LEGISLATIVE COUNCIL

Tuesday 13 October 2009

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

ROAD TRAFFIC (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

HARBORS AND NAVIGATION (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

REPRODUCTIVE TECHNOLOGY (CLINICAL PRACTICES) (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

FIRE AND EMERGENCY SERVICES (REVIEW) AMENDMENT BILL

His Excellency the Governor assented to the bill.

ANSWERS TO QUESTIONS

The PRESIDENT: I direct that the following written answers to questions be distributed and printed in *Hansard*.

MINISTERIAL TRAVEL

209 The Hon. R.I. LUCAS (18 February 2009). Can the Minister for Environment and Conservation state:

1. What was the total cost of any overseas trips undertaken by the Minister and staff since 2 December 2007 up to 1 December 2008?

2. What are the names of the officers who accompanied the Minister on each trip?

3. Was any officer given permission to take private leave as part of the overseas trip?

4. Was the cost of each trip met by the Minister's office budget, or by the Minister's Department or agency?

5. (a) What cities and locations were visited on each trip; and

(b) What was the purpose of each visit?

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 Environment and Conservation has provided the following information for the period 2 December 2007 and up to 1 December 2008:

I Cost of Trip	II Accompanying Officers	III Private Leave Taken	IV Cost met by Minister's Office or Dept/Agency	V (a) Cities and Locations Visited	V (b) Purpose of Trip
$69,124.14	Allan Holmes, Chief Executive DEH Simon Blewett Bronwyn Hurrell	No	Cost shared between Minister's Office budget and DEH	United States and Canada, including Portland Oregon, Boston Massachusetts, Vancouver British Columbia, Victoria British Columbia and Toronto	Portland—meet with representatives of Portland State University, Department of Urban and Public Affairs; EcoTrust representatives; tour of the Lloyd district—beginning the implementation of a green plan for

I Cost of Trip	II Accompanying Officers	III Private Leave Taken	IV Cost met by Minister's Office or Dept/Agency	V (a) Cities and Locations Visited	V (b) Purpose of Trip
				Canada	energy and water efficiency and reuse; representatives of metro—the regional government for discussions on planning, land use, transportation and other issues affecting the City of Portland; Governor's Sustainability Adviser; Director and representatives of the Oregon Department of Environment Quality. Vancouver—meet with Minister for Aboriginal Relations and Reconciliation; Director of Strategic Planning and Policy, Translink; Manager of Greenways and Neighbourhood Transportation, City of Vancouver; Mayor of Vancouver; Commissioner, BC Treaty Commission; Victoria—Minister for Transportation and Infrastructure; Head of Climate Action Secretariat; Assistant Deputy Minister, Environmental Protection Division, Ministry of Environment; Associate Deputy Minister, Intergovernmental Relations Secretariat Boston—meet with various Harvard academics in fields of public sector management,

I Cost of Trip	II Accompanying Officers	III Private Leave Taken	IV Cost met by Minister's Office or Dept/Agency	V (a) Cities and Locations Visited	V (b) Purpose of Trip
					indigenous affairs and early childhood development. Toronto—meet with Dr Fraser Mustard and site visits to early childhood centres.

YATALA CORRECTIONAL FACILITY

242 The Hon. D.G.E. HOOD (25 March 2009). Can the Minister for Correctional Services advise how many FTE staff were employed in 2008 to deliver rehabilitation programs to prisoners at the Yatala Correctional Facility?

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 Correctional Services is advised that:

Generally, staff with responsibility in the critical area of prisoner management provide a wide range of services, some of which may not be rehabilitation based.

However there are a number of staff whose role includes a significant rehabilitation component. In 2008, these included:

- 6 FTE's, who in addition to delivering rehabilitation programs to prisoners also provided counselling and other intervention services including intervention management;
- 2.7 FTE Psychology staff of which 1.4 FTEs were involved in the delivery of the Alcohol and Drugs Medium Intensity Program;
- 2 FTE's to deliver the sex offender and violence programs and one on one counselling and assessments;
- 2 FTE Aboriginal Liaison Officers were employed as support officers for Aboriginal prisoners; and
- one FTE Education Coordinator and additional hourly paid instructors to provide specialist education activities, as required.

YATALA CORRECTIONAL FACILITY

243 The Hon. D.G.E. HOOD (25 March 2009). Can the Minister for Correctional Services advise—

1. What was the average cost to keep one prisoner at the Yatala Correctional Facility for the year 2008?

2. What was the average cost to keep one prisoner within G Division for one year?

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 Correctional Services has advised:

The Department for Correctional Services does not record the average cost per prisoner by institution or average cost per prisoner by unit at an institution.

The Yatala correctional facility is categorised as one of the high security prisons in the State of South Australia. The average cost per prisoner in a secure prison in 2007-08, as reported in the Report on Government Services was $179.86 per day. This measure is calculated using methodology and standards applied across all jurisdictions. There is no equivalent measure, or

agreed methodology, for calculating the daily prisoner cost by an individual institution or in a unit within an institution.

However, as the staffing to prisoner ratio for G division is higher than in other units of Yatala, the cost of a prisoner in this unit would exceed the secure facility average."

PRISONER REHABILITATION PROGRAMS

245 The Hon. D.G.E. HOOD (25 March 2009). Can the Minister for Correctional Services advise how much was spent on average, per prisoner rehabilitation programs (i.e. drug rehabilitation, anger prevention programs etc.) for the year 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 Correctional Services has advised:

The Department for Correctional Services does not record the average cost spent on individual rehabilitation programs.

The Department reported in its 2007-08 financial statements the net cost for the Rehabilitation and Reparation Services program, as $24.5 million. This includes programs focused on offender specific and offence related factors and the economic and social cost of crime to the community.

The Department for Correctional Services provides 22 offence-focussed programs across various prisons, including sex offender programs, drug and alcohol programs, anger management, domestic violence, life skills programs, and education and vocational training.

PRISONER REHABILITATION PROGRAMS

246 The Hon. D.G.E. HOOD (25 March 2009). Can the Minister for Correctional Services advise how many FTE staff were employed for 2008 solely to deliver rehabilitation programs to prisoners within all of South Australia's correctional facilities?

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 Correctional Services is advised:

Generally, staff with responsibility in the critical area of prisoner management provide a wide range of services.

There is a number of staff whose role includes a significant rehabilitation component. In 2008, these included:

- 20 FTE staff who in addition to delivering rehabilitation programs to prisoners also provided counselling and other intervention services throughout the prison system including intervention management roles at Mobilong, Pt Augusta, Yatala, and the Adelaide Women's prisons;
- 14 Rehabilitation Programs Branch staff who delivered the Violence Prevention Program, Sexual Behaviours Clinic, Sex Offenders Maintenance Program and Violent Offenders Maintenance Program across Custodial Services and Community Corrections. The staff also undertook assessments and one-on-one intervention services with offenders in the areas of violence prevention and sexual offending;
- 6 FTE staff in the Psychology Services Unit who conducted the Moderate Intensity Alcohol and Drugs Program across Custodial and Community Corrections and also provided both programs and one-on-one psychological intervention to prisoners and offenders;
- 13.4 FTE staff employed across the State delivering psychological services;
- 10 Aboriginal Liaison Officers who provided support roles for Aboriginal prisoners across the prison system; and
- 9 FTE Education Coordinators who were employed in prisons across the State, with each prison also funded to recruit hourly paid instructors to provide specialist education activities, as required."

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. CARMEL ZOLLO (14:20): I bring up the annual report of the committee for 2008-09.

Report received and ordered to be published.

PAPERS

The following papers were laid on the table:

By the President—

Reports, 2008-09—
- Auditor-General and Treasurer's Financial Statements, Parts A, B and C
- Administration of the Joint Parliamentary Service

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

Reports, 2008-09—
- Office of the WorkCover Ombudsman
- Witness Protection Act 1996
- WorkCover Corporation of South Australia
- WorkCover Corporation of South Australia Financial Statements

Regulations under the following Acts—
- Firearms Act 1977—Prescribed Firearms
- Petroleum Act 2000—General
- Primary Industries Funding Schemes Act 1998—Citrus Growers Fund
- State Procurement Act 2004—Prescribed Public Authorities

Rules of Court—
- District Court—District Court Act 1991—Civil—Amendment No. 11

Budget Statement, 2009-10—Budget paper 3—Corrigendum

RESI Corporation Charter, 24 September 2009

WorkCover Corporation Charter, 22 September 2009 and 24 September 2009

By the Minister for Urban Development and Planning (Hon. P. Holloway)—

Regulations under the following Acts—
- Development Act 1993—
  - Assistant State Coordinator—General
  - Mining Production Tenements

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

Reports, 2008-09—
- Pastoral Board of South Australia
- Supported Residential Facilities Advisory Committee
- Witjira National Park Co-management Board

Coronial Inquiry into the Death of Steven Michael Bradford—Report prepared by the Department of Transport, Energy and Infrastructure

Regulations under the following Acts—
- Motor Vehicles Act 1959—Exemptions from Duty to hold Licence
- Upper South East Dryland Salinity and Flood Management Act 2002—Project Works Corridors

District Council By-laws—
- Tatiara—
  - No. 1—Permits and Penalties
  - No. 2—Moveable Signs
  - No. 3—Roads
  - No. 4—Local Government Land
- Victor Harbor—
  - No. 1—Permits and Penalties
  - No. 3—Roads
  - No. 4—Local Government Land
  - No. 5—Dogs
  - No. 6—Cats

No. 7—Nuisances caused by Building Sites

Codes of Practice under Acts—

Gaming Machines Act 1992—Responsible Gambling—The Alma Hotel Code Alteration

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

Regulations under the following Acts—

Liquor Licensing Act 1997—Dry Areas—

Long Term—Salisbury

Short Term—

Semaphore—New Years Eve

Victor Harbor—New Years Eve

SERIOUS AND ORGANISED CRIME (CONTROL) ACT REVIEW

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:24): I table a copy of a ministerial statement relating to the Serious and Organised Crime (Control) Act review made earlier today in another place by my colleague the Attorney-General. Associated with that statement, I also table a review of the execution of powers under the Serious and Organised Crime (Control) Act 2008, exercised during the period 1 July 2008 to 30 June 2009, conducted by Mr Alan Moss, a retired judge of the District Court of South Australia.

BURNSIDE CITY COUNCIL

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:24): I seek leave to make a ministerial statement about the investigation into the Burnside City Council.

Leave granted.

The Hon. G.E. GAGO: As members would be aware, on 22 July 2009 I announced a formal investigation under section 272 of the Local Government Act 1999. I appointed Mr Ken MacPherson as the independent investigator and asked him to report to me by 31 October 2009. At the time, I said that I wanted the investigator to report to me as quickly as possible, but did indicate that if Mr MacPherson requested more time, or assessed that he needed more time to do the job thoroughly, I would consider those needs.

I have recently received a letter from Mr MacPherson outlining the processes he has undertaken to date and providing me with details of the size and substance of the work required to investigate this matter thoroughly. He advised that to date the investigation team has:

- received between 60,000 and 65,000 pages of documentation requiring scrutiny by him and legal counsel assisting;
- received 40 submissions in response to the public advertisements;
- conducted seven formal interviews, taking on average six hours; and
- estimated that a further 25 formal interviews may need to be conducted and a further 25 persons of interest may be invited to be interviewed.

Mr MacPherson indicated that, as the terms of reference cover a wide range of areas, it was not possible at the outset to anticipate the time required to undertake this substantial work. As such, he indicated that it is likely that the investigation process will require another four months to complete and to ensure procedural fairness is afforded to those who may be named in his report.

As honourable members know, Mr MacPherson is a highly experienced and credentialled investigator, and I am confident that his assessment of the work required is an accurate one. Having carefully considered his request, I have consented to an extension of time to ensure that this independent investigation is comprehensive and unfettered by the pressure of time. I am adamant that this investigation must be conducted to the highest standard to ensure that all matters pertaining to the terms of reference are considered thoroughly.

In relation to costs, I am aware that a figure of $250,000 has been estimated. Obviously, the extension of time may push these costs further, but this government believes that, given the importance of the issues being considered, the expenditure is warranted.

QUESTION TIME

SANTOS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:29): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about Santos.

Leave granted.

The Hon. D.W. RIDGWAY: As members would be aware, I think it was last year that we passed legislation in the parliament to remove the cap on share ownership within Santos. At the time, the Premier and the minister gave assurances that the operations of Santos would continue as they have in the past. The opposition has been made aware that Santos intends to change some of its investment focus from the Cooper Basin to its coal seam methane assets in Queensland. My questions is: has the minister or the Premier received any advice from Santos in relation to the change in investment focus from the Cooper Basin to the coal seam methane assets in Queensland, and how many jobs are at risk in South Australia because of this change of investment focus by Santos?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:31): Let me deal with the implication that is in the question that, somehow or other, the preservation of the share ownership cap might have given some control over where Santos focuses its activities. The answer is that, of course, it did not, and I made that clear during debate. The fact is that Santos could have established—and, indeed, had in the past established—a significant part of its operations in Queensland. With the depletion of gas resources within the Cooper Basin and Santos' acquisition of significant assets within Queensland, particularly in the coal seam methane area, that will inevitably be a growing focus of its activities and, inevitably, Santos will shift its staff because of that focus. However, that is more to do with the refocusing of activities on resources within that state, rather than anything at all to do with its share ownership cap, which is entirely irrelevant to that.

Santos has made it public for some time now that it will be moving into that area, and there is nothing very surprising about that. Obviously, Santos as a company is continuing to grow but, as far as I am aware, Santos will continue to maintain its head office in and its commitment to South Australia. However, if the growth of its activities is in another part of the country or, indeed, the world, inevitably, Santos will employ people in those areas.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: How can any job be at risk? If the growth of an area is in Queensland—if that is where the coal seam gas and the expanding activities are located—Santos will employ people there. It is inevitable that the focus of Santos' activities will be there. However, my understanding is that those head office functions will remain here, and I am certainly not aware of any indication whatsoever that Santos intends to change those traditional activities located in this state. Of course, as the focus of its gas producing activities is in those coal seam methane assets in Queensland, it is inevitable the jobs will be focused there.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Well, of course, one can never say that. I am talking about the head office functions. But, obviously, those people on the ground, if they are doing their work in Queensland, it makes sense that they live where the work is.

LOCAL GOVERNMENT HERITAGE

The Hon. J.M.A. LENSINK (14:34): I seek leave to make an explanation before asking the Minister for Urban Development and Planning a question about local government heritage DPAs.

Leave granted.

The Hon. J.M.A. LENSINK: At least two councils in the Adelaide metropolitan area have undertaken their own reports to identify heritage values, as follows: the City of Unley was gazetted, on an interim basis, on 27 November 2008, for its City of Unley village living and desirable development plan amendment stage 1, requiring final formal approval by 27 November 2009, when the interim approval expires; and Adelaide City Council when, on 29 January 2008, its City Strategy Committee adopted two city heritage development plan amendments, one being city heritage and character for the central business area and mixed use zones, and city heritage and character residential zone and main street (Hutt) zone.

The Adelaide City Council Development Plan Review Report dated 27 January 2009 is allegedly waiting on formal agreement by the minister. It states in one of these documents that it was initially submitted to the minister in early 2008 with a revised version submitted in September 2008. My questions to the minister are:

1. In relation to the City of Unley, will he approve the final version by that date in November this year?

2. In relation to the City of Adelaide, what is the reason for the delay in either the interim approval or full approval, and when does he intend to make a formal decision?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:35): In relation to the Unley development plan amendment that, of course, came as a result of an initiative that this government had undertaken with Unley council and, in particular, the then mayor of Unley.

What the government was seeking to do has subsequently been picked up in the whole thrust of the 30-year plan. Indeed, many of the findings of Unley have led on to the policies of the government that are adopted in relation to the Residential Development Code and the need to look at exceptions to that code for character areas. It was really as a result of this pilot that took place in Unley and, as the honourable member said, it has been on interim protection and, obviously, I will have to make a decision within the next month as to whether that continues.

The reason that that particular development plan amendment was put on interim protection was to enable the public to respond to it. Essentially, it is an Unley council initiated DPA but the government, through the Department of Planning and Local Government, has supported it because it was a very important pilot study in terms of how one might better balance heritage considerations, particularly within our inner city areas.

I have not seen the final feedback in relation to that. Certainly, some of the information I have been provided with, and some issues have been raised as a result of that. It is almost inevitable, one would think, that there will be some changes since it was a pilot study. At present, I am not sure whether it has left Unley council and is with my department, but I have not yet received the final report. I will be looking at what the views of the City of Unley are in relation to the feedback it received during the interim period and also at the advice of the department. That will need to be done before the 12-month expiry date which the honourable member indicated was 22 November. It will be finalised then.

In conjunction with that, the government has also been finalising its policy in relation to those areas where the Residential Development Code will apply. The residential code was adopted for many areas of the Adelaide metropolitan area back in, I think, June or July, and we will be finalising it very soon. Clearly, the work of that particular development plan amendment will guide the government in relation to what policy it takes in relation to the application, or to those areas that are excluded from the application of the Residential Development Code. I hope that will be fairly soon.

In relation to the Adelaide City Council, I have had some preliminary discussions and it has raised its final report. As I understand it, the report has been delivered to the department and the department is currently having a look at it. There is a significant number of additions of places that are proposed to be put on the heritage list.

The honourable member might well remember that the North Adelaide heritage development plan amendment was proposed by a previous Adelaide City Council (that is, not the current membership but a previous membership) and, in that particular case, after it had been out for discussion, if anyone had objected to a listing the council had removed from the list that it submitted to me.

As a result of that, acting on the advice of the local Heritage Advisory Committee I added some properties back onto that heritage development plan amendment because the original proposal was essentially purely voluntary. The newly elected council has a different approach and it has added a large number of properties. Obviously, this could have some impact upon the development within the City of Adelaide. Before I make a decision on that, I think it is important that I ensure that the heritage development plan amendment is consistent with the objectives of the 30-year plan. Clearly, if one is to have greater density—particularly within the central business district—it is important that the heritage development plan amendment does not unduly impede that process. But it is important also that we should add those places of genuine heritage within the city.

What normally happens when the development plan amendment in heritage matters comes in from local government is that I refer it to DPAC and the subcommittee of DPAC (the Local Heritage Advisory Committee—LHAC) to get advice on that. I have been seeking other advice. My understanding is that, as part of this process, an economic impact statement was also made in conjunction with the city council in relation to that. So all those matters will have to be considered and, as soon as I am in a position to make that decision, obviously, I will announce it. But, clearly, it is a process that could have a significant impact on the future development of the city. As I have said, it is also important that the essential heritage of the city be preserved. We need to get the balance right, and that is something to which I will be giving close consideration in the coming weeks.

FEMALE GENITAL MUTILATION

The Hon. S.G. WADE (14:41): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question relating to female genital mutilation.

Leave granted.

The Hon. S.G. WADE: It is estimated that 130 million women around the world are being subjected to female genital mutilation. The effects of this procedure often include kidney and bladder infections, birthing problems and infertility. In South Australia, the practice of female genital mutilation is a child protection matter under the Child Protection Act 1993 and a criminal offence under the Criminal Law Consolidation Act 1935.

On 23 September, *The Advertiser* published an article entitled 'Child genital mutilation seen as illegal torture'. The article refers to a UniSA report which found that a number of Families SA child abuse workers identified female genital mutilation as requiring sensitive responses from Families SA when dealing with these issues. The report states:

> While some staff see that (mutilation) as very wrong, we need to be very sensitive how we deal with that issue.

Professor Briggs is quoted as saying:

> This attitude is unacceptable. This is an offence under Australian law and they should throw the book at them—there is no shade of grey in it.'

The article concludes with a quote from a ministerial spokesperson who states that the views were those of individuals, not necessarily the department. In saying the view is not necessarily the view of the department, the government is being equivocal as to whether the department even sees the practice as being morally wrong, let alone legally prohibited. My questions to the minister are:

1. Will the government make an unequivocal statement that it will enforce the laws of this state against female genital mutilation?

2. What is the government doing to ensure that relevant cultural communities are aware that female genital mutilation is not legal in South Australia?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:43): I thank the member for his most important question. Indeed, female genital mutilation is an abhorrent practice that is quite complex in relation to the cultural and sometimes religious sensitivities around some of these practices.

Nevertheless, it is predominantly a health issue and also human rights issue, and these matters are dealt with by the Minister for Families and Communities and also the Minister for Health, who are largely responsible for the policy formulation in relation to this issue. It is a matter

in which I obviously have an interest and concern—as has any responsible human being. I am certainly willing to work with any agency or body to assist in eliminating these abhorrent practices.

FEMALE GENITAL MUTILATION

The Hon. S.G. WADE (14:44): Can the minister get advice as to what the Minister for Health and the Minister for Families and Communities (the ministers responsible for this area, as the minister indicated) are doing in relation to my questions?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:45): I am more than happy to bring back the details in relation to those questions.

IRON ORE, EYRE PENINSULA

The Hon. CARMEL ZOLLO (14:45): My question is to the Minister for Urban Development and Planning. Will the minister outline the decision to approve a bulk handling facility at Port Lincoln and the long-term outlook for iron ore mining on Eyre Peninsula?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:45): I thank the honourable member for her important question. Earlier this month I granted conditional approval to Centrex Metals to establish bulk-handling facilities at Port Lincoln, that is, adjacent to the current grain bulk handling facilities, using some of the facilities which are already in place.

This approval marks a further significant step in the emergence of a new mining industry on Eyre Peninsula. It is also an important step in the development of South Australia's mining industry and the state's re-emergence as a major supplier of iron ore to the world. The 10-year mining lease granted to Centrex Metals for its Wilgerup iron ore project on South Australia's Eyre Peninsula highlights the continued confidence of the state's mineral sector.

The Wilgerup project follows on the success of OneSteel's Project Magnet in the Middleback Ranges and will create both jobs and export income to support the South Australian economy into the next decade and beyond. I am advised that the Wilgerup mine, near Lock, will generate up to 150 jobs and inject $70 million a year into the regional economy.

The approval of a bulk-handling facility at Port Lincoln has been limited to 10 years, which sends a strong message to Centrex and other resource companies that Eyre Peninsula's long-term future depends on the development of a new port. Clearly, Eyre Peninsula will need a large and more significant port that will take the huge cape size vessel, a 200,000 tonne vessel, which needs deep water in excess of 20 metres.

There are significant iron ore deposits on Eyre Peninsula that ultimately need the volume to be taken out of the new port, and, arguably, the grain industry would benefit from having a larger port in deeper water. A new port closer to the mines and in deeper water really will improve the economics of the industry, and that is why Centrex has found a site at Sheep Hill just near Tumby Bay.

That is the long-term solution, but to kickstart the iron ore industry and to generate the cash flow to enable the further development of port infrastructure I have approved an iron ore loader at Port Lincoln with a number of restrictions. Throughput will be limited to about 1.6 million tonnes per annum and will be restricted to iron ore mined at the Centrex Metals Wilgerup exploration lease.

In all, there are 12 conditions, including environmental monitoring, to ensure that there is no visible dust and no leakage into the harbour, and there are also restrictions on the hours that the rail cars can operate through the port. This approval is based on a recommendation of the Independent Development Assessment Commission and is subject to stringent licensing requirements approved by the Environmental Protection Authority.

The Development Assessment Commission's review of the application included a high level of consultation with the community, the industry and state and local government agencies. DAC found the application is consistent with Port Lincoln's current planning policies, given that the Centrex development is located within an existing port and will be subject to strict compliance with the EPA's licensing requirements. I have accepted its independent expert advice.

The Centrex Metals development comprises changes to existing buildings, a new conveyor system, construction of a vehicle wash down and daily checks facility and a new ship loader. While

there has been some local opposition to the project, including concerns about the potential impact on the aquaculture industry, I am confident that all environmental considerations have been taken into account in the conditions imposed on the development.

As a former fisheries minister, I am very aware of the importance of the fishing and aquaculture industries to South Australia's economy and to the livelihood of Eyre Peninsula. I am thoroughly convinced that mining and the aquaculture industry can coexist in Port Lincoln through the safeguards imposed by the approval conditions.

WORKCOVER

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:48): I table a ministerial statement on the tabling of the WorkCover 2008-09 Annual Report and the 2008-09 report of the WorkCover Ombudsman made in the other place by the Minister for Industrial Relations.

STATE BUDGET

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:49): I table a ministerial statement on budget management and savings made in the other place by the Treasurer.

LAW AND ORDER

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:49): I table a ministerial statement on attack on crime made in the other place by the Premier.

QUESTION TIME

IRON ORE, EYRE PENINSULA

The Hon. C.V. SCHAEFER (14:50): I have a supplementary question. Why did the minister allow a 10 year framework, in opposition to the three year allowance of access to the port, as suggested by the fishing industry?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:50): A 10 year access instead of the—

The Hon. C.V. Schaefer: Instead of the three year allowance, which was suggested.

The Hon. P. HOLLOWAY: For the simple reason that, if there had been a three year access, the investment that would be required for a ship loader would not be recovered. It would not be a viable option. The expected life of the resource at Wilgerup is now about eight years, and that should be sufficient to ensure that the iron from that source is exported.

As I indicated in answer to a question from the Hon. Carmel Zollo, the fundamental constraints of the project will be the rail system, which is limited to 1.6 million tonnes a year for this project, and also the capacity of the port to handle larger volumes. That is why I indicated that future expansion in that area, for future iron ore development which we hope will take place, will require the development of a new port that will take larger vessels, which of course will reduce the cost of export and therefore help pay for the investment that will be required for a larger port. Clearly, for that to happen, it will need a much larger throughput.

As I said, to kickstart the industry, the current facilities at Port Lincoln will be able to cope with that relatively small volume of ore. When I say 'relatively small', I mean relative to the sort of export that comes out of other ports within this country, such as those in Western Australia and Queensland, which in many cases have some tens of millions of tonnes of capacity. So, 1.6 million tonnes a year is relatively small to ensure that that industry can be viable and generate the cash flow necessary for further development of other resources within the Eyre Peninsula region and the development of a port. That is why that decision has been made.

MARATHON RESOURCES

The Hon. M. PARNELL (14:52): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about Marathon Resources.

Leave granted.

The Hon. M. PARNELL: On Saturday, the minister announced that he had offered a brand-new exploration licence over the Arkaroola Wilderness Sanctuary to Marathon Resources, the company that had been suspended from drilling following the discovery of illegally dumped waste and other breaches of its licence. Included in the minister's news release was the following statement:

> There are some parts of the Arkaroola area that should never be open to mining.

However, last month, on 9 September, in answer to my question, the minister implied that, until his proposed changes to the Mining Act are passed, another mining company could just automatically step in and take over exploration activities if he did not issue a new licence to Marathon. The minister said:

> … if for some reason the licence is not renewed immediately, someone else could apply for a licence over that area. The preliminary advice I have is that the Warden's Court would almost certainly issue another licence over that area. There is no power within the act. One of the amendments that the government will be looking at will address that situation. Certainly, the preliminary advice I have is that, if a licence over a particular area is not renewed, anyone else could apply unless, of course, there is some other means of preventing it.

That answer ignores the fact that there is another means of preventing it under the existing act. The minister already has the power to exempt land from the operation of the Mining Act under section 8(1)(c). In fact, Warren Gorge, in the Flinders Ranges north of Quorn, is already an area reserved from the Mining Act. The official reason on the department's website is 'to prevent further mining in a scenic area'. My questions are:

1. Does the minister accept that he does have the power under the current Mining Act to protect parts of the Arkaroola Wilderness Sanctuary from mineral exploration?

2. Why does the scenic area of Warren Gorge deserve more protection from mining than the truly breathtaking and iconic areas around Arkaroola?

3. Which parts of the Arkaroola area does the minister think should 'never be open to mining', as stated in his news release on Saturday?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:55): The Hon. Mr Parnell put out a press release, totally inaccurate and full of gross dishonesty, and did not refer to the main point I made at the weekend, namely, that the government was developing an environmental management plan for the entire northern Flinders region. We need to understand where the Hon. Mr Parnell is coming from: for a start, he opposes uranium mining, so any excuse that is around he will use. As soon as the Greens have one area closed off, they immediately start campaigning on another, which is fair enough as that is how they work.

The government believes that a much preferable way to proceed is to examine the whole Flinders area and not just Arkaroola, to identify those areas that are of particular iconic value in relation to their geological, environmental or aesthetic significance. The government has been undertaking that exercise in a collaborative effort between the Department for Environment and Heritage and the Department of Primary Industries and Resources. They have been looking at the mineral potential for that region so that in future we can better manage it. As I have indicated in this place on previous occasions, there has been exploration in that region for a century. Uranium was taken out of that region back in 1910 for Madam Curie in her early experiments, and there has been on or off mining and exploration activity since that time.

In future, as has come out of the experience of the past few years, we need to identify those areas of not just Arkaroola but of the whole northern Flinders Ranges which have special value in relation to their geology, tourism value or environmental significance. That exercise has been under way for some months now, and I expect that the Minister for Environment and Heritage will be able to release that information in the fairly near future.

Through continuing the licence Marathon has but keeping on ground and activities under suspension, the government is able to control what happens in that area; in other words, it can restrict any ground disturbing activity at least until two things happen: first, the changes to the Mining Act to which the honourable member referred and which I had indicated in a previous answer; and, secondly, developing this environmental management plan and identifying those areas. The honourable member will have that part of his question answered when that information is released fairly soon. Obviously the government needs to talk to stakeholders involved, which goes beyond just Marathon, as there are a number of other mineral exploration licences over the

northern Flinders Ranges and other stakeholders are involved, and the government will discuss it with them before it releases that information for discussion hopefully in the relatively near future.

Given that Marathon's licence expired on Saturday, the government had to make a decision on how it would deal with the situation going forward. Through the extension of a licence but keeping activities suspended, the government has been able to keep control of the situation. Had we not done so—the honourable member read out my previous answer—it would have been possible for any other company to apply for a licence; and, had the government refused and gone to a challenge through the courts, they probably would have been successful.

The difference in relation to Warren Gorge, which the honourable member has raised, is that clearly it is one thing when a licence is not operative to use that part of the act, but I am sure that the courts would take quite a different view if upon renewal the government sought to act on the basis of that implication. I am sure the honourable member as a lawyer would understand that the interpretation would be significantly different had the government sought to set aside some area exempt from mining right at the time that a licence was up for renewal.

MARATHON RESOURCES

The Hon. M. PARNELL (15:00): I thank the minister for his answer. When the minister said (on Saturday) that some parts of Arkaroola should never be opened to mining, which parts did he have in mind?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:00): As I said, these have been identified and the report will be out for discussion. The honourable member should wait until he sees it. I have seen it.

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

The Hon. P. HOLLOWAY: The Liberals are always saying that we should consult. They do not understand that it is polite to first talk to the people who are affected. Should they read about it in the newspapers or should we talk to them first and explain it? That is what we will do. We will do it properly. We will consult in the proper way. We will talk to those people who might be affected by this and, obviously, seek their agreement, because there are parts of the Northern Flinders Ranges that are either not within the national park or not within Arkaroola, and there may well be parts that have been identified as of particular environmental significance.

There will be parts that will have a low level of significance and there will be parts that will have a high level of significance, but not quite as essential, if you like, or as significant as others. Clearly, some sort of gradation of that needs to take place, and that is being done by quite extensive surveying of the region, and that is best described through the maps.

What I can say is that the area around the Arkaroola Lodge itself, as I understand it, has been in some sort of geological reserve. They are all matters that will be out for discussion, but we would like to, at least, give the stakeholders concerned some notice first before we make that information public.

UNIVERSITY PROPERTIES

The Hon. C.V. SCHAEFER (15:02): I seek leave to make a brief explanation before asking the minister representing the Minister for Primary Industries a question on the sale of university properties.

Leave granted.

The Hon. C.V. SCHAEFER: I was informed yesterday, and I believe that an announcement was made on the ABC today, that the University of Adelaide has made a decision to sell the Martindale, Munduney and Moralana properties. These properties were all bequeathed to the Waite Institute, as it was then, by the Mortlock family and Mr J. Davies, respectively. They are under the care of an independent board of management and have traded at a consistent profit.

The company which manages these properties also manages the farm on Roseworthy Campus, and the plant, machinery and workforce have been used in both places in order to maintain viable economies of scale. Part of Martindale also houses a flock of sheep under licence to an international company for the specific purpose of producing serum for snake antivenene, which is exported worldwide. My questions are:

1. Was the government consulted prior to the decision to sell these properties?

2. Is it the belief of the government that Adelaide University has breached the intent of these legacies?

3. What reason was given for the sale?

4. When will the sale take place, and what will the proceeds be used for?

5. Will employees be offered redundancy packages?

6. Will the sale of Martindale make the operation of the Roseworthy farm unviable?

7. Has the government received any information with regard to finding another location for the antivenene flock or, indeed, any advice as to whether this operation will be moved from South Australia?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:04): In relation to that, I am not sure whether the appropriate minister for handling that would be the Minister for Agriculture or whether it would be the Minister for Further Education because, clearly, it is the university that owns these properties. Obviously, what they can do with it would be part of the charter under which those properties were bequeathed, but I was certainly not aware of any proposal.

In relation to Roseworthy, the honourable member would probably know that one of the areas earmarked for expansion, through the 30-year plan, is the area around the township of Roseworthy. I know that Adelaide University sees that as an opportunity for that particular campus to be greatly strengthened and expanded, so it would go beyond just the agricultural activities. With a larger number of people living in the area, the facilities at Roseworthy would be an ideal location for further education in that region, and I know the university has been looking at that. So, I do not think the honourable member need have any concerns about the future of that campus; indeed, with the 30-year plan provisions it should be enhanced.

In relation to the first part of the question, regarding Martindale Hall, I will probably refer that to the Minister for Employment, Training and Further Education to see whether he can get any further information from the university about that matter.

WOMEN'S HONOUR ROLL

The Hon. I.K. HUNTER (15:06): I direct my question to the Minister for the Status of Women. Will the minister provide an update on the South Australian Women's Honour Roll?

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) (15:06): I am very pleased to inform members that South Australia's inspirational women were especially honoured and recognised at a reception at Government House last Tuesday. I had the pleasure of joining His Excellency Kevin Scarce and his wife, who kindly hosted a very special reception to acknowledge 100 of our leading South Australian women and congratulate them on their tireless efforts and achievements. The Hon. Michelle Lensink was also present at the event, as were the Hon. John Dawkins and his mother—and I will come back to that in a moment.

The women honoured provide a glimpse into the energy, passion and commitment of many women in our community, who often do not see their outstanding efforts as anything out of the ordinary. In the second year of this initiative 100 names were added to the honour roll, and 10 outstanding women from within that 100 were highlighted for their extraordinary contribution in both paid and volunteer roles. Many of the nominees have provided years, often a lifetime, of service in their specific area of expertise or interest, providing a safer, more inclusive, and culturally rich community. They certainly make this a much better place for us to live.

The top 10 women awarded special acknowledgement included Aunty Josie Agius. Many of us know her. She has imparted her words of wisdom at opening ceremonies for a wide range of functions, forums and events, and has an endless supply of personal insight and advice to give on those various occasions. I have never seen her at a loss for a word of advice. She is an outstanding Kaurna elder and role model in the Aboriginal community, and through her work has assisted many young Aboriginal people develop their self-esteem and cultural pride.

There was also the Kupa Piti Kungka Tjuta, a senior Aboriginal women's council. These seven women established a campaign that successfully stopped the dumping of radioactive nuclear waste in the South Australian Outback. There was Carol Sutherland for her outstanding

leadership in tertiary education, support to homeless women at Catherine House, and services to UNIFEM; Diana Sautelle for her proactive work with Aboriginal communities and organisations and as a founder of the Adnyamathanha Women's Choir; and Khadija Gbla for her contribution to the community in lifting the awareness of issues of multiculturalism, mental health and support for young women.

Also acknowledged were Dr Lesley Shorne, for her outstanding long-term commitment to the provision of high quality services and teaching in women's health; Marjorie Bateson, for her outstanding service to the union movement for 18 years in her time working at Holden's at Elizabeth and in the community services sector; Eleanor Scholz, for her active role in the Wudinna community, through her work in establishing a TAFE SA campus and in her taking a leadership role in providing support and advocacy for a large number of projects in the area; Jan Stirling, for her contribution to women's basketball as a coach, player and mentor and for her contribution to professional development in the sports sector in the community; and Nora Phippen, for her outstanding contribution in raising a group of profoundly disabled children to adulthood.

Betty Fisher also received an honorary acknowledgement and was uniquely recognised as a member of the South Australian Women's Honour Role. In many ways, Betty initiated the concept of honouring South Australian women in her 2001 book, *The Women's Role of Honour for the 20th Century in South Australia.* The book, compiled with her characteristic determination and thoroughness, was, I was advised, written on her kitchen table.

Of course, one of the recipients of the honours award is Mrs Constance Dawkins, the Hon. John Dawkins' mother, who attended the reception. Mrs Dawkins was acknowledged for her very active participation in the Gawler community since 1943. It was delightful to be able to chat with her personally. When I tried to engage her in talking about her contribution and the sorts of things she had been involved in, she was very uncomfortable talking about herself and was much more comfortable talking about her husband's former work, which is so typical of many women. They find it very hard to bang their own drum, so to speak, and to put themselves forward and talk about themselves and acknowledge their achievements. That is, of course, one of the reasons we have this honour role and why it is so important that we honour, in a very public way, these quiet achievers.

The honour role is an ongoing initiative. Each year 100 women are added to the role and, from these 100 women, 10 are highlighted for their extraordinary contribution. The South Australian Women's Honour Role provides an ideal opportunity for women to be acknowledged by their local community and to profile the truly wonderful work that women do. All of the women being acknowledged can be found on the South Australian Women's Honour Roll website, and there is also a publication in which they are honoured.

IRON ORE, EYRE PENINSULA

The Hon. R.L. BROKENSHIRE (15:13): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a further question about the Port Lincoln iron ore export facility.

Leave granted.

The Hon. R.L. BROKENSHIRE: I refer to community debate this year in Port Lincoln that has put fishing and mining communities at loggerheads, with Centrex recently gaining approval from DAC to build bulk handling facilities at Port Lincoln to allow Centrex to export 1.5 million tonnes of ore from Wilgerup prospect, near Lock, on Eyre Peninsula.

In the estimates committees, in July, the minister stated that export through the Port Lincoln township might be temporary, and I note there is allegedly a 10-year sunset review of the Port Lincoln arrangement. The minister made reference to the approximately $400 million Flinders Port export facility. In July, the minister said in the estimates committees that he hoped the decision by the infrastructure minister was not too far away. Unless I am mistaken, I do not believe the Minister for Infrastructure has yet made a decision. Therefore, my questions are:

1. Did the government consider building a new deep sea port elsewhere in the vicinity of Port Lincoln?

2. Did the government consider the additional rail traffic and other traffic congestion issues involved in moving through the Port Lincoln area?

3. Did the government consider Port Lincoln's clean and green image when giving this approval?

4. Can we take it as read from this decision that the state has been set back 10 years in getting a desperately needed new deep sea port in the northern ports area?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:15): The honourable member, of course, was at the time a minister in a government that made the decision to sell the ports of South Australia. What I find rather strange is that, in reaction to my Centrex decision last week, Mrs Penfold, the member for Flinders, said that a government with vision would have built a port. What was she doing when the Olsen government was getting governments out of the business of building ports? I find it rather extraordinary. However, for better or worse, the government made the decision a decade or so ago that it would not be in the business of running ports. That was the decision made by a previous government a decade or so ago. That is the situation we have. I am not going to go back and revisit that decision. The reality is that the expertise—

Members interjecting:

The Hon. P. HOLLOWAY: I am just pointing out that I find it rather curious that a couple of members who were there and obviously supported the decision at the time should somehow or other be seen to have changed their mind about the wisdom of that decision. The fact is that a decision was made that Flinders Ports now operate the ports within this state.

Certainly the state government has a role in relation to facilitating port development. In relation to Port Bonython, I may have some answers about that matter. One of the issues is that it is necessary for approval for foreign investment and so on for those likely export companies that might seek to export through Port Bonython, and one of those is Western Plains Resources. The honourable member would be well aware of the recent press discussion and Defence's view in relation to the future of that project. Clearly, that is one of the factors that will delay any decision in relation to that matter. If one does not have approval for companies to export iron ore, who will invest the money to build a port if there is a question mark over the companies that might supply the iron ore?

That is clearly an issue in relation to alternative deep sea ports. However, this government does remain committed to supporting the development of a new port in the Port Bonython area which is, of course, deep enough to take cape size vessels and would operate effectively as a bulk export port for the northern area of the state.

In relation to Wilgerup, the Centrex Metals resource, it is much closer to the centre of Eyre Peninsula and is quite close to the existing rail line, which is near Lock and goes through Port Lincoln. The existing infrastructure is much more suited to using Port Lincoln as an export port rather than having to truck the material through Whyalla or thereabouts to go to Port Bonython. So, clearly, that is not a preferred solution.

However, as I indicated in my earlier answer, Centrex Metals has purchased a site at Sheep Hill. I understand there is 20-metre deep water within half a kilometre of the shore and is otherwise suitable as a potential deep sea port. To bring that about it will need to justify the expenditure and it will need a number of other projects to be advanced.

It is the government's view that, by enabling the Wilgerup project to proceed and establish the credentials of this region as a suitable provider of iron ore to the world through Port Lincoln, and by using existing infrastructure (which can be done at a much lower cost than the construction of a new port), that decision will ultimately enable the establishment of an iron ore industry on Eyre Peninsula. That development will proceed at some stage in the future.

Clearly, the volume of ore available from the Wilgerup project now would be unlikely to support the economic investment necessary if an entirely new port and rail infrastructure had to be built. I believe that will come. I believe that, in a decade, there will be a new port—probably several new ports—on Eyre Peninsula, and there will be a flourishing iron ore export industry on the peninsula which will complement the existing port and hopefully, by then, the facilities at Port Lincoln will no longer be required.

VISITORS

The PRESIDENT: I advise members of the presence in the gallery today of the Hon. Alex Fergusson, Presiding Officer of the Scottish parliament. On behalf of the parliament, I welcome him to South Australia and hope that he has a pleasant and good time.

QUESTION TIME

TOURISM STATISTICS

The Hon. T.J. STEPHENS (15:20): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Minister for Tourism, a question about recent ABS tourism statistics.

Leave granted.

The Hon. T.J. STEPHENS: I draw members' attention to the latest accommodation figures released by the ABS. These figures were not at all positive and were, in fact, quite worrying. I was somewhat surprised yesterday to read about the tourism minister's take on these very same figures.

Yesterday, the minister tried to spin some positives out of the numbers while ignoring the fact that South Australia had the equal lowest bed occupancy rate for hotels, motels and serviced apartments with 15 or more rooms in mainland Australia; the lowest site occupancy rate for caravan parks in mainland Australia; and the lowest bed occupancy rate for hostels in mainland Australia. My question is: will the minister acknowledge that we are obviously failing in the domestic and youth tourism markets; and, rather than being in denial, what marketing strategies will the minister implement to lift her game?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:21): I will refer the honourable member's question to the Minister for Tourism in another place and bring back a response.

SMALL BUSINESS MONTH

The Hon. B.V. FINNIGAN (15:21): I seek leave to make a brief explanation before asking the Minister for Small Business a question regarding Small Business Month.

Leave granted.

The Hon. B.V. FINNIGAN: As honourable members would be aware, October is Small Business Month. More than 60 events are being held across the state to mark this year's Small Business Month. I understand that one of the most anticipated events is the launch of the government's Small Business Statement. Will the minister provide an update on progress in formulating this important document?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:21): I thank the honourable member for his important and most timely question. I can inform the member that, today, I have launched the long-awaited Small Business Statement. This statement, prepared with considerable input from industry and members of the public, highlights the Rann government's commitment to creating Australia's most supportive environment for small business. With many of the government programs spread across several agencies, the Small Business Statement was an opportunity for a stocktake of all these various initiatives.

The statement now provides an up-to-date inventory across the various government agencies of the large number of programs and support services already provided to business operators. This exercise highlighted to me the need for us to provide easier access to these programs and services, and that is why the government has now embarked on what we call the Ask Just Once strategy. This strategy will eventually provide a single point of entry for busy small business operators to obtain the information and support they need through one website.

The Hon. T.J. Stephens interjecting:

The Hon. P. HOLLOWAY: Yes; it would be great. With more than 130,000 small businesses employing more than half the private sector workforce, it is important that the government continue to create a business environment in which small firms can reach their full

potential. This government recognises the essential role played by small businesses in providing a sustainable and prosperous economy and a vibrant community.

The Small Business Statement reinforces our aim to create the most supportive business environment in Australia by continuing to deliver on world-class infrastructure, encouraging innovative new thinking and technologies and providing the most up-to-date advice and skills development. This government will also continue to foster awareness of the opportunities provided by the digital economy, working closely with the Business Development Council, professional and industry bodies, as well as the general community, to advance the cause of small business.

The Small Business Statement also reinforces the government's commitment to maximise opportunities for small business in priority projects and improve the information flow between government and small business. The Small Business Statement follows extensive community consultation, including submissions from the public, as well as input from the Business Development Council and the government's special advisory body on small and family business issues. The document is drawn on the experience of small business operators through a number of case studies highlighted in the statement.

Since coming to office 7½ years ago, this government has slashed red tape, reduced payroll tax and launched a range of advisory marketing and skills development services.

Members interjecting:

The Hon. P. HOLLOWAY: Well, the only government in the past 15 years to effectively either jack up land tax or reduce thresholds has been the Liberal government. That stands as a record. This government has actually cut rates. The party of the honourable member stands as the only party in the past two decades to make those changes to land tax, which has resulted in people who have the same valued property effectively paying more. That is the reality.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: And we look forward to the Leader of the Opposition telling us how she might pay for some of the promises he has been making.

Members interjecting:

The PRESIDENT: Order! The opposition will suffer in silence.

The Hon. P. HOLLOWAY: It was such a good statement that it is worth repeating: since coming to office 7½ years ago, this government has slashed red tape, reduced payroll tax and launched a range of advisory marketing and skills development services. We have also implemented many of the recommendations of Thinker in Residence Dennis Jaffe, a world expert on family business. These included the appointment of a family business development manager and broadening the range of courses and support available through our networks of business enterprise centres and regional development boards.

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

The Hon. P. HOLLOWAY: Obviously, the Deputy Leader of the Opposition does not think much of family business; she does not understand. Perhaps if she understood its importance to the economy and the fact that up to 46 per cent of businesses fall into that category, she might understand that it is an extremely important initiative. However, we know that members opposite do not agree that we should have Thinkers in Residence and get information and new ideas from people in the rest of the world. As I mentioned—

Members interjecting:

The Hon. P. HOLLOWAY: Well, it's your time.

The PRESIDENT: Order! Members on the government benches will stop baiting the opposition.

The Hon. P. HOLLOWAY: As mentioned, October is Small Business Month and, while the release of the Small Business Statement marks the midpoint, there are still many activities remaining on the calendar. These include the Northern Regional Development Board's launch of the new IT centre in Port Augusta. In Seaford the Southern Success Business Enterprise Centre, combined with Southern Futures Inc., will present a small business dinner to highlight the work of three industry roundtables that have been working in the area.

In Gawler, the Northern Adelaide BEC will be launching its Women in Business forum under the heading 'Venture Beyond Everyday'; Family Business Australia will be running a workshop for members and other interested family businesses, focusing on exit strategies; and the Australian Institute of Management will again present its annual management conference, umanage, with a keynote speaker from the United States talking about the application of the Six Sigma process to small business.

A highlight of this year's Small Business Month will be the Small Business Forum, a meeting place for business and government leaders and small business owners and managers. This forum, on 30 October, is to be presented by the Department of Trade and Economic Development in conjunction with the Business Development Council and Business SA. Small Business Month recognises the importance this government places on small businesses and the contribution they make not only to the economy and productivity of the state but to the life and culture of communities throughout South Australia.

POLICE CONDUCT

The Hon. A. BRESSINGTON (15:28): I seek leave to make a brief explanation before asking the minister representing the Minister for Police a question about police conduct.

Leave granted.

The Hon. A. BRESSINGTON: Recently, a constituent contacted my office about what he considers to be a violation of his rights, involving unlawful conduct by a police officer. This constituent willingly admits to having committed the offence of jaywalking and has paid the fine incurred; however, he has expressed concerns in relation to the conduct of the police officer who issued the fine.

Being somewhat knowledgeable of his rights, the constituent refused to state his occupation when asked by the officer. He reports that, in response, the officer replied, 'Don't tell me how to do my job,' and he was again asked for his occupation. The constituent provided the officer with the address of his place of employment, but continued to protest that he did not have to disclose his occupation. What followed, he describes, was a humiliating outburst by the police officer in a public place and in front of multiple witnesses. Subsequently, he gave the officer the information, literally under duress.

My research shows that the constituent was, in fact, correct. Under section 74A(1) of the Summary Offences Act 1953 a police officer who has reasonable cause to suspect that a person has committed, is committing, or is about to commit an offence is empowered to require that the person state all or any of the personal details required.

This power would seem unlimited if it were not for the definition of personal details under section 74A(5) of the same act, which restricts the police officer to asking for the person's full name, date of birth, residential address and business address; occupation is not included. By demanding the constituent to give his occupation, the officer has seemingly exceeded his authority under the act and breached the constituent's implied right not to divulge his occupation.

A further concern is that the subsequent expiation notice issued had an entry field for occupation, which meant that the police officer was effectively required to ask the constituent's occupation in order to complete and issue the fine. The fine also included an employer field; requiring either these details is, to my reading, unlawful.

It is my understanding that the police power to require information has been deliberately restricted to non-identifying details in order to avoid any influence a person's position or employer may have on an officer's discretion to proceed with formally punishing an offence or whether or not to issue a fine. My questions are:

1. Will the minister advise whether or not an officer who requires a person to divulge his or her occupation or employer details is exceeding their authority to require personal details under section 74A(1) of the Summary Offences Act 1953?

2. Does the minister agree that requiring a person to divulge such information is violating a person's implied right not to disclose his or her occupation or employer?

3. Does the minister share my reservations about police routinely asking a person's occupation and the potential impact this may have on the application of police discretion?

4. Will the minister explain why expiation notices are not congruent with the legislation, and will he give an undertaking to have expiation notices amended to remove occupation and employer fields?

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 questions. I will refer them to the Minister for Police in another place and bring back a reply.

ANSWERS TO QUESTIONS

WATER BILLING

In reply to the **Hon. J.A. DARLEY** (10 September 2008).

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

1. No money was collected illegally by SA Water.

2. Cheques for all customers entitled to receive an ex gratia payment were issued on 19 September 2008.

3. As there were no overpaid accounts, no interest was improperly accrued by SA Water.

4. See above answer to question 3.

CRIMINAL LAW AND MENTAL HEALTH

In reply to the **Hon. R.D. LAWSON** (25 March 2009).

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business): The Attorney-General has received this advice:

1. The Attorney-General did seek legal advice on the issues raised by Ms Nelson in her letter dated 24 May, 2004.

2. This advice was considered within the context of the subsequent reviews of mental health legislation in South Australia. No action about amending the powers of the Parole Board was taken at this time.

3. Ms Nelson wrote to the Minister for Correctional Services on 30 November 2006 highlighting similar concerns with Section 269 of the of the Criminal Law Consolidation Act 1935. The Attorney-General sought further legal advice on this matter following this letter.

4. The government is currently reforming mental health and criminal justice. This requires legislative changes, new patient-focussed models of care and agency partnerships. Of particular note is the Mental Health Act 2009, which the Governor assented to on 11 June, 2009. The Mental Health Act 2009 will provide a new legislative basis for services to people with serious mental illness who are either unwilling or unable to consent to their own treatment. This updated legislation is part of the government's broader reform agenda in the area of mental health that also involves investing millions of dollars into rebuilding community and hospital-based services.

REGIONAL DEVELOPMENT AUSTRALIA

In reply to the **Hon. J.S.L. DAWKINS** (4 June 2009).

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

In negotiating a Memorandum of Understanding governing the establishment of Regional Development Australia (RDA) over the first half of 2009, the Parties, being the Commonwealth, State and Local governments, agreed that it was their intention to maintain existing levels of funding for the new RDAs, subject to appropriation.

On 29 June 2009, the Commonwealth Parliamentary Secretary for Infrastructure, Transport, Regional Development and Local Government, the State Minister for Regional

Development, and the President, Local Government Association of SA, signed a Memorandum of Understanding to this effect.

In the 2009-10 budget handed down on 12 May 2009, the Commonwealth Government reduced its budget for the national RDA network to all States and Territories.

The Commonwealth Government previously allocated $1.448 million for its Area Consultative Committee network in South Australia. Of this, $1.132 million was allocated for regional South Australia.

The Commonwealth will now allocate $1.281 million for RDA in South Australia, with $1.200 million to be allocated for RDA in regions.

The Commonwealth budget allocation for RDA in South Australia means more Commonwealth Government funds for regional communities than previously provided, at a time when the budget for the national RDA network has been reduced.

ELECTORAL (MISCELLANEOUS) AMENDMENT BILL

Third reading.

The PRESIDENT: I certify that this fair print is in accordance with the bill as agreed to in committee and reported with amendments.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:34): I move:

That the bill be recommitted to a committee of the whole council to insert clauses Nos 5 and 23.

Bill recommitted.

New clause 5.

The Hon. P. HOLLOWAY: I move:

After clause 4 insert:

5—Amendment of section 26—Inspection and purchase of rolls

(1) Section 26(1)—after 'Copies' insert:

(whether in printed or electronic form)

(2) Section 26(1)(c)—delete paragraph (c)

(3) Section 26(2)—delete subsection (2) and substitute:

(2) The Electoral Commissioner must, on request—

(a) provide a member of the House of Assembly with an up-to-date copy of the electoral roll for the member's district;

(b) provide a member of the Legislative Council with an up-to-date copy of the electoral roll for the Legislative Council district;

(c) provide the registered officer of a registered political party with an up-to-date copy of any electoral roll for any district;

(d) provide a person who is a nominated candidate in an election with an up-to-date copy of the electoral roll for—

(i) in the case of a person who is a candidate in an election for a House of Assembly district—that district; or

(ii) in the case of a person who is a candidate in a Legislative Council election—the Legislative Council district.

(3) If, in accordance with an electoral redistribution under the *Constitution Act 1934*, the area of a House of Assembly district (the *relevant district*) will, from the day on which a general election of members of the House of Assembly is next held, be altered to include any part of the area of another House of Assembly district, the Electoral Commissioner must, on request, provide an up-to-date copy of the electoral roll for that other House of Assembly district to—

(a) the current House of Assembly member for the relevant district;

(b) any person who is a nominated candidate for an election in the relevant district.

(4) The following provisions apply in connection with the operation of subsections (2) and (3):

(a) a request under subsection (2) may be made on the basis that a copy of the relevant roll (or rolls) will be provided on a monthly basis (and the Electoral Commissioner is not required to provide a roll to a particular person (or registered political party) more frequently than once in each month);

(b) a copy of a roll may be provided in electronic form (as determined by the Electoral Commissioner);

(c) a copy of a roll must be provided without the requirement to pay a fee.

(5) If a copy of the roll is provided to a person under this section, a person who uses that copy of the roll, or information contained in that copy of the roll, for a purpose other than—

(a) the carrying out of functions of a member of the Parliament of the State or the Commonwealth or a council constituted under the *Local Government Act 1999*; or

(b) the distribution of matter calculated to affect the result of a State, Commonwealth or local government election or purposes related to the holding of such elections,

is guilty of an offence.

Maximum penalty: $10,000.

Honourable members will recall that the committee agreed to move on from clause 5. Some issues were raised about particular matters, and I indicated that, rather than bog down the bill at that time, we would revisit those. Section 26 of the act requires the commissioner to make copies of the latest prints of the electoral rolls available for public inspection and purchase. As introduced into the council, clause 5 of the bill amended section 26 to allow electronic versions of the roll to be used by the commissioner for inspection purposes, to ban the sale of the rolls, to require the commissioner to provide up-to-date copies of the rolls to members of parliament, registered political parties and nominated candidates, and to restrict the use of information provided to members of parliament, parties and candidates to state, federal or local government purposes.

Several members moved amendments to clause 5, as did the government, and ultimately it was voted down. This amendment reinstates clause 5 as originally proposed, but with two changes. First, the amended clause picks up the government's minor technical amendment as proposed to subsection (4). As members would recall, I moved an amendment to subsection (4) on behalf of the government to correct a minor drafting omission.

Secondly, the offence provision in subsection (5) has been amended to address concerns raised by the Hon. Robert Lawson and others about the original offence provision. The original offence provision prohibited the use of roll information provided to an MP, registered party or nominated candidate under proposed section 26(2) for a purpose other than a state, federal or local government purpose. In this version of clause 5, proposed section 26(5) provides:

(5) If a copy of the roll is provided to a person under this section, a person who uses that copy of the roll, or information contained in that copy of the roll, for a purpose other than—

(a) the carrying out of functions of a member of the parliament of the state or the commonwealth, or a council constituted under the Local Government Act 1999; or

(b) the distribution of matter calculated to affect the result of the state, commonwealth or local government election or purposes related to the holding of such elections,

is guilty of an offence.

'Functions' for the purpose of subsection (5)(a) is not defined. It should be given its usually accepted meaning, being 'a proper or necessary role, activity or purpose'. The government submits that this places limits on the term in the context of subsection (5)(a).

As to subsection (5)(b), the distribution of matter calculated to affect the result of an election or any purpose related to the holding of an election, this is intentionally broad. This government intends that this form of words will cover the distribution of material by candidates in an election and fundraising for the purposes of an election. Thus, I believe that this would address the concerns raised as to whether the original form of the bill would give proper exemption to the work of members of parliament.

The Hon. R.D. LAWSON: I am glad the government has adopted the suggestions made. The bill as originally proposed was, in the view of the council, unsatisfactorily restrictive and the formula now embodied in subsection (5) is a better one, even though it remains reasonably vague. The language 'carrying out the functions of a member of parliament' is obviously quite wide in its import but nowhere near as restrictive as that originally proposed, so we will certainly support the amendment.

New clause inserted.

New clause 23.

The Hon. P. HOLLOWAY: I move:

After clause 22 insert:

23—Substitution of section 66

Section 66—Delete the section and substitute:

66—Preparation of certain electoral material

(1) The Electoral Commissioner must have the following electoral material prepared for use in polling booths on polling day:

(a) posters formed from how-to-vote cards submitted by the candidates in the election; and

(b) in relation to a Legislative Council election—posters or booklets, or posters and booklets containing the voting tickets registered for the purposes of the election.

(2) Material submitted for inclusion under subsection (1)—

(a) must list candidates in the same order as their names will appear on the relevant ballot paper; and

(b) must comply with any other requirement prescribed by the regulations; and

(c) must be submitted in a quantity determined by the Electoral Commissioner; and

(d) in the case of how-to-vote cards, must be received by the Electoral Commissioner not later than 4 days after the day for nomination; and

(e) if 2 or more candidates form a group for the purposes of a Legislative Council election—must be jointly submitted by or on behalf of all candidates in the group; and

(f) must not identify a candidate—

(i) by reference to the registered name of a registered political party or a composite name consisting of the registered names of 2 registered political parties; or

(ii) by the use of a word or set of words that could not be, or may not be able to be, registered as the name, or as part of the name, of a political party under Part 6 because of the operation of section 42(2)(e) or (3)(b),

unless the candidate provides the Electoral Commissioner with a declaration (in the form determined by the Electoral Commissioner) that is signed by a person authorised by the relevant parliamentary party or registered political party (as the case may require) and states that—

(iii) the candidate is endorsed by the party; or

(iv) the party has consented to the use of the relevant name or names or word or words; and

(g) in the case of how-to-vote cards—must, in relation to how-to-vote cards submitted by or on behalf of the same candidate or group of candidates, be in identical form.

(3) The form of a poster or booklet prepared under this section will, subject to this section, be as determined by the Electoral Commissioner.

(4) The order in which the electoral material referred to in subsection (1) is arranged will correspond to the order in which the names of candidates will appear on the relevant ballot paper.

(5) The presiding officer at each polling booth must—

(a) ensure that, in relation to a House of Assembly election, posters prepared under subsection (1)(a) are displayed in each voting compartment; and

(b) ensure that all other posters and booklets prepared under subsection (1) are displayed or made available (as the case may be) in a prominent position in the polling booth and in accordance with any direction issued by the Electoral Commissioner.

This proposed new clause relates to section 66 of the Electoral Act, which sets out the electoral material the commissioner must display at polling booths. Relevantly section 66(1) requires the commissioner to display: (a) posters formed from the how-to-vote cards submitted by candidates; and (b) posters containing the voting tickets registered for the Legislative Council election. Section 66(6) provides that the presiding officer at each polling booth must cause: (a) the how-to-vote card posters to be displayed in each voting compartment; and (b) the voting ticket posters to be displayed in a prominent position in the polling booth.

As introduced in the council, clause 23 repealed and replaced section 66 with a provision incorporating a number of changes, including a provision that the Legislative Council voting tickets could be displayed in poster or booklet form, and that the posters and booklets formed from the voting tickets and how-to-vote cards could be displayed or made available in a prominent position in the polling booth (rather than, in the case of the posters formed from the how-to-vote cards, in each voting compartment).

When the committee last considered this clause a number of honourable members raised a concern about the display of the posters formed from how-to-vote cards, in particular whether the posters ought to be displayed in each voting compartment (as is the case now), or in a prominent position in the polling booth (as would have been the case under new section 66).

The posters of concern are those formed from the House of Assembly how-to-vote cards. The Legislative Council how-to-vote cards simply advise an elector to vote '1' above the line. This amendment inserts a new clause 23 into the bill. New clause 23 inserts new section 66 into the act that is in the same terms as that previously proposed, except that new subsection (5) provides that, while the posters or booklets formed from the Legislative Council voting tickets and how-to-vote cards may be displayed or made available in a prominent position in the polling booth, the posters formed from the House of Assembly how-to-vote cards must be displayed in each voting compartment.

The Hon. R.L. BROKENSHIRE: I have a question of clarification for the minister, because he is right: a number of us did raise the issue of ensuring that what had already happened in past state elections was that when people walked through the gate into the polling booth area they were given a how-to-vote card by a party or an Independent, and there was always a copy of that which the officer responsible for the management of that booth had placed in each cubicle. That was what I understood that the Legislative Council supported and voted for.

My question for the minister is: is the actual how-to-vote card of the parties and Independents going to be displayed in its entirety in the cubicle? Section 66(1)(a) refers to 'posters formed'—the word 'formed' worries me—'from how-to-vote cards submitted by the candidates in the election'. Whilst I acknowledge and accept that it is more appropriate for voting below the line, where there is a lot of detail and someone wants to go to a central point for that, I accept the government's point of view there; but where it has the party and the order of recommendation for that party on the how-to-vote card, it also has a '1' for the Legislative Council. I had understood that that would be displayed in its entirety in the polling booth, the actual cubicle, and it was only if someone then wanted to work through voting below the line that they had a central point to go to for that information.

To summarise, I am asking the minister to confirm that there would not be any cutting and pasting of those how-to-vote cards so that, in fact, it did not make a recommendation on how a person could vote for that party or Independent if they wanted to go above the line with a '1'.

The Hon. P. HOLLOWAY: My understanding is that what will be in the polling compartment will be the House of Assembly voting cards as registered. From memory, they are a different how-to-vote card from that normally handed to individuals coming in, which would have both houses on it. So, what is handed out by parties outside would be different from that which would be put up in the booth. It has to be the registered how-to-vote card and, from memory, they are of a standard size. Otherwise, if one did not have that then one could publish, presumably, larger how-to-vote cards and you would have no control over the size. I think they are all of a standard size.

It seems that they are published by the Electoral Commission, so that is what is put up. It is not the how-to-vote cards as the parties themselves would distribute to voters going into the polling booth, which would have both the House of Assembly and the Legislative Council cards (which may be on the top, the back, the bottom, or whatever); these would be just the special House of Assembly cards. The Legislative Council cards would be displayed either in a prominent position in the polling booth or in the new format.

The Hon. R.L. BROKENSHIRE: Can the minister refresh us on what was the situation prior to the last election? Whilst I hear everything the minister just said, my recollection is that in previous situations a party's how-to-vote card in the booth actually showed how to vote for the House of Assembly and above the line for that party. Is that not right, or am I mistaken?

The Hon. P. HOLLOWAY: My advice is that previously there were how-to-vote cards, but they did not have all the numbers; they just had 'vote 1 in the box'. What is being proposed now is that, because that information does not really contribute anything, it is not like the how-to-vote card below the line for the Legislative Council or the House of Assembly, where one might be interested in the order of preferences that are recommended by the parties in their how-to-vote cards. For above the line voting which is done now it is just '1' for the relevant box of the party. The view is that that does not really add any information.

If I recall the debate properly, I think the real fear is that we are now basically running out of room. I think the commissioner's fear is that, with this requirement, as we get more and more candidates, there simply will not be room in the polling compartment to have every single relevant House of Assembly how-to-vote card, as well as all the Legislative Council cards. This is a practical way of getting around that problem.

The Hon. R.D. LAWSON: I indicate that the opposition will support this amendment. However, it seems to me that there was a misunderstanding on the part of the Hon. Mr Brokenshire in posing his questions. Currently, how-to-vote information for both the Legislative Council and the House of Assembly is displayed in each booth. Under this new arrangement, only the House of Assembly how-to-vote information will be in the booth; the Legislative Council how-to-vote information will not be displayed in the booth but will be displayed elsewhere in the polling station.

That is a significant change. We accept it on the basis of the Electoral Commissioner's statement that, with the increasing size of the Legislative Council voting paper, there is simply insufficient room in each compartment to publish all the information. So there is a change, as I understand it, for the reason I have given.

New clause inserted.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:50): I move:

That this bill be now read a third time.

The Hon. R.D. LAWSON (15:50): The position of my party on the electoral bill as it was initially introduced by the government was that we did not support it. It contained a number of features which we believed to be partisan and to be designed to assist the government party and those who hold incumbency. It was also designed, as we saw it, to restrict freedom of expression in electoral matters, and it had other features that were unsatisfactory.

I might just list all of those unsatisfactory features in the original bill. First, there was a ban on electoral advertising on public roads, principally a ban on corflutes, a ban that was to cease after the 2014 election. The provisions relating to itinerant electors gave such electors, in effect, a right to enrol in a self-selected electorate. Access to the electoral roll by members of parliament was limited and candidates had no right to access. The provisions about the use to which information on the roll could be put were vague. There was the creation of a new offence restricting political advertising without the consent of a candidate, and there was also the provision about removing 'how to vote' information from voting compartments.

All those unsatisfactory elements have been removed—ultimately, with the assent of the government, albeit grudging assent in certain cases—and the bill has been greatly improved by the removal of those unsatisfactory provisions and also by amendments that have clarified some of the provisions. It is for those reasons that the opposition will now not be voting against but indeed supporting the third reading of this bill.

Bill read a third time and passed.

LIQUOR LICENSING (PRODUCERS, RESPONSIBLE SERVICE AND OTHER MATTERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 9 September 2009. Page 3120.)

The Hon. T.J. STEPHENS (15:54): I advise that the opposition supports this bill. We have consulted with industry stakeholders and listened to a number of arguments for and against the bill. We have certainly received quite a lot of feedback. At the end of the day, the Australian Hotels Association and industry stakeholders welcome the proposed amendments, so we will support them because, as Liberals, we listen to small business.

On the positive side of things, the improvements to a producer's licence is a good result for producers and consumers, and we welcome these changes. However, I place on the record some of my own concerns. This bill is designed to make Labor sound tough. It is part of the usual Labor spin about being tough on crime and tough on drugs. The trouble with this bill is that, in its rush to get a bill into parliament before the election, Labor has botched it.

Let me explain my concerns. Section 24 of the bill amends section 108 of the Liquor Licensing Act. It used to be the case that, if a licensee served an intoxicated person, the licensee was guilty of one offence. The bill creates a second offence for publicans. Under the proposal, licensees will also be guilty of an offence if they serve someone whose speech, coordination or behaviour is noticeably impaired by alcohol.

Let us examine the expression 'noticeably impaired'. The proposed bill does not say 'significantly impaired'; it does not say 'grossly impaired'—it says 'noticeably impaired'. In my experience, it is simplistic to describe someone as either drunk or not drunk. Intoxication is a state that occurs along a continuum and the high-end symptoms could include keeling over, vomiting, shouting, fighting or planning to elect Kevin Foley as the next leader of the parliamentary Labor Party!

At the low end of the intoxication continuum you may start to become a little more gregarious, perhaps more talkative. These signs are noticeable. However, if you are at the low end of the intoxication continuum you are generally not a danger to yourself, the licensed premises or society as a whole. There is no reason to turn off the tap when a customer is noticeably at the low end of the continuum. Honest, hard-working publicans and club licensees should not be found guilty of an offence simply because a person has become more gregarious.

This bill is the wowsers at work; it is the nanny state gone too far. By all means stop people from bingeing and becoming falling-down stupid drunk. There is nothing wrong with people having a quiet drink at the end of a long day or a long week, seeking to visibly enjoy the company of good friends, to intimately share stories and tell tall tales—all of these signs may be noticeable but they should not be criminal.

Will every footy player singing their club song be noticeably impaired? In my view, the minister clearly has not thought this through. If you want to focus on people who are very drunk then say 'very drunk' or 'significantly intoxicated' or something that clearly indicates that the legislation focuses on the high end of the continuum and not the low end.

We have heard that the regulators need the definition of 'intoxication' clarified because they have had difficulty in proving that a person was drunk. With the greatest of respect, what a load of rubbish! I realise that this must come as a great shock to the minister but there is a fair amount of drinking going on in South Australia and a percentage of these drinkers are getting drunk. A smaller percentage, on any given night of the year, get very drunk. There is no shortage of intoxicated people in South Australia.

The fact that the Office of the Liquor and Gambling Commissioner has not been able to find one of them since the Rann Labor government was elected has nothing to do with the inadequacy of the legislation but says volumes about the priorities of the minister and her department. If the Office of the Liquor and Gambling Commissioner wanted to prosecute a drunken person, it could find a very intoxicated person easily enough and it does not need a change in the legislation to go down that path. If it is arguing that it has problems proving intoxication in borderline cases, then it is barking up the wrong tree. Remember, it is not the drunk who is guilty of an offence, it is the licensee.

In both my official and unofficial capacities I have had a lot of dealings with hotel proprietors and club licensees. In my dealings it is clear to me that most licensees are busting a gut to comply with all the laws and regulations, codes of practice, directions from the commissioner and other red tape that gets imposed on them on a regular basis. The majority are doing the right thing. They have systems and procedures in place to prevent people from getting too drunk. They train their staff and they obey the law.

If a person is borderline intoxicated then the government should not be prosecuting licensees. Education for licensees—yes; training for venue staff—yes; a warning at the very most. However, if there are questions involving on which side of the drunkenness line a customer falls, then do not prosecute the licensee. That is why it is important to get the legislation right. The law should be clear. A licensee should be able to easily understand where the line is between intoxicated and okay to serve.

Personally, I believe that the minister's bill makes things worse. It pretty much declares that an offence is committed if anybody is visibly enjoying themselves in a pub or club. Under this bill just about every licensee will be committing an offence on every trading day. What that means is that licensees will have to rely on the goodwill and common sense of police officers and the Office of the Liquor and Gambling Commissioner inspectors not to prosecute them. How can liquor licensees be expected to run their business when, at any time, some petty official can decide to declare their behaviour to be criminal? Surely this is not the right way to regulate an industry. The minister says that similar clauses operate in other states, but that is simply not good enough. We need laws that take into account the practical realities of running a business in the liquor industry. We do not need laws that are dreamt up by the nanny state crowd who oppose people having any fun at all.

I understand that, after consulting with industry, the minister has agreed to amend her own bill. It is a pity that she did not consult up-front and get her bill right in the first place. On behalf of all liquor licensees, I only hope that the new defence she has created to counteract the possible implications of a new offence is broad enough to avoid innocent publicans and licensees from committing unwarranted criminal offences. So, for the sake of thousands of South Australian small businesses, I hope the minister has this right. South Australian licensees should not have to deal with badly thought out legislation just because the minister is desperate to get an article in tomorrow's *Advertiser*.

I move to my next concern: section 22. Section 22 of the bill amends section 104 of the Liquor Licensing Act. It proposes that, if at the end of having a meal at licensed premises you have not finished your bottle of wine, you have the legal right to take the remainder of the wine with you. This right applies despite any other provision in the Liquor Licensing Act. This looks like another clause that has been proposed without being properly thought through. What happens if the licensee has removed the patron for intoxication? What happens if they have been removed for bad behaviour, fighting, abusing staff or criminal damage? No matter how bad the behaviour of the customer, will they be able to take their booze with them? Will the problem be moved on to the streets and the surrounding precinct? I can see it now: Adelaide streets full of drunks, swigging from their bottle, because minister Gago has given them the legal right to keep drinking on the street.

What happens if the venue is in the middle of a dry zone? Dry areas are established under the Liquor Licensing Act, but the minister's bill may give a drunken customer the legal right to take away their booze, despite any other provision of the Liquor Licensing Act. So, does this new right override the dry zone laws?

Under this bill, if I want to drink in a dry zone, it looks as though all I have to do is buy a bottle of booze with a meal, tell the owner that I do not want any more food and walk out onto the street with a full bottle. This clause appears to be poorly thought through, unless the minister can explain things more clearly.

As a Liberal, I am guided by some fundamental philosophies, but now is not the time to set them out. However, this bill tramples on a few basic beliefs. Businesses need clear laws that are easy to follow. This bill fails the test. On the face of it, every liquor licensee will be committing an offence on almost every trading day. Adults should be free to make their own decisions about how they live their lives. This bill sends the message that this government opposes social drinking, and minister Gago is now the captain of the anti-fun police.

I oppose the philosophy behind this bill. I object to the poorly thought through manner in which the minister proposes to carry out her nanny state philosophy. I object to the possible impact this will have on thousands of South Australian small business people trying to make sense of their increasingly complicated regulatory scheme. I do not think behaviour should be criminal just because it is noticeable, and I think it is dumb to give drunks the right to take their unfinished booze on to the streets or into a dry zone. Having put that on the record, the opposition will be supporting the legislation.

The Hon. D.G.E. HOOD (16:03): I indicate that Family First is broadly supportive of this bill, which will operate to better regulate the supply and sale of liquor by holders of producer licences. Family First particularly welcomes the more detailed guidelines that the bill provides for the responsible service of alcohol and, in particular, the amendments recently tabled by the minister, which I think add clarity. I had some initial concerns about them, but I do think that the amendments reduce any potential for misunderstanding.

A few weeks ago I was privileged to visit the Elura Drug and Alcohol Rehabilitation Clinic in North Adelaide, which is a rehabilitation service administered by DASSA. I assure members that it was a fact-finding mission and nothing else.

The Hon. G.E. Gago interjecting:

The Hon. D.G.E. HOOD: Yes; it's clear, isn't it? You would expect nothing less. Elura is a facility where drink drivers are obliged to attend what I understand are called section 47J assessments if a court prescribes a driver's concentration of alcohol on more than one occasion within a three-year period. The service decides whether or not a person is what is deemed to be a habitual drinker. If it makes such a finding, it advises the Magistrates Court and the person is subsequently disqualified from driving until further notice.

I want to put on record my appreciation for the at least hour-long discussion I had with Dr Keith Evans, with whom I have not always seen eye to eye. I certainly appreciate the time he took to present the centre to me, the discussion we had regarding drug and alcohol rehabilitation service operations in the state and, indeed, the insight he was able to give me into DASSA's program. I came away with the impression that he and the counsellors at the service are motivated and sincere people struggling in a system that could operate much more effectively if they were given the legislative framework to do so, particularly with respect to police drug diversion initiatives.

The DASSA office is also one of many that administers the police drug diversion initiative. Frankly, I am astounded at how the system has been set up. In particular, section 40(1) of the Controlled Substances Act works to effectively decriminalise simple possession of small quantities of illicit drugs. Upon being apprehended by police, for an offender found in possession of small quantities of drugs, apart from cannabis, the regime found in division 6 of the Controlled Substances Act operates to provide that, should the offender attend a meeting at the DASSA counselling office, such as Elura that I visited recently, and not be terminated from that program, then no prosecution can proceed against them. I have been advised anecdotally on more than one occasion that, in many cases, when offenders do not attend the counselling session there are rarely any consequences at all.

The provision means that there is an inconsistency in dealing with simple cannabis possession offences, which are dealt with in section 45A of the act by way of $150 or $300 fines if the person is found in possession (pursuant to schedule 5 of the Controlled Substances Regulations 2000), compared with the possession of small quantities of so-called harder drugs for which there is no financial penalty. I find this quite amazing.

Family First's position is that possession of any illicit drug, which is the subject of a division 6 counselling session, such as you would receive at the Elura clinic, excluding, perhaps, the possession of trace amounts of a drug, should also be subject to a fine similar to the fine imposed for the possession of cannabis. In this way, people found in possession of a drug face a real penalty, and there is no argument that the possession of small quantities of drugs is legal or has no penalty associated with it, as is currently the case.

I also believe that, in cases where offenders are charged with being drunk and disorderly (turning back to the contents of this proposed bill), they should be required to attend this DASSA counselling. Dr Evans indicated to me that DASSA would be 'willing' and 'keen' (to use his words) to provide more counselling in these sorts of circumstances for those who may be alcoholics.

The counselling sessions described in division 6 of the Controlled Substances Act are the first port of call for most people who have started experimenting with drugs, and it is the first time that they have contact with the so-called system. It is important that we catch early offenders and give them all possible assistance before their drug or alcohol abuse becomes worse. In any event, Family First is exploring a private member's bill at a future stage to address this issue and provide for mandatory counselling for people who are arrested or charged with drunk and disorderly offending or other illicit drug offences.

Research revealed this week from Victoria's Deakin University and the National Stroke Research Institute indicates that Australians are among the heaviest drinkers in the world. We drink more than Americans, Canadians, Swedes and Norwegians. As a consequence, it is no wonder that we are spending billions of dollars a year mopping up after our excessive consumption of alcohol, something in the order of $16 billion per year. Approximately 3,000 Australians die every year due, directly or indirectly, to alcohol consumption.

As Family First Senator Steve Fielding has pointed out on many occasions, we have a culture of binge drinking in this country, with Australians spending some $672 million in August alone at liquor outlets across the country. This is an increase of something like 20 per cent over the same month last year. The report found that 98,000 cases of alcohol-related disease could be prevented by cutting drinking habits by a third. The Victorian health-backed study found that reducing our average intake of 773 standard drinks per year per adult to Norway's figure of 505 drinks a year would save many lives and approximately $1.2 billion per year in health expenditure.

For these reasons, Family First supports the provisions in this bill that expand section 108, which relate to the sale and supply of liquor to intoxicated persons. The bill also makes it an offence to serve liquor to a person in circumstances in which the person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor. In the same circumstances, patrons can be ejected and can now also be refused entry.

As the minister has noted, the current defences will still apply. It is a defence for bar staff if the defendant believed on reasonable grounds that the person to whom liquor was supplied was not intoxicated and for licensees and responsible persons if the defendant exercised proper care to prevent the sale or supply of liquor in contravention of the provision.

There are still subjective indications, and it will no doubt be tremendously difficult to enforce. Indeed, I think the Hon. Mr Stephens outlined some of the concerns, which I think will be practical concerns, in the implementation of these new provisions. There was a stage in my life when I worked as a bartender for a number of years as I paid my way through university. I can assure you that, when a bar is full of people, the music is loud and there is lots of activity, it can be very difficult for a bartender to judge exactly how drunk some patrons are.

One must remember that being drunk is a sliding scale, from being slightly over the limit to being very drunk indeed; exactly where the cut-off point is becomes difficult to judge and no doubt will be applied differently by different bar staff. However, the extra objectivity in the new rules probably provides some useful guidance, and I certainly think that the amendments also assist. The extra clarity will be welcomed by the industry.

Perhaps the bulk of the bill is taken up with more sensibly dealing with the way in which the producer's licence operates, after, as I understand it, fairly detailed consultation with the industry. For example, currently, the Liquor Licensing Act 1997 allows the holder of a producer's licence to sell liquor that is their own product and to sell or supply liquor for sampling.

The bill allows holders of a producer's licence also to provide liquor other than their own product as samples and comparative tastings and to be offered to consumers in a designated dining area. Of course, this really has to do with the situation of many wine cellars now offering restaurants and cafes, allowing them to offer additional wines—that is, other producers' wines—without having to apply for a second licence, thus reducing administrative costs, and we certainly support that. There are also new limits on the amount of liquor that can be provided as samples, and this is welcome, too.

Family First realises that the wine and grape industry is currently struggling to some degree. There was a report this week that export markets for wine reduced from some $3 billion in 2006-07 to $2.35 billion in the past 12 months. This is a substantial decline. I think that anything we can do in this place to reduce red tape and reduce costs for this industry is welcome.

With those words, I indicate Family First's general support for the bill. Amongst other things, we are pleased to see that it will better regulate the sale and supply of liquor in South Australia.

The Hon. A. BRESSINGTON (16:12): I rise to indicate my support for the bill before us. It makes comprehensive changes to the Liquor Licensing Act, particularly to the provision related to producers and the activities allowable under their licences. The move to support smaller boutique wineries is sensible and, from the feedback I have received, the proposed reduction in red tape, and subsequent costs to businesses, is long overdue.

The bill also makes changes to the responsible service provision in the Liquor Licensing Act, most of which are without contention, and they will lead to be easier enforcement. However, I have several concerns about clause 24, which amends section 108 (liquor not to be sold or supplied to intoxicated persons), which includes the additional offence of supplying alcohol to a person where their speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor.

This is by far more descriptive than the existing offence, which provides 'liquor is sold or supply on licensed premises to an intoxicated person', and I believe is intended to make it easier for licensees, bar staff and those enforcing the act to assess a person's level of intoxication. While I can see this is true, particularly for those enforcing the act, I have several concerns arising from the wording of the provision.

I have been contacted by several constituents living with a disability who fear that the new wording may adversely impact on their ability to purchase alcohol. This may be particularly true of those living with an acquired brain injury or intellectual or physical disability. During the briefing provided by the minister, my office was assured that consultation had been undertaken with disability groups to address these concerns. So, one can imagine my surprise when I contacted several prominent disability groups, who not only had not been consulted but also were not aware of the bill. These included the Julia Farr organisation and the Brain Injury Network of South Australia. Each group expressed concerns about the proposed wording and recounted examples of where their clients have been deemed to be intoxicated under the present act, based on nothing more than the symptoms of their disability.

Subsequently, I contacted the minister's office, to be informed that the only group to be consulted was Disability SA, which is really government consulting with government. However, a redeeming feature is that I believe the minister's intention is to consult more broadly in relation to the complementary code of practice that is to be developed following the passage of this bill. I seek a commitment from the minister prior to committee that this is actually her intention.

I add that I have some concerns about the responsibility we are now further placing on the shoulders of bar attendants to make these kinds of assessment. I was telling someone from the minister's office about my experience on about the third night of working as a bartender in a front bar, when it was necessary to inform a patron that I was not going to serve him any more rum and coke. I was literally pulled across the bar by the lapels of my jacket and threatened that, If I did not continue to serve him, it would be to my own detriment.

The Hon. B.V. Finnigan: Bundy or white rum?

The Hon. A. BRESSINGTON: Bundaberg; we are talking about Queensland.

An honourable member interjecting:

The Hon. A. BRESSINGTON: No, I headbutted him actually, which was the next part of my story, had you let me finish. It was necessary to headbutt him to get him to put me down.

The Hon. T.J. Stephens: Did he wince a bit?

The Hon. A. BRESSINGTON: He fainted. Members may think it is amusing, but back in those days it was quite a disturbing experience for me to have to go to those lengths to have my feet touch the ground again. In the hospitality industry, especially in hotels, we have, as the Hon. Dennis Hood said was his experience, students working to pay their way through uni. We have young people working in those situations and they are faced with those sorts of situation, especially in the front bars of hotels, and it can be very distressing for them, even under the current laws. Without considering that we will now extend the requirement for them to assess even more detailed behaviour, it is a matter of concern to me.

My office has been told by the AHA that it will provide training for staff to deal with this, but I remain sceptical that the level of training will be adequate to ensure that bar staff are not open to be threatened and intimidated by people used to having their way in a particular pub. I also take on board some of the comments of the Hon. Terry Stephens. We are trying to moderate people's drinking patterns and deal with heavy drinking, and I find it a little curious that in this place we would defend a person's right to drink to excess or to the point where their behaviour is disruptive and then say that—

The Hon. T.J. Stephens interjecting:

The Hon. A. BRESSINGTON: If a bar attendant is to make an assessment that somebody has had too much to drink, as the Hon. Dennis Hood said that will be a very subjective call. It may just be that the person who is being seen as being disruptive views himself or herself as simply having a good time and it makes it very difficult. My concern is for the staff and for people who do not know when enough is enough. I know that a code of conduct is coming out and all these things will be prescribed in regulation, and I hope that we are able to do this for the protection of everyone involved and not just for the person who is drinking in the bar and having a good time but is a nuisance to everybody else.

I have raised concerns about Elura's assessment process in this place on a number of occasions. In regard to people who are constantly confronted with having their drinks supply cut off because they are a pain in the neck, there should some sort of referral service or card that bar attendants can hand out, as happens with gambling, where certain people may be invited to call Gamblers Anonymous and get help. I urge the minister to consider that the assessment processes and tools of Elura have caused some concerns in the past involving, for instance, people who have gone there with alcohol or drug problems having their driving licence suspended. I have previously raised the case of a person who went there for three months and was then issued with a certificate actually saying that he was cured of his addiction, which is what every addict wants to hear. Subsequently he went out, continued to use, got on his motorbike and had an accident and, when his family tried to intervene after the certificate had been issued, he said that he had verification from professionals that he was no longer an addict and that it was not a concern any more.

A balance needs to be considered. That practice may have changed—it was about 18 months ago that I raised the issue in this place. However, if we are to refer people to services like this we need to be sure that those services, as an unintended consequence, will not have a detrimental effect on a person's behaviour. In saying all that, I support the bill and will seek from the minister that undertaking in committee about further consultation with the disability sector. I am hopeful that this bill will do what it is intended to do, namely, try to curb the drinking patterns of people in public places.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (16:22): I thank all honourable members who contributed to the second reading debate. I will seek to answer some of the questions and comment on some of the issues raised during the second reading debate and then, perhaps, deal with any outstanding matters during the first clause of the committee stage, if I could beg your indulgence, Mr Acting President.

In relation to comments made by the Hon. Terry Stephens about the extended definition of 'intoxication' involving the word 'noticeably', he is absolutely right, as is the Hon. Dennis Hood, and the Hon. Ann Bressington also alluded to it. There is an element of subjectiveness to this. It is not a definitive measure. However, what we have found in the past is that the current act makes it an offence to serve alcohol to an intoxicated person. That is an existing offence and there is already a high degree of subjectivity related to that.

What the industry has done is it has come to us and sought assistance to provide greater clarification to assist it to identify in a simpler and easier way what that might entail. That is why we have added those extra provisions around impairment of speech, balance, coordination or the behaviour of a person to whom the liquor is sold, and noticeable behaviours. That is the point, I guess, that it has to be noticeable, that is, those behaviours need to be of such a magnitude that it is brought to the attention of the licensee or bar staff—or police, for that matter.

The honourable member suggests that, if someone is singing and having a good time, and being a bit rowdy, that might result in a person being refused service. That is not so. It is a nonsense to suggest that, just because a person or a group of people are singing after a

successful game of football or netball, they are intoxicated and will therefore be refused service. Clearly, the assessment around intoxication is broader than that. It is the same with boisterousness: it needs to be linked to an impairment, and the impairment linked to the consumption of alcohol.

I accept that there remains a degree of subjectivity and that this does not overcome all elements of subjectivity. Nevertheless, I believe it provides clearer direction and is an improvement on the current provisions. This provision is consistent with other states. I am advised that it is present in most other states and it is clearly not creating social demise throughout the rest of Australia, so it is obviously a workable provision in other states.

This bill has been consulted to death. I am not certain how many years it has been in the making, but it has been a long time. An enormous degree of consultation has occurred with industry representatives, including the AHA, police, unions, a whole range of community organisations, and, as far as I am aware, they all support this definition of 'intoxication'. I will clarify that with my adviser during the committee stage, but my understanding is that we have broad support across the industry, police, unions and other organisations that, although they are not seeing this is a panacea, nevertheless, they believe that it is an improvement and are supporting it.

This is about trying to protect all of us, not only patrons who want to have an enjoyable night out and do not want their night spoiled but also bar attendants, many of whom are young people, like the Hon. Dennis Hood, who serve in bars in pubs and clubs during their student years. It is about protecting their health, safety and wellbeing, and it is also about protecting the licensee. This provides some clarity regarding their legal obligations as well. It also assists the police, I have been advised, in helping them to make their assessments of intoxication.

In relation to the consultation with the disability sector, this is an issue that is very dear to my heart, personally, and that is because both of my uncles suffered from muscular dystrophy. They suffered from a form that was mature onset, which meant that they were adult men. They had loss of motor movement, particularly fine motor movement, and it also affected their vocal chords, so it could be said that they sounded intoxicated. I was very aware and very sensitive to the way that they were treated in public because, in fact, their symptoms mimicked that of someone who is intoxicated.

We have discussed the matter with Disability SA. We approached that group because we believed that to be the peak organisation representing disability organisations. Certainly, consultations will not be exclusive to that organisation. I am committed to having an extensive consultation with those disability groups that want to participate and contribute. These matters, we intend, will be dealt with in the development of the code of practice, and we hope that that will outline training requirements for industry staff, amongst other things.

It is my intention that this training, as well as a new fact sheet, will be developed by the Office of Liquor and Gambling. That will further assist people to differentiate between someone who is intoxicated and someone who could be suffering from a disability. If they have other suggestions for mechanisms to deal with that, then I am very open to listening and taking on board that advice as well. With those remarks, I thank honourable members for their contribution and look forward to this being dealt with expeditiously through the committee stage.

Bill read a second time.

In committee.

Clause 1.

The Hon. G.E. GAGO: The Hon. Terry Stephens asked a question in relation to a partially consumed bottle of wine being given to an obviously intoxicated person. The advice I have received is that a licensee is not required to give a partially consumed bottle back to someone whom they assess as being intoxicated; however, given that the bottle is actually the property of that person, if the person insists that their property be returned to them the licensee is required to return it.

The honourable member also asked about a person transporting a partially consumed bottle, removed from licensed premises, through a dry zone. The advice I have received is that they will be permitted to do that, as long as they do not consume that alcoholic beverage whilst in the dry zone. So, they can pass through a dry zone with it in their possession. It is pretty obvious when someone is on their way to their vehicle or on their way home as opposed to someone sitting

on a park bench with a bottle open and drinking from it; I think there is some common sense around those matters.

The Hon. S.G. WADE: I welcome the minister's commitment to respect the rights of people with a disability, both in the construction of the bill and the operation of the act, but I would like to clarify something. The minister suggested that the department had consulted Disability SA and that Disability SA was the peak body for disability organisations. Did the minister actually mean Disability SA? As I understand it, Disability SA is a division of the Department for Families and Communities, which is hardly a peak body; it is a government department. If the minister did mean to refer to Disability SA, could she give an indication whether anyone with a disability or any non-government disability organisations have been consulted on this issue?

The Hon. G.E. GAGO: The honourable member is quite right; it is a government agency. However, it is highly regarded as an overarching body that provides services to a wide range of disability groups, and we believe it is able to reflect the broad views of the disability sector.

I have quite clearly put on the record our preparedness to consult on issues, and issues around disability will be dealt with in the code, so consultation on details does not need to occur until later. I have given a very firm commitment that we are prepared to consult much more broadly than that in the development of that code.

The Hon. S.G. WADE: I do not feel reassured at all. We are used to a government which tells the community what it will do—

The ACTING CHAIRMAN (Hon. I.K. Hunter): Mr Wade, you ask questions of the minister in the committee stage; you do not make a speech.

The Hon. S.G. WADE: This is a contribution to clause 1. I understood that I had the right to make a contribution to clause 1, and I propose to do that.

The ACTING CHAIRMAN: A contribution to clause 1; not a speech.

The Hon. S.G. WADE: I am sorry. I was in my first sentence; it was hardly a speech.

The ACTING CHAIRMAN: It seemed to me that that was the way you were going. Please confine yourself to asking questions on clause 1.

The Hon. S.G. WADE: I propose to make a contribution in response to the minister's response to my question. My response to the minister's question is: we are used to a government that tells the community what it will do, in the name of consultation; now we have a government that tells us that it will talk to itself and call that consultation. I make it clear to the minister that the disability community expects far more: the disability community expects to be consulted publicly and openly as individuals and as organisations.

The Hon. T.J. STEPHENS: Minister, I also have a concern with regard to policing and police resources. Does this open a bit of a Pandora's box? Given that the city is a dry zone, if the police come upon someone with an open bottle of alcohol on a busy Saturday night and the response the person gives to the police is, 'Well, I've been to a restaurant, and I brought this bottle out of the restaurant,' it will be very difficult, knowing how stretched our resources are, for the police to check that statement. We could be opening a Pandora's box with this.

The Hon. G.E. GAGO: As I have indicated, there has been extensive ongoing consultation in relation to this bill for an extraordinary amount of time, and the police have been involved along the way. The police are supportive of this bill, and they have not raised any issues of concern around resourcing in respect of that particular matter.

I have also been advised that, in relation to carrying partially consumed liquor when passing through a dry zone, the onus is on the person with the liquor to be able to demonstrate that they are, in fact, passing through. The onus would be on them to demonstrate where they had purchased the bottle, where they had been dining that evening, the location of their vehicle or home or where they were travelling. So, the onus would be on the person to justify and explain their actions at that time.

The Hon. T.J. STEPHENS: I appreciate the minister's response but, to be fair, I go back to the point I have just made. It is unworkable, and the police would have to acknowledge that fact. I really am concerned. We talk about Hindley Street and disruptive behaviour and that sort of stuff. At the moment, if someone was wandering down Hindley Street with a bottle, the police would pounce on them pretty quickly. I think the minister is opening a bit of a Pandora's box with this. I do

not know whether the minister can give me a satisfactory answer now, but it is something that might need tweaking further down the track.

The Hon. G.E. GAGO: I do not know about tweaking but, anyway, I will not go there. As I have said, the police have been extensively involved throughout the consultation on all of this bill. It is not a matter the police have raised as a concern. It is outrageous to say that the police would find this unworkable. That is not what the police have indicated at all. In fact, currently that same predicament, or almost the same predicament, already exists for those persons carrying BYO alcohol. I have been advised that, currently, a person can carry BYO alcohol through a dry zone to a restaurant. So, that situation currently exists, and I am not aware that has created any major problems or resource implications for our police service.

Clause passed.

Clauses 2 to 23 passed.

Clause 24.

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

Page 13, after line 24—After its present contents (now to be designated as subclause (1)) insert:

(2) Section 108(2)(a)—delete paragraph (a) and substitute:

(a) if the defendant is the person by whom the liquor was sold or supplied—

(i) in the case of contravention of subsection (1)(a)—that the defendant believed on reasonable grounds that the person to whom it was sold or supplied was not intoxicated; or

(ii) in the case of contravention of subsection (1)(b)—that the defendant believed on reasonable grounds that the impairment of the speech, balance, coordination or behaviour of the person to whom it was sold or supplied was not the result of the consumption of liquor; or

This is quite a straightforward amendment. The bill contains a proposed amendment, under section 108, which is designed to assist in the clarification of the term 'intoxicated'. The objective of the amendment is to enable prosecutions to be more easily brought about and thus to discourage the serving of liquor to intoxicated persons.

Shortly after the introduction of the bill, the AHA raised the concern that proposed new section 108(1)(b) did not reflect the defence contained in the current 108(2)(a), which will not be amended by the draft bill, and suggested an amendment that the AHA felt would address that concern. Advice was sought from the Crown Solicitor's Office in relation to the expansion of section 108 generally. Advice was obtained from the Crown that suggested that the AHA's proposed defence was fairly confusing in its drafting. The Crown suggested a modified drafting of AHA's proposal which maintained the intent but provided further clarity.

The Crown further advised that, although an amendment to the defence provisions was not legally necessary, its view was that the defence provision already pertained throughout those sections. Nevertheless, the Crown's view was that the proposed amendment was a very low risk in terms of interfering with the application. In light of that, we have put forward this amendment.

The Hon. T.J. STEPHENS: Given that it was only today that we received a copy of the amendment, can the minister give us an assurance that this is the amendment that made the AHA comfortable with this bill?

The Hon. G.E. GAGO: My advise is that, yes, it is.

Amendment carried; clause as amended passed.

Remaining clauses (25 to 33), schedule and title passed.

Bill reported with an amendment.

Bill read a third time and passed.

STATUTES AMENDMENT (ELECTRICITY AND GAS—INFORMATION MANAGEMENT AND RETAILER OF LAST RESORT) BILL

Adjourned debate on second reading.

(Continued from 22 September 2009. Page 3251.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (16:45): I rise on behalf of the opposition to speak to this bill and indicate that the opposition will support it. I will make a few comments in relation to that. The origin of this bill is an agreement made by the Ministerial Council on Energy. Members will recall that earlier this year legislation was passed to establish the Australian Energy Market Operator (AEMO). This implemented COAG's 2007 agreement to establish a single, industry-funded national energy market operator.

The energy market operator needs significant industry information to support the intention of this broad and deep analysis of future supply demand scenarios. The earlier legislation empowered the AEMO to issue market information orders and notices in order to gather information to assist it to perform its functions. Protected information provisions were coupled with these new powers.

This bill fixes a couple of the minor anomalies with regard to information management. The previous legislation has made it very difficult for various government agencies to fulfil their obligations with regard to regulating the industry. For example, OCBA licenses electricians and yet the electricity regulator regulates their operations and, therefore, it would be highly possible that OCBA may not have access to the information which it needs to take action in a case where a licensee has breached its regulations.

It is the same scenario for plumbers and gasfitters under the Gas Act. In the name of reducing red tape, it makes sense that OCBA would not have to start an investigation from scratch when the information needed is already available in another agency.

This bill will enable the technical regulator to pass information to the Crown Solicitor's Office, the Commissioner for Consumer Affairs, ESCOSA and the minister. In specified circumstances, the information may also be passed to state, interstate and commonwealth bodies to assist in the administration and enforcement of laws. This is important given the tendency of someone who has malpractised to move interstate and take up business.

The other change that this bill makes is with regard to the retailer of last resort. This scheme ensures that electricity consumers continue to receive electricity supply in circumstances where their electricity retailer can no longer supply. ETSA is that retailer in South Australia and, although the section has not been called upon before, the member for Mackillop in another place stated that the scheme was used in New South Wales in 2007 when a large energy retailer went out of business, and it proved very successful in keeping supply to the consumers. The bill extends ETSA's retailer of last resort role by five years from 2010 to 2015.

The member for Mackillop made some comments about how quickly this legislation has been pushed forward by the government. In fact, he recounted the very short time that we had to consider the bill and that, unfortunately, we did not have much time to consult with stakeholders. The opposition was disappointed with the speed at which this was progressed. However, stakeholders have not been coming to us with any major problems and, therefore, I indicate that, notwithstanding the fact that it was somewhat rushed upon us in the other place, we will support the bill without amendment.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (16:51): The Hon. Mr Parnell is happy for it to go through. I thank the opposition and the other independent members for their indications of support for this bill and we look forward to its passage.

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

NATIONAL GAS (SOUTH AUSTRALIA) (SHORT TERM TRADING MARKET) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 September 2009. Page 3257.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (16:53): I rise on behalf of the opposition to speak to this bill and indicate that the opposition will be supporting it. I am not quite sure how this happened, but it is interesting that this again involved a sense of urgency when the House of Assembly last sat. I think the government gave an indication to the member for MacKillop only the day before that it would be debating this bill on 22 September. Again, there was little opportunity to speak to stakeholders; nonetheless, we were able to piece together the intention of this legislation, which is to have greater flexibility in relation to short-term market trading.

As members would be aware, when electricity is produced it is put in at one end of a wire and taken out at the other end, almost as it is produced; whereas, with gas, there is some significant lapse between when it is produced and when it is used. I think it is two or three days from when it is put into a pipe at Moomba before it actually gets to consumers here in the city, so I guess it is like a large tank. Therefore, there needs to be a little more flexibility if production halts in the short term.

In Victoria, because there is closer proximity between the production area and the main consumption area, more immediate signals exist between the supply and demand sides of the market. In South Australia and in some other states, trading between suppliers and retailers is done by long-term contract. This has always worked smoothly here in South Australia but, as we go into more of a national grid and a national pipeline network, it has become important that we have this mechanism and flexibility. I note that New South Wales has experienced some problems associated with the nature of long-term contracts when gas supply ceases and market signals are not sent as quickly as they should be.

Support of this legislation is seen as a safeguard to establish a short-term trading market so that the more immediate signals will come into play. As I have mentioned, Victoria has a similar system which, as the opposition understands, has worked well in the past.

I think it is important to have this flexibility when we have a national pipe network so that, at the end of the day, consumers will not be disadvantaged if the gas supply is halted for some reason. We can actually bring market forces into play to support our supply as we did after the explosion and fire that occurred at Moomba some three or four years ago. Luckily, from South Australia's point of view, we had the SEAGas pipeline, which was an initiative of the former Liberal government. We were actually able to bring that online and not suffer any major problems here in South Australia. With those few words, I indicate that the opposition will be supporting this bill without amendment.

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

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

Adjourned debate on second reading.

(Continued from 23 September 2009. Page 3303.)

The Hon. R.D. LAWSON (16:59): The Liberal party is opposed to the provisions of this bill. We believe in the bicameral system of government. We believe that a parliament comprising two houses with co-equal powers is important. It is not some new innovation: it is a system of government which has evolved over the centuries, with its origins in ancient Greece and Rome, and it has been adopted across the world. On the other hand, for a long time, the Labor Party had a policy of abolishing the upper house. It now professes that that policy has been changed. The Labor Party now seeks to neuter the upper house so that it is no longer an effective legislative chamber. The amendments which are sought to be made by this bill are fourfold, as follows:

1. To reduce the size of the Legislative Council from 22 to 16 members.

2. To reduce the term of a member of the Legislative Council from two assembly terms, as it now is, to one assembly term and to require all members of the Legislative Council to retire at each election.

3. The bill seeks to alter the mechanism for the resolution of deadlocks by providing, in effect, that the will of the House of Assembly will ultimately override that of the Legislative Council through the mechanism of a joint sitting.

4. The bill seeks to give to the president of the Legislative Council a deliberative vote in all circumstances.

This bill represents a significant backflip by the Rann Labor government. In November 2005, before the 2006 election, the Premier announced that, if Labor won the election in 2006, it would 'hold a referendum at the 2010 state election to abolish the upper house of the parliament.' So, the proposal was to abolish the upper house. This was, I should say, at a time leading into the 2006 election, and it was a solemn promise which was applauded by *The Advertiser* newspaper, which has long been antipathetic to the Legislative Council, and also to curry favour with Business SA, which had a similar proposal.

The proposal of Business SA, *The Advertiser* and some supporters of abolition has always been that the government in the lower house should be able to get on with the business of governing, do whatever it likes, and not have to be answerable or accountable to the people through some other mechanism. They crave the Queensland model, a single house of parliament in which the government of the day can introduce a bill at 10 o'clock and force it through by lunchtime. There have been occasions in Queensland where legislation has been passed if not before lunch certainly before dinner on the same day of introduction.

Those opponents of the Legislative Council appreciate neither the importance of having a government that is held accountable and the importance of mechanisms that hold a government accountable. It is undoubtedly true that a government formed in the lower house, and only answerable to the lower house, makes the lower house a rubber stamp for the actions of the executive of the day. In November 2005, the Premier said:

> I think it's time to modernise our parliament so that it reflects the demands and expectations of a confident state as it prospers and grows into the 21st century. Let's face it, in my view, the upper house has become a relic of a time in our democratic history that is long gone. It has passed its use-by date.

He went on to say:

> It is not a bear pit—it is a sandpit. It has become a circus of smear—a den of petty game playing, and it is clear that it has lost its way. Like many other South Australians, I do not believe this house of parliament serves the people as best as it could or should.

He went on to describe the proceedings of the council as a 'farce', and claimed that members do not even wish to sit in the evening to debate important legislation, when, as any observer of the South Australian parliament, certainly during this year, will have observed, the Legislative Council has sat into the evening far more often and for longer hours than the House of Assembly.

The reasons given by the Premier on the occasion when he promised a referendum to abolish the upper house were really not reasons or arguments at all; it was pure abuse.

The Hon. R.I. Lucas: Fatuous and self-serving.

The Hon. R.D. LAWSON: Self-serving and fatuous, as the Hon. Rob Lucas mentions. And, of course, egg was all over the Premier's face after the March 2006 election, when it transpired that he was not the most popular politician in South Australia, but that the Hon. Nick Xenophon was by far the most popular politician in South Australia, and the South Australian electorate gave him an enormous endorsement. That was an endorsement not merely of the Hon. Mr Xenophon as an individual but of the work that he was doing through the Legislative Council. Mr Xenophon alone had no power, but with an effective Legislative Council, which represented the wider interests of the state, he was able to garner terrific support. The anger of the Premier at the revelation that he was not the most popular politician by any means was manifest.

Why is it that the government has abandoned its promise to have a referendum on whether to abolish the upper house? The reason given in the second reading speech is a specious one. The Attorney-General said that the government has 'listened to the people' and decided that it would be 'a waste of time and money to go to the people with a question to which we already know the answer'.

It was not the fact that the government had listened to the people. The government knew at the time the Premier made his announcement in November 2005 that the wider community supported the existence of the Legislative Council; if he did not know that, he clearly had not been reading polls that have been held over the years on that very point.

The claim by the Attorney-General, when he introduced the bill, that the government had suddenly listened to the people and changed its mind suggests that there had been some change in public sentiment after November 2005. That is not the case. The Rann Labor government, in order to secure power, reached a deal with Peter Lewis, which made him speaker of the parliament.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): I remind the member that he is the Hon. Peter Lewis.

The Hon. R.D. LAWSON: The Hon. Mr Lewis became the speaker, and a Constitutional Convention was held at great expense. Taxpayers spent over $700,000 on a Constitutional Convention, which had randomly selected citizens meet in Parliament House over a weekend. It

polled those people, both before and after their educative sessions. The Constitutional Convention also involved meetings all around the state in so-called community consultation.

The final report of that body was tabled in November 2003. If the Premier did not already then know that the Legislative Council was popular and that its retention was something the community desired, he clearly knew that from the report (if he ever read it) of the final deliberations of the Constitutional Convention because the overwhelming number of delegates supported the existence of the Legislative Council. So, the claim of a promise to hold a referendum to abolish the council is an absolutely specious one.

It was the government that dreamt up the four changes (and I call them changes and not reforms) that are suggested. It is also interesting that, in his statement in November 2005, the Premier said that the referendum would include alternatives to the abolition of the council. He suggested that these alternatives would be put to the people and that they would have, as it were, options to make choices in the referendum. That has not occurred. What we see is one bill, one proposed referendum, which is contained in a cognate bill, and there is no choice for the people. This government has delivered these proposals as a 'take it or leave it' package, and it should be considered on that basis.

I will examine briefly the four proposals. The first is to reduce the number of members. The second reading explanation provides no justification at all for reducing the Legislative Council from 22 members to 16, other than the irrelevant statement that, at various times in South Australia's history, there have been between 18 and 24 members. No explanation is given. The council was last increased on a proposal from the Dunstan government and increased at that time from 20 to 22 members. It was good enough in the 1970s for the council to be increased at the same time as the current electoral system was introduced. It was appropriate to do it then.

No reason at all was given why the council should be reduced in numbers. Rather than actually advancing some reasons, in his second reading explanation the Attorney-General rebutted an argument that nobody has actually put. He claimed that opponents of this proposal would say that there would be too much work for 16 members. He claimed, to use his words, that there is 'a good deal of make-work going on' in the Legislative Council. He claimed that the Legislative Council was setting up committees to examine 'everything under the sun'. This was not an argument; it was mere abuse.

Of course this government did not like the fact that some of the select committees that have been appointed by the Legislative Council have investigated matters that the government tried to bury—for example, the infamous Atkinson/Ashbourne/Clarke affair, which ultimately led to the Premier's principal adviser being charged with an offence of corruption of public office. That select committee revealed the fact that, because the Premier had conducted an in-house botched investigation, conducted by the head of his own department—

The Hon. B.V. Finnigan interjecting:

The ACTING PRESIDENT: The Hon. Mr Finnigan has just arrived in the chamber. He ought to take some time to examine what is happening in the debate. The Hon. Mr Lawson has the call.

The Hon. R.D. LAWSON: That inquiry initiated in this council revealed that, as a result of that secret botched inquiry, evidence was able to be altered and not put before the jury—a disgraceful attempt by the government to cover up an affair. The stashed cash affair—

Members interjecting:

The ACTING PRESIDENT: The Hon. Mr Lawson has the call and interjections from both sides of the chamber are out of order.

The Hon. R.D. LAWSON: It is no surprise that the Hon. Mr Finnigan is a vociferous opponent of an independent commission against corruption in South Australia, because he does not want an independent body shining a spotlight on the activities of government, and his party does not like the fact that the Legislative Council is the one mechanism in our system of government that enables a searchlight to be shone into some of the murky corners of the activities of this government.

It is interesting to note that in this particular proposal for a reduction in numbers there is no suggestion by the government that there will be any substantial saving or that the overall cost of government will be reduced. As anybody with any familiarity at all knows, merely reducing the

number of members in this chamber will not necessarily lead to any significant reduction in costs at all. It is clear that those members remaining would require additional resources and staff to undertake the necessary work that would have to be done.

The delegates to the 2003 constitutional convention were polled on this very issue of the size of the Legislative Council, and the delegates were provided with material. Before the convention, 58 per cent of them considered that the size of the Legislative Council was about right, but after hearing the arguments, learning more about the functions of parliament, it went up from 58 per cent to 65 per cent of delegates being of the opinion that the size was about right.

When one looks at the relative sizes of the bicameral parliaments in the Australian system, we see that, with our numbers in this council representing about 47 per cent of total members of parliament, that is about the general level. For example, in the federal parliament, as fixed by the Constitution, there are 150 members of the lower house and 76 senators, so the proportion is about 50 per cent. In New South Wales the upper house represents about 45 per cent; in Victoria it is 45 per cent; in South Australia it is 47 per cent; in Tasmania it is 60 per cent (so it has a larger proportion of members of the upper house); and, similarly, in Western Australia 61 per cent of parliamentarians sit in the upper house. We are about right as it stands presently at 22 members.

No argument is mounted to say that we are saving costs or that we are out of line with other bicameral parliaments. There is really no argument that the workload of the Legislative Council does not require 22 members. Any lesser number of members, as members in this chamber will know, would lead to a chamber in which the resources of the members is unduly stretched. The reason the government wants to reduce the number of members of the Legislative Council is that it wants to reduce its effectiveness. Committees will not be able to function properly because the workload will be spread amongst too few members. This is a transparent attempt to reduce the effectiveness of the Legislative Council, the one body in South Australia that has the capacity to hold the government accountable. There is no justification for it at all.

It is probably unnecessary for me to other than mention the computations made by the parliamentary research library and, in particular, Jenni Newton, the Director of Research. These papers have been circulated to members and show that the composition of a Legislative Council containing only 16 members would not have been markedly different over recent years. This would not have markedly diminished the capacity by the major or minor parties, although it must be admitted that in 2006 a 16 member Legislative Council would have elected three and not two of Mr Xenophon's No Pokies Independent group. I do not criticise the proposal on the basis that it is simply a self-serving proposal to improve Labor's chances, but I say that it is a self-serving proposal in that it is designed to reduce the effectiveness of the Legislative Council, and thus reduce accountability.

The second proposed change is to reduce the terms of members of the Legislative Council from two House of Assembly terms, which they currently serve, to one term. The government has provided no argument for this particular so-called reform in its second reading explanation, other than the fact that the Premier mentioned it when he announced the referendum proposal, and that was in 2005.

Although this proposal is portrayed as reducing the terms of members from eight years to four years in order to generate popular support, in reality it is a proposal to abolish staggered terms. The issue we ought to be discussing is not whether the terms ought to be five years, six years, eight years, or any other number of years, but should the Legislative Council be elected in a staggered way, as is the Australian Senate and as have many upper houses over the years?

The traditional, and I believe appropriate, justification for requiring only one half of the members of a legislative body to retire at each election is twofold. First, the system ensures that the upper house is not merely a mirror image of the lower house. Secondly, longer terms do provide greater continuity of knowledge and experience and they provide stability in parliamentary and governmental processes.

Staggered terms have always existed in South Australia. They exist in the Australian Senate, in New South Wales and in Tasmania. Once again, that argument about staggered terms was not really addressed by the government: it simply raised the populist flag, 'Let's reduce the terms from eight years to four.'

I think it is fair to say that most people in the community would consider that eight years sounds a long time, but the question is: should we have staggered terms? One way to avoid eight year terms is for us to revert to three year terms for the House of Assembly and six year terms for

members of the Legislative Council, with staggered terms. That is the system that we have in the federal parliament, three and six year terms, and that is a reasonable proposition. I do not believe that we need throw the baby out with the bath water. If eight years is too long, then we could reduce it to six years, but I do believe that we should retain staggered terms for the reasons I have outlined.

The next change is an alteration to the mechanism for the resolution of deadlocks. Standing orders of both houses already provide a formal mechanism for resolving differences, namely, so-called conferences of managers. If differences are not resolved by that mechanism or by negotiation, then section 41 of the Constitution Act provides a possible avenue for resolution. In brief, under that mechanism the bill must pass the assembly twice, once before and once after a general election, and the bill must be twice rejected by the council. A double dissolution can then be called.

This procedure has never actually occurred in South Australia because a deadlock could remain indefinitely. The question is: why should deadlocks be resolved and, more particularly, which house should prevail? We believe in a parliament comprising two houses of equal power, and there is great justification for that. As all members of this chamber know, it is elected by proportional representation and is more representative of the political diversity in the state than is the House of Assembly, which is elected in 47 separate electorates under the system of preferential voting.

What this bill does is provide a mechanism to break deadlocks, ultimately by way of a joint sitting. A joint sitting of a House of Assembly of 47 members and a Legislative Council of 16 members would inevitably lead to the will of the House of Assembly prevailing. Why should the will of the House of Assembly prevail in all cases? Why should not the House of Assembly be forced to reach some form of compromise, if that is the will of the South Australian people? Of course, the members of this council are accountable in elections.

It is interesting to see that Victoria introduced a mechanism similar to that which is proposed in this bill, but is a rather more complex mechanism. The procedure, which has not yet ever been tested there, provides for a formal dispute resolution committee and for resolution by a referendum in certain circumstances. The New South Wales model for the resolving of deadlocks also provides for ultimate resolution by way of referendum.

The government describes the power that the Legislative Council has to reject or amend bills as being a right of veto, but it is equally fair to say that the House of Assembly has, and will continue to have, a right of veto. There are bills that are introduced and passed in this council which can be killed, and often are killed, by members of the government in the House of Assembly. I believe that the correct categorisation of the respective powers is that the houses are of equal power, except as to money bills, over which the House of Assembly does have a greater, but not absolute, power.

If the government was truly interested in a democratic mechanism for resolving deadlocks, a purer system would require a deadlock bill to be put before a referendum of the people to decide, rather than seeking to distort the relationship between the two houses. It is undoubtedly true that this proposed change will increase the power of the executive, and for that reason it should be opposed.

The fourth proposed change is not, in my view, of great significance, but it has been put forward in this package, and I believe it is offensive for that reason; but there is quite some history to the new proposal to give the President of this council a deliberative vote. Between the establishment of responsible government in South Australia as early as 1856 and up until 1973, both the Speaker and the President had only a casting vote; in other words, they could not vote on any measure unless there was an equality of votes on the floor.

The Dunstan government's reforms of the Legislative Council franchise in 1973 included a provision which gave to the President, and also to the Speaker, the power to concur in the second and third readings of 'any bill'. That is contained in sections 26(3) and 37(3) of the constitution. Members will be aware that the Labor Party has always argued that that power could only be exercised in relation to a bill to change the constitution, but the amendment specifically said 'any bill'. It is not limited to bills to change the constitution, and a number of presidents of this chamber have exercised that vote over the years.

The reason given by then premier Dunstan for the amendment made in 1973 was that it was likely that the numbers in the Legislative Council would be finely balanced and that it was

'fundamentally wrong' (his expression) to deprive the presiding officer and the presiding officer's party of the vote in a case when the President was not called upon to exercise a casting vote. Likewise, he could have said that the power in the House of Assembly was finely balanced, as it had been and as it was subsequently, where independent members are appointed to take the chair.

The proposal presently before the parliament is that the President will have a deliberative vote on all questions, not merely on the second and third readings of a bill. So, the President will be able to vote in support of or against, for example, the establishment of a select committee, or some other motion that is put; not merely, as is currently the case, in relation to second and third readings. It is interesting to see that the government is reversing the amendment made in 1973 in relation to the Legislative Council but is not seeking to reverse the same amendment that was made at that time in relation to the Speaker of the House of Assembly—and no satisfactory explanation has been given for that disparity.

It is true, as has been pointed out, that the President of the Senate has a deliberative but not a casting vote. The reason for that is that senators supposedly represent the states, and the argument was that a state should not be denied a vote simply because one of its representatives is President. That is not really a consideration in relation to this issue, where each member of the Legislative Council is elected as a member in his or her own right.

In 2003 the Victorian constitution was changed to give the President of the Legislative Council a deliberative but not a casting vote, and that followed a recommendation from a constitutional commission which argued that:

> When numbers in the house are equal, or nearly equal, there will be a tussle between the parties not to have the Presiding Officer elected from their respective memberships. An appointment to one of these positions deprives the party of a vote. If the government is forced to provide the Presiding Officer it deprives itself of a vote.
>
> In a house elected by proportional representation, where party margins will inevitably be closer, no party may hold a majority. The vote of the Presiding Officer is therefore likely to be more important and influential. This would exacerbate the government's problem if it were forced to provide a Presiding Officer who does not have a substantive vote.

So Victoria has changed the powers of its President; however, in Victoria and New South Wales the President has only a casting vote. That arrangement is based on tradition and is designed to preserve the neutrality of the chair.

In my view, this proposal to give the President a deliberative vote is driven by Labor's desire to improve its position. As we all know, there are some within its ranks who covet the office of President but there are others within the Labor Party who say that it would be better served by having a vote on the floor. Those who covet the office have won over the others; this is a self-serving political move to give Labor the best of both worlds.

It should be noted that there are transitional provisions which provide that a 22 member council will continue until the 2014 election, or earlier if that next term is truncated, and that the terms of all members will expire in 2014. It is after that time that the council will be composed of 16 members. We are opposed to all four proposals. Our opposition is more vehement to some than to others, but the proposals have been put forward as a 'take it or leave it' package and, on that basis, we will not be taking it—we will be leaving it. We do not believe that any good purpose is served in continuing this debate.

I should mention that I will make only brief comments on the Referendum (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Bill. It is obviously consequential upon the passage of the bill, which I will be opposing. The Attorney-General has acknowledged that the cost of this referendum will be $1,734,000, of which the Electoral Commission requires $1.434 million, and that $300 million will be allocated to the preparation of a 'yes' case and a 'no' case by the Department of the Premier and Cabinet. There is nothing in the referendum bill that actually requires the preparation, distribution and publicising of a 'yes' case and a 'no' case. I believe there should be such a provision, although I notice that in an earlier referendum bill there was no such provision. However, that bill, if it is to be seriously considered, should have contained provisions requiring the preparation, by some independent body, of a 'yes' case and a 'no' case to educate the community.

There is no doubt from the language of the government that it has no heart for this particular so-called reform proposal. The government has not pressed it hard, and it introduced the bill late in the session. It also introduced it as a package so that we reject it, as undoubtedly the

Legislative Council will reject it, and the government can then say, 'Oh, the legislative councillors refused to accept reform.' It is just a mechanism to blame others for a flawed political strategy. I urge all members to reject the bill.

The Hon. DAVID WINDERLICH (17:41): I will briefly outline my position on the bill before us today. The bill aims to reduce the number of MPs in this chamber, halve the length of a member's term, introduce more streamlined deadlock resolution procedures, and give the president a deliberative vote. Given the Labor Party's longstanding opposition to an upper house, we on the cross-benches have greeted this legislation with some scepticism.

The Attorney-General criticises members of this chamber for so-called 'making work'. I can assure the Attorney-General that there is a great deal of work to be done to clean up the government's mistakes, oversights and incompetence. However, this relationship is not all one way. I have recently discovered that the Attorney-General does spend some time cleaning up our mistakes, or at least mine. I have here a comment on my website that reads:

If an MP can't spell in the headlines in his own website, surely he isn't worthy of being re-elected. Dseases—

I left out the 'i'—

indeed! Also, in the index of the website, shouldn't it be 'whom I support' rather than 'who I support'?

The email address is michael.atkinson@parliament.sa.gov.au. So, I do thank the Attorney-General. I think this generous side of his nature is little known, and the public should be made aware of the fact that the Attorney-General, as well as fighting the gang of 49, bikies and whatever else, is spending his time in this way. It cannot be just my website; he must be going around to lots of websites correcting grammar. In fact, I was told by someone who took the course with him that the Attorney-General took a course in grammar a couple of years ago. Obviously, the Attorney-General is putting that to good use. I have punished my staff severely but, in keeping with the spirit of criminal intelligence, I have not told them why, and I am not going to. They are going to be punished simply because this is South Australia.

Quite a lot of worthy initiatives are proposed in this chamber, which the government fails to consider, through lack of time, effort or general arrogance. The government should be thankful that many of us in this chamber do give its proposals the consideration they deserve and often amend them to help the government achieve its stated objectives more effectively.

The importance of a house of review cannot be overstated. Many speculate that Joh Bjelke-Petersen's government in Queensland would not have got away with as much as it did if Queensland had an upper house. Likewise, many attribute Howard's treatment of the Senate and his abuse of the majority there to his eventual downfall following the introduction of WorkChoices. In both cases, a decent level of review would have moderated the government's agenda and kept it accountable. Perhaps this should be a warning to the South Australian government that treating this chamber with contempt could be the beginning of its self-created end.

I will briefly outline my position on the major changes proposed. I have no problem with the deadlock provisions and believe these proposals are a sensible reform that are consistent with similar federal processes. I am inclined to support these changes. I will not be supporting the government's efforts to reduce representation in this place by reducing the number of members. I will be moving to strike out the clauses that aim to make this chamber less representative. The Attorney-General made it quite clear in the other place that the government's intention is to reduce the level of work members of this chamber can deal with, and I will oppose any moves to increase an already burdensome workload.

We on the cross-benches try to keep up with both the government and the opposition, legislatively and through public debate, with only a fraction of their resources. Overall, we are able to contribute a great deal. Reducing the number of members in this place would, as the Attorney-General hopes, reduce the level of representation we can provide for South Australians.

'In the public interest' is a term the government prefers to use only when referring to political expediency and when ramming through ill-considered measures, but I believe this is a real example of where the public interest would be served by greater representation and scrutiny, and that is a result of having a sufficient number of members in the upper house.

The upper house is far more representative of the diversity of views held by South Australians than is the other place by virtue of our proportional representation. It would become

even more representative of the diversity of views should the term of election be reduced from eight years to four. I will be supporting this change.

By reducing the quota, we would see a greater range of views represented in this place. I will always be supportive of moves that make representation more encompassing. I hope that my colleagues in this place will also support moves to retain the current number of members so that this representation is even more widespread.

I oppose the idea that the president of this place should exercise a deliberative vote. The status quo encourages the presiding officer to be more impartial and, in effect, requires a clear majority of members to agree for a motion or bill to be carried. I believe the proposal to give the presiding officer a deliberative vote is purely self-interest on the part of the government. It will also make procedures in this chamber inconsistent with those in the House of Assembly. I also hope for government proposals to lead the way by reforming the House of Assembly which often exemplifies the inefficiencies of which the Attorney-General has accused this place.

Debate adjourned on motion of Hon. J.S.L. Dawkins.

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

Adjourned debate on second reading.

(Continued from 23 September 2009. Page 3303.)

The Hon. R.D. LAWSON (17:46): I rise briefly to indicate that the Liberal Party will be opposing this bill, as well. I stated the reasons for our opposition in my earlier speech today on the Constitution (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Bill. I simply repeat, for the record, the belief that a bill of this kind should contain a provision which requires the preparation and distribution of a yes and no case.

We were informed in the second reading explanation that the government proposed to undertake such an educational campaign at a cost of $300,000 through the Department of the Premier and Cabinet. I believe that mechanism ought to be more formalised and there ought to be an independent authority charged with the responsibility for preparing the yes and no cases.

I doubt that $300,000 is an adequate amount to properly educate the community on a matter such as this. The Attorney admitted that the cost of the referendum will be $1.4 million, together with that $300,000. That is not a wise expenditure of money in the current budgetary situation, when we see a number of persons with disabilities and their families clamouring for appropriate services and the government crying poor. I do not believe that it is an appropriate expenditure of public moneys to undertake a public referendum of this kind when the result of the referendum is, I believe, almost assuredly known.

The community will not accept this nonsense. The community voted at the last election in favour of the Legislative Council and in favour of an independently-minded Legislative Council. No evidence has been produced to suggest that they would support this particular referendum. It is a waste of time and money.

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

SERIOUS AND ORGANISED CRIME (UNEXPLAINED WEALTH) BILL

Adjourned debate on second reading.

(Continued from 23 September 2009. Page 3354.)

The Hon. DAVID WINDERLICH (17:50): This bill aims to financially punish people who cannot be proven to be directly involved in criminal ventures and are suspected of having received the proceeds of wealth obtained through illegal activities. The bill creates unexplained wealth orders for unexplained reasons.

Like the Serious and Organised Crime (Control) Act 2008, the Hydroponics Industry Control Bill 2009 and the Second-hand Goods Bill 2009, the legislation makes use of criminal intelligence to put so-called evidence beyond scrutiny. Again, like the other pieces of legislation mentioned previously, the burden of proof rests on the accused, requiring the defendants to prove their innocence by furnishing records that prove the assets in question were obtained legally. The presumption of innocence has been abandoned from yet another of the government's laws.

At the briefing on the bill it was made clear that this legislation is designed to target those people who the police suspect may have been involved in criminal activity but have no evidence to show this or way to prove involvement. That is worth repeating because it would have been a radical idea just a couple of years ago: this bill is designed to target people where there is no proof that they are guilty.

Essentially, the bill aims to penalise people on the basis of little more than suspicion protected by security provisions—a sort of double jeopardy where the evidence behind the suspicion cannot even be probed. The bill creates unexplained wealth orders for unexplained reasons. This is yet another bill that puts the onus of proving innocence on the defendant and seeks to make the job of police easier at the expense of justice. The bill raises a number of serious questions. If a person who the police suspect to have acquired illegal wealth is caught under this provision, the natural response would be for the person to sell the illegal assets to pay the penalties, creating liquid capital from the proceeds of the crime that ended up in the public coffers.

This is, in fact, the intention of the bill: to cripple suspected criminals through financial penalties and, if applied correctly, the government will be directly benefiting from the proceeds of crime. It is a bit like the role of smoking taxes in health promotion grabs.

The bill is also retrospective, undermining another established principle of legislation. Further, the government is claiming that the proceeds collected by the program will go to the Victims of Crime Fund yet, before it is deposited here, costs for implementing this legislation and the Serious and Organised Crime (Control) Act are to be deducted. It is a unique proposition almost to have self-funding criminal justice initiatives. I guess that increases the incentive to issue these orders.

I am extremely sceptical about just how much will find its way into the fund and how much will end up as a revenue raiser for SAPOL. We are now heading towards a state where a person's wealth can be confiscated. They can be banned from practising their profession or banned from seeing close friends, family and associates, all on the basis of a control order which was granted on secret evidence and which they had no chance to refute. We are headed towards a society that replaces facts with suspicion, rehabilitation with punishment and justice with expediency and revenue raising.

The bill creates unexplained wealth orders for unexplained reasons. We are headed towards a state that demonises subcultures through extreme generalisations that punish for publicity rather than long-term dispute resolution. Our legislation opens the way towards the marginalisation of minorities and puts few balances and checks on the increasing powers of the police and the minister.

It is also interesting in the context of the government moving this way and, generally, the opposition supporting it. The government moving this way is vehemently against an ICAC, which would introduce some sort of check on the use of such powers. I will be opposing this bill because of the numerous civil rights breaches it contains and its complete disregard for justice.

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

RAIL COMMISSIONER BILL

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

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (17:55): 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 *Rail Commissioner Bill 2009* provides for the establishment of the Rail Commissioner for the purpose of acting as a rail transport operator under the *Rail Safety Act 2007* for the delivery of State Government rail infrastructure projects and to carry out any other function conferred on the Commissioner by the Minister for Transport.

One of the Strategic Objectives in the State Government's Strategic Infrastructure Plan is to encourage the shift to rail transport for passenger and freight movements where justified by environmental, economic or social imperatives. The Government has invested approximately $2 Billion over 10 years along with an additional

$585 Million of Commonwealth funding contributions to implement this Objective through a number of major and minor rail infrastructure projects, to be delivered through the Department for Transport, Energy and Infrastructure.

In late 2007, the State Government determined that it would take responsibility for rail infrastructure assets previously owned by TransAdelaide, and for new major rail infrastructure works proposed on the train and tram network to allow TransAdelaide to concentrate on operating train and tram services. The infrastructure is now vested in the Minister for Transport.

In September 2008, the *Rail Safety Act 2007* was introduced, as part of a process towards a national regulatory scheme for rail safety. The new legislation carries new requirements for those seeking accreditation as a rail transport operator. A person or entity may only seek accreditation under that Act if he or she can establish that he or she has the 'effective management and control' of the proposed railway operations. This requirement is distinguished from the previous Rail Safety Act whereby the test was about merely being an 'owner' or an 'operator'.

The 2007 Act thereby removed the requirement for contractors to hold accreditation as an 'owner' but rather may perform their duties under the accreditation of the rail transport operator with 'effective management and control' of the proposed railway operations. For the Government, this means that rather than continuing to hire contractors with rail accreditation under the *Rail Safety Act 1996* to carry out its business, it had to reconsider and determine who would have the 'effective management and control' of the newly announced rail infrastructure projects.

A statutory body corporate was considered the best option to ensure the required independence from the Minister for Transport.

The Bill incorporates a number of provisions (particularly in relation to the powers and functions of the Rail Commissioner) that are similar to provisions contained in the *Highways Act 1926*, the *Passenger Transport Act 1994* and the *Rail Safety Act 2007*. In addition, it should be noted that this Bill is to be read in conjunction with the *Rail Safety Act 2007*.

The Rail Commissioner to be established under the Bill will be a body corporate with the statutory imperative to apply for and hold accreditation under the *Rail Safety Act 2007*. The Rail Commissioner will have the primary function of, and necessary powers to, deliver rail infrastructure projects as announced by the State Government. The Rail Commissioner will have the 'effective management and control' of these rail infrastructure projects, and will be subject to the limited direction of the Minister without derogating from the Rail Commissioner's 'effective management and control' of the projects. The Bill provides for a wider scope of operations to include rolling stock movement and maintenance, including movement for the purpose of operating a railway service. Although these functions will not be used immediately, there may be a requirement for the Rail Commissioner to have rolling stock accreditation for the testing and commissioning of the new trams if it is deemed that the Rail Commissioner has 'effective management and control' of that project.

The role of the Rail Commissioner at this point in time is to construct and deliver rail infrastructure projects, with the ongoing maintenance and management of the infrastructure being assigned to an appropriate accredited rail entity. This will generally be TransAdelaide, which will continue to act separately as another Government rail transport operator with its own accreditation for track maintenance and management and providing passenger transport services. It is the Government's wish that both the Rail Commissioner and TransAdelaide will work in partnership for the safety of rail in South Australia.

As an interim arrangement, so that rail construction contracts could be signed and work commenced, Rodney George Hook, the current Deputy Chief Executive of the Department for Transport, Energy and Infrastructure, was appointed by the Governor, pursuant to section 68 of the *Constitution Act 1934*, to be the Rail Commissioner with the powers to do all things relevant to the undertaking of rail infrastructure projects for a period of no more than 12 months, or until the Rail Commissioner Bill was enacted, whichever was sooner. Although the appointed Rail Commissioner under the interim arrangement has been exempt from Part 4 Division 2 of the *Rail Safety Act 2007* which is the requirement to hold accreditation under that Act, he is required to act 'as if accredited' for the period of the interim appointment.

The present appointee will also be appointed as Rail Commissioner once the Bill is enacted. The appointment reflects the reporting arrangements in place within the Department for Transport, Energy and Infrastructure where Mr Hook, as Deputy Chief Executive of the Department for Transport, Energy and Infrastructure, has effective management and control of the rail infrastructure projects currently being delivered through the Department. The Bill allows for the appointment of one or more Deputy Rail Commissioners. These appointees will assist the Rail Commissioner to demonstrate 'effective management and control' and provide a significant role in the Rail Commissioner's governance structure.

The Bill provides that, with the approval of the Minister, the Rail Commissioner may make use of staff, equipment or facilities of an administrative unit of the Public Service or another agency or instrumentality of the Crown, under an arrangement with that body. It also specifies the responsibilities of the Rail Commissioner and the Commissioner's staff and gives them the power to undertake all works necessary to deliver the rail infrastructure projects as directed by the Government. The Rail Commissioner will use the resources within the Department for Transport, Energy and Infrastructure for staffing the office, and undertaking the rail infrastructure project works.

The Bill provides a structure and process, as well as capacity, to undertake the rail infrastructure projects, including the power to do associated roadworks and install traffic control devices. The Bill provides the Rail Commissioner with a high degree of autonomy when undertaking rail infrastructure projects; however Ministerial approval has been retained in accordance with other relevant statutes.

These rail infrastructure projects are a significant priority of this Government, and will allow the Government to achieve its Strategic Objective in relation to rail infrastructure for South Australia, particularly within the metropolitan area. The Rail Commissioner as a statutory authority will come under the scrutiny of the South Australian Rail Regulator and the Minister for Transport as required by the *Rail Safety Act 2007*. This demonstrates the Government's commitment to rail safety, the implementation of the new rail safety legislation as well as ensuring the delivery of safe and efficient transport infrastructure projects meeting the State Government's Strategic Objective for the benefit of commuters and the wider community.

The opportunity is also being taken in this Bill to rectify a technical irregularity with respect to the authority operating rolling stock on rail infrastructure that has been laid on a road; and with respect to constructing, repairing, altering and maintaining rail infrastructure placed on roads.

The Bill therefore amends the *Railways (Operations and Access) Act 1997* and the *TransAdelaide (Corporate Structure) Act 1998* to:

- allow rail transport operators to maintain and operate existing rail infrastructure and rolling stock on (as well as over, under, alongside, etc.) roads; and
- validate the existence of any rail infrastructure installed to date on a road by a rail transport operator; and
- enable rail transport operators to install and maintain rail infrastructure and operate on roads in the future with the Minister's approval (absolutely or conditionally).

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 contains definitions for the purposes of the measure. It also provides that, unless the contrary intention appears, an expression used in this measure that is defined in the *Rail Safety Act 2007* has the same meaning as in that Act.

Part 2—Rail Commissioner

Division 1—Establishment of Rail Commissioner

4—Establishment of Rail Commissioner

This clause establishes the *Rail Commissioner* (the *Commissioner*). The Commissioner—

- is a body corporate; and
- has perpetual succession and a common seal; and
- is capable of suing and being sued; and
- is an instrumentality of the Crown and holds property on behalf of the Crown; and
- has the functions assigned by or under this measure or another Act; and
- has the powers necessary or expedient for, or incidental to, the performance of the Commissioner's functions (including the power to enter into contracts), together with such other powers conferred by or under this measure or another Act.

The Commissioner falls within the description of a public sector agency for the purposes of the *Public Sector Management Act 1995* (and also the proposed *Public Sector Bill*) and so the relevant provisions of that Act will apply to the Commissioner.

5—Appointment etc of Rail Commissioner

The Commissioner will be constituted by a person appointed from time to time by the Governor for the purpose, and the Governor may also appoint 1 or more suitable persons to be a deputy of the Commissioner. A person appointed as a deputy of the Commissioner may act as the Commissioner in appropriate cases. The clause makes further provision in the usual terms relating to the removal of a person appointed under this proposed section or a vacancy in the office of the Commissioner.

6—Ministerial direction

This clause provides that the Commissioner is subject to the direction (which must be given in writing) of the Minister. Any such direction of the Minister must be tabled in Parliament and a statement of the fact that a direction was given must be included in the Commissioner's next annual report.

Division 2—Functions

7—Functions

This clause sets out the functions of the Commissioner. They are—

- to construct railways, railway tracks and associated track structures;
- to manage, commission, maintain, repair, modify, install, operate or decommission rail infrastructure;
- to commission, maintain, repair, modify, install, operate or decommission rolling stock;
- to operate or move, or cause the operation or movement of, rolling stock on a railway by any means (including for the purposes of constructing or restoring rail infrastructure);
- to move, or cause the movement of, rolling stock for the purposes of operating a railway service;
- to act as a rail transport operator for railway operations carried out by the Commissioner;
- to hold accreditation (if successful application is made) under the *Rail Safety Act 2007* as a rail transport operator in relation to railway operations carried out, or proposed to be carried out, by the Commissioner;
- to enter into agreements or arrangements relating to the management of risks associated with railway operations (including where rail infrastructure interfaces with roads);
- to operate passenger transport services by train or tram;
- to hold accreditation (if successful application is made) under the *Passenger Transport Act 1994* to operate passenger transport services by train or tram;
- to enter into service contracts relating to the operation of passenger transport services under Part 5 of the *Passenger Transport Act 1994*;
- to carry out any other function conferred on the Commissioner by the Minister.

The Rail Commissioner's functions include the carrying out of design work, roadwork and any other necessary or associated work relating to the Commissioner's functions.

Division 3—Special powers

8—Power to enter, inspect, etc railway premises etc

This clause provides the Commissioner (or a person authorised by the Commissioner) with the power to enter railway premises or any other land or premises to perform actions relating to the Commissioner's functions. The clause then sets out the procedures to be followed in relation to the exercise of this power.

9—Power to acquire land etc

This clause provides the Commissioner with the power—

- subject to the approval of the Minister, to acquire (by agreement or compulsory process) land or an interest in land for the purposes of carrying out railway operations, establishing or maintaining rail infrastructure or any other purpose connected with this measure; and
- subject to the approval of the Minister, to sell, transfer, lease or otherwise deal with or dispose of any land or interest in land vested in the Commissioner; and
- to remove or cut back any tree or other vegetation on or overhanging rail infrastructure.

The *Land Acquisition Act 1969* applies in relation to the compulsory acquisition of land under this clause.

10—Power to carry out works

This clause provides the Rail Commissioner with the power, subject to the approval of the Minister, to carry out such works as the Commissioner thinks fit in relation to the construction, commissioning and maintenance of rail infrastructure; the operation or management of rolling stock; the establishment, maintenance, extension, alteration or discontinuance of a passenger transport service; or any other function of the Commissioner. The clause sets out the procedures to be followed in relation to the exercise of this power.

11—Power to close or limit use of railways

This clause provides the Commissioner with the power, subject to the approval of the Minister—

- to close a railway temporarily or permanently; or
- limit the use of a railway temporarily or permanently,

for the purposes of railway operations carried out by the Commissioner.

Division 4—Miscellaneous

12—Staff

This clause makes provision for staffing of the Rail Commissioner's office. The Commissioner's staff will consist of Public Service employees assigned to assist the Commissioner and any person (who will not be a Public Service employee) appointed to the staff by the Commissioner with the Minister's approval.

13—Delegation

This clause provides the Rail Commissioner with the ability to delegate by written instrument any of the Commissioner's functions or powers (other than the power to delegate) to a particular person, or to the person for the time being performing particular duties or holding or acting in a particular position, and a delegated function or power may (if the instrument of delegation so provides) be further delegated.

14—Conflict of interest

This clause requires the person constituting the Rail Commissioner, or a deputy or delegate of the Commissioner, to inform the Minister in writing of—

- any direct or indirect interest that the person has or acquires in any business, or in any body corporate carrying on business, in Australia or elsewhere; or
- any other direct or indirect interest that the person has or acquires that conflicts or may conflict with the functions of the Commissioner.

The person constituting the Commissioner, or a deputy or delegate of the Commissioner, must take steps to resolve a conflict or possible conflict between a direct or indirect interest and the person's functions in relation to a particular matter, and, unless the conflict is resolved to the Minister's satisfaction, the person is disqualified from acting in relation to the matter.

15—Common seal and execution of documents

This clause makes provision for the common seal of the Commissioner, and the manner in which documents are to be executed by the Commissioner.

Part 3—Miscellaneous

16—Precedence over roads

This clause provides that, subject to any pre-existing contract, agreement, understanding or undertaking with a road maintenance authority, the construction, commissioning and maintenance of rail infrastructure takes precedence over roadwork.

The clause enables the Rail Commissioner (subject to the approval of the Minister)—

- to close a road temporarily or permanently for the purposes of railway operations (and the *Roads (Opening and Closing) Act 1991*, with such modifications as may be prescribed by regulation, applies to any such permanent road closure); and
- to require a council to construct or reconstruct a portion of road within the area of the council so as to conform with the construction, reconstruction or maintenance of rail infrastructure within the council area.

17—Inconsistency of by-laws

This clause provides that if a by-law made by a council is inconsistent with this measure or a regulation made under this measure, the measure or regulation prevails and the by-law is, to the extent of the inconsistency, invalid.

18—Regulations

This clause provides for a regulation making power for the purposes of this measure.

Schedule 1—Related amendments and transitional provisions

The Schedule contains related amendments to the *Railways (Operations and Access) Act 1997* and the *TransAdelaide (Corporate Structure) Act 1998* relating to operations over roads and provisions for matters of a transitional nature.

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

[Sitting suspended from 17:56 to 19:47]

NATIONAL ELECTRICITY (SOUTH AUSTRALIA) (SMART METERS) 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) (19:48): 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.

In recent years, a number of significant reforms have been made to energy markets in Australia. Under the guidance of the Ministerial Council on Energy (MCE), Australia has moved towards greater national consistency of governance and regulation. The reforms have aimed to ensure efficient infrastructure investment and promote competitive energy markets.

In February 2006, the Council of Australian Governments (COAG) agreed to a progressive national roll-out of 'smart' electricity meters to allow the introduction of time of day pricing and to allow users to better manage their demand for peak power only where benefits outweigh costs for residential users and in accordance with an implementation plan that has regard to costs and benefits and takes account of different market circumstances in each State and Territory. COAG directed MCE to oversee this process.

After reviewing a national smart metering cost benefit analysis in 2008 MCE noted a wide range of potential net benefits, but that benefits and costs were not certain in all jurisdictions. Given the potential net benefits MCE supported the development of a national smart metering framework and smart meter deployments initially in Victoria and New South Wales. Ministers agreed to further progress the smart meter roll-out by undertaking coordinated pilots and business-specific business case studies in most jurisdictions (not including South Australia and Tasmania). These pilots and business cases seek to confirm the findings of the cost-benefit analysis, reduce the range of uncertainty to inform whether a roll-out should proceed, and also inform the development of roll-out implementation plans to maximise benefits. This Bill establishes the first element of the national framework and provides support for pilots.

This Bill, although only making minor amendments to Australia's national energy market legislation, reflects another significant reform of the energy sector overseen by MCE. The Bill amends the National Electricity Law (the NEL), a schedule to the National Electricity (South Australia) Act 1996, to provide heads of power for State and Territory energy Ministers to decide the scope and timing of smart meter pilots and roll-outs of smart meters for their jurisdiction. Ministers will be able to require an electricity distributor to conduct a pilot or roll-out where the Minister is satisfied that the requirement would be in the long-term interests of consumers.

The Bill:

- supports timely and nationally co-ordinated pilots, the outcomes of which will better inform the development of jurisdictional roll-outs and the national cost benefit analysis;
- facilitates information sharing across jurisdictions conducting smart metering activities by enabling a Minister to specify that a distributor must provide the information derived from smart meter pilots; and
- facilitates cost recovery by distribution businesses.

The Bill provides a mechanism to roll out or pilot smart meters in a jurisdiction by introducing a head of power allowing jurisdictional Ministers to make a Ministerial smart metering determination that would require a distribution business to conduct a trial, assessment or roll-out of smart metering and related technologies. The Bill has no effect, including on any existing smart metering deployments, except where a minister issues a smart metering determination.

A Ministerial smart metering determination will have the effect of changing the regulatory obligation on the distribution business, triggering a mechanism for recovery of efficient direct costs in accordance with the National Electricity Rules (the Rules). Ministers also recognise the importance of promptly passing on cost efficiencies resulting from smart metering to customers affected by the costs of a roll-out.

The sharing of information obtained from smart meter trials and assessments is essential to the MCE commitment to smart meters. In 2012, MCE will review the smart meter cost benefit analysis in light of the results of smart meter trials and assessments, at which time Ministers will review jurisdictional deployment timelines and any requirement for further analysis. Ministers will be relying on this information to decide if a roll-out should proceed, and to assist in the development of roll-out implementation plans to maximise benefits. The MCE is conscious of the commercial interests of businesses involved in pilots. Therefore, a determination cannot oblige a distribution business to make information publicly available in a way that would identify the person to whom the information relates unless the business has the written consent of the relevant person.

Before issuing a pilot determination a Minister must consult with a person or body that the Minister considers has an interest in the determination.

Direct load control (DLC) is showing itself to be an important and beneficial way of assisting consumers to manage their energy consumption during peak times, whether independently or in conjunction with smart meters. Direct load control focuses on remotely switching loads such as air conditioning, pool pumps or water heaters that are operating during peak load periods. Consequently, the head of power included in the Bill that supports pilots of smart metering and related technologies, also captures direct load control trials. Technology created primarily for the purpose of direct load control is specifically included as a 'related technology' to smart meters in the trial context. While the national smart metering cost benefit analysis does not support further trials or roll-outs of smart meters in South Australia at this point, direct load control shows strong potential to reduce costs for consumers in a way that works for them. This government will continue to support further development of direct load control to help contain electricity costs for consumers.

The Bill allows a jurisdictional Minister to make a Ministerial smart meter roll-out determination, placing a regulatory obligation on a distribution business to roll out smart meters.

Before issuing a Ministerial roll-out determination, a Minister must consult publicly on it and must have regard to the National Electricity Objective. These conditions provide a safeguard that the determination is appropriate and the long-term interests of electricity consumers are protected.

A Ministerial roll-out determination cannot be inconsistent with the National Electricity Rules, which will contain the detailed elements of the national framework for smart meters. The prescription of detailed requirements under the National Electricity Rules places them under the transparent institutional governance arrangements that this Parliament has established on behalf of all Australians for the process by which Rules are made. It also provides an expectation of long-term consistency of requirements for smart metering, increasing the national character of arrangements for the electricity market. The Bill does, however, provide individual Ministers with the discretion to specify the date or dates by which infrastructure and services must be provided, allowing different levels of service to be delivered in different locations and times during the roll-out period. This discretion allows specific differences in circumstances to be taken into account in support of the objective of delivering long-term net benefits for electricity consumers.

Businesses are required to comply with a Ministerial smart meter roll-out determination despite any other contract or agreement. This is to support the benefits a mass roll-out can deliver. In having regard to the National Electricity Objective, a Minister would be expected to consider implications for existing contracts as advised by businesses during consultation.

In complying with a Ministerial smart meter roll-out determination, a specified regulated distribution network operator will be the exclusive provider of metering services for relevant metering installations. An MCE Initial Rule will be inserted in Chapter 11 (Savings and Transitional Rules) of the Rules. The Initial Rule implements, as a transitional measure, MCE's Statement of Policy Principles with regard to responsibility for smart metering during a roll-out. Section 90C of the Bill includes the necessary head of power to allow this Rule to be made.

Where a jurisdiction has already developed and mandated a smart meter program consistent with COAG and MCE commitments, it is anticipated that the jurisdiction will establish an appropriate transition arrangement. Further, in the case of Victoria, it is understood that the State will seek support to have the major elements of its current advanced metering infrastructure project recognised as consistent with the national framework.

As jurisdictions roll out smart meters over different periods and at different times, the costs and benefits as shown by pilots should become clearer for each jurisdiction. These amendments are intended as transitional arrangements to support the mandate of smart meters and as such should not remain as law in perpetuity. MCE will therefore review, by 2020, the ongoing need for these NEL amendments.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause provides that the measure amends the *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996*.

Part 2—Amendment of *National Electricity Law*

Division 1—Smart meter amendments

4—Amendment of section 2—Definitions

This clause provides new definitions for the definition section (section 2) of the *National Electricity Law*.

5—Insertion of Part 8A

This inserts a new Part concerning smart metering services.

Part 8A—Smart metering services

Division 1—Interpretation

118A—Definitions

This section provides new definitions for Part 8A.

Division 2—Ministerial pilot metering determinations

118B—Ministerial pilot metering determinations

This section permits Ministers of participating jurisdictions to make Ministerial pilot determinations. A Ministerial pilot determination may include trials of direct load control technologies.

118C—Consultation with interested persons required before making Ministerial pilot metering determination

This provision requires Ministers to consult before making a pilot determination.

Division 3—Ministerial smart meter rollout determinations

118D—Ministerial smart meter rollout determinations

This section permits Ministers of participating jurisdictions to make Ministerial smart meter rollout determinations and specifies what a determination may or must contain, including when the determination expires.

118E—Public consultation required before making Ministerial smart meter rollout metering determination

This section requires Ministers to consult before making smart meter rollout determinations.

Division 4—Provisions applicable to Ministerial smart metering determinations

118F—Compliance with Ministerial smart metering determinations

This section requires a regulated distribution system operator to comply with a Ministerial smart metering determination.

118G—Minister of participating jurisdiction must consult with other participating jurisdiction Ministers

This section requires a Minister of a participating jurisdiction to consult with the Ministers of other participating jurisdictions before making a Ministerial smart metering determination.

118H—Content of Ministerial smart metering determinations

This section lists the content of a Ministerial smart metering determination.

118I—Publication and giving of Ministerial smart metering determinations

This section requires publication of a Ministerial smart metering determination.

118J—When Ministerial smart metering determinations take effect

This section provides for the determination of the date of effect of a Ministerial smart metering determination.

118K—AEMC must publish Ministerial smart metering determination it receives on its website

This section requires the AEMC to publish Ministerial smart metering determinations on its website.

Division 2—Other related amendments

6—Insertion of section 90C

Proposed new section 90C allows the South Australian Minister to make initial Rules concerning smart metering services.

Debate adjourned on motion of Hon. S.G. Wade.

STATUTES AMENDMENT AND REPEAL (TRADE MEASUREMENT) BILL

Adjourned debate on second reading.

(Continued from 23 September 2009. Page 3354.)

The Hon. T.J. STEPHENS (19:49): I rise to speak on the bill and give the opposition's view. In April 2007, the Rann government signed a COAG agreement to move to a national system of weights and measures administration. The state government has advised us that the commonwealth government has always held the power under the Commonwealth Constitution to instigate weights and measures legislation and bureaucracy but has never utilised it to date.

It is our understanding that approximately 13 state public servants are involved here, and there is a building and assets, including testing equipment and so on. We are told that they will be transferred to the commonwealth, so the building and assets will be transferred at no cost. Obviously, the question is: what are the assets worth? Why would we give up something when fair compensation should be paid? We are led to believe that the commonwealth will be constructing a new building in three years. At what cost? Will it be on the same site? Will it keep our building and assets? Have we given up significant state funds?

We are led to believe that the commonwealth will not be charging for testing—which could be a good thing for businesses—but we are giving up control of the fees that would be charged to business. We are concerned that at the moment it may be a saving, but in the near future we would have no control over business paying higher fees. We are concerned about that. How long will the commonwealth keep its no-charge-for-test fee? Again, we have no control.

Repairers, who are currently licensed with the state at a cost of $216 per annum, plus $91 for an application fee (which is a one-off) and a fee of $60 per person, will now be licensed by the commonwealth. Again, all of a sudden the cost and structure of the licence is unknown. We are handing over those cost structures to the commonwealth government and we will have no control over what fees small businesses will be paying, and that is a concern to us.

We are told that the estimated saving to state government will be around $320,000 per annum. Lost revenue will be $560,000, but saved expenditure will be about $880,000. This sounds terrific but, again, we are giving up a building, and I want to know what it is worth and why we are doing it.

The type of new inspection regime to be implemented by the federal government is unknown. It could be more or less severe. What level of penalties will apply? That is also unknown. It could be more or less severe. Any consumer affairs complaints will not be handled within our state jurisdiction but, rather, will go to the commonwealth, so we are not sure what service will be provided to businesses, and it will certainly be out of our hands.

There is no indication at this point about whether or not the commonwealth will have a complaints office in South Australia. We are very concerned about business in this state and what we are handing over, so at this point we cannot see our way clear to support the bill.

Debate adjourned on motion of Hon. J.S.L. Dawkins.

HYDROPONICS INDUSTRY CONTROL BILL

Adjourned debate on second reading.

(Continued from 24 September 2009. Page 3422.)

The Hon. DAVID WINDERLICH (19:54): It seems for the most part that I will be of the minority opinion in this council as I have deep reservations about this legislation. I am supportive of preventing harmful drug use, but I have doubts about how effective this legislation will be in achieving its stated aim of curbing drug use and criminal activity. I also believe that the price paid, and the impact on small business and long-established freedoms and rights, is also too great.

As the State Retailers Association has stated, this legislation treats all hydroponics retailers as criminals and is purposefully discriminatory in its application. It appears that the government's approach to life is to remove any and all items that could be abused and aggressively pursue its cotton wool culture. This is not the first time the government has taken this approach, and I expect it will not be the last. It is part of a trend of greater police and government powers without mechanisms to keep them accountable. This legislation, together with the bill regulating second-hand dealers, places a significant administrative burden on small business and puts the onus and cost of crime fighting on small business rather than on detectives and the police.

The government's radical shift away from the Australian values of a fair go and the presumption of innocence is a serious concern. As in the Serious and Organised Crime (Control) Act 2008, the Serious and Organised Crime (Unexplained Wealth) Bill 2009 and the Second-hand Goods Bill 2009, the onus is on the defendant to prove their innocence. So-called criminal intelligence provisions (one of the reasons control orders were thrown out by the courts) severely limit an individual's right to justice by denying access to the basis of the allegations put against them.

For the purposes of this legislation, in the Second-hand Goods Bill, it could mean that a person is denied the right to earn their living on the basis of police suspicion that they may have associated with an associate of a suspected criminal. However, they would never know why they would be denied the right to make an honest living, because all the commissioner could disclose was that it was in the public interest for them to be out of business. Even if they appealed the commissioner's decision, the court would be compelled to keep any criminal intelligence presented secret, nullifying the effect of having an appeals process at all.

The power to deny someone the right to operate on the basis of pure speculation is too much power for an individual to hold without scrutiny—it is too much power for a government to hold without scrutiny. Yet the government continues to expand these powers, and the assistant commissioner has indicated they intend to roll out a streamlined, standardised approach, incorporating criminal intelligence into all legislation. The end effect will be the creation of a state where the police commissioner can veto any individual's right in any industry to earn a living if they

suspect it might be in the public interest. A cautious bureaucracy will lean this way naturally as it seeks to minimise any possibility of risk and maximise scarce resources.

Earlier in the year common references began to describe South Australia as a police state. At the time it seemed the label was over the top and would not be accepted by the public. However, legislation like this (and this is just one of a series of similar acts and bills) illustrates the drift towards the authoritarian state that the person had feared. In fact, it vindicates everything that was said at the time of the introduction of the Serious and Organised Crime (Control) Act.

As police powers grow, our society does not necessarily become safer. In fact, I would argue that the growth of the gang of 49 is a very good example of that. If an early intervention had occurred in 2002 or 2003 when the gang of 49 was seven, nine, 10 or 11 years old—

The Hon. S.G. Wade: They are 10 now. They were two then.

The Hon. DAVID WINDERLICH: Well, now you see they are 14, 15, 16, 17 and 18 years, so in 2002 and 2003 when the government came to power, it would have been the gang of 49 in primary school, which presumably would have been easier to deal with. So, if a more proactive, community-based early intervention strategy had been followed then, at much lower cost, the impact on society now would be much less. The point is that police powers alone do not necessarily make a community safer.

I do not believe this legislation will make us safer, either. It imposes unreasonable costs on small businesses, gives greater powers for the police to destroy livelihoods on suspicion alone and turns communities against government rather than working with it to address suspected criminal activity in their ranks.

I will be moving amendments to remove the draconian criminal intelligence provisions to ensure that individuals retain the presumption of innocence and the right to know why they have been denied the opportunity to earn a livelihood. I will also be moving to abolish the legislation's use of control orders which, like the licences, can be applied on suspicion alone. I am also assisting the government by removing this unconstitutional provision, saving it the hassle of yet more taxpayer-funded losses in court. I will speak more about these amendments when we move into committee.

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

PERSONAL PROPERTY SECURITIES (COMMONWEALTH POWERS) BILL

Second reading.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (20:00): 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 *Personal Property Securities (Commonwealth Powers) Bill 2009* and the Commonwealth *Personal Property Securities Bill 2009* will result in a reform to the law of personal property securities ('PPS'). The reforms are the result of a lot of work examining existing PPS schemes in overseas jurisdictions, and extensive consultation with stakeholders.

The proposed Bills are a part of the package of reforms approved by the Council of Australian Governments (COAG) aimed at moving towards a seamless national economy through the reform of business and other regulation. The reforms will make it easier for businesses to operate across State and Territory borders.

The Standing Committee of Attorneys-General first considered the concept of reform of the law of personal property securities in 1991, following the publication of an interim report by the Australian Law Reform Commission. As a result of concerns raised by the finance and legal sectors, no further action was taken until after the publication of a favourable report on the New Zealand personal property securities legislation. In early 2005, SCAG Ministers agreed to establish an officers working group to look at reforms in this area, and in April 2007 COAG gave its in-principle support for the establishment of a national system for the registration of personal property securities supported by a referral of legislative power by the States to the Commonwealth.

The *Personal Property Securities (Commonwealth Powers) Bill 2009* provides for the referral of power to the Commonwealth Parliament to establish a single national legislative scheme for the regulation and registration of security interests in personal property. Personal property is any form of property that is not land or buildings. It includes intangible property such as contract rights, uncertified shares and intellectual property rights such as trademarks and patents.

The PPS reforms will establish a single, national, publicly accessible electronic personal property securities register to replace the numerous State and Territory registers, and will set out the rules relating to the ordering priorities between competing secured interests in personal property. The reforms will benefit individuals, consumers and businesses by delivering more certain, consistent, less complex and cheaper arrangements for securing loans with personal property. The main cause of high cost under the present system is the existence of multiple regimes and multiple registers. Lenders must search multiple registers to check whether pledged property is subject to a personal property claim. Having one register will reduce costs as lenders will have to pay only one access fee for the information required, and may be able to reduce staff costs in searching and verification processes. The proposed reforms should also encourage lenders to grant loans on the basis of a security interest in personal property, where currently real property is favoured and businesses without holdings of real property are at a disadvantage when seeking debt financing.

The reforms would result in the repeal of the South Australian *Bills of Sale Act 1886*, *Goods Securities Act 1986*, *Liens on Fruit Act 1923* and *Stock Mortgages and Wool Liens Act 1925* and the transfer of the data contained on the registers under those Acts to the PPS register.

In accordance with established practice, the Commonwealth did not introduce its Bill until at least one State had enacted referral legislation. New South Wales agreed to take the lead in introducing referral legislation and on 17 June, 2009, introduced and passed the *Personal Property Securities (Commonwealth Powers) Bill 2009*. That enabled the Commonwealth Government to introduce the *Personal Property Securities Bill 2009* on 24 June 2009, which was passed by the House of Representatives on 16 September 2009.

The referral legislation is underpinned by and reflects the provisions contained in an Intergovernmental Agreement signed on 8 October 2008. The referral legislation provides that statutory licences created under the State and Territory legislation that are transferable, will in-principle, be personal property for the purposes of the PPS legislation, but where State legislation expressly excludes a licence, right, entitlement or authority from the application of the PPS legislation, the State legislation will prevail. There may be sound public policy reasons for preventing any form of security interest being registered against a statutory licence or other entitlement. If it is considered necessary, licences and entitlements will be exempted as part of the consequential amendments to various pieces of State legislation that will be necessary to ensure a seamless transition from the current systems to the PPS regime.

The referral legislation also makes special provision in relation to water rights and fixtures. Although private sector stakeholders were keen to have the PPS Act apply to fixtures, their inclusion might have had an impact on the integrity and indefeasibility of the Torrens title system. The Standing Committee of Attorney-General has agreed to further work being undertaken and to a review of the current law and the future treatment of fixtures as personal property for the purposes of the PPS Bill. Consequently, the referral legislation includes separate commencement provisions in relation to these matters.

Finally, the referral legislation does not refer power regarding State laws that provide for the confiscation, seizure, extinguishment or other forfeiture of property or interests in property, in connection with the enforcement of State laws.

Industry supports the proposed reforms to personal property securities and is working to revise business practices before the commencement of the scheme, which was to be May 2010. In response to industry concerns and Senate Committee recommendations, the Commonwealth has delayed the start-up time to May 2011.

Victoria's Legislative Assembly and the Queensland Parliament passed referral legislation on 17 September 2009. South Australia joins those States and New South Wales in their efforts to progress reforms that will assist business operations throughout Australia and reduce costs and red-tape for businesses and individuals in South Australia.

Explanation of Clauses

1—Name and purpose of Act

This clause sets out the name (also called the short title) and the purpose of the proposed Act.

2—Commencement

This clause provides for the commencement of the provisions of the proposed Act (other than proposed section 6(2), (3) and (4)) on the date of assent to the proposed Act. Proposed section 6(2), (3) and (4) (which make the amendment references to the Commonwealth Parliament) will commence on a day or days appointed by proclamation of the Governor.

3—Definitions

This clause defines certain terms and expressions used in the proposed Act, including the following.

The expression *law of the State* is defined to mean any Act of the State or any instrument made under such an Act, whenever enacted or made and as in force from time to time. The expression is intended to cover both existing and future Acts and instruments as enacted, made and amended from time to time.

The expression *excluded State statutory right* is defined to mean a right, entitlement or authority that is granted by or under a law of the State (which is referred to in the proposed Act as a *State statutory right*) that is declared by that law not to be personal property for the purposes of the Commonwealth PPS Act. As a result of the ambulatory nature of the definition of *law of the State* referred to above, the expression will extend to declarations that are made in relation to both existing and future State statutory rights.

The expression *express amendment* is defined to mean the direct amendment of the text of the Commonwealth PPS Act, but as not including enactment of a provision having substantive effect otherwise than as part of the text of that Act. Each of the amendment references is limited to the express amendment of the Commonwealth PPS Act. This ensures that the matters covered by the amendment references cannot be the source of power for other Commonwealth legislation.

The expression *personal property* is defined to mean property (including a licence) other than—

(a) land; or

(b) an excluded State statutory right.

The term *licence* is defined to mean either of the following:

(a) a transferable right, entitlement or authority to do 1 or more of the following:

(i) to manufacture, produce, sell, transport or otherwise deal with personal property;

(ii) to provide services;

(iii) to explore for, exploit or use a resource;

(b) a transferable authority to exercise rights comprising intellectual property.

The term *licence*, however, does not include any excluded State statutory right.

4—Meaning of referred PPS matters

This clause defines the expression *referred PPS matters* in relation to personal property that is the subject of the different amendment references under the proposed Act. The expression is defined to mean—

(a) the matter of security interests in the personal property; and

(b) without limiting the generality of paragraph (a), each of the following matters:

(i) the recording of security interests, or information with respect to security interests, in the personal property in a register;

(ii) the recording in such a register of any other information with respect to the personal property (whether or not there are any security interests in the personal property);

(iii) the enforcement of security interests in the personal property (including priorities to be given as between security interests, and as between security interests and other interests, in the personal property).

The proposed section, however, excludes from the expression the matter of making provision with respect to personal property or interests in personal property in a manner that excludes or limits the operation of a law of the State to the extent that the law makes provision with respect to—

(a) the creation, holding, transfer, assignment, disposal or forfeiture of a State statutory right; or

(b) limitations, restrictions or prohibitions concerning the kinds of interests that may be created or held in, or the kinds of persons or bodies that may create or hold interests in, a State statutory right; or

(c) without limiting the generality of paragraph (a) or (b)—any of the following matters:

(i) the forfeiture of property or interests in property (or the disposal of forfeited property or interests) in connection with the enforcement of the general law or any law of the State;

(ii) the transfer, by operation of that law of the State, of property or interests in property from any specified person or body to any other specified person or body (whether or not for valuable consideration or a fee or other reward).

Paragraphs (a) and (b) of the above exclusions from the referred PPS matters are intended to limit the power of the Commonwealth Parliament to use an amendment reference to exclude or limit the power of the State to administer, vary and abrogate any State statutory rights (such as licences) that it creates from time to time.

Paragraph (c) of the above exclusions from the referred PPS matters is intended, among other things, to preserve the operation of laws of the State that provide for the confiscation of the proceeds of crimes or for the transfer by or under a law of the State of assets from defunct bodies.

5—Meaning of security interest in personal property

This clause defines the expression *security interest* in personal property. Generally speaking, a security interest in personal property is an interest in relation to the property provided for by a transaction that, in substance, secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property). However, the proposed section also makes it clear that a security interest may encompass certain other interests provided for by a transaction regardless of whether or not the transaction secures payment or performance of an obligation. An example of such an interest is an interest of a lessee or bailor under a lease or bailment of goods.

6—Initial and amendment references

Clause 6(1) provides for the inclusion of the referred provisions in a Commonwealth Act enacted in the terms, or substantially in the terms, of the tabled text. The expression 'substantially in the terms' of the tabled text will enable minor adjustments to be made to the tabled text.

Clause 6(2) in effect refers matters to the Commonwealth Parliament in connection with the future amendment of the Commonwealth PPS Act concerning security interests in personal property (other than fixtures or water rights).

Clause 6(3) in effect refers matters to the Commonwealth Parliament in connection with the future amendment of the Commonwealth PPS Act concerning security interests in fixtures.

Clause 6(4) in effect refers matters to the Commonwealth Parliament in connection with the future amendment of the Commonwealth PPS Act concerning security interests in transferable water rights (other than excluded State statutory rights).

Clause 6(5) removes a possible argument that 1 of the references might be limited by any of the other references (except as provided by clause 6 (2), which excludes fixtures and water rights from the reference made by that proposed subsection).

Clause 6(6) makes it clear that the reference of a matter has effect only to the extent that the matter is not otherwise within the legislative power of the Commonwealth Parliament and to the extent that the matter is within the legislative power of the State Parliament.

Clause 6(7) makes it clear that the State Parliament envisages that the Commonwealth PPS Act can be amended or affected by Commonwealth legislation enacted in reliance on other powers (though this may be the subject of provisions in the Intergovernmental Agreement that will underpin the scheme) and that instruments made or issued under the Commonwealth PPS Act may affect the operation of that legislation otherwise than by express amendment.

Clause 6(8) specifies the period during which a reference has effect. Each reference will begin when the subsection that makes the reference commences and end when the period of that particular reference is terminated under the proposed Act.

7—Termination of references

This clause deals with the termination of the period of the references specified under clause 6 (namely, the period ending on a day fixed by the Governor by proclamation). The clause enables the periods of all references to be terminated at the same time or only the periods of any or all of the amendment references.

8—Effect of termination of amendment references before initial reference

This clause makes it clear that the separate termination of the period of an amendment reference does not affect laws already in place. Accordingly, the amendment reference continues to have effect to support those laws unless the period of the initial reference is also terminated.

9—Evidence of tabled text

This clause provides for the accuracy of a copy of the tabled text containing the proposed Commonwealth PPS Act to be certified by the Clerk of the Legislative Assembly of New South Wales. Such a certificate is evidence of the accuracy of the tabled text and that the text was in fact tabled as contemplated by the Bill.

The Hon. S.G. WADE (20:00): The opposition supports the bill, which is South Australia's contribution to setting up a national register for personal property securities by referring the state's power in this area to the commonwealth. New South Wales has already passed a bill to this effect. Lending security by personal property is a multibillion dollar industry in Australia, and it is important that the legal framework supporting secured lending is as certain as possible.

Personal property securities are currently covered by over 70 commonwealth, state and territory acts, which are supported by 40 registers. Four of those acts are South Australian: the Bills of Sale Act 1886, the Goods Securities Act 1986, the Liens on Fruit Act 1923, and the Stock Mortgages and Wool Liens Act 1925. A number of these pieces of legislation are convoluted and difficult for businesses and other South Australians to use. An example of that is section 2(1) of the Bills of Sale Act, a South Australian act of 1886, which includes a definition of 'bills of sale'. In that section, which takes half a page of the statute, in a single sentence it uses 227 words to describe a bill of sale. I have a copy of the section, but I hope the council may take my word for it that it is a cumbersome and inaccessible law. In contrast, this bill defines personal property in 19 words:

personal property means property (including a licence) other than—

(a) land; or

(b) an excluded State statutory right.

The federal Attorney-General summarised the scope of personal property in the following terms:

Personal property is any form of property other than land. It includes goods such as cars, machinery, even crops and livestock; financial property, such as currency and letters of credit; and, intangibles, such as intellectual

property rights. The act will apply to all transactions which create an interest in personal property that secures a loan or other obligation.

The benefits that come from this bill should produce less risk, less red tape, more consistency and less costly administrative procedures. There will be a single national online PPS register, which will provide a public notice board where users can locate details of collateral that is subject to a security interest. The register will provide online access and benefits through the entire credit life cycle.

Transactions where personal property is used as security for loan will therefore be more certain and consistent, less complex and cheaper. It is hoped by the commonwealth and state ministers responsible that the reforms will enhance Australia's position as a financial hub. Considering that the register is web accessible, it will make it easier for overseas capital markets to assess the risk associated with lending to Australian businesses, and for Australian companies to access international capital markets. Foreseeably in the long run it should reduce the cost of capital.

They are the benefits for business, but at the other end of the spectrum the reform will also make it easier for ordinary Australians to borrow against their property and to make sure property they buy is not encumbered. For example, a used car buyer could access the register to check whether it is free from encumbrance. The commonwealth has suggested that a buyer will merely need to send a simple SMS message to the PPS register to receive an immediate reply. A farmer could use it to obtain agricultural finance for loans to grow next year's crop, to buy seed or fertiliser. A small business providing credit could use the register to see whether the debtor's property is unsecured and available to meet the debt.

It is important to note that this bill will not expand the definition of personal property under South Australian law. Therefore, this bill will not affect what items can be involved in transactions but only which authority handles them. The opposition sees this as a common sense bill that will benefit both South Australian businesses and other South Australians. We support the bill.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (20:05): I have spoken to each of the Independent and minor party members, and I understand that they are happy for this bill to proceed. I thank them and the Hon. Mr Wade for his contribution to the debate. As the honourable member said, this is part of a COAG agreement, I think, going back to April 2007. So, it is good that we have finally been able to put it into legislation. I again thank members of the council for their support.

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

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

Adjourned debate on second reading (resumed on motion).

(Continued from page 3469.)

The Hon. R.I. LUCAS (20:08): I rise to address some comments to this piece of legislation, but also I think we are including the Referendum (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Bill as in essence part of an informal cognate debate, as obviously both the bills are related. So, I intend to confine my remarks to this bill, but they obviously relate to the other bill as well.

This piece of legislation is the culmination of I guess, in the first instance, many years of Labor Party policy, which had been studiously ignored for decades by Labor leaders, Labor leaders in the Legislative Council and others until 24 November 2005. Mr President, as you will well remember, on that day one Edith Pringle was about to give evidence to a select committee of this Legislative Council, I think, upon which you might have been serving at the time. The Premier (the Hon. Mr Rann) obviously believed that the evidence that was about to be given would be embarrassing to him personally and to the government and, in particular, to the Attorney-General. The government of the day—I should not say 'the government' because I understand that essentially it was a decision taken by the Premier and his office—obviously decided that there needed to be a political diversion for that day. An exclusive story was given on 24 November to the Adelaide *Advertiser*—to Greg Kelton, a political reporter at the time. The banner headline read, 'Rann to call referendum in 2010—abolish the upper house.'

Discussions with members of the Labor caucus at the time indicate they were blissfully unaware that this announcement was coming. As I said, it was a successful attempt to divert the media attention away from other activities on that day. The story was as follows:

> Premier Rann wants parliament's upper house abolished and will ask South Australians to bring about the greatest electoral system changes in the state's history.

It is intriguing that anything the Premier does is always the greatest, a world first or an Australian first. It is never humdrum or middle of the road: as in this term, 'the greatest electoral system changes in the state's history'. The article further states:

> Labor, frustrated by legislative delays and the watering down of new laws in the Legislative Council, will begin moves to get rid of it after the March 18 election which polls suggest it is likely to win.

That was the genesis of the current debate. I note that the Adelaide *Advertiser* pinned its colours to the mast on that day with its nicely understated editorial under the heading 'High time to burn down the house'. The first sentence of that editorial stated:

> The demise of South Australia's Legislative Council cannot come quickly enough.

I think it is a sad fact of recent years that the Adelaide *Advertiser* has adopted an approach that is so out of touch with the vast majority of people in the South Australian community that it is there, together with the Premier, supporting burning down the house (in political terms)—getting rid of the Legislative Council. It is certainly not an approach that the Adelaide *Advertiser* has editorially supported generally over its long and proud history here in South Australia.

Ultimately, I guess, that is an issue for the current management and the current Editor of the Adelaide *Advertiser* to defend. That was the position of the government. I think that, as the Hon. Mr Lawson pointed out, the Premier sought to give the impression that, in essence, he was going to provide South Australians with a pick-a-box referendum whereby they could either keep the Legislative Council, abolish it or reform it. Obviously, in his haste on that day to divert attention from the Pringle evidence, the Premier had not realised that it was not legally possible for him to provide a pick-a-box referendum for the people of South Australia.

He had obviously forgotten or, as I said, in his haste had omitted to acknowledge that a government must put down a proposition (as he has now done in relation to this bill) in legislation, and then that package is put to the people in terms of whether or not they support it. They do not get the chance in a referendum to tick or pick a box as to what option they want. As a result of that and the passage of time, as the Hon. Mr Lawson has summarised (and I will not repeat his commentary in that respect), we move to the position that we are in.

I should acknowledge that it was not just the Adelaide *Advertiser* and the Premier at the end of 2005 who were supporting the burning down of the Legislative Council: he was supported by his prominent senior business adviser at the time, Mr Champion de Crespigny (who was then the confidant of the Premier) and Business SA (in particular the Chief Executive, Mr Vaughan), as well as, I assume, the board of Business SA. They were all putting the proposition that the Legislative Council was a blot on the horizon of the state's economic progress and development and that it was holding up legislation; therefore, governments ought to be allowed to do whatever they wish to do. They did not need a Legislative Council, and they should just be able to ram their legislation and their view through the House of Assembly and then, four years later, the people could make a judgment as to whether or not that was a good thing.

On previous occasions when I spoke to the Address in Reply on 3 May 2006 and again on 3 May 2007, I provided significant detail as to how that information was wrong. I quoted figures from the Clerk of the Legislative Council, Jan Davis, who had indicated in a paper that only 2 per cent of the legislation that had been considered had been defeated during long periods of time when there were Liberal and Labor governments, and I added to that by analysis of the period between 2002 and 2006.

The paper presented by the Clerk of the Legislative Council is called 'The Upper House: a snapshot of the South Australian experience 1975 to 1998.' Throughout this period of some 23 years, only 1.8 per cent of government bills have been rejected outright, and this was usually after going through the whole legislative process to a deadlock conference between the houses. I updated that for an analysis of the period 2002 to 2006, which showed that over 200 bills had been introduced by the government; three bills had been defeated and one had been delayed in that time. Again, 2 per cent of bills have been defeated or permanently stayed or delayed in that period. That figure remained pretty consistent at about 2 per cent.

The argument that the government of the day (Liberal or Labor) was unable to get its legislative program through fell in the face of looking at the facts of the situation rather than the rhetoric that the Premier and others had been using at the time. That was the position of the Premier and co. and, even though we do not agree with it, one can at least understand the logic of it, and that is that the government is elected to govern, it should be allowed to govern and whatever it decides should be allowed to pass; therefore, you get rid of the Legislative Council.

When one looks now at the government's plan B, which is the legislation we have before us, one needs to look at whether it achieves what the government said originally it was setting out to achieve. The simple answer is, of course, that it does not. Its original purpose was to allow the government to put its program through without opposition. It obviously did not want an upper house where there were Independents and minor parties. It certainly did not want an upper house where the majority of members were non-government members.

The package that has been put before us, should it pass into law, would leave governments in exactly the same position: there would be an upper house, albeit differently structured, but in most circumstances it would still be in a position where there are Independents and third parties. Secondly, there are a majority of non-government members in the Legislative Council as well. So, it does not achieve the purpose that the Premier, *The Advertiser*, Mr Champion de Crespigny and Business SA were arguing for the abolition of the Legislative Council. It is not a rational plan B to the original proposition that was being put by the Premier. It does not achieve the function and purpose they said they wanted to achieve through reform of parliament and the Legislative Council.

We were therefore left with the Premier having to save electoral face and, Mr President, as you would well know, that is a very important issue for our Premier. He wants to ensure that he is seen in the best possible light, and he does not want to be seen to have gone back on the commitments that he has given. So, he moved to plan B, and plan B, of course, is the package that we have before us this evening.

In the first instance, we see a reduction in the numbers from 22 to 16. Clearly, in normal circumstances we are likely, potentially, to have the government of the day having six members, the opposition having six and the Independents and third parties having four. In other circumstances you may well have the government with five or six, the opposition with five or six, and the Independents and third parties potentially having five; almost a third, a third, a third, as is almost the current arrangement in the Legislative Council.

What you are then confronted with is a government party in this chamber with five or six members. With the current convention of the government party having a person sitting in the chair as the president, you are then confronted with the government party having four or five members sitting on government members' benches in the Legislative Council.

In a situation where you have, hopefully, a sufficient talent pool to be able to provide three out of fifteen members of the cabinet from the upper house—I know that is a difficulty for this government, and that is why we see only two cabinet ministers in this chamber—you are essentially left in a position where you would have one or maybe two members of a backbench not only having to take on the role of the whip but also having to take on all the responsibilities of being backbench members of a government party.

That takes you back to the period in this Legislative Council when there used to be 16 Liberal members and four government members: there were three cabinet ministers and one backbencher. It was almost an unworkable set of circumstances for the government of the day. In those days, of course, there was not the history and the record of significant numbers of parliamentary committees to occupy or increase the workload of Legislative Council members.

When one goes back to those periods of the 1970s and 1980s, I think there were no more than a couple of committees that involved members of the Legislative Council, and very infrequently were select committees established. It has been a practice that increased significantly only during the 1980s, 1990s, and now the new century, and it is not going to change. We are going to see this chamber, with its majority, continuing to establish an ongoing number of committees, which will need to be serviced, and clearly what is intended, in part, by the government is to weaken the capacity of the Legislative Council to provide oversight of the operations of the executive. You would have a situation where the one or two members of the government backbench would have to serve on every committee or, as has occurred in the past,

cabinet ministers would have to spend an increasing period of time serving on select committees and committees of the Legislative Council.

So, in practical terms as well as the other terms that the Hon. Mr Lawson has referred to, one can see the very important but hidden implications of a reduction of 22 to 16, superficially very attractive to the people out there. If you said to people in the electorate, 'Do you want fewer politicians? Do you want shorter terms? Would you prefer that they weren't paid at all?', 70 per cent of them would nod their head. If you put to them, 'Would you prefer to almost get rid of all the politicians, don't pay them anything, and have as short a term as possible?', again, you will get a head nod. That is the sort of populism to which this particular aspect of the legislation is pitched. But when you look behind, in terms of the practical implications of how this chamber would operate, there are dire consequences if you were to go down this particular path.

The second aspect of the legislation refers to the introduction of the four year terms. I refer to a contribution from the current Attorney-General, who addressed this particular issue on 9 March 2005. It relates to a piece of legislation from an Independent member which sought to introduce exactly this aspect, that is, four year terms coinciding with the House of Assembly. What did the Attorney-General say? I quote:

> I now turn to the Constitution (Terms of Members of the Legislative Council) Amendment Bill. The bill seeks to amend the principal act so that the term of members of the Legislative Council will expire on the dissolution or expiry of the House of Assembly. The government does not support this proposal. It believes that the current system is preferable. Currently, members of the other place generally serve the equivalent of two terms of the House of Assembly. That is eight years.
>
> The terms of members of the council (the other place) have always been staggered so that, usually, only one half of the membership is elected at any one election. The amendments proposed in this bill would mean that all 22 councillors would be elected at the same election, meaning a reduction in the quota from 8.3 per cent of the formal vote to 4.3 per cent, or thereabouts. The importance of the other place and equivalent chambers is explained in *Odgers'* text as follows:
>
> The requirement for the consent of two differently constituted assemblies improves the quality of laws. It is also a safeguard against misuse of the law-making power and, in particular, against the control of any one body by a political faction not properly representative of the whole community.
>
> The government believes that the current system is consistent with the role of the other place as a house of review. It has been common for upper houses to be constituted in this way. For example, the Senate maintains a staggered system of appointment. Staggered terms allow members of the other place to be more removed from immediate electoral pressure. It offers stability and balance, as a strong populist vote in the house would not necessarily result in a majority of members in the other place. I believe that this is a safeguard. It has the advantage of ensuring continuity of experience in at least one house of parliament.

Those were the words of our Attorney-General, Mr Atkinson. I am sure that the Hon. Mr Finnigan, as a wholly owned subsidiary of that particular part of the Labor right, would take those particular comments from the Attorney-General—his Attorney-General, his leader—to heart in relation to the legislation. That is why I say that this particular announcement by the Premier in November 2005, and now this particular adaptation, is completely contrary to the views that have been put by people like the Attorney-General and others over a long period of time in relation to the Legislative Council.

My views of the Attorney-General are well known: consistency of political argument has not always been our Attorney-General's strong suit, but I would invite him to reconcile his statements of March 2005 with his introduction of this legislation. We heard earlier how the Attorney-General assiduously corrects the grammar of members of parliament on their websites, etc., and we know that the Attorney-General and, indeed, others of his particular group do spend a lot of time and creativity on websites and related activities, but more about that on another occasion. On the issue of grammar I might ask the Attorney-General whether he could spell for the parliament the simple word 'hypocrisy', and I invite him to comment on this particular issue.

The third matter my colleague the Hon. Mr Lawson raised was regarding the vote of the President, and I think he nailed it very clearly. I do not intend to speak about it at length, but the important part of his argument was that the changes had been made back in 1973 for the presiding officers of both houses, yet in this legislation the proposal to give what is, in essence, a deliberative vote to the presiding officer is in this chamber only, and is not being done for the Speaker.

I put that to the government advisers and to Speaker Jack Snelling, who was also there, when we had the briefing with them in Old Parliament House. I think it is fair to say that a rather flustered Speaker blurted out an attempted explanation that in some way it was more likely, or something, that there were smaller numbers in the Legislative Council—shock, horror; we had not

realised that—and it was likely to be more important for the President in the Legislative Council to be able to have a deliberative vote.

I think he also indicated that it was something to do with the fact that we had even numbers in the Legislative Council and they had odd numbers in the House of Assembly, and that in some way justified the difference, giving the presiding officer in this house a deliberative vote but not making the change in the House of Assembly. As I said, it was not a very convincing response from the Speaker, and it left a number of us who were there shaking our heads. However, that is part of the package that we have before us.

The fourth element relates to the double dissolution provisions, and, again, my colleague more than adequately summarised the argument against those. The simple reality is that in the many years of operation of the Legislative Council there has never been a situation where that has been contemplated. This council has never refused supply, although it has always had the capacity to do so. It is not an issue that has been at the forefront of debate about electoral reform in South Australia, and it is not the sort of issue about which, when I am at the football on a Saturday or at a community group over the weekend, someone has said to me, 'We really need to change the double dissolution provisions of the Legislative Council; it is eating away at me at the moment. Please do something about it,' or 'The issue of whether or not the presiding member in the council has a deliberative vote is a critical one in terms of whether or not I can get a service for my child with a disability or whether I can get off a waiting list and into a hospital.' It is not the sort of issue that is in the mind of the people to whom I speak; maybe the Premier and the Attorney-General speak to different people when they talk about the need for electoral and political reform.

In these final moments I would like to flag some other broad areas. Whilst I think this is a nonsense—and I think it is being treated as a nonsense by most people—in terms of electoral reform, it is an attempt to reduce scrutiny and accountability of the executive arm of government, and if the government got this through it would apply to future Liberal governments as well as Labor governments. I think that is a bad thing in terms of our democratic processes.

I have touched upon issues in terms of reform on other occasions, and I hope I have the opportunity to touch upon them again in other motions before the end of the year, but I will list them briefly here. The operations of the committees of this Legislative Council are just so fundamental to keeping the executive arm of government accountable, and the progress of the last 20 years needs not just to be put away and admired, saying 'That's a good thing.'

We need to look at it, build on it and improve upon it in terms of its operations. I think the decisions we have taken in the past two or three years with Budget and Finance are the germs of starting a committee system of the Legislative Council which I think we can be proud of and which will keep future governments, Liberal and Labor, accountable. We have to acknowledge on our side that when it comes to our cycle to be in government there will be a non-government majority in the Legislative Council chairing and operating the numbers on a budget and finance committee to keep Liberal ministers and public servants under a Liberal government to account as well. We have to accept that political reality.

I think we have to build on what we have. I have said before and I will argue again that it should become a standing committee of the Legislative Council so that it is not there at the whim and wisdom of a particular flavour of the day in terms of the vote in the Legislative Council. We should have permanent resourcing in terms of staffing so that we have two full-time staff on that committee who can build up corporate knowledge and expertise of budget accounts so that, as new members join the committee, they can provide advice and guidance to those members.

You cannot expect new members on a committee like that to be able to know everything about the operations of budgets, accounts and finances. The staff should be in a position, as they are in other legislatures, to provide advice to new committee members. They should be able to say, 'I have been through every budget line of this department, members, and you can either agree to these questions or not but, in a bipartisan way, here are the questions that ought to be raised with this particular agency.' The Labor members can pick up the ones they like, the Liberal members can pick up the ones they like, and hopefully the Independents would pick up the whole lot of them and raise the questions with the public servants. That is the way that that committee ought to operate.

We have the Statutory Authorities Review Committee at the moment which is wholly comprised of members of the Legislative Council. I would like eventually to see a third wholly Legislative Council based standing committee in the social and environmental area so that we have

an across-the-board spectrum of Legislative Council committees. Our joint standing committees were an accident of the history of the time in terms of how they were established, and I suspect that it will be very hard to unravel all of them, and there will be some in this chamber who do not want to unravel them, and I accept that.

I think we could certainly combine some of those—natural resources and environment perhaps into one, or the Aboriginal affairs and social into another and establish the resources for a third standing committee of the Legislative Council. We should, over a period of time, be aiming—and, as those of us who have been here for many years move on to other challenges, I hope that the newer members of this chamber take on this commitment—to build on what we have and eventually see a Legislative Council standing committee system that covers the spectrum for those who are interested in social and environmental issues, for those who are interested in budget and finance and for those who are interested in the review of statutory authorities where you look at particular agencies etc., and have that spectrum across the board.

That is the sort of reform that would mean much more in terms of improving the performance of the parliament and the Legislative Council by improving the transparency of the accountability of government, both Liberal and Labor, whereby we could genuinely talk about that as the sort of reform that we should be introducing.

I would hope that in the new parliament, whoever is in government, we amend our sessional orders or standing orders in this chamber to require answers to questions on notice within a specified period of time—60 days or 30 days. I will go through the detail of this in another motion. It is a practice that exists in most other jurisdictions where governments of the day cannot ignore for seven years questions on notice. At least they have to provide some form of answer. You might not be happy with it, and I am sure that oppositions in other parliaments are not happy with what they get, but they at least get the courtesy of a response from the government of the day within a period of 30 or 60 days of a question being put on notice. I think that is a worthwhile reform of the operations of the Legislative Council which would improve accountability.

Again, I will speak on this on another occasion, but I think we do need to look at our standing orders. There are many standing orders in relation to which I think the passage of time has meant that the arguments for them have perhaps disappeared. Let me briefly refer to two. I am not going to waste time this evening by going through many of the others. I am sure other members have a view on many of them as well. I refer members to standing orders 189 and 190—and I am sure all members will know exactly the standing orders. Standing order 190 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.

That is generally ignored in many of the discussions in the parliament. There are so many select committees of the Legislative Council that, if on every occasion an issue was raised, whether it be the topic of water or Atkinson or Ashbourne, or whatever, as one goes across the spectrum, and if anyone wanted to take a point of order, the point of order would probably have to be upheld by the President.

By and large, the reason for this particular standing order came about because of the fact that all the proceedings of committees were held in confidence; they were not in public session. So, until it reported, you did not know anything about the proceedings of the committee, and you can understand that. However, these days, virtually all of our committees are open to the media, and they are recorded and reported on, etc. It makes no sense to me to have a standing order that prevents you from discussing or raising these issues. There are some protections you would have to weave into any change in this area, but I just give it as an example of something that I think, in terms of reforms to a modern day parliamentary chamber, we need to be tidying up and having a look at. The other one I will briefly refer to is this wonderful standing order 189, which provides:

> No member shall read extracts from newspapers or other documents, referring to debates in the council during the same session, excepting *Hansard*.

I am not sure of the exact reasons for that. In essence, what it is saying is that, if the Adelaide *Advertiser* or the *Independent Weekly* or something refers to or reports on a proceeding in the Legislative Council during the same session, we are not allowed to refer to that report, other than quoting *Hansard*. It makes no sense to me, and I have been here for a while. It is an example, I think, of a number of the standing orders where we need to have a look at the rules upon which we operate.

I come to the last point in relation to standing orders, and that is the process or procedure for change. Again, I will try to speak in greater detail on this on another occasion before the end of the year, but I will just flag briefly that there is no rule that prevents the majority of this chamber from changing the standing orders if it so wishes. I have spoken previously on the convention in my period in the Legislative Council where we have essentially not changed the standing orders unless we could get the agreement of everyone. That was a bit easier 20 years ago when there were mainly 20 Labor and Liberal members. Essentially, if they agreed, the only other ones we had to worry about in those days were the two Democrats.

Of course, now it is one-third, one-third, one-third and it is a much tougher task. As I have said, it is a convention as opposed to a rule. So, the majority of the day, if it so wishes, can take control of the Standing Orders Committee and rewrite the standing orders completely. I do not support that proposition. However, I think the days of having to get the agreement of all 22 members are probably now gone. Probably a proposition I would invite members and the government to consider would be the agreement, clearly, of the government and the opposition, as the two biggest parties, and possibly a convention where a majority of the non-government/non-opposition members agree to the change. So, if we have six members, as we have at the moment, it would be a matter of whether you agree on it being three or four of those members.

It still means that an overwhelming majority of the members need to agree to a particular change. It means, of course, that you have to have the agreement of the government and opposition and the majority of the Independent members. However, it is different from the House of Assembly, where the government of the day, with the numbers, can walk in one day—and governments have in the past—and change all the standing orders; whatever the government wants, it can put through.

We are different, but perhaps we need to consider now how we might move to a new convention, and we ought to have a debate about that. This is just my view. The government may well have a different view. If it is in opposition, it might have a different view again. I would invite non-government members as well to contemplate it and, as I have said, perhaps through a notice of motion in private members' business, raise the issues, because I think we need to do some thinking and have a discussion on this prior to March 2010.

In the new parliament (whoever is in government) my views are on the record and I can assure you they are not going to change whether I am in government or in opposition. I am only speaking for myself personally at the moment, of course. We support, obviously, the Budget and Finance Committee but, in relation to these standing order issues, we need to have that debate as well.

We do need to consider how we move to a process of improving some of the standing orders in the Legislative Council because, essentially, if someone wants to be a stickler and you get the equivalent of a Peter Lewis in this chamber (heaven forbid!) the standing orders could be effectively used to stymie almost anything that currently goes on as normal accepted practice for keeping governments to account. I do not think that is a good thing in terms of the operation of the chamber. Let us try to fix it up before we get the political equivalent of a Peter Lewis in this chamber in relation to using standing orders in that particular way.

I indicated that I would not speak for much longer than 30 minutes, and it has been 35 minutes so I indicate, again, my support for the comments of my colleague the Hon. Mr Lawson in terms of opposition to both bills. I would urge other members to similarly oppose the bills that are before the council

Debate adjourned on motion of Hon. Carmel Zollo.

FAIR WORK (COMMONWEALTH POWERS) BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (20:48): 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 *Fair Work (Commonwealth Powers) Bill 2009* (the Bill) is part of a legislative package of two Bills that will refer power to the Commonwealth to facilitate South Australia's participation in a national system of industrial relations for the private sector from 2010.

Members will recall that on 9 June 2009 the Government publicly announced South Australia's intention to participate in the national system for the private sector from 1 January 2010, subject to the finalisation of a number of issues being resolved with the Commonwealth.

South Australia's private sector participation in the national industrial relations system has been the subject of extensive and detailed consultations with members of the Industrial Relations Advisory Committee and other key stakeholders. There is general support for our participation in the national system and for the proposed text based referral of powers to the Commonwealth.

There are many benefits for South Australians resulting from the referral of IR powers. A streamlined national system of industrial relations will result in significant red tape reductions for business and greater administrative efficiency by eliminating regulatory overlap and duplication. Businesses will no longer have to deal with complex jurisdictional questions about which system of industrial relations they are operating in.

A single set of general industrial relations laws for the private sector, with the retention of significant South Australian based education, information and enforcement services will have a positive impact on employers and employees generally, but particularly on small business, young workers, women, employees with a disability, workers in regional areas, indigenous Australians and workers from culturally and linguistically diverse backgrounds. These were the groups identified by numerous research projects and inquiries to be the most adversely affected by the previous Federal Government's WorkChoices legislation.

This historic Bill is a culmination of many months of multilateral and bilateral discussions with the Commonwealth and other states and territories, and extensive consultations with key South Australian stakeholders.

The package of Bills before the Parliament and the associated inter-governmental agreement are prime examples of what can be achieved by cooperative federalism. This proposal builds upon the reforms to industrial relations initiated since the election of the Commonwealth Government in November 2007 and will ensure that South Australia has a significant and ongoing say in the industrial relations laws that will apply in our community.

The Rudd Government was elected with a commitment to implement its industrial relations policy *Forward with Fairness. Forward with Fairness* includes the aim of creating a single national system of industrial relations for the private sector.

Many in the community considered major elements of the former Commonwealth Government's WorkChoices legislation to be divisive. The passing of the Commonwealth *Fair Work Act 2009* removed the remaining vestiges of WorkChoices, established the national system and represented the cornerstone of a balanced, fair and equitable industrial relations legislative framework.

The previous WorkChoices system also resulted in confusion for many employers and employees given the uncertainty as to whether they were covered by the former Commonwealth legislation. The basis for South Australia's participation in the national system as outlined in this Bill, achieves the key public policy objective of providing certainty for all South Australians regarding their rights and responsibilities in the workplace.

The current Commonwealth industrial relations legislation and the previous WorkChoices legislation relied mainly on the Corporations Power of the Australian Constitution (section 51(20)) to regulate constitutional corporations. Most unincorporated employers and their employees remain in the South Australian industrial relations system. The difficulty has been that for some employers, their status as a constitutional corporation, or not, was not clear and depended upon the view that might by taken by the Courts and Tribunals from time to time.

Section 51(37) of the Australian Constitution provides for State Parliaments to refer powers to the Commonwealth Parliament to make laws in relation to referred matters. This Bill makes use of this constitutional power to refer the making of industrial relations laws for the private sector to the Commonwealth and in so doing to remove this jurisdictional uncertainty.

The Bill will provide for a text-based referral, an amendment reference and a subject matter transition reference to facilitate South Australia's participation in the national system of industrial relations for the private sector. This referral of powers is similar to the most recent Victorian reference of powers to the Commonwealth which is contained in the current Division 2A of the Commonwealth *Fair Work Act 2009*.

Contained in the Bill is a text-based reference to the Commonwealth that would be adopted in a form that reflects (in general terms) the approach already taken to facilitate the recent Victorian reference. The referred text:

(a) provides for South Australia to be recognised as a 'referring State';

(b) takes into account the provisions of this Bill as they relate to the exclusion of the public sector, local government and any other relevant exclusions (for example, this means that South Australia will still meet the definition of 'referring State' even though our Referral Bill excludes local government); and

(c) applies the *Fair Work Act 2009* to South Australian employers and employees who are to be brought into the national industrial relations system on account of the South Australian referral. These provisions extend the existing definitions of 'national system employer' and 'national system employee' to include any employee and any employer in a referring State such as South

Australia (except for those excluded from the referral) who would otherwise be outside of those definitions.

The proposed text for the text-based referral is set out in Schedule 1 of the Bill. We anticipate that this will be reflected in the changes to the Commonwealth *Fair Work Act 2009* that will be made by the Commonwealth Parliament to accept our referral.

The advantage of this approach is that all of the *Fair Work Act 2009* itself does not have to be tabled in the Parliament with this Bill; just the intended text of the Commonwealth Act to accept our referral as appended to this Bill.

The Bill also provides for an amendment reference that will refer power to the Commonwealth to enable it to make amendments with respect to defined subject matters. The definition of 'referred subject matters' for the purposes of the amendment reference generally reflects the main elements of the current national system as contained in the *Fair Work Act 2009* including minimum terms and conditions of employment, bargaining, workplace rights and responsibilities, compliance, administration and application of that Act.

To enable the Commonwealth to make laws dealing with the transitional matters arising from the transfer of South Australian employers and employees from the State jurisdiction into the national system this Bill provides for a referral of this power via a transition reference.

It is important that the House appreciate that these subject matter references do not provide a 'blank cheque' to the Commonwealth similar to the original 1996 Victorian reference. Our ongoing role in ensuring that this State's interests are maintained is achieved through a combination of the amendment reference and the termination provisions evident in the Bill.

The amendment reference and termination provisions of this Bill restrict future changes from removing agreed fundamental elements (including the scope) of the national system. These provisions expressly exclude the power to make amendments based on our referral with respect to continuing State law matters that are 'saved' by section 27 of the *Fair Work Act 2009* (including occupational health and safety, training and skills development, child labour etc) and with respect to the public sector, local government and any other excluded sectors.

This is achieved by including these matters in the definition of 'excluded subject matter' in the Bill.

The Bill also links the amendment reference limitations to the statutory based governance principles unanimously agreed to by the Workplace Relations Ministers Council on 23 May 2008. A translation of these principles is set out in the definition of the 'fundamental workplace relations principles' as provided in clause 4 of the Bill.

The significance of these principles is that it will permit the amendment reference to be terminated in certain circumstances by South Australia whilst retaining our status as a referring State. This is achieved as follows.

This Bill allows for termination of the references by a proclamation of the South Australian Governor. This is a standard provision in Referral legislation and in general terms a period of six months notice is normally required to be given to the Commonwealth if the State intends to terminate any of its references. Should South Australia do this in isolation from other referring States, and where the agreed national system principles have not been breached, South Australia would no longer be considered to be a referring State under the terms of the *Fair Work Act 2009.*

However, the Bill also provides for a termination of the amendment reference if the Governor, in the Proclamation giving effect to the termination, declares that, in his/her opinion, the *Fair Work Act 2009* has been (or will be) amended in a manner that is inconsistent with one or more of the relevant fundamental workplace relations principles.

The termination of the amendment reference in this context would require three months notice and have the effect that the Commonwealth would not, after the date of effect of the Proclamation, be able to rely on South Australia's referral to enact amendments to the *Fair Work Act 2009*. Future amendments would not apply to non-constitutional employers and employees in South Australia, pending the resolution of the issues by the Parliament.

Under these provisions the remainder of the South Australian reference would remain intact. This also means that the *Fair Work Act 2009,* as amended up to the date of the Proclamation would continue to apply to non-constitutional employers and employees in South Australia.

Amendments to the *Fair Work Act 2009* to reflect this are set out in Schedule 1 of the Bill.

This means that should a future Commonwealth government make changes to the *Fair Work Act 2009* that are not consistent with the basis upon which we have agreed to participate in the national system, South Australia would be in a position to prevent further changes to the system applying to our referred parties until the Parliaments have resolved the issues. Unlike the normal six months notice provision, this approach would avoid the significant disruption, expense and uncertainty that would be caused by a withdrawal from the national system itself.

The Government considers that this approach to the amendment reference supplements the intent of the relevant Inter-Governmental Agreement. It also provides the system with the certainty and flexibility required to maintain a genuine national system into the future. Importantly, this approach also ensures that South Australia's interests are clearly taken into account in any future changes to the Commonwealth legislation.

It is envisaged that if all jurisdictions were meeting their obligations under the Inter-Governmental Agreement, the provisions of this Bill for the termination of the amendment reference (because of inconsistency with the fundamental workplace relations principles) would not need to be applied and in effect would only be

contemplated in the most extreme circumstances where the agreed fundamentals of the national system are threatened.

The Bill's provisions relating to the amendment reference would not constrain the Commonwealth from making any minor or technical adjustments to the *Fair Work Act 2009* nor from making progressive amendments to build on the fundamental principles into the future. Neither would it constrain the Commonwealth from making amendments to the FW Act that have been developed by the jurisdictions through the consultation and governance processes anticipated by the Inter-Governmental Agreement.

Participation in the national system, in the manner proposed in this Bill, will also ensure that South Australia is in a direct position to influence the future industrial relations laws that will apply in our community and to ensure appropriate and comprehensive education, information and enforcement services will be provided for the national system in this State.

When this package of Bills is enacted, South Australians will have an industrial relations system built on the foundation of a strong safety net, access to collective bargaining (including for the low paid) and protection of workplace rights. The new arrangements will have a positive impact on workers by removing the worst aspects of the previous WorkChoices amendments.

The Commonwealth Government has made special arrangements for small businesses in the unfair dismissal jurisdiction and Fair Work Australia has established a special unit to support small businesses in the new system.

An agreement has also been negotiated between the Fair Work Ombudsman and SafeWork SA to provide for the local delivery of South Australian compliance, education and advisory services. As part of these service delivery arrangements SafeWork SA officers will be undertaking a large number of education visits to workplaces transferring from the state system to the federal jurisdiction over the next three years.

Transitional arrangements and other assistance for those employers and employees transferring to the national system are also currently being finalised between this Government, the Commonwealth and the other referring States. Extensive consultation with local stakeholders on these matters has taken place and will continue. The aim is to provide a smooth transition to the national system, recognising the particular needs of both employers and employees during that process.

South Australia's participation in a national system of industrial relations for the private sector reflects a new era of cooperation with the Commonwealth. Although there have been numerous attempts to achieve a unified system since Federation, this Government has led the way in assisting to create a new, simple, fair and accessible industrial relations system for South Australian employers and employees.

We are proud to take this opportunity for South Australia to participate in a national system of industrial relations for the private sector, while maintaining a contemporary and equitable State system for the public sector and local government.

I commend the Bill to Members.

Explanation of Clauses

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Interpretation

This clause defines certain terms and expressions used in the proposed Act.

4—Fundamental workplace relations principles

This clause is relevant to the operation of clause 9. It is intended to recognise certain principles as being fundamental to the arrangements under which the State is willing to grant a reference under this measure.

5—Reference of matters

This clause provides for the reference of matters to the Commonwealth.

Clause 5(1)(a) provides for the inclusion of the initial referred provisions in a Commonwealth Act enacted in the terms, or substantially in the terms, of the tabled text. The expression "substantially in the terms" of the scheduled text will enable minor adjustments to be made to the text.

Clause 5(1)(b) provides for the reference of the matters within the definition of *referred subject matters*. This is referred to as the "amendment reference".

Clause 5(1)(c) provides a reference for any necessary transitional provisions associated with the transition from the old industrial relations regime to the regime provided by the Commonwealth Fair Work Act.

Clause 5(2) makes it clear that the reference of a matter has effect only to the extent that the matter is not otherwise within the legislative power of the Commonwealth Parliament and to the extent that the matter is within the legislative power of the State Parliament.

Clause 5(3) removes a possible argument that 1 of the references might be limited by any other of the references.

Clause 5(4) makes it clear that the State Parliament envisages that the Commonwealth Fair Work Act can be amended or affected by Commonwealth legislation enacted in reliance on other powers.

Clause 5(5) specifies the periods during which a reference has effect.

6—Matters excluded from the reference

The following matters are to be excluded from the reference:

(a) matters relating to Ministers, Members of Parliament, judicial officers or members of tribunals established by or under a law of the State;

(b) matters relating to public sector employees;

(c) matters relating to persons engaged as a member of a Minister's personal staff;

(d) matters relating to persons—

(i) appointed under section 68 of the *Constitution Act 1934*; or

(ii) appointed or engaged by the Governor or a Minister under any other Act, law or authority;

(e) matters relating to persons holding office as Parliamentary officers or employed under the *Parliament (Joint Services) Act 1985*;

(f) matters relating to persons holding office or employed under the *Courts Administration Act 1993*;

(g) matters relating to—

(i) members of SA Police under the *Police Act 1998*; or

(ii) police cadets, police medical officers or special constables; or

(iii) persons employed as protective security officers under the *Protective Security Act 2007*;

(h) matters relating to local government sector employees.

7—Termination of references

This clause deals with the termination of the period of the references specified under clause 5 (namely, the period ending on a day fixed by the Governor by proclamation). The clause enables the periods of all references to be terminated at the same time or only the periods of any or all of the amendment references.

8—Effect of termination of amendment reference or transition reference before initial reference

This clause makes it clear that the separate termination of the period of the amendment reference does not affect laws already in place. Accordingly, the amendment reference continues to have effect to support those laws unless the period of the initial reference is also terminated.

9—Period for termination of references

As a general proposition, a day fixed for the termination of a reference must be at least 6 months after the day on which the relevant proclamation is published. However, if the termination only relates to the amendment reference and the Governor is acting on account of an assessment that the Commonwealth is acting, or has acted, in a manner that is inconsistent with 1 or more of the fundamental workplace relations principles, the period set for the termination of the amendment reference may be reduced to 3 months. In such a case, the Minister will be required to provide a report to the Parliament relating to the matter.

Schedule 1

This schedule sets out the text for the purposes of the initial reference.

Debate adjourned on motion of Hon. S.G. Wade.

STATUTES AMENDMENT (NATIONAL INDUSTRIAL RELATIONS SYSTEM) BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (20:49): I move:

That this bill be now read a second time.

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

Leave granted.

The *Statutes Amendment (National Industrial Relations System) Bill 2009* is the second part of the legislative package that will refer power to the Commonwealth to facilitate South Australia's participation in a national system of industrial relations for the private sector from January 2010. It deals with transitional and consequential amendments of State laws arising out of South Australia's participation in the national system.

Earlier today, when I introduced the *Fair Work (Commonwealth Powers) Bill 2009* (the Referral Bill) into this House, I provided members with the background to South Australia's participation in the national Industrial Relations system. To effectively implement the referral of powers to the Commonwealth, amendments to other South Australian legislation will be required. The *Statutes Amendment (National Industrial Relations System) Bill 2009* (the Bill) provides for:

- transitional arrangements for those employers and employees returning to the state system to be facilitated;
- the implementation of certain consequential changes to State law; and
- the updating of references to Commonwealth legislation and industrial instruments in South Australian statutes given the changes to the Commonwealth law that have already occurred.

In relation to the Referral Bill, I outlined that the State public sector and the local government sector were not included as part of the national system. These parties will be subject to the continuing State industrial law and so be afforded jurisdictional certainty for the first time in many years. In relation to the local government sector, the Bill provides for the recognition under the *Fair Work Act 1994* (SA) of all collective industrial instruments made by local government parties pursuant to the *Workplace Relations Act 1996* (Cth) and the *Fair Work Act 2009* (Cth). This will include recognising relevant federal awards and agreements.

The Bill also formally recognises any formal collective agreements made by local government parties in the state jurisdiction during the 2006-2009 period. This will include recognising collective agreements made under Chapter 3, Part 2 of the *Fair Work Act 1994* (SA) and referral agreements made pursuant to Schedule 1 of the *Commercial Arbitration and Industrial Referral Agreements Act 1986* (SA).

This provision is required as the status of agreements made by local government in the State jurisdiction between 2006-2009 is not beyond doubt. This is because if the council was a constitutional corporation between 2006-2009 it could only make valid agreements in the federal industrial relations jurisdiction. The same issue applies if a council made a federal agreement when it was not, in law, a constitutional corporation.

The effect of providing this recognition is to ensure that all transitioning agreements made during the 2006-09 period are legally valid irrespective of the constitutional status of the individual council at that time.

Although the Bill does not recognise unregistered administrative agreements and Memorandums of Understanding as transitioning instruments, there will be scope for the parties to legitimise these arrangements in the state system as part of any variation and renegotiation processes.

Under this Bill provision is made for transitioning agreements to be varied by the Industrial Relations Commission of South Australia to resolve any ambiguities or uncertainty caused by recognition of these instruments under the State system. This can be achieved either by consent of the parties or by a determination of the State Commission.

The State Commission will also be given jurisdiction to vary or revoke (upon application) any term or provision of a transitioning award or enterprise agreement if it is satisfied that it is fair and reasonable to do so in the circumstances. This is a similar approach to that taken in the *Statutes Amendment (Public Sector Employment) Act 2006* which dealt with the transition of certain elements of the public sector into the state system in 2006.

All agreements transitioning into the state jurisdiction from 1 January 2010 will operate subject to the minimum standards in the *Fair Work Act 1994* (SA). The Bill further provides for these transitioning agreements to have a sunset clause of two years, or the nominal life of the agreement, whichever is the earlier, at which time they must be renegotiated.

Relevant federal awards applying to the local government sector are also to be recognised under State law by regulation from 1 January 2010.

These provisions ensure that all relevant agreements and awards are immediately recognised and validated within the state industrial relations jurisdiction, without any further action by the parties. They also ensure that the State Commission has jurisdiction to deal with any immediate issues of ambiguity and uncertainty arising from the transition.

The legislation also takes account of bargaining processes commenced by the parties. If a Council has engaged in enterprise bargaining in the federal system and the process has been concluded (including a vote by employees to accept the agreement and lodgement with the federal tribunal for approval), but the agreement has not been approved by Fair Work Australia by 31 December 2009, it is intended that the approval process will be concluded by Fair Work Australia and the agreement subsequently recognised in the State system.

In the situation when a Council has engaged in enterprise bargaining in the federal system and agreement was not reached by 31 December 2009, the bargaining process will need to recommence in the state system from 1 January 2010. However, the Bill ensures that the Commission may take conduct of the parties prior to 1 January 2010 into account when it considers enterprise agreement matters after that date.

In relation to the public sector, most Government Business Enterprises will have their coverage confirmed under the State Industrial Relations system. This is achieved by amending the various South Australian statutes that

establish Government Business Enterprises to declare that they are not national system employers for the purposes of the *Fair Work Act 2009*. These provisions are designed to operate in conjunction with the *Fair Work Act 2009* so as to exclude these entities from the national system.

The Bill provides for transitional arrangements for those Government Business Enterprises 'returning' to the state system and these are similar to those I described for the local government sector.

The aim of this Bill is to ensure that the transition for the parties in these sectors to operate as simply and smoothly as possible, whilst acknowledging existing industrial arrangements.

Some consequential amendments to the *Fair Work Act 1994* (SA) are also necessary as a result of South Australia's participation in the national system. In the context of establishing the national system on the foundation of cooperative federalism, this Bill will insert statutory encouragement provisions for the full utilisation of dual appointments in Fair Work Australia and the State Commission.

These include:-

- the insertion of a provision in the objects clause of the *Fair Work Act 1994* (SA) to reflect the aim of establishing a national industrial relations system based on co-operative federalism particularly through the use of dual appointments to Commonwealth and State tribunals; and
- the insertion of operational provisions to encourage the actual use of dual appointments.

The Industrial Relations Court of South Australia (the Court) will be an eligible Court under the national Industrial Relations system and be accessible to all parties in this State. As such it is appropriate to confirm elements of its operations. In particular, the Bill re-establishes the discretionary approach to the awarding of costs as historically taken by the Court.

Following the removal of the special treatment for employer members of the Exclusive Brethren in the *Fair Work Act 2009*, this Bill also removes the special right of entry restrictions in section 140(5) of the *Fair Work Act 1994* (SA) as they relate to that group.

Provisions have been made for any references in the various State Acts mentioned in the Bill to the repealed Commonwealth *Workplace Relations Act 1996* and any references to federal awards and enterprise agreements to be amended to ensure that they are consistent with the *Fair Work Act 2009* and relevant fair work industrial instruments.

The concepts outlined in the Bill have been subject to detailed consultation with the Industrial Relations Advisory Committee and other interested parties.

The package of Bills I have introduced today are necessary to implement South Australia's participation in the national Industrial Relations system from 1 January 2010. After the new arrangements have been in place for a period, the Government also intends to undertake a further review of the State industrial relations legislation to further fine tune its operation and address any other consequences of the national system changes.

I commend this Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

Operation of the measure is to commence on a day to be fixed by proclamation. Section 7(5) of the *Acts Interpretation Act 1915* will not apply to the Act (in case it is necessary to delay the commencement of certain amendments beyond the second anniversary of assent).

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Construction Industry Long Service Leave Act 1987*

4—Amendment of section 4—Interpretation

This clause substitutes a new definition of *agreement* and amends the definition of *award*. In both cases, the changes are made for the purpose of updating obsolete references to Commonwealth legislation.

Part 3—Amendment of *Equal Opportunity Act 1984*

5—Amendment of section 85F—Exemptions

6—Amendment of section 100—Proceedings under *Fair Work Act 1994*

The purpose of the amendments made by these clauses is to replace obsolete references to State and Commonwealth legislation.

Part 4—Amendment of *Fair Work Act 1994*

7—Amendment of section 3—Objects of Act

As a consequence of this amendment to the objects section of the *Fair Work Act 1994*, an additional object of the Act will be facilitation of the establishment and operation of a national industrial relations system through co-operative federalism.

8—Amendment of section 4—Interpretation

This clause amends the interpretation provision of the *Fair Work Act 1994* for the purpose of updating obsolete references and inserting new definitions. For example, a new definition of *Commonwealth Act* is substituted so that reference is made to the *Fair Work Act 2009* of the Commonwealth. The *Commonwealth (Registered Organisations) Act* is the Commonwealth *Fair Work (Registered Organisations) Act 2009*. *Fair Work Australia* is Fair Work Australia established under the Commonwealth Act.

9—Amendment of section 29—The President

Section 29 is amended by this clause so as to require the President of the Industrial Relations Commission to perform his or her functions and exercise his or her powers in a manner that facilitates and encourages co-operation between the Commission and Fair Work Australia.

10—Amendment of section 37—Concurrent appointments

Section 37(3) provides that a member of an industrial authority constituted under the law of the Commonwealth or another State may be appointed as a member of the Commission. This clause amends the section by inserting a new subsection that makes it clear that section 34(2), which requires consultation in relation to proposed appointments, does not apply to the making of concurrent appointments under section 37(3). Also, a member of the Commission appointed under section 37(3) will not be taken into account for the purposes of section 34(3), which imposes a requirement for the number of Commissioners with experience in industrial affairs through association with the interests of employees to be equal (or almost equal) to the number of Commissioners with experience in industrial affairs through association with the interests of employers.

11—Amendment of section 79—Approval of enterprise agreement

This clause amends section 79 to remove references to the Commonwealth Act.

12—Amendment of section 92—Retrospectivity

This clause amends section 92 by removing a reference to awards or agreements under the Commonwealth Act. The section as amended will instead refer to fair work instruments under the Commonwealth Act.

13—Amendment of section 100—Adoption of principles affecting determination of remuneration and working conditions

Section 100 currently makes reference to a declaration of the Commonwealth Commission. The section as amended by this clause will refer instead to a determination of Fair Work Australia.

14—Amendment of section 119—Eligibility for registration

15—Amendment of section 122—Registration of associations

16—Amendment of section 125—Alteration of rules of registered association

17—Amendment of section 131—Eligibility for registration

18—Amendment of section 135—De-registration

19—Amendment of section 136—Federation

The amendments made by these clauses remove references to the Commonwealth Act (which is the *Fair Work Act 2009*) and substitute references to the Commonwealth (Registered Organisations) Act (that is, the *Fair Work (Registered Associations) Act 2009* of the Commonwealth).

20—Amendment of section 140—Powers of officials of employee associations

Subsection (5) of section 140 provides that, despite other provisions of the section providing for entry into workplaces in certain circumstances by officials of employee associations, an official may not enter a workplace if the employer is a member of the Christian fellowship known as *Brethren* and certain other conditions are satisfied. This clause repeals that subsection.

21—Amendment of section 141—Register of members and officers of associations

The amendment made by this clause removes a reference to the Commonwealth Act (which is the *Fair Work ACT 2009*) and substitutes a reference to the Commonwealth (Registered Organisations) Act (that is, the *Fair Work (Registered Associations) Act 2009* of the Commonwealth).

22—Amendment of section 167—Extension of time

This clause replaces a reference to the Commonwealth Commission with a reference to Fair Work Australia.

23—Amendment of section 185—Costs

Section 185 provides that the Industrial Court of South Australia may award costs in proceedings based in a monetary claim on an appeal. The section as amended by this clause will further provide that an award of costs on an appeal need not follow the event. Further, in making a determination in relation to costs on an appeal, the Court may take into account any matter it thinks fit but is required to take into account the following:

- the conduct of the parties;
- the relative positions and circumstances of the appellant and the respondent (and of the successful and unsuccessful parties);
- the nature of the question in dispute and the impact of the proceedings.

24—Amendment of section 210—Powers on appeal

The amendment made by this clause to section 210 relates to the awarding of costs on appeal and has substantially the same effect as the amendment made by clause 23 to section 185, except that section 210 is concerned with appeals to the Full Commission whereas section 185 deals with appeals to the Court.

25—Amendment of section 215—Co-operation between industrial authorities

26—Amendment of section 216—Reference of industrial matters to Fair Work Australia

These clauses amend various references to, or related to, the Commonwealth Commission by substituting appropriate references to Fair Work Australia.

27—Repeal of section 222

This clause repeals section 222, which provides for certain provisions of the Commonwealth *Workplace Relations Act 1996* relating to secondary boycotts to apply (subject to certain modifications) as laws of South Australia.

28—Amendment of section 237—Regulations

Section 237 as amended by this clause will provide for the making of regulations contemplated by or necessary or expedient for the purposes of the Act. The section will provide that the regulations may make provision for any matter relevant to the interaction between the Act and a Commonwealth Act, including matters of a saving or transitional nature.

29—Amendment of Schedule 1—Transitional provisions

This clause inserts a new transitional provision.

18—National industrial relations system

Clause 18 provides that the *Fair Work Act 1994* will operate in relation to a matter arising under that Act before the designated day, as well as a matter arising directly or indirectly out of such a matter, if the matter is not dealt with under the Commonwealth *Fair Work Act 2009* on or after the designated day. The *designated day* is the day on which a Commonwealth Act in the terms, or substantially in the terms, set out in the tabled text under the *Fair Work (Commonwealth Powers) Act 2009* comes into operation.

30—Insertion of Schedules 2 and 2A

This clause inserts two new Schedules into the *Fair Work Act 1994*.

Schedule 2—Continuity of industrial arrangements—government business enterprises

This Schedule provides for a scheme under which federal industrial instruments that relate to the employees of certain government business enterprises (*GBE*) can be "converted" to awards or enterprise agreements (as may be appropriate) under the State Act. The scheme is similar to the scheme under the transitional provisions enacted in 2006 under the *Statutes Amendment (Public Sector Employment) Act 2006*.

Schedule 2A—Continuity of industrial arrangements—local government sector

This Schedule relates to the local government sector. Clause 2 will ensure the operation of various enterprise or industrial agreements. Other clauses will facilitate the transition of federal industrial agreements relating to the local government sector to the State scheme. This is connected with the exclusion of this sector from the Commonwealth Fair Work Act under the new scheme that is to be put in place.

Part 5—Amendment of *Housing and Urban Development (Administrative Arrangements) Act 1995*

31—Amendment of section 17—Staff

This clause amends section 17 of the *Housing and Urban Development (Administrative Arrangements) Act 1995* so that the section includes a declaration that *HomeStart Finance* is not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 6—Amendment of *Local Government Act 1999*

32—Insertion of section 302A

Under new section 302A of the *Local Government Act 1999*, inserted by this clause, the following local government sector employers are to be declared not to be national system employers for the purposes of the Commonwealth *Fair Work Act 2009*:

- a council;
- a subsidiary or a regional subsidiary;
- any other entity established under the *Local Government Act 1999*;
- the Local Government Association;
- any other entity established by a body referred to above.

Part 7—Amendment of *Long Service Leave Act 1987*

33—Amendment of section 3—Interpretation

34—Amendment of section 13—Failure to grant leave

35—Amendment of section 16—Act not to apply to certain workers

The amendments made by these clauses correct obsolete references to State and Commonwealth legislation in the *Long Service Leave Act 1987*.

Part 8—Amendment of *Motor Accident Commission Act 1992*

36—Amendment of section 29A—Staff

Under section 29A of the *Motor Accident Commission Act 1992* as amended by this clause, the Motor Accident Commission will be declared not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 9—Amendment of *Occupational Health, Safety and Welfare Act 1986*

37—Amendment of section 4—Interpretation

This clause amends the definition of *registered association* in the *Occupational Health, Safety and Welfare Act 1986* for the purpose of removing a reference to associations registered under Commonwealth legislation that is no longer in operation and substituting a reference to organisations registered under the *Fair Work (Registered Associations) Act 2009* of the Commonwealth.

Part 10—Amendment of *Petroleum (Submerged Lands) Act 1982*

38—Amendment of Schedule 7—Occupational health and safety

This clause amends the interpretation provision for Schedule 7 of the *Petroleum (Submerged Lands) Act 1982* by substituting new definitions of *registered organisation* and *reviewing authority*. The existing definitions include obsolete references.

Part 11—Amendment of *Public Corporations Act 1993*

39—Insertion of section 38B

Under new section 38B of the *Public Corporations Act 1993*, the following entities will be declared not to be national system employers for the purposes of the Commonwealth *Fair Work Act 2009*:

- the Adelaide Convention Centre Corporation;
- the Adelaide Entertainments Corporation;
- the Land Management Corporation.

Part 12—Amendment of *Rail Safety Act 2007*

40—Amendment of section 4—Interpretation

The definition of *registered association* in section 4 of the *Rail Safety Act* currently refers to associations registered under the *Industrial Relations Act 1988* of the Commonwealth. This clause amends that definition by substituting a reference to an organisation registered under the Commonwealth *Fair Work (Registered Organisations) Act 2009*.

Part 13—Amendment of *South Australian Forestry Corporation Act 2000*

41—Amendment of section 15—Staff

Under section 15 of the *South Australian Forestry Corporation Act 2000* as amended by this clause, the South Australian Forestry Corporation will be declared not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 14—Amendment of *Stamp Duties Act 1923*

42—Amendment of Schedule 2—Stamp duties and exemptions

This clause amends Schedule 2 of the *Stamp Duties Act 1923* by removing references to the *Workplace Relations Act 1996* and substituting references to the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth.

Part 15—Amendment of *State Lotteries Act 1966*

43—Amendment of section 13—Powers and functions of Commission

Under section 13 of the *State Lotteries Act 1966* as amended by this clause, the Lotteries Commission of South Australia will be declared not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 16—Amendment of *Superannuation Funds Management Corporation of South Australia Act 1995*

44—Amendment of section 31—Staff of Corporation

Under section 31 of the *Superannuation Funds Management Corporation of South Australia Act 1995* as amended by this clause, the Superannuation Funds Management Corporation of South Australia will be declared not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 17—Amendment of *West Beach Recreation Reserve Act 1987*

45—Amendment of section 15—Officers and employees

Under section 15 of the *West Beach Recreation Reserve Act 1987* as amended by this clause, the West Beach Trust will be declared not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 18—Amendment of *WorkCover Corporation Act 1994*

46—Insertion of section 22A

This clause inserts a new section into the *WorkCover Corporation Act 1994*. Under section 22A, the WorkCover Corporation will be declared not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 19—Amendment of *Workers Rehabilitation and Compensation Act 1986*

47—Amendment of section 3—Interpretation

The definition of *industrial association* in the *Workers Rehabilitation and Compensation Act 1986* is amended by this clause to substitute a reference to organisations registered under the Commonwealth *Fair Work (Registered Organisations) Act 2009* for a reference to associations registered under the *Industrial Relations Act 1988*.

Schedule 1—Transitional provisions

1—Transitional provisions

The transitional provisions deal with any remaining references to the Australian Industrial Relations Commission or references in respect of organisations registered under the *Workplace Relations Act 1996* of the Commonwealth by providing that—

- a reference in an Act or statutory instrument to the Australian Industrial Relations Commission will be taken to be a reference to Fair Work Australia; and
- a reference in an Act or statutory instrument to the *Workplace Relations Act 1996* will, to the extent that it that relates to organisations registered under that Act, be construed as a reference to the *Fair Work (Registered Organisations) Act 2009*.

Debate adjourned on motion of Hon. S.G. Wade.

ELECTORAL (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

At 20:49 the council adjourned until Wednesday 14 October 2009 at 14:15.