robyn Geraghty and Mr Tom Kenyon. I also acknowledge the hard work and commitment of the secretary, Ms Leslie Guy, and the committee research officer, Ms Carren Walker. I commend the report to the council.

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

MAGILL YOUTH TRAINING FACILITY

The Hon. M. PARNELL (16:45): I move:

That the Legislative Council—

1. Notes that—

   (a) The young people detained in the Magill Youth Training Centre in South Australia are being held in degrading conditions; and

   (b) In the assessment of the 2009 Australian Youth Representative to the United Nations, Mr Chris Varney, this represents a breach of the United Nations Convention on the Rights of the Child.

2. Recognises that in 2006 the South Australian Labor government acknowledged that the centre was in need of replacement as it breached modern building codes and occupational health and safety requirements; and

3. Calls on the South Australian government to keep its election promise and urgently build a new facility to replace the Magill Youth Training Centre.

How remarkable that, on the day that the Legislative Council is set to censure the government for its continued failure to respond to the community on the disaster that is the Magill Training Centre, we find that the Premier, in this parliament today, has, finally, announced that the government will spend $67 million to build a new 60-bed secure youth justice facility to replace the Magill Training Centre.

I welcome the decision of the Premier. I congratulate the Premier for making that decision. But we can be in no doubt that the government has been dragged kicking and screaming into honouring its election promise. It is, I think, an important message for the people of South Australia to realise the importance of the Legislative Council, because I have no doubt that it is the fact that we are debating this this afternoon that has encouraged the Premier to finally admit what we have all known, that is, that the disgraceful Magill Training Centre, which breaches international standards, needs to be demolished and rebuilt.

The motion before us refers to recent representations by the Australian youth representative to the United Nations, who pointed out that the conditions at the Magill Training Centre represented a breach of the United Nations Convention on the Rights of the Child. In fact, Mr Chris Varney, who is that representative, was not the first person to have made that point.

Pam Simmons, the child advocate, has made that same point on a number of occasions, and in this parliament we have pointed out the fact that the Magill Training Centre does not meet

international standards. In fact, I have used the example of the Magill Training Centre on a number of occasions to demonstrate the need for law reform in South Australia so that international treaties are more relevant in the decision-making processes of our ministers and bureaucrats.

What I think was most remarkable in this debate on the Magill Training Centre over recent weeks was the fact that the government tried to have us believe that this one facility—and we are now told it will be a $67 million investment—was the project that would push us over the edge as a state and that we would lose our AAA credit rating. What a remarkable claim that was from the government.

The lesson that we have to learn from this whole experience is to look at this vulnerable group of young people: young people who have been in trouble but who have so much potential if only we can give them the chance and manage them properly. The lesson for us is that these young vulnerable people should not be left to carry the burden for the state's budget and credit rating. As it turns out, I will be amazed if any rating agency comes out and says, 'Oh no, South Australia's economy is now in ruins because of this commitment of $67 million to rebuild the Magill Training Centre.'

The motion that I have moved today and that we will be considering calls on the South Australian government to keep its election promise and urgently build a new facility to replace the Magill Youth Training Centre. The fact of the Premier having made an announcement today I do not think precludes us from considering and passing this motion. We have the Premier's view that the new detention centre will be operating, I think he said in his statement, in the second half of 2011. I think the challenge should be to bring that forward, to build the facility as quickly as we can and to have it operating, if possible, before that date.

The particular wording of my motion reflects a similar motion that was moved in both the Senate and the House of Representatives. It was moved in the Senate by senator Sarah Hanson-Young and, as I understand it, in the House of Representatives by Mr Briggs.

So, while some members might feel that the motion is now redundant, I will be leaving it on the *Notice Paper* for members to consider, and hopefully to make contributions. I conclude my brief remarks now by saying that I am pleased that the government has listened to what people have been saying, not just in the past couple of weeks but over the past couple of years, and I look forward to seeing the opening of this new facility.

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

WORKERS REHABILITATION AND COMPENSATION (INCOME MAINTENANCE) AMENDMENT BILL

The Hon. M. PARNELL (16:50): Obtained leave and introduced a bill for an act to amend the Workers Rehabilitation and Compensation Act 1986. Read a first time.

The Hon. M. PARNELL (16:52): I move:

That this bill be now read a second time.

Last year, this parliament passed one of the meanest pieces of legislation that I have experienced; that is, the suite of changes that cut entitlements to injured workers under the WorkCover scheme. No doubt, the government felt that, by introducing and passing this legislation so far out from the state election, by the time 20 March 2010 came around people would have forgotten the days of early 2008 when we saw the spectacle of thousands of trade unionists, workers, their families and supporters on the steps of Parliament House condemning the Rann Labor government for its vicious attack on injured workers. No doubt, the government hoped that people would have calmed down and would have forgotten by the time March 2010 came around.

I talk to unions regularly and I have a lot of contact with workers, including injured workers, and I can tell this council that they are still angry and they have not forgotten it. When we debated the bill last year, I moved many amendments—from memory, 150 or so—and every one of them was opposed by the old parties. Once the bill finally passed mid-last year, I promised injured workers and their representatives that I would bring the worst elements of this legislation back into the parliament to give members the chance to reconsider these mean-spirited and unfair provisions. So, the bill I present to the council now seeks to redress some of the worst excesses of the government's 2008 changes.

Members might recall that we had a lengthy debate on these measures in 2008. We sat late into the evening on a number of occasions. It is not my intention to repeat everything that I said

back in 2008 but I want to highlight now what I think were some of the worst of those changes and to explain those I seek to redress through this bill.

The first area relates to the issue of the payment of WorkCover benefits to injured workers during disputes—that is, where the injured worker is in dispute with WorkCover. My amendment seeks to return to the situation that existed before August 2008 whereby payments for workers whose claims were the subject of a dispute were continued until such time as the dispute had been resolved.

When we debated this last time I described this as one of the very worst elements of the bill and the area on which I had possibly received the most correspondence, especially from people who were outraged at the unfairness of the provision. The government's approach, as I described it last year, was that it sought to starve injured workers into submission and it was prepared to follow that model, even when WorkCover had made the wrong decision to cut a worker's income. That is what the government sought to do last year.

My amendment seeks to reverse that situation. I think it is a terrible affront to injured workers to use the weapon of cutting payments during a dispute as a means of preventing disputes. I think it is an appalling way for the WorkCover system to operate, and that is why I have brought this important amendment back to the parliament. As I say, it is an amendment on which many unions and individuals have written to me and I am very pleased to be able to give this parliament another opportunity to consider reversing that mean-spirited provision.

The second area that I seek to reform through my bill is the inclusion of a safety net for the lowest paid workers to ensure that no worker receives income maintenance payments that are less than the state's minimum wage. As members would recall, the arrangement that was passed last year included a step down from the original figure of 100 per cent of payments to 90 per cent and then down to 80 per cent. When you consider a worker who was on the minimum wage, then we are talking about income that is 80 per cent of the minimum wage. In other words, it is not the minimum any more. My amendment seeks to provide that floor beneath which no injured worker can fall.

The government, in opposing that move last time, talked about unintended and perverse incentives that would work against an incentive to return to work. I thought that was rubbish back then and I still think it is rubbish now. We need a floor—a safety net—that is just that, not a negotiable safety net where only 80 per cent of the minimum wage can be paid.

The third amendment that I am seeking to introduce through this bill is to ensure that retraining and rehabilitation is provided to injured workers before they are made to undergo a work capacity review. I do not think an injured worker should be removed from the scheme, and remember that was another one of the introductions last year—the removal of people from the scheme following these work capacity reviews. I do not think they should be removed until all reasonable steps have been taken by rehabilitation providers, and that includes retraining as well as rehabilitation.

The fourth series of amendments that I introduce through this bill is to reverse the step down arrangements that were introduced in August last year that reduced an injured worker's entitlements to 90 per cent after 13 weeks and 80 per cent after 26 weeks. It is probably fair to say that some of the aspects of the new WorkCover legislation have not yet manifested themselves in the hardship that we expect and know will follow because, in some areas, it is early days. But certainly, the step downs are now in place; they are taking effect, and we see injured workers taking a cut to their pay.

The irony is that we are in a period when all the talk is around economic stimulus, around handing money to people to help them consume. I doubt very much whether any injured workers who received stimulus payments would have been buying plasma televisions; they would have been supplementing the income that was cut as a result of these mean and tricky amendments that the government put through last year. So, my amendments take us back to the situation that existed before, when we did not have these step-downs.

The fifth area that my amendments cover is to remove the five per cent impairment test that applies to injured workers in relation to their impairment before lump sum payments can be made. That is an area, again, about which I received a great deal of correspondence on the basis of its unfairness.

What my amendments seek to do is to remove the provision that says that a worker who ends up with a permanent loss of function of less than five per cent of their whole body receives not 1¢ of compensation for their non-economic loss. The amendment also removes the ban on non-economic loss compensation for psychiatric injuries. When I introduced these amendments last year I spoke at some length about why both those reforms are needed.

The final amendment introduced by my bill is in relation to the difficulty that is apparent in the selection of doctors in relation to medical practitioners who are able to assess injured workers. There are some areas of medicine (for example, cardiothoracic) where an injured worker has a choice of only one or two medical practitioners. The problem with that, of course, is that, if the first assessing medical practitioner refuses to treat the injury seriously, the worker possibly has no option of seeking a second opinion. I want to enshrine the ability of workers to make sure that their condition is properly assessed.

Those are the amendments that I seek to bring forward this time. As tempting as it was to re-engage all 150 amendments that we went through last year, I do not propose to do that. That might be an exercise for the next parliament. What I am proposing now is that all members, including those who supported the government's WorkCover changes last year, have a good look at the impact of those changes and their impact on workers whose only crime was to have been injured at work through no fault of their own—none of them asked to be injured.

I ask all members to look at whether we can make these changes to re-inject some fairness back into the system. By no means does my bill fix up all of the problems that we identified last year, but I think this would be a very good start for many members, particularly those in this place with a union background, to redeem themselves in the eyes of their members. With those brief words, I commend the bill to the council.

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

REFUSE CONTROL

The Hon. S.G. WADE (17:04): I move:

That the General Regulations under the Public and Environmental Health Act 1987 concerning Control of Refuse, made on 17 September 2009 and laid on the table of this council on 22 September 2009, be disallowed.

The motion seeks to disallow an amendment to a regulation tabled in this place yesterday. However, I remind honourable members that the need for the regulation goes back more than two years. In January 2008 the state government, through Zero Waste, invited councils to trial a fortnightly collection of general waste.

In July 2008 the government announced that 10 councils had been receiving state government funding to participate in the trial. The minister at the time indicated that four of the councils would be trialling fortnightly collection. Separately, the Prospect council has indicated that it will tender for a fortnightly waste collection to commence in July 2010, beyond the scope of the trial.

In March, the opposition raised concerns that fortnightly waste collection is contrary to the Public and Environmental Health General Regulations 2006. Regulation 4(2) provides:

The owner of premises must take reasonable steps to ensure that refuse on the premises that is capable of causing an insanitary condition is disposed of as often as may be appropriate in view of the nature of the refuse but, in any event, at least once a week.

By failing to collect rubbish weekly, councils and the government put owners and occupiers at risk of breaching the Public and Environmental Health Regulations. The Liberal opposition insists that the Public and Environmental Health Regulations be complied with and enforced. Those who make the laws should not break the laws.

We cannot expect our citizens and ratepayers to abide by our laws and bylaws when we ignore them when it suits us as a government and a council. In this context the Hon. Dennis Hood introduced a bill to highlight the failure of the government to enforce Public and Environmental Health Regulations. Liberal amendments were filed but not moved so as to avoid giving the government a pretext to procrastinate. The amendments would have changed the bill to more closely reflect the Public and Environmental Health Regulations to, therefore, highlight both our concern about health and about the need for due regard to the law.

In spite of the opposition of the government, the Hood bill passed this council and is languishing on the *Notice Paper* of the other place. After months of pressure, the Minister for

Environment and Conservation (Jay Weatherill) went on radio FIVEaa on 30 June this year and, on behalf of the government, backed down. He said, 'We will be enacting a law which makes sure there is weekly collection of waste.' Leon Byner, not often lost for words, said, 'Would you just say that again?' The minister said:

> We will be enacting a law which ensures that weekly collection of waste—and I think the Norwood council knew that that's what would happen if they went down the path they did last night.

The government promised to change the law to force councils to collect waste weekly. Then last week we find that the government has merely amended a regulation, adding a subregulation. New subregulation (4) provides:

> In order to facilitate compliance with subregulation (2), it is expected that a metropolitan council (within the meaning of the *Local Government Act 1999*) will provide a weekly kerbside waste collection service in respect of residential premises within its area.

There is no change to the obligation in subregulation (2). Owners of premises will still be legally obliged to dispose of waste that is capable of causing insanitary conditions at least once a week.

The key word in the new subregulation is 'expected'. Councils are not required to do anything: they are expected to provide a collection service. Having committed to requiring weekly waste collection, the government has put forward this amendment to a regulation with a mere expectation. It is a failure to deliver the promise of a better law. The government has breached its commitment. Surely parliament, of all places, knows that laws are laws and expectations are a hope.

If the government is requiring action, why does it not say 'require'? Laws are enforceable, after all. What happens if a council does not live up to these expectations? The Minister for Environment and Conservation (Hon. J. Weatherill) went on Radio FIVEaa last Friday and said that the amended regulation would act as a requirement because the council would respect it.

I fail to understand how councils can be expected to respect a regulation by doing something that on its face it does not say. The government needs to talk straight. If the government means what it says, it should say what it means. If the government is requiring councils to collect waste weekly, it should say 'require' in the regulation.

I seek the support of the council to disallow this amendment to the regulations, first, because the amendment does not meet the commitment of a law requiring weekly collection; secondly, because it does not reflect the minister's interpretation of the regulation being a requirement; and, thirdly, because it would mislead readers of the regulation to see the subregulation as not being mandatory.

In conclusion, I note that, if the minister is correct and the regulation is to act as a requirement, it would have the fatal flaw that the minister accused the Hood bill of having. The regulation does not distinguish between insanitary waste and other waste, so that if councils read this expectation as a requirement, as the minister said they should, they will be collecting all types of waste weekly, including recyclables and hard rubbish. The opposition is not asking for that, and the community is not asking for that. This highlights that the government is continuing to play games on this issue.

I seek the support of members to disallow the amendment to the regulation so that we can get on with getting a regulation or a bill that will do what the government has committed to and what the community demands, and that is weekly collection of insanitary waste.

Debate adjourned on motion of Hon. R.L. Brokenshire.

BIRTHS, DEATHS AND MARRIAGES (CHANGE OF NAME) AMENDMENT BILL

The Hon. R.L. BROKENSHIRE (17:11): Obtained leave and introduced a bill for an act to amend the Births, Deaths and Marriages Registration Act 1996. Read a first time.

The Hon. R.L. BROKENSHIRE (17:11): I move:

That this bill be now read a second time.

Knowing that there is a full *Notice Paper*, I will be very brief and will not seek leave to conclude my remarks as this is a relatively simple reform. The bill is designed to ensure that where persons seek to change their name to avoid detection by the law, or if they are paedophiles or fraudsters who are trying to reinvent themselves for a new set of unsuspecting victims, it will be harder for them to do so.

Applicants for name change will need to declare that they have no previous serious criminal history and it will be an offence to make a false declaration. The police commissioner can also notify the Registrar of Births, Deaths and Marriages of any persons about whom he wants to be notified should they wish to change their name. Family First believes that this is a very workable measure in the present information age of data matching and sharing.

Concern about this issue has been around for a while worldwide with a paedophile in the United Kingdom evading police supervision via the sex offenders' register by changing his name via deed poll. I appreciate that, here in South Australia, we have a register that arguably covers this scenario, but we thought it would be a complementary measure to have provisions under the Births, Deaths and Marriages Act to support the register.

New South Wales police in July this year formed a memorandum of understanding with their office of births, deaths and marriages for this kind of arrangement, and I believe there might be moves afoot for a federal uniform regime to this effect. I do not think that is an excuse to wait. We often hear the Premier saying, 'We will just wait until it becomes national.' In the meantime, there are young people who could be at risk from paedophiles and other people who could be at risk from serious criminal offenders.

We have seen with payday lending how that process goes nowhere even though you have the same party in government from the Pacific to the Indian Ocean. They say they will look at that nationally and nothing happens. At the time of announcing this claim 'Australian first', New South Wales Premier (Hon. Nathan Rees) said:

> The New South Wales Government has acted to ensure that criminals who try to change their name to escape their criminal past and evade police detection will not get away with it…The reforms mean that Police will have real-time access to the registry and will be instantly alerted whenever a convicted criminal or person of interest changes their name.

I add in conclusion that, in May, before the July New South Wales announcement, Family First senator Steve Fielding raised concern about this issue, and I believe that he is trying to do what he can from a federal level to close this name change loophole. I believe that this bill is a necessary and complementary measure to interstate—

Members interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): I remind members that the Hon. Mr Brokenshire has the floor. The level of conversation is getting a bit high.

The Hon. R.L. BROKENSHIRE: I believe this bill is a necessary and complementary measure to interstate and commonwealth moves to close a loophole in our legal system that favours criminals preying on the vulnerable. With those brief comments, I commend the bill to members and open it up to their scrutiny in coming months.

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

PRIVATISATION

The Hon. R.D. LAWSON (17:16): I move:

That the Legislative Council—

1. Notes the Premier's announcement that privatisation will be the major issue at the next state election.
2. Notes the Deputy Premier's statement contradicting the Premier's announcement.
3. Considers that a more significant issue is Labor's mismanagement over many years of the financial affairs of South Australia, particularly in relation to state-owned enterprises, including the State Bank.
4. Regrets that neither the Premier, nor his government, have apologised to the people of South Australia for the damage caused by their mismanagement.
5. Urges electors to remember Labor's record, not its rhetoric.

On 1 September this year, upon returning from overseas, in his first press conference, the Premier said:

> We've got a State Election coming up next year. Privatisation once again is going to be a key thing that will be fought out at the next election campaign.

Most commentators were surprised to see the Premier seeking to resuscitate that particular issue, but it was a resuscitation clearly motivated by political consideration. The Premier believes that, if he can stigmatise a particular transaction as privatisation, it will not be popular with the electorate, even though it might be in the best interests of the state. He wishes to create a fear campaign that state assets will be privatised and that the community will suffer.

I must give some credit to the Deputy Premier because, shortly thereafter, he said on ABC Radio:

> I don't think the next election will be fought about privatisation to be perfectly honest.

When you hear the Hon. Kevin Foley use the words 'to be perfectly honest', you have to wonder whether or not he is pulling someone's leg or perhaps pulling his own leg. The fact is that this government is hypocritical on the subject of privatisation. I intend to provide details of the transactions this government has entered into which amount to privatisation and those arrangements which it has been happy to continue but which it criticised as privatisation when the original transaction was entered into.

I think the start of this historical analysis ought to be February 1991, when the then Bannon Labor government had to acknowledge that, under its watch, the State Bank had incurred liabilities of some $3 billion, which the state government and the community of South Australia were required to stump up because of the government guarantee of that enterprise. That was February 1991. At that time, the Liberal opposition, for some considerable time, had been warned of the state of the State Bank. On 13 April 1989, famously, the member for Briggs (Hon. Mike Rann) moved:

> That this house condemns the Opposition for its sustained and continuing campaign to undermine the vitally important role of the State Bank of South Australia in our community.

He went on to say:

> I am concerned that the Leader of the Opposition—

that is, the then Liberal leader of the opposition—

> his shadow ministry, and his staff have embarked on a sustained and continuing campaign to undermine the credibility of the State Bank of South Australia, and to denigrate and defame its board and its principal officers.

This is what the Hon. Mike Rann told the House of Assembly on 13 April 1989: 'The State Bank is one of South Australia's greatest success stories'. He then went on to say:

> So, why has the Opposition in South Australia, at the behest of its Leader, set out to undermine one of the greatest success stories in the economy of this State?

I repeat those words: 'one of the greatest success stories in the economy of this state'. The only other passage from this ill-fated speech to which I will refer is where the Hon. Mike Rann said:

> The success of the new bank is, in a large part, due to the brilliance of its Managing Director, Tim Marcus Clark.

How far from the truth were these claims? And how they demonstrate that the Hon. Mike Rann has no understanding of the true operations of the financial markets.

The Liberal opposition was vilified for months and years for having questioned Labor's management of the economy. A royal commission was appointed. It was conducted, first, by the Hon. Sam Jacobs QC and completed by John Mansfield QC, but the three reports of that royal commission were a damning indictment of not only the way in which the bank had conducted its affairs but also the way in which the Bannon Labor government failed to exercise appropriate supervision, sought to manipulate the bank and its policies for political purposes, and failed to discharge its obligations of due diligence.

The Auditor-General reported similarly. I might add that there were two reports in this particular case. Both the Auditor-General and the royal commissioner undertook investigations, indicating, once again, the need for an independent commission against corruption in this state. We hear the constant refrain from the Attorney-General that it is unnecessary to have an independent commission against corruption because we have, for example, the Auditor-General, the Ombudsman and other officers, but the State Bank fiasco highlighted the need not only for an Auditor-General to conduct inquiries, and the like, but also for the occasions when a special inquiry is warranted.

The State Bank cost $3 billion. The Liberal government, when it came into office at the end of 1993, established an asset management task force to address various issues. At that stage, the

state's net debt had risen to $8.5 billion. That represented a massive increase, not only because of the collapse of the State Bank but also because of the financial situation of the government-owned state government insurance commission and the failure of a number of other key state-owned assets.

On 30 June 1994, South Australia's net indebtedness had jumped to around 23 per cent of gross state product. That alarming growth led to a collapse in investment confidence, and international investment agencies downgraded our economy. The impact on the state's finances can be underlined by the fact that net interest payments on state debt rose from about $650 million in 1990 to some $900 million in 1995.

Faced with such a dramatic deterioration, the Liberal government grasped the nettle and established the asset management task force which, under the chairmanship of Dr Roger Sexton, set about on a vigorous analysis of our financial position. The methodology adopted by the task force included assessing the benefits of selling an asset versus the cost of retaining the asset in public ownership. Dr Sexton wrote in the final completion report that they applied a rigour to the hold versus sell analysis but noted that debate occasionally surfaced during the three years that followed about the downside involved in 'selling off the family silver'.

Proponents of the latter argument invariably adopted the view that there was little benefit to the state's bottom line from the sale of government-owned assets or business entities because the state had forgone ongoing revenue from the assets but, as Dr Sexton reports, 'this argument is a simplistic and myopic one which simply doesn't stand up to scrutiny'. Dr Sexton pointed to the very real financial problems which existed in a number of state-owned business enterprises and activities before his appointment.

I will not go into all the activities of the asset management task force which was in operation for three years, but it effected a number of important sales. For example, the pipelines authority of South Australia was sold to a company (which became Epic Energy), realising some $304 million. Property sales of some $124 million were realised. SGIC was sold for $175 million. Austrust, a business in which we should never have been engaged, was sold for some $44 million. Fleet SA was sold to financiers—and is now owned by one of the major banks—and realised $195 million. Forwood Products was sold for $122 million. A building at 333 Collins Street, Melbourne—which came into ownership of SGIC by reason of an auction—was sold for $243 million. The ill-fated scrimber business in the South-East, which had cost the government millions on fruitless research, was sold. Bank SA was sold for some $730 million. In all, some $2 billion was realised.

It is interesting to note that, for example, the state government at this time held a securitisation contract involving 70 commercial properties in the United States worth $41 million, and that securitisation actually remained in force until 2000. However, had the state government allowed business enterprises to continue as they had been, there is no doubt they would have been widely involved—and expensively involved—in the securitisation activities in the United States, which have more recently caused enormous financial problems.

SGIC's activities, not only in relation to 333 Collins Street but also in various re-insurance policies, were simply catastrophic. For example, the taxpayers of South Australia lost $30 million when Hurricane Andrew went through Florida in August 1992.

The Hon. R.L. Brokenshire: What about 33 Collins Street, Melbourne?

The Hon. R.D. LAWSON: The honourable member was not listening, because I did mention that. It cost the state tens of millions but was ultimately realised. The current Treasurer likes to suggest that he is a master of financial and business management. He is a master of spin. He has managed in good economic times and reaped the benefits of the good economic managers who preceded him, who reduced the state's debt markedly. He has ridden on the benefits provided by his predecessor, and he has been the beneficiary of the fact that assets were sold and businesses were privatised.

I think it is also worth noting that the recovery process went well beyond the activities of the asset management task force, which finished in 1997. For example, legal proceedings were issued against Mr Marcus Clark and the former directors in March 1994, and those court cases were successful. Mr Marcus Clark was found to be negligent and in breach of his fiduciary duty by virtue of his conflict of interest, following the 1988 purchase of the entire capital of Oceanic Capital Corporation for some $59 million. Mr Clark was found liable to pay damages of $81 million but, of course, he was bankrupt and paid nothing.

The government did reach a settlement with FAI in relation to some of the activities of the State Bank. The government settled the case against KPMG and PriceWaterhouse for some $120 million on account of their negligence as accountants and auditors. There were other recoveries made.

In 2002, the Rann Labor government ran on a pledge by Mr Rann of 'No more privatisation'. Since Labor came into office, let us look at the record. The Labor government renewed the prisoner transport contract, which had been let by the Liberal government. It was a good contract which, when it was let, the Labor Party condemned as privatisation. The government promised the PSA that, when the Labor Party was elected, it would return the prisoner contract to the public sector. The government did not do it. It renewed the prisoner transport contract because it was a good contract and represented value for taxpayers. It would have been simple ideology and not sound common sense not to renew that contract.

The government renewed the contract for the operation of the private prison at Mount Gambier, notwithstanding its condemnation of that contract. The government renewed the contracts for the operation of the metropolitan bus system to private enterprise. This government built courthouses and police stations with private-public partnerships. Indeed, the government actively pursued public-private partnerships for the construction of the new prison facility at Mobilong. The government actually announced that that project was to go ahead, yet subsequently the government has put the project on hold by reason of the current economic situation.

When announcing the new Mobilong prison, the Treasurer announced that the catering and services for the prison, other than the employment of correctional services officers directly, would be provided by private contractors, once again showing the hypocrisy of this government. The government has let the contracts for the construction of super schools, which are to be run by private-public partnership. The government has announced that the proposed Royal Adelaide Hospital on the railyards will be developed as a private-public partnership.

The government has announced—the Treasurer has certainly indicated—that the outsourcing of the maintenance of the metropolitan water network and the operation of the sewerage system will continue in private hands after the expiration of the current contract with United Water, either with United Water or with some other provider. The government is indicating, having criticised its predecessors for entering into these contracts, that it is very happy to continue them. The government made a huge noise about the privatisation of the state's electricity system, yet it took absolutely no steps to unwind that or to bring any part of those enterprises back into government ownership.

The one contract that the government did cancel was with the company Healthscope, to manage the Modbury public hospital. That was a contract which required Healthscope to manage that hospital at a cost which was less than the state would incur if it were to have the hospital managed within the Department of Health. I repeat that: that was a contract which required Healthscope to provide services at a cost less than the cost of public management.

In other words, it was a good deal for the state, but it was an easy one to cancel: easy because Healthscope was quite happy to get out of the contract as it was costing it money and it was too beneficial to the public of South Australia. The hospital has now been taken back into public management, the services provided at the hospital have been downgraded, and the people in the north-east of Adelaide who have been complaining about the private management have now been dudded by this government, for ideological reasons.

Today, of course, we have seen the government's backflip on the Magill Training Centre, a backflip, incidentally, which we have been calling for and which we welcome. The Premier has announced today that the government will be working with the companies involved in the original public-private partnership before tenders are let for construction. The government will be flogging off land at Oakden (some 15 acres), according to this announcement, and selling it to private developers to fund the building of this new training centre.

This government has been entirely unprincipled and hypocritical in relation to privatisation. Once again, we see the Premier engaging in a scare campaign, a hypocritical and unprincipled scare campaign. The ruse, however, is revealed by the Treasurer, who says that he does not agree, if he is being perfectly honest, that privatisation will be an issue.

The extraordinary thing is that neither the members of the Bannon government, of whom Mr Rann was a prominent member, nor his successors, either in office under the Arnold government or in opposition, have ever apologised to the people of South Australia for the gross

disservice they did to this state which set us back years, nor have we received any expression of gratitude—nor would we expect to, frankly—from the present government for the work of the Liberal government, under treasurers Stephen Baker and my colleague the Hon. Rob Lucas, in reducing the debt and putting this state's financial footing on a basis that would warrant a AAA credit rating.

It is appalling that this government should also be attacking United Water in a most underhand and outrageous way, a way which is absolutely contemptuous of the court process. It was recently announced, with much fanfare, in a release to *The Advertiser*, that United Water had, according to the government, been overcharging and that the government was suing, but the government had not actually told United Water that it was doing that. The government issued the proceedings in court but did not serve them on United Water. It simply went to the media to denigrate and bad mouth that particular contractor.

Of course, if United Water has, in fact, been overcharging then let that matter be determined by the court, but to seek to use the threat of court proceedings to browbeat a company, whether large or small, into settling a commercial dispute is outrageous, and I am delighted to see that the defendant has come back strongly and complained to the court, which has agreed, apparently, with the submission that the government has behaved inappropriately, and the matter will be set down for a quick hearing, which I hope is resolved promptly. It brings no credit at all to the Treasurer to engage in activities of that kind. It is the most outrageous contempt of court in recent times. I commend the motion to the council.

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

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE (PARENTAL CONSENT) AMENDMENT BILL

The Hon. R.L. BROKENSHIRE (17:44): Obtained leave and introduced a bill for an act to amend the Consent to Medical Treatment and Palliative Care Act 1995. Read a first time.

The Hon. R.L. BROKENSHIRE (17:45): I move:

That this bill be now read a second time.

The premise of this bill is simple: to reinstate parental rights. We have an inconsistent situation in the state where we, in this parliament, have indicated that we are against minors having tattoos without parental consent, and we are against having body piercings and scarification without parental consent, but when it comes to any other medical procedure the parents do not have to know about them. We have even heard calls that minors should be excluded from solariums unless they have parental consent, after a tragic and much publicised case of a young woman who died from skin cancer after using a solarium.

However, with other medical procedures, some of which can be quite invasive, parents are not entitled to know anything about that procedure. This bill rearranges the priorities so that families are put first. In non-emergency situations—and I repeat that: non-emergency situations—once reasonable efforts have been made to locate parents, treatment can proceed. There will be only a few remote scenarios outside of emergencies where parents will not be capable of being located in a reasonable time before an intended procedure is performed.

Therefore, parental rights and the integrity of the family are restored by this bill. There is no change to the emergency provisions of the Consent to Medical Treatment and Palliative Care Act. I do not believe this is a complicated bill. It is simple in its import and merely harmonises what this parliament has said about other procedures upon children. I commend the bill to honourable members.

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

ENVIRONMENT PROTECTION (RIGHT TO FARM) AMENDMENT BILL

The Hon. R.L. BROKENSHIRE (17:47): Obtained leave and introduced a bill for an act to amend the Environment Protection Act 1993; and to make a consequential amendment to the Land and Business (Sale and Conveyancing) Act 1994. Read a first time.

The Hon. R.L. BROKENSHIRE (17:47): I move:

That this bill be now read a second time.

This bill is based in part on models adopted in northern America but also based on calls made by Australian farmers federations for the protection of farmers' rights to farm. Throughout the world, as we see increased urbanisation, increasingly we have farming enterprises continuing to operate at the fringes of urban sprawl or otherwise close to where people have moved for a farm change, sea change or green change.

I declare my personal interest here as a farmer. My family are farmers but I speak for constituents generally in agriculture. The frustration of farmers not only here but the world over is that they are then the victims of noise complaints, air pollution complaints or other nuisance complaints when all they are doing is continuing their usual farming activities in the same place where they have carried on farming for generations.

Family First considered the legislative models from northern America and those proposed by farming federations here in Australia, and we believe we have captured the two least controversial and important elements of those. First, it will be a defence to an EPA complaint if a farmer is conducting a protected farming activity—namely, a practice condoned by a code of practice or by generally accepted standards and practices in the farming industry. The obligation will be on the EPA, not the farmer, to establish that defence.

Secondly, persons who buy land in farming areas will be notified when buying land in the area that there are farming enterprises operating in the area. This will serve as notice to purchasers to prevent nuisance complaints in the future should they decide they are unhappy with the noise, sight or smell of farming machinery rolling past their home. When I was the member for Mawson, I put on notice the Adelaide Mushroom Farm at Woodcroft which had been there for a long time and was ultimately a headache to both governments—this one and the last one—until it was finally moved. But the question is: why should it have been moved if there were proper buffers and notification to purchasers of subdivisions around the farm?

I believe this bill is about valuing our primary producers, providing them with certainty in difficult economic times and providing natural justice to those who by and large have farmed in their area for generations and are given trouble by new residents who want the rural lifestyle but not the primary production activity. Those people seem to misunderstand that you cannot have one and not the other. You cannot go into the country and live on a nice hobby farm and not have farmers farming around you. Farmers, at times, have to work 24 hours a day, seven days a week.

I look forward to our country members of parliament, the South Australian Farmers Federation and those who are sympathetic to family farming supporting this bill as a timely encouragement to farmers of the value of their activity in the South Australian economy. I commend the bill for the right to farm to the council.

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

SELECT COMMITTEE ON CONDUCT BY PIRSA IN FISHING OF MUD COCKLES IN MARINE SCALEFISH AND LAKES AND COORONG PIPI FISHERIES

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

That the report of the select committee be noted.

(Continued from 9 September 2009. Page 3108.)

The Hon. C.V. SCHAEFER (17:52): I will make a brief contribution to this report. I believe the structure and main findings of this report have already been enunciated by the chair of the committee, the Hon. John Dawkins. I did, however, want to make some comments because setting up this committee in the first place was somewhat contentious. I think the belief was that because the council agreed to this select committee we would inevitably find against the recommendations of the government of the day.

In fact, that has not happened, and I believe that it was the council perhaps working at its best. We had representatives from the two major parties and a cross-section represented on the committee. We were brought quite legitimate complaints by the pipi fishery and the mud cockle fishery. We investigated those complaints and have handed down a number of recommendations that I believe PIRSA would be well advised to take into account when it inevitably regulates other fisheries within South Australia.

I think the lesson to be learnt is that the matter of whether PIRSA or a government department considers it has consulted and the matter of whether those affected by the decisions of that department consider that they have been consulted are two very different things. That was

adequately shown in this case particularly with the mud cockle fishery. Many of the participants in that fishery believed that they were not given sufficient notice, that the meetings that were held were, if you like, biased and that some people had inside knowledge that their fishery was to be regulated and others did not.

We saw a newsletter which was circulated to that fishery enunciating that it was a fishery under stress due to over-fishing. That, of course, came about with the increase in the value of cockles as they were used for human consumption as opposed to bait. However, it was quite clearly enunciated some time before this regulation that the fishery was under stress and that it was likely to be over-fished.

If I was a participant in that fishery I would have taken that as a hint that the fishery was going to be regulated in some way or another. Therefore, I reject the view that some people had inside knowledge. Some simply chose to read the information that they were provided with and others did not.

One of the arguments that we heard was both for and against the methods used for deciding on the size of the quota for each of the fishers and the proportion of that decision which was allocated according to fishing history and that which was allocated as a right of licence. I have looked at this, as best I can, from every angle and I hark back to the days when quotas came into grain farming. They did not last very long, thankfully because, again, there were winners and losers, and there were farmers who were going to go broke under a quota'd system.

However, one of the things that was applied was a harvest history—how much the property concerned had produced over an average period of time. I cannot see, if an industry is to be regulated and quota'd, how there is any other fair method. I think it is quite unfair and unjust to allow for the fact that someone has a given right simply because it was part of their licence. So, the method used was probably quite just. It was an amalgam of those two: of the catch history and licence right.

There was a system of appeal, which is quite unusual within the fisheries industry generally, put in place. Again, we can argue whether that system of appeal was or was not transparent enough. Those who won out of that system were happy with it and those who lost were unhappy. In the end, those who had been on the appeals committee agreed that they had differed only in respect of the decisions involving two of the fishers. So, the people who served on that committee agreed on the allocation of additional quota to everyone but two people. Given that licensing is always contentious and regulating a free-for-all system is always contentious, as sad as that may be for those two people, I think it is probably about as fair as it is going to get.

As I said, we have made a number of recommendations that I believe are applicable to future regulations including, I think quite importantly, that in the future any fishery which goes to management has an audit conducted to inform those concerned what their actual catch history is and what method will be used in applying that to decide what their quota becomes.

In the end, as a committee we believed that delaying the process any further was going to impinge on the commercial viability of the fishers. Some will find it difficult but they will at least have a commercial value on their quotas and it will make their quotas transferable so that they will be able to either buy or sell additional quota. Our committee, in the end, recommended that the minister reintroduce the regulations relating to quota allocations as soon as practicable, and I concur with that decision.

Debate adjourned on motion of Hon. A. Bressington.

CONSTITUTION (REFORM OF LEGISLATIVE COUNCIL AND SETTLEMENT OF DEADLOCKS ON LEGISLATION) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (18:01): I move:

That this bill be now read a second time.

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

Leave granted.

For several years it has been ALP policy to support our bi-cameral Parliamentary system, but to investigate the reform of the Legislative Council. In November 2005 the Premier announced the Government's intention to seek

the views of the South Australian voters at the 2010 election through a referendum. The reforms suggested were reducing the tenure of Members of the Legislative Council from eight years to four years, reducing the number of Members of the Legislative Council from 22 to 16 and having all Members stand for election at the same time. In honouring that commitment the Attorney-General has had Bills drafted that will enable the voters to choose whether they want to reform the Legislative Council in this way and also substitute a better procedure for dealing with deadlocked Bills, or to keep the status quo.

The Bill I introduce today, together with an accompanying Bill for holding a referendum, is for the purpose of achieving that. The referendum would be held at the next general election in March 2010.

This Bill would amend the *Constitution Act 1934* to achieve the reforms of reducing the number of Members of the Legislative Council to 16 and reducing the terms of MLCs to four years coinciding with the terms of Members of the House of Assembly.

In addition, it would replace the current deadlock provision, which is so cumbersome that it is not used. The new provision is based on the equivalent in the Commonwealth *Constitution,* although there is an important difference in that it will be for the House of Assembly to determine whether the position the Legislative Council has taken on the deadlocked Bill should result in a double dissolution and general election.

At present, the President of the Legislative Council has only a casting vote. Since 1973 the President has also been able to indicate his concurrence or non-concurrence in the passing of the second and third reading of a Bill to alter the *Constitution Act.* This Bill would give the President a deliberative vote on all questions, instead of only a casting vote and the very occasional and limited opportunity to indicate concurrence or non-concurrence.

Mr President, before addressing the proposed reforms in greater detail, I wish to advise honourable Members that the Government has given serious consideration to the suggestions that have been made to the effect that the Bill should be split into four separate Bills. Three potential problems with the proposal of asking the electorate to vote on four separate Bills, each only amending the Constitution in a particular way.

One is that the putting of multiple Bills to the electorate by referendum is unprecedented.

The Constitution stipulates that referendum question must be in terms of approval or otherwise of 'a [particular] Bill'. Because of the wording of section 10A(3) of the *Constitution Act*, there must be a Bill in place to which the referendum question relates.

Putting more than one Bill to the voters at a referendum has no Australian precedent. Whilst there are several examples of multiple proposals being put simultaneously to voters, in each case those proposals have been quite distinct, or related and not inconsistent, and contained in the same Bill. The closest law we have on the topic arises from *Boland v Hughes* in which an individual challenged the Hawke Government's proposed referendum to extend the right to trial by jury, to extend freedom of religion and to ensure fair terms for compulsory acquisition of property. This bundle of separate reforms was contained in a single Bill. The plaintiff claimed that the referendum did not relate to 'a proposed law' (the equivalent of section 10A in the Commonwealth Constitution). Note that the Government did not attempt multiple Bills but inserted separate unrelated proposals in one Bill. The plaintiff's application was rejected by Mason CJ of the High Court. The Chief Justice said; *'… in conformity with the doctrine of parliamentary supremacy, … there is no relevant limitation or restraint on Parliament's capacity to formulate an amendment or amendments to the Constitution in the form of one Bill, if the Houses so decide.'*

The Chief Justice's statements give some support for the view that multiple proposals may be put to the electorate in a single Bill. However, the fact that multiple Bills have never been put before might invite a legal challenge. Although it would seem that the risk is low, it nevertheless would be uncharted waters.

Any legal challenge could only be made in a court after the Bills had passed both Houses (i.e. after Parliament had approved the Bills being put to the electorate by referendum). The bringing of an appeal would seriously undermine any chance of success of a referendum held in March 2010, before the appeal was heard.

The second, more important problem with splitting the Bills into four is that some of the reform proposals can only succeed in conjunction with others. That is, some of these reforms are only workable or desirable in particular combinations.

Further, at least one of the combinations of possible responses is unworkable (irrespective of which order the questions are asked in). The reform of the deadlock provision can stand alone, but it is also is a necessary prerequisite for reducing members' terms.

Section 41 of the Constitution currently provides that a deadlock is resolved by dissolution of the Legislative Council. The subsequent election of members is undertaken in a manner that presumes staggered elections in accordance with the current scheme for election of Legislative Councillors. Accordingly, the deadlock provision must be passed in order for the terms to be reduced in length. This means that it would be dangerous to put these two proposals in separate Bills and risk the electorate voting for the reduction in length of terms but not to reform the deadlock provision.

There may be other outcomes that are unworkable or undesirable such as a change to the President's vote without a reduction in the number of Members.

The problem of dependence of at least one of the reforms on another reform creates an insurmountable barrier to the proposal of putting four separate questions to the electorate by four separate Bills.

Thirdly, and related, is the problem that none of the four Bills could be guaranteed to accurately set out the consequential amendments arising from the primary reform, because those consequential amendments would depend on what was voted on.

Each of the four Bills would be drafted as if it were the only Bill to be approved by the electorate. However, if two Bills were approved, there might be consequential amendments associated with the combination of Bills that are dealt with in neither Bill. The Government would be faced with the prospect of attempting to amend the Bill that had been put to the electorate.

Each Bill for reform needs to be supported by its own referendum machinery Bill. If four questions are to be put to referendum, eight Bills are required.

What this demonstrates is that the splitting of the proposals into four Bills would be very problematic. The Government has considered it but decided that it cannot safely be done.

The Bill as introduced could not come into operation unless first it is passed by an absolute majority of both Houses of Parliament and then approved by South Australian electors at a referendum.

This means that the general election to be held in March 2010 will be conducted according to the provisions of the *Constitution Act* as it now stands. Eleven Members of the Legislative Council will retire and there will be an election to fill eleven seats. Those eleven Members will be elected for terms of eight years. However, if the electors approve the reforms, all the Members of the Legislative Council will retire at the general election in 2014, or at any earlier general election. At that election there will be only 16 seats to be filled.

If the Bill is approved by the electors, the new deadlock procedure would come into force on the Bill receiving the Governor's Assent. This would be soon after the results of the referendum are known.

The deadlock provision - section 41 of the *Constitution Act* - is entrenched. To alter or repeal it, there must be a Bill passed by an absolute majority in each House of Parliament and then the Bill must be approved by the electors in a referendum.

If the proposed reforms of the Legislative Council are approved, they would be irreconcilably inconsistent with section 41. At the least, section 41 would have to be substantially amended. So, a referendum on this Bill will be necessary for legal constitutional reasons, as well as because it has been promised.

If these Bills are passed by absolute majority, the referendum will be held at the next election in March 2014.

Mr President, while these reforms are very significant ones, the concept of change to the Legislative Council is not, of course, new. The Opposition proposed similar changes in 2000. The Government looks forward to its support.

Number of Members of the Legislative Council

Since proclamation of the Province of South Australia on 28 December 1836 under the South Australian Colonisation Act 1834, the composition of the upper house in South Australia has been changed on a number of occasions. The number of Legislative Councillors has fluctuated from 18 to 24. From 1857 to 1881 there were 18 Members. From 1881 to 1901 there were 24. From 1901 until 1913 there were again 18 Members. From 1913 to 1973 there were 20. Since 1973 there have been 22.

The Opposition's response to this proposed reform, to date, appears to be to claim that there will not be enough Members to do all of the work. This is to miss the point entirely. The message that this Government has received from the public is that there is a good deal of make-work going on.

The desire by our business and community leaders to seek to have Government policy coherently reflected in legislation was described by one honourable Member as the Government 'jamming its program unmolested through Parliament'. I think molestation of the legislation is a very apt description for the other place's contribution to the Government's legislative agenda.

Clearly, if there is to be a house of review there needs to be a workable solution for impasses. A deadlock resolution provision was inserted into the *Constitution Act* in 1881. It requires the dissolution of both Houses and fresh elections, or the election of two additional Legislative Councillors. It has never been used. It would be difficult to imagine the circumstances, today, in which it would be responsible for a Government to put the State to such expense and inconvenience, however clear the mandate was for a particular law. Labor attempted to change it in 1966 but failed in the Legislative Council. The State needs a modern and realistic mechanism for dealing with deadlocks. The Government has devised such a mechanism. A further forty years has passed and that is enough.

Under the Reform Bill, the mechanism involves these steps.

- A Bill, within 45 sitting days from transmission to the other place, is rejected or not passed in that other place, or amendments are proposed that are rejected in this place.
- The House again re-passes the bill after a three-month interval and it is again rejected by the other place, or amendments are proposed that are rejected by the House within 30 sitting days.
- The House may then resolve that it is appropriate for both Houses to be dissolved on account of the position taken by the Legislative Council on the bill.
- If the House so resolves, then His Excellency the Governor dissolves both Houses, provided it is not within 6 months of a general election.

- Following the election, this House again passes the Bill.
- Within 30 days of transmission, it is again rejected in the other place.
- His Excellency the Governor may then proclaim a joint sitting of both Houses.
- The Bill is passed by an absolute majority of the total number of the members of both Houses voting together.
- The Bill may then be presented to His Excellency the Governor for assent.

This mechanism is similar to that operating at the Commonwealth level. It gives the other place several opportunities to consider and negotiate on a Bill without what is effectively, today, a right of veto. This is far closer to the proper review character of a second chamber than the model we have today.

If the Reform Bill is approved by the electors it will be presented to His Excellency the Governor for assent immediately, but the reduction in the number of Members will take effect from the 2014 election or any earlier general election. This delay is necessary to accommodate the staggered nature of the terms of members of the Legislative Council. The new four year terms will start immediately. There will be no special provisions for the six who miss out on a seat at the 2014 general election because of the reduced size of the Council. In other words, the incumbents - including any who have just won a seat at the 2010 election - will all continue to sit until 2014 but at that point all of the seats will become vacant and subject to election.

I commend this Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will need to be submitted to a referendum under the proposed *Referendum (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Act 2009*. (If this measure does take effect as an Act, the sections relating to a reduction in the number of members of the Legislative Council, and the term of office of members of the Legislative Council, will come into operation immediately before writs are issued for the first general election of members of the House of Assembly next ensuing after assent.)

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Constitution Act 1934*

4—Repeal of section 10

Section 10 of the Act is to be repealed by virtue of the scheme proposed by new section 41.

5—Substitution of section 11

From the commencement of this provision, the Legislative Council will consist of 16 members.

6—Amendment of section 13—Casual vacancies

These amendments are consequential by virtue of clause 7, which proposes that all members of the Legislative Council will retire whenever the House of Assembly is dissolved or expires.

7—Substitution of sections 14 and 15

The term of a member of the Legislative Council is a term expiring on the dissolution or expiry of the House of Assembly. A Legislative Council election will then take place whenever there is a general election for the House of Assembly.

8—Amendment of section 25—Continuance of President in office after dissolution or retirement

This clause is consequential on clause 7.

9—Amendment of section 26—Quorum of Council

This clause contains a consequential on clause 5. It is also proposed to amend the Act so that the President will have a deliberative vote on any question before the Council but will not have a casting vote. In the event of an equality of votes, the question will be lost.

10—Amendment of section 38—Privileges, powers etc of Council and Assembly

This clause is consequential on clause 11.

11—Substitution of section 41

This clause sets out a new scheme with respect to the settlement of deadlocks between the House of Assembly and the Legislative Council. It is based on the scheme under section 57 of the Commonwealth of Australia

Constitution Act. Essentially, the scheme provides for a double-dissolution trigger if a particular Bill is rejected on 2 occasions by the Legislative Council, taking into account some specified time periods and other related requirements, and then for a joint sitting if the Bill is rejected on a third occasion following the ensuing general election.

12—Amendment of section 57—Restoration of lapsed Bills

This clause is related to the operation of clause 11.

Schedule 1—Transitional provisions

All members of the Legislative Council will be required to retire immediately before writs are issued for the first general election of members of the House of Assembly next ensuing after assent (taking into account the requirement for a referendum before assent). The new deadlock provisions will only apply in relation to Bills introduced into the Parliament after the commencement of this measure.

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

REFERENDUM (REFORM OF LEGISLATIVE COUNCIL AND SETTLEMENT OF DEADLOCKS ON LEGISLATION) BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (18:02): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill accompanies the *Constitution (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Amendment Bill 2009*, which cannot come into operation unless it has been approved by the electors in a referendum. It is a procedural Bill providing for the holding of a referendum and the means by which it is to be done. As South Australia does not have a referendum Act of general application, it is necessary to ask Parliament to pass a referendum Bill for each proposed referendum.

The Bill provides that the question to be put to the electors at the referendum is—

Do you approve the Constitution (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Amendment Bill 2009?

The Bill requires that the referendum be held on the day fixed for a general election and it is intended that the referendum be held at the next election.

The South Australian Electoral Commissioner will be responsible for the conduct of the referendum. The *Electoral Act 1985* will apply with necessary exceptions or modifications prescribed by legislation.

I commend this Bill to the House.

Explanation of Clauses

1—Short title

This clause is formal.

2—The referendum

This clause provides for the *Constitution (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Amendment Bill 2009* to be submitted to a referendum. The provision specifies that the referendum must be held on the day of a general election (taking into account the requirement in section 10A of the *Constitution Act 1934* that the referendum be held not less than 2 months after the Bill has passed through the Parliament).

3—Conduct of referendum

This clause provides that the Electoral Commissioner is responsible for the conduct of the referendum and provides for the appointment of scrutineers for the purposes of the referendum, the application of the *Electoral Act 1985* to the referendum and the declaration of the result of the referendum.

4—Regulations

This clause provides for the making of regulations for the purposes of the measure.

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

[Sitting suspended from 18:02 to 19:47]

SELECT COMMITTEE ON CONDUCT BY PIRSA IN FISHING OF MUD COCKLES IN MARINE SCALEFISH AND LAKES AND COORONG PIPI FISHERIES

Adjourned debate on motion of Hon. J.S.L. Dawkins (resumed on motion).

(Continued from page 3299.)

The Hon. I.K. HUNTER (19:47): Without going back to *Hansard* to check, I think I opposed the setting up of this select committee. On reflection, I still believe it was unnecessary. The committee has not found any fault with PIRSA's or the minister's decisions. It has recommended the reinstatement of disallowed regulations and has made some other useful recommendations.

Having said that, I personally enjoyed working with my colleagues on this committee and our ability to work together as a group and arrive at a report we could all be happy about. I also enjoyed learning about an industry I knew nothing about previously. I do not pretend that our report and recommendations will be received with happiness by all sectors of the industry, but I believe that we gave a fair hearing to all those who wanted to raise their concerns with us.

If nothing else, perhaps this function justifies the select committee being established; that by doing so we allowed dissatisfied members of the industry to have their claims ventilated exhaustively once again. That we endorsed the departmental and ministerial decisions, however, really should be no surprise to anyone. They are, I believe—and the committee found—the fairest way to move forward, to quota management of a fishery under stress. I echo the thanks of the committee Chair (the Hon. Mr Dawkins) to the staff of the committee and to all those witnesses who assisted us with their evidence.

The Hon. A. BRESSINGTON (19:48): I would like to thank the research officer, Geraldine Sladen, for the report she wrote. She did an excellent job and was very precise. I would also like to thank committee members: the Hons. Caroline Schaefer, Russell Wortley and Ian Hunter, and the Hon. John Dawkins as Chair.

As the Hon. Ian Hunter just indicated, we did work well together as a committee. I still do not agree that this inquiry was not necessary, and not just because I moved for that particular inquiry. Problems were aired from both sides of the fishery, and it is sad that it had to be divided into two sides. As the Hon. Ian Hunter said, it gave us an opportunity to learn more about that particular industry and how it works or does not work, as the case may be.

However, after sitting on this particular committee and on other committees, I have come to understand that select committee inquiries put constituents in a difficult situation, because they do not seem to understand the value of evidence or what evidence is and somehow believe that hearsay, gossip or innuendo constitutes solid evidence. One thing that I found difficult to reconcile in this inquiry was the fact that, on one side, we had a group of fishermen who, literally, were trying to claw back a quota system that was never going to be and it was not practical. We all came to the conclusion at the end of the inquiry that what they were seeking could not happen.

However, the evidence they provided was given to the best of their ability. These guys are average fishermen. It would have been like asking shearers in your day, Mr President, to appear before a select committee and present evidence about things that they did not believe were being done in a righteous fashion. Let us face it, fishermen do not walk around with cameras strapped to their back or with notebooks, and they do not get people to witness what they have seen and they do not think to take notes of what they are seeing.

Perhaps one side was a little disadvantaged in that they could not afford to hire a temporary CEO to plead their case, whereas the other side was able to do that. I think that put them at a great disadvantage. I am not saying that that changed the evidence that we received, but I believe it certainly tipped the scales in favour of that side. The Hon. Ian Hunter said that we found no fault with PIRSA. Although we did not necessarily find fault with PIRSA, I think the committee believes that the recommendations it made will perhaps improve the process in the future for any other areas of the fishery that need to go to quota.

The two most relevant recommendations for me were, first, the recommendation for PIRSA to conduct a full audit prior to going to a quota system to verify catch and effort data, because, even to the end of the inquiry, there were allegations that were neither proven nor disproven, but one particular person from one of the groups had faced court for that and similar charges. It was not necessarily disproven that those allegations did not have any foundation at all. Secondly, the

recommendation to prohibit off-beach grading. That did not come about simply because there was no evidence that the off-beach grading was being done in a proper manner.

In my view, it all gets down to the fact that PIRSA has a huge task to do and it works in a difficult area. As the Hon. Caroline Schaefer said, there will always be winners and losers when we go to quota. That is a sad thing, but it is a reality. I also think that some of the recommendations may help PIRSA to improve its consultation methods and communication level with the people of that industry. I also concur with the Hon. Caroline Schaefer that it was not necessarily true that inside information was leaked about going to quota: it was probably a case of some people choosing to read the documentation and letters that were sent out and others did not. All in all, I believe that it has been a valuable exercise and, if the seven recommendations are taken up, it will be a step towards helping to make that transition from open slather to quota a little easier both for PIRSA and the people involved in the fishery.

The Hon. J.S.L. DAWKINS (19:54): I thank my colleagues the Hons Caroline Schaefer, Ian Hunter and Ann Bressington for their remarks. I remind the council that it was a unanimous decision in the report. As I said when moving the motion, I hope the industry can move forward in a more unified manner for the benefit of the whole state. Those of us on the committee can see the benefit for the state in that industry.

We have recommended a role for PIRSA in trying to ensure that happens. I do not think any of us believe that will be easy, but certainly that is something in which we all believe. Once again, I thank all members of the committee for making my job as chairman relatively easy. We did take a lot of evidence from a lot of different people and, as my colleagues have said, we know a lot more about this important industry than we did at the start. In closing, I reiterate the valuable role played by our secretary Guy Dickson and research officer Geraldine Sladden. I commend the report to the council.

Motion carried.

NATURAL RESOURCES COMMITTEE: SOUTH AUSTRALIAN MURRAY-DARLING BASIN NATURAL RESOURCES MANAGEMENT BOARD

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

That the 29th report of the committee be noted.

(Continued from 15 July 2009. Page 2867.)

Motion carried.

NATURAL RESOURCES COMMITTEE: NORTHERN AND YORKE NATURAL RESOURCES MANAGEMENT BOARD

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

That the 31st report of the committee be noted.

(Continued from 15 July 2009. Page 2868.)

The Hon. C.V. SCHAEFER (19:57): I rise to speak briefly to the motion. Last year the committee chose to recommend that the minister not accept proposals by the board for a Division 2 levy; that is, a levy on irrigated water. We chose at that time to reject the application because no water allocation plan had been presented to irrigators within the region. They were being asked to pay a levy on something for which they had no explanation. This year it was agreed that we could no longer forestall that levy because a water allocation had been presented and approved by the minister.

As an irrigator within that region, I declare a conflict of interest in this case. As an irrigator I attended a briefing to the community at Clare on this particular levy on Monday this week. One of our consistent criticisms as a standing committee has been that the consultation process has been faulty, at best, across the state. The legislation requires the board to consult with local government, but the need to consult with the general community is a somewhat grey area.

I was pleased to attend the briefing, which was attended by 70 or 80 irrigators within the region. The board presented its water allocation plan in a clear and concise fashion. I was interested, however, to learn that this Division 2 levy, which will generate $65,000 income for the Northern and Yorke Natural Resources Management Board, cannot be introduced until volumetric allocations for water have been introduced into the area. That is not likely to happen in the next

financial year. There is still some distance between working out the volumetric allocations and the time they are to be introduced, so I cannot help but wonder whether we have again put the cart before the horse, because it would appear that this levy will not come into force until after next year's report to the committee.

As a general comment, and as I said, our committee has criticised, across the state, the consultation process introduced by a number of the boards. I do believe they have struggled, and I have been very critical of the time it has taken to introduce the regional plans. I think they have struggled with the introduction of those plans, for a number of reasons, but they have now been written and have been approved by the minister, and I look forward to watching those boards and the processes evolve into something that the community can at last own. At this stage I think that is a work in progress, to say the very least.

Having said that, I commend the Northern and Yorke board for its work and for the proposal it has put to us. There have been a number of general criticisms, as I said, across the state, which I will address when I speak to the Eyre Peninsula report. I am happy to support the adoption of this report.

Motion carried.

NATURAL RESOURCES COMMITTEE: EYRE PENINSULA NATURAL RESOURCES MANAGEMENT BOARD

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

That the report of the committee, on the Eyre Peninsula Natural Resources Management Board Levy Proposal 2009-10, be noted.

(Continued from 15 July 2009. Page 2869.)

The Hon. C.V. SCHAEFER (20:02): Again, the Eyre Peninsula Natural Resources Management Board is one that has had the attention of our committee for some time. We have visited on a number of occasions, and I believe it has been educational for those members of the committee who are, perhaps, not as familiar with the area as I am to recognise the vast distances and the vastly different problems of that particular area.

I am sure you would be aware, sir, that our committee has the right to review only board budgets which propose levies above the CPI; so, unless their levies are above CPI we have no right to review them. The criticism we had on this occasion was that the Eyre Peninsula committee proposed a division 2 levy (again, a water levy), an increase of 50 per cent for reticulated water supply—that is, SA Water. Of course, that was much higher than CPI. As the presiding member, Mr John Rau, has said, even without that increase it represented the highest water levy in the state.

Members were directed to a board minute noting the need to clearly justify the basis for the division 2 levy increase, and it was probably wise that the board did minute that, because we have been very critical of boards across the state who have introduced increases in their levy without justifying them. Sadly, the rationale behind that increase was proposed to us well after we had made a decision, and Mr Rau commented that it may have been helpful if board staff had identified and explained the proposed increase as part of their evidence.

The 50 per cent levy increase was not discussed, and members were unaware of this until they received copies of the regional NRM plan. So, we were left in a position where, even though we probably had some sympathy with that proposed very large increase—and I am very well of the cost of supplying water to Eyre Peninsula—the proof that we needed was offered to us long after we had made a decision.

We note within the report that the committee has been frustrated by boards—and this is not solely in relation to Eyre Peninsula but boards generally—ignoring repeated requests to provide the committee with draft proposals, inclusive of proposed levy increases, well in advance. Failure to do this by any board increases the likelihood of its proposal being rejected and places the committee under time constraints which, although consistent with the legislative minimum requirements, are incompatible with the thorough and fair consideration of any levy proposal by the committee.

We have made a recommendation at the end of this report that I hope will be taken into consideration—and it will, I think, require legislative amendment. Our recommendation is that the minimum consultation period of at least 20 days, as required under the act, be increased to 35 days to facilitate a more comprehensive consultation process that includes the public and the

Natural Resources Committee. I do not wish to dwell on that, and I do not wish to be overly critical of the Eyre Peninsula board, because my criticisms are general across the state.

I think we have mostly very hardworking boards, which have accepted with good grace our criticisms as a committee over the years I have been on that committee and attempted to meet our requirements. Having said that, we believe that we are a conduit between the boards and the public and the boards and the minister.

We as a committee—and I have said on a number of occasions in this place that, without a doubt, this is the best standing committee I have served on in my time in parliament—cannot fulfil our obligations if we are not provided, either legislatively or by the boards, with the information we require. I hope my criticisms are taken on board by the boards across the state and that they continue to work towards a transparent process that is embraced by the public they serve.

Motion carried.

EAST TIMOR

Adjourned debate on motion of Hon. David Winderlich:

That this council—

1. Remembers that at least 40,000 Timorese civilians were killed as a result of their assistance to Australia in the Second World War;

2. Regrets that there has been no official recognition of the role of the Timorese in assisting Australia in World War II;

3. Notes that the United Kingdom awarded the Island of Malta the George Cross on 15 April 1942 to honour the courage of its people;

4. Supports the call by the Mary MacKillop East Timor Mission for the nation of East Timor to be given the award of the Companion of the Order of Australia for the extraordinary service rendered by the Timorese people to Australia during World War II; and

5. Conveys its support for the awarding of the Companion of the Order of Australia to the Australian Honours Secretariat in Canberra.

(Continued from 17 June 2009. Page 2668.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (20:09): I rise on behalf of the opposition to support the motion proposed by the Hon. David Winderlich to which I have an amendment. I move:

After paragraph 3, insert new paragraph 3A, as follows:

3A. Notes the contribution of the Howard government in helping East Timor to achieve its independence.

Sister Susan Connolly of the western Sydney-based Mary MacKillop Institute of East Timorese Studies is one of Australia's most respected advocates of the East Timorese people. According to her, at least 40,000 East Timorese died at the hands of Japanese in reprisals. Just 400 commandos entered Timor in the invasion on 17 December 1941, and in February the following year thousands of Japanese invaded.

Australian commandos lost contact with Australia during the battle but continued to ambush and harass the Japanese. After contact was re-established in April these operations intensified to a 20,000-strong Japanese force. The Timorese natives helped the Australian commandos to such an extent that they were able to frustrate the overwhelming number of Japanese.

The young Timorese men, called 'creados', provided shelter and food and relayed information on Japanese troop movements. They also protected and carried commando equipment and tended to them throughout their suffering of tropical diseases such as malaria. Between 40,000 and 60,000 Timorese civilians died during the military occupation. It is interesting to note that Timor was not at war but a colony of a neutral nation.

The Mary MacKillop mission is campaigning through a nationwide petition calling for the Australian government to make East Timor a Companion of the Order of Australia. To date, it has collected over 23,000 signatures. While conceding such an award would be unprecedented in Australia, Sister Connolly points out that the British government, as I said in reading the Hon. Mr Winderlich's motion, gave Malta the George Cross on 15 April 1942 to honour the courage of its people. Malta was the first British commonwealth country to receive a bravery award. It

should be noted that in July 2009 the government began presenting commemorative medallions to the Fuzzy Wuzzy Angels and their survivors. This was for care of Australian soldiers during the Second World War in Papua New Guinea.

In relation to my amendment, on 20 May 2002 East Timor became independent. East Timor was Australia's most important military involvement since the Vietnam War. It was in December 1998 that John Howard marked a significant policy change in his letter to President Habibie. The letter suggested that after a period of autonomy there should be an act of self-determination in East Timor. In late January 1999 the Indonesian cabinet made its remarkable decision. East Timor would be offered a consultation (later defined as a referendum) on autonomy or independence.

Australia's significant diplomatic and political effort helped firm up international support for an act of self-determination and, later, when security broke down, helped to restore that security. Australia was involved from the outset, participating in the first UN monitoring mission and culminating in a public verdict favouring independence; leading the INTERFET mission, restoring security in East Timor throughout 1999; and contributing to the United Nations Transitional Administration in East Timor (UNTAET) mission.

Financially, humanitarian efforts amounted to some $81 million in 1999 and 2002 and $150 million for the transition period in the early years of independence. Between 1999 and June 2001, Australia's contribution to peacekeeping was valued at $1.4 billion. National efforts involved thousands of Australians living and working in East Timor and the service of over 15,000 defence personnel.

The former secretary of the Department of Foreign Affairs and Trade, Dr Ashton Calvert, described John Howard's diplomacy over East Timor as one of the most impressive examples of head of government international diplomacy that he saw in his career. With those few comments I commend my amendment to the council and also endorse the motion of the Hon. Mr David Winderlich.

The Hon. R.P. WORTLEY (20:14): I rise to give support to this motion. The people of Timor paid a terrible price for their loyalty to Australia during World War II. It was a price completely out of proportion with their population and with their role in world and regional affairs. The sacrifices made in their own name were largely for the benefit of our nation. The Battle of Timor occurred in Portuguese Timor and Netherlands Timor during World War II. It involved forces from the empire of Japan, which invaded on 20 February 1942, shortly before the first attack on Darwin.

On the other side were allied military personnel, predominantly from Australia and the Netherlands East Indies. Principal among these was Sparrow Force. Sparrow Force was a detachment based on the 2nd/40th Australian Infantry Battalion and other 8th Division units. It had been established to defend Timor from invasion. A commando unit, the 2nd/2nd Independent Company, was also part of Sparrow Force.

On 16 February 1942, Sparrow Force was reinforced with British anti-aircraft gunners. The 2nd/40th and most of Sparrow Force units were based at Penfui airfield, outside the capital of Netherlands Timor, Kupang. Japanese units began amphibious landings in Timor on the night of 19 February 1942. Sparrow Force withdrew and during that operation encountered a force of 500 Japanese paratroopers who occupied well fortified positions.

The Australians attacked, however, but they ran low on ammunition and, being hopelessly outnumbered, they surrendered at Airkom on 23 February. Some members of Sparrow Force escaped to Portuguese Timor, where they joined the 2nd/2nd Independent Company. Although the Portuguese Empire was not a combatant, many East Timorese civilians fought with the Allies as criados or guerrillas, or indirectly supported them by providing food, shelter and other assistance.

By the end of February 1942, the Japanese controlled most of Netherlands Timor and the area around Dili in the north-east. However, they could not move into the south and east of the island without fear of attack.

The 2nd/2nd Independent Company was hidden throughout the mountains of Portuguese Timor and it commenced raids against the Japanese, assisted by Timorese guides and porters, utilising Timorese mountain ponies for transport and other logistic support. Indeed, during the early months of Japan's occupation, the success of the Australian forces in East Timor was made possible only by the additional support they received from the local Timorese, who risked execution by the Japanese by providing information, food and shelter.

During the following months, the guerrillas inflicted significant damage on the Japanese occupation forces wherever and whenever they could. The Japanese recognised the strong link between the local population and the Australian forces and instigated a counter-offensive campaign that was designed to intimidate the locals and destroy their links with the Allies. In spite of this, many Timorese continued to risk their lives to assist and protect the Australian forces.

The price paid by the people of East Timor during their campaign of resistance was heavy. Somewhere between 40,000 and 70,000 died as a result of indiscriminate attacks by Japanese forces, or from other effects of the occupation. Japanese forces remained in control of Timor for 3½ years, until their surrender in August 1945.

While the commando campaign on Timor had little direct strategic value, the fact is that the allied commandos and the Timorese who assisted them prevented an entire division from reaching the New Guinea campaign. Such a contribution to the war in New Guinea at that time could have easily turned the tide of battle in favour of the Japanese invasion force. Indeed, the history of the Kokoda Trail, and the impact of the war in the Pacific, could well have been very different.

I recognise the award of the George Cross made by the British government on 15 April 1942 to the people of Malta to honour the heroism and devotion of its people and see the parallel there. Malta was important to the allied North African campaign, and the island endured heavy aerial bombardment and a naval blockade over an extended period as Adolf Hitler sought to neutralise it in preparation for a German invasion.

While the people of Timor did not suffer the air and sea offensive suffered by the population of Malta, I note that the number of Timorese lost during the Second World War far exceeded the number killed in the German offensive operations directed against Malta.

The time to recognise the courage of the Timorese people is long overdue and I commend this motion to the council, although I must say that I think it is a shame that the Hon. Mr Ridgway has sought to politicise the motion by moving the amendment. I am not quite sure what we are going to do. We will oppose the amendment but we will have to see what we do with regard to ensuring the success of this motion.

The Hon. D.G.E. HOOD (20:20): Very briefly, I indicate Family First support for the motion and I congratulate the Hon. Mr Winderlich on moving it. In fact, it is something that is well and truly overdue, as members of the council have mentioned in their contributions. I also indicate that we support the Hon. Mr Ridgway's amendment.

The Hon. I.K. HUNTER (20:20): I indicate that Labor members have decided to support the important motion of Mr Winderlich. However, I, too, am a bit saddened by the Leader of the Opposition's attempt to politicise unnecessarily a very important motion; I think it cheapens the motion and is very sad. I oppose the amendment.

The Hon. DAVID WINDERLICH (20:21): I thank all members for their contributions. I also indicate at the outset that I am quite comfortable with the amendment. People who know me well, particularly from my involvement in refugee issues, would have heard me make vociferous and heated criticisms of former prime minister John Howard. In fact, at one point I was saying that I think it was people like him who make a place like hell necessary. I have been no fan of John Howard on many fronts; however, on East Timor, I think he did the right thing. I think it also followed a period of successive Labor governments doing the wrong thing in respect of East Timor. I think those are just the facts of history. On many other fronts I would be very critical of John Howard—one of his most bitter critics, which is what happens when you walk into detention centres and see children—but with respect to this motion I am quite comfortable with the amendment and quite happy to support it.

Most of the points have been made, so I will not repeat them, but perhaps I will very briefly summarise them. A key point is that the people of East Timor made an outstanding and unique contribution to the security of Australia and, more than that, they made that contribution in what is virtually universally recognised as one of the just wars in history. I do not necessarily support Australia's involvement in every war that we have been involved in, nor do I necessarily celebrate them. I think some wars are a mistake; I think some wars are wrong—arguably, most are—but I think the Second World War, which was a struggle largely of democratic countries against international fascism, was a just war. The East Timorese in their support of Australia made a contribution not just to our security but to international democracy. I think that is well worth celebrating.

The point has been made that it is not unprecedented to give awards to nations. Britain awarded the George Cross to Malta, so within our broad Westminster system of government this sort of thing has occurred. It would be a first for Australia, but it would not be a first internationally.

One point that has not been made, but which I think is implicit in this, is that I think there is a special bond developing between East Timor and Australia. It started with their incredible contribution in World War II. I think in a couple of ways we let them down and we perhaps set that relationship back—and I refer to the acceptance of the 30 years of Indonesian occupation and an attempt to seize too much of the profits of the East Timor oil reserves—but they appear to have forgiven us for that. At all sorts of non-government levels for years a special bond has developed between the many Australians who have worked to support East Timor with both their independence and also to provide it practical support.

Now, with this initiative, I think to give them the Companion of the Order of Australia is symbolic recognition of that bond. It is also important to recognise the special role played by the Mary Mackillop East Timor Mission. This initiative is really all their work. They have provided years of practical support on the ground to the East Timorese people; now, this is an attempt to provide symbolic recognition to the people of East Timor.

If this motion passes today, as it clearly will, it will be submitted to the Australian Honours Secretariat at Government House in Canberra who will conduct a formal investigation into the merits of the nomination. I believe that the support of this council for this nomination will add considerable weight to the nomination and will make the Secretariat look upon it in a very favourable light. Of course, above all, that will be to the credit of the people of East Timor and to the Mary Mackillop East Timor Mission. I thank members for their support. I look forward to the successful passage of this motion through the council.

Amendment carried; motion as amended carried.

DEVELOPMENT (REGULATED TREES) AMENDMENT BILL

Adjourned debate on second reading.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (20:26): I rise on behalf of the opposition to speak to the Hon. Mr Hood's amendment to the Development Act and, in particular, regulated trees. Members will be aware that this same bill lapsed when parliament was prorogued a couple of years ago. The last time it was debated was in September 2007 when we reached the committee stage. It was a long and protracted bill in an attempt by the government to come up with a simpler more streamlined approach to dealing with the perennial problem of large trees in our suburbs and, in particular, difficult and significant trees.

At that time the opposition indicated to the Leader of the Government and the minister that, at that stage, we were not prepared to support the bill. While we acknowledged that we had eight members in this chamber and the government seven, as well as six crossbench members, if the government was able to get the support of enough of the crossbenchers to achieve its legislative reform we would not make a big song and dance about it—it would be a bit of government legislation which we did not necessarily support but which we did not necessarily oppose.

On a number of occasions in this place since that time the minister has claimed that we opposed it because we did not support it. I keep reminding the minister that we had only eight members and that, with the six crossbench members and the government members, he had the numbers if he was able to convince them that it was a sensible piece of legislation. There are a number of concerns, but one of our fundamental concerns is that a big chunk of this legislation is left to regulation.

At the time the minister was not prepared to show us the regulations. I know that the LGA wishes to see a copy of the regulations, and I note that we have a representative of the LGA in the gallery tonight. It should be noted also that we debated the planning reforms, and, in particular, the implementation of a residential code. Again we asked to see some draft regulations, because while the residential code primarily is an instrument set up by amendment to the act the actual detail is in the regulations.

The government was prepared to show us the draft, and I think we had draft 10 or 11 when it finally got into this chamber. The government has realised that the way to get some of this more difficult legislation through is to give us a look at the regulations. As I mentioned, at that time we did not support the bill or the regulations. Sadly, the Local Government Association did not trust the

government and wanted to see a copy of the regulations at that point, but they were not forthcoming and, sadly, they are still not forthcoming.

I think that some of the amendments proposed by the government address some of the minor concerns of the LGA, but as late as 17 September (this month) I was advised that the LGA would still like an amendment that would require the Department of Planning and Local Government to consult councils on the regulations accompanying this bill, and to our knowledge that has not been forthcoming. I think they have had informal discussions in the minister's office about the possibility of having a committee within the Department of Planning and Local Government comprised of representatives from local councils who could help to formulate the regulations with respect to trees and more pertinent issues.

The LGA also indicated to the minister that it would be satisfied with a dot point overview of the proposed regulations, perhaps presented during this debate. So, I am waiting. As I have indicated, the opposition has not changed its position. We do not support this legislation at this point, but if the minister were to table some dot point regulations that the Local Government Association was happy with, we might be prepared to consider supporting it. However, we have only eight members. There are 22 of us in this chamber, including you, Mr President. So, there are 13 other members on the floor of the Legislative Council and, if the Hon. Mr Hood gets enough support, he will be able to pass his legislation.

I do not want to prolong the debate, because members are fully aware of the opposition's position on this, but things such as the urban trees fund and the make good orders have been particular concerns of ours. The urban trees fund is where a person wishing to remove a significant tree has to pay into a fund to do so.

I will give an example of what I think is one of the sticking points for me (and I have often talked about it in previous debates). An opposition staff member bought a property that had a tree in the backyard. They may have been a bit excited about the property and did not see that the tree was on their land. When they demolished the old house to build a new one and cleared the property, they realised that it was on their land. They applied to try to get rid of it and had a long battle with the local council. In the end, they did not remove it.

While the tree is still a concern on some stormy nights, because it is large (it is a red gum about 150 years old), they are quite delighted, because it gives a lot of shade and protection to their home. They have a pool and quite a nice backyard, I think. So, on the one hand, they were very happy to get rid of it but, on reflection, they are now quite pleased that it provides quite a lot of shelter. That is an example of where the system frustrated a landowner but, in the end, they are quite happy that they did not cut down that tree.

The problem with the urban trees fund is: how do you value a tree? I remember having an informal discussion with the Hon. Mark Parnell. I am not sure where he got this from, but he talked about a tree that was a habitat for some birds. I think he said that the tree was 20 metres high and had three or four birds' nests in it, and the cost to build a steel structure with a bit of shading over it and three or four bird nests in it was roughly the value of a tree. I struggle with how you can—

The Hon. M. Parnell: You quoted me accurately; but they were not my figures.

The Hon. D.W. RIDGWAY: No, I am not saying that it was the Hon. Mark Parnell's figures, but we had a discussion (it may have been in the ERD Committee) about how you arrive at the value of a tree, because we all put a different value on a tree. I am sure that the Hon. Mark Parnell and a lot of his party colleagues may value trees significantly higher than do other members in this place—or maybe not. So, how do you arrive at a value that is reasonable for protection, but then also to pay into a fund, and where does the fund go and how is it administered? It seems to be a particularly cumbersome mechanism to try to achieve an outcome.

The other issue that we struggled with was the make good orders. If someone cuts down a tree—like the staff member about whom I spoke earlier who cut down the 150 year old red gum tree in their backyard and built their pool—and then the local authorities decide, 'This person has done the wrong thing; we are going to impose a make good order on them,' how on earth do you re-establish a 150 year old tree? What is the magnitude of a make good order?

We can all understand that, if someone pulls up or destroys a tree that is a few years old, they can replant something of similar size and nature. I am not quite sure how you achieve a make good order when you are talking about large trees. Clearly, you cannot replace them or transplant them back into place. With respect to the value of trees, I have always been somewhat of a greenie

when it comes to trees, and large trees in particular, and I remember the disappointment—the Hon. Mark Parnell might laugh, but I remember the—

Members interjecting:

The Hon. D.W. RIDGWAY: Well, you all might be laughing. I can remember the disappointment. You may laugh but I can recall that when I was about 19 or 20 we burnt a wheat stubble and we thought we had put out all the fires, as you do in March and April. Unfortunately, one of the best gum trees in the paddock had a little bit of leaf mulch under it and there was a strong north wind that night. I recall that I had been out to a Rural Youth meeting and on my way home at about 10.30 that night I saw that the tree was alight, and there was no possible way to put it out. It fell down—

The Hon. A. Bressington interjecting:

The Hon. D.W. RIDGWAY: It was a bit reckless, in hindsight. The next morning you get up and there is a tree that is probably 250 or 300 years old lying on the ground. It was healthy, and it was full of possums and birds. I recall there was a snake that had been caught in the roots; it had tried to get out from the fire and was dead on the ground. I looked at it and thought, 'That was a careless act,' and I felt quite bad about it, as did my cousins and neighbours on adjoining properties. It would not matter how much money you paid because you could not replace what was lost that night.

The PRESIDENT: You should have had the dog tied up to it; he would have put it out.

Members interjecting:

The Hon. D.W. RIDGWAY: You might all laugh. The people who are laughing, and I do not want to point it out, epitomise the lack of respect a lot of people have for the farming community and their environmental concerns. People can laugh and people can criticise. To this day, 30 years later, I feel guilty that I did not make sure that fire was out and that the tree is gone. Once it was gone, it was gone forever and I could not replace it. That is why I have a fundamental belief—

The Hon. P. Holloway interjecting:

The Hon. D.W. RIDGWAY: The Leader of the Government is laughing now. He thinks it is a joke that I burnt down the tree. It is not a joke.

Members interjecting:

The Hon. D.W. RIDGWAY: I am a bit ashamed and saddened that members are ridiculing me because I am disappointed that I helped burn down a tree accidentally. It was 300 years old and probably the home of countless dozens of animals.

That is why I am concerned about this legislation. I do not think it actually addresses the problem that we have, and it is cumbersome. I do not know how you can arrive at the value of a tree. I do not know how make-good orders can be made to work. Our party feels the same, so I indicate that we are prepared to listen to some of the amendments. I think the Hon. John Darley's amendment that gives concessions to pensioners is a sensible one and, certainly, the opposition will support that in the event that there is sufficient support for this legislation. However, I indicate that the opposition is unlikely to support this bill.

The Hon. M. PARNELL (20:37): This is now the third time we have seen this bill and the third time I have spoken to it. The first time I made quite a lengthy contribution, going through all the different elements of the bill. The second time I was briefer, and I think this will be the briefest of the lot.

At its heart, the problem with this bill is that it starts on the premise that it is too difficult and too expensive to chop down trees and that therefore we need to make it easier. If, on the other hand, the premise of the bill was that not enough or not the right sorts of trees were being protected, we would have got a different bill. But it starts from the wrong premise and, therefore, it comes up with the wrong result.

One issue I have discussed already with the member who introduced this bill is one of my fundamental concerns, and that is the level of assessment that will be provided to assist in determining applications to remove, whether it is significant or regulated, trees. Under this bill (even though the Hon. Dennis Hood is bringing it to us now, this was the government's position), unless special circumstances apply, the local council planning officer is not allowed to ask for any

technical or expert information about the state of a tree to justify the claim that has been made that it should be removed.

For example, if someone went along to the council and said, 'This tree has to go because it is diseased,' what would normally happen (under the present system) is that a diligent council officer would say, 'Give me some proof,' and that would usually be an arborist or someone who understands trees. You would get a report and, if that vindicated the fact that it was diseased and possibly likely to fall over, you would probably get your approval.

We know that it costs money and we know that that is the driving force behind this bill—or it was—from the government's point of view; saving those few hundred dollars for technical reports. However, put yourself in the position of the council planning officer, who is not allowed to ask for any technical information or any expert report. They have to look at a sheet of paper which basically says, 'Tree at number 37.' They want to chop it down because they say it is diseased and dangerous and that it drops limbs. They can say whatever they want and the officer is not allowed to get a second opinion. It may be that a very diligent planning officer would go and inspect it. Most do not, but let us say that they did: would a planning officer necessarily know a dangerous tree from a safe tree just by looking at it? Probably not; probably they would not have any idea.

It seems to me, that is just one example of where I think this legislation makes it unnecessarily easy to chop down these trees and removes the ability of our planning authorities to make a proper assessment. However, having said that, I know that, certainly as far as the honourable member is concerned, and certainly the minister when it was his bill, they made out the very good point that inappropriate trees have been planted, for example, people planting lemon-scented gums that they were given as a birthday present or a Mother's Day present from a well-meaning child. They planted it because they thought that was the right thing to do and, within a year or two, it is already looking like causing damage. If you do not get onto it straight away then it can become a significant tree and there can be some rigmarole in order to remove it.

This bill takes that situation as the norm and applies a lax standard to that situation which can then be used for situations where the trees are not necessarily causing a problem. I think it is the wrong tool to use. If the starting point was driven more by a question such as, 'How do we get *Eucalyptus microcarpa* properly protected in the significant tree legislation?' I think we would have had a different outcome.

I also agree with the Hon. David Ridgway when he points out that almost all of the useful detail as to how these laws will apply is to be contained in regulations that we have not yet seen. The honourable member who is moving this bill as a non-government member of this council does not have any capacity to write regulations. Even if he were to ask parliamentary counsel, I am not sure whether it is part of their brief to let a backbencher or a cross-bench member write regulations, so we have no idea what the coverage of this legislation will be.

The government, as I understand it, is supporting this bill because it was originally theirs and the minister may provide us with some draft regulations that might settle some of our concerns. However, whilst at present all we have before us is this bill and no regulations, the Greens cannot support it.

The Hon. DAVID WINDERLICH (20:43): I will not be supporting the bill. I would like to acknowledge the contribution of the Hon. David Ridgway, who gave us some of the emotion of trees. I understand there are people called tree doctors who can help him deal with the unresolved guilt. However, I did genuinely respect what he was saying. In fact, I thought it was verging on the poetic. It made me think of a very short poem by Ogden Nash as follows:

> I think that I shall never see
>
> A billboard lovely as a tree.
>
> Perhaps, unless the billboards fall,
>
> I'll never see a tree at all.

I think that kind of emotion is important and at the heart of this question. Really, what it comes down to is this: do we think trees are valuable? I think there are many reasons, emotional reasons—as we have heard outlined—biodiversity reasons, microclimate effects in the cooling of the city and the visual amenity and so forth. Imagine Adelaide without trees. I think they clearly are valuable. The question is: what role will this legislation play in balancing the protection of trees and the protection of people? I think that is what it comes down to.

There is no doubt that removal can be necessary. There is no doubt that some trees are dangerous and that their removal can be expensive. I think we do have a problem where there is a situation where the public or community benefit of a significant tree of some size is paid for at a private cost to individuals who must maintain it or manage it. I think that is a problem, and I do not think this legislation will resolve the problem other than just to raze the tree.

It also raises some interesting questions about risk. We have different levels here. If a branch is about to fall on my house, I think I am entitled to take steps to prevent that happening. If a branch almost fell on me out in the backyard, I think that is quite a different argument, and to say that that is an argument for the removal of trees uncovers some very interesting arguments about risk.

My 16 year old daughter is going to learn to drive. If she almost runs me over in the driveway, which is probably reasonably likely, I am not going to crush the car. I am just going to say 'Phew! Well, that's a relief! Didn't run me over.' There are interesting attitudes here about what are legitimate risks which we accept in all sorts of contexts and do not resort to drastic solutions—we just say, 'Well, something almost happened, and thank goodness it didn't'—and what are risks that we are reacting to almost irrationally, like the Jaws effect of not going swimming because there is a shark in the water.

I think that some of these issues around how we react to our natural environment, as opposed to the way in which we react to the other sorts of threats, such as those posed by traffic, are quite revealing about what we value in life and what we try to manage.

As I said, there is a need to strike a balance but I do not think this bill is a serious attempt to strike a balance. It has identical problems which were pointed out in detail, and the Hon. Mark Parnell just outlined them again. Do we still have this arbitrary measure of the two metre girth which does not take into account that many native trees do not reach that measurement?

The Hon. Mark Parnell pointed out that this bill in fact blinds councils. They cannot go out and get the information they need, and there is a balance there too because there is a great temptation on the part of councils to forever get reports and hold things up and avoid making decisions. That happens, so there is a need to balance that. The Hon. David Ridgway pointed out the lack of regulations and how important regulations are going to be to make this work and, in their absence, we cannot really make a sensible decision about this.

The other key factor in terms of whether this legislation is workable is to look at the context. The context of this legislation is that we are in an environment where we say that we value biodiversity and vegetation and the garden setting and all that sort of thing, but every trend is moving against that. Backyards are disappearing and, with them, trees. The metropolitan boundary is expanding, so that will remove a large number of trees out on the fringes.

We have the effects of drought and climate change, and we have an aggressive 'develop at all costs' mentality which I think is exemplified not only in terms of the large development corporations and the large development projects but also on quite small domestic projects where everything inconvenient is to be swept aside, razed to the ground. I think there is also a fundamental impatience with nature and anything that does not fit neatly into our plans for how we want where we live to look and whether we want to build this particular extension or that particular extension.

In that climate, there is a growing impatience with the untidiness of nature such as is often provided by trees. The overall picture is that we say trees are valuable and biodiversity is valuable but there are some very powerful trends that make it very clear that trees are in danger—our significant trees and our trees of any size in particular are in danger.

This legislation creates too many loopholes that would mean that all those forces that want to deal with trees as an inconvenience will do so. I think the cumulative effect of this will probably actually outweigh the effects of drought or climate change—a sustained go with a few thousand chainsaws and bulldozers will actually make a huge hole in the tree population of Adelaide.

The Hon. P. Holloway: They are cutting them down when they get near two metres. They cut them down before they become significant—that is what is happening now.

The Hon. DAVID WINDERLICH: Well, that happens too and I think we will see both happen. The flaws in this legislation were pointed out in great detail by councils and by various interest groups, I think, two years ago when this was first discussed. This current bill has not

responded to any of those criticisms. Therefore, I do not think it is a serious attempt to strike this balance, and I will not be supporting it.

The Hon. D.G.E. HOOD (20:50): I thank members for their contribution. I think this is one of those bills that people have very strong feelings about. I understand that and I share those feelings. I would like to sum up very briefly. The first thing I want to say to members regarding this bill is that it was, of course, a government bill initially and it had Family First's support, but it lapsed, as we know. I have reintroduced it for a number of reasons. I certainly do not want to see as a result of this bill passing this place—and I believe it will on my simple count of the numbers—the wholesale removal of trees from Adelaide's landscape. I do not believe that will be the case. In fact, I am quite confident that that will not be the case.

I think we are living in a situation now where the tree legislation in this state is nowhere near as good as it should be, and it really has created huge angst. I have had literally—I would not be able to put a number on it—at least 100, if not more, contacts with constituents over this issue as I have done some media on it. There is a lot of feeling and a lot of angst in the community from people who feel they are in a very difficult situation; for instance, people who have spent many thousands of dollars trying to remove trees for reasons which, certainly to me, appear to be legitimate, but they are not able to because of what they perceive as red tape. This bill should fix those sorts of situations. That is what it is targeted at, as best as I can tell.

I would like to touch on a couple of points that have been made by members. I thought the Hon. Mr Winderlich gave a thoughtful contribution, but one point on which I would disagree is the example he gave of a car potentially running down the driveway or a tree potentially falling on one of his children or himself—I think he said. He said that you would be grateful that it did not happen and move on. I agree with him on that part, but I think also you would then take steps to make sure it could not happen again in the future. I think that is what this bill takes small steps towards.

I should acknowledge that this bill is not perfect. I do not believe it is perfect at all. In fact, I think the Hon. Mr Ridgway outlined problems with the bill, and I actually agree with most of them. There are certainly issues with this bill. The Hon. Mr Parnell mentioned one of them, and that is that much of the guts of this bill, if you like, or the real detail of the bill, will be formulated in the regulations. Of course, that is something that we will simply have to trust the government to do to the best of its ability.

I believe there is goodwill on this bill. I see no reason why the government would not do that. I think it makes good provisions. They probably are not optimal but I think, again, they are better than what we have now. That is why I think this bill is worth pursuing. Basically doing nothing, I think, is unacceptable. My view is that we should pass this bill in order to improve—albeit marginally, some might argue—on a situation that, at the moment, is unacceptable.

The Hon. Mr Parnell gave what I thought was a well thought out contribution. I would like to pick up on one point he made with which I do not agree. It was the point about someone approaching their local council and saying, 'I want to get rid of this tree because it is diseased,' or something along those lines. I think his argument was that it is difficult for a council to assess, in those situations, what they should actually do. I think that is a fair point but, under this bill—should it pass—that situation would apply only to regulated trees, not to significant trees. So, the situation with significant trees is largely unchanged. The situation with regulated trees would be changed. So, essentially, it would be easier to act on regulated trees, but there would still be substantial protection for significant trees.

I note also that this bill, in a general sense, has broad support from the LGA, subject to regulation, which I understand the minister will address. I have a fax here—and I am sure other members also received a copy of the fax—indicating the LGA's support for the bill. I would also like to say that Family First will be supporting the sensible amendment which will be moved by the Hon. Mr Darley in due course.

Bill read a second time.

In committee.

The Hon. P. HOLLOWAY: Mr Chairman, I wonder, with the indulgence of the committee, whether members would accept my having an adviser from the Department of Planning and Local Government. I know it is the Hon. Mr Hood's bill, but given that, originally, it was a government bill, if there are technical questions, it might assist the committee if I can provide answers to some of

those questions with the help of the adviser. I know that it is an unusual procedure for a private member's bill, but I am happy to do that on this occasion if that is the wish of the committee.

The Hon. D.W. RIDGWAY: Is it the minister's view that, if any member other than a government member reintroduces a government bill that has lapsed, dropped off because parliament has been prorogued or defeated, a government adviser will be available to assist during subsequent debate on such a bill?

The Hon. P. HOLLOWAY: I am not suggesting that this sets any precedent. I am suggesting that it would make common sense on this particular occasion, but obviously it is up to the committee. There are unusual circumstances with this bill. It was not debated through the committee stage originally, so some of the technical questions, amendments and things were not discussed. It is in the hands of the committee. If members do not want that, so be it, but I put that as an offer, I think a sensible offer, to assist the discussion on the bill.

The Hon. D.W. RIDGWAY: The minister is proposing that, in relation to an amendment or any questions that we might address to the Hon. Mr Hood on his bill or the Hon. Mr Darley in relation to his amendments, there is the potential that any technicalities will be answered by the minister, with advice provided by the government adviser. I understand what the Leader of the Government is trying to do, but I think it sets a precedent with any piece of legislation, if the government chooses to have an adviser in the chamber—and next year we hope it will be a different government. I make it very clear that, if we are going to make a significant change to what has been the practice in the past, all members are aware of it.

The CHAIRMAN: I do not want this to set a precedent where all private members who introduce bills have advisers sitting next to them, but all the amendments, except for two which are in the name of the Hon. Mr Darley, are government amendments. I do not know whether the Hon. Mr Darley has requested any assistance to convince the committee to pass his amendments. He says no. The minister is entitled to have the advice of the adviser in respect of the government amendments.

The Hon. S.G. Wade interjecting:

The CHAIRMAN: The minister has the other amendments on the table. To answer questions that might be raised in committee, the minister can ask for the adviser to assist. That is not having the Hon. Mr Hood asking the adviser to assist, because the amendments are in the name of the minister.

The Hon. S.G. WADE: Does that mean that another member who had carriage of a private member's bill would be able to have an adviser present?

The CHAIRMAN: No. I am saying that the minister is entitled to use the adviser, without the approval of the committee, on the government amendments. The Hon. Mr Ridgway's argument is that the Hon. Mr Hood or the Hon. Mr Darley do not use an adviser. If they do, they set a precedent, and I tend to agree with that; that is, a precedent would be set for other members, when dealing with their bills at the committee stage, to argue that they should have the use of an adviser. Except for two, these amendments are in the name of the minister. The minister is entitled to have an adviser in the committee.

The Hon. D.W. RIDGWAY: In the 7½ years, nearly eight years, that I have been here, I do not recall in relation to any other private member's bill the minister having an adviser. We have had close to 100 private members' bills. I do not recall—I stand to be corrected—that the minister has had advisers sitting next to him.

The Hon. P. HOLLOWAY: I do not think it has ever been done before, but the difference here is that this bill was originally drafted on the government's instructions. The advisers working on it were public servants of the government and, obviously, they have an intimate knowledge of the bill which they can share with the committee, if the committee so wishes. Normally, with most private members' bills, if they are drafted on the instructions of members in this place, members will be more familiar with the bill; there will not necessarily be any advice from outside in relation to it.

It is simply an offer I make. Because of the background of this bill and because a lot of work has been done on it by people within my department, I am happy to answer any questions raised or provide further information with the assistance of the advisers, if the committee so wishes—because I think that would make better legislation. I do not see its setting any precedent. It is an unusual set of circumstances, but it is entirely up to the committee.

The CHAIRMAN: If questions are directed to the minister by members of the committee, the minister is entitled to seek advice from the adviser in the committee. In relation to amendments moved by the minister, the minister is entitled to do that. I suggest that we proceed to move the amendments and follow the procedure that the minister seeks advice when he is questioned or in regard to his amendments; so we proceed along those lines.

I understand the Hon. Mr Darley is quite happy to argue his own amendments. The Hon. Mr Hood does not have any amendments to the bill. If other members have serious questions about it and the Hon. Mr Hood has any difficulty answering them, they might direct those questions to the minister. Let us see how we go without setting a precedent because I am reluctant to do that.

Clause 1.

The Hon. A. BRESSINGTON: It is my understanding that this bill was re-introduced for the reasons that the Hon. Dennis Hood mentioned. Like him, I have received many emails, letters and photographs of trees that have been causing problems to families with small children. Unlike the Hon. David Winderlich, who used the analogy of his daughter driving a car, you would not crush the car but you would certainly try to instruct your daughter not to make the same mistake again. It is very difficult with a tree.

I have a similar problem with a huge pepper tree at Shay Louise House at DrugBeat. It is a beautiful tree and no-one wants to cut it down, but it is causing major concern for neighbours on three sides of Shay Louise House because of big branches dropping—and nothing can be done about it because it is a significant tree. Getting council approval to trim those branches so that they are not a risk to the children in the yards next door is a concern for not only us but also our neighbours.

We need to be practical about this. I do not see that there is a motivation to mow down trees for no particular reason. The Hon. David Winderlich spoke about disappearing backyards. Guess what? It is happening. We have backyards that are too small to plant trees in. It may be a little strange in these days of wanting to preserve as much as we can, but I figure that if you own your block of land and build a house, and there is a tree there that you did not believe was going to be a problem at the beginning but it turns out to be one, because it is your plot you should be able to make that as safe and as comfortable for your family as you need it to be.

I think that is the guts of this bill. It is about safety and it is about risk management—and both sides of government, both parties, are big on risk management. If it does not apply for normal householders to monitor and manage their own plot of dirt, we really have a bit of a problem. I support this bill, and I support the Hon. John Darley's amendments.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. P. HOLLOWAY: I move:

Page 3, line 3—Delete 'within a class of trees' and substitute:

, or a tree within a class of trees,

There was a series of amendments here, and members who were around at the time may recall that these amendments are the same as those that were on file in my name two or three years ago, when we first dealt with this bill. They came about as a result of significant consultation in relation to the bill with the Local Government Association, in particular, but also with a number of other people. This first amendment deletes the clause 'within a class of trees' and substitutes 'or a tree within a class of trees'.

The bill, via the definition of 'development', enables the regulations to prescribe the class of trees that are deemed to be 'regulated trees'. The regulations currently refer to trees with a two metre circumference, as per the existing regulations. I note that the original tree controls refer to trees with a 2.5 metre circumference. The bill also enables the regulations to add or exempt prescribed classes of trees.

This amendment will enable the regulations to add or exempt single trees; thus, it merely provides for the full range of options that may need to be considered in the future. This amendment provides the option for the regulations to specify a specific tree as being a regulated tree, even

though the whole species does not warrant listing. This amendment flows on into the other amendments.

In other words, the Hon. Mr Parnell talked about lemon-scented gums, and so on, that had been planted in many backyards. Trees of that type are very fast-growing trees that are native to the Eastern States, and they have created some problems because people have planted them inappropriately and they reach that two metre circumference fairly quickly.

Whereas one might want to define a class of trees to which the provisions of this bill should or should not apply, there will be occasions when one particular example of that tree may be regulated because of the circumstances in which it is located, for example. This amendment simply allows that extra degree of flexibility in relation to the bill. It is a relatively minor amendment but, I think, an important one. Again, I make the point that it came out of some discussions when this bill was originally introduced.

The Hon. D.W. RIDGWAY: I indicate that the opposition is prepared to support the amendment. It is interesting to note that the minister said that it came out of some discussions and consultation. I think I made the point two years ago when we were debating the bill that the minister has at his disposal the whole of Planning SA and a number of advisers. However, time and again, with government legislation (although this is now the Hon. Mr Hood's bill, and we know the circumstances in which became his bill), we have seen that, after months and months of consultation and hundreds of thousands of dollars in salaries (I believe his adviser at the time, Mr Vanco, was intimately involved in it, and I think today he is on a very nice salary and buried deep within the department somewhere), we did not get this in the bill when we first saw it.

I think it is a sad indictment on the leadership the minister provides that we must have these amendments, which are reasonably sensible amendments, and that we have to go through this whole process before we get them. The minister needs to have a good, long, hard look at how he progresses his legislation through his department.

The Hon. P. HOLLOWAY: I do need to answer that point about legislation in relation to significant trees. As I have said on a number of occasions, trees are very difficult things to regulate, because they come in all shapes and sizes. You can have very old trees that are small, very large trees that are young, some trees that are diseased and trees that are effectively weeds—and the situations in which they can fulfil these different roles can vary. For example, trees and plants that are highly valued in one location may become weeds in another area.

One only has to look at some of the melaleuca plants that have taken over the Everglades in the United States, for example, to see that. Conversely, we have a number of trees in the Adelaide Hills, for example, that run rampant in the high rainfall areas but may not pose such a problem in a lower rainfall environment.

So, there are many, many different factors, and that is why it is hard to develop legislation that covers all of the situations. The more one tries to make this legislation cover all the various situations that might arise, obviously the more complex it becomes. So, there is a trade-off, ultimately, between how complex the legislation should be and how practical it can be if one is dealing with all the possibilities that can happen in trying to deal intelligently with trees.

In relation to points made by the Leader of the Opposition, this government introduced the bill. Originally, a working group was established by one of my parliamentary colleagues, the now minister for employment, when he was a parliamentary secretary, and the Local Government Association. A significant amount of work was put into that. A bill was developed, circulated and commented on. Then, as it came into this parliament, other suggestions were made. These amendments all came out of that. All the amendments I am moving here are essentially those which were tabled two years ago and which would have been incorporated into the government's bill at the time.

To suggest that one can develop a piece of legislation and have it perfect first time is a nonsense. Perhaps the Leader of the Opposition is perfect, and he might be able to do those sort of things with legislation. However, I would suggest that, in such a complex area like this, that is not the case. I do not think making those sort of comments serves any real purpose.

The Hon. M. PARNELL: I will ask the minister a question, and I guess the minister will determine whether he needs to take advice. My question relates to clause 4, which we are on, but I will not repeat it in relation to clause 5 or the minster's proposed new clauses 5A or 5B. It is the one question, but it starts at clause 4.

The regime here is that significant trees come to be significant by one of two routes—no pun intended in terms of roots; hopefully, they will have more than two roots. One is that they come through regulations; the other is they come in through the development plan. My question, in particular, is in relation to the development plan. Clause 5, which we will get to next, sets out the criteria that need to be met for a development plan to be able to list a tree. Proposed new clauses 5A and 5B provide some of the mechanics of who needs to be consulted before trees are declared to be significant by virtue of insertion into a development plan.

So, what we are talking about is that local planning schemes will have lists in them of significant trees. There are clearly resource implications for local councils to audit their region and list the trees they believe should be listed that might not otherwise be picked up by regulation. However, the minister also has the power, using ministerial development plan amendments, to incorporate significant trees. Does the government have the intention, either as a one-off exercise or as a rolling exercise, to introduce ministerial development plan amendments to incorporate significant trees into the planning scheme and thereby obtain the level of protection that this bill would afford?

The Hon. P. HOLLOWAY: It is really the government's intention, as has happened in the past, that the significant tree legislation would essentially be administered by local government. That is the intention. It is possible, obviously, if these amendments are changed, that there could be a ministerial development plan, but it was certainly was not my intention go down that route. Rather, the option here is that it would specifically apply to councils such as Mitcham, for example.

There has been long-standing debate in this significant tree area in relation to the grey box tree. I am referring to trees that cannot effectively be addressed by the existing significant tree legislation because they are basically fully grown and do not reach the size requirements, although often they have multiple trunks. Of course, the grey box is an indigenous tree, and quite distinctive of parts of the Mitcham Hills and particularly in the higher rainfall areas, where the closely related species is the stringy bark, which is a much larger tree. In those areas with a slightly lower rainfall, you do have these stands of grey box. Councils have tried to protect them in various ways, which have not been particularly effective. In moving the amendments and through clause 5, it will enable better protection to be given to those types of tree. That is the sort of situation that we had in mind when that clause was originally introduced.

The Hon. M. PARNELL: I thank the minister for his answer. I note also that he mentioned the City of Mitcham. Not that long ago we incorporated the Hills suburb of Mitcham into the Native Vegetation Act; so the microcarpa had some level of protection that it did not have before, or at least we clarified that protection. I can see that if we also included those trees within this regime they would be even better protected.

Coming back to my theme of two avenues by which trees can be listed as significant, does the minister expect that most significant trees will be caught within the net by virtue of regulations, or does he expect that most will be caught because councils do audits of trees in their local area and list them individually in the development plan?

The Hon. P. HOLLOWAY: Perhaps I can go back to the original act and the reason it was introduced. The amendments to the Development Act that cover significant trees were introduced by the Hon. Diana Laidlaw back in the late 1990s or early 2000. Essentially they were dealing with a situation that existed, particularly in the eastern suburbs, where there are large river red gums, in some cases many hundreds of years old, and it was really the outrage at some of those trees being cleared that led to this particular bill.

The definition of the significant tree, apart from its size, which was an obvious parameter, required that that tree should contribute to the biodiversity of the region. I believe that was understood at the time to distinguish between trees such as pine trees—perhaps radiata pines and others—which were not indigenous and not an important and established part of the biodiversity of the area. When this act has been applied in cases where it has gone to the Environment, Resources and Development Court, I believe that the court has essentially interpreted the act in that way, and it is appropriate that it should do so.

To get back to the honourable member's question, what we are trying to do here, I think, is to deal with those trees, such as the river red gums, South Australian blue gums and others that are indigenous to the area. It is one thing to give them special protection because of their age—obviously, if a tree is several hundred years old it cannot be easily replaced and is clearly in a different situation than, say, one of the fast growing gums, such as the lemon scented gum, which

someone has planted in their yard and may be only 20 years old but is already of a significant size. Essentially, what we are trying to do in the refinement of the bill is to distinguish between those two cases.

What you want from the process, I guess, is the significant trees being those particularly old trees, the indigenous species and, obviously, the larger species, because they are going to be more important, and clearly the protection that they are given, the process they are given, needs to be much more complex, much more detailed and much more stringent than for the trees that can be readily replaced because they are not as old, they are not indigenous to the area and they do not contribute so much to the biodiversity of the area, and given the fact that they are not as old they are more likely to be causing problems to houses and drains and those sorts of things because in many cases they have been planted after a house is built.

That is somewhat different, of course, to having an existing significant tree that has been there for hundreds of years, and someone comes in who wants to build there and their building may disturb the roots of the trees and so on. Conceptually, there is a significant difference between trees in those two situations, and that is essentially what the division in this legislation is trying to deal with.

So, if through regulation we can remove some fast growing species and take them out of the system, that should deal with many of the problems that people are faced with who have planted inappropriate fast growing trees in their backyard, front yard or side, as the case may be, but it will still be quite a restrictive process. Indeed, under this bill I would suggest that there are even more stringent constraints on removing those particularly old and, in that sense, truly significant trees.

Rather than a tree just being significant because it happens to be large, the idea here is to make significant trees those that truly are significant because they contribute to the amenity of the area in a number of ways.

The Hon. M. PARNELL: I just need a little bit more clarification. I thank the minister for his answer. It seems to me that a local council will have in mind the types of trees that it wants to protect in its local area. Whether it can rely on the state government to write regulations that protect all the sorts of trees that it wants protected, or whether it has to go out and individually name them and then list them in its development plan, I think, is a matter of some resource implications for each local council.

The reason for my question—and it might be impossible to answer; I do not know—is that it would seem to me that, the more thorough the government is with regulations, the less need for councils to have to go out and audit and list individual trees in their own area. So, if I rephrase my question: is it the government's intention to make regulations that are comprehensive enough that the vast majority of significant trees are properly recognised through regulation without the need for local councils having to undertake audits?

The Hon. P. HOLLOWAY: I think that probably what is more significant is exempting some of those trees. They might be olive trees, they might be radiata pines, they might be certain other trees that you might describe as a weed species. If you can get them out of the system, and not make them significant, I think that will help in that direction. When we last debated this bill I mentioned about a dozen species that were examples of trees that you could not consider to be significant. Conversely, there are those trees—and I mentioned the grey box earlier—which are not effectively protected by the legislation but which you could bring in to give them protection not now afforded.

Again, in trying to balance up the bill to make it more effective for dealing with the actual situations we face, I think you can deal with this from both ends. I notice that, in national parks, debates have occurred over radiata pines; for example, some have been cut down in Belair and so on. I think there has been some argument as to whether or not some of those old standing trees should have been cut. Anyone who lives in the Adelaide Hills like I do would know that those trees spread fairly quickly; some Mediterranean pines, in particular, can very rapidly take over whole areas. In effect, they become weed species, so it would seem rather absurd in those situations to have trees that are taking over existing biodiversity protected by significant tree legislation.

If we look at the national parks, it is exactly what has happened; they have cut down some of those trees. Of course, that is not to say that in one particular case in the right location you might have a tree of a species that is not indigenous but nevertheless it may be afforded protection under

some council legislation for a number of reasons. It could be a copy of the Lone Pine brought back from Gallipoli or something like that. There may be other reasons why you would wish to do it.

Generally speaking, if you can get lists of species, that will at least in an absolute way reduce the amount of workload that is needed in dealing with individual assessments of trees. I acknowledge that grey box is one of the few examples I can think of which are not otherwise protected because of their size. Conversely, there is probably a fairly limited number of species where one would not wish to give them any protection at all.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 3, line 6—Delete 'group' and substitute 'stand'

The bill, by the definition of development, enables councils to list a group of trees and development plans as being significant trees; hence, they are included in the broader regulated tree definition. In the past, this has resulted in councils attempting to designate whole suburbs as containing significant trees rather than undertaking investigations as part of a proper and transparent development plan amendment process.

As a consequence, this amendment and subsequent amendments Nos 4, 8, 10 and 12 use the term 'standard trees' to ensure small areas are listed after a fair and transparent process. I acknowledge that, as the Hon. Mark Parnell just argued, that will ultimately take some resources, but clearly that is up to individuals councils if they wish to do it. One would expect that those councils whose communities value these particular stands of grey box, for example, would be prepared to do that. I believe it is a much more preferable way to deal with these stands of trees rather than a blanket suburb-wide designation.

The Hon. D.W. RIDGWAY: I indicate that the opposition supports the government's amendment.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 3, lines 8 and 9—Delete 'also falls within a class of trees declared to be regulated trees' and substitute:

is also declared to be a regulated tree, or also falls within a class of trees declared to be regulated trees,

This amendment proposes to delete the words 'also falls within a class of trees declared to be regulated trees' and to substitute 'is also declared to be a regulated tree, or also falls within a class of trees declared to be regulated trees'. This is a technical amendment consequential on the adoption of amendment No. 1. This states that a tree or stand of trees listed as a 'significant tree' in the development plan for an area constitutes a regulated tree even if it does not meet the standard two metres circumference set out in the regulation.

The Hon. D.W. RIDGWAY: I indicate that the opposition also supports this amendment. I live these days in the Mitcham Hills and I think that this does assist with some of those trees that may not fit into the criteria of the two metres in circumference.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 3, line 12—Delete 'group' and substitute 'stand'

This is a consequential amendment to one moved earlier.

The Hon. D.W. RIDGWAY: We support the amendment.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 3, lines 14 and 15—Delete 'also falls within a class of trees declared to be regulated trees' and substitute:

is also declared to be a regulated tree, or also falls within a class of trees declared to be regulated trees.

This is a technical amendment consequential on the adoption of an earlier amendment.

The Hon. D.W. RIDGWAY: I indicate the opposition's support.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 3, line 16—Before 'a tree' insert:

a tree declared to be a regulated tree by the regulations, or

This is a technical amendment, again, consequential on the adoption of the first amendment.

The Hon. D.W. RIDGWAY: I indicate that the opposition supports the amendment.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 3, after line 18—Insert:

(3a) Section 4(1), definition of tree-damaging activity—after 'health and appearance of a tree' insert:

or that is excluded by regulation from the ambit of this definition

This amendment allows the definition of 'tree-damaging activity' to be prescribed by way of regulation. This addresses concerns from the LGA about the original bill. This amendment will allow regulations to define precisely what is meant by 'maintenance pruning' and therefore exempt it from the definition of 'tree-damaging activity'.

It should be noted that currently each council defines 'maintenance pruning' differently, and there will be a benefit of clarifying it through the regulations. Obviously, it will require some work with the LGA and other stakeholders to settle on a definition. There is some work to be done, but I think that members can see the benefits that would follow if we do clearly define what is meant by 'maintenance pruning' and therefore exempt it from the definition of 'tree-damaging activity'. Obviously, I think it is important that we do that.

There is a need to allow maintenance pruning but, because of the great variation in how this is applied, it will make sense to use the regulations to get a definition. As I said, if the bill is carried, obviously we would be discussing that with the Local Government Association.

The Hon. D.W. RIDGWAY: Is the minister proposing with this amendment to have a uniform pruning code defined, I guess, by regulation in relation to particular classes of tree? Will you have, say, a uniform pruning regime for red gums and a different pruning regime for grey box or any other trees that may be deemed to be significant for either of the two courses that are available? I would like a bit of explanation as to how that might work.

The Hon. P. HOLLOWAY: It is probably too complex, and I do not know that that would be envisaged. However, obviously if that is the only way that it can be adequately expressed through regulations it may be contemplated. One would hope that one could get some definitions that are broad enough to cover most situations which would ordinarily be contemplated.

The bottom line here is that we want to define fairly precisely what we mean by 'maintenance pruning' so that it can be exempt from the definition of tree damaging activity and, therefore, not require the approvals that would be associated with that. Clearly, you want to go far enough as to enable reasonable pruning to be done but, obviously, not so far as to damage or deform the tree.

I imagine that in drafting those sorts of regulations you would need some level of expertise from arborists, but whether or not it would require a code I think is probably going too far. That is obviously something into which the LGA and other stakeholders would have an input. However, I hope that at least the council would agree that, if we can get a better definition of what maintenance pruning is, it will be in the best interests of the smoother operation of this section of the act.

The Hon. D.W. RIDGWAY: I think in his answer the minister has hit the nail on the head with respect to this legislation and, in particular, the regulations. He said that maintenance pruning would be defined by regulation. When I sought more detail, he indicated that it is too difficult and too broad to give more detail.

There is an example in my own neighbourhood, where a significant tree overhangs someone's property. Where does maintenance pruning sit in relation to someone protecting their

property where there is a tree in the back corner of the property next door, which is not particularly damaging to that property, but there is some potential damage or threat or risk to the adjoining property?

In that case, the landowner may see maintenance pruning as being, 'I want to make sure that I remove the risk.' I think that is the stalemate we reached a couple of years ago; it becomes so complex. I do not think there was any real clarity. I think that is why the LGA wanted to see some draft regulations, so that it could have some understanding of where things are at. The minister may not be able to answer that question but, for the purpose of the debate, I want to put on the record the opposition's concern that it may take a millennium to draft the regulations that cover what the minister has described.

The Hon. P. HOLLOWAY: Obviously, you do not have the regulations, you have what we have now, and it ends up that any council can determine it to be effectively what it wants it to be and if you want to challenge it you go to court. If you have a council that believes that every tree is sacred, it will have very tight regulations, and if someone wants to get around that they have to challenge it in court. Conversely, you could have a council that has a completely different attitude towards it, where anything goes. I think that is the problem at present.

It comes back to the comments I made about this bill right from the start. Because trees come in so many different sizes, shapes, ages, locations, and so on, and because there are so many different properties, it will be difficult to get any piece of legislation that adequately deals with all situations. Without getting overly complicated and having massive, complex codes for everything, we are trying at least through regulations to get some more comprehensive and general definitions that will deal with most situations we face. Beyond that, I think it is hard to do much more.

The Hon. D.W. RIDGWAY: Is the minister proposing a set of maintenance pruning guidelines by regulation that is broad enough to cover a 'near enough is good enough' approach to all trees? The minister just said that beyond that it will get too complex. I do not know how we address those complex issues. If someone has a tree that falls into the too complex issue, where do they go at that point?

The Hon. P. HOLLOWAY: If one just talks in extremes, maintenance pruning of a tree would not necessarily be cutting it off a metre from the ground right across the stump. If you look at pruning textbooks, and if you have ever done the roses, you will know that there are certain places to prune that are in the interests of the tree. Of course, it is about keeping laterals and branches in the proper places.

It is pretty easy and well-defined if you are talking about roses and fruit trees and the like but, without having any expertise in this area, I imagine when it comes to the larger trees, such as gum trees and the like, it ought to be possible to come up with some similar general principles that would define what is maintenance pruning and what is excessive maintenance pruning. I think one only has to look at what some of the contractors for the electricity companies do on occasions to see the sorts of issues that are thrown up in relation to that. You can prune trees in ways that do not damage their overall shape or you can do it pretty badly.

That reminds me of some comments made earlier by the Leader of the Opposition when he talked about problems with trees in neighbouring yards. The Development Act, as such, is not necessarily the vehicle to do that. If trees are in yards and impacting in some way upon their neighbours, obviously those issues are dealt with more through common law. As I understand it, if you have branches overhanging you can cut them off level with the fence, providing you return them to the neighbour's yard. There are all sorts of common law provisions, and perhaps there are others who are more expert in that than me, because I am not particularly familiar with that law, but I know there are provisions like that. Clearly, if you have a problem between neighbours regarding a tree, it will be dealt with inevitably under the different regulations rather than through the Development Act.

The Hon. D.W. RIDGWAY: I think it indicates why we achieved the stalemate two years ago. The minister talked about maintenance pruning and used the comparison between good pruning and some of the pruning done by the contractors provided by electricity companies. They would say that, while it might disfigure the tree significantly, it is definitely maintenance pruning to achieve an outcome that makes the electricity transmission line safe. I do not want to prolong the debate, because we have other bills to deal with.

The Hon. P. Holloway interjecting:

The Hon. D.W. RIDGWAY: I understand that, but I think in the end this is why in the previous debate the opposition took the view that it did. We are not going to oppose this tonight and, if there is sufficient support between Mr Hood, the government and his other crossbench allies, we will not oppose it.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 3, after line 21—Insert:

(10) For the purposes of this Act, a stand of trees is a group of trees that form a relatively coherent group by virtue of being of the same or a similar species, size, age and structure.

Obviously that is an important definition. It is consequential on the amendment to amendment 2. This amendment defines the term 'stand of trees'. As previously explained, the bill relating to the definition of 'development' enables councils to list a group of trees in development plans as being significant trees. In the past, this has resulted in councils attempting to designate whole suburbs as containing significant trees rather than undertaking a proper and transparent development plan amendment process. As a consequence, this amendment and the subsequent amendments 10 and 12 use the term 'stand of trees' to ensure small areas are listed after a fair and transparent process.

The Hon. D.W. RIDGWAY: The opposition supports this amendment.

Amendment carried; clause as amended passed.

Clause 5.

The Hon. P. HOLLOWAY: I move:

Page 3, line 32—After 'native fauna' insert:

taking into account any criteria prescribed by the regulations

The bill enables councils to list a tree as a significant tree in the development plan if the tree constitutes 'an important habitat for native fauna'. This is a broad criterion. This amendment will allow regulations to be drafted to ensure that the importance of the habitat can be applied consistently across different council areas. It is important that the community as a whole and landowners have confidence that the listing process is fair, transparent and based on proper investigations.

The Hon. D.W. RIDGWAY: I have been made aware of a colony of birds that are in the Concordia area in the proposed Gawler East development, and I have just asked my colleague the Hon. John Dawkins if he knows what they are called. Some of the local residents are concerned that the development will put this colony of birds at risk. I wonder what the impact of this amendment will have on that particular development. The birds are a white-tailed something—I cannot recall the name. The Hon. Mark Parnell might know.

However, residents and the very hardworking candidate in the seat of Light (Mr Cosi Costa) have brought the matter of this colony of birds to my attention on a number of occasions. I think most members would be happy to support an amendment that protects the habitat of these particular birds or any native fauna. How does the minister see this impacting on developments such as that where you have a colony of birds?

The Hon. P. HOLLOWAY: There are a number of things to be undertaken. In that particular area I am not sure whether the significant tree legislation applies. The significant tree legislation applies to metropolitan councils. It was extended by this government some time back to include certain areas in the Mount Barker council district, and I think it includes the Adelaide Hills council, but whether that area out there is included I am not sure.

Of course, if it is native vegetation then the Native Vegetation Act may well apply. Obviously, it depends on factors like that. Clearly, if a tree is in an area and it is significant and if it is deemed to be important to native fauna, taking into account any criteria prescribed by the regulations, then the tree has that level of protection and its removal would require the appropriate consideration.

That is essentially all that the significant tree legislation does; it classifies trees into certain categories. Here we are making it a little more complicated than the original bill, under which a tree was significant if various criteria applied, including size. Here we are talking about regulated trees,

significant trees. Once the criteria are set, if one wishes to remove the tree or damage the tree in some way, then the Development Act and its provisions apply. That is as far as the bill goes. This legislation may not apply if it is not in the appropriate council area.

Perhaps I could take this opportunity to clarify some of the misinformation that has been going around in relation to clearing in bushfire areas. Whereas the clearance around buildings of up to 20 metres involves the Native Vegetation Act, that does not necessarily apply to significant trees. However, the trees can only be significant in certain areas. They will be in the Adelaide Hills council area and parts of Mount Barker but they may not be, for example, in a number of other councils in the Adelaide Hills area because the legislation does not apply in those districts. There are a number of factors that determine whether or not a tree is significant, other than just these definitions.

The Hon. D.W. RIDGWAY: I have a point of clarification. We have had a range of questions in the past few days about the Plan for Greater Adelaide and we see significant population increases and residential development by way of this plan in the Roseworthy area, on the edge of the Barossa and certainly in the Gawler East area. Does the minister envisage that these areas will be brought under the umbrella of this legislation or will they still remain outside it?

The Hon. P. HOLLOWAY: I am actually not sure. As the honourable member would know around Gawler, you have the Town of Gawler, the Light council and the Barossa Council. I would have to go back and have a look at the regulations that determine where they apply, but clearly the significant tree legislation was specifically intended to apply in built-up areas. I think it was the view of the parliament at the time that native vegetation law would broadly apply outside the built-up areas and, in the built-up areas, the significant tree legislation would apply. However, as we have seen, there are overlaps.

Some of the complexities we have in relation to fire at the moment mean that there is an overlap in that legislation. Of course, it is made even harder when the greatest threat from fire, for example, is from native vegetation down at the house level. I am told that, if you have tall trees, fire can actually go over the top of a house and there can actually be less risk.

They are the sort of complexities in dealing with fire protection in relation to which one needs to take the advice of experts, but it just indicates another complexity that you have in dealing with this sort of legislation. The contribution or the threat imposed by a tree to fire can vary significantly depending on the situation. I would have thought that eventually as Adelaide grows, if an area becomes built-up—a part of the greater area—one would expect that this legislation would apply. That would be the expectation.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 3, line 35—Delete 'group' and substitute 'stand'

It is a consequential amendment.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 4, line 7—After 'native fauna' insert:

taking into account any criteria prescribed by the regulations

This amendment is consequential on amendment No. 9. The bill enables councils to list stands of trees as significant trees in the development plan if a stand of trees constitutes 'an important habitat for native fauna'. This is a broad definition.

These amendments will allow regulations to be drafted to ensure that the importance of a habitat can be applied consistently across different council areas. This will require considerable research before appropriate regulations can be drafted. It is important that the community as a whole and landowners have confidence that the listing process is fair, transparent and based on proper investigations.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 4, line 12—Delete 'group' and substitute 'stand'

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 4, after line 15—Insert:

(4c) For the purposes of subsection (4a), a Development Plan must identify the location of a tree or stand of trees in accordance with any requirements imposed by the regulations.

In order to provide certainty for landowners and councils, it is proposed that individual or stands of significant trees be listed in development plans by certificate of title references and coordinates.

Amendment carried; clause as amended passed.

New clauses 5A and 5B.

The Hon. P. HOLLOWAY: I move:

Page 4, after line 15—Insert:

5A—Amendment of section 25—Amendments by a council

Section 25—after subsection (12) insert:

(12a) If a proposed amendment declares a tree to be a significant tree or a stand of trees to be significant trees, the council must, at or before the time when the DPA is released for public consultation, give each owner of land where the tree or trees are located a written notice—

(a) informing the owner of the proposed amendment; and

(b) inviting the owner to make submissions on the amendment to the council within the period provided for public consultation under the regulations.

5B—Amendment of section 26—Amendment by the Minister

Section 26—after subsection (7) insert:

(7a) If a proposed amendment declares a tree to be a significant tree or a stand of trees to be significant trees, the Minister must, at or before the time when the DPA is released for public consultation, give each owner of land where the tree or trees are located a written notice—

(a) informing the owner of the proposed amendment; and

(b) inviting the owner to make submissions on the amendment to the Minister within the period provided for public consultation under the regulations.

The bill enables councils or the minister to list significant trees in development plans through the preparation of a development plan amendment process.

It is proposed that the bill be amended to ensure that the development plan amendment process involves notification of the owners of trees or stands of trees which are proposed to be listed as significant trees; notification of these owners at the commencement of the public consultation process; and landowners being provided with an opportunity to make written submissions on such a listing proposal, as well as to be heard by the council, DPAC or a regional body hearing such submissions.

The Hon. D.W. RIDGWAY: I come back to the Gawler East proposal. The trees would be identified as significant in that proposal if the bill is supported. Now that we indicate that, if they are a habitat for fauna, they become significant trees even if they are not significant in nature, in their own size. So, with any development plan amendment released for consultation—and Gawler East is probably the easiest one, as the minister and other members in this chamber are familiar with it—landowners would be identified as part of that whole rezoning process that these trees are significant for the following reasons, including size or habitat for fauna. Is that correct?

The Hon. P. HOLLOWAY: I think so, if I understand the member correctly. The honourable member is talking about Gawler East. Clearly, if a major tract of land, a significant size of land—hundreds of hectares, for example—is to be turned over for urban development, one looks at that land. There is obviously a creek line or drainage line along there, as well as a major river—actually, South Para River borders it. Clearly, those areas would be defined and protected as part of any subdivision process. The development plan amendment would, I think, take all that into account in any case.

Obviously, these sections are indicated not for those sorts of situations but more where a council might be retrospectively going back through an area that has been long urbanised to update its development plan in relation to significant trees. I think that is essentially the situation that it is designed for, not for new subdivision in greenfield areas.

I make the point that, with any subdivision in a greenfield area, if there are stands of trees, inevitably nowadays they would be protected as part of any subdivision plan, and I am sure that any council or the government—whatever the relevant body—would require that.

The Hon. M. PARNELL: I support proposed new clauses 5A and 5B, because what they provide is that, if someone is to have a development plan list a significant tree in their yard, they have a right to be advised. I urge the government to take the thinking behind this clause and apply it to other situations because, in my 10 years with the Environmental Defenders Office, one of the most common complaints I had were people whose properties were rezoned underneath them or zoned flood plain when they had not been before, and all of a sudden they were precluded from building. People had development plan changes affect what they could do with their property yet, under the Development Act, they had no right whatsoever to be even notified that the changes were about to occur, or had occurred, other than the general notification in the *Government Gazette* and in public newspapers.

So, my comment, if you like, rather than a question of the minister, is: I think this is a good initiative—that people who are directly affected by changes to the development plan have a right to be directly notified. I urge the minister to apply that thinking to other Development Act changes, especially those that affect a discreet section of the population. You would not want to have to notify every resident of Adelaide that a general principle had changed in a development plan but, when it affects a limited number of people, absolutely we should notify them directly.

The Hon. P. HOLLOWAY: Essentially, the process here mirrors what is done with heritage listing to which fairly similar principles apply. There is obviously a degree of subjectiveness about what is heritage and what is not, but I just assert that this process essentially mirrors what we already do in relation to heritage listing.

New clauses inserted.

Clause 6.

The Hon. P. HOLLOWAY: I move:

Page 4, after line 19—Insert:

(3aa) A relevant authority should, in dealing with an application that relates to a regulated tree, unless the relevant authority considers that special circumstances apply, seek to make any assessment as to whether the tree is a significant tree without requesting the applicant to provide an expert or technical report relating to the tree.

This amendment provides clear direction to councils that an arborist report is not a prerequisite for all applications relating to regulated trees. The amendment stipulates that the assessment as to whether a regulated tree will be assessed as a significant tree is to be considered by the normal development application process relating to amenity issues. An arborist report would only be required in special circumstances where the health of a significant tree or stand of significant trees was a critical factor to the decision.

The Hon. M. PARNELL: This is a fairly critical amendment and it was the one on which I focused in my brief second reading contribution. I think we need to look at the proposed insertion of paragraph (3aa) alongside the insertion of paragraph (3a) in the bill. Paragraph (3a), which is currently inserted through clause 6, basically says that the planning authorities should not insist on an arborist's report in determining whether or not a regulated tree should be chopped down, unless it is a significant tree. The minister's amendment says 'and also the planner should not require an arborist's report to determine whether or not it is a significant tree'.

The question remains: can the planning officer, if having determined without the aid of technical reports such as an arborist report that it is a significant tree, then freely insist that an arborist's report be obtained before granting approval for that tree to be removed?

The Hon. P. HOLLOWAY: Clearly, this amendment seeks to address those issues—and I think the Hon. Mr Hood mentioned this earlier—where people have been required to provide reports, which can be particularly expensive if you are a pensioner, for example, and you have a tree in your backyard that might be cracking the house or something like that. If it is doing some

damage, why would one necessarily require an arborist's report if that is really not directly relevant to the decision about whether development approval should be given to the removal or pruning of the tree? Essentially, that is the point here. Certainly anecdotal evidence suggests that some councils are requiring a much higher level of report, even though that is not strictly necessary to any reasonable decision on the fate of the tree.

The Hon. M. PARNELL: I might phrase my question in another way because it goes to the key issue of when a council officer can insist on an arborist's report. Under the Hon. Dennis Hood's proposal, if it is just an ordinary old regulated tree—in other words, it is not significant, it is just regulated—they cannot insist on an arborist's report. On the minister's amendment, the council planner cannot insist on an arborist's report to determine whether or not it is a significant tree. My question is: if the planner makes that assessment without the aid of a report, is the planner then free to say, 'I have assessed that it is a significant tree and I now insist on your getting an arborist's report before I let you chop it down'?. Is that how this would work under your amendment?

The Hon. P. HOLLOWAY: Councils now have to determine whether an application is a merit assessed development or a complying development. They now have to make that judgment and, by analogy, a council would now make a judgment as to the status of the tree.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 4, line 23—Delete 'the provision of' and substitute:

the applicant to provide

This amendment is consequential on amendment No. 15. This amendment is to ensure that an application relating to a regulated tree is dealt with as a normal development assessment application process relating to amenity issues. An arborist's report is only being required in special circumstances when it is critical to the decision making. The bill does not require an arborist's report for assessing significant trees and, once again, should only be required when it is critical in the normal development assessment process.

Amendment carried; clause as amended passed.

New clause 6A.

The Hon. P. HOLLOWAY: I move:

Page 4, after line 24—Insert:

6A—Amendment of section 42—Conditions

Section 42—after subsection (3) insert:

(4) Subject to subsections (6) and (8), if a development authorisation provides for the killing, destruction or removal of a regulated tree or a significant tree, the relevant authority must apply the principle that the development authorisation be subject to a condition that the prescribed number of trees (of a kind determined by the relevant authority) must be planted and maintained to replace the tree (with the cost of planting to be the responsibility of the applicant or any person who acquires the benefit of the consent and the cost of maintenance to be the responsibility of the owner of the land).

(5) A tree planted under subsection (4) must satisfy any criteria prescribed by the regulations (which may include criteria that require that any such tree not be of a species prescribed by the regulations).

(6) The relevant authority may, on the application of the applicant, determine that a payment of an amount calculated in accordance with the regulations be made into the relevant fund in lieu of planting one or more replacement trees under subsection (4) (and the requirements under subsection (4) will then be adjusted accordingly).

(7) For the purposes of subsection (6), the relevant fund is—

(a) unless paragraph (b) applies—an urban trees fund for the area where the relevant tree is situated;

(b) if—

(i) the relevant authority is a council and an urban trees fund has not been established for the area where the relevant tree is situated; or

(ii) the relevant authority is the Development Assessment Commission,

the Planning and Development Fund.

(8) Subsections (4) and (6) do not apply if—

(a) the relevant tree is of a class excluded from the operation of those subsections by the regulations; or

(b) the relevant authority determines that it is appropriate to grant an exemption under this subsection in a particular case after taking into account any criteria prescribed by the regulations and the minister concurs in the granting of the exemption.

The amendment requires that any approval to remove a regulated or significant tree is to have a condition that replacement trees are planted or that money is paid into an urban trees fund established by the relevant council or the existing Planning and Development Fund.

This amendment has been moved in order to create greater consistency in the administration of the regulated tree provisions. This amendment also specifies that the regulations can require that certain trees are not planted as replacement trees. This is to avoid the problem of people planting exempted trees, in order to circumvent the provisions in the act, that inadvertently could cause damage to structures or pipes.

In order to provide consistency in administration, this amendment requires the payment of moneys to the Planning and Development Fund in those circumstances where a council itself has not established an urban trees fund. Councils would be able to continue to apply for grants from the Planning and Development Fund.

The Hon. D.W. RIDGWAY: This issue has been a sticking point for the opposition since the bill was introduced by the government several years ago; that is, the urban trees fund and moneys paid into it. In relation to the amount that is determined, how do you value a tree? This is one of the fundamental issues in relation to this bill. The minister some two years ago was unable to clarify how a tree could be valued and how that could be consistent across the metropolitan area. I do not know how you do it.

We talked earlier about trees which are classified as significant or regulated because of the fauna that live in them. The trees themselves may be poor specimens of a particular species yet they are a habitat for fauna. How do you place a value on that? If a developer in an area wants to cut down a stand of trees for the purpose of development, how do you value the fauna?

They may not be significant or regulated trees but, rather, non-indigenous trees which are a habitat for a particular species we want to protect. Cockatoos fly around the Mitcham area and the yellow-tailed black cockatoos eat the pine cones from the radiata pines, which, clearly, are not native to the area. In most cases, people want to see those trees removed, but the native birds—and we do not see many of them—use them as a food source. Will the minister explain how we value a tree?

The Hon. P. HOLLOWAY: By analogy, we have similar provisions in the Development Act in relation to car parking. We have a car parking fund. In lieu of the provision of car parks on properties, people in commercial areas may be required to contribute to a car parking fund. This is so that car parks can be provided for the general area. That is a well established development plan principle—

An honourable member interjecting:

The Hon. P. HOLLOWAY: It is not that different in concept; it is the same case here, by default. If the tree is such that there is no other way you can develop a property, and if approval is given for removal of that tree, the logic is that you would plant replacement trees somewhere else. Similarly, with a car parking fund, if for some reason you cannot provide car parking on your own property you can contribute to a fund so that the council can provide car parks elsewhere. It is not all that different in concept when you think about it. Not all councils have car parking funds, but a number do, and it seems to work reasonably well.

The Hon. D.W. Ridgway: We are talking about trees, not car parks.

The Hon. P. HOLLOWAY: I am answering it by way of analogy, in terms of value, of what a car park is worth. What is a tree worth? Obviously, one has to reach a fairly arbitrary, average value but, just as it works with car parks, I am sure it can work with trees.

The Hon. S.G. WADE: I think the minister's analogy works well in terms of the offset principle; a car park here and car park there, a tree here and a tree there. The problem is that the honourable member is raising the issue of the value of trees. How do you say that one tree of that type is worth eight trees in another place? One car park of a certain space in a certain district; if it is not there it is here. That is easy to offset, easy to value. I agree with the honourable member. This amendment does raise some significant issues in terms of valuation; it is almost an aesthetic value, the value of a tree.

The Hon. P. HOLLOWAY: The alternative is to have nothing. The principle behind this is that, at present, if you are determined to get a tree down, you hire an arborist, you get through the system, you might spend thousands of dollars in arborists' reports and other things, and the tree is removed. That is it. There is no community compensation, if you like. If you have a tree fund, that money can at least go into planting trees elsewhere. I think the philosophy behind it is probably more important than the technicality.

Of course, the value of each tree will be different. It comes down to 'How long is a piece of string?' However, I believe that you can get an average value, like we do with car parks—because not all car parks are equally valuable; it depends on where they are. If someone does get agreement to the removal of a tree, all we are really trying to do is ensure that there will at least be compensation, if you like, to the community for its removal. Funds will be available for the replanting of trees elsewhere. They do not exist at the moment. One can argue all day about what trees are worth, but I would have thought that the underlying principle, that of getting some return to the community, is a valuable one.

The Hon. D.G.E. HOOD: I think the opposition has a point. It is difficult to gauge the value of a tree; I do not think any of us would disagree with that. However, the way I reconciled this for myself in preparing this was that this urban trees fund (if you like) comes into consideration only if the council and the applicant cannot agree on either replacing or replanting the tree in a specific location. So there are steps in the process before you get to this last resort type of situation. Even then, while it is not ideal, if you do get to this last resort of a sum of money being contributed to this fund, it is at least some compensation. The difficulty, of course, is exactly what that value should be. My understanding is that that would be decided between the applicant and the council themselves; they would reach agreement on that. As I said at the outset, it is not perfect, but I think it is better than nothing.

The Hon. D.W. RIDGWAY: I will quickly put on the record for the fifteenth time that I think the key flaw in this bill is the value of a tree. We have talked about an offset: do you plant one tree somewhere else or do you plant 10? You could get to the point where you cannot negotiate any further with the local government body, so then the decision is that you cut it down and you pay into a trees fund. What if you are the only person who has paid into that trees fund for five years, and how much do you value it at?

Then that local council has to find a place to plant the trees. Once they put money into an urban trees fund, I am assuming council will then possibly purchase some land or there may be some council land available. I live in the Mitcham area, and you have the Mitcham Village park near Brownhill Creek. I assume there would be odd places there where council could say that, given that the big old red gums there are quite old, it would be a sensible thing to plant a half dozen new young red gums in that area. I can accept that there would be an odd place that you might plant a few extra trees, but I just do not understand how you can value a tree.

I come back to the tree I spoke about in relation to a staff member of the Liberal Party. I think they had a quote—and I would have to check *Hansard*—of many thousands of dollars to have it cut down, if they could get it cut down at all. It was a brand new house, probably worth half a million dollars, and it was quite an expensive project. If they could have paid $10,000 or $20,000 to get rid of the tree, they would have done so. Is that the sort of value? I know that in discussions I had with the minister's advisers, back when it was a government bill, they talked about a figure of just a few hundred dollars.

I put on the record that the opposition will not be supporting this amendment. I expect it will get through; we will not divide on it, because we have a lot of business to deal with tonight. However, it is clearly an area where I think there will be significant difficulty in valuing a tree. We will see money going into an urban trees fund that will never be used to plant trees because the council may not have an area in which to plant them. So, the council will need to buy some land, and there will not be sufficient money there. Then there is the maintenance and the watering. A mature tree 50 or 100 years old has a root system which maintains itself free of charge.

Once you cut it down and the decision is made to plant 10 trees elsewhere because that is considered a fair trade-off, who keeps the weeds and vermin away and makes sure that those trees are watered? Will the urban trees fund be expected to pay for irrigation, weed control, vandal control and fire prevention? There is a whole range of questions, and I think it becomes so complex that it is almost unworkable.

The Hon. P. HOLLOWAY: If someone kills, destroys or removes a regulated or significant tree, new clause 6A provides:

> ...the relevant authority must apply the principle that the development authorisation be subject to a condition that the prescribed number of trees (of a kind determined by the relevant authority) must be planted and maintained to replace the tree (with the cost of planting to be the responsibility of the applicant or any person who requires the benefit of the consent and the cost of maintenance to be the responsibility of the owner of the land).

That is the condition for removing the tree or, if that is not possible because, for example, the block might be too small, the alternative is to pay into a fund. Obviously, the regulation will determine some price, and I guess that will be worked out in negotiation with the local council. If the honourable member looks at councils such as Unley, for example, a number of pocket parks along creek lines are likely to have been developed in that area. It is quite amazing the transformation that has taken place.

You actually do not need large areas for parks. If I can very briefly digress for a moment, on the TOD tour, one of the things that really struck me was how some of the most successful park areas are not huge areas of parkland. Quite small areas, with a great deal of attention paid to good design and public art, for example, are often much more popular. I think you can see that in some of our more dense suburbs, like Norwood and Unley—probably Unley in particular—where some of those pocket parks are extremely popular and they have, in many cases, significant trees in them.

New clause inserted.

Clause 7.

The Hon. P. HOLLOWAY: I move:

Page 4, lines 36 and 37—Delete paragraph (a) and substitute:

(a) all amounts paid into the fund as a condition of a development authorisation under section 42; and

This amendment makes it clear that all moneys provided by an applicant in lieu of replacement trees are to be paid into the urban trees fund established by the council.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 4, after line 38—Insert:

and

(c) any amounts paid to the credit of the fund under subsection (9).

This amendment ensures that money from the sale of any land purchased under the fund is maintained as part of the urban trees fund established by the council. I think it addresses a point raised by the Leader of the Opposition earlier that, yes, if councils are in built-up areas like Unley that do not have much land, they can use some of the money in the urban trees fund to purchase land, but the condition imposed here is that money from the sale of any land purchased under that fund is maintained as part of the urban trees fund established by the council.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 5, lines 1 to 26—Delete subsections (5) and (6)

This is a consequential and technical amendment. The provisions laid down for the fund are now included in section 42 of the act rather than section 50B.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 5, lines 30 to 37—Delete subsections (8) and (9) and substitute:

(8) Money standing to the credit of an urban trees fund may be applied by the council—

(a) to maintain or plant trees in the designated area which are or will (when fully grown) constitute significant trees under this act; or

(b) to purchase land within the designated area in order to maintain or plant trees which are or will (when fully grown) constitute significant trees under this act.

(9) The council must, if it subsequently sells land purchased under subsection (8)(b), pay the proceeds of sale into an urban trees fund maintained by the council under this section, subject to the following qualifications:

(a) if an urban trees fund is no longer maintained by the council, the proceeds must be applied for a purpose or purposes consistent with subsection (8)(a) or (b);

(b) if money from an urban trees fund only constituted a proportion of the purchase price of the land (the *designated proportion*), the money that is subject to these requirements is the designated proportion of the proceeds of sale.

This amendment enables councils to use the urban trees fund to purchase land in order to protect or plant significant trees. Naturally enough, moneys from the urban trees fund could be augmented by grants from the Planning and Development Fund. Under this government, nearly $50 million has been given to councils for open space purposes. It may also be possible for councils to seek contributions from other state government funding sources as well as from their own parks and gardens budget as well as stormwater management programs.

This amendment also ensures that, should a council sell part of the land purchased with an urban trees fund, the money returns to the urban trees fund. The amendment deals with a proportion of expenditure so that any capital gain from the sale of the portion of the land also in part goes to the urban trees fund. This amendment provides greater flexibility for innovative councils while ensuring accountability to the communities.

The Hon. D.W. RIDGWAY: If a council established a parcel of land with some trees on it, I understand about the maintenance of those trees, but what happens if those trees are destroyed by fire? Is the council then required to replant those trees using the urban trees fund? I accept that the land value does not change; it may be enhanced if the trees are removed by fire. How does the legislation deal with the removal of trees when they are not cut down?

The Hon. P. HOLLOWAY: All this clause deals with is the case that, if a council accumulates money under an urban trees fund and buys land with it for public space purposes, if it sells that land, surely it is appropriate that the money that it receives from the land—and any gain it makes on it—should be retained with an urban trees fund. Otherwise, if the money is used to buy land and the land is then sold at some point afterwards, you have not achieved the purpose of this section of the bill which is to ensure that the money that is paid for that purpose is ultimately used to replace trees. I really do not think we need go any further than that in terms of an explanation of this clause.

The Hon. D.W. RIDGWAY: New subsection (8)(b) refers to land within the designated area in order to maintain or plant trees which are or will (when fully grown) constitute significant trees under this act. Is 'fully grown' prescribed in the regulations? Is it a 2 metre circumference? Clearly, with the grey box it cannot be. What is the definition of 'fully grown'?

The Hon. P. HOLLOWAY: I will have to check on that. I assume it is probably common usage. It is not defined. It would just be common usage and, therefore, if it was ever in dispute, it would be up to the courts to determine. I think that common English should make that pretty clear. I think we know the difference between mature trees and immature trees. Obviously, a fully grown tree is—

The Hon. D.W. Ridgway: Fully grown.

The Hon. P. HOLLOWAY: Yes.

The Hon. D.W. RIDGWAY: I will use the example again of the staff member I have referred to previously.

The Hon. S.G. Wade: Be careful.

The Hon. D.W. RIDGWAY: Yes, I know. They have a river red gum in their backyard that the arborist says came up after it self-seeded once the first house was built. It is about 50 or 60 years old. He said it is a pretty young tree. It is a very big tree but it is a young tree. It is certainly

not fully grown for a red gum. It is a lovely young, fresh tree. I do not necessarily ask a question; I am just expressing a statement. It is a bloody big tree in their backyard, but it is not fully grown.

The Hon. P. HOLLOWAY: The proposed subsection provides:

Money standing to the credit of an urban trees fund may be applied by the council—

(b) to purchase land within the designated area in order to maintain or plant trees which are or will (when fully grown) constitute significant trees under this act.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: I repeat: which will, when fully grown, constitute significant trees under this act. The use of money to the credit of the urban trees fund is applied to trees that will be significant trees if they were fully grown. That is the context in which the words 'fully grown' are used.

Amendment carried.

The Hon. J.A. DARLEY: I move:

Page 5—

After line 32 [section 50B]—After subsection (9) insert:

(10) Despite the operation of any other provision, if—

(a) a person is required to make a payment in lieu of planting one or more trees; and

(b) the person is a designated person,

then the amount of the payment that would otherwise apply must be discounted by 66.6 per cent.

After line 33 [section 50B(9)]—Insert:

(11) In this section—

designated person means a person—

(a) who is an owner and occupier of the land where the relevant tree is situated; and

(b) who—

(i) is the holder of a current pensioner concession card issued by the commonwealth government and is in receipt of a full commonwealth pension in connection with that card; or

(ii) falls within a class of person prescribed by the regulations for the purposes of this definition.

For the benefit of all members, it may be worth noting that these amendments previously had the support of the government. The amendments relate to clause 7 of the bill. Amendment No. 1 provides that, where a person is otherwise required to make a payment in lieu of planting one or more trees and the person is a designated person, the amount of the payment must be discounted by 66.6 per cent.

A 'designated person' is defined in amendment No. 2 as a person who is an owner and an occupier of the land where the relevant tree is situated and is the holder of a current pensioner concession card issued by the commonwealth government and is in receipt of a full commonwealth pension. It does not apply to pensioners who are in receipt of a part pension only or who do not own or occupy the premises where the tree is located. The reason for this is to ensure that the discount is applicable to those who really need it and to avoid situations arising where the discount may be abused by individuals who are not properly entitled to it.

Elderly people in particular may not be able to replant or maintain more than one tree, or in many instances even one tree. Essentially, the purpose of the amendments is to ensure that those pensioners receive a discount given that they receive an equivalent of approximately one-quarter of the average weekly earnings in entitlements. These individuals will no doubt experience financial hardship in paying to have a tree removed in the first instance which, depending on the size of the tree, can run into thousands of dollars.

These amendments are really intended to ease any additional financial burdens that would otherwise be imposed on pensioners as a result of the establishment of the urban trees fund. A

designated person also includes a person who falls within the class of persons prescribed by the regulations.

The purpose of this subclause is to ensure that, if at a later point it becomes apparent that there is another group of people who ought to receive the discount, the government can deal with that by way of regulation rather than by amending the principal act. I urge all honourable members to support these amendments.

The Hon. D.W. RIDGWAY: I indicate that the opposition will be supporting the amendments, but I wish to ask a question of the minister, given the government's support of these amendments previously.

If a pensioner, for example, wants to contemplate over the next three or four years selling their property and moving to a retirement village or a smaller property, and if the urban trees fund charge or the offset are significant, and they want to sell their property to a developer to do something else with, or they just want to sell the property, would this be a mechanism for the purchaser to do a deal with the person who is receiving a pension to say, 'You apply to have the trees removed, because you can get it at a discount, and when the dust has settled and the leaves have all fallen we will complete the purchase.'?

We understand the intention of the Hon. John Darley. I think it is a good intention not to burden pensioners who are not able to pay or maintain extra trees, but I indicate that I can see an opportunity for this to be a way for people to short-circuit the system. If a high value is put on a tree for the urban trees fund or for offsets, I assume it allows those people to do a deal with pensioners (and I will ask the minister to clarify this) to avoid having to pay the cost.

The Hon. P. HOLLOWAY: I doubt that, in practice, that would be a huge problem. If it was, it could always be revisited. Whereas it could, in theory, be a loophole, I doubt that it is one that would be exploited very often, if at all.

The Hon. M. PARNELL: I also have a brief question of the minister. As I understand it, in the normal situation where there are discounts to concession holders, the state government often steps in and pays the difference. My understanding is that that is how it works with utilities bills and public transport and things like that. Would it be the intention of the state government to reimburse councils—and, in particular, reimburse their urban trees fund—for any revenue shortfall that results from pensioner applications, or is it the case that a local council unfortunate enough to have a lot of pensioners in its area would simply receive less money from the fund than a council that had predominantly younger people?

The Hon. P. HOLLOWAY: The point here is that, unlike the current situation, where removing trees can be an incredibly expensive exercise for people, in those circumstances considered by the act where that removal is granted, is it not better to have some money going into a fund of the council that can be used to replace trees? One could certainly try to go to all levels of equity in relation to that, but I think the amendment moved by the Hon. Mr Darley is a fairly straightforward one; we give the concession. I do not think that the scale of the problem would be such that one would really need to start talking about those complicated equity measures.

The Hon. D.G.E. HOOD: I indicate that Family First will also be supporting the amendments.

Amendments carried; clause as amended passed.

Clause 8.

The Hon. P. HOLLOWAY: I move:

Page 5, after line 40—Insert:

(2) Section 54A(2)(c)—before 'the owner of the land' insert:

except in circumstances prescribed by the regulations.

As a result of submissions on the original bill by the LGA, amendment No. 20 exempts landowners from seeking retrospective approval when trees have been cut down by a prescribed emergency body, such as the SES, the CFS, the MFS and councils, as part of a genuine emergency. This will avoid the situation of people facing the stress of an emergency not having the additional burden of then having to apply to remove a tree that has already been felled.

Amendment carried; clause as amended passed.

Clause 9 passed.

Clause 10.

The Hon. P. HOLLOWAY: I move:

Page 6, lines 32 and 33—Delete ', or ceases to be an owner or occupier of the relevant land' and substitute:

at the time of the making of the order

This amendment addresses concerns that the make-good orders in the bill could be too onerous on the innocent purchaser of an allotment where illegal removal of a regulated tree had occurred prior to the sale of the property. This amendment now enables a council to seek an order from the ERD Court. If a person has undertaken the illegal removal of a regulated tree and has put the property on the market, the council will be made aware of proposed sales through requests for section 7 notices under the Real Property Act. In those circumstances where the council becomes aware of the illegal activity after the sale of the property, the council can still take compliance action against the previous owner under the Development Act. Thus, action is against the offending person rather than the new landowner.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 6, after line 39—Insert:

(4a) Subject to subsection (4b), an order under this section will cease to apply with respect to land if or when the land is sold to a genuine arms-length purchaser for value.

(4b) Subsection (4a) does not apply if the order is noted against the relevant instrument of title or, in the case of land not under the provisions of the Real Property Act 1886, against the land under a scheme prescribed by the regulations for the purposes of this subsection.

This amendment is associated with amendment No. 23. This amendment clarifies that an order cannot be made against a person who has purchased a property in good faith and not colluded with the previous owner in regard to the removal of any regulated tree.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 7, line 3—Delete the penalty provision and substitute:

Maximum penalty: $60,000.

This amendment increases the maximum penalty fine from $30,000 to $60,000 when a person fails to comply with a make-good order by the court under section 106(a)(1)or (2) relating to establishing a tree or removing buildings associated with the illegal removal or damaging of trees. This amendment reflects the desire of the government to discourage illegal development and reflects the penalty changes made as part of the assessment procedures act amendments to the Development Act. The ERD Court can judge the penalty based on the circumstances applying to each case. Consideration should be given as to whether these penalty provisions are still appropriate. General planning offences under the act carry a maximum penalty of $120,000, with general building offences having a maximum penalty of $60,000. While it is agreed that a monetary figure rather than a divisional penalty should be named, the offences are serious enough to warrant being brought into line with the general offences penalty, in this case, $120,000.

The Hon. D.G.E. HOOD: Briefly, this amendment seeks to double the penalties in the original government bill, which is the bill I presented to the chamber in its current form. So the original penalty was what is referred to as a division 4 fine, and my understanding is that is $30,000, and that has increased to $60,000. My question to the minister is: can he confirm that is correct, that it is a doubling of the amount? My understanding is that it is. Secondly, if so, how often is $30,000 applied as a penalty? Is the minister aware whether it has ever been applied as a penalty, because $60,000 is certainly a very significant fine?

The Hon. P. HOLLOWAY: Yes; I was talking here about illegal development and, obviously, there would have to be pretty exceptional reasons for a court to make an order of that order.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 7, line 8—Delete the penalty provision and substitute:

Maximum penalty: $15,000

Likewise, this is a change to the penalty provisions. This amendment increases the maximum penalty fine from $8,000 to $15,000 where a person hinders another person from undertaking a make good order from the court.

Amendment carried; clause as amended passed.

New clause 11.

The Hon. P. HOLLOWAY: I move:

Page 7, after line 8—Insert:

11—Amendment of Schedule 1—Regulations

Schedule 1, item 9—delete 'power or function under' and substitute:

power or function under or in relation to the operation of

This amendment enables the regulations to prescribe qualifications required by a person preparing any arborist's report in regard to the health of a significant tree or stand of trees. This, in association with other regulation-making provisions, will also enable regulations to ensure that tree-felling contractors are not providing advice in situations where they have a conflict of interest.

New clause inserted.

Schedule and title passed.

Bill reported with amendments.

The Hon. D.G.E. HOOD (22:47): I move:

That this bill be now read a third time.

The Hon. D.W. RIDGWAY: I indicate that the opposition, from the time the government introduced the bill, expressed a number of concerns about its cumbersome nature, and I think tonight we have discovered a whole range of areas (the value of trees, the regulations, the pruning and maintenance) that are still very uncertain as to their operation. I think it is appropriate that I record the opposition's position and indicate that it still does not support this bill at this stage.

The council divided on the third reading:

AYES (10)

Bressington, A.	Brokenshire, R.L.	Darley, J.A.
Gago, G.E.	Gazzola, J.M.	Holloway, P.
Hood, D.G.E. (teller)	Hunter, I.K.	Wortley, R.P.
Zollo, C.		

NOES (9)

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

PAIRS (2)

Finnigan, B.V.	Stephens, T.J.

Majority of 1 for the ayes.

Third reading thus carried.

Bill passed.

SOCIAL DEVELOPMENT COMMITTEE: INQUIRY INTO BOGUS, UNREGISTERED AND DEREGISTERED HEALTH PRACTITIONERS

Adjourned debate on motion of Hon. B.V. Finnigan:

That the report of the Social Development Committee, on an Inquiry into Bogus, Unregistered and Deregistered Health Practitioners, be noted.

(Continued from 17 June 2009. Page 2680.)

Motion carried.

30-YEAR PLAN FOR GREATER ADELAIDE

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

That this council notes with concern the potential for conflict of interest in the development of the 30-Year Plan for Greater Adelaide.

(Continued from 3 June 2009. Page 2489.)

The Hon. M. PARNELL (22:54): I have decided today to conclude my remarks on this motion as this will be the last chance to put a number of important things on the record before the close of public submissions on the 30-year plan at the end of this month. Since I originally moved this motion, there have been a large number of developments, some of which I will go through tonight. Probably the most important of these has been the growing chorus of calls from a range of professional people questioning the veracity of the 30-year plan and the assumptions that underpin it as well as calls questioning who, in fact, is really driving these changes in the 30-year plan.

I want to start by talking about population, because we have had a number of questions asked in this place recently about population. The importance of the issue is that it goes to the heart of the plan. The question for us is whether the government's population projections are, in fact, aspirational or whether they are real figures. To me, the critical issue is that the government's documents published on its departmental websites might contain misleading information about the population of Adelaide and this, in essence, gives credibility to population projections that might not be supported by the evidence. For example, page 33 of the 30-year plan states:

The population of Greater Adelaide is expected to increase by 1.85 million by 2036.

It also says that a target of 2 million by 2050 for the entire state is now to be reached 23 years ahead of target. Another statement is that the projected increase in the population means that the region will grow by 560,000 people in the next 30 years. These and other statements by the government are statements of inevitability. That is what the government is saying will happen, and it comes over as if there is no choice but to accept that that population increase will happen.

Every single strategy in the 30-year plan—and especially the strategy for the release of more land on the fringes of Adelaide for housing development—is based on the need to deal with an expected population increase of 560,000 people. These forecasts are being presented as fact, with massive implications for where the government chooses to spend money on infrastructure priorities and for businesses looking at this plan to work out where to invest.

Also, by loading up the population forecasts, the government is artificially creating a false argument for more housing estates on Adelaide's outskirts that are simply not required. This goes directly to the heart of my motion: who is driving these population forecasts and who will benefit from the overblown forecasts?

I have been reliably informed that the 30-year plan authored by KPMG, Connor Holmes and other members of the development industry at a cost to taxpayers of $1.4 million, with its 560,000 population target, was in fact prepared before the background technical document. In other words, the plan came first and the background technical document came second. The errors and inconsistencies in the technical document suggest that that document was hurriedly put together. I note that the Chief Executive of the Department of Planning and Local Government, Mr Ian Nightingale, told the Budget and Finance Committee last week that the two documents were written in parallel and that they informed each other.

I might also suggest that the minister's response to claims by the Greens that the population targets in the 30-year plan are a couple of hundred thousand more than the ABS targets also smacks of similar retrofitting of arguments to justify the outcomes outlined in the consultant-written 30-year plan.

The minister argued three things yesterday. First, he said that Greater Adelaide is larger than the ABS Adelaide Statistical Division by about 150,000 people. Secondly, he said that the ABS series 6 was similar to the 30-year plan population forecasts. Thirdly, he said that eminent demographers like Professor Hugo would be embarrassed by the latest Australian Bureau of Statistics release from yesterday.

Taking the first of those points, even accepting that Greater Adelaide is larger than the ABS Adelaide Statistical Division, and even if we accept the minister's figure—which I do not necessarily—that it is 150,000 people larger, the gap is still only about 12 per cent when compared with the Greater Adelaide region. So, assuming that it also makes up about 12 per cent of the growth—therefore, it might account for about 67,200 of the additional people who I say cannot be justifiably predicted to be part of our state—there is still a considerable unexplained gap of at least 120,000 people between the ABS high growth forecast and the forecast in the 30-year plan, with the gap between the ABS middle range forecast and the figure in the 30-year plan still adding up to about 180,000-odd additional people who will more than likely never eventuate.

Secondly, it is worth noting that the ABS Series 6 is the second highest projection in the entire 72 projection series, which suggested it was considered down one very extreme end of the continuum by the ABS. I note that No. 1 is the A series projection; B is series No. 29; and C is series 54. These are described in the ABS catalogue 3222.0 as follows:

> Three main series of projections, Series A, B and C, have been selected from a possible 72 individual combinations of the various assumptions. Series B largely reflects current trends in fertility, life expectancy at birth, net overseas migration and net interstate migration, whereas Series A and Series C are based on high and low assumptions for each of these variables respectively.

Not all 72 projections are likely. The ABS has chosen the three which provide the likely range. The government choice, Series 6, is well and truly above even the high Series A assumptions. I might also add that the minister is accusing me of using the ABS Adelaide Statistical Division and then he uses data from exactly the same statistical division to justify his target.

In the ABS release from yesterday, members should note the following. First, South Australia had the second lowest population growth in the country. We do not know about Adelaide specifically, but it does tend to be lower than South Australia, and South Australia had the second lowest. Secondly, the ABS population projections in this latest update are exactly the same as the projections I used, which were from September 2008. Thirdly, for the past 12 months, net interstate migration in South Australia was minus 5,000 people. Fourthly, for the past 12 months, 88.9 per cent of our population growth was made up of net overseas migration, yet the background technical document acknowledges a recent cut by 14 per cent to the national 2008-09 permanent skilled migration program intake from 133,500 to 115,000. I could say much more on the government's population projections, but I will leave that for another day.

I now move to the Growth Investigation Areas Report. Frequently over the past few months I have called in this chamber and in the media for the release of this report (which was authored by consultants Connor Holmes). Members should know that the call I have been making has been backed by the Planning Institute of Australia, South Australian Division. The President of the Planning Institute wrote the following letter to *The Advertiser* of 10 August:

> The SA Division of the Planning Institute of Australia urges the Minister for Urban Development and Planning Paul Holloway to release the Growth Areas Investigation Report undertaken to inform the development of the 30-Year Plan for Greater Adelaide. For consultation on the plan to be genuinely robust and meaningful, the people of South Australia need to have access to the research that underpins the rationale for the urban growth directions proposed by the plan for Greater Adelaide.
>
> As a professional organisation, PIA considers that the release of this background information will allow a transparent assessment of the impact of the proposed urban growth areas on the protection of primary production land and biodiversity habitat. It will also allow us to evaluate the ability of new residential areas to be adequately served by the infrastructure and community services essential to a sustainable quality of life.
>
> Planners take our responsibility to involve people in decisions that affect their lives most seriously. We have a code of conduct which governs our actions in this regard. When governments act to deny citizens the right to access important information that would assist them to understand and contribute to the planning process, democracy is compromised. As planners we know that this can result in a cynical community that no longer trusts the planners that make the plans and the politicians that promote them. Is this the Adelaide we all want?

It is signed by Angela Hazebroek, President of the South Australian Division of the Planning Institute of Australia. In this place, minister Holloway has said:

> I do not intend to release the growth areas investigation report. Obviously, the information about where Adelaide might grow is potentially highly commercially sensitive.

Yet the highly commercially sensitive nature of the information contained in the growth areas investigation report has not stopped the report's authors from working for property developers seeking to rezone and redevelop the same land that is identified in the report.

This is how it works. The government has paid a private planning consultancy firm some $250,000 to identify future land for housing development. Then months after the report has been completed the government refuses to release the report to the public. Meanwhile, the planning consultants, who do know which land has been identified, are out in the marketplace working for private developers who are keen to subdivide those same parcels of land. As a result, the firm of Connor Holmes is allowed to know where future land releases have been recommended to occur while everyone else has to rely on fuzzy maps and vague descriptions in the 30-year plan.

The firm of Connor Holmes has been working for private clients in relation to exactly the same areas of land before, during and after it has undertaken work for the government that, presumably, identified those parcels of land for future development. Now, I say that this is a completely unfair commercial advantage, and I think it is an outrageous conflict of interest.

Before I go on, I want to make it clear that I am not suggesting that Connor Holmes has misused its commercial advantage to benefit either itself or its commercial clients. I think it is clear that it has an advantage, but I am not saying that it has misused it.

I have had two conversations with one of the Connor Holmes directors, and he has assured me that his firm has not misused any information that they obtained through undertaking government consultancies. Connor Holmes has written to me and also written to the minister repeating this. The minister read part of one of those letters into *Hansard* during question time.

Some of the correspondence that I get from other professional planners and people in the community still gives me cause for alarm. For example, one letter I received posed the following questions:

> Why is it that most of the land proposed to be part of the new urban boundary is either in ownership or has options over it by companies that employ Connor Holmes as their development advisers? If so, how can the work be impartial and unbiased, given that Connor Holmes is paid by those companies to facilitate the rezoning of their land.
>
> One of the directors of Connor Holmes is the state president of the Urban Development Institute of Australia—the main lobby group for developers. How did that firm give fair, unbiased advice when his role in the UDIA is to lobby for rezoning on behalf of their members (including Hickinbotham and DayCorp). Given the planning strategy is a public document, why isn't the work undertaken by Connor Holmes publicly available? Is their substantial conflicts of interest with developers benefiting from the new urban boundaries the reason why it is not available?

To be fair, I mentioned earlier that Connor Holmes had contacted me and the minister about the statements that I have been making over conflict of interest. Connor Holmes also put its case, its version of events, to the planning profession in a letter that was published in the PIA newsletter, and I will read that letter. The letter, which is addressed to a Angela Hazebroek, President of the Planning Institute of South Australia, states:

> Dear Angela, recent public comments by Mark Parnell MLC regarding alleged conflicts of interest and privileged access to information on the part of Connor Holmes raises two key issues for PIA. First, PIA members must be able to compete for and accept major regional policy planning commissions from government. If involvement on behalf of a private client in one or more parts of a potentially very large region is to disqualify PIA members from bidding for major planning studies, then the government will be deprived of the expertise it is seeking and PIA members will be deprived of the opportunity to contribute. PIA members cannot be expected to sever ties with private clients as this would jeopardise their livelihoods once the government commission is over. Disclosure of interests is the appropriate course to follow in these cases, as it allows the client to determine whether and how to commission the work. This was the course of action followed by Connor Holmes in relation to the recent Growth Investigations Study.
>
> Secondly, it must be recognised and understood that PIA members are bound—legally and ethically—to abide by confidentiality requirements imposed by their clients. Where a consultancy contract—be it with government or any other party—specifies that information is confidential, PIA members are contractually bound not to disclose that information or to use it for the benefit of other clients. Connor Holmes—in common with any of the larger planning consultancies—has within the firm information that is confidential to one client and cannot be used to benefit another. There is nothing sinister or unusual about this.
>
> It is my view that PIA members should be able to accept commissions from government subject to appropriate disclosure, and that having accepted such a commission, PIA members can be trusted to be responsible custodians of any confidential information related to that project.

Within that letter from Connor Holmes lies the heart of this problem: that is, when it comes to conflict of interest we are obliged to trust that the planning profession is honourable and will not use

information. We are obliged to trust them because there is no other mechanism in place. I believe that is a major problem.

I also raised the issue of conflict of interest in the Budget and Finance Committee recently—that most worthwhile committee that I believe does this chamber proud. The following evidence was given to the committee by Mr Nightingale, the Chief Executive of the Department of Planning and Local Government. I asked him to explain the processes his agency goes through to make sure that real or potential conflicts of interest do not occur, and he replied:

> With any private consultancy, we would be requiring to declare a conflict of interest.

I think it probably should read 'requiring them to declare a conflict of interest'. Mr Nightingale continued:

> I should say that, as with all commercial providers of information, it is the information that the department is looking for to provide solid and sound advice to the minister, and nearly all of those planning consultants would have a commercial client, it isn't just this particular company that you are talking about. We have other contracts with other planning consultancy firms that are providing us with advice, that advice feeds into good policy-making, and once you can identify if there is any potential conflict of interest it is how the government and the department uses the advice.

I think there is still a major problem, because the department remains reluctant to release the documents that they say exist, including the disclosures of conflict of interest. I have requested those documents under the Freedom of Information Act; I have been knocked back once and we are currently in the appeal process.

In the Budget and Finance Committee Mr Nightingale was also asked about the actual mechanisms used to ensure that conflict of interest did not occur, other than the simple disclosure. He said, in relation to these private firms that hold contracts with the government:

> If the contract has been completed and the information has been provided to the government, then, like any customer/client relationship, the information provided is the client's. More importantly, the point I want to make is how the government, or the department, uses information to create good policy advice.

The Chairperson then asked:

> …what you are saying is that that is the end of the conflict of interest management from the department's viewpoint—that would appear to be what you are saying—but is there some secrecy provision or confidentiality provision that these private sector consultants are required to sign and abide by?

Mr Nightingale said:

> I think the important part of the contract provisions is that they agree at the signing of the initial contract that they don't take on any more clients within the scope while the contract is under way.

The Chairperson asked:

> While it is under way, but once they have completed it and handed it to you, that requirement doesn't exist any more.

Mr Nightingale replied:

> That would be correct.

The Chairperson went on to ask:

> What about the access to the information that they have gathered on completing the contract for the department? At the conclusion of that can they then go off to a client in that particular area, and are they completely free to use the intellectual knowledge that they have in that particular area?

Mr Nightingale started to say:

> My personal view, without seeking legal advice, would be that the department is the owner of the property. So, the department—

He was then cut off and invited to go back and seek legal advice, no doubt so that he did not cause himself any difficulty. Connor Holmes, whose letter I read out earlier, state quite clearly what they believe the situation is. The head of the department is apparently unsure of the status of the information and whether it could be used by anyone else. In fact, the evidence from the Chief Executive to the Budget and Finance Committee is that he is unsure what the limitations are on consultants using the information they obtained during government contracts, and I do look forward to his further advice.

So far, the only limitation, according to the Chief Executive, seems to be the requirement that the consultant not add to their list of private clients where a conflict exists during the currency

of the contract. When the contract expires, they can take on new clients with interests in the same land as the subject matter of the consultancy, and I find that to be a remarkable situation.

I next want to talk about Mount Barker. I should, at the outset, say that I am seeking, under freedom of information, details of the role of private developers and planning consultants who I believe are pushing for the release of land around Mount Barker for urban development. The concerns that have been raised in that local community have revolved around issues such as the alienation of prime agricultural land.

I held a public meeting in Mount Barker, and some 200 people attended. One of the biggest issues raised by members of the community was the question: who is behind the push for further housing on the fringes of Mount Barker? We know that land developers approached minister Holloway to open up Mount Barker to new broadacre development; the minister has said as much in this place. He has also told us that the developers who approached the minister included Urban Pacific, which is part of the Macquarie Group; Walker Corporation; the Fairmont Group; Land Services Pty Ltd; and Day Corporation Pty Ltd.

Members might be interested to note that those companies have together given $2 million to the Labor Party over the last 10 years, including $179,500 directly to SA Labor. So, since 2000, here are some of the figures: the Walker Corporation has given $25,000 to Labor in South Australia and over $1.1 million to federal and New South Wales Labor; the Macquarie Group (that is, Urban Pacific), $27,350 to Labor in South Australia and just under $1 million ($978,000) to Labor in New South Wales and federally; the Fairmont Group has given $119,450 to Labor in South Australia; and Day Corporation, $7,700. Those South Australian donations add up to $179,500. These are the companies the minister has told us were the consortium that approached him to open up land outside Mount Barker.

So, it seems that when the rich and powerful donors come knocking, it would be very hard to ignore them—and this is an extraordinary amount of money. The question I will continue to ask in this place is: why are property developers such generous donors to the big parties? So, serious questions are being asked about the government's haste to rezone around Mount Barker. In this case the consortium made up of property developers who have been extremely generous donators to Labor has resulted in the government acquiescing to their requests. I think that the people of Mount Barker are quite rightly concerned that their interests are being put behind the interests of developers who have a history of being generous donors.

The question still remains about who is developing the development plan amendment on behalf of the developers. When minister Holloway wrote to the Mount Barker council on 19 May this year, in a letter addressed to Mayor Ann Ferguson, he said the following about this consortium of property developers:

> The consortia is also required to advise me in writing, for my consideration, of a suitably qualified person, under section 101 and/or regulation 86 of the Development Act 1993, who the consortium propose to engage to prepare background investigations, associated draft development plan policies and a formal structure plan for the whole of the affected area. I have instructed that your council also be advised once this part of the process is concluded.

I have tried a number of times to ascertain who it is that the developer has nominated to be this responsible person. For the benefit of members, section 101 of the Development Act requires a suitably qualified planner to effectively sign off on the validity of a rezoning exercise.

I posed some questions to the chief executive of the Department of Planning and Local Government in the Budget and Finance Committee. I asked him, 'Well, who have these developers put forward as the responsible person?' The response from Mr Nightingale was that there was no such person. In fact, the nominated person was the Director for Planning, Andrew Grear, and then his staff.

I pursued the issue by saying that the minister had stated in parliament that he was going to ask them who the nominated person was to effectively control the process. I asked whether the consortium of developers had nominated Andrew Grear or whether the government had changed its mind about how this process was to be conducted. I received no suitable answer to that question. So, again, we need to chase, under the Freedom of Information Act, who is behind that.

I want to mention briefly the Gawler East development plan amendment. I went to the development policy advisory committee meeting, along with other honourable members—the Hon. David Ridgway was there. It was a 5¼ hour marathon meeting and, again, there were very similar concerns raised in Gawler to those that were raised in Mount Barker. Communities were

feeling under extreme pressure from circling developers, and residents were frustrated that the government was not listening to their concerns.

In that public meeting speaker after speaker slammed the government's plans and they slammed the process. The only people who spoke in favour of urban sprawl at Gawler East were the developers and land owners who are set to make a fortune from property sales. I think it is a very legitimate suspicion that these changes to our planning rules are being driven to suit property developers and not the people who will be left to pick up the pieces once the development industry moves on to greener pastures.

We know that the town of Gawler is facing a potential tripling in size over the next 10 years, with major new developments proposed for Gawler East, Concordia and Roseworthy. Development consultants Connor Holmes presented at that meeting on behalf of its client, Delfin Lend Lease, and that is the major Gawler East developer. Yet, despite this contractual arrangement, Connor Holmes was also asked by the Rann government to evaluate the potential for Gawler East for new housing as part of the 30-Year Plan for Greater Adelaide.

In the Budget and Finance Committee I asked Mr Nightingale about the Gawler East development plan amendment. I asked the question, 'Are there any contracts let to private consultants in relation to', and I first asked about the Mount Barker DPA. The response was, 'Not from the department's point of view.' My next question was:

> What about in relation to the Gawler East DPA? Did that involve private consultants?

Mr Nightingale answered:

> No, the Gawler East DPA is the same as Mount Barker in the sense that it will, for example, draw upon the work that was included as part of the Plan for Greater Adelaide; it will draw on work from other agencies. But, again, the department is the one running with the DPA.'

I went on to ask:

> I am trying to work out whether, in any of these rezoning exercises, the government, through your agency, is paying private consultants to do any of the work at all.

Mr Nightingale then affirmed that it was only the growth investigation area's report. The Hon. Russell Wortley kindly interjected with the following:

> The answer to Mr Parnell's question is no; would that be right?'

Mr Nightingale answered, 'Yes; no.' So, I thank the honourable member for that.

Basically, here we have the head of the department saying that the writing of these development plan amendments was not something that was let out to private consultants. Imagine my surprise when I applied under the Freedom of Information Act to see who in fact had written these development plan amendments. Gawler East is the one I am talking about now. Of course, most of the documents were denied. That is the government's modus operandi when it comes to these things.

But three documents were released—three 'with compliments' slips. I will read the 'with compliments' slips. They are from Connor Holmes, and they are addressed to Caroline Chapman within the department. One dated 8 December 2008 states:

> Please find enclosed the draft Gawler East DPA.

The next one dated 12 March 2009 states:

> Gawler East draft enclosed.

The third one dated 3 April 2009 states:

> Attention Susan Lewis—

again, I assume she is in the department, given that this is a freedom of information request of the department—

> please find attached a hard copy and an electronic copy of the Gawler East DPA. Kind regards, Michael Osborne.

This is on a Connor Holmes 'with compliments' slip.

It is as clear as mud to me that Connor Holmes has written the development plan amendment for Gawler East, yet the head of the department in a committee of this parliament is basically saying that it did not. Is there any wonder that I am getting frustrated in relation to conflicts of interest when requests for information are repeatedly denied? When we do get an opportunity

such as in a committee of this parliament, we get inconsistent information. So, in conclusion, I would make the point that local people—

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Just before the honourable member goes on, I draw attention to standing order 190, which provides:

> No reference shall be made to any proceedings of a Committee of the whole Council or of a Select Committee, until such proceedings have been reported.

I know where the honourable member is heading, but I just had that drawn to my attention. You have made certain references to the evidence in a committee which is relatively public, but you have indicated you are about to conclude—

Members interjecting:

The ACTING PRESIDENT: Order! When the chair is speaking, the council will come to order. That includes the Hon. Mr Wortley. I would appreciate it if the Hon. Mr Parnell did not refer to any further proceedings of that committee or any other committee.

The Hon. M. PARNELL: Thank you, Mr Acting President. I have no further references to make but, as you said, these meetings were well attended by the media and were well recorded; much of the information is already well and truly in the public realm.

In conclusion, local people are not stupid. They see massive new housing estates being proposed for unsuitable locations with no public transport. Ordinary people can join the dots on issues such as climate change, peak oil and social inclusion, and that begs the question: why can't the government? The Greens do strongly support well-designed development hubs that are based around public transport infrastructure, but instead what we are seeing are more bog-standard commuter suburbs that extend urban sprawl.

I strongly urge all members to pay attention to the 30-year plan and to make submissions to it. It closes at the end of this month. The Greens' call will be for the government to go back to the drawing board. The plan is based on misleading information and that taints the whole the plan. Recently, well known economist Professor Dick Blandy at a public presentation slammed the 30-year plan and said that it was not based on reality. He talked about the appalling consultation and the lack of alternatives to the plan that were provided.

Despite all the rhetoric, the overblown population figures, the inclusion of areas such as Roseworthy, Outer Gawler, Mount Barker and Buckland Park without any public transport will guarantee that urban sprawl will get worse. The heat is clearly on the fringes of Adelaide and that is where the developers are keen to go. The role of government is different to the role of developers. The government must have at its heart the public interest, not the interest of private developers. When the influence of the development industry appears to have skewed a major government document, that is when the community, eminent commentators and other experts and this parliament have every right to raise concerns and call into question why it is so.

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

VICTIMS OF ABUSE IN STATE CARE (COMPENSATION) BILL

Adjourned debate on second reading.

(Continued from 15 July 2009. Page 2907.)

The Hon. S.G. WADE (23:32): I rise to speak on this bill. Children are a precious gift. We are entrusted to provide them with a safe, nurturing environment in which they can grow into adulthood. Our community looks to our government to care for children who, for whatever reason, cannot get that support from their own family networks. One of the most shameful chapters in the history of our state has been the failure of successive governments to provide a safe and secure environment for children who need to fall on the state for care.

On 1 April 2008 the South Australian Children in State Care Commission of Inquiry Report (commonly known as the Mullighan report) was released. On 17 June 2008 the government and a range of church leaders made an apology to system leavers. The Hon. John Darley in this place in November 2008 said:

> Victims have been waiting a long time for changes and the support they need and deserve as a result of the abuse they suffered. Apologies are important, but they are little more than lip service if they are not followed by prompt and decisive action aimed at redressing past wrongs.

The bill we are considering tonight puts a spotlight on the government's failure to promptly and decisively act on a key recommendation of the Mullighan report. Recommendation 40 of the Mullighan report states:

- that a task force be established in South Australia to closely examine the redress schemes established in Tasmania, Queensland and Western Australia for victims of child sexual abuse;
- to receive submissions from individuals and relevant organisations on the issue of redress of adults who were sexually abused in state care; and
- to investigate the possibilities of a national approach to the provision of services.

It needs to be acknowledged that Commissioner Mullighan did not recommend that South Australia establish a redress scheme: he recommended that it should be investigated. This bill requires the council to consider the pros and cons of establishing a redress scheme.

The Senate Community Affairs Committee addressed the issue of how best to provide compensation, redress and reparation for victims in its report 'Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children' in August 2004.

The committee highlighted the specific difficulties faced by people who have suffered abuse within institutions in successfully pursuing compensation through the civil court system, including limitation periods; problems establishing liability, particularly when records are often not available through the efflux of time; the cost of litigation; and the adversarial nature of the system.

The adversarial nature of court proceedings, for example, can involve victims recounting traumatic events from their childhood. Testifying and facing cross-examination is often painful, bringing back memories and opening old wounds. Victims can feel that they are the ones on trial because they are forced to prove what happened to them. The Senate committee noted:

> The adversarial nature of traditional civil litigation, particularly as compared to redress mechanisms, mean that they are an unlikely forum for the promotion of acknowledgment, apology and reconciliation, as it encourages defendants to deny, not acknowledge, responsibility. This lack of scope for an apology is compounded by the process of challenging evidence that often involve personal challenges by the defendant about the plaintiff, his or her lifestyle and the substance of his or her claims.

The government's response to concerns about the burden of civil litigation is that in South Australia victims of abuse in state care, as victims, already have access to a statutory compensation scheme as an alternative to civil proceedings in the form of the Victims of Crime Act 2001. However, the current scheme for the compensation of victims of crime is ill-suited for the compensation of those who have been abused while in state care.

Generally, claims must be made within three years. The burden of proof is beyond reasonable doubt that a crime was committed, in contrast to the balance of probabilities envisaged under the redress scheme in this bill. The compensation available is likely to be lower than that available under the proposed scheme, and the resources of the fund could be exhausted. In her press release dated 11 September 2009, the shadow attorney-general, Vickie Chapman, said:

> ...consistent claims made by the government that victims of child sex abuse while in state care could seek compensation from the Victims of Crime Fund were rubbish.
>
> The Victims of Crime Fund is simply not adequate as the threshold and procedures are oppressive (have to prove beyond reasonable doubt and amounts are paltry).
>
> The fund is not there to cover the negligence of governments who have failed to protect children in their care.

In relation to reparation schemes, the Senate committee noted:

> While reparation schemes vary they usually contain a number of components including the provision of apologies/acknowledgment of the harm done, counselling, education programs, access to records and assistance in reunifying families. A common feature of redress schemes is also the implementation of financial compensation schemes. While the design of the schemes vary they have as a common goal the need to respond to survivors of institutional child abuse in a way that is more comprehensive, more flexible and less formal than existing legal processes.

The pros and cons of redress schemes and the alternative means for redress schemes are issues that need to be addressed by the government in responding to recommendation 40 in the Mullighan report. I turn now to consider what the government has done in response to that recommendation. In the government's implementation report of September 2008, the Minister for Families and Communities said:

In July 2008, the South Australian government established a task force of persons with appropriate experience to closely examine redress schemes for victims of child sex abuse and to investigate the possibilities of a national approach to the provision of services. The task force is expected to report back to the government on its findings by the end of 2008.

In November 2008, in response to a motion moved by the Hon. Ann Bressington, the Hon. I.K. Hunter, on behalf of the government, said:

The government will consider the report of the task force after it has received it later this year.

Later in the same contribution, he said:

I look forward to the findings—expected, I am told, by the end of next month.

That was 10 months ago, and we are still waiting. In a submission to the Senate Community Affairs Committee Inquiry into the Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports in February 2009, the South Australian Minister for Families and Communities gave the following commitment:

Upon receipt of the task force report, the government will consider the task force findings and recommendations and determine the most appropriate course.

In the House of Assembly yesterday, in response to a question from the shadow attorney-general, the Attorney-General stated:

From day one of the report of the Mullighan inquiry, I have said that two courses are open to those who claim to be victims of sexual abuse in state care.

One of them is to do what any citizen could do, that is, to brief lawyers, bring an action for damages and prove that case on the balance of probabilities; and the Crown, in acting as defendant, will act as a model litigant and do what it can to be fair to the plaintiff.

The second course, which I announced on day one, was for people who allege they were victims to apply to the Victims of Crime Fund, which is a fund that gets its revenue from a levy on fines and expiation notices and some from consolidated revenue. Individuals who claim to be victims would get every consideration from me should they not succeed in establishing that they were victims beyond reasonable doubt. I would look at an ex gratia payment of up to $50,000 and do so on a burden of proof much less than the normal burden of proof required either in criminal courts or, for that matter, in civil courts.

A scheme exists already for victims of crime which those who claim to be victims through the Mullighan report can access, and it was there from day one.

Later in the same response the Attorney-General said:

The task force surveyed schemes in other states, reported to me about the schemes in other states and did not, so far as I can recall, make any recommendations. The solution for people who say they were victims of sexual abuse in state care is the Victims of Crime Fund or an ex gratia payment under the provisions of that law.

When asked by way of supplementary question whether he would now table the report, the Attorney-General said:

When my cabinet colleagues have seen it, I will consider releasing it; but, believe me, there are no revelations in the report.

The Attorney-General's response reflects three things in my mind: first, the government does not have any sense of urgency to address this issue; secondly, the government is comfortable with the current remedies; and, thirdly, the government is not inclined to establish a dedicated statutory compensation scheme for victims of abuse in state care.

The government promised the task force on the redress scheme would conclude at the end of 2008. As we rush towards the end of 2009, the silence of the government is hurtful. It undermines the credibility of the cross-party support for an apology. We need more than an explanation of delay: we need a clear, unequivocal statement of the government's position. We need action.

The Liberal Party will not be party to the government's procrastination on this issue. Accordingly, in the context of this bill, the Liberal opposition has felt morally obliged to address the issue of whether or not this state should have a redress scheme. We have thought long and hard about whether we would give in-principle support to a redress scheme. On balance, the Liberal Party has come to the view that there would be value in a redress scheme being established. We consider that victims of abuse in state care should have access to a dedicated scheme. We offer our in-principle support to the development of a fair and reasonable redress scheme which minimises the cost to both victims and the government and minimises the distress to victims in settling compensation claims.

We will give expression to that in-principle commitment today by supporting the passage of this bill. However, a detailed scheme will not be developed or endorsed by the Liberal Party from opposition. We do not have access to the files of the Attorney-General's Department, nor to the files of the Department for Families and Communities. We do not have access to the other information and advice that we would need to determine what would be a fair and reasonable scheme in the South Australian context. Accordingly, in giving support to the passage of this bill, we do not endorse the detail of the model and, in not supporting the Hon. Robert Brokenshire's amendment or the Hon. Ann Bressington's amendments, we indicate that we do not have the necessary information to participate in the process of developing the detail of the scheme at this stage.

The opposition commends the Hon. Robert Brokenshire for the bill and his amendment, and the Hon. Ann Bressington for her amendments. They have done a service to the parliament by raising the issues and airing a range of proposals which deserve further consideration by government,. However, as I said, in the absence of legal advice and an analysis of the likely costs of both litigation—

The Hon. A. Bressington: How long have you had to get it?

The Hon. S.G. WADE: Excuse me; we are in opposition.

The Hon. A. Bressington: How long do you need?

The Hon. S.G. WADE: We are in opposition; we do not have those resources.

The Hon. A. Bressington: How long do you need to get legal advice?

The PRESIDENT: Order!

The Hon. S.G. WADE: As I said, in opposition, we do not have access to the files of the Attorney-General's Department, and we do not have access to the files of the families and communities department. The opposition reserves its position on the structural details of the most appropriate redress scheme for South Australia. We do not know whether the redress scheme envisaged by this bill or any of the amendments are ideal, but we do know that the government has had long enough to address this issue in good faith.

We call on the government to stop the delay. We want the council to pass this bill today, to put the onus on the government to address the need for fair and reasonable redress as a matter of urgency.

The Hon. CARMEL ZOLLO (23:45): The Hon. Stephen Wade has very kindly put on the record the response of the Attorney-General in the other place, and I would like to add to it. Whilst the government appreciates, understands and, indeed, concurs with the sentiment of this proposal, the government opposes this bill. This bill seeks to introduce a new dedicated compensation scheme as well as a requirement for mandatory apology to victims who claim to have suffered abuse and neglect in state care. I understand that the bill was modelled on the Queensland redress scheme to compensate abused former state wards.

Though well intentioned and, I do not doubt, a genuine attempt by the honourable member to help heal the pain caused by the shocking allegations of abuse, the government prefers what it has already put in place to provide redress.

At the outset may I first recognise the important work of Commissioner Mullighan in conducting the inquiry established by the South Australian government, and the presentation of his report and recommendations. May I also put on the record my sadness at the abuse, and I commend those victims of abuse who bravely came forward to lift the veil of silence. I am also glad that the government has moved to carry out 49 of the 54 recommendations made by Commissioner Mullighan.

This bill is opposed, not because the government seeks to avoid appropriate recompense to victims or because it is avoiding an apology—quite the opposite. On 2 April 2008 the Premier announced that an apology would be made to victims of sexual abuse while children in state care. On 17 June 2008, on behalf of this parliament and previous parliaments, the Premier delivered an historic apology.

The government spent $13.5 million on establishing the Children in State Care Inquiry. Over 170 allegations were referred to police for investigation, and an extra $190.6 million over

four years has been added to the state budget commitments to keep children safe—the largest ever investment in protecting children in this state's history.

The effect of the bill is that a person who claims to have suffered abuse while a child in state care, whether the abuse took the form of physical, sexual or emotional abuse or neglect, may ask the Attorney-General for compensation and the Attorney-General may make a payment. If the Attorney-General is satisfied that the person suffered abuse or neglect but is not satisfied that the person suffered significant physical or psychological injury as a result, then the payment may be up to $7,000. If the Attorney-General is satisfied of such injury, the payment may be up to $43,000 in all.

However, the Hon. Mr Brokenshire has now moved an amendment to increase the maximum payment to $50,000. A payment must be accompanied by a written apology. The Attorney-General can require waiver of other rights as a condition of the payment. The bill also states that if offered a payment the claimant must have independent legal advice for which the Attorney-General must pay the reasonable cost, up to $500 or higher prescribed amount.

Any payment approved by the Attorney can be recovered by the claimant as a debt. The bill also provides that the Commissioner for Victims' Rights must advise and assist claimants, including arranging for their legal advice about a payment. If the claimant later receives other damages or compensation for the same harm, then the Crown may recover (as a debt) the compensation paid by the Attorney-General.

The bill does not compel the Attorney-General to make a payment in any particular case; rather, it establishes an application process, although the bill relies on the making of regulations specifying the information and documents that the claimant must submit.

The bill proposes that claimants have one year from the date of commencement to apply but does not set any time limits for the determination of claims. Eligibility is restricted to persons who were legally in the care of the state: that is, it follows the terms of reference of the Mullighan inquiry and excludes those who were voluntarily placed in care by their families without any court order.

Mullighan found that most inquiry witnesses who claim to have been in state care had not been the subject of formal orders and thus were outside the terms of reference. The same may be true for many applicants under this proposed law. In deciding whether to make a payment, the bill provides that the Attorney-General may rely on information supplied by the claimant which must be verified by statutory declaration or on further information that he obtains by investigating the claim. He is not obliged to investigate.

I note that the bill is silent as to the source of the funds to pay these claims. Indeed, that is because this place does not have that authority. Clause 7(2) requires a mandatory apology to the victim which must refer to the circumstances of his or her abuse and must acknowledge that the abuse occurred because of a breach of the state's duty of care. A mandatory apology is inappropriate because no breach of duty needs to be proved to entitle the claimant to compensation under this bill, and it may well be that that question remains unresolved in many cases in which payments are offered.

Payment under the proposed redress scheme is not necessarily founded in legal liability for negligence. Indeed, what is the true value of an apology imposed by statute as opposed to the apology given freely and genuinely that has already been given on our behalf by the Premier? There is also the difficulty that the apology, if it goes into detail about the alleged abuse, could expressly or implicitly identify a known person as an abuser even though such a person had not been found guilty of any offence. The bill does not protect against liability in defamation. The Premier's apology was appropriate, sincere and afforded a further opportunity for healing.

Secondly, this particular scheme is unnecessary in light of the mechanisms that the government already has in place. The government's opposition to this bill is by no means unsympathetic to those terrible instances of child abuse in state care occurring over several decades as detailed in the Mullighan inquiry report.

Civil remedies are available in some cases at common law. Indeed, there are actions already before the courts. As a model litigant, the state is treating each of the cases (and will treat any further cases) with the sensitivity and compassion that they deserve and will be working to ensure that these matters are dealt with efficiently. It has already made a significant settlement of matters.

Additionally, as the government has previously advised, in appropriate cases claims can also be made to the victims of crime fund. Payments from the victims of crime fund are generally capped at $50,000. This is the very same figure that this bill proposes, only it is available through the victims of crime fund rather than through this dedicated scheme, the adoption of which would be more complicated and administratively burdensome.

For those matters that might fail to reach the required burden of proof, I know that the Attorney-General has indicated that he will consider those applications under other sections of the Victims of Crime Act that permit ex gratia payments. These payments also have a cap of $50,000. The South Australian government's option for redress through the victims of crime fund is generous by national standards. Western Australia, which previously offered a maximum payment of $80,000, has recently announced a reduction of this amount to $45,000. That now makes South Australia one of the most generous avenues for redress in Australia.

Finally, the government has followed the Mullighan recommendations in examining the available remedies for claimants in South Australia as well as compensation schemes in other jurisdictions. I understand that the Attorney-General has that report. Indeed, he stated that in parliament recently. He has used this report to inform himself and the cabinet.

It should be noted that the recommendation does not oblige the establishment of a separate compensation scheme. The scheme that this bill proposes to establish offers the same maximum payment to victims of abuse in state care as that which is currently available through the Victims of Crime Fund. Therefore, the government believes a separate scheme that this bill establishes is unnecessary.

The Hon. R.L. BROKENSHIRE (23:56): I note the hour but, with honourable members' indulgence, I just want to spend a few minutes to sum up the second reading debate. We have done a lot of work today and, even though it has come on so late, in my opinion—and I am sure in the opinion of many of my colleagues—this is a very important piece of legislation that puts together a complex web of frustration, anxiety and unnecessary pain over a very long period of time to hundreds and possibly thousands of victims of abuse in this state.

For the record, in painting the picture, there have been a lot of steps, and this is a step in the process of healing. This is a bona fide step, and I do not accept the government's response to this bill in any way whatsoever. It is an absolute cop-out and it just proves that there was, I think sadly—and I have to say this—more spin than actually wanting to get a proper outcome for these people.

Just briefly on the history, it goes back to the person that I have had the privilege of replacing in this council, and that was the Hon. Andrew Evans, who amended the legislation. I thank all colleagues in this council and in the House of Assembly who supported that legislation to allow perpetrators to actually be prosecuted and put behind bars where they belong.

The Hon. A. Bressington: Statute of limitation.

The Hon. R.L. BROKENSHIRE: Yes; and forever I will be grateful. From there, of course, along came the Mullighan inquiry. I congratulate the government on initiating that; it was important. Ted Mullighan did a brilliant job.

The Hon. A. Bressington interjecting:

The Hon. R.L. BROKENSHIRE: I think he tried his best. There is also the police Paedophile Task Force. As a former police minister, I know that the dedicated police in that area have very difficult work and they have done everything they can to try to get these perpetrators. But right now—and I have been reported in the media on this—we see the police Paedophile Task Force about to close. I did not want to enter into debate in the media with police officers whom I respect, so I did not say it, but I will say it here in the council: it is more to do with the lack of budget funding from the government to SAPOL than SAPOL wanting to close the Paedophile Task Force.

In fact, only a couple of weeks ago, the Victoria Police, under a Labor government, have set up a dedicated, specific and highly technical Paedophile Task Force to specifically target these paedophiles, whose number they say is growing at an alarming rate. I place on the record my concern that, while SAPOL will do the very best it can, it is a cost-cutting exercise in the budget that is seeing the Paedophile Task Force close. So, that is the picture.

We come now to the bill. I thank all honourable members for their contribution on this landmark piece of legislation. I am grateful to those who have indicated their support in the

chamber or to me privately. I am also grateful to those who might have particular issues with the model proposed by Family First but who can see that the most important thing is to pass a bill to get the legislation through this council.

The Hon. A. Bressington: So you can get some media?

The Hon. R.L. BROKENSHIRE: Can I finish?

The Hon. A. Bressington: You're a disgrace.

The PRESIDENT: Order!

The Hon. R.L. BROKENSHIRE: I would like to carry on—and continue the pressure on the government to get on with setting up a compensation scheme. I am most grateful that the victims of abuse have been supportive and pragmatic in their approach to this bill, and I applaud their maturity and acumen in negotiating an outcome that I believe is a very positive step forward for former wards of the state and other victims of abuse in state care.

As I said in my second reading contribution, by acts of cabinet (not legislation), the Western Australian, Queensland and Tasmanian governments have all implemented redress schemes. Last weekend, I observed that the embattled New South Wales Premier, Nathan Rees, issued an apology to the 'forgotten Australians'—a label adopted by some victims of abuse in South Australia—which is a step in the right direction for that state which has not had a redress scheme. I acknowledge that this is a step the state government here and all members of parliament have already taken, but the reality is that, on justice to victims of abuse, this government is now with the New South Wales government right at the back of the pack.

I move through to recent developments in Western Australia, because in August redress hit the press there. The Western Australian scheme, which by the measure of the three schemes interstate was the most generous at $80,000 maximum compensation, was cut back to a maximum of $45,000. To put the record straight, it was always the intention of my bill that it would be $50,000, but a drafting error was made inadvertently which is the reason for my amendment—the 43 plus 7. Of course, we have also seen the Hon. Ann Bressington's amendments to make the compensation higher. We are sympathetic to that if this chamber supports it.

In that context, I note that the federal Liberal member for Swan, Mr Steve Irons, spoke on 18 August 2009 in criticism of the Barnett state coalition government for cutting the Western Australian compensation from $80,000 to $45,000. To put his comments into context, he revealed that he was a former ward of state, later a foster child of the Irons family. I applaud him and the Australian democracy for his being able to come from that situation to represent his community in federal parliament. Mr Irons does not say he suffered abuse in state care, but his comments in August are very relevant to this debate. He said:

> I call on the Western Australian state government to reverse its decision which saw the compensation scheme payment reduced from $80,000 to $45,000, and to reopen the scheme to be used for future claims. I also call on the federal government to urgently consider the recommendations to the report Lost Innocents and Forgotten Australians Revisited.

So, what has the Barnett government in Western Australia done? Well, look at what Western Australia Labor has said. This is interesting because we have had a change of government and we now have had a cut to the scheme. On 7 August this year, the Western Australian Labor shadow minister for community services, Sue Ellery, said:

> I have been contacted by redress applicants from across Western Australia asking me to help them get this callous cut overturned.

You have a Labor opposition in Western Australia saying that it is a callous cut because they are cutting it from $80,000 to $45,000, but you have a Labor government in South Australia saying that it is not interested in a dedicated and specific fast-track approach to assist with the healing. This is what this is about: it is about a fast-track approach. It is about a genuine and bona fide apology for each individual—not a broad apology, but a specific apology to each individual. The Labor opposition in Western Australia said:

> Premier Barnett could end the additional distress he had caused by reversing the cut and topping up the scheme so that the commitment made in good faith by the previous government [which was a Labor government] is honoured.

On 4 September, on the Western Australian version of ABC1 *Stateline (*which gives political issues a broader exploration than they sometimes get on commercial networks) Premier Barnett reflected

upon his first year in office, and redress was one subject that arose. I think it is important to put the interview on the public record as follows:

> Colin Barnett: I am generally pleased. I think we have set out and delivered most of what we promised and I believe we have provided good government. Made a few mistakes along the way, I wouldn't deny that, but for a first year I am generally well pleased.
>
> Frances Bell: On those mistakes do you concede that the changes to the redress payments and the cut to the pauper's funeral are two of those mistakes and that may have made the government seem heartless?
>
> Colin Barnett: I can understand how people might feel that. The changes to the redress scheme was a difficult decision but I believe the right decision. And what I would emphasise—

The Hon. A. Bressington interjecting:

The Hon. R.L. BROKENSHIRE: Can I put it on the public record? It continues:

> And what I would emphasise is that we are maintaining the funding for that program at its full level and have said that we will increase funding if it's necessary.

It is a debate for Western Australia about whether or not funding is at the full level, but the irony here is that Western Australia Labor is agitating for the full $80,000 compensation (as they had established) and the Western Australia Liberals are also supporting redress but reducing it.

Meanwhile, Victorian Care Leavers continue their campaign for redress. The Care Leavers Australia Network President and co-founder, Leonie Sheedy, joined a protest outside the minister's electorate office in July this year and explained the Victorian situation well. While the Victorian government has provided $7.1 million for a service for care leavers and $30,000 towards a memorial for care leavers, Ms Sheedy said that it was not much compared with funding offered by other governments: Western Australia, $114 million; Queensland, $100 million; and Tasmania, $75 million.

I want to put on the record—because a concern was raised by a former ward—that they hope the compensation payment would be exempt from social security considerations. We have looked at this situation, and in this state we cannot do anything about it other than appeal to the commonwealth with respect to Centrelink. There was a determination in 2008 that 'a payment made by the state of Western Australia under Redress WA to a person or their partner is an exempt lump sum under paragraph 8(11)(d) of the Act'.

Therefore, I have every confidence that this scheme, once implemented, will attract similar social security exemption, and I hope that it would be looked at favourably by the commonwealth. I am advised that there is nothing of weight we can put in the bill to ensure that exemption. All we can do—as I am now—is indicate that it is the legislature's intention that the payments not impact social security payments, and we can have a high degree of confidence, given the precedent in Western Australia that, likewise, this scheme will be given an exemption.

I will not take members' time much longer. I want to emphasise that the maximum level of compensation does not preclude former wards of the state who were victims of abuse to seek compensation in the courts or by negotiation with the Attorney-General.

I have received representation from former wards in relation to the $50,000 level of compensation in this bill. Some are saying it is sufficient, some are saying it is not sufficient and some are saying they do not want much more fuss. In summary, I am saying that we must do something. We must put pressure on the government. I personally am sympathetic to the Hon. Ann Bressington's amendments, so I will listen to them in the committee stage. We have to get something out of this council to the lower house if we are to continue to put pressure on the government to come up with an honourable response to these people.

Bill read a second time.

In committee.

Clause 1.

The Hon. A. BRESSINGTON: I rise to indicate my absolute disappointment and disgust with this process. I do not think anyone expected the government to support this bill, and that is no surprise, but that is not the side of parliament that I am disappointed in tonight. The title of this bill is Victims of Abuse in State Care (Compensation) Bill, and I think it is a sad day in this parliament when such an emotive issue can be used for nothing more than political game-playing.

When we had the second reading contributions on this bill in the last session of sitting, the Hon. Robert Brokenshire stated that he was amenable to discussing amendments. The Hon. Stephen Wade has indicated for the past two weeks that he is amenable to the amendments that will be put forward and has used political doublespeak all day today to deceive Ki Meekins. If you do not want to support the amendments, if you do not want to support anything other than political game-playing and using these people as political pawns, then at least have the guts to stand up and own your actions.

This is an absolute horror. These people do not want this bill without the amendments, because it is a nothing bill; yet those of us in this chamber will sit in our ivory tower and make a decision about their future and about what they are worth. Ki Meekins has worked 10 years to get to this point and he has been sold out; sold out for political gain. The Liberal Party and the Hon. Robert Brokenshire and Family First should hang their heads in shame.

The Hon. R.L. Brokenshire: Rubbish!

The Hon. A. BRESSINGTON: You should! You know that they do not want this bill as it stands; you told them you would be open to it. I do not care about these amendments; I am withdrawing the amendments. This was not about whether I win or lose: it was about making a bill that was worth fighting for—and you have sold them out.

The Hon. R.L. Brokenshire interjecting:

The Hon. A. BRESSINGTON: Yes, you have; and you should be ashamed of yourself. If the victims of abuse in state care do not deserve compensation—

The CHAIRMAN: I remind the honourable member that she is speaking to clause 1, and she will direct her remarks through the chair.

The Hon. A. BRESSINGTON: Thank you, Mr Chair; I appreciate that. The victims of abuse in state care do deserve redress, and they do deserve to be acknowledged for their pain and suffering—but not this way. I will not vote on this bill, and I will not move my amendments, and if the Hon. Robert Brokenshire believes that he will get favourable media out of this—

The Hon. R.L. Brokenshire: I am not interested in media.

The Hon. A. BRESSINGTON: You are interested in media. This is pre-election campaigning, but this issue is above election campaigning. I am disgusted with this, and will not vote on this bill. I withdraw from this debate entirely.

The CHAIRMAN: Order! Is the honourable member indicating to the committee that she withdraws all her amendments?

The Hon. A. BRESSINGTON: Yes, Mr Chair.

The Hon. S.G. WADE: I would like to respond to some of the comments made by the Hon. Ann Bressington. I have had discussions with—

The Hon. P. HOLLOWAY: I rise on a point of order. Clause 1 is scarcely a time for continuing debate—particularly after midnight. Clause 1 is about the title of the bill, and the standing orders. The matter should be relevant; it is not about—

The CHAIRMAN: It is getting late. If the honourable member has some problem with clause 1 or a question about clause 1 for the mover of the bill, ask it, or let us all go home.

The Hon. S.G. WADE: Perhaps it is a matter of referring to the clause in standing orders that deals with personal explanations, but I think it is appropriate that I have the opportunity to respond to the allegation just made by the honourable member.

The CHAIRMAN: The allegation she made to whom?

The Hon. S.G. WADE: She made the allegation that I made misrepresentations to members of the public. I will not speak for long.

The CHAIRMAN: You can deny the allegation.

The Hon. S.G. WADE: I would just like to make it clear that at no time in recent days, or at any time, have I indicated what my position would be on amendments. What I did indicate explicitly—

An honourable member interjecting:

The CHAIRMAN: Order!

The Hon. S.G. WADE: —to people associated with the Hon. Ann Bressington's office is that I would not be putting my position until I came into this chamber.

The Hon. A. Bressington interjecting:

The CHAIRMAN: Order!

Clause passed.

Clauses 2 to 5 passed.

Clause 6.

The Hon. R.L. BROKENSHIRE: I move:

Page 4, line 5 [Clause 6(1)(b)]—Delete '$43,000' and substitute '$50,000'

There was a drafting error, which was found after printing, with respect to a $7,000 component. It was always intended that the amount be $50,000, and the amendment will correct the error.

Amendment negatived; clause passed.

Remaining clauses (7 to 13) and title passed.

Bill reported without amendment.

Bill read a third time and passed.

STATUTES AMENDMENT AND REPEAL (TRADE MEASUREMENT) 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) (00:20): Obtained leave and introduced a bill for an act to amend the Natural Resources Management Act 2004 and to repeal the Trade Measurement Act 1993 and the Trade Measurement Administration Act 1993. Read a first time.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (00:22): I move:

That this bill be now read a second time.

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

Leave granted.

Council of Australian Governments (COAG) reviewed the state and territory trade measurement systems and decided that a national system should be introduced. This Bill gives effect to that policy decision.

Background

The Commonwealth has constitutional power for 'weights and measures' under section 51(xv) of the Constitution. The *National Measurement Act 1960* established a national system of units and standards of measurement and provided for the uniform use of those units and standards throughout Australia.

Since Federation the Commonwealth has delegated its constitutional authority for the administration of weights and measures law in respect to transactions in trade and commerce to the states and territories. Until 1990 the states and territories were autonomous in the administration of trade measurement within their jurisdictions.

The Commonwealth through the *National Measurement Act 1960* set the requirements for the standards used in measurement throughout Australia. The enforcement of the use of those standards on business has been separately regulated by the states and territories under the trade measurement legislation.

The trade measurement legislation of the states and territories provides the legal framework for regulating the accuracy of measuring instruments used for trade. The legislation requires that all goods sold by measurement (weight, length, volume, area or count) are accurately measured, labelled and the correct price calculated. This includes petrol pumps, shop scales, weighbridges, pre-packed articles and machines for measuring length.

In 1985 the Scott review of the trade measurement system recommended a national system but the result was the development of uniform model legislation that was not fully adopted in all jurisdictions. In 2006 Western Australia was the last jurisdiction to implement uniform trade measurement legislation. The relevant South Australian legislation which is based on the uniform model is the *Trade Measurement Act 1993* and the *Trade Measurement Administration Act 1993*.

Under the current system, changes to legislation have been introduced at different times in the different jurisdictions which has led to inconsistencies and differences in trade measurement practices across the country.

COAG

In February 2006, COAG identified trade measurement as requiring reform and asked the Ministerial Council on Consumer Affairs (MCCA) to develop a recommendation and timeline for the introduction of a national trade measurement system.

MCCA reviewed the current national arrangements and recommended the development of a trade measurement system that would be administered by the Commonwealth.

On 13 April 2007, COAG formally agreed that the Commonwealth would assume full responsibility for the administration, enforcement and funding of a national trade measurement system. A referral of powers is not necessary due to the Commonwealth's power under section 51(xv) of the Constitution.

COAG agreed to a three year transition period, setting 1 July 2010 as the commencement date for full administration of trade measurement by the Commonwealth.

New Commonwealth legislation

The *National Measurement Amendment Act 2008* came into operation on 1 July 2009 and provides the legislative basis for the Commonwealth to establish and operate a single national trade measurement system based on the uniform legislation.

The Commonwealth has appointed the National Measurement Institute (the NMI) which is part of the Department of Innovation, Industry, Science and Research to coordinate Australia's national measurement system. The NMI will commence administration of the new national trade measurement system on 1 July 2010.

It was agreed by COAG that the Commonwealth, State and Territory officials will work together to develop detailed transitional arrangements. Progress in implementing the proposed national trade measurement system is being monitored closely by the Business Regulation and Competition Working Group.

South Australia

This Bill has been drafted to give effect to the COAG decision and to enable the NMI to begin providing national trade measurement services on 1 July 2010.

The major provisions of the Bill include:

- the repeal of the Trade Measurement Act 1993;
- the repeal of the Trade Measurement Administration Act 1993; and
- transitional provisions to provide that trade measurement documents and information relating to the administration or enforcement of those Acts may be provided to the Commonwealth for the purpose of the administration and enforcement of the National Measurement Act 1960.

The Bill makes a minor consequential amendment to the *Natural Resources Management Act 2004*.

I commend the Bill to the Honourable Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal. The commencement date for the main amendments is 1 July 2010. This date has been fixed for the scheme by the amendments to the Commonwealth *National Measurement Act 1960*. The provision allowing information to be provided to the Commonwealth is brought into operation on assent to allow for preparatory action for the handover.

Part 2—Amendment of *Natural Resources Management Act 2004*

4—Amendment of section 106—Determination of quantity of water taken

Section 106(2) provides that if the Minister uses meter readings or uses any other measuring instrument to determine the quantity of water taken under the Act, the Minister will be taken not to be using a measuring instrument for trade for the purposes of the *Trade Measurement Act 1993*. This State exemption cannot operate under the Commonwealth Act and so the subsection is deleted.

Part 3—Repeal of Acts

5—Repeal of *Trade Measurement Act 1993*

6—Repeal of *Trade Measurement Administration Act 1993*

These clauses effect the repeal of the State Acts.

Schedule 1—Transitional provisions

1—Transfer and disclosure of information etc

This clause expressly authorises the State agency to hand over relevant information and material to the Commonwealth agency.

2—References to repealed Acts

This clause provides for references to the State Acts in contracts and other documents to be read as references to the Commonwealth Act unless the contrary intention appears or the context requires a different interpretation.

Debate adjourned on motion of Hon. J.S.L. Dawkins.

SERIOUS AND ORGANISED CRIME (UNEXPLAINED WEALTH) BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (00:23): I move:

That this bill be now read a second time.

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

Leave granted.

The prosecution of the activities of serious and organised criminals and outlaw motor-cycle gangs and their members is a high priority for the Government. Outlaw motor-cycle gangs and their members are involved in drug trafficking and other profitable crimes.

One of the most effective ways to counter serious criminal offending is to confiscate the proceeds of crime. The *Criminal Assets Confiscation Act 2005* allows for the proceeds or instruments of crime to be forfeited to the State. However, forfeiture-related proceedings may occur only where it can be shown on the civil onus of proof that the person has been convicted of a serious offence, or that the person is suspected on reasonable grounds of having committed a serious offence, and the relevant property is either proceeds of, or an instrument of, that crime. The Government considers that the effectiveness of these provisions is limited by the need to prove that the defendant (or some other relevant person) has committed a serious offence.

An important means of attack on the profits of organised crime, including the activities of outlaw-motor cycle gangs, lies in the introduction of unexplained wealth orders. In general terms these provisions will authorise the Crown to apply to a Court for a declaration that a person (including an incorporated body) has 'unexplained wealth'. A person has 'unexplained wealth' if the value of their proven wealth, calculated in accordance with the legislation, exceeds their lawfully-obtained wealth. Any wealth the defendant cannot explain will be assessed and form the basis of a civil judgment debt due from the defendant to the Government.

The proposed Bill will authorise the Crown Solicitor to apply to a Court for a declaration that a person (including an incorporated body) has 'unexplained wealth'. Wealth is defined as everything that a person has ever owned or controlled, whether before or after the Act comes into force.

The proposed amendments will have these key features:

- The process will usually begin by application for a restraining order made on application by the Commissioner of Police. The application will ask the Court to be satisfied that the order is reasonably necessary to ensure payment of an amount that is, or may become, payable under an unexplained wealth order. The application for the restraining order will specify the property that it will cover. There is no need to show that the property is crime derived or related in any way. The restraining order will last for 21 days unless an application for an unexplained wealth order is made. In that case, the restraining order will normally apply until the end of proceedings.
- Since there is no need to show that the property is crime derived or related in any way, safeguards are needed. A key safeguard is that the Court may refuse to make a restraining order if the Crown makes no appropriate undertaking for the payment of damages or costs or both, should the target satisfactorily explain his wealth. The applicant is obliged to notify any person who is known to be an owner of any property specified and restrained, or having an interest in this property, so that these people, and anyone else who hears of the matter, can make an application to have their lawful interest in any of the property excluded from the order.

- The police have been given other investigative powers. First, a police officer of or above the rank of Superintendent may issue a written notice to a deposit holder—that is, essentially, any organisation that holds money in accounts on behalf of other persons—requiring the provision of information about accounts held by a specified person. Second, a police officer of or above the rank of Superintendent may apply to a Court for an order that requires a deposit holder to report specified transactions on such an account. Third, the Commissioner of Police may apply to a Court for an order requiring a person to give evidence to the Court about his wealth or to produce documents or material about his wealth. Fourth, the Commissioner of Police may apply to a Court for a warrant authorising the search and seizure of anything relevant to identifying, tracing, locating or quantifying a person's wealth. Some of these provisions closely follow existing provisions in the *Criminal Assets Confiscation Act 2005*.

- These extensive powers proposed for the investigation of a person's means and wealth do not require any showing of criminality and so require a special safeguard. The Bill proposes that the powers be used only against those convicted of or found liable to supervision for a serious offence, those subject to a control order under the *Serious and Organised Crime (Control) Act 2008*, or those about whom the Crown Solicitor has reasonable grounds to suspect have engaged in serious criminal activity, regularly associate or have regularly associated with persons who engage, or have engaged, in serious criminal activity, are a member of a declared criminal organisation or who have acquired property as a gift from or from the deceased estate of such a person. The decision of the Crown Solicitor on this point is unreviewable by a Court and the Crown Solicitor is not required to provide procedural fairness while acting in this gate-keeper role. The discretion of the Crown Solicitor is an independent discretion and he does not act on instructions in exercising this function.

- There will be no criminal threshold of proof for the making of the application for the full unexplained wealth order. Instead, an application may be made if the Crown Solicitor reasonably suspects that a person has wealth that has not been lawfully acquired. An application may be brought against any person or body corporate (a small business, for example) irrespective of whether the person or body corporate has been convicted of an offence, has been charged with an offence or, indeed, is suspected for any reason of committing an offence. There is no obligation on the Crown to prove or even allege the person or body corporate is engaged in any sort of criminal activity. Although this represents a departure from the current criminal assets confiscation where the Court must be satisfied, either by conviction or on the civil burden of proof, that the respondent has committed a relevant criminal offence, the effectiveness of unexplained-wealth declarations rests on the Crown being relieved of the need to prove the defendant is, or has been, involved in criminal activity or that a particular asset is linked to a particular crime.

- Once an application is made against a person or body corporate, any part of the person or body's wealth (all property owned or effectively controlled by the person, all property the person has given away at any time, all property the person has acquired and discarded or used, all services a person has acquired, royalties etc.) is presumed not to have been lawfully acquired. Effectively, the legislation deems all private wealth to have been unlawfully acquired.

- The respondent (the person or body corporate who is the subject of the application) bears the onus of establishing that his or its wealth has been lawfully obtained. All the Crown is required to prove is that the respondent owns or effectively controls wealth. The Court hearing an application may declare that the respondent has unexplained wealth if the Court determines that it is more likely than not that the respondent's proven wealth is greater than his or its lawfully acquired wealth. The Court may refuse to make an order only if the Court is satisfied that it would be manifestly unjust to make the order. It should be made clear that the relevant question is whether it is manifestly unjust to make the order for payment of the sum of money—it is not relevant to consider whether it would be manifestly unjust to lose particular property or the consequences of making the order. This order is not a confiscation order—it is an order for the payment of a sum of money as a judgment debt only. The clear intention of the Bill is that it is to be presumed that the order will be made and that the order will be for the payment of a sum equalling the amount of unexplained wealth.

- Where the Court makes an unexplained-wealth declaration, the respondent is required to pay the amount found to be unexplained to the Crown. The specific property restrained is then available to meet the payment of the sum declared to be owing. The judgment is an ordinary civil judgment for a sum of money and is enforceable under the *Enforcement of Judgments Act 1991*. Interstate judgments are exclusively the subject of the Commonwealth *Service and Execution of Process Act 1992*.

- As the Crown does not have to establish criminality, or link a particular asset to a particular crime; unexplained-wealth proceedings allow the wealth of those who may not have directly participated in crime, but who have benefited financially from crime, to be attacked on the basis that the wealth exceeds that which they obtained through lawful means. This legislation will provide a mechanism by which the Government can take clear aim at those who direct and who profit from the activities of criminal organisations but who are, themselves, insulated from any direct criminal liability.

Since this is an ordinary civil action, the ordinary rules of civil procedure apply. These include rules of discovery. As in other legislation of this kind, it is necessary to protect information that, as the Bill provides, 'relates to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety. This is the form of provision that was declared constitutional by the High Court in K Generation Pty Ltd v Liquor Licensing Court [2009] HCA 4. This kind of provision has attracted some unfairly harsh criticism. The High Court made it clear that the question of how the information is to be handled is up to the Court and not the Commissioner of Police. Further, the

statutory provisions are similar to the common law concept of public interest immunity and no critic has taken the time to compare the two. There are ancillary provisions in the Bill, and perhaps the most important of these state that the proceeds must be credited to the Victims of Crime Fund and that providing for the awarding of costs in connection with proceedings. There are also extensive provisions for review of the operation of the Act.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines certain terms used in the measure. In particular, wealth of a person is defined to consist of all property that the person owns or has previously owned (including before commencement of the measure); all other benefits that the person has at any time acquired (including before commencement of the measure); and all property that is, or has previously been, subject to the person's effective control (including before commencement of the measure).

4—Meaning of effective control

This clause provides assistance in determining whether property can be said to be subject to a person's *effective control*.

5—Extra-territorial operation

This clause provides for extra-territorial operation of the measure (to the fullest possible extent).

6—Criminal intelligence

This clause contains measures for protection of the confidentiality of material classified by the Commissioner of Police as criminal intelligence.

7—Role of Crown Solicitor

This clause makes it clear that, where the measure specifies that a power or function is to be exercised by the Crown Solicitor, the Crown Solicitor is to exercise an independent discretion and does not act on instruction.

Part 2—Unexplained wealth orders

8—Determining the value of property and benefits

This clause sets out provisions that apply when determining the value of any property or benefits for the purposes of the Part.

9—Unexplained wealth orders

This clause provides for the making of an order (an *unexplained wealth order*) that a specified person pay to the Crown a specified amount if the Court finds, in accordance with the measure, that any components of the person's wealth the subject of the application for the order have not been lawfully acquired. In determining the proceedings, each component of a person's wealth specified in the application will be presumed not to have been lawfully acquired unless the person proves otherwise but if the Court is satisfied that it is not reasonably possible for a person to establish that a component of his or her wealth was lawfully acquired the Court may determine that the value of that component should not be taken into account in determining the person's total wealth.

10—Appeals to Supreme Court

Appeals may be made to the Supreme Court by the Crown Solicitor or a person subject to an unexplained wealth order.

Part 3—Investigative and enforcement powers

Division 1—Preliminary

11—Application of Part

Powers and functions under the Part may be exercised either before or after an unexplained wealth order, or an application for an unexplained wealth order, has been made against a person.

12—Limitation on exercise of powers and functions under Part

This clause provides that where powers and functions are to be exercised before the making of an unexplained wealth order, the powers and functions must be authorised by the Crown Solicitor unless they are being exercised for the purpose of investigating or restraining the wealth of a person who has been convicted of, or declared liable to supervision in relation to, a charge of a serious offence or who is or has been subject to a control order under the *Serious and Organised Crime (Control) Act 2008*.

The Crown Solicitor may not authorise the exercise of powers and functions unless satisfied that they are to be exercised to investigate, or restrain, wealth of a person who the Crown Solicitor reasonably suspects of being—

- a person who engages or has engaged in serious criminal activity; or
- a person who regularly associates with persons who engage, or have engaged, in serious criminal activity; or
- a person who is or has been a member of an organisation that is a declared organisation; or
- a person who has acquired property or a benefit as a gift from a person of a kind referred to in the preceding dot points or on the distribution of the estate of a deceased person who was such a person.

The clause also makes other provisions relating to an authorisation by the Crown Solicitor.

Division 2—Investigative notices, orders and warrants

13—Notices to deposit holders

This clause sets out a process under which a police officer of or above the rank of Superintendent may give a deposit holder a notice requiring them to provide information or documents of a kind specified in the provision. This clause makes it an offence (punishable by a fine of $10,000 or imprisonment for 2 years) to disclose to a person the existence or nature of an order, or information from which the person could infer the existence or nature of the order, if the order specifies that information about the notice must not be disclosed.

14—Monitoring orders

This clause allows a court, on application by the Commissioner of Police, to make orders requiring a deposit holder to report transactions of a kind specified in the order.

15—Orders for obtaining information

This clause allows a court, on application by the Commissioner of Police, to make orders requiring the giving of evidence, or the production of documents or materials, relevant to identifying, tracing, locating or valuing a person's wealth.

16—Warrants

This clause provides for the granting of warrants on application by the Commissioner of Police.

17—Powers conferred by warrant

This clause sets out the powers conferred by a warrant.

18—Exercise of jurisdiction

The jurisdiction of a court under this Division may be exercised by a judicial officer sitting in chambers.

Division 3—Enforcement powers

19—Enforcement of unexplained wealth orders

An unexplained wealth order is enforceable under the *Enforcement of Judgments Act 1991* if not paid within 21 days. The clause also allows a court to declare that property that is subject to the effective control of a person in relation to whom an unexplained wealth order has been made is to be taken to be property of the person for the purposes of the *Enforcement of Judgments Act 1991*.

20—Restraining orders

This clause allows the Commissioner of Police to apply to a court for an order preventing the disposal of specified property or preventing specified kinds of transactions involving safe custody facilities. The court may only make the restraining order if satisfied that it is reasonably necessary to ensure payment of an amount that is, or may become, payable under an unexplained wealth order.

21—Refusal to make an order for failure to give undertaking

A court may refuse to make a restraining order if the Crown refuses or fails to give the Court an appropriate undertaking with respect to the payment of any costs that may be awarded against the Crown.

22—Form of restraining order

This clause sets out the form of a restraining order.

23—Notice of restraining order

This clause sets out who should be given notice of a restraining order.

24—Right of objection

If a restraining order is made ex parte, a person who was, or should have been, given notice of the order may lodge a notice of objection with the court that made the order within 14 days after becoming aware of the making of the order (or such longer period as the court may allow).

25—Variation or revocation of restraining order

This clause allows a court to vary or revoke a restraining order. If, however, a variation or revocation is sought to enable the payment of legal costs, the court can only make the order if satisfied that there is no other source of funds for the legal costs.

26—Appeals to Supreme Court

This clause provides for appeals to the Supreme Court from a decision of a court under the Division.

27—Cessation of restraining order

This clause sets out the circumstances in which a restraining order will automatically cease to operate.

28—Contravention of restraining order

This clause sets out offences for contravention of a restraining order.

Division 4—General provisions relating to investigative and enforcement powers

29—Representation of Commissioner of Police

This clause allows the Commissioner of Police to be represented in proceedings under the Part by a police officer or by counsel.

30—Ex parte proceedings

A court may make an order under the Part on an application made without notice to any person.

31—Immunity from liability

This clause provides protection from liability for persons in taking action to comply with a notice or order under the Part.

32—Making false or misleading statements

This clause makes it an offence (punishable by a fine of $5,000 or imprisonment for 1 year) to make a false or misleading statement in or in connection with a notice or order under the Part.

33—Failing to comply with notice or order

This clause makes it an offence (punishable by a fine of $5,000 or imprisonment for 1 year) to refuse or fail to comply with a notice or order under the Part.

Part 4—Reviews and expiry of Act

34—Annual review and report as to exercise of powers

This clause requires the Attorney-General to appoint a retired judicial officer to conduct an annual review of the exercise of powers under the measure, to be presented to the Attorney-General by 30 September each year and laid before both Houses of Parliament. The Attorney-General, the Crown Solicitor and the Commissioner of Police must ensure that the reviewer is provided with such information as he or she requires to conduct the review. Any information that has been classified by the Commissioner as criminal intelligence must be kept confidential.

35—Review of operation of Act

This clause provides that the Attorney-General must, as soon as practicable after the fourth anniversary of the commencement of the clause, conduct a review of the operation and effectiveness of the measure (the report of which must be tabled in both Houses of Parliament). Again, any information that has been classified by the Commissioner as criminal intelligence must be kept confidential.

36—Expiry of Act

The measure will expire 10 years after commencement.

Part 5—Miscellaneous

37—Manner of giving notices

This clause sets out the manner of serving or giving notices, orders and other documents for the purposes of the measure.

38—Immunity from liability

This clause provides immunity from liability for the Crown and persons exercising powers and functions under the measure.

39—Protection from proceedings etc

This clause excludes judicial review and all other remedies in relation to certain matters under, or purportedly under, the measure. The clause also specifies that the Crown Solicitor is not required to provide procedural fairness in exercising a discretion under this Act.

40—Proceedings under Act are civil proceedings

Proceedings (other than proceedings for an offence) under the measure are civil proceedings and are subject to the civil burden of proof and civil rules of construction and evidence.

41—Ancillary orders

A court may make ancillary orders.

42—Consent orders

This clause provides for the making of consent orders by a court dealing with a matter under the measure.

43—Costs

This clause provides for an award of costs (on a solicitor/client basis) against the Crown.

44—Credits to Victims of Crime Fund

This clause requires money recovered under an unexplained wealth order to be applied, in accordance with guidelines issued by the Treasurer, towards the costs of administering the measure and the *Serious and Organised Crime (Control) Act 2008* and the balance must be paid into the Victims of Crime Fund.

45—Regulations

This clause contains a regulation making power.

Schedule 1—Related amendments

The Schedule makes a related amendment to the *Criminal Assets Confiscation Act 2005* to ensure that, where an unexplained wealth order has been made against a person, property and benefits taken into account as wealth of the person that was not lawfully acquired for the purposes of that order are not the subject of proceedings under that Act for a restraining order or a confiscation order (so that the person is not held to account twice for the same property or benefits).

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

At 00:24 the council adjourned until Thursday 24 September 2009 at 11:00.