LEGISLATIVE COUNCIL

Thursday 29 October 2009

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

JOHN KNOX CHURCH AND SCHOOLHOUSE

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 799 residents of South Australia concerning John Knox Church and Schoolhouse. The petitioners pray that the council will—

1. Take immediate action to acquire the John Knox precinct;

2. Partner with the Onkaparinga Council to determine a use for the John Knox precinct as a public asset and thereby;

3. Return the John Knox precinct to the people of Morphett Vale and the wider South Australian community.

DRAG AND TRACK RACING

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 720 residents of South Australia concerning drag and track racing. The petitioners pray that the council will call upon the Premier and his government to support drag and track racing in South Australia by approving the construction of the Adelaide Motorplex at Gillman.

PAPERS

The following papers were laid on the table:

By the President—

Ombudsman Report, 2008-09

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

Reports, 2008-09—
- Phylloxera and Grape Industry Board of South Australia
- Phylloxera and Grape Industry Board of South Australia—Financial

Reports—
- Transparency Statement—Part A—Water and Wastewater Prices in Metropolitan and Regional South Australia, February 2009
- Transparency Statement—Part B—Inquiry into the 2009-10 Metropolitan and Regional Water and Wastewater Pricing Process, August 2009
- Transparency Statement—Part C—Inquiry into the 2009-10 Metropolitan and Regional Water and Wastewater Pricing Process—Government Response, October 2009

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

Guardian for Children and Young People—Report, 2008-09

CONTAINER DEPOSIT LEGISLATION

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:20): I table a copy of a ministerial statement relating to container deposit legislation results made earlier today in another place by my colleague the Premier.

POLICE COMPLAINTS AUTHORITY

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:20): I table a copy of a ministerial statement relating to the Police Complaints Authority made earlier today in another place by my colleague the Attorney-General.

QUESTION TIME

HOUSING AFFORDABILITY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:21): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about housing affordability.

Leave granted.

The Hon. D.W. RIDGWAY: Numerous complaints have been made to the Liberal opposition over the past few years about an ongoing culture of bullying and intimidation by senior ALP members. The ALP conducts a very aggressive and assertive fundraising campaign, through its fundraising arm, Progressive Business SA. A significant number of comments have been made by members in this place on issues relating to donations to Progressive Business SA and success fees paid to lobbyists for the introduction and successful completion of projects.

Recently, I was provided with information by people connected to the development industry in South Australia. They have advised me that it is now common practice for proponents of projects to budget for donations to the ALP and success fees. I am advised that budget lines are now appearing in project budgets for contributions to Labor Party fundraising. Figures quoted have been in the vicinity of $80,000 for major development declaration and the undertaking of rezoning and up to $250,000 for major project approval and the completion of rezoning. The cost, of course, will be passed on to the end consumers. Will the minister please explain the hypocrisy of his government's affordable housing policy, given that these fundraising costs are now being passed on to South Australian home buyers?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:23): What a disgraceful piece of sleaze from the Leader of the Opposition! The new Leader of the Opposition, Isobel Redmond, was supposed to bring in a new regime. Well, it has not taken her and her party long to get deep down into the sewer—and they have come up besmirched with excrement, metaphorically speaking. So, we have these sorts of totally unsubstantiated comments.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: If the honourable member has any information, let him produce it—but, of course, he won't because it is a totally, completely and utterly fabricated question, and he knows it. All it does is represent the depths to which this Liberal opposition has sunk.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: I have answered the question. Just produce one piece of evidence—I'll bet you can't.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Yes, I suppose they could do that. This party is a master of fabrication. There is a person sitting up on the backbench whose staff member was producing dodgy websites—and he is still employed by them, I understand. It is the dirty tricks department of the Liberal Party, and this is just another example of it. If the honourable member has one piece of evidence, let him produce it.

An honourable member interjecting:

The Hon. P. HOLLOWAY: I don't believe it.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Why don't you people actually produce some policies for the people of South Australia? Why don't you people opposite come up with something to offer to the people of South Australia, rather than getting down into the sewer and bringing up all this sort of rubbish, which you know is dishonest? You know it is untrue and totally fabricated.

GLASSWARE, SHATTERPROOF

The Hon. J.M.A. LENSINK (14:25): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about shatterproof plastic glasses.

Leave granted.

The Hon. J.M.A. LENSINK: In July this year the city nightclub HQ replaced all its glassware with shatterproof polycarbonate containers. That was a voluntary decision by the owner of that nightclub who had witnessed a glassing incident in Melbourne and did not wish to have that happen in his nightclub. The Liquor and Gambling Commission was reported as saying that, while it is not mandatory for any pubs or clubs to use plastic glasses, anything which makes the club safer is a good thing. Has the minister had an opportunity to review this policy and does she intend introducing legislation to make it mandatory in pubs and clubs?

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) (14:26): Indeed, we are always looking at the problems that occur within the industry and monitor those and, where ever possible, try to formulate strategies to address those problems. Members can see that we have done a great deal. To date, for instance, the power to bar is a very good example of that, as well as laws to deal with nuisance and offensive patrons.

The previous legislation was not working well. Licensees did not feel able to avail themselves of that legislation, so we got some feedback about that and changed the law so that police could quite easily on the spot remove offensive and disorderly patrons from licensed premises; and we extended that to areas and wider regions for various periods of time depending on the offence. We have also looked at introducing metal detectors at some venues that have been found to be problematic.

We looked at introducing metal detectors so that patrons had to go through a detector before entering premises. I understand that those venues took that up in a voluntary way but, certainly, we did look at the prospect of making that a condition of their licence. I just cannot recall whether we needed to go down that path or whether the premises involved took it up voluntarily, anyway. Nevertheless, it was our engaging that part of the sector that enabled some of those protective practices to be put in place. They are just a couple of examples.

I read somewhere that changes had been made to glasses in interstate venues. I was aware that HQ had made some changes, too, and I congratulate it for taking that initiative. I requested some time ago when we put our minds to this whether that was an issue here in South Australia given some of the reports that I had seen from other states. I did ask whether it was an issue here. I asked that I be given some feedback about the prevalence of broken glass either in terms of injury or being used as a weapon.

From recollection, the feedback was that there was a fairly minimal number of adverse events involving glass in our venues here in South Australia. I am pleased that we are not like some other states where it seems that some of these practices become fashionable almost, and behaviours can change quite quickly.

Nevertheless, here in South Australia the feedback was that minimal events had occurred. At that time our position was to encourage those venues that assessed a need in their premises to change to plastic. I have asked the agency to continue to monitor events and, if there are any changes or it does appear that we have to take further action, I am certainly willing to do that.

SANDS LIFESTYLE VILLAGE

The Hon. S.G. WADE (14:30): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about liquor licensing and retirement villages.

Leave granted.

The Hon. S.G. WADE: The Sands Lifestyle Village, which is a secure community of 280 people at Seaford, is fully fenced with key card-operated, monitored security gates. The Sands Lifestyle Village Residents Association is a group of residents of the village that promotes the social life of the village.

The association was advised that, even if alcohol is not being sold at association events but is brought by residents to those events and a cover charge is levied for food or entertainment, the association needs a limited club liquor licence pursuant to section 36(3) of the Liquor Licensing Act 1997.

The association applied for such a licence, which was refused yesterday. A resident of the village has contacted me to indicate his objection to the Sands community needing to get a licence to consume alcohol within its own community. Other South Australians do not need a licence to

consume alcohol in their home or with their friends in their neighbourhood, so why should retirement village residents be treated differently? Does the minister consider appropriate the application of liquor licensing laws to regulate social interaction within closed residential communities? Will the government review the act to deal with this anomaly?

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) (14:31): As members would be well aware, the commissioner's authority and the Liquor Licensing Court is quite independent of me. It would be most inappropriate for me to interfere with those decisions.

The Hon. S.G. Wade interjecting:

The Hon. G.E. GAGO: I am sure the honourable member is not suggesting that I intervene in that respect. I am completely unaware of this particular event. It would have gone to the court and been dealt with using the appropriate processes. To the best of my knowledge, residents of the village have not written to me and/or raised their concerns with my office. I am unaware of this issue and I do not have any background on it.

These decisions are made independently of me. Obviously, the principles behind these sorts of decisions are about public interest, balancing a community's needs, and the importance of communities being able to have social events and a good time, with the broader community's interests. I know that is always a tricky balancing act. I do not know of this particular example. I am not aware of what submissions were made against the issuing of this licence.

I am more than happy, if the honourable member gives me some details, to follow it up in order to ensure that a proper process was adhered to. I am sure the honourable member would not want me to interfere with the independent court's decision.

SANDS LIFESTYLE VILLAGE

The Hon. S.G. WADE (14:34): I have a supplementary question. My question was not about the processes but, rather, the policy and the legislation that lies behind it. Will the minister consider not merely the process but, rather, whether the policy underlying the legislation and the legislation itself need to be adjusted?

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) (14:34): If I have received complaints, there would be very few in relation to this issue around our legislation being far too onerous on smaller communities. This is one of the rare times—in fact, I cannot recall any other times, but it is likely that there have been some—that I have received a complaint about this. So, it would be unlikely on the ground of this one complaint that I have been made aware of that I would review a whole policy. I am happy to look at it but, as I said, it is not an issue that has been brought to my attention previously. I certainly would have received very few complaints and concerns about this, but I am happy to take a quick look at it.

CHINESE INVESTMENT

The Hon. B.V. FINNIGAN (14:35): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about Chinese investment in South Australia.

Leave granted.

The Hon. B.V. FINNIGAN: Australia and China are natural partners for future growth and, as this emerging economic giant's appetite for resources grows, our nation works towards meeting that demand. China is South Australia's second-largest trading partner, based on two-way trade worth $1.8 billion in 2007-08. Only the United States has a larger volume of trade with our state. During this 12-month period, the state's total exports to China were worth $817.3 million, and imports from China were worth $995.6 million. Trade is only part of the story, with foreign investment from China into resource-related projects being a key element in the development of future mining projects. Will the minister provide details of what South Australia is doing to lure Chinese investment to this state to help develop our pipeline of world-class prospects?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:36): I thank the honourable member for his very timely question. Only last week, I travelled to China to take part in

the China Mining 2009 congress at the TEDA Convention Centre (the Tianjin Economic Development Area centre) at Tianjin's Binhai New Zone. Tianjin is, of course, the port city for Beijing. I was very impressed with not only the congress but also the modern venue. Team Australia (that is, all the Australian states and their representative geoscience officials) and South Australia had a very high profile at the three day congress, which is rapidly growing to rival the PDAC (Prospectors and Developers Association of Canada) mining conference in Toronto.

My trip to China, accompanied by a team from Primary Industries and Resources SA, headed by Dr Paul Heithersay, provided an opportunity to reinforce South Australia's reputation as a secure investment destination and potential supplier in mineral exports. As part of Team Australia, South Australia was able to remind Chinese and other overseas delegations of the continued potential for mineral resources development in South Australia and the support provided by the state government through the Plan for Accelerating Exploration (PACE). Chinese companies attending the congress included Sinosteel (the Chinese government's chief investment arm), the CITIC Group, Wuhan Iron and Steel Company and the Shandong Geomineral resources group, all of which are already investors in exploration and development in South Australia.

South Australia has emerged as a competitive and reliable supplier of a wide range of resources to China. During the past 18 months there has been a significant rise in the level of Chinese foreign direct investment in Australia, including our state, despite the global financial crisis. In South Australia, in particular, there have been numerous Chinese resource and investment groups entering into cooperative ventures with South Australian explorers and mining companies.

While in China I had the privilege of providing the opening address to the Australia-China Mining Investment Seminar in Beijing, which included representatives from South Australia and the other Australian states, including parliamentary secretary Lylea Ann McMahon from New South Wales. The seminar, themed 'Australia—your natural partner for mineral exploration development', provided information to potential Chinese investors of projects being developed within the nation's resources industry. This seminar was well attended by local companies and foreign media, which reflected the genuine interest in Australia's minerals and energy sector.

Our team also attended the inaugural gathering of the Oriental Mining Club. Established by some of the mining and mining support services companies based in Asia, the club was launched with a speech by former BHP Billiton China chief representative Clinton Dines. Mr Dines was able to provide a brief history of his 25-year involvement in China's opening up to the world and give some thoughts on the future for mineral exports and inbound investment. It is clear that more and more the economies of South Australia and China are becoming inextricably linked. South Australia actively encourages and welcomes foreign investment in the mineral resource sector, subject to all relevant approvals, including from the federal government's Foreign Investment Review Board. Despite recent media hype, the pace of foreign investment approvals in South Australia is quite significant.

At the China Mining Congress Mr Alan Morrell, the head of Austrade, pointed out that Australia has received 90 applications from China for foreign investment approval and these have been approved at a rate of one a week. The South Australian government has been very supportive of this foreign direct investment and has actively promoted applications submitted for approval. Whilst some people would like to talk up the one or two examples where Foreign Investment Review Board approval has been problematic for one reason or another, the overall picture is quite positive.

China resource and investment groups have recognised that South Australia is a source of world-class mineral and energy deposits and has great potential for further discoveries. South Australia also has a diverse range of minerals resources, including iron ore, zinc, heavy mineral sands, copper-gold and uranium. South Australia has also become a leading international destination for investment to tap the potential of geothermal energy. As I am sure many members in this place would already know, South Australia has a sister-state relationship with Shandong Province that has been going for more than 20 years, and we continue to maintain good relations with our friends from the Geology and Mineral Resource Bureau of Shandong. Evidence of this close relationship is the decision by Shandong Geology and Mineral Resource Bureau to establish the Shandong Ludi Mining Company in Adelaide to manage its existing mining interests and pursue further investment in South Australia.

I was delighted to host representatives of both the Shandong Geology and Mineral Resource Bureau and Shandong Ludi Mining at an investment dinner during my stay in Tianjin. Despite the worldwide economic downturn sparked by the global financial crisis, the fundamentals

of the mining industry, including demand from China, remains positive. In that regard it is quite timely that South Australia has established itself as a low risk destination for investment. It is largely due to the positive environment this government has created in the past 7½ years that our state has entered a period of sustained growth and prosperity, supported by record levels of investment in mineral exploration.

Resource companies are exploring deeper and in more remote parts of the state with outstanding success. I am confident that last week's visit to China reinforced South Australia's international reputation as a secure destination for investment, and a growing source of a wide range of mineral resource exports.

YOUTH COURT

The Hon. A. BRESSINGTON (14:43): I seek leave to make a brief explanation before asking the minister representing the Attorney-General a question about the Youth Court procedures and Crown Law representatives.

Leave granted.

The Hon. A. BRESSINGTON: I have spoken with solicitors and carers who have been parties in various Youth Court matters over the years. Last year my staff were expelled from the Youth Court premises whilst attending to the needs of constituents. They were not even permitted to be in the corridor of the building and were actually escorted off the premises. This was later remedied with an apology and a directive to cease such practice. More recently it has been brought to my attention that another practice has since been adopted by the Youth Court to deny carers the presence of personal advocates and supporters within the courtroom. Even counsel representing the aggrieved parents and/or carers who are about to lose care of their children have to seek the permission of Crown Law representatives before allowing advocates and supporters of families, whose lives are to be put under the microscope, rather than leaving it to the judge on the bench to decide whether those parties should have access to their support networks within the courtroom. Almost invariably it seems that such permission is denied.

This practice never used to be the norm, and certainly I am told that it has never been more prolific than it is presently. The predictable excuse given is that it is because these cases involve children. However, I am advised that the practice in the Youth Court used to be very similar to that of the Family Court and, unless a judge had expressly suppressed the public and/or certain parties or witnesses from attending, Youth Court matters were relatively accessible. Many child protection advocates would argue that, because Youth Court matters involve vulnerable children, they should be all the more open to public scrutiny of the proceedings. We know that family law court judges have come under fire recently for what seemed to be unreasonable decisions not in the best interests of children. However, unlike the Family Court, at the Youth Court the legal guardians are not in dispute with another private individual but are against the state. Usually, they are unable to afford proper representation, often denied by Legal Aid, and almost as often the carers are from low socioeconomic backgrounds, inarticulate, unable to understand the processes, unable to understand how to seek out and gather information, or even how to instruct their own counsel. My questions are:

1. Why are Youth Court judges and Crown Law representatives refusing carers, who are the subject of Youth Court proceedings, access to their personal support networks whilst the state is permitted to be armed to the teeth with the presence of separate representatives, ministerial representatives, social workers, psychologists, sheriffs officers, and a host of other people employed by the state?

2. Will the Attorney-General investigate the motivation behind these actions and bring back an answer as soon as possible?

3. Why do Youth Court judges and Crown Law representatives feel that it is appropriate to deny access to advocates and supporters of parties who are challenging state authorities?

4. Will the Attorney-General give an undertaking to take steps to ensure a more level playing field for the carers, who are trying in earnest to keep families together, and ensure that the authorities follow the proper policies and procedures?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:46): Given the separation of powers that exist, obviously, just like this parliament has its own rules in relation to what

happens in Parliament House, judges have authority over their courts. Obviously, it would be improper for parliament to intrude into that area other than to set the broad guidelines under which our judicial system operates. The honourable member has raised some important issues. I will refer them to the Attorney-General for his consideration.

The Hon. A. Bressington interjecting:

The Hon. P. HOLLOWAY: Well, yes; that's right. Crown Law is obviously a different kettle of fish, but I think the honourable member referred to judges. Obviously, they have the discretion, and under the separation of powers we should not be interfering in that part of it. I will refer the honourable member's question to the Attorney and bring back a reply.

GAWLER RAIL LINE

The Hon. J.S.L. DAWKINS (14:47): I seek leave to make a brief explanation before asking the Minister Assisting the Minister for Transport, Infrastructure and Energy questions about the Gawler rail line.

Leave granted.

The Hon. J.S.L. DAWKINS: I have asked a number of questions in this place over many months relating to the Gawler rail line, particularly the lack of timeliness and the overcrowding of these services. These questions have been referred to the Minister for Transport in another place. I am yet to receive any response.

The poor situation was highlighted by a constituent recently, who related an incident about a TransAdelaide employee announcing to passengers that their peak hour service had arrived in the Adelaide rail yard on time. However, due to delays in other services leaving Adelaide station, the train was forced to stand waiting in the yard for at least another 10 minutes.

I can relate a similar exercise recently, where a train—not at peak hour, but midmorning—was probably on schedule to come in ahead of time, but because of the congestion of trains, obviously late from other destinations coming out of the station, our train sat out in the yard for some considerable period.

One of the flow-ons from that situation, as I have said in this council before, is that so many rail commuters find themselves forced to catch at least one train ahead of what they would normally need to catch just to make sure that they arrive at their destination on time. My questions are:

1. Will the Minister Assisting the Minister for Transport give an undertaking to emphasise to her colleague in another place the extent of the continuing inconvenience to rail passengers and to seek answers to my earlier questions?

2. Will the minister also indicate to her colleague that the schedule introduced on 27 April last year, and slightly amended in November and January, is clearly not working?

3. Why did the most recent timetable changes apply only to weekend services?

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) (14:50): I thank the honourable member for his important questions. I will refer them to the Minister for Transport in another place and bring back a response. I remind honourable members that spending on the South Australian government's infrastructure capital program is now at unprecedented levels. DTEI's capital works program is $1.1 billion for the 2009-10 year, and that is up $160 million a year from eight years ago. We are spending more than $160 million more than this lot opposite us. Some $3 billion will be spent over the next four years on transport alone. I know the honourable member is very keen to see things happen at Gawler, but what this government has done and has committed to doing is unprecedented.

SUSTAINABILITY AWARDS

The Hon. I.K. HUNTER (14:51): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about KESAB's 2009 National Sustainability Awards.

Leave granted.

The Hon. I.K. HUNTER: Local government plays an important role in advancing sustainability initiatives in our communities. For example, councils use planning regulations, waste management strategies and education programs to further sustainability on a day-to-day basis. 'Think globally and act locally' is the old catchcry of local community activists around the nation. This philosophy is actively pursued by our local government sector. I understand that a South Australian local council was a contender in a national sustainability awards ceremony in Canberra recently. Will the minister advise the council on how our state finalist, the City of Port Adelaide Enfield, performed in the national competition?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:52): I am delighted to advise the council that, after being named South Australia's finalist in the Keep Australia Beautiful Australian Sustainable Cities Awards 2009, the City of Port Adelaide Enfield won not one but two awards in the ceremony held in Canberra on Friday 23 October 2009. The awards are designed to encourage, motivate and celebrate the local sustainability achievements of local urban communities in Australia.

The City of Port Adelaide Enfield is active in water quality improvement and conservation, graffiti management, butt litter reduction, education, illegal dumping and community waste reduction education. The wide range of strategies used by the city demonstrates the seriousness of its commitment to long-term environmental sustainability. As a result, Port Adelaide Enfield won awards in the categories of Young Legends and Resource Recovery and Waste Management.

I was particularly pleased that the city received an award for its effective and innovative approach to resource recovery and waste management. The council's bulk residential green organics disposal program has been successful in diverting and recycling about 500 tonnes of garden organics a year by encouraging residents to manage their own green waste and converting this to compost for use in the region. I understand that its innovative approach to disposal has also facilitated the recycling of a huge amount of building waste, with over 9,600 tonnes of construction and demolition materials in the 2008-09 financial year alone, so I am told.

The council was chosen for this award because of its outstanding commitment to the improved recovery of a wide range of materials from both industry and households, but the council did not stop there. By supporting the work of the Portside Christian School in actively caring for Mangrove Cove, the City of Port Adelaide Enfield also won the National Young Legends award, which is sponsored by Toys'R'Us.

This project provides numerous learning opportunities for the school by engagement in environmental sustainability initiatives in that area. This is a particularly important initiative, as it teaches future citizens how they can nurture their environment and protect it for future generations. As the past minister for the environment and the current Minister for State and Local Government Relations, I am delighted that these two portfolio responsibilities dovetail around these awards. I certainly congratulate the City of Port Adelaide Enfield on winning two very prestigious national awards and commend its commitment to environmental sustainability.

SILICA DUST AND MINING

The Hon. DAVID WINDERLICH (14:55): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development questions about silica dust and mining.

Leave granted.

The Hon. DAVID WINDERLICH: On Saturday 24 October, Premier Mike Rann announced plans to amend the dust diseases regulations, which provide a greater opportunity for sufferers of asbestos-related diseases to bring claims for damages, by moving the date of claim back from 1971 to 1960.

The Dust Diseases Act relates only to diseases caused by exposure to asbestos. There are mounting concerns about the health effects of other dust-related diseases, such as silicosis, and these are generally associated with mining. The state of California, which sets the international standards, earlier this year (in February) classified crystalline silica as a toxic air contaminant. The state of California identified asbestos as a toxic air contaminant under California's Air Toxics Program in 1986.

In 2005, a Senate inquiry was held into, amongst other things, the effects of silicosis on the Australian population. There are community campaigns in different locations in Australia—there is

one in the Somersby Plateau on the central New South Wales coast—based on concerns about mining of crystalline silica. In Angaston, South Australia, there are concerns about silica dust emanating from the operation of the Penrice mine, which has led two families that I know of to leave the immediate area because of concerns about the health effects on their children. My questions are:

1. Is the minister aware of growing concerns about silica dust related to mining?

2. Is the minister aware of concerns in Angaston about silica dust related to the operation of the Penrice mine?

3. Can the minister inform the council whether any consideration has been given to broadening the scope of the Dust Diseases Act so that it covers diseases other than those caused by exposure to asbestos?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:58): Issues of the working conditions of miners are, of course, covered by SafeWork SA. Unlike some other states, the responsibility for workplace safety and occupational health and safety is not within the mining department: it is actually within SafeWork SA, which essentially has responsibility for those conditions.

In relation to the latter question asked by the honourable member regarding Penrice: yes, I have had meetings with some of the residents about Penrice, and we have been following the intervention of PIRSA in relation to the operations. A Penrice mine community consultative group has been set up to work through some of those issues with the Penrice representatives, and that process is ongoing.

There have been concerns relating to a number of issues, including noise and also dust and, as a result of that, various interventions have been made by the authorities, not just Primary Industries and Resources but also the EPA. As I understand it, the EPA has been conducting some noise monitoring and also, I believe, dust monitoring in the area to ensure that the levels of any dust comply with the relevant standards. So, the monitoring of that particular site is ongoing.

As I understand, silicosis is particularly a problem within the coal mining area. Within our major mines, if you go to Olympic Dam, you will see that there are quite complex systems to ensure the safety of workers in that area, for such things as ventilation, for example, where doors close off and the pressure is adjusted and so on to ensure that dust is not an issue within those mines. There is also close monitoring of that process, as we would expect. As I have mentioned, SafeWork SA is diligent in ensuring that there is compliance with those standards. In relation to the latter part of the question about the Dust Diseases Act, that is really a matter for my colleague. I will refer that part of the question to my colleague in another place and bring back a reply.

TUNA INDUSTRY

The Hon. C.V. SCHAEFER (15:01): I seek leave to make a brief explanation before asking the Leader of the Government a question about compensation.

Leave granted.

The Hon. C.V. SCHAEFER: We were all disturbed to learn a few days ago about the imminent closure of Bridgestone Tyres and grateful to hear the immediate announcement of compensation packages, which are similar to those that were offered to Mitsubishi workers, for those who have lost their job as a result of the closure of Bridgestone.

A few days later, we learnt that the tuna industry, which employs directly some 150 people, is to have its quota cut by 25 per cent over two years. The tuna industry is, of course, centred very much around Port Lincoln and is responsible for several hundred million dollars of income into South Australia. Mr Steve Prout, the President of the Chamber of Commerce in Port Lincoln, had this to say:

> It's not just the actual industry itself, that those who work in it but also the ancillary trade; the truck drivers, the freight companies, the electricians, the plumbers, refrigeration mechanics, all those sorts of people who are directly affected by the industry. So, yeah, [we are] totally devastated.

My question is: given the government's generosity and immediate response to those who, through no fault of their own, have lost their job as a result of the closure of Bridgestone, what processes are in place to assist those who find themselves in the same position because of the tuna industry restructure?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:03): I am aware of recent press reports that indicate that the commonwealth government has been looking at this issue. Obviously, a decision was made to cut Australia's quota, but presumably that will take some time to have an effect. The federal government, which has been party to the discussions by the international body which sets these quotas, has been looking at this issue and, obviously, this state government will monitor that process. However, the impact of the cut in quota may take some time to have an effect. I presume that the new quotas will apply next season, but I do not have any particular information on that matter. It is obviously a matter for my colleague, and I will certainly forward the question to him.

However, what I should say is that this government has recently approved the development within Port Lincoln of a bulk ore loader to enable the Centrex mine at Wilgerup on Eyre Peninsula to proceed, and that will provide not just some additional jobs particularly around the mine but also within Port Lincoln itself and will also provide a significant injection, during the construction phase of that particular loading facility.

I was somewhat disappointed, I have to say, that the local member opposite attacked the government in relation to that proposal. I would have thought that, particularly at this time, any economic development that improves the economic competitiveness of that region would be warmly welcomed. It is interesting, too, that in a recent press statement the Leader of the Opposition in another place proposes to dedicate a certain proportion of mining royalties to regional areas.

I think it is a great pity that the Leader of the Opposition in another place does not support the government in these sorts of ventures. Perhaps, rather than trying to distribute the cake, she should help us grow the cake so that there will be more for everyone. That would be a far better and productive activity. It is typical that Mrs Redmond would say, 'Okay, look, we'll give $40 million, or thereabouts, to regional development. We'll do this notional division of what is taken in mining royalties'. It would be much better if she supported the government instead of having members of her party attack government decisions that seek to grow that royalty revenue that will mean more money for all South Australians.

To come back to the matter, the tuna industry is very important for South Australia. Obviously, the impacts of this decision will flow through. I am aware that the commonwealth government is looking at the question of compensation, as it should. As I said, I will refer that question to my colleague the Minister for Agriculture, Food and Fisheries in another place because he may have some more information on what talks might be involved with the commonwealth government about this matter. I imagine that, as this decision progressively takes effect (which, as I said, may take some time), obviously there will be an impact on it. At least I hope that the steps this government has taken to grow other industries within the Eyre Peninsula region will provide new job opportunities in that area.

TUNA INDUSTRY

The Hon. J.S.L. DAWKINS (15:07): As a supplementary question arising from the answer, will the minister, on behalf of the government, rule out designating mining royalties to regional infrastructure?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:07): We have this phoney debate the Liberal Party has been using about royalties. What happened was that the National Party in Western Australia came up with a policy at the last election. Western Australia has about $4 billion a year in mining royalties. The National Party there promised that it would spend 25 per cent (about $1 billion a year) on regional infrastructure. Of course, it was elected and that has now come about.

The problem in South Australia, of course, is that mining royalties are such that 25 per cent is about $40 million. The fact is that this government spends far more than 25 per cent on regional infrastructure across government departments. One could come up with a phoney policy where we say, 'Look, because we spend so much more, we will do a bit of paper shuffling here. We will notionally allocate money to mining royalties and that will make us look good. We can cash in on what they've done over in Victoria, so we'll notionally allocate it and just shuffle the money around.' However, that would not necessarily mean that any extra money would get to the regions.

What will get more money to all South Australians, including the regions, is growing the mining industry, which this government has done. We are about the business of increasing royalties; and we have been assiduous in doing that. As I said, we would appreciate a bit of help from members opposite instead of them bagging us every time we make a decision. They have already tried to derail the Olympic Dam expansion. The Leader of the Opposition—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Well, you have. You and the deputy leader have said that you will add $1 billion to that project, which would put it at risk. Let us make no mistake here: is it not your position that you will demand that the desalination plant be located near Ceduna, which will add two or three years, because you would not be able to put the pipeline through the Woomera protected area or across Lake Giles? It would add two or three years and perhaps also add anything up to $1 billion.

The Leader of the Opposition in the other place has come out and endorsed that, so that is the sort of contribution that members opposite make to the mining industry. It is all very well for them to talk about how they will divide royalties, but what about making sure we get them in the first place?

This government has spent far more than 25 per cent of our mining royalties on infrastructure in rural areas, and it will continue to push hard–as it has done—to ensure we get growth in our regional areas. It is absolute hypocrisy from members opposite who are adding billions of dollars and delays to those two projects, and in the case of Olympic Dam possibly putting it in jeopardy by their conditions. They would be much better off concentrating on making sure we get the royalties instead of worrying about where they will go.

MINERAL EXPLORATION, INDIGENOUS COMMUNITIES

The Hon. J.M. GAZZOLA (15:10): My question is to the Minister for Mineral Resources Development. This will be a good one. Minister, will you outline the benefits for South Australia's—

The Hon. J.S.L. Dawkins: As opposed to the last one!

The Hon. J.M. GAZZOLA: I know you are not interested in the questions we ask. Minister, will you outline the benefits for South Australia's indigenous communities as a result of the record level of investment in this state's minerals and energy sector?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:10): This is a very timely question because it will give me the opportunity to highlight what this government is doing for indigenous communities that are located in the remote areas of this state. South Australia's indigenous communities, along with regional and remote parts of the state, are one of the many beneficiaries of the renewed interest in mineral resources development.

Five years ago this government embarked on the Plan for Accelerating Exploration (PACE) program. One of the key outcomes sought through the PACE initiative was the emergence of sustainable and vibrant indigenous communities engaged in economic development in and around the mining sector.

This government is pleased with the progress made towards this outcome. While the internationally renowned PACE initiative has significantly boosted mineral exploration activity in this state, it has also provided opportunities for indigenous communities to become engaged in economic development in and around the mining sector.

The South Australian government through PIRSA has established positive working relationships with indigenous communities across the state. Currently, there are 17 approved exploration licences in the APY lands, represented by five mineral exploration companies; six exploration licence applications with ministerial approval for negotiation with the APY; 12 exploration licence applications under review by PIRSA; and six petroleum exploration licence applications with ministerial approval for negotiation with the APY.

As exploration activity increases across the APY lands, employment opportunities will continue to flow through these communities. The South Australian government will continue to work with the APY communities and industry to identify these opportunities and to develop appropriate projects to boost exploration and future mining in the highly prospective North West of the state.

While the APY lands have been the primary focus under the PACE initiative, the South Australian government supports other statewide education programs. These programs are designed to provide skills training in geoscience and exploration to ensure that Aboriginal people are well placed to participate in future mining ventures.

The Resources Engineering Skills Alliance (RESA) was first established as the mineral resources and heavy engineering skills centre in 2006, with $8.3 million in government funding over four years. The specific objective of RESA was through collaborative arrangements with companies and organisations in order to deliver innovative solutions to address the anticipated skills shortages of South Australia's expanding mining industry.

One of RESA's strategic priorities is to promote indigenous employment programs, particularly in South Australian regional areas. The ongoing progress towards developing new mines in South Australia points to increased employment. BHP Billiton is an active supporter of a range of indigenous community projects, and at Olympic Dam the company has established and participates in a number of programs providing indigenous employment, training and education funding.

The indigenous participation program offers apprenticeships and traineeships. In 2008, the number of apprentices and trainees at Olympic Dam totalled 96, with 56 graduates. OZ Minerals' Prominent Hill copper and gold mine operates with a focus on creating opportunities for increased indigenous employment. Currently, the mine employs 580 workers, 25 per cent of whom are from Coober Pedy and towns and centres in Upper Spencer Gulf, with a further 49 per cent from within South Australia.

In addition, Heathgate Resources has set and achieved a target of providing 20 per cent indigenous employment within its Beverley workforce. Heathgate has also actively encouraged the development of indigenous businesses in the Beverley area and built a 5 per cent advantage into quotations by indigenous businesses for the supply of goods and services to the mine.

On the West Coast, Iluka Resources' Jacinth-Ambrosia Heavy Minerals Sands mine is providing employment and business opportunities for the region's indigenous communities. Indigenous workers currently employed at Jacinth-Ambrosia represent 20 per cent of the workforce, and one in three workers are from the Ceduna area. Again, this shows how this mining expansion is contributing to local communities, and indigenous communities especially.

However, it is not only in the mineral sector where indigenous employment opportunities exist. Officer Basin Energy's search for petroleum in the Officer Basin has provided the Maralinga Tjarutja communities in the west of the state with substantial business opportunities. In 2007, Maralinga Tjarutja was successful in securing contracts for seismic line preparation on the first phase of OBE's exploration program, which provided a 1,250 kilometre seismic survey over mostly new but temporary access tracks. The contract was a major business success for Maralinga Tjarutja, providing a track record for future work as well as a major employment and training opportunity for many people from the local MT community.

Maralinga Tjarutja will also have further business opportunities during OBE's subsequent target, definition and drilling phase. Further employment for Maralinga Tjarutja has been possible through the OBE-MT native title negotiations in which OBE employed an MT cultural heritage team to complete work clearance areas, a skill that can now be employed in future business ventures.

With the appropriate training and skills opportunities for indigenous people, communities right across the state will be able to share in the economic benefits these mineral resource and energy projects will bring to South Australia. So, let us support the mining expansion and jobs for indigenous people. Let us not have the sort of knocking we have had from members opposite who will oppose anything that is in their backyard.

MINERAL EXPLORATION, INDIGENOUS COMMUNITIES

The Hon. T.J. STEPHENS (15:16): I have a supplementary question, Mr President. The minister, when talking about BHP, mentioned 78 apprentices. Was he saying that they are Aboriginal apprentices, or what percentage is Aboriginal?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:17): I am talking about the indigenous participation program which is offering apprenticeships and traineeships. There is a very large workforce at Olympic Dam—it is in the thousands. So, those numbers are significant—96 with 56 graduates.

NORTHERN FLINDERS RANGES

The Hon. M. PARNELL (15:18): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about mining in the Northern Flinders Ranges.

Leave granted.

The Hon. M. PARNELL: On Tuesday, the Premier released a statement entitled 'Balancing mining and conservation in the Northern Flinders', and he put out for public consultation a document entitled the Northern Flinders Environmental Management Framework. Whilst we have had that document for only a couple of days, I have read it, and a number of anomalies are apparent—and I should say these are legal and administrative anomalies rather than geological anomalies.

First, the southern boundary of an area between the Arkaroola village and Mount Gee is a straight line running east-west that appears to match almost exactly with Marathon Resources' exploration licence area, which begs the question: why, if these areas have been judged on the basis of their ecological or scenic characteristics, does the boundary follow an artificial mining tenement boundary rather than following natural contours or topographical features?

Secondly, on the map on page 15 of the framework, Mount Gee is clearly in zone 2A, and then it is described in the text as being in zone 2B on page 16. The importance of that difference, which might seem subtle, is that in zone 2A mining infrastructure is prohibited but in zone 2B it is allowed.

Thirdly, there seems to be a major inconsistency between the proposed new framework and the provisions of the Development Act, which is also under the minister's control, in that Mount Gee is designated under that act as a class A zone which prohibits mining infrastructure, whereas mining is clearly proposed under this framework. So my questions of the minister are:

1. How were the zone boundaries developed? Were they developed along natural or mining tenement boundaries?

2. Where is Mount Gee—in zone 2A or 2B?

3. Is the new proposed framework inconsistent with the Development Act and, if it is inconsistent, which will prevail?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:20): In relation to the latter question, obviously the Development Act sets planning guidelines, but clearly if one is to establish a project in there of this nature it would be assessed separately, either under the Mining Act or under some other major project category, where there would be a full and proper environmental impact statement, and that would apply whether the mine was in a sensitive or nonsensitive area. Clearly that would have to happen, so I do not see a conflict there.

First, we have gone beyond Arkaroola. I say at the outset that, as soon as this was published, we knew that it would not be enough for the Greens: nothing less than total removal would have been satisfactory, and once that was done we would go elsewhere. This government has tried to have a proper scientific analysis of all the various values that apply within the northern Flinders Ranges, and this goes well beyond Arkaroola.

We are looking at the entire north Flinders region, and some of the regions identified are well north of the Arkaroola boundary. Also, they are not solely within the Marathon licence area. The Mawson Plateau, probably the largest area under this proposal with no access at all for any mining—it is a large area—is not within the Marathon licence but is in fact licensed to by another company. It is generally identified by everyone to be one of the key geological assets of that region.

The maps that accompany the study of the northern Flinders Ranges indicate three zones. The first zone has no access at all. There is then the 2A and 2B zones, which allow some activity but it is very restrictive, with no significant surface disturbance in the region. There are those areas that remain outside. That has been done to try to look at the entire northern Flinders region, a very large region of many square kilometres, and say that we need to identify those areas at a particular aesthetic, environmental or geoscientific value. The Mawson Plateau is not only valuable as an environmental and aesthetic resource but also many geologists regard it as one of the real jewels in the geological crown of this state because of its geological features. It is named after Mawson for a very good reason.

Putting all that together, the honourable member asked about the area around Mount Gee, and that area is certainly within the restricted zones of either 2A or 2B, and the maps are included on the website. One can look at them and make comment. The government will welcome comments on this proposal up to 19 December. We have tried to identify those values in the area that are important so that we can protect the essential environmental, tourism, geological, iconic values, while at the same time, where it is possible to do so, allow some economic development, whether tourism or other activities, in areas where that will not detract from those values, so that we can get, as the document says, a proper balance.

Under this proposal, significant areas of the northern Flinders Ranges, including some outside Arkaroola itself, would, as well as being significant areas, have much tighter controls on them as to what sort of activities could take place. Many areas would have no access whatsoever, and we welcome comments on that. The government sees this as a sensible way of trying to manage this issue so that over an area of many hundreds of square kilometres we can get the balance right. We can protect all those highly sensitive areas, while at the same time, where it is less sensitive, allow, subject to appropriate conditions, some economic development in the area, which could provide significant return to the state without unnecessarily damaging the overall environment and aesthetic appeal of the area.

FIRST HOME OWNER GRANT (SPECIAL ELIGIBLE TRANSACTIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 October 2009. Page 3618.)

The Hon. R.I. LUCAS (15:26): I rise on behalf of Liberal members to support the second reading of this legislation. Put simply, the commonwealth government announced the first homeowners boost on 14 October last year, and in the commonwealth budget on 12 May this year it was further extended. The boost occurred in two stages. We had the full boost (if you want to portray it that way) through until the end of September 2009, and then there was a half boost from 1 October 2009 to 31 December 2009; so, for the last three months of this particular period.

This legislation gives power to Revenue SA to administer the scheme. The legislation also seeks to clarify the commissioner's powers generally in relation to first homeowners' grants, particularly in relation to the exercise of discretion by the commissioner about varying periods of time and the expiration of the time period for the provision of various homeowners' grants.

In relation to this latter point, the second reading explanation argues—I assume they have had legal advice that it was arguable, which is a wonderful legal term—that the commissioner should consider whether to exercise a discretion only at the time that the first homeowner's grant application is made, whereas the commissioner had obviously been looking at these time extensions or variations when circumstances transpired in which the particular applicant sought either an extension or a variation in some way. I think that, rightly, as the second reading explanation points out, it is highly unlikely that, in most circumstances, applicants would know at the start that they are going to have any particular time problems.

This legislation proposes to amend the act retrospectively to give the commissioner flexibility to exercise these discretions at any time, whether or not there are good reasons for doing so. There are many occasions when members in this chamber and those in another place argue strongly against retrospective legislation. On this particular occasion the Liberal Party is prepared to accept the retrospective element of the legislation in the public's interest.

The only other point that I will make in relation to this is that we are debating this legislation essentially in November—we have a day or two left in October 2009—yet the first homeowners' boost was announced, as I said, almost 12 months ago, on 14 October 2008, and then it was extended on 12 May 2009. I think there is an obvious question as to why on earth, with just two months to go, we are now debating the legislation that gives legislative reinforcement to the whole scheme.

We are told that, buried in the middle of the second reading explanation, the boost has been provided on an administrative basis since its announcement, and this bill will provide legislative backing to the boost. That is indeed wonderful, but the issue really is: why is it that the government has left it until virtually November 2009, given that it has obviously known since October 2008 that there was to be some requirement for legislative backing for the implementation of the scheme?

I am not sure whether anyone takes or has taken a legal view that the provision of these grants on an administrative basis without legislative backing has in some way been challengeable, and I guess the interesting question is who might challenge it, given that it is obviously handing money to generally successful applicants who are deemed to be eligible. Nevertheless, it is an issue that the minister handling the bill on behalf of the government needs to answer.

It is unsatisfactory practice, frankly, that, with two months to go of a scheme that will have operated for 14 months, in essence we are being asked to validate retrospectively everything that has gone before us when there does not appear to have been a satisfactory explanation given as to why we should not have been considering this legislation late last year, early this year or, certainly at the very latest, immediately after the federal budget in May as part of the budget package of bills that we were required to consider at that time. With that brief contribution, as I said, the opposition supports the legislation, but we do seek from the minister a response to our specific question as to why we are now debating this legislation virtually at the death knell of the scheme.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:32): I thank the Hon. Mr Lucas for his contribution to the debate. Perhaps it is best to deal with his question during the committee stage. I understand that other members have indicated their support for this bill but did not wish to speak, so I thank them for those indications of support. I look forward to the committee stage of the bill, where I will address the question asked by the Hon. Mr Lucas. I commend the bill to the council.

Bill read a second time.

In committee.

Clause 1.

The Hon. P. HOLLOWAY: I will address the question the Hon. Mr Lucas asked about timing. The commonwealth approved the new scheme through cabinet back in October 2008. The relevant changes were approved in December 2008. At the same time, I am advised that Crown Law advice was received in relation to other matters that are covered in this bill in relation to those legal issues.

I am advised that, while that was being prepared in May 2009, the extension of the scheme was announced. That is why the process was delayed. I am advised that it was actually approved by cabinet back in July 2009, and it was then introduced into the parliament. It has taken the subsequent period of time to be received in the upper house. It was laid on the table and read a first time on 9 September 2009 in another place, but I am advised that it was approved back in July. So, that is basically the time frame.

The Hon. R.I. LUCAS: I thank the minister for that outline. I will just indicate that it is an entirely unsatisfactory explanation, if I can put it that way. The simple fact is, as the minister has acknowledged, that the scheme was announced by the commonwealth in October, and the scheme has been administered, obviously—

The Hon. P. HOLLOWAY: It changed in May this year.

The Hon. R.I. LUCAS: Yes, but even if it had not changed in May, there would need to have been some legislative backing for the scheme from October through to May. So, we have a situation where Treasury is saying that it needs legislative backing to administer this scheme. It knew that from October. We have a situation where, between October and May, it needed legislative backing and then, in May, the scheme was continued. So, clearly, it needed legislative backing. The point I am making is that here we are, almost in November 2009, and the government is asking us, in essence, to approve retrospectively the government's administration of the scheme. I think that is an entirely unsatisfactory set of circumstances.

I do not intend to delay the committee other than to say that I think the Treasurer has to accept responsibility for this. The buck stops at his desk. Perhaps his attention is being directed elsewhere and not in the areas where it ought to be, and that is in the proper administration of his portfolio. We should not have a set of circumstances where the parliament has asked—virtually at the end of the scheme—that we approve something that has been operating since October last year.

Clearly, the parliament would accept that it might be a reasonable period of time after October before we might be in a position to enact legislation. One can understand if it could not

have been introduced before Christmas last year, but there certainly does not appear to be any excuse at all for the legislation not being introduced in the February-March 2009 session.

The government's partial response is that it wanted to take the opportunity to explore other issues which needed to be tidied up, and that is wonderful as well! If that was going to delay this matter, it could have been the subject of other legislation, as well. I accept that the minister here has no direct responsibility for what has been negligent oversight of the administration of the scheme and the implementation of the legislation. That responsibility rests with the Treasurer. It is just one further example of the lack of competent oversight of the portfolio by the Treasurer of the state, whose mind is obviously on other matters unrelated to his own portfolio.

Clause passed.

Remaining clauses (2 to 13) and title passed.

Bill read a third time and passed.

NATIONAL ELECTRICITY (SOUTH AUSTRALIA) (SMART METERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 October 2009. Page 3475.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:41): I rise on behalf of the opposition to speak to this bill. This year, South Australia has passed a number of bills modelled on the national electricity law, and our state is the lead legislator. All the bills contributed to the successful implementation of the National Electricity Market. Once again, COAG instigated this move back in 2006, when it decided on a progressive rollout of smart meters and the Ministerial Council on Energy was instructed to facilitate the program.

Smart meters are electricity meters that are capable of measuring and recording energy consumption at short intervals. They are also capable of two-way communication, which enables energy providers to read and control the features of the meter remotely. The use of this technology will mean that householders can monitor the cost of electricity throughout the day and adjust their consumption accordingly. For example, consumers will be able to restrict their use of particularly energy-intensive appliances to off-peak times. Effectively, smart meters (also known as advanced metering infrastructure) will provide two-way communication between the electricity meter and the power company, making more immediate information about one's electricity use available to the provider and the consumer.

It will be easier to connect and disconnect power when you move house, and power companies will be able to identify outages and restore power more quickly. It will also mean the end of estimated bills or staying in for meter readings. The rollout of smart meters would also be a key step towards future smart electricity grids, which we need so that more renewable energy can be fed into the grid.

Victoria was the first state in Australia to give the go-ahead for the widespread rollout of smart meters. It will cover around 2.2 million homes and 300,000 businesses. The decision to implement this legislation is backed by a national cost benefit analysis, funded by the Ministerial Council on Energy, as a precursor to a national rollout of smart meters. This analysis found that the smart meters project will deliver net benefits to Victoria of up to $700 million over the next 20 years.

I am not sure whether the minister has any advisers here, but I would like to ask a question about the projected cost of smart meters to the average household and the savings that might come from having a smart meter. As I said, the national analysis found that smart meters in Victoria will deliver benefits of up to $700 million over the next 20 years. I am intrigued to know whether that is $700 million to the power company, $700 million to the manufacturers of smart meters or $700 million to the consumers. From my notes, I see that the Ministerial Council on Energy is undertaking coordinated pilots and business case studies to decide whether the analysis is accurate. I would like an update from the minister on whether this information is accurate.

In briefly looking at that analysis, it is clear that there are possible opportunities for South Australia to benefit from rolling out the smart meters; however, I think the findings for South Australia were far less certain. So, while I am sure it will allow power companies opportunities to see where the power outages are occurring, I recall from my days on the farm that, when you rang to say that the power was out, you would be told, 'Yes, we know it's out east of Bordertown,' but no-one quite knew how far east and particularly where the outage was located. Of course, smart meters may well help locating the problems and getting them fixed quickly.

Although South Australia is involved in neither the initial roll-out nor the pilot business program, the government should certainly be busy investigating the opportunities for South Australia. Ultimately, the bill gives the Minister for Energy the power to decide the scope and the timing of the smart meter pilots and roll-outs. The minister has stated a number of times that he is opposed to smart metering. The opposition certainly hopes that his position will not prevent further investigation into the viability of such a program in South Australia.

If possible, I would like the minister to respond to those questions about the actual financial benefits to consumers here in South Australia. With those few words, I indicate that the opposition is happy to support the bill.

The Hon. M. PARNELL (15:45): I rise to support the second reading of the bill. Smart meters, I think, are the way of the future, and there are a number of advantages that I think tell us that this bill is deserving of support. One of the biggest advantages of smart meters—and there is a range of advantages—is the ability for people to track in realtime their energy consumption. It is particularly useful in that this energy consumption can be tracked remotely. That has huge advantages for business and industry where they can, in realtime, determine where their power is being used.

Members can imagine a situation where a night watch person can discover in fairly rapid time that banks of lights have been left on or an air conditioner has come on in the middle of the night and remedial action can be taken. It is important for people in industry and business. My understanding is that currently these types of meters are compulsory only for the largest commercial electricity consumers, and that 160 kilowatt hours is the threshold, which represents some 160 tonnes of CO_2 equivalent per year.

These are substantial polluters and, if we can get their energy use down, emissions will come down accordingly. One question I would ask the minister to address is whether it is the government's intention to make smart meters compulsory for more businesses and, in particular, whether it will drop the threshold and, if so, what that new threshold might be. The critical issue with smart meters is the question of who controls the data. If it is the retailer who is controlling the data, the information is unlikely to drive behaviour change. In fact, the information is that smart meters are really likely to benefit only the retailer in that they will not have to send out meter readers anymore; they will be able to save on billing costs.

If a consumer of electricity has full access to the data, that information can be used to change behaviour. My understanding is that, at present, the providers of smart meters are charging customers to access the data. I believe it is something like $1 a day; and, whilst that might not seem like much, for $365 there are many people who would not bother spending that extra money to access the information. It is in fact an impediment to customers accessing the data and therefore accessing the information that they can use to change their behaviour.

If you do not know how much energy you are using in realtime, it is difficult to change your behaviour. My question for the minister in relation to both business and, in particular, households is whether consumers will have free or cheap access to this data, because most of us have no idea how much electricity we use. At this stage, I will put in a plug for the scheme that is being operated through municipal libraries where you can in fact borrow a device—I think they are called meter mates—which you plug into your power outlet. You then plug your appliance into the device and it tells you how much electricity you are using at different stages.

For example, you can test your computer in stand-by mode and you can test it in full operating mode. You can test all those appliances, the glowing red lights of which actually keep our houses lit in the evenings. People are often surprised to find out that an appliance with a glowing red light that is not being used, perhaps for 99 per cent of the day, might be using five, 10 or more watts of electricity. So, if you can find out in real time and easily how much electricity you are using, you can take steps to change your behaviour.

The other thing worth saying is that South Australia has one of the peakiest demands for electricity and it is that peak that results in our having a number of power stations that only operate for a few days per year. If we can control our energy demand in the peak, then we can do away with some of those peak supply power stations.

I have discussed the issue of smart meters on a number of occasions with Mr Lew Owens of ETSA Utilities. He has described to me the trial they have conducted at Glenelg, which involves the electricity companies remotely switching, for example, air conditioners in customers' homes to reduce demand during peak times. The concept or idea of big brother turning off the electricity

without your knowing about it horrifies many people, but I understand from the trials that turning off the compressor rather than the fan for short periods results in almost no noticeable difference in the internal climate of people's homes—they do not even know it is happening—but it can save large amounts of electricity.

Clearly, what is overlying all our concerns in relation to energy is climate change. If anyone is not paying attention to climate change then they are probably living on a different planet. We will be going to Copenhagen shortly. As a global community we will be discussing our contribution in trying to restrict carbon accumulation in the atmosphere. As a wealthy country, Australians are expected to show some sort of leadership.

Smart meters will not deliver the cuts to carbon dioxide emissions that we know are necessary to keep the earth's climate below 350 parts per million of CO_2 equivalent, but they do provide a useful tool to get us part-way there. Once we have weaned ourselves off coal, once we have a serious renewable energy economy, once we have a smart grid, then smart meters will be the icing on the cake to help us reduce our emissions. With those remarks the Greens are happy to support the second reading of this bill.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:52): I thank the Hons Mr Ridgway and Mr Parnell for their contributions and other members for their indications of support for the bill. The Hon. Mr Ridgway asked a question about the benefits of smart meters for local customers. I guess we can deal with that further, if necessary, during the committee stage.

I assume the question was about the results of the cost/benefit analysis of smart meters for South Australia. The minister has indicated that the South Australian government is not prepared to mandate a roll out of smart meters in this state at this time but, of course, this legislation is necessary in order to let other jurisdictions do so. The work of their pilot programs undoubtedly will be of some benefit to this state in terms of the information it will provide.

In answer to the question of the Hon. Mr Ridgway, in April 2007 COAG committed to a national mandated roll out of electricity smart meters to areas where benefits outweigh costs. As indicated by the results of the cost/benefit analysis, taking account of different market circumstances in each state and territory and the circumstances of different groups of consumers, the cost/benefit analysis indicated that the range of net benefits from a roll out of smart meters in South Australia varied from a very significant net present value (NPV) of minus $108 million to a best case of $146 million. This uncertain result would come at a total cost of around $188 million to $308 million net present value.

The potential for further downsides was also identified from the consultant's findings. South Australia's approach to not roll out trial smart meters based on the cost/benefit analysis results is consistent with the COAG commitment in 2007.

The results of the cost benefit analysis for South Australia show that, for a rollout of smart metering to have a net positive benefit, it is necessary to have costs at the low end of the range estimated. Per customer business efficiency benefits are lower in South Australia than the national average, mainly due to much lower avoided costs for special reads (15 per cent of the national average, driven by lower property churn and much lower reading costs), lower avoided costs for routine meter readings and less reduction assumed in the cost of calls to faults and emergency lines. Demand response benefits may assist in meeting any shortfall between costs and benefits in South Australia but would not result in a rollout becoming net positive if costs were at the high end of the range estimated, even taking into account the additional demand response that may be achievable with the inclusion of an interface to the home area network.

That is the position of the government, but the Minister for Energy in his concluding speech on this bill in the House of Assembly stated:

> I make the point that you can get one—

that is, a smart meter—

> if you want one: we are not preventing it. Anyone who thinks there is an advantage in real-time metering is free to get one, but I would say that you would have to be a very large customer.

I think the Hon. Mr Parnell alluded to the fact that certainly demand management has significant advantages and, obviously, for large customers the benefits of that information could be significant. However, obviously for smaller customers, given the cost of these meters, the return is likely to be much less. The minister went on:

That ability has been around for a very long time and I must point out that very few large customers have taken it up, which I think supports the case we have made in South Australia.

It is an important piece of legislation for the national electricity market and, in terms of smart meters, it is far more important in other jurisdictions than it is here. It will allow us to embrace those technologies if there is a benefit from them and if people want them.

The only other issue raised by the Hon. Mr Parnell (and, if necessary, we can pursue it further in the committee stage) was about the availability of data. My advice is that this is the subject of discussions at national level, but under the terms of the bill a determination on such matters would be jurisdiction-based so, obviously, it would be up to those jurisdictions taking up the scheme as to what they would wish to have provided. With those comments, I commend the bill to the council.

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

LOCAL GOVERNMENT (ELECTIONS) (MISCELLANEOUS) AMENDMENT BILL

Consideration in committee of the House of Assembly's amendment.

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

That the House of Assembly's amendment be agreed to.

Members will recall that an amendment to this bill was moved by the Hon. Robert Brokenshire. His amendment introduced the concept of a prescribed contract, and that was defined as a contract for the provision of goods, services or any other matter that has been included in the business plan and budget. Anything that was a prescribed contract was to be excluded from the caretaker period. That encompassed almost everything as it was very broad brushed. Concerns were raised and we also received advice that that definition of prescribed contract was so wide and so vague that it was likely to create contractual uncertainty for council operations and would also effectively negate the essential purpose of the caretaker period because it excluded almost everything.

The clause was amended in the other place following consultations with the Local Government Association, and those discussions resulted in a prescribed contract that would relate to road and drainage works. That means that road and drainage works would be excluded from the caretaker provisions and could occur right throughout the year. That was because those works are able to be done only at limited times, according to weather opportunities: it cannot be raining or be too hot, and so on. There are limited weather condition opportunities throughout the year during which these works could be completed. Therefore, given that that could place quite significant restrictions on a particular project, it was agreed that we would include those matters as prescribed contracts and, therefore, they would be exempt from the caretaker provisions.

Some members probably received a letter from the Executive Director of the LGA, Wendy Campagna. She wanted to extend the definition of the prescribed contract even further, that is, to exclude even more things from the caretaker period. However, the things that she proposed were very case specific; therefore, the government was not able to support those additions.

The LGA was prepared to accept the amendment as it stands before members today. Obviously, the LGA would prefer it to be broader than it is, but it has accepted the amendment as it stands. We have also given an undertaking that through regulations we will include a number of routine day-to-day operational matters and any other particular contract provisions that might need to be excluded from the caretaker provision, and we have agreed to work with the LGA in developing those regulations. I urge members to support the amendment.

The Hon. D.G.E. HOOD: I speak on behalf of my colleague who, as members know, is paired at the moment. Family First moved this amendment in good faith. We believe that it is a good amendment. We thank the opposition and other Independent members for their support when we initially moved the amendment. However, I inform the chamber that we will not be insisting on the amendment.

We are somewhat satisfied with the arrangements that the government has reached in a compromise agreement with the LGA; but I must point out that we believe that our initial amendment was superior. The reason for that is that it would have included things like sewerage works, which will not be included under the new compromise arrangement. Also, one must ask why lighting projects, for example, could not continue. If a light goes out or, for some reason, it does not work, it is the sort of thing that people want fixed fairly quickly. You do not want a delay for something like that; it can be a safety hazard in some instances. Our amendment was deliberately broad for those reasons.

We are somewhat disappointed that we were not able to get it through. The other limitation that I see in the compromise arrangement is the question of the federal government's stimulus package, which is obviously very substantial and which will be significantly implemented by local government. We believe that the compromise agreement with the LGA may, in fact, create some difficulties down the track, when local government elections are held when they are due in 2010.

That being said, we are pleased that a compromise has been reached and that an arrangement has come partially towards what we sought to achieve in the first place. As a party we do our best to not clog up the wheels of government. For that reason, we will not be insisting on our amendment, although, as I say, we do feel that it offered a better solution.

The Hon. S.G. WADE: In the government's initial opposition to the amendment that was successful and the committee is now considering whether or not to insist on, the government said three things: that it thought the amendment would allow controversial decisions to be made in the caretaker period, that it was too vague, and that the government would prefer to consult with the LGA and come back with an agreed regulation. Can the minister advise the committee of the outcome of the consultation with the LGA about an alternative regulation?

The Hon. G.E. GAGO: We met with the LGA and had discussions about this amendment, and we advised it of the opinion that we received about some legal ambiguities due to the scope of the Hon. Robert Brokenshire's original amendment. So, we discussed that with the LGA. We then sat down and tried to work out an alternative amendment that it was satisfied with, and the outcome of that is before you. So, although it would rather it be broader, nevertheless, it was prepared to support this as it is before members today.

We have also entered into discussion with the LGA about the regulations that will come later, and within those regulations we will consider those other matters that would need to be exempted from the caretaker provision. There are a number; the Hon. Dennis Hood mentioned for instance stimulus package initiatives that are very time specific and other contracts for instance that have been signed already, and there are time constraints in them. There are a number of things on which we have said we will work with the LGA to ensure those matters are picked up in regulation, and it is reasonably satisfied with that.

The Hon. S.G. WADE: I thank the minister for that advice. The opposition will also be supporting the council in not insisting on the amendments, but in saying that I highlight what I believe are some inconsistencies with the minister's opposition to the Family First amendments and the government's alternative definition of prescribed contract. As I said, one of the minister's main objections, if not the main objection, to the Brokenshire amendment was that it would allow controversial decisions to be made during the caretaker period.

The government's alternative definition of prescribed contract relates to road construction or maintenance or drainage works. There is no doubt that those matters can lead to great controversy. What might to us seem to be a small proposed change for a road can be extremely controversial in a local community. Local governments are major businesses in this state, for want of a better word, and their road construction projects can be very large. Drainage works by local government in the driest state in the driest continent in the context of a state government not interested in stormwater can be extremely controversial, so I reject the government's suggestion that the alternative words avoid the controversy of the original motion.

It is also clear that these projects could be extremely expensive. There is no limitation on the value of these contracts during the period. One of the great attributes of the Hon. Mr Brokenshire's amendment was that it was linked to the annual business plan in the budget, and that is under the Local Government Act subject to consultation. These road construction and maintenance and drainage works could be the good idea of a councillor on the night. I concur in the Hon. Mr Hood's comments that there is much to commend to the council in the original amendment. Through implementation of these proposals in practice I would not be surprised if by regulation or statute we were looking at a very similar clause to that of the Hon. Mr Brokenshire in a few years' time, but with a stubborn government you do what you can.

Motion carried.

STATUTES AMENDMENT (VICTIMS OF CRIME) BILL

Consideration in committee of the House of Assembly's message.

Amendments Nos 1, 3 and 6:

The Hon. P. HOLLOWAY: I move:

That the Legislative Council do not insist on its amendments.

The position is that the Legislative Council amended the bill and then transmitted it to the house. The house agreed to amendments Nos 2, 4, 5 and 7 and disagreed to amendments Nos 1, 3 and 6. Amendment No. 1 extends the right to make a victim impact statement in person to a wide range of summary offences against the person. Amendment No. 3 gives the victim a right to determine the form of any community service imposed. Amendment No. 6 limits the Commissioner for Victims Rights' exemption from FOI legislation. The government is opposed to all of these amendments. The reason for that was thoroughly canvassed in debate before the council, and there is no point in rehashing it all again.

The Hon. J.A. DARLEY: I will be insisting on my amendments.

Motion negatived.

SERIOUS AND ORGANISED CRIME (UNEXPLAINED WEALTH) BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: I take this opportunity to reply to two questions raised by the Hon. Mr Lawson that I did not address in the second reading reply. First, the honourable member asked why the standard criminal intelligence provision in clause 6 allows criminal intelligence to be provided to the Attorney-General. The answer is that there are some conceivable situations in which that might need to happen. Under clause 35 of the bill, the Attorney-General is obliged to conduct a review of the operation of the act. This is one of the accountability measures contained in the bill. It would be intolerable if the Attorney-General was told that, despite being responsible to parliament for the review of the act, he or she should not be given the necessary information in order to make a judgment about the utility of the act.

More generally, the act will be committed to the Attorney-General. The office functions as the chief law officer. The Attorney-General is responsible to the parliament and the public to ensure that the resources of the state are spent wisely and that the executive is kept accountable. Again, it would be intolerable if the Attorney-General was told that he or she could not be given much or any necessary information in order to make judgments in his or her ministerial capacity.

The honourable member also asked about the drafting of clause 7. He said that he would prefer a wording to the effect that 'the Crown Solicitor shall not act on instructions'. I have consulted parliamentary counsel, as this is a drafting matter. I am advised that parliamentary counsel is of the opinion that the words drafted mean what the honourable member desires and that in parliamentary counsel's opinion the drafting should stay as it is to achieve that result.

The honourable member also questioned the constitutionality of unexplained wealth legislation. He might like to know that the Northern Territory provisions have been challenged on all possible grounds, including Kable, and survived. The decision is that of the Northern Territory Court of Appeal in Burnett v. the DPP (2007) 180A.Crim.R41.

I also take this opportunity to address the amendments to the bill proposed by the Hon. Mr Lawson. The effect of the amendments to the bill proposed by the Hon. Mr Lawson is to substitute the DPP for the Crown Solicitor throughout. The Crown Solicitor has no role at all under the amendments. The effect of the amendments proposed by the government is that the role is split between the Crown Solicitor and the DPP. The DPP acts as the independent gatekeeper and the Crown Solicitor does the litigating.

We now come to the question of the role of the Crown Solicitor. It is true that the two existing regimes in Western Australia and the Northern Territory use the DPP. That is likely to be because the relevant provisions are in their confiscation legislation and not as here in a separate act. The government takes the view that it is the Crown Solicitor, rather than the DPP, who should take on the litigation role. The reason for this is simple. This is straightforwardly a civil option action. It is not a prosecution; there is no necessary connection to criminal proceedings.

The Criminal Assets Confiscation Act 2005 proceedings, while civil in terms of onus of proof, are proceedings which involve assets that are crime related. Confiscation often follows conviction. That is not so with unexplained wealth. It does not matter whether or not the assets are crime related. What counts is whether the person who controls the asset can explain that the

assets were lawfully obtained. It is enforced as a civil judgment. Interstate matters will be governed by the commonwealth Service and Execution of Process Act. These are not matters with which the DPP is concerned, and nor should they be. The government maintains that its position is the right one.

The Hon. R.D. LAWSON: I thank the minister for those indications. I point out that the concerns of the opposition regarding the entire exclusion as originally proposed in the bill of the DPP were unwarranted. It led us to suspect that the government's antipathy towards the present occupant of that office and the hostility so often demonstrated by the Attorney-General towards the Director of Public Prosecutions lay behind the exclusion in the bill as originally proposed of any role for the Director of Public Prosecutions.

The director is a statutory authority created by the Director of Public Prosecutions Act. The director has statutory independence; he reports annually to the parliament. The powers of the Director of Public Prosecutions in section 7 of that act include the initiation of civil proceedings for contempt and also to carry out any other function assigned by any other act. That act provides that, in any legal proceedings, the Director of Public Prosecutions can be represented by the Crown Solicitor, amongst others.

We believed that the director was the appropriate functionary not only to initiate but also to prosecute unexplained wealth declarations. We note that that is the position under the Northern Territory criminal property forfeiture acts which contain provisions about unexplained wealth. It is also the provision under the relevant Western Australian legislation, where section 11 of the Criminal Property Confiscation Act 2000 vests in the Director of Public Prosecutions the power to apply for an unexplained wealth declaration.

I remind the committee that the director already has power under the Criminal Law (Sentencing) Act to obtain restitution of property, and also to obtain orders for compensation for injury, loss or damage. I also remind the committee that our Criminal Assets Confiscation Act provides in section 47 that a court must, on the application of the Director of Public Prosecutions, make a forfeiture order; and, likewise under section 24 of that act, restraining orders are made on the application of the DPP.

It was for those reasons that we believed that it was appropriate that the director have vested in him or her (the holder of that office) the power to commence and prosecute proceedings. I make that comment now in response to the minister's opening comment rather than repeating it later when we get to the specific amendments relating to this aspect of the matter. I do have one question on clause 1. This act will come into operation on a day to be fixed by proclamation, so will the minister indicate when it is intended to proclaim the legislation to come into operation and, if that is not to be reasonably soon, what reason is there for any delay?

The Hon. P. HOLLOWAY: My advice is that before the bill can be proclaimed the government will need to consult with the DPP, SAPOL and the Crown Solicitor. Depending on the outcome of amendments, those bodies will have to set up protocols—which are quite complicated—so it may take some time. Obviously, it is the government's wish that this bill be proclaimed within a reasonable time, but it will depend on the establishment of protocols between those three parties.

The Hon. DAVID WINDERLICH: I have made it clear already that I will be rejecting this bill. This is yet another bill in a trend or, in fact, a free fall or headlong plunge into a secret state mentality. We started down this road with the terrorism legislation, where the threat we sought to avert was potential mass deaths from suicide bombing. It moved to organised crime, where the threat we sought to avert was street violence, extortion and involvement in the drug trade. Just the other day we dealt with legislation in relation to hydroponics, where the threat was a link to the drug trade and organised crime. Today we are dealing with unexplained wealth and, shortly, we will be dealing with second-hand goods. With each step, the link between the threat and the measures we are taking becomes more tenuous.

As was highlighted by the Attorney-General in his second reading explanation, already there is the power to confiscate the proceeds of crime under the Criminal Assets Confiscation Act. However, that act has the slight inconvenience of requiring proof that a person has been convicted of a serious offence or that a person is suspected on reasonable grounds of having committed a serious offence.

This bill would dispense with the requirement for proof. In each step of these pieces of legislation—or most of them—no good evidence has been provided for the measure taken. There

has been no clear evidence of how serious the threat is that we are dealing with. There has been no clear argument about whether the measure will work. Given the dynamic nature of crime, there has been no discussion about whether we will simply drive criminal elements into another secret society and then have to follow them down that burrow with more repressive legislation that will affect another industry sector or group in the community. For example, organised crime may move into mobile phones. It might be a good way to get lots of information about people. Will we then need to apply criminal intelligence and reverse the onus of proof in that sector?

Last night we spoke about voluntary euthanasia and there was talk about declining moral standards, or that is a concern often voiced during that type of debate. I believe this trend of legislation is evidence of declining moral standards of another sort. We say that we value freedom, but we dispense with it just for the faintest whiff of additional safety. We say we are concerned about abuses in one sector, but today, no doubt, this chamber will vote for legislation under which there is no need to prove a case. Decisions will be made on the basis of secret evidence and there is no prospect of appeal or review.

A recent bill introduced by the Hon. Robert Brokenshire was subjected to an intense grilling by the government. It wanted evidence about each and every measure—about the costs and value of every clause—yet we do not subject this legislation to the same sort of scrutiny.

I think social democracy went with Dunstan. We are now closing the door on liberal democracy. It is clear that no-one believes in it any more. It is clear from this legislation that on important matters we have extraordinary trust in the authorities that, for some reason, we do not have in other areas not related to law and order, so we are prepared to let decisions be made in secret.

We are prepared to dispense with the presumption of guilt when we talk about serious offences and serious penalties. Well, why not go the whole hog? Why not just make these defaults in every area of law? Why do we need the presumption of innocence? Why should the decisions of the authorities ever be open to scrutiny? If they are not open to scrutiny in matters as important as these, why do they need to be open to scrutiny in much less important matters?

I think those of us who are arguing for an ICAC—and this excludes the government because it is at least being consistent—on the ground of calling for greater scrutiny are, in fact, being inconsistent in continually agreeing to legislation such as this with no effective watchdogs and no scrutiny. I think we are a marshmallow fascist state where fundamental individual rights (which are rights that do not just protect the individual but also protect the whole of society because they limit the power of government) are very easily dispensed with.

As I said, it is clear that no-one, with the possible exception of myself and maybe one or two others, believes in this stuff any more, so I think just let it rip and be quite open with the people of South Australia about what you are on about. Some sort of amendment bill to completely dispense with the presumption of innocence would be in order—at least it would be honest—and also some sort of bill to have completely closed trials in every case. Why not? We do it for the most important decisions that we can make in our court system; why not do it for the minor ones? That, at least, would be consistent.

Clause passed.

Clause 2 passed.

Clause 3.

The Hon. DAVID WINDERLICH: I move:

Page 4, lines 1 to 5 [clause 3(1), definition of criminal intelligence]—Delete the definition of criminal intelligence

This amendment would delete the definition of criminal intelligence. My opposition to the notion of criminal intelligence I think has been made abundantly clear, so I will not speak about it at length other than to reflect on a remark made by the minister the other day when he talked about criminal intelligence being better than criminal ignorance. In fact, in many ways, they are the same thing because, under criminal intelligence provisions (that is, secret evidence), the accused will be ignorant of the grounds on which they are accused—or may well be ignorant. Their lawyer will be ignorant, the media will be ignorant and the public will be ignorant. The only people who will know what is going on are the authorities who will operate without scrutiny. So my opposition is abundantly clear: criminal intelligence is criminal ignorance in terms of how democracies operate.

The Hon. P. HOLLOWAY: This amendment is the first in a series filed by the Hon. Mr Winderlich that remove the prohibition against disclosing information classified as criminal intelligence that is submitted by the commissioner in the course of an investigation and the making of an application for an unexplained wealth order. The government submits that this amendment should be treated as a test amendment for the series.

This amendment deletes the definition of 'criminal intelligence' from clause 3 of the bill. The definition is crucial to the provisions that prohibit disclosure of criminal intelligence. For this reason, it is opposed. 'Criminal intelligence' is defined in clause 3 of the bill to mean:

> ...information relating to actual or suspected criminal activity (whether in this state or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

For obvious reasons, criminal intelligence cannot be disclosed to the criminals to whom it relates. Criminal intelligence may take the form of information from police informants or undercover officers, from covert surveillance (including electronic surveillance) or from victims of crime and other witnesses. What is important is that the information, whatever its source, satisfies the definition. If it does not, it is not criminal intelligence and is not protected from disclosure.

Criminal intelligence is protected from disclosure by the combined effect of clauses 6 and 12 of the bill. These clauses are by no means unique. Information in the nature of criminal intelligence as it is defined in the bill which is relevant to administrative decisions and determinations or which is tendered as evidence in court proceedings is protected from disclosure under a number of South Australian acts. Examples are: the Liquor Licensing Act, the Serious and Organised Crime (Control) Act and the Security and Investigation Agents Act. Nor is South Australia alone in recognising the need to protect highly sensitive information from disclosure in court proceedings. Section 76(2) of the Western Australian Crime and Corruption Commission Act 2003, for example, protects from disclosure criminal intelligence tendered in review proceedings under that state's anti-fortification provisions.

As members may also be aware, claims of public interest immunity against disclosure of information of the kind that would meet the definition of criminal intelligence have been a feature of our criminal system for some time. Criminal intelligence provisions, including provisions substantially the same as those the Hon. Mr Winderlich's amendment seeks to delete from this bill, have been found to be constitutional by the High Court in K-Generation Pty Ltd, the Liquor Licensing Court 2009, HCA4. These provisions are important. Without them information relevant to the stripping of unexplained wealth from those who have insulated themselves from the operation of the criminal law will not be able to be used as to do so would risk disclosure of the information to the criminals about whom it relates.

I stress again that the only information that will come within the definition is information the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of a confidential source of information or endanger a person's life or physical safety. The government's position is that information that could prejudice criminal investigations, disclose a confidential source of information or place a person's life or physical safety at risk should not be disclosed to the criminals about whom it relates. For this reason the government opposes this amendment and any other that seeks to remove the protection from disclosure afforded to criminal intelligence.

The Hon. R.D. LAWSON: Liberal members will not support the amendment proposed by the Hon. David Winderlich. We hesitate about the use of criminal intelligence provisions, but our touch stone in relation to them is that ultimately it must be for a court to decide whether the particular information qualifies as criminal intelligence, and an independent judge has that role. Provided there is that judicial supervision, provided the judge has the capacity to say, 'No, the information is not criminal intelligence because it does not satisfy the criteria'—namely, those tendering it cannot satisfy the court that the disclosure could reasonably be expected to prejudice proceedings, enable the discovery of the identity of a confidential source of information or to endanger a person's life or safety—the fact that the decision is in the hands of a court is sufficient.

We accept that the High Court in the K-Generation case, a case emanating from South Australia, supported the constitutionality of the inclusion of such proceedings, which is important to us. We also believe that these are relatively new provisions and there will be occasion in the not too distant future to review their operation. If it transpires that the fears of those who, like the Hon.

David Winderlich, feel that it is inappropriate are justified, we are certainly not wedded to maintain for all time exactly the same criminal intelligence regime.

We accept the evidence given by police commissioners that increasingly today criminal investigation relies upon criminal intelligence, much of which is information gained by sources which are themselves either criminal or associated with criminals, from informers and the like. We do not believe that the police are so foolish in their use of criminal intelligence to blindly accept whatever rumour is advanced to them, but ultimately we are satisfied with these provisions on the basis that they are all subject to judicial supervision. We will not support this amendment or the other consequential amendments of the honourable member.

Amendment negatived.

The Hon. R.D. LAWSON: I move:

Page 4, after line 11 [clause 3(1)]—Insert:

DPP means the Director of Public Prosecutions and includes a person acting in the position of Director of Public Prosecutions;

My amendment inserts a definition of the DPP. Perhaps I will treat my next amendment as a test for the proposals we have for the DPP as opposed to the Crown Solicitor.

The Hon. P. HOLLOWAY: I guess there is no point in my moving an identical amendment. I did explain the reason for the government moving these amendments in my comments on clause 1, so I will not repeat them here.

Amendment carried; clause as amended passed.

Clause 4.

The Hon. R.D. LAWSON: In relation to clause 4, a formula is provided for determining what is effective control. Clause 4(1)(c) provides that a formula, which includes a number of beneficiaries, is used. Does the government accept that it is the case that in many discretionary trusts it is not possible to determine in advance the number of possible beneficiaries, given that many discretionary trusts have a wide range of persons who might be eligible as beneficiaries?

The Hon. P. HOLLOWAY: I understand the point the honourable member is making, but the government has taken this definition from the Criminal Assets Confiscation Act. Although much thought has been given to an alternative definition, given the complexity we believe that this is the best definition that could be devised. We accept the point that the honourable member is making, that it is a very complex area. It is very difficult to get a better definition.

Clause passed.

Clause 5 passed.

Clause 6.

The Hon. R.D. LAWSON: I move:

Page 5, line 35 [clause 6(1)]—Delete: 'The Attorney-General'

This amendment excludes the Attorney-General from those persons to whom criminal intelligence may be disclosed. I acknowledge that the minister, in his comments on clause 1, indicated reasons why the government believes that the Attorney-General should be a recipient. He mentioned the fact that the Attorney is the responsible minister, that the Attorney is required to undertake a review of the operations of the act.

We note that under the Serious and Organised Crime (Control) Act there is a provision in section 29(2) which enables the Attorney to be informed of criminal intelligence. Section 13 of that act does not permit the Attorney-General to disclose to any other person information which the commissioner has classified as criminal intelligence except to the inspector appointed under part 6 of that act. Likewise, section 21 of that act enables the Attorney-General to receive criminal intelligence used in relation to the making of control orders.

Our concern in moving the amendment is that there was nothing on the record to indicate why the Attorney ought be the recipient of criminal intelligence. We are, however, satisfied by the explanation that has been put on the record, principally because the minister is responsible for the administration of the act and that it is important ultimately that the community, through an elected representative, be in a position to hold a statutory office holder such as the commissioner of police

accountable for the administration of the law. Having said that, I am really indicating that I am not inviting the committee to support the amendment that has been proposed and certainly will not be dividing on the matter.

The Hon. P. HOLLOWAY: I thank the Hon. Mr Lawson for his comments.

The Hon. DAVID WINDERLICH: I will briefly say in relation to criminal intelligence that I note the two defences of the use of criminal intelligence, one by the minister where he cites other acts in which provisions of criminal intelligence or similar criminal intelligence exist. He cited the Serious and Organised Crime (Control) Act, the Security and Investigation Agents Act and the Liquor Licensing Act.

I believe that the only one of those that precedes this government is the Liquor Licensing Act, so when we look for a reference or justification for criminal intelligence we say, 'Well, it is there in law.' Who put it there? Gosh; we did. Who can vouch for this as a legislative tool and established principle? We can; we did it. I do not accept that argument. My whole point is that this government has led us down an increasingly authoritarian path and is extending these provisions into more and more areas and, shortly to come, into small, second-hand goods shops and market stalls.

The Hon. Robert Lawson's defence of criminal intelligence was basically premised on trust in the police. I do not want to criticise the police any more than any other institution in society, but I do criticise other institutions in society. I believe all institutions are fallible, and we have a strange perspective when somehow we accept that power will be abused in relation to politicians (of course we accept that); we accept that developers will attempt to influence and bribe officials (no problem; we accept that); we accept that local councils will be corrupted and influenced; and we accept that doctors could abuse their important role in relation to voluntary euthanasia.

Somehow, everyone can abuse their powers and therefore must be scrutinised except for the police. It does not make sense. They have a very hard job to do in a very adversarial situation; I would not want to do it. They perform an absolutely vital role, but they are not above criticism, and they are certainly not to be trusted any more than any other powerful institution. All power corrupts; all power corrupts the more when conducted in secret. That is the premise of the argument against criminal intelligence, which is not to say that there is no role for issues such as public interest immunity.

If we look at the context of this whole bill, you do not have to prove that the proceeds of wealth were obtained illegally; you just have to suspect it. A whole lot of things then follow. These decisions are not reviewable. There are some very explicit descriptions in the report, which I think are obviously put there in support of this measure but, to my mind, they actually condemn it.

There will be no criminal threshold of proof for the making of the application for the full unexplained wealth order. I think that in itself very clearly explains it all. There is no obligation on the Crown to prove, or even allege, that the person or body corporate is engaged in any sort of criminal activity. So, in the context of the whole bill, you do not have to prove your case and then you can put evidence in secret. I have difficulties with criminal intelligence in almost all contexts anyway but, in the context of this bill—so much of which is beyond challenge—I think it is even worse.

I have one final point. I believe the minister also said that information that could prejudice an investigation should not be disclosed to the criminals who are being investigated. As I said, we have just about abolished the presumption of innocence. The minister demonstrated the presumption of guilt. It is the default presumption, in many ways, in many pieces of the government's legislation. As I said, go ahead; standardise it. You are sort of doing it by stealth anyway, so do it openly. I think I have made my point very clear. My opposition to criminal intelligence, particularly in the context of this bill, is very clear.

The Hon. P. HOLLOWAY: I would have thought that we had the vote on the criminal intelligence issue earlier. In essence, I would have thought that the Hon. Mr Winderlich's motion is consequential. I move:

Page 5, line 34 [clause 6(1)]—After 'to the' insert:

DPP or the

I addressed this matter in my comments on clause 1. The effect of the amendments to the bill that were proposed originally by the Hon. Mr Lawson was to substitute the DPP for the Crown Solicitor throughout. Under his series of amendments, the Crown Solicitor has no role at all. The effect of

the amendments to the bill proposed by the government is that the role is split between the Crown Solicitor and the DPP. The DPP acts as the independent gatekeeper and the Crown Solicitor does the litigating. That is the difference in approach. This is the first amendment that is a test of that approach.

The Hon. R.D. LAWSON: We are grateful to the government for altering the model originally adopted. The series of amendments on this subject standing in my name were designed to substitute the DPP with the Crown Solicitor. The government's proposal is not to make that substitution but to interpose the DPP as the gatekeeper—as the minister describes the DPP—in whom is reposed the responsibility for initiating unexplained wealth orders.

The key clause is an amendment to clause 9 foreshadowed by the minister which, under the government's model, will provide that, if the DPP reasonably suspects that a person has unexplained wealth, the DPP authorises the Crown Solicitor to make the application. Whilst that is not our model, it is a considerable improvement on the government's original proposal, and the opposition will accept the government's model in relation to this. On the assumption that the minister will be moving a series of amendments to achieve that objective, I will not move the amendment standing in my name on this topic.

The Hon. P. HOLLOWAY: I thank the opposition for its indication of that.

Amendment carried; clause as amended passed.

Clause 7.

The Hon. R.D. LAWSON: I move:

Page 6, lines 14 and 15—Delete 'exercises an independent discretion in relation to that power or function and does' and substitute:

must exercise an independent discretion in relation to that power or function and must

The bill as it is currently drafted contains in clause 7 a pronouncement, which provides:

For the avoidance of doubt, where this act specifies that a power or function is to be exercised by the Crown Solicitor, the Crown Solicitor exercises an independent discretion in relation to that power or function and does not act on the instructions of any other person...

We believe that a more satisfactory formulation of that concept is one that actually requires the Crown Solicitor to exercise an independent judgment, not simply to proclaim by statute that he is exercising an independent discretion. We also believe that it is inappropriate to say that he 'does not act on the instructions of any other person or body' because that is a statutory pronouncement that may or may not be true. It is possible that the Solicitor-General, who is an officer answerable to the Attorney-General, may be given a direction by the Attorney-General and, in a certain instance, is acting on the instruction of the Attorney-General. We do not favour pronouncements of this kind. We believe it is better statutory practice to require certain action to be taken rather than announce to the world that certain action has been taken.

The Hon. P. HOLLOWAY: I did refer to this matter in my comments on clause 1. The Hon. Mr Lawson said that he would prefer wording to the effect that the Crown Solicitor 'shall not act on instructions'. As I indicated earlier, the government has consulted parliamentary counsel, as this is a matter of drafting. I am advised that parliamentary counsel is of the opinion that the words drafted mean what the honourable member desires and that, in parliamentary counsel's opinion, the drafting should stay as it is to achieve that result. That is the advice the government has received.

The Hon. R.D. LAWSON: That is on the record, and I do not propose to divide on this issue.

Amendment negatived.

The Hon. P. HOLLOWAY: I move:

Page 6, after line 16—Insert:

(2) In proceedings under this act the Crown Solicitor acts as a model litigant for, and on behalf of, the state.

This amendment is an attempt by the government to address the concerns raised by the opposition in relation to the independence of the Crown Solicitor.

The Hon. R.D. LAWSON: Could the minister indicate whether this concept of the model litigant appears in other legislation, and what meaning does the government ascribe to the term 'model litigant'?

The Hon. P. HOLLOWAY: My advisers are not aware of this term being elsewhere in legislation, so in that respect it is novel. However, I am advised that it is commonly accepted that the Crown Solicitor should act as a model litigant; and it is, as I said earlier, an attempt by the government to address the concerns that were raised in the debate earlier.

The Hon. R.D. LAWSON: We support the amendment. We certainly support the concept that the Crown Solicitor ought act as a model litigant, although there are a number in the community who would question that fact. I think there is a bill before the council, perhaps moved by the Hon. Rob Brokenshire, to require the Crown Solicitor to act as a model litigant in relation to the costs, I think, in the Trevorrow matter.

We think it is laudable that the Crown Solicitor should act as a model litigant, and any statutory provision that encourages the Crown Solicitor to do so is to be supported, notwithstanding the vagueness of the concept and the fact that this provision is again couched in terms of pronouncement rather than in terms of requirement. We appreciate the sentiment behind the amendment and will support it.

Amendment carried; clause passed.

Clause 8 passed.

Clause 9.

The Hon. P. HOLLOWAY: I move:

Page 6, lines 33 to 35 [clause 9(1)]—Delete subclause (1) and substitute:

(1) If the DPP reasonably suspects that a person has wealth that has not been lawfully acquired, the DPP may authorise the Crown Solicitor to make an application to the District Court under this section.

The Hon. P. HOLLOWAY: This amendment is consequential on the earlier amendment we moved in relation to the role of the Director of Public Prosecutions.

The Hon. R.D. LAWSON: I indicate that we will support the amendment.

Amendment carried; clause as amended passed.

Clauses 10 and 11 passed.

Clause 12.

The Hon. DAVID WINDERLICH: I move:

Page 8, lines 32 to 37 [clause 12(1 (a)]—Delete paragraph (a) and substitute:

(a) the powers and functions are exercised for the purpose of investigating, or restraining, wealth of a person who has been convicted of a serious offence or declared liable to supervision under Part 8A of the Criminal Law Consolidation Act 1935 in relation to a charge of a serious offence; or

This amendment is a test case for proposed amendments Nos 4, 5, 6, 7, and 8, which I will not move if this amendment fails. This amendment would effectively delete paragraph (a), the effect of which would be to strike out a provision relating to control orders.

Again, in a number of other contexts I have spoken against control orders—and will continue to do so. In the context of this bill, we have a situation where evidence is not required to prove that proceeds of wealth were obtained illegally. The onus of proof is reversed. The trigger for these kinds of provisions—and one of the ostensible safeguards—is that they can be used only against those convicted of or found liable to supervision for a serious offence, those subject to a control order under the Serious and Organised Crime (Control) Act, or those who the Crown Solicitor has reasonable grounds to suspect have engaged in serious criminal activity or regularly associated with persons who engage or have engaged in serious criminal activity.

Following the recent court case, there is now a constitutional question in relation to control orders—and I imagine that will be clarified—but beyond that my concern is that people are subject to control orders in two broad ways. First, they are a member of a declared organisation and, therefore, by virtue of their membership of that organisation, they can be subject to a control order.

That can apply even if that individual has not had any convictions recorded against them, even if that individual has not been recorded as having broken the law.

In fact, even the Finks Motorcycle Club—that does have a high proportion of people with criminal convictions, as indicated in material provided by the Attorney-General to support his declaration of the Finks Motorcycle Club—had four members without a criminal conviction. That is at the extreme end. Other organisations that could be declared could have higher proportions of people without a criminal conviction. One becomes subject to a control order not on the basis of what one has done but, rather, on the basis of one's membership of a group. That is dangerous territory and I oppose it on those grounds. The other broad way in which someone can be subject to a control order is on the basis of past criminal convictions, which could go back decades.

I have two broad objections. One is on the broad ground of freedom and rights, both as a protection and a right of the individual and as a restraint on the power of government and the authorities. My other objection, which has not been aired much in this debate, is about the equity impacts of control orders. Once we start to look at the second broad ground on which someone can be subjected to a control order, that is, their past criminal convictions, we then find that there are certain suburbs and population groups in Adelaide where you will have a much higher proportion of people who at some time in the past have had a brush with the law. This does not happen in the nice, middle-class surrounds that most of us come from but—

An honourable member interjecting:

The Hon. DAVID WINDERLICH: Most of us.

The Hon. P. Holloway: There is a lot of unexplained wealth out there, though.

The Hon. DAVID WINDERLICH: Yes, and quite a lot of it is in the Labor Party. I know something of these issues because I have been a youth worker in a number of communities. I also have an indigenous adopted brother, so I do know something about this. There are places in Adelaide and in South Australia where, if you sit around the table, it is reasonably likely that one member of the family or the extended family is not there because they are in gaol; or they have come back from gaol; or at some time in the past they may have served time in gaol on some sentence. That person may, over time, have rehabilitated themselves and worked their way back into the community. There are many cases (I will not name names) where some people make the headlines from time to time and then assume a leadership position in their community.

We do have to be careful given the social and economic roots of much crime—and I want to be clear that that is not to say we do not have an absolute priority on making people safe when a crime is committed and that individuals do not have a responsibility. However, statistics show very clearly the social and economic roots of this. When you start to apply issues such as control orders on those grounds, you have equity effects. In fact, there is a point at which an indiscriminate law and order approach actually declares war on the poor. That is my belief. There is a time for tough penalties and tough approaches but, if you adopt an indiscriminate one, you are declaring war on the poor because they are the ones most likely to fall foul of the law.

The Hon. P. Holloway: War on the poor, when there is unexplained wealth?

The Hon. DAVID WINDERLICH: Well, these are some of the grounds for control orders. The control orders are partly based on past criminal convictions and, once you are subject to a control order, you can then be subjected to unexplained wealth provisions which, as I have said, do not require evidence to be implemented. So I think these are entirely objectionable in general and they are objectionable in the context of a bill the fundamental premise of which is to get around the need to provide evidence for taking action against a person. So I object fundamentally.

I will not speak on the other amendments because, as I said, this is a test case, and I will not divide. I could do that, but I do not want to waste the chamber's time. I note for the record that, as far as I know, I am probably the only person in this chamber who will actively contest these issues and probably one of only two (in conjunction with the Greens) who will vote against them. If anyone wants to correct that, feel free.

The Hon. P. HOLLOWAY: The effect of this amendment, which is also one of a series, would confine the operation of this bill to those who have been charged with and convicted of a serious offence or found not criminally responsible by reason of mental impairment. If passed, this amendment would have the effect of gutting the bill. It would mean that the government might as well abandon the bill. It is therefore opposed with vigour.

Let me be plain about this. The government is, through this bill, aiming for those who organise, finance and direct serious criminal activity and threatening gang activity but so insulate themselves from the direct commission of the offences that they cannot be brought to book. That has been happening ever since Al Capone, and probably a lot longer than that. I believe for many years there have been crime bosses who have insulated themselves. There is Fagan and plenty of those people who get others to commit the offences. The government is going after them and, for those who do insulate themselves, it does not apologise for it. We are not alone in this. Western Australia and the Northern Territory have analogous laws and the commonwealth has just introduced a bill into the commonwealth parliament to do the same. There is a national consensus on the path, and the government will not be deflected.

The Hon. R.D. LAWSON: We will not support the amendment. We believe that the evidence clearly establishes that those who obtain wealth by criminal means seek to insulate themselves from forfeiture and other legislation by placing such assets in the hands of people who have not been the subject of criminal proceedings and who have not had any convictions. If the legislation were to be restricted only to those who had been convicted of serious criminal offences, but not extended in the manner suggested, it would be weak legislation indeed. The loopholes would be so large that trucks could be driven through them.

It is important that this legislation does not give cart blanche to the authorities in this regard. There must have been either a serious conviction or the person must have been the subject of a control order to activate these provisions.

Amendment negatived.

The Hon. P. HOLLOWAY: I move:

Page 8, line 38 [clause 12(1(b)]—Delete 'Crown Solicitor' and substitute 'DPP'

Page 9—

Line 1 [clause 12(2)]—Delete 'Crown Solicitor' and substitute 'DPP'

Line 3 [clause 12(2)]—Delete 'Crown Solicitor' and substitute 'DPP'

Line 9 [clause 12(2)(c)]—Delete 'Crown Solicitor' and substitute 'DPP'

Line 15 [clause 12(3)]—Delete 'Crown Solicitor' and substitute 'DPP'

These amendments are consequential on earlier amendments.

The Hon. R.D. LAWSON: I support the minister's amendments and will not be moving the amendments standing in my name on this clause.

Amendments carried.

The Hon. P. HOLLOWAY: I move:

Page 9, line 17 [clause 12(3)]—After 'Commissioner' insert 'of Police'.

This amendment makes clear that when 'commissioner' appears it refers to the Commissioner of Police.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 9, lines 18 to 28 [clause 12(4) to (6)]—Delete subclauses (4) to (6) inclusive.

This amendment essentially is consequential. The authorisations by the DPP are now included as a new clause in my amendment No.13, so it is consequential on earlier amendments.

Amendment carried; clause as amended passed.

Clauses 13 to 33 passed.

Clause 34.

The Hon. P. HOLLOWAY: I move:

Page 19, line 31 [clause 34(2)]—Delete subclauses (4) to (6) inclusive.

The amendment is consequential to the earlier amendments to incorporate the role of the Director of Public Prosecutions.

Amendment carried; clause as amended passed.

Clauses 35 and 36 passed.

New clause 36A.

The Hon. P. HOLLOWAY: I move:

Page 20, after line 22—Insert:

36A—Authorisations by DPP

(1) An authorisation given by the DPP for the purpose of section 9 or section 12 lapses three years after the date on which it was given.

(2) In any proceedings—

(a) a certificate of the DPP certifying that the exercise of powers or functions specified in the certificate has been authorised in accordance with section 9 or section 12 is conclusive evidence of the matters so certified; and

(b) an apparently genuine document purporting to be a certificate of the DPP under this subsection is to be accepted in any proceedings as such a certificate in the absence of proof to the contrary.

(3) The DPP may not delegate any powers or functions of the DPP under section 9 or section 12.

This amendment is consequential. It is this clause which again relates to the role of the Director of Public Prosecutions.

New clause inserted.

Clause 37 passed.

Clause 38.

The Hon. P. HOLLOWAY: I move:

Page 20, line 34 [clause 38(a)]—Delete: 'Solicitor-General' and substitute:

DPP, the Crown Solicitor

This is consequential.

The Hon. R.D. LAWSON: That is not, strictly speaking, consequential. The inclusion of the Solicitor-General was acknowledged by the minister to be a drafting error initially. In my second reading contribution I queried that. I am grateful to the minister for now moving the exclusion of the Solicitor-General.

The Hon. P. HOLLOWAY: Yes, I acknowledge that Mr Lawson picked up this drafting error during the early stage of the debate, and I thank him for doing so. This corrects it.

Amendment carried; clause as amended passed.

Clause 39.

The Hon. DAVID WINDERLICH: I move:

Page 21, lines 1 to 11—Delete clause 39

The amendment relates to removing protection from proceedings or essentially allowing judicial review of decisions, which are currently prohibited under this bill. The amendment will delete clause 39 entirely, because clause 39 completely removes the possibility of judicial review for a declaration injunction order, or other remedy, under this bill.

There are three objectionable levels of decision-making in this bill. The first is that you do not need evidence that wealth has been obtained illegally; you just need to suspect it. Then we have secret evidence, criminal intelligence, and, finally, there is no means of redress, no way of getting judicial review of decisions taken. Decisions taken without evidence on the basis of information that can be considered in secret cannot be reviewed. It is hard to think of how something could offend so many principles of our justice system and our judicial history in one blow.

I note that the Hon. Robert Lawson QC spoke of loopholes in this legislation. I am sure he will respond to this. I think that he should respond, because he is a QC. When we speak of loopholes in this legislation—and he knows far more about the law than I do—would that be the

loophole under which no evidence is required, or would that be the loophole under which the presumption of innocence is reversed? Would that be the loophole under which things can be considered in secret? I do not pretend to be any sort of expert on the law, but I did not think these used to be considered loopholes; I thought they used to be considered basic tenets of our legal system. I look forward to his learned explanation of why that is not so.

The Hon. P. HOLLOWAY: The amendment moved by the Hon. Mr Winderlich seeks to strike out the privative clause. It is opposed. The privative clause is common to the serious and organised crime package for the simple reason that, if defendants could litigate judicial review on every aspect of the decision to take proceedings against them to the High Court, as they have clearly shown they are prepared to do, then the legislation will grind to a halt for years and be unworkable.

There is more. The role of the Director of Public Prosecutions in this legislation is as a gatekeeper. The government has put protections for defendants into the bill to ensure that there is independent scrutiny of the decision to take steps which may be very intrusive against defendants. These are protections for defendants. If these could be bogged down in the courts for years, the government would not have the protections at all. There is an irony here. The workability of the very protections for the integrity of the system proposed would be undermined by the honourable member's amendments.

One further thing: the discretion that the honourable member seeks to have reviewed is that exercised by the Crown Solicitor and the Director of Public Prosecutions. Since when have courts reviewed the decision of any litigant to bring civil proceedings? About never, I would say. Analogously, since when have courts reviewed the decision of the DPP to bring civil or criminal proceedings? About never, I would say. The idea is preposterous.

The Hon. R.D. LAWSON: We will not support the Hon. Mr Winderlich's amendment. From the opposition's point of view, the most important protection in this legislation is the fact that an appeal to the Supreme Court exists for a person who is subject to an unexplained wealth declaration, and the appropriate time for determining the rights of the person is at the time the decision is made, and an appeal is brought against that decision if it is deemed to be unsatisfactory.

Ordinarily we would prefer rights to judicial review which generally exist to remain. However, in relation to legislation of this kind, it is clear that, if judicial review is allowed at a preliminary stage, proceedings will never get under way or will become bogged down. As the minister has said, there are really no rights to judicial review in relation to the initiation of either civil or criminal proceedings by ordinary litigants; why should the Crown be subjected to similar limitations? The real protection is the right of appeal and the right to be heard when the order is made.

The Hon. P. HOLLOWAY: I move:

Page 21—

Line 5 [clause 39(1)(a)]—Delete 'Crown Solicitor' and substitute:

DPP or the Crown Solicitor

Line 6 [clause 39(1)(b)]—Delete 'Crown Solicitor' and substitute:

DPP or the Crown Solicitor

Line 7 [clause 39(1)(b)]—Delete 'Crown Solicitor' and substitute:

DPP or the Crown Solicitor

Lines 10 and 11 [clause 39(2)]—Delete 'Crown Solicitor' and substitute:

DPP or the Crown Solicitor

These are all consequential to the earlier amendments we have moved, and they all relate to the role of the Director of Public Prosecutions.

The Hon. R.D. LAWSON: I make no comment in relation to the first three. The fourth provides that neither the DPP nor the Crown Solicitor is required to provide procedural fairness in exercising powers or performing functions under this act. At first glance that might appear to be a draconian provision. The new provision is in identical terms to that which appeared in the bill originally proposed, except that both the DPP and the Crown Solicitor are now included.

The obligation to provide procedural fairness in relation to administrative proceedings is a common law provision. When I was a law student, it used to be called the rules of natural justice, which required allegations to be provided to persons who might be affected by decisions and, more importantly, provided that, before decisions were made, those persons were accorded the opportunity to make submissions or to protest against the proposed actions.

It is not appropriate in ordinary criminal investigations to require that procedural fairness be accorded; in other words, all allegations do not have to first be laid before the person and they do not have to be given the right to comment before an arrest is made, for example, before charges are laid or before proceedings are taken. Their opportunity to contest the matters will occur in the ordinary course of the criminal proceedings rather than at a preliminary stage. I do not regard this as a loophole. We will be supporting the minister's fourth amendment on this clause. I indicate that the amendments I have to clause 39 will not be moved.

Hon. David Winderlich's amendment negatived; Hon. P. Holloway's amendments carried; clause as amended passed.

Clauses 40 to 44 passed.

Clause 45.

The Hon. P. HOLLOWAY: I move:

Page 22, line 15 [clause 45(2)(b)]—After 'Attorney-General,' insert:

The DPP,

Again, this amendment is consequential and relates to the role of the DPP.

Amendment carried; clause as amended passed.

Schedule and title passed.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (17:38): I move:

That this bill be now read a third time.

The Hon. DAVID WINDERLICH (17:39): In the debate on this bill, I am reminded of two things. I am reminded of when I began work in cabinet office in 1993 after the Labor government had been thrown out and the new Dean Brown government elected. What struck me was that, virtually overnight, with the change of regime, the language of social justice disappeared. All of a sudden, without anyone even having to issue a circular, everyone knew that it was verboten, and no-one mentioned social justice any more.

The other thing it reminds me of is the *Mad* magazine, the shadow nose, where you see a picture of a character who is shaking someone's hand but the forward bubble shows that they are actually stabbing them in the back. I say that because I think some of the language used today was very revealing of the cultural shift that is now going on in our minds. We have now become accustomed to dispensing with what we once thought fundamental, and we have done this on more and more tenuous grounds, I argue. The two revealing—

An honourable member interjecting:

The Hon. DAVID WINDERLICH: Well, I would like to see the evidence for your approach. There are many criminologists who would say that you are, in fact, reacting to crime, not preventing it in many ways, but we can have that argument another time. The minister's description of justification of criminal intelligence as 'Criminals should not be given access to information that might prejudice the investigation' was in the context of a bill for which no evidence is required and evidence is heard in secret and there is no review. So, what was already operating in the minister's mind was the presumption of guilt, not the presumption of innocence. I was struck by the Hon. Robert Lawson's description of what I took to be fundamental tenets of our system as loopholes.

In response to my last amendment to the removal of the prohibitive clause ensuring the ability to have a judicial review, the minister asked, 'Since when do we have this sort of process in relation to civil decisions?' He is probably right, but my whole point is: since when (clearly, as of now) do we have one package of legislation under which evidence was not required to take action to confiscate wealth? Evidence was not required for that because it was obtained illegally; the

presumption is reversed; there is criminal intelligence, or secret evidence; and there is no provision for review.

I think this is breaking new ground, and I do not think it is positive ground. As I have said on a number of occasions, I do not think the case has been made. Of course, I recognise that there is a problem with organised crime; of course, I recognise community safety is important. However, there are two fundamental qualifications. One is that we need evidence when we make major decisions of this kind, and the other is that we need to think through what price we are willing to pay. If we want to be absolutely and completely safe, we could have—

The PRESIDENT: I remind the honourable member that the time for debating the bill has concluded.

The Hon. DAVID WINDERLICH: Okay; I will conclude very shortly. If we want to be completely safe, we could be frisked every five minutes; we could have security cameras in every nook and cranny; and we could have police with machineguns in every corner. Would that make us safe? I do not know. What sort of life would we live? I think it is Benjamin Franklin who is often attributed the remark, 'Those who would dispense with their freedom to protect their security deserve neither.' I think that is increasingly the situation in which we find ourselves.

Bill read a third time and passed.

STATUTES AMENDMENT (CHILDREN'S PROTECTION) BILL

Adjourned debate on second reading.

(Continued from 15 October 2009. Page 3633.)

The Hon. S.G. WADE (17:44): I rise to indicate the opposition's support for the Statutes Amendment (Children's Protection) Bill. The bill amends the Summary Procedure Act 1921 and the Children's Protection Act 1993 and makes consequential amendments to the Criminal Law (Sentencing) Act to establish measures to prevent and punish the exploitation of runaway children.

The bill is part of the response to recommendation 47 of Commissioner Ted Mullighan's report of the Inquiry into Children in State Care presented to this parliament on 1 April 2008. Recommendation 47 states:

> That the following offences be created:
>
> (1) Harbouring a child in state care contrary to written direction.
>
> (2) Communicating with a child in state care contrary to written direction.
>
> The legislation should provide for a written notice to be served on a person with a presumption that, upon proof of prior service, the offence is committed if the child is found with that person.

The Mullighan inquiry was a traumatic revelation of the abuse of young people and children in South Australia, both within state care and in the wider community. The whole parliament shares a commitment and a responsibility to do what we can to reduce the risk of harm in the future.

This bill focuses on the situation of young people who have run away from home or from a care institution and taken shelter with an adult who supplies inducements, such as money, shelter, food, alcohol or drugs in return for the child providing sexual services to the exploiting adult or the service of selling drugs for the exploiting adult. Commissioner Mullighan highlighted in his report that a range of statutes are available to protect children in these circumstances. However, in practice, these statutes do not provide effective protection and are rarely used—first, because young people are often unwilling to incriminate the exploiting adult for fear that this will cut off their supply of inducements; and, secondly, the statutes tend not to be used because they are limited in scope and application.

We need to appreciate that runaway children have often had negative experiences of state intervention in their lives. Particularly if they have run away from state care, they are often likely to be suspicious of the state when it offers to protect them outside of care. The resistance of these young people to professional help makes them particularly vulnerable to harm. Commissioner Mullighan recommended that, even if it meant overriding the wishes of the young person, these young people should be protected. The opposition supports the recommendation and the bill as implementing that recommendation.

The bill seeks to provide protection by introducing additional measures that target the exploiting adult rather than the child and do not depend therefore on the cooperation or evidence of

the child. The first element of the bill to which I seek to refer is the child protection restraining order. The bill introduces this order that will restrain an adult from having contact with a child under the age of 17 years if the person not being the child's guardian resides with that child somewhere other than in the home of the guardian.

The order is not an explicit recommendation of the Mullighan report, but it is consistent with it. To make such an order, the court must either be satisfied that the child's contact or residence with the defendant may expose the child to sexual abuse or drug offending, or that the defendant has in the past 10 years been convicted of a prescribed drug or sex offence, or been the subject of a child protection restraining order.

The court must nevertheless consider that, in the circumstances, the making of the order is appropriate, and the bill makes clear that the primary consideration of the court must be in the best interests of the child. The order may not be with the young person's consent but it needs to be in their best interests. It is not a punitive order on the young person. Being a civil application, the court must satisfy itself of the risk of sexual abuse or the exposure to drugs on the balance of probabilities.

A child protection restraining order may impose restraints on the adult and may provide for the temporary placement of the child. The child may want to stay with the exploitative adult and may return to or refuse to move out of the adult's home after a child protection restraining order has been made. So, to help the police and the child, protection officers who are dealing with these situations will be entitled under this bill (through amendments to section 16 of the Children's Protection Act) to say that if an order prevents a person residing with a child and the child resides with the person, the child will be taken to be in a situation of serious danger from which these officers are authorised to remove the child.

It is worth noting that this order does not have its origins directly in the Mullighan report and it is not explicitly recommended by him. This is an initiative of the government, and the opposition is concerned about some aspects of it. For example, the order is limited to drug or sexual abuse, but there is no doubt that children can be exploited by other means and in other ways; the most obvious and most common of which is where children are used in the commission of crime. In fact, it is noteworthy that in an earlier debate the use of third parties in the commission of crime was mentioned.

A child can be used in the commission of a crime such as stealing, committing a robbery, and so on. These activities would not come under the definition in the bill of their being at risk or exposed to sexual abuse or drug offending. We regard that limitation as concerning.

Considering the order is not recommended by the Mullighan report, it is no answer to this criticism to say that the limitations on the order reflect the focus of the Mullighan report. The government chose to be creative in developing the order—we do not criticise it for that; we support the order—but we think it could have been more creative in considering its relevant application.

The bill deals with directions not to harbour, conceal or communicate with children. The bill amends the Children's Protection Act 1993 to authorise the chief executive of the Department for Families and Communities to direct a person by written notice not to communicate with, or harbour or conceal, a named child who is under the guardianship or in the custody of the minister if he or she believes this is reasonably necessary to avert a risk that the child will be exposed to abuse or neglect, directly or indirectly, or to avert a risk that the child will be engaged in or exposed to illegal drug activity, or if the issue of the notice is reasonably necessary to otherwise prevent harm to the child.

These directions are aimed at protecting vulnerable children who are in state care from the kind of exploitation that was highlighted by Commissioner Mullighan in his report. The bill makes it an offence for a person without reasonable excuse to contravene or fail to comply with such a direction. I know that this power to direct is not available in relation to children who have left the care of their parents rather than the care of the state. The reality is that children are at risk, irrespective of whether their legal guardianship vests with their parents or the minister.

While Commissioner Mullighan's terms of reference were quite narrow in relation to the children about whom he was making recommendations, a group of other children, who are not under the guardianship of the minister, also need protection.

The third element of the bill is the offence of harbouring or concealing a child. The bill makes it an offence to harbour or conceal a child or to prevent a child's return to state placement,

knowing that the child is absent from that placement without lawful authority. Neither offence requires proof that the person induced or enticed the child away, or knew the circumstances of the child's absence from the state placement. However, it will give state authorities and parents options to help separate vulnerable children from exploitative adults and, by so doing, protect them from harm.

For children who are not in state care, the only option—other than asking police to exercise their power to remove children from situations of serious danger—will be the proposed child protection retraining order. Parents or guardians of a child can make a complaint under the proposed child protection restraining order without having to go through SAPOL or the department, although the usual course would be to go through SAPOL.

The second reading explanation of the minister makes it clear that the bill does not make provision for future care. Recommendation No. 43 of the Mullighan report states:

> That a secure therapeutic facility to care for children exhibiting behaviour placing them at high risk be established as a last-resort placement.
>
> That the minister appoints a panel of suitably qualified persons to select and design the secure care therapeutic facility and determine the therapeutic services to be provided.

The government has decided to reject this recommendation. When the report was released the opposition publicly stated that it welcomed the recommendation. The opposition has raised concerns in the parliament in the past about a young woman who ran away and, within a period of about seven months, became addicted to both drugs and alcohol. She became pregnant and was the victim of exploitation. She became homeless. Subsequently, the child was placed 'for her own safety' in Magill Training Centre, which is a detention facility for children who have committed offences and are on remand in relation to those charges.

To find that a child who has ultimately become a victim, who has committed no offence, is being held in a prison facility was very concerning; so, when Commissioner Mullighan recommended a secure care therapeutic facility in his report, the opposition was well aware of the sorts of issues he was trying to deal with. The government's failure to accept recommendation 43 is condemning young people who have committed no crime, not even been charged with a crime, to incarceration in a youth detention facility.

In the House of Assembly the Attorney-General referred to the proceedings of the Mullighan Inquiry into Children in State Care. At a public hearing in Adelaide on 28 September 2005, the Attorney-General informed us that Commissioner Mullighan asked for a comment on the option of placing runaway children in forcible, albeit therapeutic, detention. The Attorney-General favourably quoted a witness who spoke against forcible detention. I thank the Attorney-General for that quote because what he has done is reiterate that recommendation 43 was a considered recommendation on which the commissioner received expert evidence and, having weighed the pros and cons, made a positive decision to make the recommendation in the light of that evidence. We believe the recommendation carries double weight on that ground.

The government has advised that Commissioner Mullighan was consulted on the proposed child protection orders. In relation to that advice, I ask the minister whether he could advise at an appropriate stage the answer to two questions:

1. Did Commissioner Mullighan endorse the child protection restraining orders?

2. Did Commissioner Mullighan explicitly advise that the orders would obviate the need for a secure therapeutic detention centre?

The opposition also raises its concern that the relevant agencies be adequately resourced to deal with their enhanced role under this act, particularly in light of the number of cases that may now come before the Magistrates Court to protect children in these circumstances. It will, of course, impose an extra responsibility on the courts. In conclusion, I indicate that the opposition supports the bill and looks forward to considering it further in the committee stage.

The Hon. D.G.E. HOOD (17:57): In my relatively short time in this place (nearly four years) I have seen a number of bills, of course, and I have seen a number of good bills—whether they be government bills, opposition bills or bills from the crossbenches, including my own party. I think I can confidently say I believe that this is one of the better ones that I have seen in that period. For that reason, I put on the record Family First's strong support for this bill.

The bill has many similarities to a bill that was introduced recently by the Hon. Ann Bressington, and I am grateful to see that the government has taken on board many of the honourable member's submissions in drafting this important new bill. We support this bill, as we supported the similar earlier bill presented by the Hon. Ann Bressington for which she deserves credit.

This bill responds to recommendation 47 of Commissioner Ted Mullighan's report of the Inquiry into Children in State Care, as tabled on 1 April last year, by more adequately dealing with young people who have run away from home or a care institution or who would take shelter with an adult who supplies money, shelter, food, alcohol or drugs in return for sexual services or for selling illicit drugs. Chapter 4.2 of that report, entitled 'Children in state care who run away: stopping the perpetrators', focused on deficiencies in the current law where children were being harboured by malevolent adults.

The current law is clearly inadequate, as the minister outlined during the second reading debate. According to the report, section 76 of the Family and Community Services Act 1972 is inadequate because it generally relies on the child being willing to give evidence that they were induced to leave their refuge (which they are often, of course, unwilling to do). Section 80 of the Criminal Law Consolidation Act 1935 makes it an offence to abduct a child under 16 years. However, that section requires proof that the child was taken—either enticed away by force or fraud. This section again would require the child to both report and give evidence against the offender, something that experience has shown is, indeed, quite rare. Section 99 of the Summary Procedure Act 1921 allows courts to make general restraining orders against a person. However, as the report states, the section requires proof that a person has been behaving in an 'intimidating or offensive manner on two or more separate occasions'. Justice Mullighan notes that section 99A of the Summary Procedure Act 1921 provides for the making of paedophile restraint orders. Although these do not require the evidence of the child, their applicability remains limited.

Lastly, section 38 of the Children's Protection Act 1993 permits the Youth Court to order parties to care and protection applications to restrain from contacting a child. However, this again has a limited application to parties within the proceedings. As the minister has also stated, investigating and prosecuting sexual or drug offending by an adult is also difficult if the young person, as the alleged victim or primary witness, will not cooperate. This bill attempts to address the deficiencies in the above situations I have just outlined through the introduction of child protection restraining orders, which will allow the courts to restrain certain adults from contacting children under 17 years of age if there is evidence of sexual or drug abuse. I note the Hon. Mr Wade's comments that the bill could be even broader than it is, and Family First would support the thrust of those comments.

The operative provisions are found in clauses 4 and 6, which give the department power to make an order to protect children in danger and also to remove a child in cases where the order has been breached. New section 52AAB provides that the chief executive may, by written notice, direct a person not to communicate or attempt to communicate with a specific child in any way or in a way specified in the actual notice during a specified period. Also, importantly, the chief executive may, by written notice, direct a person not to harbour or conceal or attempt to harbour or conceal or assist another person to harbour or conceal a specified child during a specified period. Family First strongly supports this policy.

Far too often on talk-back radio or in discussions with constituents or in the public arena I hear from distraught parents whose children have run away from home, only to be harboured by somewhat seedy characters involved in the drug trade, or to be taken advantage of sexually by an adult at a new address. The usual course of events is that the parents will first beg the child to return home, find that in many cases to be unsuccessful, later contact police and regularly be told that there is nothing the police can do about it. Family First does not accept that: we understand that it is currently the situation, but we do not accept that it is appropriate.

We are strong advocates for parents rights—with the responsibilities that go with those rights, of course—and we strongly believe that children require the care and protection of their parents whenever and whenever possible. If a child is being abused or neglected at home, there is the option of foster care and the appropriate agencies should intervene. There were some 645 applications for care and protection and investigation and assessment orders involving 1,158 children during the 2008 calendar year, resulting in many children being placed in foster care. These numbers are truly staggering.

I put on record my sincere appreciation for the work foster carers do in our community. When children are genuinely abused or neglected, foster carers step up to the plate to help heal the situation. They are the true contrast to the drug dealers and sexual predators to whom this bill applies, and they deserve the community's thanks for the care they provide to our state's neglected children.

While dealing with the issue of child protection I raise a comment made by the then minister for families and communities after he had just stepped into the portfolio back in 2004. In that year a departmental investigation found that 5 per cent of cases, where child welfare thought children were in immediate danger, were not investigated within a 24-hour period. This was in breach of the guidelines, and in a ministerial statement the minister called the figure, in his own words, alarming. On 26 May 2004, the minister also said, as recorded in *Hansard*:

> I can assure the house that the resources will be provided to this organisation to achieve the required outcomes under the legislation, which is to investigate those matters within 24 hours. We know that investigations into the most serious of these matters are absolutely vital. It is vital that they occur within the 24-hour period and it is also incumbent upon us to give those involved the resources to do so.

However, a response to a question on notice I asked on 25 March this year, answered on 8 September this year, indicated the following:

> The practice standard required that Families SA staff commence an investigation of Tier 1 notification within 24 hours...The Client Information System used by Families SA shows that in 2008 a response was commenced within 24 hours for [just] 84 per cent of Tier 1 notifications.

The so-called alarming figure of 5 per cent has now increased to 16 per cent, despite a promise at the time to provide whatever resources were necessary. I do not say that to embarrass the minister; in fact, that minister is no longer the minister responsible for that portfolio. I say it because this is a situation that deserves an urgent response. Clearly, the situation is getting increasingly worse.

I think this bill is a positive step in the right direction, and I commend the government for introducing it, because it will go some way to reducing that 16 per cent. However, so much more needs to be done now, because this is indeed a truly alarming situation. We spend a lot of time in this place passing bills on law and order and crime-related issues and, generally speaking, Family First supports those measures. However, I think that if we were able to address these measures at the very early stages of life we might find that a lot of these young people do not go off the rails in the first place and, therefore, do not end up in the criminal justice system later on. I think that this bill will take one step in the right direction towards reducing that 16 per cent, but so much more needs to be done.

On the face of it, that figure seems to indicate that the department is struggling under the load of child abuse and neglect notifications. I note that a recent answer to a question on notice that I asked indicated that there were some 33,658 notifications of child abuse or neglect during the 2008 calendar year, which is an absolutely staggering and gut-wrenching number. Each one of them represents a child who desperately needs help.

Another indication of a department struggling to cope comes from other answers to questions on notice recently supplied to me. Pursuant to sections 91B and 92A of the Family Law Act, judges and magistrates can request state child welfare agencies to urgently intervene in child custody and access proceedings if they have a fear that a child 'has been abused or is at risk of being abused'. Those sorts of requests are usually made of Families SA when grave fears are held by a judge for a child's welfare and safety. I can say with confidence that such requests would not be made lightly.

However, I was recently advised that, of about 30 such requests received by Families SA in 2007 from the family and federal magistrates courts to urgently intervene to ensure a child's welfare, it intervened only twice. On only two occasions did it intervene, after some 30 direct requests from judges and magistrates to do so. I think that is appalling. The government refused to supply data for 2008 beyond saying that it received 26 requests for intervention from 1 January to 30 September 2008. The Minister for Families and Communities has not provided the data with respect to how many times it intervened, but the wording of the response implied that no core interventions had occurred.

If the department is truly struggling, the question is whether parents who have concerns about their children being harboured by a drug fiend or a paedophile will get the action that they need from the department. Will they get genuinely swift action, as this bill envisages, or will they be

placed in a queue while their child becomes hooked on drugs or taken advantage of sexually? And there is the crux of this bill.

As I said, we strongly support this bill. It is a very good bill, and I am sure that probably every member in this council will support it. I hope that is the case. However, the rubble will hit the road when the issue of resources comes to the fore; that is, when this bill becomes law, will the department have the resources to make it happen? That is the key question. I hope so.

I indicate that Family First will support the second reading of this bill, and I look forward to the committee stage. However, I also ask the question of the minister: what resources will be provided to the department to facilitate and implement these important protections for at-risk children? This is a good step in the right direction, but the resources must be provided.

Debate adjourned on motion of Hon. J. Gazzola.

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 October 2009. Page 3699.)

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) (18:10): I understand that there will be no further speakers in relation to this bill. By way of concluding, I would like to thank those honourable members who contributed to the second reading debate. I thank them for their contributions and their support. A number of question were raised, which I will take on notice and deal with during the committee stage. I look forward to dealing with this expeditiously through the committee stage.

Bill read a second time.

SPENT CONVICTIONS (NO. 2) BILL

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

MOTOR VEHICLES (MISCELLANEOUS NO. 2) AMENDMENT 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) (18:12): 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 *Motor Vehicles (Miscellaneous No 2) Amendment Bill 2009* amends the *Motor Vehicles Act 1959* to further strengthen the South Australian Graduated Licensing Scheme for novice drivers.

It is important to remember that for the vast majority of our young people today, driving is likely to be the riskiest activity they will ever undertake. Each year, nearly 350 young drivers or passengers between the ages of 16 and 24 are killed or severely injured in South Australia. Despite steady falls in South Australia's road toll over the past decade, young drivers continue to be over represented in road trauma statistics.

This Bill builds upon the previous novice driver initiatives introduced by the Rann Government by ensuring that young novice drivers are better prepared for when they graduate to a full licence.

The amendments within this Bill will do the following.

The Bill increases the required hours of supervised driving for learner drivers from 50 to 75 hours

This amendment is overwhelmingly supported by extensive research that suggests that the more time a learner driver spends driving whilst supervised the more experience they gain driving in all conditions, which decreases their likelihood of crashing. While recognising that an increase in supervised hours may result in additional imposition upon families, particularly in our rural areas, we are convinced that the long term road safety benefits outweigh any imposition incurred by sectors of the community.

The Bill increases the minimum time on a learner's permit from 6 to 12 months for drivers aged under 25 years

The most effective and enduring forms of driver training involve gaining substantial and varied on-road driving experience with an appropriate supervising driver. Further, evidence suggests that from age 25 onwards,

learner drivers tend to exhibit more mature behaviour on our roads. Therefore the amendments will not apply to drivers who are 25 years or older.

The Bill introduces a restriction on driving high powered cars for provisional drivers (both P1 and P2) aged under 25 years

Victoria, New South Wales and Queensland have all introduced high powered vehicle restrictions for their provisional drivers in recent years and our scheme will be aligned with those operating in other jurisdictions. The restrictions will apply to all provisional drivers (i.e. both P1 and P2) who are under 25 years of age, however transitional provisions will be in place. Exemptions recognise that there will be individual situations where compliance with the ban will make life very difficult for some provisional drivers. I stress however that an exemption will be not be automatic.

An exemption may be granted; if a high powered vehicle is the only vehicle available to the driver; if the driver owned a high powered vehicle before the ban came into effect; or if required as part of the driver's employment. A person's driving history will also be considered. If granted, the driver will be required to carry the exemption certificate at all times when driving the high powered vehicle. Failure to immediately present the exemption certificate to a Police Officer, when requested, will result in the driver incurring 3 demerit points and an expiation fee of $250.

Drivers will have to apply to the Registrar of Motor Vehicles for the exemption. The grounds for exemption and process to apply for an exemption will be placed in the Regulations.

The Bill changes the penalty for the failure to display two P plates from disqualification to a fine and loss of demerit points

Currently, failure to display any P plates is a breach of licence conditions and results in licence disqualification. This penalty is regarded within the community as too severe. This Bill makes failure to display any plates an offence with a penalty of $1,250 (the same as for breaching a condition of licence or permit). It is intended to introduce an expiation fee of $250 and apply two demerit points to this offence. If the vehicle is not a motor bike and only one plate is missing, the expiation fee will only be $125 and no demerit points will be incurred. For consistency, the same change has been made to the learner's permit provisions.

The Bill replaces the current hardship appeal provision with the offer of a Safer Driver Agreement

The current hardship appeal provision for provisional drivers who are disqualified because they contravene a condition of their licence or incur 4 or more demerit points will be replaced with an offer of a Safer Driver Agreement. It will not be available to those provisional drivers who receive a disqualification for a serious disqualification offence - the option to appeal a licence disqualification to the Magistrates Court on the basis of hardship will continue to apply to these drivers.

By choosing the Safer Driver Agreement, the disqualified driver would avoid the six month disqualification, but would regress to a previous licence stage and further, agrees not to breach a condition of their licence or incur 4 or more demerit points during the term of the Safer Driver Agreement. Any breach of the Safer Driver Agreement would result in disqualification for 12 months with no right of appeal. A Safer Driver Agreement would only be available to provisional drivers once in a five year period.

The Bill strengthens the current curfew conditions applying to drivers returning from a serious disqualification offence by restricting the carriage of passengers during the curfew period of midnight to 5am

Currently, a novice driver who returns from a disqualification for committing a serious disqualification offence is automatically subject to a curfew (for a period of 12 months) between the hours of midnight to 5am, unless accompanied by a Qualified Supervising Driver. This amendment strengthens the current condition by further providing that during the curfew period the novice driver must not carry any passengers apart from the Qualified Supervising Driver. This condition aims to minimise the elevated risks of night time driving and driving with passengers for these novice drivers.

In addition to these improvements to the Graduated Licensing Scheme, the Bill contains a number of amendments of a technical or administrative nature designed to improve the operation of the Act. They include:

- Upon gaining a provisional licence, the driver's learner's permit will be cancelled regardless of its expiry date. This was previously only implied in the legislation.
- The legislative requirement for police to conduct an annual check of driver's licences has been removed. This recognises that the checking of drivers licences is a continuous police activity, made possible by advances in technology e.g. mobile real time computer terminals in every marked SAPOL vehicle. A corresponding amendment to the Road Traffic Act provides for the checking of driver's licences to be combined with any random testing activity undertaken by SAPOL.
- Accumulated demerit points will be reinstated in the event of a successful appeal against disqualification. Currently, every full licence holder has a limit of twelve demerit points within a three year period before they are subject to licence disqualification. Upon disqualification, all accumulated demerit points are erased. If an appeal is initiated against the disqualification and is successful, this amendment will ensure that only the demerit points related to the offence in question are erased.

- Legislation currently specifies that it is an offence to unlawfully alter or damage a licence or learner's permit, but it is often difficult to prove who actually caused the damage to the licence/permit. To assist SAPOL's enforcement, an additional offence has been created for being in possession of a licence or permit that has been altered or damaged.
- An amendment is made to increase the period within which a prosecution can be commenced for the offence of providing false and misleading information from two years to five years with the authorisation of the Attorney-General. Fraudulent licenses can be used for a wide range of purposes including by persons who wish to continue to drive when their legitimate licence has been cancelled of suspended. As driver's licenses can be issued for up to 10 years it is considered necessary to extend the prosecution period for this offence.
- It is currently an offence to drive a vehicle with an expired registration label. If a person has paid for the vehicle registration but does not receive the new label before the old label expires, and continues to display the expired registration label, they could be fined. An amendment is being made to provide a defence to this offence, which will specify that the owner has 30 days to affix the new label.
- The Bill also provides that provisional and probationary driver's licence holders and learner's permit holders who allow their licence or permit to expire and are then disqualified, face the same consequences as a driver who remains properly licensed and then is disqualified.

These amendments will improve the Graduated Licensing Scheme and the effective operation and administration of the Motor Vehicles Act.

In conclusion, this Bill demonstrates the Government's commitment to saving young lives on the road by equipping novice drivers with the skills and experience to drive safety.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Motor Vehicles Act 1959*

4—Amendment of section 5—Interpretation

This clause makes consequential amendments to certain definitions in the Act and inserts a new definition of *high powered vehicle* (consequentially to proposed section 81A(16)).

5—Amendment of section 53—Offences in connection with registration labels and permits

This clause inserts a new defence to the offence of driving, or leaving to stand on a road, a vehicle with an expired registration label or permit.

6—Amendment of section 74—Duty to hold licence or learner's permit

This clause corrects a minor drafting error in subsection (2a) and clarifies the application of the disqualification under subsection (5).

7—Amendment of section 75AAA—Term of licence and surrender

This clause amends section 75AAA to make it clear that a licence is cancelled on surrender to the Registrar.

8—Amendment of section 75AA—Only 1 licence to be held at any time

This clause amends section 75AA to specify that the Registrar must not issue a licence to a person who already holds a licence and to make changes consequential to the new definition of *interstate licence*.

9—Substitution of section 75A

This clause substitutes a new section 75A as follows:

75A—Learner's permit

This proposed section provides for the Registrar to issue learner's permits, their expiry, conditions and renewal. The section is substantially similar to the current section 75A, however the structure and numbering has been updated and the requirement to display an 'L' plate is no longer a condition of the permit (although failure to display 'L' plates will still be an offence). The section also includes amendments to clarify the position in relation to persons who already hold a licence, or provisional licence, for another kind of motor vehicle than that for which they require a learner's permit.

10—Amendment of section 79—Examination of applicant for licence or learner's permit

This clause amends section 79 to include reference to persons who have previously held interstate learner's permits and to deal with disqualifications occurring interstate.

11—Amendment of section 79A—Driving experience

This clause amends section 79A to change requirements relating to learner drivers under the age of 25. Currently the section requires a person to have held a learner's permit for 9 months (in the case of a person who has previously been disqualified from holding a learner's permit for an offence committed while the holder of a learner's permit) or for 6 months (in any other case). For young drivers these will be increased to 15 months and 12 months respectively. In addition the section is amended to include references to interstate licences and interstate learner's permits and to deal with disqualification occurring interstate.

12—Substitution of section 81A

This clause substitutes a new section 81A as follows:

81A—Provisional licences

This proposed section provides for the Registrar to issue provisional licences (P1 and P2) and the conditions that attach to such licences. The proposed section is substantially similar to the current section 81A, however the structure and numbering has been updated and the requirement for a P1 driver to display a 'P' plate is no longer a condition of the licence (although failure to display 'P' plates will still be an offence). The proposed section also introduces new restrictions relating to high powered vehicles and alters the driving curfew for the holder of the P1 licence who has previously been disqualified from driving for a *serious disqualification offence* (the definition of which is also amended to include serious offences occurring under the *Criminal Law Consolidation Act 1935*), to ensure that no passengers, other than a person acting as a qualified supervising driver, may be present in the vehicle during the curfew hours.

13—Amendment of section 81AB—Probationary licences

This clause proposes to add to the circumstances in which a person must be subject to probationary licence conditions. These circumstances are proposed to include disqualification under section 81D (disqualification for certain drug driving offences) and other offences resulting in disqualification committed while the person was not authorised to drive a motor vehicle on a road under the *Motor Vehicles Act 1959*.

14—Substitution of section 81B

This clause deletes section 81B and substitutes the following:

81B—Consequences of holder of learner's permit, provisional licence or probationary licence contravening conditions etc

This proposed section is equivalent to subsections (2) to (4) and (12) of the current section 81B.

81BA—Safer Driver Agreements

This clause provides that a person holding a provisional licence who is given a notice of disqualification under section 81B may, in lieu of being disqualified from driving, enter into a Safer Driver Agreement.

81BB—Appeals to Magistrates Court

This clause provides for an appeal to the Magistrates Court in relation to a notice of disqualification given, or liable to be given, under section 81B in relation to an offence or offences committed by a person while the holder of a provisional or probationary licence. The clause is substantially the same as the previous right of appeal provided for under the current section 81B but allows the Crown to submit evidence (which may be in writing) as to previous offences relating to the appellant's use of a motor vehicle and, in such a case, the Court may only allow the appeal if satisfied that such evidence does not indicate that the appellant is a substantial risk to himself or herself or to other members of the public.

15—Redesignation of section 81BA—Consequences of holder of unconditional licence incurring demerit points in respect of offences committed while holder of provisional licence

This clause redesignates section 81BA as section 81BC.

16—Amendment of section 91—Effect of suspension and disqualification

This clause clarifies the effect of the provision where a person holds an unconditional licence to which the relevant disqualification does not apply in accordance with section 81B(4).

17—Amendment of section 97A—Visiting motorists

This clause amends section 97A to make any conditions on an interstate licence or learner's permit, imposed in the jurisdiction where issued, applicable in this State and enforceable as if they were imposed under the *Motor Vehicles Act 1959*. This clause also amends section 97A to make changes consequential to the new definition of *interstate licence*.

18—Repeal of section 98

This clause repeals section 98 (which requires the Commissioner of Police, on an annual basis, to take steps to check whether people are driving unlicensed).

19—Amendment of section 98AAE—Licence or learner's permit unlawfully altered or damaged is void

This clause increases the maximum fine for the existing offence of wilfully altering, defacing or damaging a licence or learner's permit from $750 to $2,500. The clause also introduces a new offence of possessing, without lawful authority, a licence or learner's permit that has been wilfully altered, defaced or damaged and this new offence carries a maximum penalty of a fine of $2,500.

20—Amendment of section 98BC—Liability to disqualification

This clause amends section 98BC to make amendments consequential to the new definition of *interstate licence* and to make other technical amendments.

21—Amendment of section 98BD—Notices to be sent by Registrar

This clause amends section 98BD(2) which details the notice that is to be given by the Registrar to a person liable to be disqualified from driving under section 98BC. The clause requires the notice to include references to a learner's permit.

22—Amendment of section 98BE—Disqualification and discounting of demerit points

This clause makes an amendment consequential to clause 23 and amends an incorrect cross reference.

23—Insertion of section 98BF

This clause inserts a new section 98BF as follows:

98BF—Effect of appeal or rehearing on disqualification and discounting

This proposed new section provides that, on an appeal or an application for a rehearing for a conviction resulting in disqualification, the disqualification will be inoperative until the appeal or application is determined or withdrawn and provides for the reinstatement of any demerit points for other offences that were discounted under section 98BE(5) if, after an appeal or rehearing, the person is determined not to be disqualified.

24—Amendment of section 98BI—Notification of demerit points to interstate licensing authorities

This clause is consequential to the new definition of *interstate licence*.

25—Amendment of section 135—False statements

This clause amends section 135 to increase the maximum fine for an offence of furnishing a statement under the Act that is false or misleading in a material particular to a maximum of $5,000. The clause also inserts a new subclause that allows a prosecution to be commenced within 5 years with the authorisation of the Attorney-General.

26—Amendment of section 139D—Confidentiality

This clause amends section 139D to remove an out of date reference to the *Road Traffic Act 1961*.

27—Amendment of section 141—Evidence by certificate etc

This clause amends section 141 to include in the list of matters that may be certified by the Registrar that a person was, or was not, on a specified day, the holder of an exemption under section 81A(16).

28—Repeal of section 144

This clause repeals section 144 (which limits the time within which proceedings for an offence against this Act must be commenced).

Schedule 1—Related amendments and transitional provisions

Part 1—Related amendment to *Road Traffic Act 1961*

1—Amendment of section 47EA—Exercise of random testing powers

This clause amends section 47EA of the *Road Traffic Act 1961* to insert a new subsection (2) giving a police officer, who has stopped a motor vehicle in the exercise of random testing powers, power to delay the driver of the vehicle for the purpose of conducting a licence check.

Part 2—Transitional provisions

2—Interpretation

This clause provides that a reference to the *principal Act* is a reference to the *Motor Vehicles Act 1959*.

3—Learner's permits in force immediately before commencement

This clause provides that , subject to clause 4, the changes made by clause 9 and clause 11 of the measure do not apply to a learner's permit in force before the commencement of the measure.

4—Requirement to display L plate

This clause provides that the new requirements in relation to display of L plates will apply to learner's permits in force before commencement of the measure.

5—Provisional licences in force immediately before commencement

This clause provides that, subject to clause 6, the changes made by clause 12 of the measure do not apply to a provisional licence in force before the commencement of the measure.

6—Requirement to display P plate

This clause provides that the new requirements in relation to display of P plates will apply to P1 licences in force before commencement of the measure.

7—High powered vehicle restrictions inapplicable to some provisional licences issued after commencement

This clause provides that the proposed section 81A(16) (which prohibits a holder of a P1 or P2 licence who is under the age of 25 from driving a high powered vehicle) will not apply to a person who holds a P2 licence issued after the commencement of the proposed new section if, immediately before being issued with the P2 licence, that person held a P1 licence that was issued before the commencement of the proposed new section.

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

STATUTES AMENDMENT (PUBLIC SECTOR CONSEQUENTIAL AMENDMENTS) BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (18:13): 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 South Australian Public Sector is the State's largest employer. The recently enacted *Public Sector Act* provides a modern and streamlined employment framework in support of a high performance public sector. We need a high performance public sector to capitalise on the State's prospects for strong economic recovery and sustained growth, as well as improving community wellbeing and environmental sustainability. Under the Act, agencies and employees across the whole of the public sector (not only the Public Service) will be governed by a comprehensive set of principles, with greater emphasis on 'one government'. The principles are intended to help make the South Australian public sector an employer of choice, encouraging the development of its employees, and providing rewarding and flexible working conditions.

This Bill is the next stage in implementing the new framework. It amends various Acts consequent on the enactment of the *Public Sector Act 2009* and the *Public Sector Management (Consequential) Amendment Act 2009.*

Those Acts replace the *Public Sector Management Act 1995* with 2 measures:

- the *Public Sector Act 2009* – containing annual reporting, employment management and immunity provisions; and
- the *Public Sector (Honesty and Accountability) Act 1995*—containing conflict of interest and other honesty and accountability measures.

The changes effected by this Bill include:

- replacing all references in Acts to the *Public Sector Management Act 1995* (or its predecessors) with reference to either the *Public Sector Act 2009* or the *Public Sector (Honesty and Accountability) Act 1995*, as appropriate;
- removing provisions in Acts relating to conflicts of interest for public sector administrators and others to ensure consistency through reliance on the approach in the *Public Sector (Honesty and Accountability) Act 1995*;
- removing provisions in Acts providing immunity from liability for public sector administrators and others to ensure consistency through reliance on the immunity provision contained in the *Public Sector Act 2009*;
- substituting references to particular departments and officers with references that will continue to work despite rearrangements of the Public Service structure;
- making other consequential amendments to update references to the terminology and approach of the *Public Sector Act 2009* (for example, by modifying references to Public Service positions, the title of the Commissioner and altering references to departments to references to administrative units so as to include attached offices where appropriate).

The conflict of interest provisions in the *Public Sector (Honesty and Accountability) Act 1995* will be complemented by provisions in the *Public Sector Corporations Act 1993* and the *Local Government Act 1999*. In the case of the public sector, exemptions in relation to particular interests are currently set out in the *Public Sector Management Regulations 1995*. The Bill brings most of those exemptions up into the relevant special Acts. Where

considered appropriate, the Bill applies the public sector provisions to committees of a statutory body as if they were advisory committees within the meaning of the *Public Sector (Honesty and Accountability) Act 1995* (see for example the amendments to the *Environment Protection Act 1993* and the *Zero Waste SA Act 2004*). Provisions that provide special conflict of interest provisions for persons to whom functions and powers are delegated and for inspectors will remain on the Statute Book.

The immunity provisions in the *Public Corporations Act 1993* for bodies to which that Act is applied are brought into line with the public sector immunity provision. Immunity for local government officers is dealt with in the *Local Government Act 1999*. Immunity provisions for public sector bodies will remain on the Statute Book as follows:

- provisions forming part of a uniform legislative scheme (for example, the electricity, gas and rail safety schemes);
- provisions providing immunity for criminal liability for dealing with emergencies;
- provisions providing immunity to police officers under the *Police Act 1998*;
- provisions providing absolute immunity to courts, including non-judicial officers and mediators, and tribunals; and
- provisions providing absolute immunity (to officers and the Crown) in certain areas of potentially high risk, including, for example, the administration of the food laws and genetically modified crop laws, clamping and impounding of vehicles, carrying out forensic procedures, the making of public statements under the *Fair Trading Act*, the preparation of storm water management plans under the *Local Government Act*, the destruction of animals and plants under the *Natural Resources Management Act* and matters covered by the *River Murray Act*.

I commend the Bill to Members.

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

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT BILL

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

At 18:15 the council adjourned until Tuesday 17 November 2009 at 14:15.