LEGISLATIVE COUNCIL

Tuesday 17 November 2009

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:20 and read prayers.

HYDROPONICS INDUSTRY CONTROL BILL

His Excellency the Governor assented to the bill.

LOCAL GOVERNMENT (ELECTIONS) (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

RAIL COMMISSIONER BILL

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (RECIDIVIST YOUNG OFFENDERS AND YOUTH PAROLE BOARD) BILL

His Excellency the Governor assented to the bill.

FIRST HOME OWNER GRANT (SPECIAL ELIGIBLE TRANSACTIONS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

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

His Excellency the Governor assented to the bill.

ANSWERS TO QUESTIONS

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

CHILDREN IN STATE CARE

178 The Hon. SANDRA KANCK (26 November 2008). Can the Minister for Families and Communities advise, in relation to the tabling of reports associated with the Mullighan Inquiry, what arrangements will be made for out-of-session publication of the Children in State Care Report due on 25 December 2009 and the APY Lands Report due on 30 January 2010?

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

Under section 11a(c) of the commission of inquiry (children in state care and children on apy lands) act 2004, I am required to table further responses updating the Parliament on the implementation of the Commission's recommendations annually for five years.

These responses must be tabled within three months of the end of the year and must state:

- the recommendations of the Commissioner that have been wholly or partly carried out in the relevant year and the manner in which they have been carried out; and
- if, during the relevant year, a decision has been made not to carry out a recommendation of the Commissioner that was to be carried out, the reasons for not carrying it out; and
- if, during the relevant year, a decision has been made to carry out a recommendation of the Commissioner that was not to be carried out, the reasons for the decision and the manner in which the recommendation will be carried out.

I tabled the South Australian Government's full response to the Children in State Care Commission of Inquiry report on 25 September 2008 and to the Children on APY Lands Commission of Inquiry report on 30 October 2008.

The first of the annual responses to the Children in State Care and Children on APY Lands Commission of Inquiry reports are due on 25 December 2009 and 30 January 2010 respectively.

To ensure these reporting timeframes are met and the Government demonstrates its commitment to the recommendations of the Commissioner, I will table the response to the Children in State Care report and the Children on APY Lands report on or before the 3 December 2009, which is the last Parliamentary sitting day for 2009.

VOLUNTEERING

218 The Hon. D.G.E. HOOD (25 March 2009). Can the Minister for Correctional Services advise what has been the change in the number of South Australians volunteering over the last 10 years?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy): The Minister for Volunteers has advised:

In 2000, the level of volunteering in South Australia was assessed as approximately 38 per cent.

In 2006, the assessment was that the formal volunteer participation rate in South Australia was 51 per cent, representing approximately 610,000 South Australians providing an estimated 1.4 million volunteer hours per week.

In 2008, results showed that there had been a slight decline in numbers with approximately 49 per cent of people formally volunteering.

The surveys conducted in 2006 and 2008 also captured the level of informal volunteering in our community. When we consider this participation rate alongside formal participation it shows that volunteering in South Australia is extremely healthy, reflecting a total participation of 75 per cent in 2006 and 73 per cent in 2008.

The South Australian Government can be justifiably proud of the work being undertaken to encourage, support and recognise the volunteering effort in our communities.

PAPERS

The following papers were laid on the table:

By the President—

Reports, 2008-09—

Corporation—

Salisbury
West Torrens

District Council—

Barunga West
Berri Barmera
Flinders Ranges
Tatiara
Wattle Range

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

Reports, 2008-09—

Adelaide Festival Corporation
Electoral Commission SA
Mining and Quarrying Occupational Health and Safety Committee
Premier's Climate Change Council
SafeWork SA Advisory Committee
State Emergency Management Committee
Suppression Orders, pursuant to Section 71 of the Evidence Act 1929
Technical Regulator—Electricity
Technical Regulator—Gas
Veterinary Surgeons Board of South Australia

Inquest into the death of Stephen Michael Bradford—Report

Regulations under the following Acts—

Cross-border Justice Act 2009—General
Dust Diseases Act 2005—Prescribed Processes

Essential Services Commission Act 2002—Revocation Regulation 3
Fire and Emergency Services Act 2005—Review
Fisheries Management Act 2007—
Demerit Points Offences
Fish Processors—Delivery of Pipi
Lakes and Coorong Fishery—Pipi and General
Marine Scalefish Fishery—Pipi and General

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

Reports—
Kingston District Council—Heritage Development Plan Amendment by the Council
Naracoorte Lucindale Council—Naracoorte Industry Development Plan Amendment by the Council

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

Reports, 2008-09—
Adelaide Dolphin Sanctuary Act 2005
Barossa and Districts Health Advisory Council Inc.
Berri Barmera Health Advisory Council Inc.
Boundary Adjustment Facilitation Panel
Ceduna Koonibba Aboriginal health Advisory Council Inc.
Children's Services
Construction Industry Training Board
Coorong Health Service Health Advisory Council Inc.
Eastern Eyre Health Advisory Council Inc.
Education Adelaide
Far North Health Advisory Council
Food Act 2001
Freedom of Information Act 1991
General Reserves Trust
Hawker Memorial District Health Advisory Council
Hills Area Health Advisory Council Inc.
HomeStart Finance
Local Government Finance Authority of South Australia
Lower Eyre Health Advisory Council Inc.
Loxton and Districts Health Advisory Council Inc.
Mallee Health Advisory Council Inc.
Mannum District Hospital Health Advisory Council Inc.
Mid North Health Advisory Council Inc.
Mid-West Health Advisory Council Inc.
National Parks and Wildlife Council
Office for the Ageing
Outback Areas Community Development Trust
Renmark Paringa District Health Advisory Council Inc.
South Eastern Water Conservation and Drainage Board
The Council for the Care of Children
The Murray Bridge Soldiers' Memorial Hospital Health Advisory Council Inc.
The Whyalla Hospital and Health Services Health Advisory Council Inc.
Veterans Health Advisory Council
Waikerie and Districts Health Advisory Council Inc.
Regulations under the following Acts—
Harbors and Navigation Act 1993—Restricted Areas—Christies Beach
Road Traffic Act 1961—
Heavy Vehicle Speeding Compliance
Intelligent Access Program
Miscellaneous—Heavy Vehicle Speeding Compliance—Offences
Traffic Speed Analysers
Third Variation of the Port Operating Agreement for Port Adelaide—Agreement between the Minister for Transport and Flinders Port Pty. Ltd

Variation of Port Operating Agreement (Port Giles)—Agreement between the Minister for Transport and Flinders Port Pty. Ltd

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

Report—

Bogus, Unregistered and Deregistered Health Practitioners—Response to the Social Development Committee Report

Regulations under the following Act—

Liquor Licensing Act 1997—Short Term Dry Areas—

Coffin Bay

Streaky Bay

By the Minister for Government Enterprises (Hon. G.E. Gago)—

SA Lotteries—Report, 2008-09

SELECT COMMITTEE ON FAMILIES SA

The Hon. C.V. SCHAEFER (14:25): I lay on the table the report of the select committee, together with the minutes of proceedings and evidence.

Report received and ordered to be published.

MARALINGA LANDS

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:29): I table a copy of a ministerial statement relating to the hand-back of Maralinga lands made earlier today in another place by my colleague the Premier.

WATER SECURITY

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:29): I table a copy of a ministerial statement relating to maintaining South Australia's water security made earlier today in another place by my colleague the Minister for Water Security.

TASERS

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:30): I table a copy of a ministerial statement relating to Tasers and SAPOL made earlier today in another place by my colleague the Minister for Police.

QUEAMA, MR KUNMANARA

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:30): I table a copy of a ministerial statement relating to Mr Kunmanara Queama made earlier today in another place by my colleague the Hon. Jay Weatherill.

REDFORD, MR A.

The PRESIDENT: I advise members of the presence in the gallery today of a past member of the Legislative Council, Mr Angus Redford.

Honourable members: Hear, hear!

An honourable member: He was well behaved.

The PRESIDENT: He was well behaved!

QUESTION TIME

ST CLAIR LAND SWAP

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:33): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about the St Clair land swap.

Leave granted.

The Hon. D.W. RIDGWAY: As we have just heard with the Hon. David Winderlich's notice of motion for an inquiry, there is considerable interest in the St Clair land swap and, in particular, the events surrounding the meetings held by the City of Charles Sturt and also the minister's responsibility to have the final say and make a decision on the land swap.

We know that the Land Management Corporation has a significant stake in this particular development. In fact, in a radio interview between the minister and 891's Mr David Bevan, he was asked the following question:

> But doesn't the Land Management Corporation want to swap the land? Ah, yes, but...this land swap decision is subject to the community land title being revoked...

The minister said:

> It will be a land swap that we're committed to in the end.

He continued:

> ...the land swap is to do with proposed housing development around the St Clair site, which is to do with...a housing proposal...in line with our 30-year development plan for South Australia...that's about benefitting South Australians...The South Australian government is not going to end up with money in its pocket.

Later in the interview, she then goes on to say the following, in relation to the act under which she operates and makes a decision:

> ...before a decision is made to revoke the community land title, the act requires that a process of community consultation occurs and the act is quite explicit about some of those processes and that's what, if and when the council writes to me and requests me to consider this revocation, that's what my responsibilities will be to do, will be to check off the process really carefully to ensure that they have met all of their requirements under the Act...

I note also that the Attorney-General, Mr Atkinson, was on radio the next day spruiking this particular government project. I was intrigued to see that, in one of his opening statements, he said:

> What I'm promoting is the light rail, of which this land swap is an essential element...The Rann Government is building the tramline from North Terrace, City West, past the New Market Hotel, over the railway bridge, past the Thebarton Police Barracks and down Port Road, past the Brewery to Port Road, outside the Entertainment Centre, and many of my constituents know that because they've seen the road works.

He then goes on to say:

> What my constituents don't know is that that tramline is going to be extended onto the existing rail line...

My questions are:

1. Does the minister agree that, as the minister responsible for the decision, and given that it is a government project with little or no consultation and that the LMC will make a financial gain from the project, she has a conflict of interest in relation to this land swap?

2. Given that minister Atkinson has admitted that his constituents do not know about the project, can the minister confirm that there has been adequate consultation in relation to this land swap?

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) (14:37): I thank the honourable member for his important question, although he is misguided in some ways. It gives me a valuable opportunity to talk about the important process around land revocation and the rigor of that process and to provide the reassurance that, in fact, diligence will be applied and the rigor of this process will be upheld in full.

If councils want to deal with community land, they have to go through a community land revocation process. There are legislative requirements the council must meet in undertaking that process, and that is to ensure that certain protections, both legal and administration protections, as well as community protections, are put in place.

The act requires councils to prepare and adopt a public consultation policy, which must set out the steps the council will follow in cases where the act requires that the council must follow that consultation policy. It must also set out the steps the council will follow in cases involving council decision-making. We are talking about council decisions. The Hon. David Ridgway misunderstands the responsibilities of councils when decisions are made under the Local Government Act versus

the local member's consultative process. The honourable member really does not know what he is talking about. The Hon. David Ridgway just does not get the difference between the local member's responsibility and the requirements of a council under the act. The local—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: I set the record straight by saying that it is, in fact, the Hon. David Ridgway who does not understand the difference in the responsibilities of the local member and the requirement for local councils to consult. My responsibility as the Minister for State/Local Government Relations is around the responsibilities under the Local Government Act, and I am happy to outline those.

Before a council can revoke the classification of community land it has to prepare a report, and the report must be made available during the public consultation. It must contain: a summary of the reasons for the proposal to revoke the classification of community land; a statement of any dedication, reservation or trust to which the land is subject; a statement of whether revocation of the classification is proposed with a view to sale or disposal of the land, and, if so, details of any government assistance given to acquire the land; a statement of how the council proposes to use proceeds; an assessment of how implementation of the proposal would affect the area and local community; if the council is not the owner of the land, a statement of any requirements made by the owner as a condition of approving the proposed revocation, and a copy of the relevant certificates, titles or other title reference; and a map or plan defining the area of each piece of land for which the revocation is proposed.

The council will have to give consideration to section 194(2), report and pass a resolution to proceed with public consultation in accordance with the council's public consultation policy. Section 194B of the act requires the council to follow the relevant steps set out in its public consultation policy, following the preparation of the report. To fully inform the community, the council's reasons for wanting to deal with the particular parcel of land should be clearly articulated so that the community can put forward any concerns or give support to the proposal.

To publicise the proposal it is desirable to have a notice placed in newspapers circulating in the council's area so that the council's intentions are made known clearly to the community, together with details of the land, the reasons for the proposal, any conditions to be imposed, details of where the report can be obtained, contact details of relevant council officers, and the closing details for submissions to the council.

The act requires that a notice must give at least 21 days during which interested people can make submissions on the proposal, and also, to engage the community, councils should bring the proposal to—

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: Mr President, the Hon. David Ridgway has asked about community consultation and I am outlining that in detail for his information, and yet he continues to take no interest whatsoever. He asked a question about community consultation, which I am answering in detail. He is away with the fairies. He is completely disinterested in the level of community consultation that the act requires the council to undertake in fulfilling its obligations.

To engage the community, councils should bring the proposal to the attention of the wider community. Councils may choose to provide a period longer than 21 days for consultation. After considering the report, along with all submissions made during the public consultation process, the council would then need to pass a resolution to seek ministerial approval for the revocation of the land.

Once council has resolved to seek that approval, an application is then made to the minister, which has occurred in this case. The application should contain details of the steps which the local council has taken in relation to the list of matters that I have outlined. The minister then considers whether the council has fulfilled its statutory obligations and followed the processes required under its consultation policy. If the council receives confirmation it is only then, if the appropriate revocation process is followed, that the council is at liberty to make a further resolution to give effect to the community land classification.

So, Mr President, you can see that local councils, as democratically elected members of local government, are accountable to their communities for the decisions that they make, and they

must consult with their communities to ensure that the matters that are being decided on are known to the communities and there is an opportunity for their views to be given. As I have outlined, statutory requirements under the act ensure that that takes place. The minister—

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: To stop his harping, I have visited the park, and it is a lovely park. The honourable member asked a question about consultation, which he is clearly not interested in. I would like to put on record that the minister's role in the revocation process is not to make the revocation decision but to review the council's proposal and processes to ensure that they are followed. The matters outlined in the act that are requirements of the local council, including community consultation, must be fulfilled before I as minister would be able to approve that application. The effect of that approval then gives the council the authority to make the revocation decision.

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: Well, he wanted to know what the processes of community consultation involved, and I have outlined that. As I have indicated, it is a rigorous process, and it is only if, when and until I am satisfied that all of those statutory requirements have been fulfilled that, as minister, I would be able to approve an application. It is only if, when and until all of those statutory responsibilities are fulfilled.

For the record, in terms of the Land Management Corporation's involvement in land ownership, I have been advised that it will seek to own and be responsible for only that parcel of land that it is swapping and replacing. I have been advised that the Land Management Corporation does not own any other part of the Actil site, which is currently owned by AV Jennings. The only component that it will have any ownership of is the parcel of land that it will be handing over as part of the land swap. To say that there is some sinister money grab out of this development proposal by the Land Management Corporation is dishonest and misleading.

ST CLAIR LAND SWAP

The Hon. DAVID WINDERLICH (14:48): I have a supplementary question. Will the minister reject the council's application if the council's decision-making process has been marred by a conflict of interest?

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) (14:48): It is a hypothetical question for a start.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: It is a hypothetical question. We know that democratic and administrative processes and safeguards have been put in place. If there is a question of a breach of legislation, an irregularity or some other improper or illegal activity, processes and safeguards are put in place, which the community has access to. I encourage members of the public, if they believe that there is any breach of legislation or irregularity in relation to the Local Government Act, or any other act for that matter, to come forward and lodge their complaints with the Ombudsman, who is the independent gatekeeper for these matters.

We know that the Ombudsman is an independent statutory officer with his own powers and legislation. As I have said, the Ombudsman has powers to make full and preliminary investigations for all legitimate complaints put before the Ombudsman, which he or she is required to investigate. The Ombudsman must then report on any evidence of breach of duty or misconduct that might be part of any complaint put before them.

I am confident that, in relation to any complaint the Ombudsman receives, he undertakes his responsibilities with a high degree of integrity, diligence and thoroughness. I am also confident that, if the Ombudsman has any concerns of which he needs me to be aware, he will take the necessary action that the act allows.

I have statutory responsibilities to deal with the revocation application, and they involve my dealing with it in a timely way. I am not aware of any evidence of impropriety with respect to or in breach of the Local Government Act or any other act in relation to the revocation put before me. I

put on the record that I am at the stage of considering the application by the Charles Sturt council. I have not completed the process, as I am still ensuring that the statutory requirements have been fulfilled.

I am not aware of any evidence of any breach of the legislation. The processes of my statutory responsibilities and those of the Ombudsman are quite separate and mutually exclusive. I have no reason not to proceed with my statutory requirements, that is, to deal with my responsibilities in a timely way.

We know that the act does not carry caretaker-type provisions (we have had those discussions in this place before, so I will not go through them in detail) particularly to be in place whilst an investigation is underway. The Ombudsman's investigations can take any length of time—up to 12 months or even more on occasion in certain circumstances, so it can be quite a lengthy process.

I believe that around 27 full investigations were undertaken in 2008-09. Can you imagine, Mr President, if the business of council was waylaid every time an application or an investigation was before the Ombudsman? Councils could not perform their day-to-day responsibilities. As I said, they are democratically elected officials, and they have responsibilities under the act in relation to their ongoing work.

I believe that it would simply paralyse the activity and business of local councils if, every time an investigation was before the Ombudsman, as the honourable member is suggesting, major decisions were stalled. I believe that it would be irresponsible of me not to fulfil my statutory responsibilities, that is, to proceed with the application for revocation in a timely, thorough and diligent way.

The Hon. B.V. Finnigan: Connor Holmes must be in on it, too.

ST CLAIR LAND SWAP

The Hon. M. PARNELL (14:54): If the Hon. Bernard Finnigan says so, they must be. My supplementary question of the minister is: given that the final decision—

Members interjecting:

The PRESIDENT: Order! I remind honourable members that we have had 20 minutes on one question.

The Hon. M. PARNELL: —rests with you, and you have explained how you will review the statutory process—

The PRESIDENT: Order! Get to the question.

The Hon. M. PARNELL: —is your answer to this council that, if citizens have concerns about the failure of public consultation, they must go to the Ombudsman and that your door is closed to them?

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) (14:55): Of course not. There is a range of options for the community to lodge complaints and have matters investigated, and I have outlined those several times. I do not think the honourable member seriously wants me to outline those again.

There are legal entitlements for the general public. They can seek redress in a number of ways, and I have outlined those at length. There is the Ombudsman, there are provisions for me to investigate under certain circumstances, and there are also provisions under the anti-corruption responsibilities of the police. So, there is a number of options available to members of the public to lodge complaints and have their matters investigated, but it is a matter for individuals to decide which avenue they choose to use. I have to correct the record: the final decision is not mine. The final decision to revoke community land rests with the local council; it is its decision. Only a resolution of the local council can finalise a revocation of community land.

As I have already very carefully put on record, my responsibility is to ensure that proper processes and other legal requirements, as outlined in the act and as I have outlined here today, are fulfilled by the local council. So, it is a checking off of the council's process to make sure that it has met all of its administrative and other legislative requirements under the act before it is then entitled to put the matter to a final council vote. And that is exactly what I intend to do.

SHELL GRIT MINING

The Hon. J.M.A. LENSINK (14:57): I seek leave to make a brief explanation before asking the Minister for Mineral Resources and Development a question about the shell grit mine at Port Parham.

Leave granted

The Hon. J.M.A. LENSINK: Local residents have expressed some concern about the practices and damage being done by the Clay & Mineral Sales company in mining shell grit. I note that there has been considerable community revegetation efforts along the coast. The South Australian mineral resources department says that the company has been asked to review and update its mining and rehabilitation plan for Port Parham. My questions to the minister are:

1. Since this company has been operating there, how many times has its plan been reviewed?

2. What investigations has the government undertaken into the operation, including environmental monitoring?

3. Has the company, in fact, amended its plan as was stated in the media last month and, as a result, what changes have been made to its practices?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:58): This matter was first raised with me by a councillor on the District Council of Mallala back in September. My advice is that Clay & Mineral Sales, which has been operating the mining lease, has actually been operating this mine for a number of years. It has been extracting relatively small parcels of material in recent years on a campaign basis, that is, as the need requires. However, the current campaign appears to be to remove a slightly greater quantity of shell grit. Although this company has had an extractive mineral lease over the area for some time, it is not, I believe, the land owner.

PIRSA met with senior representatives of this company on 14 October to discuss community and council concerns and the recent incidents. I am advised that Clay & Mineral Sales has indicated its intention to retain the mining leases; however, it has also expressed a willingness to cooperate and resolve the council and landowner issues associated with its operation at Port Parham.

I am advised that the company was going to arrange a meeting with the District Council of Mallala—that should have taken place—to discuss its mining and rehabilitation plan and to address the council issues, and a PIRSA representative was to be in attendance at that meeting. Further, I am advised that Clay & Mineral Sales will also consult with the relevant landowners and neighbours in an effort to address their issues with the operation. PIRSA will take the concerns of the council and landholders into account during the assessment of Clay & Mineral Sales' amended mining and rehabilitation plan. The deputy leader asked me when the original mining plan was reviewed. I will have to go back and get that information from the records for the honourable member.

BUSHFIRE BUNKERS

The Hon. S.G. WADE (15:01): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question relating to bushfire bunkers.

Leave granted.

The Hon. S.G. WADE: On 21 October, the Minister for Consumer Affairs released a media statement on bushfire bunkers, expressing the government's concerns that consumers are being misled by some traders claiming that their bunkers meet an Australian standard for the product, despite there being no standard in place. In response to a question in this place the following week, the minister stated that the government had 'prepared and distributed a comprehensive cautionary note that outlines a whole range of complex issues that need to be considered if a person wishes to purchase or construct a bushfire bunker'. The cautionary note imposes no mandatory requirements.

Last Wednesday, the Victorian planning minister issued a media release entitled 'Bushfire shelters to require building permits', which reads in part:

> Victorians who choose to build a bunker or private bushfire shelter on their property will be required to adhere to new regulations. Planning minister Justin Madden today announced interim regulations and an

accreditation process for construction of bunkers or bushfire shelters, which will come into effect immediately and provide clarity to Victorians until proposed new national standards are introduced next year. If people do choose to construct a bunker or private bushfire shelter, they will be required to obtain a building permit and adhere to regulations and an accreditation process.

My questions are:

1. Given minister Madden's assertion that it is absolutely vital that people considering building a bunker or private bushfire shelter are aware of the risks and requirements, will the government introduce interim planning regulations on bushfire bunkers?

2. So as to minimise any delay, will the minister consult with the Minister for Emergency Services on whether the Victorian regulations could be adopted in South Australia pending the availability of national standards?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:03): I was at the building ministers' forum in Melbourne last Friday. Minister Madden was also there, and he outlined the procedures he was taking, because clearly there is a need, which was reinforced at the forum, that we have national standards in relation to bunkers. I think my colleague the Minister for Local Government made clear in her answer several weeks ago that, until those national standards come out (and I believe a committee is working on them and that Mr Euan Ferguson, the head of the CFS, is playing a key role in relation to that matter, at least from the CFS side of things), we need a standard from the Australian Building Codes Board that applies to such structures.

The government believes that the approach we have taken—a cautionary approach—is the appropriate way to proceed. If one looks at minister Madden's statement, one will see that he concedes that what they are doing in Victoria essentially is an interim measure until a national standard comes out. These are matters that the government has considered closely. There were discussions earlier this year between a number of ministers involved, including myself, the Minister for Emergency Services and others in relation to that. As a result of those decisions, this cautionary note in relation to bunkers and shelters was issued. We advise people that they should be very careful with them if they are determined to build bunkers and ensure that they are not ovens in which they are cooked. The dilemma is that, until we have a proper national standard, there is a danger that anything the government advises may not be sufficient. In any case, if someone had built one of these shelters it might be that when this standard came out—hopefully some time early in the new year—the shelter might not comply.

At this stage, the government's position is that it is doing everything it can to support the development of a national code, and South Australian input, through the individuals that we have, will be significant. However, at this stage, and until we have that code, the government believes that issuance of the cautionary note, and advice to people in relation to that, is the best stand it can take.

As I said, I was given a copy of the information provided by minister Madden in Victoria last week. The department will certainly look at that, but at this stage the government does not propose to deviate from its previous position—that is, to issue the cautionary note on shelters but support development, as rapidly as it can be done, by the national authorities of an appropriate standard in relation to those shelters.

SCHOOLIES FESTIVAL

The Hon. J.M. GAZZOLA (15:06): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about the upcoming Schoolies Festival to be held at Victor Harbor.

Leave granted.

The Hon. J.M. GAZZOLA: As members know, each year thousands of South Australian students visit Victor Harbor to celebrate the end of their high school studies. Over the years the popularity of Victor Harbor as a venue for school leavers has led to the event being professionally managed, and it is now known as the Schoolies Festival. The South Australian Schoolies Festival is a well managed event that has avoided many of the problems associated with similar events in other states.

As it is my son's, and indeed many students', first Schoolies Festival, can the minister advise the council about the comprehensive strategies that the government has put in place to make this year's Schoolies Festival as safe as possible for the young people participating?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:07): I thank the honourable member for his question, and understand his interest in this important issue. I hope I can reassure him and allay his anxiety about his son's attendance at his first Schoolies, and I also hope that his son has a wonderful experience.

Schoolies is a very important occasion where school leavers attend a final party, and it is an important way of relaxing and celebrating the end of one phase of their life and the commencement of a new one. Many, if not most, of them have worked hard—and I hope that Henry has worked hard; yes, apparently Henry has worked hard—and they deserve to relax and have some fun at this time. However, as with many of these events, there are potential concerns, but I believe the government has taken a number of steps to minimise those.

South Australia's Schoolies Festival, which is held at Victor Harbor each year, is envied by many other states as being a well managed event with many planned activities and support services in place. This year the Schoolies Festival will be held at Warland Reserve in Victor Harbor from Friday 20 November to Sunday 22 November, and I understand that approximately 10,000 young people are expected to attend, a testament to the event's enduring popularity. As members would be aware, excessive alcohol consumption can be an unfortunate feature of Schoolies celebrations. I am sure that most South Australians realise it is impossible to stop alcohol being present at events such as these, so the government's focus continues to be on the safety of participants.

The government's focus on safety at Schoolies is not something which takes place only during the festival; in fact, it began with 'Safety at Schoolies' seminars held for many year 12 students over recent months. The Office of the Liquor and Gambling Commissioner provided funding assistance, and this resulted in 13 free 'Safety at Schoolies' seminars held for high risk public schools that would not normally be able to participate in a seminar if a cost were involved.

The seminars were conducted by Encounter Youth who are also the event managers for Schoolies 2009. The seminars gave real life examples and scenarios incorporating police and community expectations, promoted key health messages and challenged students to think about how they and their friends could celebrate safely.

As well as providing funding for the seminars, the Office of the Liquor and Gambling Commissioner provided information material for the presenters on topics such as liquor licensing laws for minors, dry areas and public information points. Several staff from the office will also be attending the Schoolies Festival to reinforce the message from the seminars, and staff will also have an opportunity to talk to school leavers in a friendly, non-intimidating environment about responsible drinking, harm minimisation and looking after themselves and, most importantly, looking after their mates and keeping an eye out for their friends.

Staff will also discuss some of the social and medical harms associated with excessive drinking and will also hand out giveaways such as T-shirts and iPod holders carrying the federal government's 'don't lose your standards' message.

The government's 'safety at schoolies' strategy involves multiple agencies working together such as the Office of the Liquor and Gambling Commissioner, SAPOL, Drug and Alcohol Services SA, the Department of Education and Children's Services, and SA Ambulance Service. Other significant measures to support the safety at schoolies strategy include:

- The provision of entertainment involving live acts and big screen film events held at the central Warland Reserve location to provide safe activities that do not involve alcohol or drugs.
- A dry area, larger than in previous years, road closures and speed restrictions.
- The establishment of a liquor accord for schoolies between SAPOL, the Office of the Liquor and Gambling Commissioner, and liquor licence holders. This accord is supported by the local liquor licence holders and is designed to prevent underage drinking and promote the responsible consumption of alcohol by legal drinkers. I am advised that earlier than normal closing times will support responsible drinking.
- There will be increased police resources involving random drug and breath testing for drivers and a drug detection sniffer dog.

- Mobile paramedics will patrol the Schoolies Festival on pushbikes and work in coordination with the South Coast District Hospital and the Southern Fleurieu Health Service.
- A free barbecue at major accommodation sites to give students a good, filling meal and to provide agencies with an opportunity to spread the safety message.

Safe transport is critical, with thousands of young people needing to get to accommodation at the end of the festival. The RAA is sponsoring a free bus service from Adelaide to Victor Harbor and for the return journey at the end of the festival. I am advised that the Motor Accident Commission is also sponsoring free hourly shuttle buses from Warland Reserve in the heart of Victor Harbor to nearby coastal towns where students might have overnight accommodation.

The government has a responsibility to do what it can to maximise the safety of our young people at the Schoolies Festival, but its active role does not and should not diminish the critically important role of the parents and guardians of young people attending the festival. I would like to encourage parents and carers to discuss their children's plans and to encourage and support responsible and safe behaviour, particularly in relation to transport and accommodation plans.

I am sure that many of the 500 volunteers who have been coordinated by the event manager (Encounter Youth) are parents, and I commend them and all the volunteers for taking the time to keep an eye on our young people at this very important time in their lives.

HYDRO LORD

The Hon. A. BRESSINGTON (15:15): I seek leave to make a brief explanation before asking the Minister for Police and the Attorney-General a question about a board game called Hydro Lord.

Leave granted.

The Hon. A. BRESSINGTON: Recently, I was informed that the board game Hydro Lord has been classified as M, a classification that carries no restrictions on what age a consumer must be to purchase but does require consumer advice to be displayed. I find this incomprehensible.

One cannot view this game and not draw the conclusion that it intentionally glorifies the drug culture and criminal behaviour. Hydro Lord is a board game similar in style to Monopoly but, instead of playing the game to own hotels, the player who accumulates the most hydroponic set-ups is the winner. Along the way to becoming a drug kingpin, the player will draw cards that either offer an advantage or a disadvantage. Cards include, among others, the following categories: 'Go to jail for using a blood filled syringe to rob an inner city clothing store'; 'Pay a $500 fine for savagely attacking two women after arranging sadomasochistic sex sessions'; 'At a public toilet, you crush to death a nine week old baby after collapsing from an overdose. Pay a fine of $1,000'; and 'You sell cuttings (referring to cannabis plants), collect $5,000 from each set-up you own'. These cards trivialise, glorify or educate the player in the commission of a crime. I assume that it is with sarcasm that the game's website describes Hydro Lord as an educational tool for parents.

Hydro Lord first came to the attention of the public after the publisher, Mr Edward Khammash of Parafield Gardens, admitted to employing the promotional tool of leaving the game in people's driveways, on footpaths and in children's playgrounds across our suburbs, from Stirling to Glenelg to Victor Harbor, during school holidays. He did so because he knew the contents of the game would rightly provoke public anger, gain media attention (which it did) and, in doing so, provide the game with free exposure.

This game is so contentious and morally destitute that the public outcry was justified, yet the Classification Board apparently disagrees with the public and instead has given the game a classification that allows it to be sold to anyone, be they adult or child.

Due to this deficient classification, Mr Khammash has not committed an offence in not having Hydro Lord classified prior to its first going on sale in 1997, as I had hoped. However, I am aware that neither the Hydro Lord packaging nor the website displays the consumer advice, as required by the Classifications (Markings for Publications) Determinations 2007, which is an offence. My questions for the Minister for Police and the Attorney-General are:

1. Given that I have been informed that the producer of Hydro Lord is failing to display the consumer advice, as is required by law, will the Minister for Police investigate this and report to the parliament on whether an offence has been committed and whether the publisher will be charged?

2. Given the nature and the intention of Hydro Lord, does the Attorney-General agree with the Classification Board's classification of M? If not, will the Attorney-General make representations to the Classification Board and his federal counterparts, with the intention of revising Hydro Lord's present classification?

3. If the Attorney-General does agree with the classification, does he perceive a level of hypocrisy, given his staunch opposition to R18+ video games on the grounds of their potentially exposing youths to violence, sexual acts and drug use, similar to the inferences made in Hydro Lord?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:18): I am sure the Attorney-General would be interested in the questions and pleased to answer them. I understand that the Attorney-General has taken a high profile in relation to trying to ensure that the sorts of games described by the honourable member are properly classified.

Members interjecting:

The Hon. P. HOLLOWAY: Well, I understand it. If I recall correctly, I think I read in *The Advertiser* recently that one of the proponents of one of these games was going to run against the Attorney-General in protest to the position he has taken in relation to that game. I know the Attorney has a strong interest in such matters. As I have said, I believe he has taken a strong position against games that—

The Hon. T.J. Stephens: A tough position.

The Hon. P. HOLLOWAY: Well, the fact that there has been a reaction is a tribute to the position he has taken. I am sure the Attorney would be pleased to consider the questions asked by the honourable member, and I am happy to refer them to him.

ANTIVIOLENCE PUBLIC AWARENESS CAMPAIGN

The Hon. J.S.L. DAWKINS (15:19): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations, representing the Minister for Substance Abuse, a question about an antiviolence public awareness campaign.

Leave granted.

The Hon. J.S.L. DAWKINS: On 7 November, the Minister for Substance Abuse, the Hon. Jane Lomax-Smith, announced a new public awareness campaign aimed at binge drinkers. The campaign is entitled 'Drink too much. It gets ugly', and the slogan is to be printed on ice bags.

The minister may be aware that Professor Paul Mazerolle, Director of Griffith University's Centre for Ethics, Law, Justice and Governance, recently compiled statistics about youth violence and crime. Professor Mazerolle's research indicates that violent crimes among young people are increasing and the situation is exacerbated by the popularity of the internet and alcohol abuse.

Recently, my attention was alerted to two public awareness campaigns operating interstate: first, in Queensland, the 'One Punch Can Kill' campaign; and in Victoria the 'Step Back. Think' campaign. Both have been highly successful anti-violence campaigns targeted at young adults. Both have been funded and heralded by state Labor governments and the Prime Minister, the Hon. Kevin Rudd. Both were inspired by tragic events: in the case of the former, a tragic loss of life, and, in the latter case, a permanent brain injury.

South Australia has also suffered the pain and anguish that stems from the fact that one punch can indeed kill. In 2004, one of this state's most well known sportsmen, Mr David Hookes, was tragically killed in Victoria by a reported single blow.

The aim of both the 'One Punch Can Kill' and 'Step Back. Think' campaigns is to make younger people aware that alcohol-fuelled violence can have lifelong ramifications—ramifications that are worth thinking about. It is particularly relevant to consider these issues, given that thousands of year 12 students will descend on Victor Harbor for Schoolies this weekend, as highlighted by the Hon. John Gazzola's earlier question. My questions are:

1. Is the minister aware of either the 'One Punch Can Kill' or 'Step Back. Think' campaigns?

2. Will the minister research both initiatives and investigate the feasibility of establishing a South Australian anti-violence public awareness campaign, based on the 'One

Punch Can Kill' or 'Step Back. Think' campaigns, and complementing the 'Drink too much. It gets ugly' campaign?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:22): I thank the honourable member for his most important questions. I am happy to refer them to the Minister for Substance Abuse and bring back a response. However, I think there are some things that I can put on the record in terms of trying to address the problem of binge drinking and excessive drinking, particularly amongst young people. We know that a number of things contribute to acts of violence. It is a complex thing, but we do know that there is a strong link between violence and assaults and alcohol use.

The government has been involved in a number of initiatives. Responsible consumption of alcohol initiatives developed and promoted by the Office of the Liquor and Gambling Commissioner include: 'That next drink' initiative, which is a campaign to remind drinkers that every extra drink increases their risk; the 'Safe partying' initiative, which is information provided to assist parents, families and communities to develop harm minimisation strategies that address alcohol consumption at parties or special events, and that has been developed collaboratively with agencies such as SAPOL, DECS and DASSA; manufacturers such as Coopers and retailers such as Woolworths being encouraged to include responsible consumption messages in their advertising and on liquor packaging; and the production of a wallet card providing information about alcohol and the law, and promoting the responsible service of alcohol for young people. Further, of course, we have legislation that has been tabled addressing new liquor licensing provisions that look at improving the responsible service of alcohol and also improving the code of conduct generally for liquor licence holders.

We also have things like the responsible consumption of alcohol message that is promoted at festival events. I have outlined in detail here today a list of activities and initiatives that will be in place at Schoolies to help promote responsible behaviour and bring about harm minimisation. Also, a *Teenage Parties and Alcohol—A Parent's Guide* brochure, which features party tips and outlines legal responsibilities, is widely circulated to schools, council offices and police stations.

Of course, the Office of the Liquor and Gambling Commissioner is also involved in the development of the South Australian Alcohol Action Plan in conjunction with SAPOL, DASSA and representatives from other agencies. The plan deals with a number of priorities in terms of reducing the incidence of intoxication amongst drinkers, enhancing public safety and amenity, improving health outcomes amongst individuals and communities affected by alcohol consumption, and facilitating safer and healthier drinking cultures, to mention a few.

I am very pleased to say that our federal government has put its money where its mouth is in relation to a number of really important initiatives. Members will be aware that the Prime Minister has made a number of public statements since the beginning of the year expressing his concern about the levels of binge drinking in Australia. This culminated in the announcement of a $53 million National Binge Drinking Strategy on 10 March last year.

This message is aimed particularly at young Australians and it focuses on three main areas: $14.4 million over four years to invest in community level initiatives to confront the culture of binge drinking, particularly amongst sporting groups; $19.1 million over four years to intervene earlier to assist young people to ensure that they assume responsibility for their binge drinking; and $20 million to fund advertising that confronts young people with the costs and consequences of binge drinking.

I am not too sure whether the One Punch Can Kill campaign is being considered by the federal government. I am sure that it will be looking at a wide range of initiatives, particularly evidence-based activities, that show that they are bringing about some change in behaviour.

They are some of the things that are in place. As I said, I am happy to pass on the rest of that question to the appropriate minister in another place and bring back a response.

CARAVAN PARKS

The Hon. CARMEL ZOLLO (15:27): My question is to the Minister for Urban Development and Planning. Will the minister provide an update on progress in developing effective planning policies for caravan parks that provide greater certainty to caravan park operators and their tenants?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:28): I thank the honourable member for her question. Caravanning is one of the fastest-growing sectors in the tourism and hospitality industries. Caravan parks also provide diverse and affordable housing. Despite this growth in demand, it is possible that some caravan parks could be lost to other forms of development due to rising property values in attractive locations.

The honourable member will recall that until recently there was no specific zoning requirement for caravan and tourist parks in South Australia. In December 2007 the Residential Parks and Caravan and Tourist Parks Development Policy Amendment came into interim operation. Prior to this development plan amendment, 47 different types of zoning applied to caravan park sites across South Australia.

Most caravan park sites in Adelaide and near country areas have now been rezoned to one of two specific purpose caravan park zonings: the caravan and tourist park zone, which is for caravan parks entirely or predominantly used by tourists for short-term stays, with only a minority (if any) of the park dedicated to long-term accommodation; or a residential park zone, which is for caravan parks primarily used to meet the demands of long-term residents and a minority of tourists.

These two new zones ensure that caravan parks are specifically designated and protected from redevelopment outside of their current use unless rezoning is sought and gained. As part of the introduction of the interim development plan amendment, a community consultation process was carried out through the Independent Development Policy Advisory Committee.

Three public meetings were held by DPAC, following the close of the public consultation period, at Adelaide, Victor Harbor and Gawler. To augment this consultation process, I also established a working group to advise me on the best course of action for a more permanent solution to the issue of caravan parks zoning. The working group consisted of members from relevant government agencies associated with the caravan tourist and residential parks industry. The group has been providing advice on the criteria for establishing the economic viability of caravan tourist and residential parks to identify areas for future park sites.

The group also helped to develop an appropriate process for rezoning existing sites. Having considered the DPAC report and the advice of the Residential Parks and Caravan and Tourist Parks Working Group, I approved the development plan amendment on 11 December 2008.

Since that time, the Environment, Resources and Development Committee, which has a statutory role in scrutinising ministerial development plan amendments, wrote to me to recommend removing the Adelaide Caravan Park from the DPA and to consider amendments to the Dalkeith Caravan Park.

I can inform honourable members that I have accepted the committee's advice, and those amendments recommended by the ERDC were gazetted on 29 October 2009. I thank members of the ERD Committee for their contribution to that quite important but complicated development plan amendment.

This government's objective is to provide greater certainty, simplicity and consistency to the land zoning for caravan parks. By replacing the array of different zoning, the Rann Labor government is providing certainty to caravan park users, residents and neighbours about the future use of caravan park sites.

These two new types of zoning have not changed the ownership of land or land tenure of any existing caravan park site. The zoning policies have been inserted into the development plans of the 17 local councils in order to guide the development of proposed caravan parks. The policies ensure that any new parks are located to provide appropriate access to public services and facilities, as well as a safe environment.

PORT LINCOLN IRON ORE EXPORT FACILITY

The Hon. R.L. BROKENSHIRE (15:31): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about the Port Lincoln port facility.

Leave granted.

The Hon. R.L. BROKENSHIRE: Family First supports mining and infrastructure development as long as it is done in a balanced way, taking into account community concerns. In

regard to the Centrex Metals application, and other projects that show there are significant mining opportunities on Eyre Peninsula, the community are telling me that they support and prefer a new port facility built away from the city of Port Lincoln.

The minister has approved a supposedly temporary 10 year permission for a bulk handling facility right in the middle of the city of Port Lincoln, which the community tell me is 10 years too long for the clean green tuna farming industry so vital to the area and 10 years too long for the residents of Port Lincoln, who have to suffer iron ore dust and other inconvenience. My questions are:

1. As to the validity of using section 49 of the Development Act (a section designed to handle issues of public infrastructure), does this section retain appropriate relevance for this situation, which is a refurbished piece of private infrastructure for one operator use? The use of section 49 will effectively remove any reference for decision-making from the local community. How does the minister justify this section?

2. Why did the EPA issue three reports that were softening down each time on its concerns about the impact of Centrex using the Port Lincoln jetty facility?

3. Given that this approval process has been confirmed by the government only in recent times, will the minister explain to the council why a letter to Mr Mark Cant, signed on 13 March 2009 by Mr Phil Tyler, Executive Director of Small Business and Regional Development, Department of Trade and Economic Development, states:

> In relation to Centrex, the SA government is supporting the company's efforts to export its minerals. The first Centrex minerals exports will be via Port Lincoln. The development application for the Port Lincoln minerals export facility using the main wharf has been given crown development…

and the letter continues.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:35): In relation to the last part of the question, section 49 is the crown development section of the act. That was considered to be an appropriate way of dealing with it. The development is over crown land. Of course, the ports are now being long-term leased to Flinders Ports, but certainly the land is out of council districts. It is in the harbour. I believe that the crown development provides an appropriate way to consider such proposals. It requires a similar level of environmental assessment as if it had been done as a major project under section 46 of the Development Act.

There has been significant input from the community as well as from government agencies, such as the EPA, in relation to that particular matter. In his question, the honourable member referred to iron ore dust. I remind the council—and I did answer a question about this some time ago—that a significant number of conditions apply in relation to the approval. In fact, there were 12 basic conditions, one of which was:

> The facility herein approved must be designed and constructed to ensure that no visible haematite-bearing dust is emitted to air from the receipt, storage, transfer or shiploading operations.

The reason why the proposal took a significant amount of time to be assessed was that the EPA initially, as I understand it, raised some issues in relation to the potential for algal blooms being created by iron ore dust. I believe that it sought—quite appropriately, as the agency that has to license this—additional advice in relation to that matter and ultimately satisfied itself that the likelihood of that was small. That did take some time, but it was appropriate. That is what we expect agencies such as the EPA to do with these complex proposals.

Finally, the government has made it clear that, for the long term, the future of the iron ore industry on Eyre Peninsula does require a new port. We believe that the approval of this proposal will help establish the credibility of the iron ore industry on Eyre Peninsula. Port Lincoln has been used as an export port for grain for many decades now. Port Lincoln was originally established as a port. Prior to the development of a new port, it is our expectation that the company would make clear that, with the cash flow from this particular operation, if there is to be further expansion of the iron ore industry, that cash flow should be employed towards the development of a new port.

Subsequent to my decision, I note that the Foreign Investment Review Board has approved an investment within Centrex from WISCO, a Chinese company, the Wuhan steel company, which is a very significant steel producer. With its significant equity now in the project, we certainly believe that that will improve the capacity of Centrex to inject capital into this process. So, the reason the government has put a life on it, time operation limits and a volume limit—that is,

1.6 million tonnes of ore a year—is to ensure that, while this can enable in the short term the iron ore industry to be up and running, over the longer term we would wish to see a port developed. The company already has a site that it believes is suitable at Sheep Hill, but obviously more work will need to be done on that particular location. I believe that there is water more than 20 metres deep less than half a kilometre offshore, which would make it a very suitable site, providing that tides and other matters are suitable.

We would certainly hope that over the next few years work can begin on that particular project, which not only would advantage the mining industry on Eyre Peninsula but also could potentially benefit the grains industry as well. We always learnt at school that Port Lincoln was the only natural deepwater port we had. Of course, what was deep then at about 14 metres is now somewhat too shallow for the new cape size vessels, and above, which require 20 metres draft.

Times have moved on and clearly it will be in the interests of, ultimately, both the grain and mining industries to develop a port that can take these large vessels that require 20 metres or more of draft. It is an interim decision, the government accepts that, but one which in the long term will ensure that the economic diversity of Eyre Peninsula is guaranteed.

The honourable member talked about the aquaculture industry, and I am sure he is aware of the difficulties currently facing that industry because of the recent international decision to cut the tuna quota. It is in the best interests of Eyre Peninsula that the economy is diversified. While the government's decision is controversial in some parts of Eyre Peninsula, it has been warmly welcomed in other parts because of the benefit this would mean to diversify the economy on Eyre Peninsula. Certainly the government will continue to work for the development of a new port during the life of this project. The cash flow that will be generated should enable that to happen.

ANSWERS TO QUESTIONS

TAXIS, COUNTRY

In reply to the **Hon. C.V. SCHAEFER** (9 April 2008).

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

1. The government has recently introduced regulations to specifically recognise country taxis without council licences, distinct from Small Passenger Vehicle Non-Metropolitan Vehicles. Amendments to the Passenger Transport (General) Regulations 1994 were published in the South Australian Gazette on 22 January 2009. Local Councils have and will retain the powers under the Local Government Act 1934 to licence taxis through by-law.

These regulations formalise the future operation of country taxi services in South Australia. This has occurred after a very lengthy process involving the Department for Transport, Energy and Infrastructure (DTEI) in conjunction with the taxi industry, local government and existing country operators. Amendments to the Passenger Transport (General) Regulations 1994 came into operation on 28 February 2009 and introduced a new category of country taxi accreditation and associated requirements for the operation of country taxis.

Under the new regulations country taxis will be distinguishable by taxi livery requirements as in the past, but there will also be distinctive country taxi number plates for all vehicles attached to the accreditation or licensed by local government. DTEI has kept Country Taxi SA Inc informed of issues and progress regarding the development of a new accreditation category for country taxis not licensed by Councils.

DTEI will continue to liaise with the industry associations regarding the implementation of the new regulations and transition processes.

2. Based on information provided from the South Australian Transport Subsidy Scheme database within DTEI, there are no delays to vouchers being paid to country taxi operators.

SURF LIFE SAVING SOUTH AUSTRALIA

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:42): I move:

That for the purposes of section 13(7) of the West Beach Recreation Reserve Act 1987, this Council approves the grant by the West Beach Trust of a lease to Surf Life Saving South Australia Incorporated for a period

of 50 years of portion of the West Beach Recreation Reserve, being such portion of the land contained in Certificate of Title Register Book Volume 5867, Folio 283, as is determined by the Minister for Urban Development and Planning, for use for the operation of surf life saving emergency services (including administration, storage of operation craft, life saving academy, communications centre, training rooms, supporting gear and equipment storage) and for the construction of such buildings and other works for that purpose as are specified or authorised in the lease.

This is a simple matter that requires both houses of parliament to pass a resolution approving a 50 year lease of a parcel of West Beach Trust land to Surf Life Saving South Australia. Surf Lifesaving South Australia is the key agency for beach safety in South Australia and provides the vital services of beach safety education, incident prevention and search and rescue.

Surf Life Saving South Australia is currently operating its communications function from Lonsdale and its administration services from cramped facilities at Torrensville, and vessels are stored at various locations, including the homes of staff and club members. It is crucial that this community organisation continues to educate and protect South Australians enjoying our coast, and to this end adequate and centralised facilities for staff and equipment are essential.

In its 2009-10 budget, the government announced $1.1 million in funding for new emergency services facilities for Surf Life Saving SA. The board of the West Beach Trust has approved in principle the offer of a 50 year lease to Surf Life Saving South Australia to develop Surf Central. The headquarters for administration, training and delivery of life saving emergency services will be on 4,600 square metres of land near the corner of Barcoo and Military Roads within the West Beach recreation reserve.

In recognition of Surf Live Saving South Australia's important community service role, Adelaide Shores has offered a mutually beneficial lease that includes a sponsorship component to reinforce both organisations values of active lifestyles and social interaction. Surf Central will be a modern and visually appealing new building designed to minimise environmental impact in accordance with the environmental principles of the government, Surf Life Saving South Australia and Adelaide Shores. Total construction costs are estimated at $3.6 million. The $1.1 million in government funding will be used to construct the operation centre. The remainder of the funds will be obtained through the sale of the existing facility at Torrensville, from existing Surf Life Saving SA reserves and a loan.

Surf Central will be complementary to existing facilities within the Barcoo Road precinct, including the South Australian Sea Rescue Squadron, and it will create opportunities for Adelaide Shores accommodation guests from Adelaide and regional areas to develop water safety skills and enjoy the coast in a safe environment. I commend the motion to the council.

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

PIKE RIVER CONSERVATION PARK

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:45): I move:

That this council requests His Excellency the Governor to make a proclamation under section 30(2) of the National Parks and Wildlife Act 1972 excluding allotment 10 of Deposited Plan 72034, Hundred of Paringa, County of Alfred, from the Pike River Conservation Park.

This is a simple matter, which requires a resolution of both houses of parliament under the National Parks and Wildlife Act 1972.

Pike River Conservation Park is 226 hectares in size and is located four kilometres south-east of Renmark adjacent to the township of Paringa. The park was constituted in 1979 to protect flood plain environments. The motion before the council seeks to remove a small allotment of land from the Pike River Conservation Park as it contains a privately tenanted residence, and this is considered inconsistent with the core operations of the park.

Following parliament's consideration of the excision of this small allotment of land the government will add an additional 62.52 hectares of land to the Pike River Conservation Park. The land to be added to the park represents the features of a known significant wetland ecosystem, and including it in the Pike River Conservation Park will enable remnant vegetation to be protected by controlling weed invasion, introduced animals and unrestricted recreational use. The proposed addition contains river red gum forests, blackbox woodland, chenopod shrubland and native grassland.

The land addition is scheduled to occur by the end of 2009 following parliament's consideration of the excision of land from the park. This addition will contribute to the 225,000 hectares of land added to our park system since 2002. This government has also added 24 new parks, reserves and wilderness protection areas to the state's protected areas system, which includes 950,000 hectares of land given a higher level of protection under the Wilderness Protection Act. This is more than 13 times the area covered by wilderness protection areas in 2002 when the Rann Labor government came to office, when only 70,000 hectares were afforded such high protection. These are important additions, and they play an integral role in our parks system, strengthening habitat for our state's flora and fauna. I commend the motion to the council.

The Hon. J.M.A. LENSINK (15:48): The opposition supports this motion, which is procedural to enable a lot on which a house is situated to be excluded from a new part of the Pike River Conservation Park, which was 228 hectares and which, with the addition of the Mundic Native Forest Reserve of some 68 hectares, is to become part of the park.

The area has important conservation and protection values and will assist with the Nature Links program, which provides important habitat for our native species. I understand that such a procedure has not been necessary since the land swap within the Gammon Ranges, and that native title and all other such approvals have been obtained. I commend the motion to the council.

Motion carried.

LOCAL GOVERNMENT (ACCOUNTABILITY FRAMEWORK) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 September 2009. Page 3162.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:50): I rise on behalf of the opposition to speak to this bill. This measure was introduced by the minister back in September this year and has been sitting on the *Notice Paper* to allow the Local Government Association to consult with its member councils. While we are happy to support the second reading of this bill, I will outline a number of concerns that have been raised with the opposition. The LGA is having a briefing with the minister's representatives this afternoon. There are still a few outstanding issues that need to be resolved and, if they are not resolved between the government and the LGA, I will be moving some amendments.

In December 2008 a proposals paper 'Reforms to improve the accountability framework for local government in South Australia' was distributed for consultation. This paper outlined proposals to amend the legislative framework for internal and external review of council administration and financial management. This bill flows from that paper.

Increased community concerns are being raised around the operations and decisions of a number of councils. There were issues regarding the City of Burnside, the ministerial inquiry or investigation into the District Council of Yorke Peninsula, the issues raised today in question time in relation to the City of Charles Sturt, the Campbelltown City Council and the District Council of Robe–to name just a few. I suspect that the issues regarding the City of Charles Sturt will dominate question time in this place for the next couple of weeks.

Clearly, there has been significant community interest in the way that some councils operate and particularly where perhaps they have not consulted properly. In the case of the City of Charles Sturt, the Hon. David Winderlich has described it as perhaps an overtly integrated subsidiary of the Australian Labor Party—not that being a member of a political party in itself is a reason for raising concern but, clearly, there are some issues around the City of Charles Sturt which I have raised in this place over a number of years.

There is an expectation in the community that councils will operate in a very open and transparent manner and provide good governance and maintain high standards in all aspects of their operations including service delivery, management and accountability. This bill goes some way, after all the consultation, to addressing some of the concerns that have been highlighted throughout that process.

We have all been members of local communities and our three levels of government have served this country particularly well but, from time to time, all levels of government need to have a review of their operations and functions to make sure that their decisions are accountable, that the right framework is in place for councils to operate and that there is some transparency in relation to those decisions.

I will briefly go through a number of clauses that have been outlined in the consultation we have had. The LGA has contacted the opposition, and the first clause that it raises some concern with is clause 4, relating to the amendment of section 4. The LGA opposes this clause, which it says would have a negative impact on rating income by extending the 75 per cent mandatory rebate under section 161 to all registered community housing associations. Councils with a higher proportion of economically disadvantaged ratepayers claim they would be affected. The Onkaparinga, Holdfast Bay, Salisbury, Tea Tree Gully, Adelaide and Port Adelaide councils estimate the cost to their rate revenue to be in excess of $1 million per annum. I indicate that, while we are sympathetic to a number of the LGA's concerns, we will be supporting the bill and the clause as it stands, rather than the LGA's position.

Clauses 5, 17 and 18 are amendments to various sections of the act. In particular, clause 5 is an amendment of section 8—'Principles to be observed by a council'. The LGA supports and seeks a definition of 'good public administration'. The minister might like to put on the record the definition of 'good public administration'.

Clause 8 amends section 48—'Prudential requirements for certain activities'—by inserting subsection (aa1), which provides that a council must develop and maintain prudential management policies, practices and procedures for the assessment of projects to ensure that the council maintains certain specified standards.

The bill also extends the basis on which the council must obtain and consider a report that addresses certain prudential issues to include where the council considers that it is necessary or appropriate. Further provisions are included that state that the report must not be prepared by a person who is employed by the council or has an interest in the relevant projects.

Our understanding from the consultation is that the Local Government Association supports the intent of this clause but seeks to be included in the role of developing model documentation for ministerial approval. The LGA has received legal advice that current exemptions from requiring the preparation of prudential reports under section 48(3) do not extend to community waste water management scheme projects, such as the CWMS.

The LGA believes that this is an unintended consequence of the drafting and asks whether it should be rectified by the specific inclusion of community waste water management scheme projects in the listed exemptions. We would like a response from the minister about allowing the LGA to be involved in preparing that model documentation.

Clause 17 amends section 132. Again, this clause talks about the definition in relation to access to documents. The LGA and the opposition would like to know the minister's definition of a 'reasonable time'. Clearly, 'a reasonable time' is a little ambiguous; it could be very much up to the interpretation of the minister of the day. So, we would like to know what the minister defines as a reasonable time. In clause 18, which amends section 132A, the definition of 'good public administration' is once again sought, just for clarification.

Clause 22 amends section 155—'Service rates and service charges'. This is one of the LGA's greatest concerns. The LGA thinks this clause has been poorly drafted and that it is defective, confusing and clearly reactive and overly restrictive and would like it to be deleted. I am not sure whether the opposition will be moving to delete it, but an amendment is proposed to this section to provide that it refer specifically to waste collection services.

This results from the minister's concerns about the District Council of Yorke Peninsula's waste collection charges in that the same charges apply to residents whose bins or rubbish is collected from their property as opposed to rural residents who take their rubbish to a central depot yet are charged the same rate, which is inherently unfair.

The Local Government Association is dissatisfied that the minister has decided to introduce this section into the bill without consultation as, reportedly, after 12 months of operation, the vast majority of residents are happy with the service. We would like further clarification from the minister about how that would work and whether there could be some sliding scale that might more appropriately deal with the issue. So, if you receive the door-to-door service then, sure, I think most of us would expect to pay for it.

Often what rural residents do, Mr Acting President, because I suspect that you have rarely been out in the country to see this, is they congregate their waste bins in groups. I recall a private operator doing some waste collection down the back road from my property. He had an arrangement where seven or eight farmers, I think, brought their bins to that particular site on a

particular day of the week and they were collected. He was a private operator who had an arrangement with them per bin. You will also get some people who may be levied and rated who would not use the system at all, but nonetheless would possibly still pay a small rate to make sure that the community had that benefit.

I recall in my own community we had the Wolseley RSL and recreation and sporting club, which was a community club based around the Wolseley area. We had a community oval, some tennis courts, a playground, public toilets and a watering scheme that provided reticulated water to some of the residents of Wolseley. To develop that the community club took out a significant loan at the time, I think it was $60,000 or $70,000, and to fund that a special rate was struck by council over that end of the district, so that everybody in the community paid.

It was a certain rate in the dollar, so the bigger land owners would have paid more than the small home owner in the little township of Wolseley, but it seemed a very fair and equitable way to be able to get a guaranteed income stream—it was a fraction of a cent in the dollar—for the community club, which seemed to make a lot of sense. Invariably, in country communities like that you would always see the same people raising the money, who are always at the working bees, cutting the sandwiches, catering for the weddings, doing all the work, and yet the whole community benefited from it. As the volunteers in the community were getting older it was seen as a very sensible way that everybody participated in that particular way of funding that project.

I would be interested to get the minister's response to make sure that any legislative change would not impact on that type of special rate struck by a council to provide a service to a particular community. We will be looking at some amendments if the LGA does not get a satisfactory response from the minister.

I also note that the LGA supports a number of the amendments, but in particular clause 36, the amendment of section 270, which is 'Procedures for review of decisions and requests for services.' The LGA supports this but requests a role in developing the model documentation with the minister. Again, I would like a response from the minister that she is prepared to embrace what the LGA is asking for, that is, some extra consultation in developing these particular bits of model documentation.

We also have some questions relating to investigations and clause 38, which is 'Insertion of sections 271A and 271B.' The LGA seeks amendments to ensure the reasons for the minister requiring the information from council are provided and that an investigation is not conducted by the Ombudsman and the minister at the same time. The opposition's position is that, if the Ombudsman is conducting an investigation, it does not see any reason why the minister, if he or she feels that way inclined at the time, should not conduct an investigation if he or she sees fit to do so.

Clause 39 is an amendment to section 272, 'Investigation of a council'. The LGA seeks amendments to section 272(6)(a) and clause 39(5) to require the minister to advise and consult with the council following the investigator seeking to broaden an investigation before agreeing to proceed. The LGA also seeks a definition of the word 'person' in section 272.

The opposition supports the LGA's position in relation to this. We have seen it with the Burnside council, where Mr Ken MacPherson is undertaking the investigation and where, if he feels it is appropriate, he will ask to broaden the investigation. The opposition believes that a council under investigation should be informed by the minister of any intention to broaden the investigation. We think that is a proper and reasonable requirement and, if the government does not address that matter, I indicate that we will move an amendment.

We support the amendment to the section involving action to be taken on a report. The LGA seeks amendments to ensure that councils have the right to provide reasons for not implementing the recommendation from the Ombudsman before the minister takes any action. We also support the amendment to section 274, relating to the investigation of a subsidiary, except for subsection (7a), to which the LGA seeks an amendment to require the minister to advise and consult with the subsidiary and consistent councils following advice from the investigator to broaden an investigation before agreeing to proceed. We support the LGA's position to advise and consult prior to that decision being made. I am sure that the minister is aware of that and that her advisers would have been informed of that by the LGA.

We are concerned about clause 45, involving an application to the Crown. Subsection (155)(2a) provides the power for regulations to be made removing the right of councils to apply service rates and charges in prescribed circumstances. Land such as national parks or unalienated

land are expected to be exempted from levied service charges. The LGA supports the clause; but it seeks to be consulted regarding the proposed exemptions. We indicate that if the LGA is not happy with the exemptions we will consider moving some amendments.

The LGA supports clause 46, involving the amendment to schedule 2—provisions applicable to subsidiaries—but again seeks clarification on the process for applications for exemption. I will ask the minister to provide an answer in relation to that matter.

There is one last item that we have some concerns about. The LGA seeks an amendment to the bill enabling documents relating to a matter covered by a declared interest to be withheld from a council member with a conflict of interest, and it does so for their protection and that of the council concerned. This proposed amendment addresses identified deficiencies in the act in terms of requiring a council CEO to provide all members of council with a copy of council reports and related documents despite these documents directly relating to a matter in which a member may have previously declared an interest.

We would again like some clarification from the minister about exactly how that would work. We would be prepared to draft an amendment. It makes it a little unworkable if somebody, who has declared an interest and leaves the meeting and does not participate, at the next meeting is then provided with all the documents relating to the interest they have declared and to the same conflict that existed.

I will not prolong the debate any longer; I know that we have a number of things to consider. The government has agreed not to proceed beyond my second reading contribution. The Hon. David Winderlich has a contribution to make. I am certain that we will have a response from the LGA soon as to whether common sense has prevailed and some middle ground has been found. If not, we will be moving some amendments. With those few words, on behalf of the opposition, I support the second reading of the bill and look forward to the committee stage.

Debate adjourned on motion of Hon. Carmel Zollo.

FAIR WORK (COMMONWEALTH POWERS) BILL

Adjourned debate on second reading.

(Continued from 27 October 2009. Page 3664.)

The Hon. J.A. DARLEY (16:10): I rise to speak briefly on the Fair Work (Commonwealth Powers) Bill and the Statutes Amendment (National Industrial Relations System) Bill. This package of bills is intended to facilitate South Australia's participation in a national system of workplace relations. It forms part of a wider package of bills currently being addressed by the federal parliament in terms of accepting the referral of the participating states and establishing a national system of workplace relations.

There is some dispute about the precise number, but at present approximately 70 to 90 per cent of South Australia's private sector falls under the commonwealth industrial relations system. The remaining 10 to 30 per cent of unincorporated employers and employees remain in the South Australian industrial relations system. The referral of powers to the commonwealth will result in all private sector employers and employees becoming part of a national industrial relations system.

The LGA and the public sector have been precluded from the scope of the referral. As noted by the Minister for Industrial Relations, a national system is intended to alleviate complex jurisdictional questions about which system of industrial relations businesses are operating in and also to provide uniformity and certainty for all employers and employees in regard to their rights and responsibilities.

I am advised that Tasmania and Queensland have already passed legislation in line with South Australia's referral. Victoria is currently considering a new referral bill in line with South Australia's referral, which will effectively result in a re-referral, and Western Australia has decided not to refer its powers but, instead, embark on its own harmonisation approach. More recently, I have been advised that New South Wales has indicated its support for the referral, as well.

As I already mentioned, a national system that covers some 70 to 90 per cent of South Australia's private sector already exists, so we are effectively talking about the remaining 10 to 30 per cent. As I understand it, a large majority of that remaining 10 to 30 per cent is made up of small businesses, and my primary concern relates to any negative impact referral may have on those small businesses in the long term, particularly in regard to the award modernisation process.

Whilst this may be a separate issue to that we are dealing with today, there is an obvious crossover of the two, given that the referral will ultimately result in the remaining private sector falling within the ambit of the award modernisation process. I acknowledge that there will be a one year transitional period and ongoing transitional arrangements for the remaining private sector. However, as I understand it, not a lot of detail is available at the moment regarding all these transitional arrangements, so the full impact of the award modernisation process is still not known.

The minister's office provided me with a summary of the results of a broad comparison between the existing South Australian industrial awards and the draft national system modern awards undertaken by SafeWork SA. These results demonstrate that, in general terms, the South Australian industrial award wage rates and associated loadings are higher than the modern awards, especially when considering ordinary hourly rates and weekend penalty rates.

After allowing for the fact that many state awards have a 20 per cent loading for casuals, whereas the modern awards all will have a 25 per cent loading, the comparison also shows that there are some modern awards in which penalty rates for public holidays and/or weekend work are higher than the South Australian awards.

Overall, I am advised that, in terms of the areas analysed, the comparison demonstrates that modern awards will be broadly compatible with the equivalent South Australian industrial awards. While those awards appear to be useful, they are by no means exhaustive, and they certainly do not take into account all the awards. This becomes evident when you consider the Horticultural Award, which is still being finalised and which has been the subject of great concern in the horticulture industry.

Concerns have been raised with me in regard to this specific issue, and I note that these same concerns have also been raised with my colleague Nick Xenophon at the federal level of parliament. The South Australian horticulture industry has expressed particular concern about the rushed and impractical nature of these changes, particularly given the flexibility required within that industry in terms of working hours and itinerant workers.

Whilst I agree in principle with the idea of one system for all Australians, particularly where this leads to less bureaucratic red tape and greater productivity and efficiency, I would be reluctant to support a move that could negatively affect South Australia's small businesses in the long term. Having said that, I note that Nick Xenophon is working with some of these groups at a federal level with a view to achieving a more viable outcome. As I understand it, he is advocating for a six-month extension of time with respect to the implementation of the horticulture modern award in order to negotiate its provisions further and alleviate the concern surrounding it prior to the remaining South Australian private sector falling within the scope of the national system.

My second concern relates to the exclusion of the public sector and the LGA from the referral. I see no reason why the public sector should be treated any differently from the private sector and distinguishing between the two in this respect. If it is good enough for the private sector to be harmonised at the national level, it should also be good enough for the public sector. I am sure that the minister will not mind me saying that, during a recent briefing, he also acknowledged this as a legitimate concern which will probably need to be addressed in the future. I would like to have seen this issue addressed now rather than later. Again, I am hopeful that the minister will consider this issue further after the new arrangements have been implemented and the government undertakes any further review of state industrial relations legislation.

My last concern relates to the overall details of the scheme and the fact that so many elements are still being finalised, even at the federal level. Legislation as significant as this should have been dealt with in a much more judicious and considered manner. Nevertheless, I am particularly mindful of the need for this legislation to be passed if the national system is to proceed as proposed. I am satisfied that the concerns I have will be able to be addressed at the federal level. For that reason, I will be supporting the passage of the bill.

The Hon. J.S.L. DAWKINS: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

The Hon. A. BRESSINGTON (16:18): I rise briefly to indicate that I will be supporting this bill. I do not do so lightly, but I recognise that the bill will ultimately better position South Australia to have input into the industrial relations of all private sector employers and employees as opposed to the minority which we presently control.

I accept that the national system of industrial relations will provide businesses with less regulatory duplication and will reduce the infamous red tape and that, ultimately, it will be simpler to comply and administer. Additionally, those businesses and their employees on the fringes of what are presently considered constitutional corporations will benefit in knowing precisely which system they operate under and what their rights and obligations are.

I am satisfied that the structure of the reference—particularly the ability of South Australia to terminate the amendment reference—will ensure the state's active participation and ability to influence any future changes to the Fair Work Act in reliance upon the bill's reference. This is the point: this bill sits us back at the table that we were pushed away from by the High Court. This is significant and is enough to garner my support.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (16:20): I thank members of the council for their contributions to the debate on this historic bill. Members would now be aware of the importance of South Australia's participation in the national system from 1 January 2010 in the manner proposed in this bill. This bill will ensure that South Australia is in a direct position to influence the future industrial relations laws that will apply in our community. It will also ensure that appropriate and comprehensive education information and enforcement services will be provided for the national system in this state.

However, I take this opportunity to respond to a number of issues raised in this debate. The concept of having and retaining a competitive advantage in our industrial relations in this state is a good one, which would have the support of this whole chamber. However, given the small and declining coverage of our state system, the point where that competitive advantage can be supplied by the legal framework in which it operates is long gone; that is, it must be recognised that as much as 80 to 90 per cent of private sector employees and their employers are already covered by the national system.

We have been provided with an overview of the constitutional history of industrial relations since 1901 as part of this debate. However, the key date in the context of these bills is 2006. It was in 2006 that the Howard government used the corporation powers in the Constitution to enact the WorkChoices legislation. A number of states, including South Australia, challenged this legislation in the High Court. They argued that the corporation's power did not extend to the regulation of the relations between a constitutional corporation and its workforce and that its scope must be limited to prevent it conflicting with the industrial arbitration powers and the Constitution. South Australia also presented arguments based on the traditional division of industrial relation law-making powers between the states and the commonwealth. The High Court rejected the state's arguments and upheld the expanded use of the corporation's power.

Whatever may have been the intention of those who established the federation in 1901, in 2006 the then commonwealth government successfully used the corporation powers to expand its jurisdiction to cover the vast majority of South Australian employers and employees in the private sector. The result of this takeover is that as little as 10 to 20 per cent of employers and employees remain in a state system. The capacity to market a different industrial relations system to the business community, based upon our legal framework, is therefore already fundamentally compromised by the use and impact of the corporation powers by the commonwealth, and this cannot be undone.

It is also very important to remember that the use of the corporation power in the industrial relations context does not discriminate between small and big business. If a business is a proprietary company it is already in the national industrial relations system, irrespective of whether it employs one or 100 employees. Indeed, a significant proportion of small business in South Australia is already part of the commonwealth system and it is not possible to have them excluded, given the construction of the Constitution.

In terms of our competitive advantage, South Australia has had and will retain a significant competitive advantage in industrial relations. We have an outstanding record of industrial harmony and cooperation between business and workers on major projects and in the workplace generally. Any suggestion that the retention of marginally different laws for a minority of the community, who would not be involved in the sort of competitive bidding for projects referred to by the opposition in any event, is naive and underestimates the nature of the South Australian community.

What we can do is maximise our influence over the national system by participating in a manner that gives us a significant role in future change and a break on the power of the

commonwealth to make regressive changes or to unilaterally expand the system. This is achieved by a combination of the intergovernmental agreement, the particular nature of our referral and our active involvement in local service delivery for the national system.

The Hon. Mr Lawson raised a number of questions regarding the intergovernmental agreement or IGA. The IGA was signed by South Australia, Tasmania, Victoria, the commonwealth, the ACT and the Northern Territory on or about 25 September 2009. Queensland indicated that it intended to subsequently sign the intergovernmental agreement and I am advised that its referral bill, based almost entirely on the approach outlined in this bill, was passed in the Queensland parliament last week. I also add at this point that the Tasmanian bill to refer powers was passed some weeks ago, and in all likelihood the New South Wales government will also participate.

The honourable member also suggested that we should become a mirroring or cooperating state. However, this would produce a somewhat curious result for someone urging a states' rights agenda. Three levels of participation in the national system are recognised in the IGA: referring states (those that refer power to the commonwealth and the territories), mirroring jurisdictions (states that enact mirror legislation substantially consistent with the Fair Work Act over time) and cooperating jurisdictions (states that commit to forms of cooperation and harmonisation over time but do not enact referral of power or mirror legislation).

Jurisdictions will have different rights in the system, depending on their level of participation. For example, the commonwealth will genuinely consult referring states about proposed amendments in accordance with a procedure set out in the IGA. In addition, only referring states have a right to vote on proposed changes to the national laws. Further, the commonwealth is obliged by the IGA to give genuine consideration to any proposals of referring states and to provide written reasons for its response to such proposals.

Referring states will also be able to formally raise issues relating to service delivery within the national system. However, the commonwealth is only obliged to notify mirroring jurisdictions about amendments and will merely report amendments to cooperating jurisdictions. If we followed the Hon. Mr Lawson's approach, we would lose the capacity to have any influence on future policy frameworks and on any future changes to the national system. If we choose to be a cooperating state, future changes to the national system, which would apply to the vast majority of South Australian employers and employees irrespective of any referral, would be determined by the commonwealth and the referring states—Queensland, Victoria, Tasmania and possibly New South Wales—with the South Australian government merely being informed of the changes once they had been determined.

A referral bill contains limitations upon the amendments the commonwealth can make using our referral. The capacity to terminate the amendment reference in certain circumstances, while retaining the laws and arrangements that apply at that time, represents a significant factor that will help to ensure that the commonwealth continues to genuinely involve South Australia in the development and administration of the national system while retaining a genuine national system. This balances the need for a genuine break on the commonwealth's powers with the need for legal certainty for parties or in the context of constitutional limitations. This approach is being considered and has been adopted by most other states, with the exception of Western Australia.

Some issues have been raised regarding the alleged impact of the commonwealth Fair Work Act 2009, in particular the alleged costs of the new modern awards. It should be recognised that these awards are still being finalised by the Australian Industrial Relations Commission, and most of the more recent changes to the request for that work, including the request to revisit the horticultural award, as issued by the Deputy Prime Minister (Hon. Julia Gillard MP), and the changes announced by the commission itself, have been undertaken to better recognise the circumstances of the employers in many industries.

Further, comprehensive transitional arrangements have been introduced that will operate for up to five years for those already in the national system. In that regard I note that questions were raised by the shadow minister in another place and referred to by the Hon. Mr Lawson in this chamber regarding the cost impact of modern awards upon a particular small retailer. First, as I have indicated already, the government does not accept the broad proposition about these additional costs. Secondly, the question that needs to be asked in this context is whether a shop is a constitutional corporation—in other words, a proprietary company. If it is a constitutional corporation is it already in the national system and not affected by this referral? This is the question that every employer currently needs to ask to work out which system they are in: state or federal.

With the referral they will no longer need to consider the issue or seek legal advice in order to understand their rights and obligations. If the shop is a partnership, trust or non-incorporated entity, and therefore in the state system, the question remains: should we be supporting the different industrial arrangements for businesses based solely on how they are legally established from time to time?

Even if that does not concern the honourable member, it is inconceivable that in the medium and longer terms different basic minimum standards can or should exist between businesses and employees working in the same locations based solely on how the business has been established from time to time. In any event, as I will outline shortly, the transition for South Australian employers will be facilitated in a number of ways. It should also be noted that the modern awards will apply to the 80 to 90 per cent of the private sector already in the system. It is also highly likely that when finalised these new standards would be applied under our state awards in the event that the referral of powers does not take place.

The Hon. Mr Lawson raised the issue of South Australian employers' incapacity to match Sydney rates of pay. Historically, national minimum standards have always been highly influential on this state, with federal awards operating in South Australia for more than the past 50 years. Accepted industry standards generally flow on to state-based awards, meaning that decisions by other state or federal tribunals have always had an impact on our state awards. Some examples include national awards such as the National Building and Construction Industry Award, the Vehicle Industry Repair Service and Retail Award, the Transport Workers Award and the Metal Industry Award, where national rates and conditions were directly reflected into state awards.

Another example of where national standards have flowed into the state system include parental leave, carers leave and the so-called termination, change and redundancy standards. This means that South Australia cannot effectively isolate itself from national standards, even if that were considered desirable. The differential in wages that has existed between Sydney, Melbourne and Adelaide, for example, will continue in the over award payments, as has always been the case.

I am also advised that it is intended that the commonwealth laws will provide an additional transitional arrangement to the parties being referred, including interim recognition of their existing state awards and agreements and the capacity, after 1 January 2010, to approach Fair Work Australia to further amend the proposed modern awards to recognise their particular circumstances. Within this context it should also be noted that state minimum award rates are currently higher than federal minimum rates in many areas and, whilst historically the rates have been more consistent, this fact, along with the 12 months additional transitional period, will ease the transition for both employers and employees in this state.

Further, as part of the service delivery agreement with the commonwealth, SafeWork SA officers will undertake transitional educational visits—10,000 over three years—specifically to inform employers of their responsibilities as they transition into the national system. The government expects that these will be particularly targeted at the small businesses that would be making that transition. It is also proposed that our state agencies—including the Industrial Relations Court and Commission, and SafeWork SA, including its regional network in particular—will be utilised as part of the national system in a manner that is cost effective to both jurisdictions.

Suggestions have been made that the national system's approach to unfair dismissal would impact negatively upon small business. On the contrary, from that perspective there are many advantages in the national system for employers, particularly for small businesses that will be referred, including the special unfair dismissal regime specifically designed to recognise the needs of small business. There are no special arrangements for small business in the state system, with all dismissed employees generally entitled to lodge an unfair dismissal claim. The exceptions are those who are on a probationary period that has been agreed with the employee before commencement, and which the commission considers is of a reasonable length. Generally, three months is considered reasonable.

The national system established special rules for small businesses of less than 15 employees currently full-time equivalents and, after 1 January 2011, 15 employees on a head count. Employees must have completed a 12 month qualifying period of service in the national system before they can lodge an unfair dismissal claim, and a dismissal will be deemed to be fair if the employer has complied with the Small Business Fair Dismissal Code. There is also a reduced period for a dismissed employee to apply: 14 days as opposed to 21 in the state system.

The Hon. Mr Lawson suggested that the South Australian Industrial Relations Commission was being retained merely to service the public sector and local government sector. However, this ignores the fact that the national industrial relations system would still rely upon continuing state law in many areas for the private sector, and this law requires the state tribunal to administer certain aspects. These laws will include occupational health, safety and welfare (including the resolution of bullying complaints), child employment, training and skills development, outworkers, and dispute resolution under the state industrial referral agreements legislation.

The Industrial Relations Commission will be run on a cost-efficient basis in partnership with the commonwealth; that is, the commonwealth will meet some of the costs of our continuing state commission by making a contribution to meet the salary costs of those members who will undertake some work for Fair Work Australia as dual appointees.

In terms of the retention of the public sector and local government in our state system, the government acknowledges that there are different views on the matter. What is clear is that this is consistent with the 'Forward with fairness' framework in which we have been operating, which emphasises one system for the private sector. Further, the nature of our referral will ensure jurisdictional certainty for all parties, a key policy objective for all parties that have expressed views on this matter.

Some speakers have suggested that this is about the government keeping a competitive advantage for itself; however, that ignores the fact that this approach has been strongly supported by the unions that represent the employees who are affected. The arrangements also make the most efficient use of those state agencies and institutions that must be retained to administer continuing state laws in any event.

Some members have mentioned that we should try to isolate larger businesses or areas from the non-government community services sector and refer them only to the commonwealth. It is simply not feasible to part-refer the private sector and/or the non-government community services sector, as this would simply create new questions of jurisdictional uncertainty and would involve South Australia being considered a non-referring state in terms of the intergovernmental agreement and other matters, with the consequential loss of any genuine influence and involvement in the national system.

Issues have been raised about what was said to be the transfer of TransAdelaide and the SA Water Corporation to the commonwealth system. Ideally, all of the public sector would have remained or returned to the state system. However, many government business enterprises are likely to be trading corporations and, therefore, may already fall within the commonwealth system of industrial relations.

The commonwealth has agreed with us that GBEs that are clearly established for a public purpose may be declared not to be part of the federal system. These declarations are contained in the provisions of the related statutes amendment bill. However, these GBEs that are clearly constitutional corporations and are operating within areas subject to nominated national competition policy areas (that is, rail, ports, water and electricity, for example) will by agreement between all jurisdictions remain in the federal system.

SA Water and TransAdelaide clearly meet these criteria and, therefore, are not included in the list of GBEs being declared not to be national system employers through this referral process. TransAdelaide and SA Water, in effect, already currently operate in the federal system of industrial relations and have had federal awards and agreements for many years. Further, in terms of the concerns raised by Mr Hood about the impact on the employees, I can advise that the unions representing the workers at these agencies have been consulted throughout this process and support remaining in the federal system.

In response to the Hon. Mr Hood's question regarding the status of this state's outworker legislation, I can confirm that the South Australian laws relating to outworkers are not affected by the referral and that this state was instrumental in ensuring that the capacity to regulate in this sector remained within the state jurisdiction. This is achieved by division 2 of the existing Fair Work Act 2009 and is reinforced by the referral bill which confirms that the power in relation to South Australia's outworkers laws is not being referred to the commonwealth.

Mr Hood also raised the issue of working conditions for taxi drivers. The government acknowledges the concerns raised by the honourable member and, as the council would be aware, a number of measures have already been initiated to lift the standards within the industry, including those applying to the drivers themselves. These have included the establishment of the Premier's

Taxi Council in 2002 and the increase in driver representation on that council in 2008, moves by the Taxi Council SA to establish a taxi driver welfare committee in 2008, and the work of the parliamentary select committee on the taxi industry.

Most importantly for present purposes, I am advised that taxi drivers are generally not considered to be employees for the purpose of the South Australian Fair Work Act 1994 or the Commonwealth Fair Work Act 2009 and, subsequently, are not affected by the referral. Section 4(1) of the state act excludes non-employment contracts that are made for taxi drivers from being deemed to be contracts of employment, and the commonwealth act applies only to contracts of employment. As a result, any proposal for regulation at a state level that might arise from the parliamentary select committee or otherwise would not be compromised by this referral.

It has been suggested that the consultation process for these bills was limited. On the contrary, the Industrial Relations Advisory Committee (which includes most major industry and union groups) has been extensively consulted through the almost two years leading to that point. Many other key groups have also been directly consulted and the issues canvassed by the bill have been in the public arena now for many months. This has included detailed consultation on the detail of the national laws as they were being developed and the various policy elements that have ultimately led to the bills presently before parliament.

Whilst it is true that at some times these groups were given confidential access to draft bills which, as you would expect, could not be distributed, almost all of the consultation afforded the opportunity for these groups to discuss the proposed decisions with their members and to bring back informed views. In fact, they were encouraged to do so and many have actively participated in the consultation process. Indeed, changes to the bills were made as a result of that consultation.

Further, and of significance, is that, since the government announced its intention in June this year and introduced the detailed legislation in September, there has not been any submission or correspondence to minister Caica or the relevant agencies suggesting that the referral not proceed as now proposed. To accept the referral of industrial relations powers to the private sector provided for in this bill I am also advised that the commonwealth minister introduced a bill to the commonwealth parliament on 21 October 2009. The commonwealth bill accepts our referral in the form that is now proposed to this council and makes technical, transitional and other necessary changes to the Fair Work Act 2009. These include changes to that act as sought by South Australia in order to ensure that the state's interests are fully represented within the national system.

In view of the urgency associated with the passage of this bill I do not intend to go over all the points raised during the debate but simply reiterate the importance of a national IR system for the private sector to the employers and employees of this state. Again, I thank members for their contribution and urge the council to support the bill.

Bill read a second time.

In committee.

Clause 1.

The Hon. R.D. LAWSON: Will the minister indicate when it is proposed that this bill will come into operation?

The Hon. P. HOLLOWAY: It is the government's intention to proclaim this bill to operate as soon possible (that is, as soon as it is passed) but, obviously, it will not have practical effect until the commonwealth legislation is enacted, and I believe that is due to come into effect on 1 January next year.

The Hon. R.D. LAWSON: I notice that the Fair Work Amendment (State Referrals and Other Measures) Bill, in the commonwealth parliament, was referred to a parliamentary committee, which tabled its report yesterday in the commonwealth parliament. In relation to this highly complex legislation, bearing in mind that the explanatory memorandum itself to the commonwealth legislation is some 70 pages, can the minister indicate to the committee what were the recommendations contained in the report of the parliamentary committee tabled yesterday in Canberra?

The Hon. P. HOLLOWAY: I am advised that there were minority and majority reports. I understand that the majority report supported the legislation as proposed. The minority report, which was essentially the opposition party, as I understand it, raised two concerns: first, that it gives too much power to the states as a result of the intergovernmental agreement and the

capacity to terminate the amendment reference whilst remaining a reference state; and, secondly, that the potential to terminate the amendment reference could easily lead to different minimum standards applying in the community.

I think one could perhaps make the comment that those statements by the federal opposition that this bill gives too much power to the states appears in direct opposition to the fears expressed by those members in this place that this legislation would, in fact, give away the states' powers. Obviously, the federal opposition felt that it was the reverse. So, I just note that fact.

In relation to the bit about the argument in the minority report that the potential to terminate the amendment reference could easily lead to different minimum standards, I point out that the likelihood of using an amendment reference termination is not simply a question of whim or political convenience. There are important checks and balances that would ensure that this power is exercised with care. I point out to the committee that they include the following. The intergovernmental agreement establishes a process where these issues will, in almost all cases, be resolved at an intergovernment level. The focus is upon whether a change to the commonwealth legislation that has been proposed represents a breach of the agreed fundamental principles of the national system, and these are set out in clause 4 of our bill. It is not simply a question as to whether the state and territory governments support the detail of the proposed change.

The decision to terminate the amendment reference is also one that would not be taken lightly. The Governor, who would act upon the advice of Executive Council, is required to declare that the amendment would breach the agreed national principles and that proclamation would be subject to potential judicial review should it, in the very unlikely event, ever be issued without sufficient foundation.

The termination of the amendment reference would also mean that it would again be necessary to classify businesses as being a national system, constitutional corporations or referred employers, and this very undesirable outcome would need to be considered by any government and weighed against the need to object to the changes before choosing that course of action.

The decision to terminate the reference would also require that the government of the day consult with the parliament. Not only is this required by clause 9(3) of the bill but it would be necessary to have parliament approve an amendment to the legislation to reactivate the amendment reference for the future or to make some other referral arrangements. As a result, the existence of the amendment termination provisions is likely to ensure that future governments work cooperatively to maintain the national system. The termination is a realistic option but would be contemplated only in extreme circumstances. In the event that a future government wanted to undermine the national system, it could and probably would withdraw the referral in its entirety.

The Hon. R.D. LAWSON: It was suggested in the minister's contribution that New South Wales, in all likelihood, will refer its powers under this scheme, notwithstanding the fact that prior announcements from New South Wales ministers suggested otherwise. Can the minister indicate to the committee what is the basis of his claim that in all likelihood that state will refer its powers?

The Hon. P. HOLLOWAY: I understand that the New South Wales government made a submission to the senate inquiry, which has only recently reported, as mentioned by the honourable member. My advice is that New South Wales has indicated that it is still working on the referral. I believe that the Senate submission made it clear that it was actively exploring the question of referral. So, while it clearly has not made a decision yet, it is the government's view, based on its indication to the Senate submission—and it was on that basis that I made those comments in my concluding remarks—that it is likely that New South Wales would refer.

The Hon. R.D. LAWSON: Does the minister agree that if New South Wales does not refer, as Western Australia has indicated that it will not be referring, it would perhaps have been better to wait until there is a commitment from the New South Wales government, not merely material submitted to a parliamentary committee, to verify that this will be truly a national system and that two of the economic powerhouses of the country will not be omitted from it?

The Hon. P. HOLLOWAY: I would suggest that if South Australia passes this legislation that would further encourage New South Wales. Certainly, its indication is that it is actively considering it, and we believe that the action of this parliament in passing this bill is more likely to bring about a national system than if we were not to pass it.

The Hon. R.D. LAWSON: During the minister's contribution earlier today, as well as the contribution from the Hon. John Darley, mention was made of the horticulture award. Can the

minister indicate to the committee what arrangements are proposed relating to horticulture workers?

The Hon. P. HOLLOWAY: I thank the honourable member for his question. My advice is that the national award—the modern award, if you like—has been finalised. The national award will apply to those already in the system. I understand that the Australian commission has invited further submissions on the draft of that national award and has announced transitional arrangements which would see a six month delay in the application of that award. There would be a further four and a half years of transition. I am also advised that those for whom the state award currently applies would effectively stay on that state award for at least a 12 month period before they would transition to the new national award.

The Hon. R.D. LAWSON: Can the minister indicate whether those transitional arrangements are the same in terms of the time—four and a half years and 12 months—as applied to the shop assistants?

The Hon. P. HOLLOWAY: My advice is that the Australian commission has handed down a model transition that will apply unless it is persuaded for some exceptional circumstances. So, it has handed down the model transition, and I believe that will apply basically to all the awards it has currently finalised.

The Hon. R.D. LAWSON: Can I clarify that the widely reported fact that the retail awards had particular transition arrangements because of the large number of retail workers who were employed in small unincorporated businesses is not true and that retail workers will enjoy the same transition provisions as apply to other awards?

The Hon. P. HOLLOWAY: My advice is that those retail workers would stay on their current award for 12 months and then they would revert to the national award, including its transitional arrangements.

The Hon. R.D. LAWSON: Minister, you mentioned that there are certain areas that would remain within the jurisdiction of the South Australian commission, as I understood your proposal, in relation to all South Australian employers, matters such as bullying and outworkers, and I think you mentioned a number of other areas.

The Hon. P. HOLLOWAY: Occupational health and safety, welfare, state industrial referral arrangements and others.

The Hon. R.D. LAWSON: Why is it that those matters should be the province of the South Australian commission when all other aspects of employment will be the province of the federal commission or fair work legislation?

The Hon. P. HOLLOWAY: Essentially, this is legislation is about removing uncertainty between the two systems. Clearly, as I indicated earlier, you do have the problem where certain businesses, depending on their construction, whether they are constitutional corporations or partnerships, etc., can be in the same industry in the same circumstances but possibly subject to either state or federal systems.

Clearly, there is a need to remove that uncertainty, but the federal laws do not purport to apply to matters such as occupational health and safety, welfare and all those other areas that I indicated, so they will remain under state law and they are not being referred. As I said, the commonwealth does not seek to take responsibility for such matters.

The Hon. R.D. LAWSON: Does that mean that an employee, all of whose terms of employment are governed by the federal system, will still go to the state system to make a complaint about workplace bullying and that Fair Work Australia will have no jurisdiction in relation to that?

The Hon. P. HOLLOWAY: My advice is that bullying is under the South Australian occupational health and safety act. However, it should be pointed out that, under the effective operation of the system, if this bill is carried there will be a joint service provision, so that SafeWork SA would be dealing with matters effectively under both acts.

Clause passed.

Remaining clauses (2 to 9), schedule and title passed.

Bill reported without amendment.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (17:05): I move:

That this bill be now read a third time.

The Hon. R.D. LAWSON (17:05): I think it is a sad day for South Australia when we are abandoning our capacity to have an industrial relations system that is tailored to the needs of the state. I think we have been used as a pawn in this particular issue. As I mentioned earlier, Western Australia announced that it will not be participating. The New South Wales government has not yet made any commitment to participate in the scheme. What the government is doing here is pushing us into passing this legislation in the hope that we will force New South Wales to also participate.

I recall some years ago that the Hon. John Della Bosca told me that New South Wales would never abandon its own industrial relations system; not over his dead body nor the dead bodies of many others, he said. I believe that is still the attitude of the New South Wales government. So, we are not going to have a national system at all.

It is a pity that we do not exercise our independence in the same way as the Western Australian government has done. Nobody can say, for example, that Western Australia is a backward state industrially or in any other way. What we are doing here is depriving South Australian enterprises of opportunities.

It may be true, as the minister said, that, presently, most South Australian businesses, certainly of any significant size, are already incorporated and already subject to commonwealth laws, but that is not to say that proprietary companies or other constitutional corporations will remain the preferred model for business enterprises.

At the moment, South Australian enterprises have an opportunity to choose a particular structure to suit their particular needs, and those needs may include industrial issues. That choice will be taken away from them, so we are removing an important choice that already exists. This legislation really is a deal made between large employers, large national employers, and large national unions. It happens to suit them.

The Labor states have fallen into line because they believe that they have fashioned a deal that will prevent a future non-Labor government federally from unwinding provisions or imposing provisions they do not like. They believe that they have built enough escape clauses into this, so they have fashioned a scheme they think is win-win for the interests of Labor.

However, this is just the old industrial relations club, as it is so often termed, which is the big end of town and big unions making arrangements that simply do not take account of the needs of small business. Small business is being crushed yet again.

When this bill was introduced, the minister in another place said, and I think the minister here repeated, that by participating we will ensure that South Australia has 'a significant and ongoing say in the industrial laws that will apply in our community'—a significant and ongoing say. We will be little old South Australia at a table at which larger states and the commonwealth are sitting. We will have virtually no say, unless we happen to be speaking in tune with others at the table.

By this device, South Australia is losing its capacity to have its own industrial relations system, yet we are only half undoing the system. For industrial and political reasons, the government has decided that the public sector will remain with the South Australian commission. We heard today the minister say that the South Australian commission, which would be virtually devoid of work, will be given these odds and sods issues of bullying outworkers, child employment and occupational health and safety.

Occupational health and safety is an important issue, of course, but that is a function of a particular branch of government, not the Industrial Relations Commission itself. So, it is a make-work scheme to ensure that those who are presently in the state commission will continue in their comfortable jobs, notwithstanding the fact that there will be very little for them to do.

The minister said that there had been extensive consultation in relation to this legislation. That is not as I am advised. True it is that there is an advisory committee, which, incidentally, does not include much say from small business or unincorporated business—not from farmers out in the bush, not from country employers, etc.

However, the advisory committee was not truly advisory. It received information from the minister and the minister's office about the way in which matters were going. Members of the

advisory committee were not able to take away copies of bills or consult with all their wider membership. When the minister says that the bill has been in the public arena for many months, it is simply not the case.

As I mentioned earlier, the commonwealth report on this was tabled in federal parliament only yesterday. The explanatory memorandum relating to the legislation in the federal parliament was introduced only a relatively short time ago, and it has not yet fully passed. The bill was first introduced into this parliament only on 9 September. So, we reject the notion that there has been wide consultation on the bill; in fact, it has been a secretive process to stitch up the deal to which I referred.

As I indicated at the outset, we know where the numbers are, and some members have expressed opposition. I am delighted that Family First has also expressed opposition to this bill. It has taken a principled stance on the matter—the stance that the Liberal Party has taken. As I mentioned earlier, it is a sad day for South Australia, especially for small business in this state.

The Hon. B.V. FINNIGAN (17:13): I was not intending to make a contribution on the third reading, but the sheer hypocrisy and audacity of members of the opposition compel a response. The entire reason we have the bills before us relating to referral of powers to the commonwealth in relation to IR can be summed up in one word: WorkChoices.

The federal Liberal government, under John Howard, effectively nullified and castrated the state industrial relations system by using the corporations power to legislate for a national IR system, which was (regrettably, in my view) upheld by the High Court.

Where was the Hon. Mr Lawson—the great state's rightist—when the Howard government was trashing the state industrial relations system? Where was the Hon. Mr Lawson when he used the corporations power to decide that the federal government could legislate for IR for all corporations, which is the vast majority of employees?

The Hon. R.D. Lawson interjecting:

The PRESIDENT: Order! I remind the Hon. Mr Lawson that he was listened to in silence.

The Hon. B.V. FINNIGAN: We see yet again that the Liberal opposition has surrendered any claim to economic credibility and any claim to being an alternative government of this state. We see yet again the complete hypocrisy of the Liberals, with their federal colleagues saying one thing and the state Liberals saying another.

The Senate committee inquiry into the relevant federal bill said that the problem with it is that it gives too much power to the states. Yet here is the Hon. Mr Lawson saying, 'This is the end of South Australia as we know it. It's taking away the state's power—this terrible, draconian plot by the Labor government, the unions and big business, getting into bed together and ruining the constitutional power of South Australia.' Yet, his colleagues in Canberra are saying that the problem with this whole system is that it gives too much power to the states. Why are they saying that? Because they are the ones who brought in this system. The Liberal Party effectively ended state industrial relations systems for the vast majority of employers in the private sector when it brought in WorkChoices. These bills do not get rid of the state industrial relations system, and there will still be a large number of state and local employees who will be covered by the state system, and that will ensure that the commission has more than enough work to do.

However, the ruin of the state industrial relations system for private sector employees was brought about by the Liberal Party and, here it is, claiming that it is all some conspiracy between the ACTU or big unions and big employers. The Hon. Mr Lawson referred to the industrial relations club. Well, we know the industrial relations club that came up with WorkChoices—it was the Business Council, it was ACCI, it was some senior private law firms who actually wrote the legislation. It is one of the only times that legislation has been written by private sector law firms to suit the interests of private sector big business. So, we know who the club was that drafted that legislation. We know whose interest that was there to serve. It is because of that WorkChoices legislation and the High Court decision that upheld it that we have before us now the legislation—

Members interjecting:

The PRESIDENT: Order!

The Hon. B.V. FINNIGAN: —which refers powers to the commonwealth in relation to industrial relations.

Let us just recognise the hypocrisy and the absurd position—the position with no credibility or substance—that the Liberal opposition has taken. Suddenly, it is the great states' righter. Members opposite were as silent as the grave when John Howard was trashing the Constitution, taking away the powers of the states, using the corporation's power to completely nullify the role that the state industrial relations systems had in the corporate sector. They were as silent as the grave then but, now, suddenly, they are the great defenders of the states. They are the great states' righters. We all know that that is a complete furphy. It is hypocrisy. It is an absolute charade, and it should be recognised for what it is.

The council divided on the third reading:

AYES (10)

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

NOES (9)

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

PAIRS (2)

Winderlich, D.N.	Ridgway, D.W.

Majority of 1 for the ayes.

Third reading thus carried.

Bill passed.

STATUTES AMENDMENT (NATIONAL INDUSTRIAL RELATIONS SYSTEM) BILL

Adjourned debate on second reading.

(Continued from 27 October 2009. Page 3665.)

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (17:23): I will be brief in my summing up of this bill as many of the issues raised were canvassed in my response to the Fair Work (Commonwealth Powers) Bill 2009, the referral bill, that the council has just passed. I wish to record my thanks to members for their contribution to the debate and emphasise the necessity for parliament to expeditiously consider this important bill.

The Hon. Mr Lawson raised issues regarding the overall number of amendments proposed by this bill. It should be appreciated that most of the amendments are consequential upon changes that have already been made in the commonwealth laws; that is, given the new institutions and instruments created by the Fair Work Act 2009, it is appropriate that references in our state laws be updated to reflect that legal reality. They do not, however, change the state law in any way and are not a consequence of the referral of powers.

The other changes in the bill are, however, clearly a consequence of the referral bill, including the fact that the public sector and local government are to be retained within a continuing state system, in particular, to confirm the exclusion of those sectors from the national system and to make transitional arrangements for those parties returning to the state system. I outlined the justification for that approach during debate on the earlier referral bill and as part of my initial contribution to this debate.

It should be appreciated that all the consequential changes and transitional arrangements that have been included in this bill have been subject to intensive consultation with key stakeholders and, in particular, representatives of the employers and workers in the sectors

concerned. Importantly, these proposals have strong and unqualified support. In conclusion, I urge the council to expeditiously pass the bill.

Bill read a second time.

In committee.

Clause 1.

The Hon. R.D. LAWSON: We regard this as complementary to the previous bill and, whilst we do not support the bill, we will not divide on its passage.

Clause passed.

Remaining clauses (2 to 47), schedule and title passed.

Bill reported without amendment.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (17:27): I move:

That this bill be now read a third time.

The Hon. R.D. LAWSON (17:27): As I indicated a moment ago in committee, although the Liberal Party does not support the passage of this bill, we regard it as a complementary piece of legislation to the bill passed earlier today. It is appropriate for me to indicate in response to the rather ill-tempered contribution by the Hon. Mr Finnigan that for him to accuse the Liberal Party of hypocrisy in relation to industrial relations is preposterous. It is, in fact, and has been for years the policy of the federal Labor Party to have a national unified scheme. That has been its objective for years. When John Howard, in my view ill-advisedly—

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): I remind the honourable member, as I did when I interjected from the floor, that John Howard's title is the Hon. John Howard, and any former prime minister should be referred to in that way.

The Hon. R.D. LAWSON: Thank you for your correction, Mr Acting President. The hypocrisy is really on the side of the Australian Labor Party, which complained bitterly about the terms of the (as I regard it) ill-named WorkChoices legislation, but when it came to power it did not seek to repeal it but sought to exploit it, and exploit it it has. This legislation that has been passed today is the final chapter in that exploitation. As I indicated before, South Australia ultimately will live to regret this legislation.

Bill read a third time and passed.

STATUTES AMENDMENT (CHILDREN'S PROTECTION) BILL

Adjourned debate on second reading.

(Continued from 29 October 2009. Page 3853.)

The Hon. R.P. WORTLEY (17:30): I rise today to address the Statutes Amendment (Children's Protection) Bill. This bill represents part of the government's response to a particular recommendation—recommendation 47—within the report of the Commission of Inquiry into Children in State Care.

I do not propose to revisit the stories that were told to that commission of inquiry, stories that are well and truly scorched into our memories. I personally remain—as I am certain we all remain—profoundly affected by those experiences of physical and sexual abuse and emotional and psychological deprivation that were finally revealed by those who had suffered them as children and young people, and who continue to suffer from them today. The government has acted to ensure that in future some of those terrible stories will no longer need to be told. Recommendation 47 reads:

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 bill before us amends two pieces of legislation, the Summary Procedure Act 1921 and the Child Protection Act 1993, and it makes consequential amendments to a further statute, the Criminal Law (Sentencing) Act 1988. These amendments will give effect to measures that will, first, prevent and, secondly, penalise the exploitation of children who have run away from home or from state care.

Unfortunately, a frightening number of children and young people in South Australia have run away from their families or from care, and the reasons for their running must be almost as many in number. Even more importantly, there are in our community predators who would abuse and exploit these young ones for their own sinister ends. Among these are people who will offer money, a home, drugs or alcohol, or simply a meal for the purposes of obtaining in return unlawful sexual activity or the carrying out of a criminal act or acts.

I put this in polite terms, but basically I am talking about the provision of sexual services or criminal acts by young, vulnerable and often damaged people in a situation of complete power imbalance and conscious criminality, and such is the degradation of these children that sometimes they are unwilling to incriminate those who have hurt them. Often the exploiting adult is the rare individual who has shown a twisted form of 'kindness', or who has provided the child with the bare necessities of life for their own nefarious reasons. Currently, and unless this bill is passed, if the child is resistant to police or other professional assistance the predator may avoid sanction.

This bill makes the targeting of the exploiting adult the main event; the cooperation of the victim will not be required, nor will his or her evidence. The bill achieves this by introducing a court-issued child protection order that will restrain an adult from contact with a child (defined as being under 17 years of age) if the person is not the child's guardian as defined, and if the child resides with that person away from the guardian's home. The court must be satisfied that such residence would render the child open to sexual abuse or drug-trafficking, and must be of the view that the order is appropriate to the circumstances. The court may make such an order if:

- the adult or other person residing at or frequenting the premises where the adult and child live, or have lived, has been convicted of a prescribed offence in the past 10 years; or
- the adult or other person residing at or frequenting the premises where the adult and the child live, or have lived, has ever been the subject of a child protection restraining order; or
- where the court is satisfied that the child is at risk of sexual abuse or is being exposed to drug-related conduct that is an offence under part 5 of the Controlled Substances Act 1985; or
- where the court is satisfied, considering other related factors and the appropriateness of the order, that the child's residence or contact with the adult puts that child at risk of engagement in or exposure to conduct that is an offence under part 5 of the Controlled Substances Act 1984. This may include the supply of money by the adult so that the child may buy drugs, or the adult involvement of the child in drug consumption, manufacture or trade—even if that adult has not been convicted of a prescribed offence.

The ambit of the order relates not only to direct child sexual abuse; it may be made where the child is exposed to the committing of a child sexual offence on or in relation to another child. In addition, the defendant need not have committed a sexual offence or sexually abused the child in question. The court need only be satisfied that the child's contact or residence with a defendant may expose the child to the risk of sexual abuse, and that in the circumstances the order is appropriate. The applicable standard of proof is the balance of probabilities.

As always in such matters, the best interests of the child are paramount. In considering these the court must—and I repeat, must—have regard to the level of control or influence exerted by the adult over the child, the adult's criminal record, the adult's pattern of behaviour towards the child or other children and their justification of this, and the views of the child and his or her guardian. Ancillary to the child protection restraining order is the option of a temporary placement of the child in certain circumstances.

The child protection restraining order will expire when the child turns 17 or, if the court directs, at an earlier time. The ways in which an order may be sought, varied or revoked are identical to other restraining orders available under the Summary Procedure Act. For the child's protection the bill restricts the people who may be present in court and prohibits the publication of information that could identify the child. Furthermore, the bill extends the power to make orders

beyond the Magistrates Court—to the Youth Court, for example—and penalties apply for a breach of the child restraining order, to a maximum of two years' imprisonment.

Child removal provisions also apply if the child resides with the person in question during the operation of the order. Importantly, the child may be forcibly removed should he or she not decide to leave voluntarily. Additional offences and penalties apply if there is a direction not to harbour, conceal or communicate with a named child in the custody of or under the guardianship of the minister. The direction will extend to attempts to communicate, harbour or conceal as well as the rendering of assistance to another person in communicating, harbouring or concealing a child. Such directions have been made possible by way of amendment to the Children's Protection Act. Furthermore, it will be an offence to harbour or conceal these children or to prevent their return or to assist others to do any of these things.

There is no onus upon the prosecution to prove that the defendant knew the child's placement circumstances or actively enticed the child. All that is required is proof that the person knew that the child was away from state care without authority at the time of the commission of the prohibited acts outlined above by that person.

The measures I have discussed will not wholly prevent child predators from carrying out their terrible plans, nor can they, by themselves, make better the harm that has been done—and is possibly being done even as we speak. While the bill cannot solve all the problems associated with this very difficult area, it will give parents and the state options in protecting and removing children and adults who would exploit them—effective options and substantial sanctions that were not previously available in this form.

These measures are intended to protect any child who runs from state care or from parents and who, by residing with the person who is to be restrained, is subject to or exposed to sexual abuse or drug offences. Indeed, for children not in care, the child protection restraining order will be the only option available to parents or guardians who themselves may make a complaint, save for a request to the police to exercise their powers to remove children from environments of serious risk. As I said earlier, the bill makes the targeting of the exploiting adult the main event. A damaged and vulnerable child in the thrall of such a person (for whatever reason) may not wish to cooperate in bringing that person to justice but cooperation will no longer be required.

In summary, the legislation before us provides additional ways in which the minister and his or her delegates, the courts and the police, parents and the community may deal with the insidious behaviour of child exploiters. I commend this bill to members.

The Hon. A. BRESSINGTON (17:39): I rise to briefly indicate my support for the second reading of this bill. This bill proposes significant reform as to how the state and parents respond to the harbouring of runaway teens. As I am sure members in this place and the other are aware, this is a significant issue that many genuinely loving families face when their children, to use the colloquial term, go off the rails.

I have met many desperate parents whose children are being harboured against their (the parents') will and, from conversations in hallways, I know that other members have had to face the difficult question posed by their constituents: 'How do we protect our son or daughter?'

The first reform relates to children under the guardianship of the minister. The Chief Executive of Families SA is to be given the power to issue a notice directing an individual not to communicate, harbour or conceal a child in state care if it is subjectively believed that it is necessary to either avert a risk that a child will be subjected to abuse or neglect or exposed to drug use or, more broadly, to prevent harm occurring to the child.

Failure to comply with a notice is an offence that can result in a maximum penalty of $4,000 or one year's imprisonment for communicating with a child, and $15,000 or four years' imprisonment for harbouring or concealing a child. A further offence of taking part in the harbouring or concealing of a child or preventing a child from returning to state care, where it is known that the child is unlawfully absent from a state care placement, is also to be created. This offence is not subject to prior direction or notification and carries a maximum penalty of a $12,000 fine or 12 months' imprisonment.

Both these measures attempt to overcome the limitations of the present offences, as outlined by Commissioner Ted Mullighan in his report 'Inquiry into Children in State Care', and repeated by the minister when introducing this bill. While I fully concur with the commissioner and recognise the need for and give my support to these new offences, I seek to make clear my

reservations about the potential for their misapplication, specifically if but more likely when they are applied to family members of a child in state care.

Of course, there will be legitimate examples of where this should occur. However, from my dealings with Families SA and my knowledge of how awry the management of cases can go, I fear these new tools may be used not just to protect a child from a predator but to deny parental access. I beg the minister to keep a close eye on this and monitor this particular concern of mine very closely.

This is all the more likely when a particular parent or family member of a child removed becomes difficult to manage for a social worker who will ultimately be responsible for requesting a directive to be issued and briefing the CEO on its necessity. The power placed in the hands of the CEO, due to the nature of the system, is power given to social workers. I have encountered more than one case where social workers within Families SA have either misinformed or denied crucial information to the minister and his or her then representatives. I have no reason to believe that such deliberate deception has not occurred and will not occur with the CEO.

I have previously in this place, on numerous occasions, raised such endemic issues with Families SA and, along with the other honourable members of the Families SA select committee, I plan to do so again when that report is tabled tomorrow. An example of the potential for misapplication—that is, to anyone other than, in the words of the minister in her second reading contribution, 'those who are believed to be exploiting the child'—is a case which I was made aware of some time ago. A parent, distraught at having her children removed and not being granted access for one child's birthday, attempted to pass a birthday card to the child which was, tragically, contrary to the social worker's instructions.

If this was discovered and she was subsequently issued with a notice not to communicate, any further attempt would be an offence carrying a potential penalty of $4,000 or one year's imprisonment. I ask the minister to answer, prior to the committee stage, whether this would indeed be considered an application contrary to the intentions of the bill.

Of further concern is the potential, from my reading of the bill, for notices to be routinely issued to parents or other caregivers who lose custody without foreseeable prospect of access. The term' prevent harm' could have a very liberal application, particularly when the issuing of a notice is not justiciable. I seek a commitment from the minister, prior to the committee stage, that the routine issuing of notices is not intended and such an abuse of these provisions would not be tolerated.

The second substantial provision in the bill attempts to deal with the non-state wards who have run away from home. As I said at the outset, this is a significant issue. Parents whose child has run away, for whatever reason, and is refusing to leave what is often most undesirable circumstances and return home have found the present law most inadequate, and Families SA and the police apathetic. The statement, 'There is nothing we can do' is too often the response to a parent's desperate plea.

As identified by the Hon. Dennis Hood, there does appear to be a pattern to such cases. Parents will firstly beg and plead with their child to return. When such cases too often involve a rebellious teen who has been initiated into the world of drug use, this is often to no avail. The next port of call is the police who, as stated, explain that their hands are tied. Then some go to Families SA, which department duly informs the desperate parents that their child is not a priority or that they are being overprotective.

This leaves parents with nowhere to turn, which is why so many cases end up on our desk. To be fair, I am aware of several cases where members of the police force have initially endeavoured to return the child to their home. However, after they have made two, three or, in some cases, more attempts, it would seem that the child has been labelled as a recidivist runaway and assistance from the police becomes less forthcoming.

The proposed solution was the advent of the child protection restraining orders. It was made abundantly clear in the other place that this measure was devised by the Attorney-General's Department, in consultation with Families SA, in response to the aforementioned need. At present, under the bill, a police officer or parents, with the support of state agencies, will be able to apply for a restraining order against an individual who is harbouring their child where, on the balance of probabilities, it is shown that the child is being sexually exploited or exposed to illicit drug use, or that the person harbouring the child has been convicted of a prescribed offence in the previous 10 years, or subject to a previous child protection restraining order.

Notable aspects of the proposal include the prevention of an order where the defendant is a guardian; the ability of the court to impose such restrictions upon the defendant as are deemed necessary; and the ability of the court to order temporary placement, subject, of course, to any other custody orders.

While I wholeheartedly support the concept, as members may be aware, I intend to move substantial amendments to the threshold of the child protection restraining order. While I will, of course, go into detail at the appropriate time, I indicate that, in essence, the amendments will make it easier for parents to access restraining orders by lowering the trigger for an order to contravention of the child's best interests. The present threshold, while well intended, is too high for a parent to satisfy, even on the balance of probabilities, and effectively requires a parent to procure either a Families SA or police investigation prior to applying. The Hon. Dennis Hood, in his second reading contribution, said:

> ...the question is whether parents who have concerns about their children being harboured by a drug fiend or a paedophile will get the action they need from the department. Will there be 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?

Experience indicates to me that parents must be fully empowered to initiate an application and prosecute an order, because reliance upon the department will lead to disappointment. My amendments provide that they will be so empowered.

I will very briefly give an example of how someone harbouring a teenager can perhaps be coerced very easily into returning that child. I had a constituent come to me about six months ago in relation to a 13 year old teenage girl who was living in Davoren Park with a gentleman who was well known to police and who had a fancy for young girls. This young girl had not been to school for some three months, so truancy was an issue. She had been observed under the influence of drugs and alcohol, and she had shared with her friends that she was engaging in sexual activities with this 35 year old man.

The family went to the police. The police knocked on the door and saw that the girl did not appear to be at risk of physical abuse. There was a roof over her head and she had a bed to sleep in and was being fed. The police then told the parents that there was not much they could do about the matter because the child refused to leave the premises. Her parents went to Families SA, and Families SA's response to these parents was that, if they had not been so strict at home, perhaps the child would not have run away in the first place.

Her parents then came to see me, and I took it upon myself to write a letter to this gentleman because the parents knew his name and address. I threatened him by saying that perhaps he was in breach of the Child Protection Act and that, if the child was not returned by the Friday following receipt of my letter, I would instigate an inquiry at the highest possible level into his activities with this child. By Thursday afternoon, at 3 o'clock, the girl was packed up and returned to her parents. So, it can be as simple as that.

I hope my amendments will give parents exactly that amount of power; that is, to go to the court and be able to say, 'My child hasn't been to school for one month, two months or three weeks, or whatever. This indicates to me that my child is at risk of harm. My child is a truant and a law is being broken in that regard. I want a restraining order against the person who is harbouring my child against my will. I want that child returned, and I want orders in place that ensure that I have authority over my child.'

I understand that there are some parents who do not treat their children well, and children flee because of that. Those children will not be affected by my amendments. With my amendments, there is no risk of a child being forced to return home to abuse because the key statement in my second amendment is 'in the best interests of the child', and the court can determine that from hearing the evidence that would be presented. I commend this bill to the council. I congratulate the Attorney-General and the Minister for Families and Communities for responding to the serious issues that have been raised about child protection.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (17:52): By way of concluding remarks, I would like to thank honourable members for their support for this bill and take this opportunity to answer some of the questions asked during the debate. For those questions that I am not able to answer at this point, particularly those that have just been put forward by the

Hon. Ann Bressington, I would seek the indulgence of the council to allow me to deal with those under clause 1 during the committee stage. The Hon. Stephen Wade, noting the opposition's support for the bill, has asked two questions, as follows:

> 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?

Commissioner Mullighan was not asked to endorse the proposal for child protection restraining orders. The proposal was brought to his attention as a courtesy, during his inquiry, and he noted it as an option for protecting children who run away from home and find themselves in the situations of exploitation to which he referred in his report. He did not include the proposal in his recommendations for the obvious reason that it is not about children in state care. This is a measure that will be used mostly for children who run away from home, not from state care, although, as noted in the second reading explanation, it can be used as an adjunct to the harbouring offences by state authorities.

Commissioner Mullighan did not advise the government that child protection restraining orders would obviate the need for a secure therapeutic detention centre. This bill does not set out to provide for the forcible detention of children for therapy, but neither does it set out to exclude this possibility in other legislation. It is a bill setting up restraining order procedures and other measures, including harbouring offences, that are directed against the exploitative adult. It is not legislation setting up measures dealing with the exploited child. The Attorney-General made the limited purpose of the bill quite clear in the final paragraphs of his second reading explanation, when he said:

> The bill cannot resolve the difficulties that Families SA and the courts may have in arranging the future care of a child who has been exploited by an adult as I have described. It will simply help separate the exploitative adult from the child. This bill does not seek to pre-empt Commissioner Mullighan's recommendations about the care and control of these children or to limit the actions open to the government in response to those recommendations. Instead, it aims to strengthen the operation of division 2 of the Children's Protection Act 1993, which allows state authorities to remove children from situations of serious danger, by also providing a means of dealing with the exploitative adult. It is one more tool to be used in protecting intractable and highly vulnerable children from exploitation and harm.

The opposition also asked about the resources required for the measures in the bill. The Hon. Dennis Hood, of Family First, supporting the bill, put it this way:

> What resources will be provided to the department to facilitate and implement these important protections for at-risk children?

The government will implement these changes from within existing resources. The Department for Families and Communities, in consultation with the Attorney-General's Department and SA Police, will develop appropriate policies and procedures to implement the new requirements. DFC and SAPOL will also prepare a communication strategy to raise staff awareness and facilitate appropriate staff training.

Support for children and young people affected by these changes will be provided through existing child protection services. The government already provides appropriate interventions and support for children and young people who are at risk. These interventions are further supported by the government's response to recommendation 42 of the Mullighan Inquiry into Children in State Care, where a pilot program has been established to provide intensive therapeutic support to children and young people in care who are identified as at risk through specialised and individual responses.

The full impact of the proposed changes is unknown at this stage. The Department for Families and Communities, with the Attorney-General's Department and SA Police, will monitor demand on government services and review the need for additional resources on a regular basis. I note the intention of the Hon. Ann Bressington, who has indicated that she will move amendments to the bill. The government will be supporting some but not all of those amendments, for these reasons.

The bill was designed to meet a particular problem that Commissioner Mullighan identified in his Inquiry into Children in State Care: the exploitation, by predatory adults, of children who run away from home or care, who get the child to sell or make drugs or use the child for commercial or

personal sexual purposes in return for drugs and shelter. There is no evidence that these children are at risk of any other kind of abuse, unless that abuse is secondary to the sexual or drug-related abuse.

It appears that the Hon. Ms Bressington is trying to use this restraining order procedure to give parents a new legal means of controlling their children, and one that is not afforded by any other Australian jurisdiction. Her amendments would allow a parent to apply for a child protection restraining order against anyone with whom their runaway child is living, even if that person is genuinely caring for and not exploiting the child, as long as the parent thinks the arrangement is not in the best interests of the child (for example, because the parent thinks the child is not doing enough homework or is allowed too much freedom or simply because the parent thinks it would be better for the child to live at home, despite the plain fact that the child is unhappy there).

Most of these children have long histories of running away from home, and this is usually because there are intractable problems in their relationship with their own family. It will not help the situation to allow parents to drag people who are genuinely caring for these children before the courts as if they were predators in an attempt to force the child to come home. A law like this may well deter people from helping runaway children and put those children at even greater risk of exploitation.

The government is not prepared to expand the scope of the bill to this extent. It offered, however, to meet the Hon. Ms Bressington half way in allowing, as a further ground for restraint, that residing with the defendant would put the child at risk of physical, psychological or emotional abuse or neglect. Although, as I have said, this kind of exploitation usually only occurs in association with the kinds of exploitation already captured by the bill (providing shelter and drugs in return for sex or selling drugs), the government thought its compromise would at least be consistent with the policy behind the bill and would put appropriate limits on the discretion of a court to make a restraining order in cases where the child is not at risk of sexual abuse or exposure to drug activity. Unfortunately, the Hon. Ms Bressington would not accept that proposal, but I restate the government's willingness to work with the Hon. Ms—

The Hon. A. BRESSINGTON: On a point of order—

The PRESIDENT: Order!

The Hon. A. BRESSINGTON: It is actually not accurate what is being said here.

The PRESIDENT: What is your point of order?

The Hon. A. BRESSINGTON: I do not know—that they are not actually being truthful about what I did and did not agree to, because I was not consulted at all on the amendments that the A-G put up in my name.

The PRESIDENT: The honourable minister.

The Hon. G.E. GAGO: I am sure that the Hon. Ms Bressington will have ample opportunity to put her detailed response to this on the record, no doubt, during the committee stage. I am sure that she will have more than enough time to set the record straight.

The Hon. A. Bressington interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: I restate the government's willingness to work with the Hon. Ms Bressington to render her proposals into a practical form. I will provide further detail of the government's opposition to this amendment in the committee stage.

Bill read a second time.

[Sitting suspended from 18:01 to 19:47]

MARALINGA TJARUTJA LAND RIGHTS (MISCELLANEOUS) 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) (19:50): 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 Maralinga Tjarutja Land Rights (Miscellaneous) Amendment Bill 2009 transfers Section 400 Out of Hundreds (Maurice) to the Maralinga Tjarutja people. It also includes measures to improve the governance of the Maralinga Tjarutja Corporation and authorises it to make by-laws, subject to Ministerial approval, to better control substance misuse on the lands.

Between 1953 and 1963 the Maralinga lands were used by the British Government for the testing and development of nuclear weapons. This resulted in significant contamination of the land by radioactive substances and other hazardous materials. It also resulted in loss of access to the test site land by the Maralinga Tjarutja traditional owners for a significant number of years to date. Access to Section 400 remains restricted to those permitted entry by the Commonwealth Government.

In 1984 the South Australian Government granted a significant portion of the Maralinga lands to the Maralinga Tjarutja people. However, sections of the land at Emu (Section 1486) and Maralinga (Section 1487) and Section 400 were not handed back at that time as the results of a joint State/Federal Government radiation survey in May 1984 had found that there remained significant radioactive contamination of those areas.

In 1991, after a program of minor works, the South Australian Government transferred the ownership of Section 1486 (Emu) and Section 1487 to Maralinga Tjarutja.

Section 400 has been the subject of more extensive rehabilitation work as part of the 1995-2000 Maralinga Rehabilitation Project, described in the Maralinga Rehabilitation Technical Advisory Committee (MARTAC) Report 'Rehabilitation of Former Nuclear Test Sites at Emu and Maralinga (Australia, March 2003)'.

This work has reduced the radiation levels to the MARTAC clearance criteria that were agreed to by the Commonwealth, the State and Maralinga Tjarutja and Section 400 is now in a condition such that it can be returned to Maralinga Tjarutja.

Section 400 is the only remaining parcel of land yet to be handed back to Maralinga Tjarutja. It is presently vested in the Commonwealth Government and dedicated in trust as a Reserve for Defence Purposes under the SA Crown Lands Act 1929. If this Bill is passed, the Commonwealth will return the land to South Australia for transfer of the freehold title to Maralinga Tjarutja.

Critical in the negotiations with the Commonwealth has been our position that the State would not accept the transfer of the land unless it, and Maralinga Tjarutja, were provided with an indemnity for all claims where the loss is directly or indirectly related to the contamination of the land as a result of the British Nuclear Test Program. We considered that as the Commonwealth was responsible for the contamination of Section 400, it should accept liability for damage arising from that contamination. I am pleased to report that after several years of negotiation, the Commonwealth has provided the required indemnity within the Handback Deed. The indemnity covers not only Section 400 but also the contamination at Section 1486 (Emu) and Section 1487.

Out of an abundance of caution, the Bill also amends the *Maralinga Tjarutja Land Rights Act 1984* to provide that no liability attaches to the State in relation to any injury, damage or loss caused by or in any way related to the British Nuclear Test Program conducted at the Maralinga nuclear test site.

Although the 1995-2000 Maralinga Rehabilitation Project left the Maralinga site in a safe state, there will need to be periodic monitoring of the radiological status of the site to ensure the continuing effectiveness of the rehabilitation works and, if necessary, remedial action undertaken.

The Maralinga Land and Environment Management Plan sets out the ongoing responsibilities of the stakeholders to maintain the security of the buried radioactive materials for the ongoing protection of people and the environment. In addition to Section 400, the Plan covers Section 1486 at Emu, Section 1487 at Maralinga and other adjacent land affected by the British atomic tests.

Land Management issues in relation to the British Nuclear Tests will be dealt with by the Maralinga Land and Environmental Management Committee comprising a State Government representative, a Maralinga Tjarutja representative, and an Australian Government representative. The Committee will oversee the implementation of the Maralinga Land and Environment Management Plan.

Section 400 contains a licensable amount of radioactive material and the South Australian Environmental Protection Authority will register and regulate the land under the *Radiation Protection and Control Act 1982* following its transfer. However, pursuant to the Plan, the Commonwealth must at its expense maintain the physical structures built at Maralinga during the 1995-2000 Rehabilitation Project, monitor radiation levels and review radiation protection principles and standards.

In response to concerns about the potential risks associated with significant ground disturbance, mining activities will be prohibited on Sections 400, 1486 and 1487. There are currently several Petroleum and Mineral Tenements that cover those Sections. The Bill will vary these Tenements to excise from them any lands within those Sections. A review of the prohibition must be carried out within five years of the land transfer and the report will be tabled in Parliament. Whilst the prohibition may bring some criticism from the mining industry, the areas affected are only approximately 3% of the total area of the Maralinga Tjarutja lands. Furthermore, permitting mining would place the State and Maralinga at financial risk because the indemnity provided by the Commonwealth does not cover losses that arise from ground disturbance due to mining or exploration.

Section 400 contains what remains of the Maralinga Village constructed by the British Government in 1955. The Village has a number of large buildings as well as power generation and water reticulation systems and an airstrip. Maralinga Tjarutja proposes to develop a small Land Management and Heritage Resource Centre at Maralinga Village. This would enable Maralinga Tjarutja to conduct all land management operations for the Maralinga lands from Maralinga Village. Maralinga Tjarutja are also planning to establish and operate a caravan park style tourist facility at Maralinga Village that would include a kiosk and a small interpretive centre. The Commonwealth Government has provided funds to Maralinga Tjarutja to assist with this initiative and for the ongoing maintenance of Maralinga Village.

At the request of Maralinga Tjarutja, the Bill includes several amendments not directly related to the handback of Section 400. The amendments deal with measures to improve governance by including the power for Maralinga Tjarutja to make a constitution and by providing a more precise statement of the capacity of the Maralinga Tjarutja Council to delegate powers and functions. Out of Maralinga Tjarutja's concern about alcohol misuse and petrol sniffing, they also include the power for Maralinga Tjarutja to make by-laws (subject to the approval of the Minister) to control alcohol, petrol and other regulated substances on the lands. The proposed changes will bring the powers of the Maralinga Tjarutja Corporation broadly into line with those of the equivalent peak body on the Anangu Pitjantjatjara Yankunytjatjara Lands as set out in the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*.

The transfer of Section 400 represents the final chapter of a process that began in 1984 to return the Maralinga lands to the traditional owners. It will be an occasion of considerable significance to the traditional owners who have been essentially forbidden from these lands for more than 50 years. I would like to acknowledge the patience and cooperation of the Maralinga Tjarutja people for negotiating in good faith over so many years for the return of their land.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Maralinga Tjarutja Land Rights Act 1984*

4—Amendment of section 3—Interpretation

This clause inserts definitions of key terms used in the measure into section 3 of the principal Act.

5—Amendment of section 5—Powers and functions of Maralinga Tjarutja

This clause inserts new paragraphs (j) and (k) into section 5(2) of the principal Act, conferring on Maralinga Tjarutja the power to make a constitution in respect of specified matters, and the power to take such steps as may be necessary or expedient for, or incidental to, the performance of Maralinga Tjarutja's functions.

6—Substitution of section 9

This clause substitutes a new power of delegation, replacing the existing power (which limited the persons to whom a power or function could be delegated to members, officers or employees of Maralinga Tjarutja) with one more consistent with current practices that gives Maralinga Tjarutja more flexibility.

7—Amendment of heading to Part 3 Division 1A

This clause amends the heading to Part 3 Division 1A to reflect the change of the name of the Unnamed Conservation Park to the Mamungari Conservation Park.

8—Amendment of section 15B—Establishment of co-management board

This clause makes a consequential amendment to reflect the change of the name of the Unnamed Conservation Park to the Mamungari Conservation Park.

9—Amendment of section 15D—Dissolution or suspension of co-management board

This clause makes a consequential amendment to reflect the change of the name of the Unnamed Conservation Park to the Mamungari Conservation Park.

10—Amendment of section 15E—Staff

This clause makes a consequential amendment to reflect the change of the name of the Unnamed Conservation Park to the Mamungari Conservation Park.

11—Insertion of Part 3 Division 1B

This clause inserts new Part 3 Division 1B, setting out provisions related to the Maralinga nuclear test site as follows:

Division 1B—Special provisions related to Maralinga nuclear test site

15H—Interpretation

This proposed section defines the management plan for the Maralinga nuclear test site to be the management plan annexed to the Maralinga nuclear test site handback deed, as varied from time to time.

15I—Guidelines related to Maralinga nuclear test site

This proposed section requires Maralinga Tjarutja, within 6 months after the commencement of the section, to prepare and submit to the Minister for approval guidelines to be followed in relation to the Maralinga nuclear test site. Subsection (4) sets out the required contents of the guidelines.

The proposed section also sets out procedural matters in relation to the guidelines.

15J—Immunity from liability

This proposed section confers immunity on the State and Maralinga Tjarutja for any injury, damage or loss caused by, or related to, the British Nuclear Test Program, or minor trials, conducted at the Maralinga nuclear test site. However, this immunity only operates in the event that the Maralinga nuclear test site handback deed either ceases to be in force, or for some other reason fails to provide indemnity for the State or Maralinga Tjarutja in relation to a particular claim for damages.

15K—Mining etc prohibited on Maralinga nuclear test site

This proposed section disapplies the *Mining Act 1971*, the *Petroleum and Geothermal Energy Act 2000* and the *Opal Mining Act 1995* in respect of the Maralinga nuclear test site.

This proposed section also prohibits the specified mining-related activities from being undertaken on, or in relation to, the Maralinga nuclear test site. The maximum penalty for a contravention is a fine of $120 000.

15L—Review of operation of Division by Minister

This proposed section requires the Minister to cause a review of the operation of this proposed Division to be conducted and a report on the results of the review to be prepared and submitted to him or her. The clause sets out consultation and other requirements in relation to the review.

15M—Evidence

This proposed section allows evidence of the Maralinga nuclear test site handback deed to be given by certificate in legal proceedings.

12—Amendment of section 17—Rights of traditional owners with respect to lands

This clause makes a consequential amendment to section 17 of the principal Act.

13—Amendment of section 18—Unauthorised entry upon the lands

This clause extends the operation of section 18(11) of the principal Act (which provides that that section does not apply to certain people) to include a person entering the land in accordance with, or to exercise a function under, the Maralinga nuclear test site handback deed, or a person assisting a person otherwise specified in the subsection.

14—Insertion of section 18A

This clause provides that certain specified people who may enter and remain on the lands under section 18(11) of the Act may reside on the lands where that is necessary or desirable for the purpose of carrying out their duties or functions. This is consistent with a similar provision in the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*.

15—Amendment of section 20—Use of roads to traverse the lands

This clause amends section 20 of the principal Act to exclude from the roads that may be used on the lands a road that is in Section 400, Out of Hundreds within the Maralinga nuclear test site (whether or not the road is a continuation of a road that the person is entitled to use).

16—Substitution of section 20A

This clause disapplies Part 3 Division 4 of the principal Act (dealing with mining operations on the lands) in respect of the Maralinga nuclear test site.

17—Amendment of section 30—Road reserves

This clause makes a consequential amendment to reflect the change of the name of the Unnamed Conservation Park to the Mamungari Conservation Park.

18—Insertion of section 43

This clause inserts new section 43 into the principal Act, allowing Maralinga Tjarutja to make by-laws in respect of the following:

(a) regulating, restricting or prohibiting the consumption, inhalation, possession, sale or supply of regulated substances on the lands;

(b) providing for the confiscation, in circumstances in which a contravention of a by-law under paragraph (a) is reasonably suspected, of any regulated substance to which the suspected contravention relates;

(c) providing for the treatment or rehabilitation (or both) of any person affected by the misuse of any regulated substance;

(d) prohibiting specified forms of gambling on the lands;

(e) providing for any other matter that is prescribed by the regulations as a matter in relation to which by-laws may be made.

The clause sets out procedural and other matters in relation to making such by-laws.

19—Amendment of section 44—Regulations

This clause amends section 44 of the principal Act to allow regulations to be made regulating, restricting or prohibiting entry on, or any activity on, the Maralinga nuclear test site.

The clause also inserts new subsection (1a), allowing regulations made under section 44 to be of general application or vary in their application according to prescribed factors, and allowing such regulations to confer a discretion on the Minister or a specified body of persons.

20—Amendment of Schedule 1

This clause amends Schedule 1 of the principal Act, adding Section 44, Out of Hundreds to the Lands.

21—Substitution of Schedule 2

This clause amends Schedule 2 to make amendments to the prescribed roads consequential on this measure.

22—Insertion of Schedule 5

This clause inserts new Schedule 5 into the principal Act, and provides a map (for ease of reference only) of the Maralinga nuclear test site.

Schedule 1—Transitional provision

1—Maralinga nuclear test site excluded from mining tenements etc

This clause also makes a transitional provision—

(a) extinguishing any rights that existed in respect of the Maralinga nuclear test site under a mining tenement or permit under the *Mining Act 1971*, a precious stones tenement or permit under the *Opal Mining Act 1995* or a tenement under the *Petroleum and Geothermal Energy Act 2000*;

(b) modifying any application for a prescribed tenement that seeks the conferral of any rights in relation to any part of the Maralinga nuclear test site so that it does not seek such conferral.

No compensation is payable in respect of the operation of the clause.

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

CONSTITUTION (APPOINTMENTS) BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (19:51): I move:

That this bill be now read a second time.

As it is a relatively brief report I will read it into *Hansard* because the government would like to deal with this bill tomorrow if possible. This is a bill to remove doubts that have arisen about the validity of official acts done by Lieutenant-Governors appointed by Her Majesty the Queen after 3 March 1986 when they have assumed the administration of the state ex officio under clause X of the Letters Patent made by Her Majesty on 14 February 1986.

Section 7 of the Australia Act 1986 of the parliaments of the United Kingdom and the commonwealth of Australia may be summarised as providing that all powers and functions of Her Majesty in respect of a state are exercisable only by the Governor of the state, except when Her Majesty is personally present in the state and chooses to exercise her powers and functions.

There is a debate about whether section 7, when read together with section 16 of the Australia Acts, means that lieutenant-governors and administrators of the Australian states are to be appointed by the Governor or by Her Majesty. This creates doubt about the validity of official acts done by lieutenant-governors who have derived their functions and powers from their

appointment by Her Majesty. The New South Wales parliament has passed this month an act to remove this doubt, and there are bills before the Victorian and Tasmanian parliaments.

As there has not been consistent practice about whether lieutenant-governors have been referred to as 'Lieutenant-Governor' or as 'Administrator' when they have assumed the administration of the state, the bill refers to both. On most occasions when the Governor is unable to attend to the duties of office, it is possible for the Governor to appoint the Lieutenant-Governor or another suitable person—usually the Chief Justice of South Australia—to be the Governor's Deputy.

Clause XVII of the Letters Patent provides for this and sets out the circumstances in which the Governor may appoint a deputy. The doubts that have arisen about the official acts of some lieutenant-governors when they have assumed the administration of the state ex officio do not apply to acts done by lieutenant-governors or the Chief Justice when they have been appointed to be the Governor's Deputy, as in those cases they derive their authority from an appointment made by the Governor.

Besides ensuring that the official acts of lieutenant-governors who have assumed the administration of the state ex officio are valid, the bill will protect the state from liability that might otherwise arise. This is a precautionary provision. I commend the bill to members. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

1—Short title

This clause if formal.

2—Interpretation

This clause defines key terms used in the measure.

For the purposes of this measure—

- *Administrator* means a person appointed as, or purportedly appointed as, or acting as, or purportedly acting as, Administrator of the State;
- *Lieutenant-Governor* means a person appointed as, or purportedly appointed as, Lieutenant-Governor of the State;
- *relevant action* means any act or omission of an administrative or legislative nature by a Lieutenant-Governor or an Administrator in the administration or purported administration of the State done or omitted since the commencement of the *Australia Act 1986*;
- *relevant time* means from the commencement of the *Australia Act 1986* (5 am GMT on 3 March 1986) to the day the Act receives assent.

3—Act binds Crown

The Act will bind the Crown in right of the State and, insofar as the legislative power of the Parliament permits, the Crown in all its other capacities.

4—Effect of relevant actions

This clause provides that relevant actions are deemed to have effect, as if they had been done or omitted to be done at the relevant time by a person validly holding the office of Governor.

5—Act not to give rise to liability against the State

Clause 5(1) provides that the State is not liable for any action, liability, claim or demand arising from the proposed Act.

Clause 5(2) states that no proceedings lie against the State, except to the extent that they would lie had the relevant action or omission been done by a person validly holding the office of Governor.

Clause 5(3) defines *proceedings* to include proceedings in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief. The provision also defines *the State* to include any State authority or officer of the State, the Government of the State, a Minister of the Crown in right of the State and a statutory corporation or other body representing the Crown in right of the State.

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

CHILDREN'S PROTECTION (IMPLEMENTATION OF REPORT RECOMMENDATIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 October 2009. Page 3641.)

The Hon. S.G. WADE (19:54): I rise to speak to the Children's Protection (Implementation of Report Recommendations) Amendment Bill. I open my remarks by quoting sections of Commissioner Mullighan's introduction to the report of Children in State Care Commission of Inquiry, as follows:

> Nothing prepared me for the foul undercurrent of society revealed in the evidence to the Inquiry; not my life in the community or my work in the law as a practitioner and a judge. I had no understanding of the widespread prevalence of the sexual abuse of children in South Australia and its frequent devastating and often lifelong consequences for many of them.
>
> Before the Inquiry I had no understanding that people who had been abused felt fear, guilt, shame and responsibility, which contributed to their silence…I was not prepared for the horror of the sexual cruelty and exploitation of little children and vulnerable young people in State care by people in positions of trust and responsibility, or the use of them at paedophile parties for sexual gratification, facilitated by the supply of drugs and alcohol.
>
> I had no understanding that, for many people, a consequence of having been sexually abused as a child was the loss of a childhood and an education…I had no knowledge of the fear, isolation and loneliness of the children living on the streets and the means by which they survived.
>
> As the Inquiry progressed I soon felt a deep sense of privilege and responsibility at having been entrusted with the disclosures of people's most painful memories. I observed their selflessness and courage in sharing their stories as part of their process of healing, but also their desire to assist in some way to prevent future sexual abuse of children in State care.

It is in this context that this bill is introduced. Through it, we hope that we can, as a parliament, take another step to do what we can to expose current abuse and prevent future sexual abuse of children in state care. It is timely that we are considering this bill the day after the federal parliament made an apology to the forgotten Australians. This parliament made an apology 18 months ago, but apologies are only stages in a journey. Part of our state's journey with victims of past abuses is that we do what we can to reduce current and future abuse. Just as the opposition actively advocated for the establishment of the commission of inquiry, we will be supporting this bill.

The Children in State Care Commission of Inquiry commenced its work in November 2004. A total of 792 people told the inquiry that they were victims of child sex abuse while living in South Australia. These people have made 1,592 allegations dating from the 1930s to the present time, involving 1,733 alleged perpetrators. Of the 792 people, 242 were children in state care at the time of the alleged abuse, and they made a total of 826 allegations against 922 alleged perpetrators.

Commissioner Ted Mullighan issued interim reports on 12 May 2005 and 28 October 2005, with his final report being released in April 2008. The government's initial response to the inquiry report was tabled in this parliament on 17 June 2008 and an implementation statement was tabled in the parliament on 25 September 2008. The government accepted all but one of these legislative recommendations.

This bill has been described to the opposition as purely Mullighan; that is, we understand that it is focused on a package of legislative reforms in direct response to Commissioner Mullighan's recommendations. The bill amends the Children's Protection Act 1993 and the Health and Community Services Complaints Commission Act 2004.

First, I would like to consider the enhanced provisions to promote child safe environments. On 31 December 2006, amendments to the Children's Protection Act 1993 entitled, 'Child Safe Environments' came into operation. Section 8B of the act requires certain organisations to obtain a criminal history from the Commissioner of Police or Crim Trac for people who hold, or who are to be appointed to, positions that involve regular contact with children or being in close proximity to children or having access to records relating to children.

The section applies to all non-government organisations, but only to those non-government organisations named in the regulations. Regulations only extend the operation of the provision to non-government schools within the meaning of the Education Act 1972. In her second reading speech, the minister noted the following:

> At that time, a number of non-government organisations that were not legally obliged to conduct criminal history checks of staff and volunteers working with children did so as part of their commitment to making children safe and because they saw this as good organisational practice. I recognise in particular a number of churches, sporting bodies and service organisations that undertook this positive step of their own initiative.

Section 8C currently requires certain organisations to establish appropriate policies and procedures for ensuring that mandated reports of abuse or neglect are made under the act and that child safe environments are established and maintained within the organisation. There is a penalty of up to $10,000 for non-compliance. Section 8C has much wider application than section 8B. Section 8C applies to an organisation that provides health, welfare, education, sporting or recreational, religious or spiritual child care or residential services wholly or partly for children. The section applies to a government department, agency or instrumentality or a local government or non-government organisation.

The effect of sections 8B and 8C is that the obtaining of a criminal history report is discretionary for non-government organisations other than non-government schools as defined in the Education Act 1972. In recommendation 3 and the first element Commissioner Mullighan recommended that the duty to get criminal history checks under section 8B ought to apply to organisations as defined in section 8C. In recommendation 2 in its second element he recommended that consideration be given to reducing or waiving the fee for an organisation applying for a criminal history check in order to comply with section 8B. The government's response is that it will allow a general waiver; it will continue its present policy of waiving fees for criminal history reports for volunteers working with vulnerable groups, but it will not apply a full waiver.

The government's approach is that it will provide exemptions from the requirements to organisations, persons and positions where there is an assessed low risk to children and the requirement would necessarily be onerous for the organisation. The government proposes to achieve this exemption in two ways: first, the minister says that the definition of prescribed functions under section 8B(8) will be amended by regulation to exclude certain functions, in particular where a person is under direct supervision and observation at all times by appropriate personnel.

I ask the minister at the summing up of the second reading to clarify this situation for the opposition. My reading of clause 8B(8) is that prescribed functions can be added to by regulation, but that clause 8B(8) does not allow new motive functions to be limited by regulation in terms of persons engaged in those functions. I seek clarification from the government as to whether it has the power it intends to use. Secondly, the minister advises that an exemption scheme will also be established by regulations under the Children's Protection Act 1993. It is intended that these regulations will exempt organisations, positions and functions from the requirement to undertake criminal history checks in certain circumstances.

I indicate that I am concerned that the regulations be carefully worded and scrutinised. There is no point broadening the scope of section 8B if the increase in scope is undermined by exemptions. Obviously each exemption reduces the cost to non-government organisations and volunteers, but every exemption also reduces the protection available to children and young people. The shadow attorney-general in the other place warned the parliament that criminal history checks are not magical. They are not some kind of panacea for the protection of children. People who have a criminal record are the ones who have been caught. The Mullighan report lays testament to the fact that many perpetrators are still at large.

In December 2007 the Guardian for Children and Young People, Ms Simmons, reinforced this point in evidence to Commissioner Mullighan's inquiry when she said that a child safe environment:

> ...involves a lot more than police check, background checking, of any volunteers or paid staff working with children or having access to the records of children, and that such checks are only one part of creating a child safe environment.

She went on to say:

> It is very easy for all of us to slip straight into the regulation structure—regulation, rules, policies, procedures. The greater protection always will come from the less tangible things about the environment, and that is the perspective people take, the notice they take of children, the involvement of children in regular activities, not just child activities. Those are the things that make the bigger difference for a child safe environment rather than regulation. I am not saying do away with the regulations about safety and screening, but I am saying that the bigger challenge is actually an attitude and environmental social environment, change in organisations, and we still have a long way to go.

The acts recognise the importance of culture in creating a child safe environment. Under section 8A(i) of the act the chief executive of the Department for Families and Communities is currently required to monitor progress towards child safe environments in the government and non-

government sectors and to report regularly to the minister. Commissioner Mullighan noted that for the chief executive to be able to effectively discharge his or her duties and monitor progress it is essential that the organisations covered by section 8C provide the chief executive with a copy of their policies and procedures or for the chief executive to maintain a register of them. The bill imposes this obligation by clause 8.

I now move to the issue of notification of abuse and neglect. In recommendation 30 Commissioner Mullighan highlighted that the law is to protect people who make reports under the act, not only to protect their confidentiality but also to protect them from intimidation or unfavourable treatment when reporting. Clause 10 amends section 11 of the act to make it an offence for a person to threaten or intimidate, or cause damage, loss or disadvantage to a person, because the person has discharged, or proposes to discharge, his or her duty to notify. The maximum penalty is a fine of $10,000.

I move now to the role of the Guardian for Children and Young People. The guardian plays an important role in representing and advocating for the rights and interests of children and young people in care, and as a monitor of that care. This bill strengthens the powers and functions of the guardian. The minister advised that in some cases the amendments formalise what is already occurring, and that the amendments have been brought forward to ensure that there is no doubt regarding the guardian's role. In particular, the guardian's functions and powers are amended to make it clear that the guardian is able to act as an advocate for a child or young person in state care who has made a disclosure of sexual abuse.

Commissioner Mullighan reported that he consistently found that adults who were sexually abused as children in state care said they would have liked to have a person in authority to whom they could take their concerns, and who would represent their interests and intervene on their behalf with the minister and the department. The commissioner said that he considers that a child in state care should have such an advocate from the time he or she makes an allegation of sexual abuse until the completion of the criminal justice process. The role of an advocate would be to monitor the response of the state to that allegation, including the child's placement, the organisation of therapy for the child, the response of the police in investigating, the response of the DPP (including the provision of witness assistance), and the response of the courts in progressing the matter.

Currently, under section 52C(1)(b) the guardian's functions include 'to act as an advocate for the interests of children under the guardianship, or in the custody, of the minister'. The bill proposes to add the words 'and, in particular, for any such child who has suffered, or is alleged to have suffered, sexual abuse'. On a literal reading, advocating for a child who has suffered sexual abuse, as is required under the current clause, is already covered. However, the guardian, Ms Simmons, has publicly indicated that the emphasis and intention of the legislation is on systemic advocacy and change.

In her 2006-07 annual report Ms Simmons advised that, as guardian, she had, in specific circumstances, advocated on behalf of individual children or young people. In that year the guardian responded to 103 requests for assistance with individual children or young people and intervened on behalf of 34. Only six of these cases were self referrals. Of the 34 cases, two involved allegations of abuse in care, and these were not necessarily self referrals. Ms Simmons told the Mullighan inquiry that, while individual advocacy was not part of the role of the guardian, it had started to provide individual advocacy in limited circumstances because there was no other service to provide it.

There is some lack of clarity as to the roles between bodies in the areas of advocacy, investigation and complaints. In broad terms, as I understand it, the guardian advocates, the investigation unit investigates, and the Health and Community Services Complaints Commission is responsible for formal complaints.

Clearly, Commissioner Mullighan felt that it was important, moving forward, that the role of the guardian as an advocate should be strengthened and to make clear that it involves individual advocacy. In recommendation 23 the commissioner recommended that the Children's Protection Act be amended to add a function to the Guardian for Children and Young People; namely, 'To act as an advocate for a child or young person in state care who has made a disclosure of sexual abuse.'

An essential ingredient in advocacy is independence. The inquiry stated that it was important that the guardian's independence be formalised in the Children's Protection Act 1993.

One aspect of independence is the security of tenure of the office holder. Commissioner Mullighan noted that the guardian may be removed under the current act by the Governor for reasons set out in section 52A(5) of the Children's Protection Act, and that those reasons were so broad and unqualified that it does not sit well with the idea of an independent Guardian for Children and Young People.

In recommendation 27 the commissioner recommends that the powers of removal be replaced with provisions similar to the powers of removal relating to the Health and Community Services Complaints Commissioner and the Employee Ombudsman. The Health and Community Services Complaints Commissioner may be removed by the Governor for limited and defined reasons including becoming, in the opinion of the Governor, mentally or physically incapable of carrying out satisfactorily the duties of office. The Governor may also remove the commissioner from office on the presentation of an address from both houses of parliament seeking the removal. This bill amends section 52A to legislate similar provisions in relation to the guardian.

Another aspect of independence is the ability to act contrary to ministerial direction. Currently, section 52A of the Children's Protection Act provides that the guardian is subject to the minister's direction. However, section 52A(7) indicates that the guardian is not subject to ministerial direction in a number of specified areas. The act also requires that any directions given to the guardian by the minister must be in writing.

Nevertheless, it was the view of the commissioner that these direction provisions are not sufficiently consistent with the independence of the guardian and, in recommendation 28, he recommended that the Children's Protection Act 1993 be amended to expressly refer to the independence of the Guardian of Children and Young People and that the GCYP must represent the best interests of children and young people under the guardianship or in the custody of the minister, and that the minister cannot control how the GCYP is to exercise his or her statutory functions and powers.

Clause 14 of this bill proposes to insert a new section 52AB on independence. In summary on this point, instead of starting with a general power of the minister to direct the guardian this bill starts with the fact that the guardian must 'act independently, impartially and in the public interest'. Proposed section 15(2) provides that the minister cannot control how the guardian is to exercise the guardian's statutory functions and powers and cannot give any direction with respect to the content of any report prepared by the guardian.

The shadow attorney-general in another place highlighted the novelty of these provisions. In relation to these provisions I ask the minister: how do the provisions of this bill for the independence of the guardian compare with independence provisions in other legislation for statutory officers and, to the extent that they differ, why does the government prefer the provisions in this bill? Further, have there been any ministerial directions given to the guardian under this act?

One of the guardian's functions is to advise the minister on the quality of care being provided to children under the guardianship or custody of the minister and whether their needs are being met. Under the Children's Protection Act 1993 the guardian must report to the minister as requested by the minister and also produce an annual report. Commissioner Mullighan, however, foresaw that the guardian may consider some matters require a special report to the minister which should also be laid before both houses of parliament. There is currently no provision for such reports in the Children's Protection Act.

In recommendation 29 the commissioner recommended that the Children's Protection Act 1993 be amended to allow for the guardian to prepare a special report to the minister on any matter arising from the exercise of the GCYP's functions under the act and that the amendment shall require the minister to table the special report in parliament within six sitting days of receipt. Clause 17 inserts a new section 52DA, which provides:

> The guardian may, at any time, prepare a report to the minister on any matter arising out of the exercise of the guardian's functions under this act.

I now turn to the issue of consultation with young people and children. Commissioner Mullighan said that one of the most important aspects to the prevention of sexual abuse is the empowerment of children and young people in all parts of their life. He reports that the New South Wales Commissioner for Children and Young People undertook a comprehensive literature review of 1998 to 2002 on the benefits of participation of children and young people in their own life and found that participation empowers children and young people and that it can help protect them. The Guardian for Children and Young People said:

Arguably, the most fundamental and significant change we can make is to listen to and act on what children and young people have to say about their lives in care.

Part of this involves meaningful participation by children in decision-making and changing community attitudes. The commissioner recommended that a youth advisory committee be established to advise the guardian, and clause 18 inserts a new section 52EA to this end.

The commissioner also recognises the empowerment of children in state care with disabilities is more complex and for this reason recommends that a specialist position be created in the guardian's office to address individual and systemic advocacy for such children. The government has accepted this recommendation and has funded the position, and I welcome that, but it does highlight the hypocrisy of this government. This is the government that, less than a year before the commission report, took $750,000 out of disability information and advocacy services.

The bill also serves to strengthen the role of the guardian in terms of the relationship of the guardian with third parties and dealing with attempts to interfere with that relationship. In recommendation 30, Commissioner Mullighan recommended, as follows:

The Children's Protection Act 1993 is amended to provide the Guardian for Children and Young People with powers to obtain information from any person in connection with the GCYP's functions under the act. This power should be coupled with a penalty for failure to comply. It should also be an offence for a person to persuade or attempt to persuade another by threat or intimidation not to provide information, and there should be a general provision making it an offence to obstruct the GCYP.

Clause 16 of the bill proposes to insert new section 52CA, which creates a series of offences—offences relating to intimidation, reprisals and obstruction and the provision of information that is false or misleading.

The bill also provides for a charter of rights for children and young people in care. The work on the charter was concurrent to, rather than a result of, the work of the commission. The Guardian for Children and Young People has for some time had a group of voluntary youth advisers who are either in care or have been in care. The youth advisers created and developed the charter for children and young people in care in consultation with other children and young people, carers, social workers and people from government and non-government organisations. The then minister launched the charter in April 2006, and by the end of 2007 it had been endorsed by 42 organisations.

The young people wanted the charter of rights to be in legislation. To this end, the charter was passed through the youth parliament in 2006. The guardian has indicated that the then minister had supported it being passed in parliament, and she understood that it had gone to parliamentary counsel. Commissioner Mullighan indicated that he supported legislative endorsement of the charter of rights in the same way that the parliament passed schedule 1 of the South Australian Carers Charter and the Carers Recognition Act 2005.

In recommendation 7, Commissioner Mullighan recommended that the Charter of Rights for Children and Young People in Care be the subject of legislation in South Australia. In her second reading speech, the minister claimed, as follows:

In accordance with the inquiry's recommendation, this bill establishes a legislative requirement that the Charter of Rights for Children and Young People in Care exists.

I regard that statement as misleading. The recommendation, in context, was clearly referring to a charter enshrined in legislation. Under the Carers Recognition Act, the charter is entrenched in legislation. In this legislation, the charter is not entrenched: it is merely required to be produced and endorsed by the minister. It is not what the young people asked for, it is not what the commissioner recommended, and it is sophistry for the government to suggest otherwise.

The bill inserts a new section 52EF, which requires persons involved with children in care to 'have regard to, and seek to implement to the fullest extent possible, the terms of the charter.' The section makes it clear that the charter cannot create legally enforceable rights or entitlements. Of the 40-plus agencies which have endorsed the Charter of Rights for Children and Young People in Care and pledged to apply it in their practice and policy, only 12 are government agencies. Three of those are government departments or units: the Office for Youth, the Department for Families and Communities and the Department of Education and Children's Services. The other nine are government health services. Of course, the bill will apply the charter to all government agencies, whether they ascribe to it or not, but I find it disappointing to see that the government is not showing the same eagerness to associate with the charter as the non-government sector.

Earlier, I highlighted that just as the guardian has a role of advocacy, both individual and systemic, the Health and Community Services Complaints Commissioner has a role in terms of offering a formal complaints system. The Layton report recommended that a special unit be created to investigate complaints and grievances in relation to services concerning children and young people.

Commissioner Mullighan recognised the need for an independent body to investigate any complaints from a child about the response to his or her allegation of sexual abuse. Commissioner Mullighan concluded that the HCSC Commissioner holds an important statutory office that provides an independent complaints investigation and reparations process.

The position of the commissioner was established in 2005, with a child protection jurisdiction coming into effect in July 2006, when the commissioner had secured a dedicated resource. The Health and Community Services Complaints Commissioner has jurisdiction to receive, independently assess and resolve complaints about child protection services which fall under the act's definition of 'community service'.

However, Commissioner Mullighan expressed concern that the current legislation does not permit a child under the age of 16 to complain directly to the commissioner. Accordingly, Commissioner Mullighan recommended in recommendation 31 as follows:

> That the Health and Community Services Complaints Act 2004 be amended to allow all children and young people to make a complaint directly to the Health and Community Services Complaints Commissioner.

This proposal was supported in recommendation 27 of the review of the Health and Community Services Complaints Commissioner at the end of 2008. This bill seeks to amend the act to allow a direct complaint. The commissioner also expressed concern as to time limits. He recommended that the commissioner's act should contain a specific provision stating that a relevant consideration for extending the two year time frame limit be extended in the child protection jurisdiction where the complaint arises from circumstances dating back to May 2004 when 'Keeping them safe' was launched. Recommendation 5 of the commissioner's act review supported the Mullighan proposal and the changes are in the schedule to this bill.

At this point, I indicate that the opposition is very disappointed that the government is yet to finalise its response to Commissioner Mullighan's recommendation 43. In that recommendation Commissioner Mullighan called for a therapeutic facility for the secure care of children who have behavioural or drug problems. Children in this state, from time to time and for short periods, end up in a youth detention facility (in particular, the Magill Training Centre) because there is no secure facility to put them in. That is in spite of the fact that they have not committed a criminal offence or are not even suspected of having committed a criminal offence.

In summing up the second reading in another place, the minister said that the government had sought and received advice from the Guardian for Children and Young People on the issue as follows:

> As best my memory serves me, we have not yet reported on a clear decision in relation to that.

So, I ask the minister, in this place, whether the government can advise what decision has been made in relation to recommendation 43.

The second aspect about which I want to indicate the disappointment of the opposition is that in having the second part of the reform recommended by Commissioner Mullighan we still do not have a redress fund for victims who have come forward. A very clear recommendation of Commissioner Mullighan was that there should be an investigation into the establishment of a redress fund. The Attorney-General insists that victims need to use an inappropriate victims of crime compensation scheme or resort to submissions for ex gratia payments. The opposition is of the view that a statutory redress scheme would be more appropriate.

I would like to highlight another issue raised by Commissioner Mulligan, that is, record-keeping. The commissioner considers that the methods of record-keeping need to be improved in regard to children in state care who have alleged sexual abuse. He said that during the course of the inquiry it was not possible to make an inquiry on the department's computer system to locate all the children who had allegedly been abused while in state care.

Given the recommended role for the Guardian for Children and Young People as an individual advocate for such children, the commissioner is of the view that the department must ensure that appropriate records are maintained and are easily accessible. He noted that Families

SA is currently developing a new case management system. In recommendation 25 the commissioner recommended the following:

> That Families SA's new C3MS (connection client and case management system) include a separate menu for allegations of sexual abuse of a child in state care which would collate the names of all such children. That the system include a separate field in relation to each child in state care, which is dedicated to recording any information about allegations of sexual abuse, including when that information had been forwarded to the Guardian for Children and Young People.

It is timely that we should be considering the Mullighan report at a time when the department is in conflict with its own workers over the implementation of C3MS. The Public Service Association has placed work bans in the Crisis Response Unit and district offices. While the Crisis Response Unit bans are, as I understand it, currently suspended, the PSA made it clear in a statement, dated last Friday, that the bans will be reimposed if there is an unacceptable increase in workloads or adverse effects on the health and welfare of members.

In relation to the unacceptable increase in workloads, I remind the council that even before the implementation of C3MS the team at Families SA has been working with a huge increase in notifications over recent years. In the most recent year I have available to me the number of child protection notifications in 2007-08 totalled 17,142. Of those, 1,019 were tier 1 notifications, the most serious level of notification. The total of 17,142 is a 30 per cent increase in five years up to 2007-08.

Here we have a team which is dealing with one of the most sensitive areas, one of the most important areas, of child protection and care. They are already dealing with a huge workload, and what they are being asked to do is to cope with the implementation of a case management system, which the workers are not even confident of being able to do the job. They are certainly finding a dramatic increase in their workloads in what is already a very stressful and delicate area of government child protection.

The union has concerns that the pressures of the new system are so severe that it is having adverse effects on the health and welfare of members. Considering the problems that we have in retaining staff in Families SA, it is a very stressful and challenging role. We need to respect and value these workers. We need to make sure that they get the support they need to make their role manageable. They need our support; the first thing they need is tools to do their job.

In conclusion, I reiterate that the Liberal opposition supports this bill as a part of the efforts of this state to do what we can to secure the safety and health of South Australian children, especially children entrusted to the care of the state.

The Hon. R.P. WORTLEY (20:30): I rise to contribute some brief remarks on the Children's Protection (Implementation of Report Recommendations) Amendment Bill. The bill represents another element of the government's response to recommendations made in the reports of the Commission of Inquiry into Children in State Care and the Commission of Inquiry into Children on APY Lands, the Mullighan commission.

As I indicated in my remarks on the Statutes Amendment (Children's Protection) Bill, now is not the time to revisit the heartbreaking stories recounted to those commissions of inquiry. Now is the time to take decisive legislative action and make sure that some of those terrible stories will no longer need to be told in the future.

The Children's Protection (Implementation of Report Recommendations) Amendment Bill represents substantial reforms that are intended to strengthen South Australia's child protection system and protect children as they take part in various activities in the community. It amends the Children's Protection Act 1993 and the Health and Community Services Complaints Commission Act 2004.

In summary, specified organisations will be required under the act to conduct criminal history assessments on certain employees, contractors and volunteers and lodge a statement outlining their child safe environment policies and procedures with the Department for Families and Communities.

The amendments will apply to all organisations, businesses, service providers and groups, whether incorporated or unincorporated, that provide the following services wholly or in part for children: health, welfare, education, sporting or recreational, religious or spiritual, child care and residential services.

The requirement for criminal history assessments will cover all employees, volunteers, agents and subcontractors who are (1) working in a prescribed position in (2) a relevant organisation. A criminal history assessment is a process leading to a decision about whether a particular person is suitable to work with children.

The determination is arrived at on the basis of a person's criminal history, if any, and the assessed risk to children served by the organisation. The term 'prescribed functions' in section 8B(8) of the Children's Protection Act indicates that not all functions are captured and, indeed, certain low risk functions are excluded. Further, certain organisations and positions will be exempt under the regulations.

Of course, exemptions will not be made for activities such as commercial child care, child protection or service provisions for those with disabilities, and the prohibition preventing registrable offenders from involving themselves in child-related work as per the Child Sex Offenders Registration Act 2006 will remain firmly in place.

A person who volunteers in his or her children's sporting activities, for example, will be exempt from the requirement of a criminal history assessment. I coach my son's basketball team, so I would be exempt from a criminal history assessment, even though I would have no problem with doing one because there is a blank page.

A work position where all child-related work is performed while the child's parents or guardians are present, and there is no physical contact with the child, will be exempt. A person who works or a position that involves work not provided on an individual basis or for the exclusive benefit of a child or children will be exempt.

Police officers and registered teachers will be exempt, and there are other exemptions to meet specific scenarios and circumstances. In this way, the right balance can be struck between a risk or risks under reasonable management of the government's new and extended requirements. These amendments will contribute to the safety of children and protect them when assessing services.

Extending the requirement on organisations from the obtaining of criminal history checks to the carrying out an assessment of a person's criminal history in accordance with the regulations will also help organisations to manage the risks associated with engaging people in various child-related work arrangements. By the same token, it will ensure that standards are maintained.

The bill also provides stronger protection for mandatory notifiers—those who have a legal obligation to report any suspected child abuse and/or neglect, such as teachers and healthcare workers. It will create a new offence of preventing a person from discharging the obligation of mandatory reporting through threat, intimidation or unfavourable treatment.

The bill will establish avenues to ensure that suitable response protocols and mechanisms are available when a child discloses sexual abuse. It will clarify and augment the powers, including powers relating to obtaining and using information, exercised by the Guardian for Children and Young People. The guardian's funding has been augmented to support two specialist advocacy positions for children with disabilities in care, Aboriginal children in care and young people in care.

The Guardian will advocate for a child or young person disclosing sexual abuse while in care. The Guardian's independence will be affirmed by these amendments and, importantly, the Guardian will have the capacity to report to the minister on any matter, with the report to be impervious to ministerial direction and to be brought speedily to the attention of the parliament. A youth advisory committee is to be established to assist the Guardian with first-hand experience and advice.

On a related matter, the Health and Community Services Complaints Commissioner will be expressly empowered by way of amendment to the Health and Community Services Complaints Act 2004 to receive complaints from children and young people on an individual—that is, case-by-case—basis and, in certain circumstances, to extend the limitation period in which a complaint must be lodged.

Finally, the bill will establish a legislative requirement for the existence, availability and regular review of the Charter of Rights for Children and Young People in Care. These changes will bring South Australia further in line with 'working with children' schemes established in other Australian states and territories. Most Australian jurisdictions outside South Australia have introduced 'working with children' checks in recent years, or are moving to introduce such checks. For example, Queensland, Victoria, New South Wales, Western Australia, and now the

Northern Territory, have well-established schemes for checking persons working in child-related employment.

As I said when I addressed the Statutes Amendment (Children's Protection) Bill, the measures I have discussed cannot by themselves make better the harm that has already been done—and is possibly being done even as we speak—but it is incumbent upon us to make sure that things change from now, with the passing of this bill, for the protection of our children. I commend the bill to members.

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) (20:36): By way of concluding remarks, I thank those honourable members who contributed to the second reading debate. I thank them for their support. The Children's Protection (Implementation of Report Recommendations) Amendment Bill 2009 was passed by the House of Assembly on 14 October 2009, and it is heartening to see that the opposition has recognised the importance of the reforms contained in this bill and supports its passage through the council.

The bill is a key component of the government's legislative response to the Mullighan inquiry recommendations and introduces important reforms aimed at strengthening South Australia's child protection system and protecting children as they interact in the community.

The bill will enhance provisions to promote child safe environments, including requiring a broader range of organisations to have a criminal history check for personnel working with children; introducing additional protection for mandatory notifiers; establishing that appropriate mechanisms are available to respond when a young person makes a disclosure of sexual abuse; clarifying and strengthening the role and powers of the Guardian for Children and Young People and the Health and Community Services Complaints Commissioner; and introducing additional mechanisms to promote the participation of children and young people in government decision-making.

The Hon. Stephen Wade asked a number of questions during the second reading debate, and I would beg the indulgence of the chamber to allow me to deal with those answers in clause 1 of the committee stage. I commend the bill and look forward to the committee stage being dealt with expeditiously.

Bill read a second time.

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. G.E. GAGO: A number of questions were asked during the second reading debate and it would be easiest if I answer them now. In the course of the second reading of the proposed legislative amendments for this bill the Hon. Mr Brokenshire asked a number of questions relating to the Department for Correctional Services: I thank him for his questions, have sought a report from the minister and am pleased to provide the following response. The first question relates to the level of internet use by prisoners, the purpose for which they use the internet and safeguards that exist to ensure that prisoners cannot interact with members of the public via the internet. The Department for Correctional Services does not allow prisoners to have access to the internet or any other services that contain a modem. Access to any other electronic devices by prisoners is also prohibited in instances where the device has the potential to provide access to the internet, is capable of storing materials which may be prohibited or has the potential to allow the user to engage in a prohibited form of communication.

In instances where prisoners involved in approved study need material download, this is undertaken by education co-ordinators on the prisoners' behalf. Only prisoners accommodated in the Adelaide pre-release centre and involved in approved leave programs have the ability to access the internet when they are in the community. Such instances include when they are at an approved service provider for the purpose of searching for jobs or as part of their university or TAFE studies. The Department for Correctional Services and government will continue to ensure there are adequate security measures in place to protect the community in this regard.

The honourable member further inquired about prisoner entitlements to computer games and whether controls are in place regarding the ratings of games prisoners are permitted to access. The Department for Correctional Services restricts prisoner access to material that may be

detrimental to safety and security of staff, prisoners and the community. In keeping with this approach only electronic computer or video games rated 'M', which is 15 plus or lower in accordance with the Classification (Publications, Film and Computer Games) Act 1995, are permitted in the South Australian prison system. Prisoners are not allowed access to any electronic, computer or video games that are violent, sexually explicit or have any racist content, regardless of their classification. They also do not have access to games designed for interactive play and which require the user to adopt the persona of a violent, antisocial or aggressive character or which depict violent, dangerous, aggressive or antisocial behaviours.

There have been instances where prisoners have inappropriately gained access to games, either through the purchase of PC magazines that contain trial versions of games, or through other means. The department reviews every such incident and takes whatever steps are necessary to remove the contraband and to prevent any further occurrences. The honourable member asked whether restrictions are imposed on television programs or video available for viewing in the South Australian prison system. Prisoners are only allowed access to films rated 'M' (mature) or lower under the classifications act. It should be known that the standards set out by the department in accordance with the act do not apply to free to air TV as prisoners can access any publicly accessible program.

In regard to current numbers of prisoners across the prison system in South Australia and details regarding future projections for prisoner numbers, I am advised that at the close of business on 10 November 2009 there were 1,980 prisoners in custody throughout South Australia. The daily average prisoner number represents the number of offenders in all South Australian prisons averaged out over a year. Prisoner numbers can fluctuate significantly from the average figures over a period of several months; for example, whilst the daily average for 2007-08 was 1,855, the department experienced a peak number of prisoners that year of 1,949 on 18 June 2008. It is important to recognise that it is not feasible to be precise on future prisoner populations; there will always be a number of unknowns and uncertainties with respect to future criminal justice policy, policing and sentencing practice, and demographics.

The department's methodologies for projection modelling are regarded as consistent with industry best practice and are largely based on previous trend data, current legislation and existing policies. The current projections available for the daily average prisoner population for the next three years are estimated to be 1,975 for 2009-10, 2,026 for 2010-22, and 2,078 for 2011-12. The department reviews prisoner projections on a longer and shorter term basis as part of capacity planning and management processes, and I am advised that the next comprehensive review is scheduled to commence this month.

The honourable member sought information on the number of home detention bracelets available for use by the department, as well as details relating to the budget in forward estimates and the use of such bracelets. Home detention was first introduced in South Australia in 1986, and it is a valuable mechanism for reintegrating prisoners into the community. The original program was introduced to support the graduated release of prisoners back into the community. South Australia is also one of the only states in Australia to have a home detention program for offenders on bail and intensive bail supervision. I am advised that there are currently 385 home detention bracelets available for use by the department. They are leased under contract with G4S Australia, and the average number of units utilised in October 2009 was 330, or 86 per cent. The 2009-10 budget for lease payments is $957,455.

The honourable member sought information concerning the functions and activities of visiting inspectors and tribunals. Visiting justices of the peace, visiting inspectors, are appointed by the Minister for Correctional Services to independently conduct inspections in each prison. I am advised that metropolitan prison visits generally occur on a set day (Tuesday), although inspectors can visit on any day. Visits to country prisons do not occur on a set day, and inspectors often attend the institutions without prior notice.

The role of visiting inspectors is to ensure that all prisoners are treated fairly and that their accommodation is clean and safe. They must also ensure that prisoners have access to adequate food and clothing. Prisoners may approach inspectors to discuss problems they may have, and inspectors are also called upon to investigate any complaints that affect the health and welfare of prisoners. On average, visiting inspectors speak to about 10 prisoners during a visit and most of the issues raised are dealt with at the time, with very few requiring additional follow-up. The visiting inspectors often discuss the issues raised by prisoners with the prison's general manager or

delegate to ensure that they are made aware of the issues and that they facilitate the desired outcome.

It should be placed on record that inspectors are instrumental in reducing tension within the prison, thereby assisting in the safety and welfare of prisoners and staff. Inspectors have reported that in following up matters with prisoners they are able to report a high level of satisfaction with the level of cooperation they receive from prison management and staff across the system.

Independent tribunals are appointed by the minister to adjudicate on serious breaches of prison rules and hear appeals that originate from managers' inquiries. The visiting tribunals are also involved in witnessing the destruction of contraband seized within the prison system. Visiting tribunals operate on a rotational basis, averaging four prison visits per month. Both inspectors and tribunals are also available on an on-call basis.

In relation to the honourable member's question regarding probation hostels, I am advised that no hostels have been declared by the Minister for Correctional Services. However, the department, in conjunction with Housing SA, has received funding for a housing program for prisoners leaving prison. The Integrated Housing Exits Program is managed under contract by five different non-government organisations, being Aboriginal Prisoners and Offenders Support Services (APOSS), Offender Aid and Rehabilitation Services (OARS), Anglicare, Baptist Community Services and Centacare.

In asking these questions, to which I have responded, the honourable member also queried the status of MOW Camps and asked for some background information to be provided in relation to the ceasing of the program Operation Challenge. MOW Camps provide a valuable service to the South Australian community in various remote areas across the state. The program provides benefits to the community through its work in national parks, Balcanoona, the Coorong, Bimbowrie, Brookfield and the Gawler Ranges. There is currently an agreement with the Department for Environment and Heritage to operate from five locations.

The MOW Camp program has two camps operating in conjunction with each other: a 19-day camp which operates in locations south of Port Augusta and a 14-day camp which generally operates in locations north of Port Augusta. The camps program comprises a coordinator, five permanent supervisors and an average of 18 prisoners who participate in the program—12 on camp and six as reserves.

The work done by MOW Camps includes building restoration, feral non-native flora and fauna control, the cleaning of park facilities, walking track maintenance, fencing, conservation programs and the collection of statistics in terms of animal counts.

The Port Augusta Prisoner Reintegration Employment Opportunity program was piloted this year through the MOW Camp program. This program operates for a three-month period, utilising MOW Camp staff and equipment. This program is in partnership with the Department of Correctional Services and BHP Billiton. Clearly, these partnerships with the Department for Environment and Heritage and BHP Billiton have proved to be successful to date with significant benefits achieved both for organisations and for program participants, and ultimately for the South Australian community.

In relation to Operation Challenge, I am advised that it was discontinued as from 1 July 2002. The funding for Operation Challenge, which was not recurrent, was withdrawn as a result of the state government's 2002-03 budget and savings strategy on the recommendation of the Department of Correctional Services. Whilst Operation Challenge was considered to be of benefit to the department, competing priorities and pressures meant that funding this initiative could not be sustained and had to be transferred to higher priority initiatives. I thank members for their questions and interest in relation to this bill.

The Hon. R.L. BROKENSHIRE: Could the minister advise the council whether all prisoners in home detention situations have bracelets?

The Hon. G.E. GAGO: I am advised that not all detention prisoners have bracelets.

The Hon. R.L. BROKENSHIRE: This may need to be taken on notice but I would appreciate an answer even if it is not available now. Given that answer, how many on home detention do not have this tracking device?

The Hon. G.E. GAGO: I will take that on notice and bring back a response.

Clause passed.

Clauses 2 to 5 passed.

New clause 5A.

The Hon. R.L. BROKENSHIRE: I move:

Page 3, after line 37—After clause 5 insert:

5A—Amendment of section 5—Victims Register

Section 5—after subsection (6) insert:

(7) Any information or notification required or authorised by this act to be given to a registered victim will be taken to have been given to the victim if it is sent by post to the contact address relating to the victim included in the Victims Register.

The impact of this clause will become apparent in amendment 5, as they interrelate but, because amendments work numerically through the act, we have to deal with this amendment first. Clause 5 makes a couple of changes, one of which concerns notification to victims when someone is going to be released on parole. To ensure that this amendment does not unfairly tie up the Parole Board or anyone in the department, we want to make it clear that postage to the address on the Victims Register is sufficient effort to notify the victim. Anything more than that would be an undue burden on the Parole Board and government resources.

Over a long period of time now, victims have expressed to me their concerns about whether or not information and notification as a registered victim will be made available to them. I believe that it is really important that we look after these victims, and that is why we have moved this amendment.

The Hon. T.J. STEPHENS: I advise the Hon. Robert Brokenshire that we will be supporting his amendment. We think it is a sensible amendment, and we do not think it would be unwieldy or involve any undue costs.

The Hon. G.E. GAGO: The government does not support this amendment. The amendment proposes that information forwarded to victims who are registered with the Department for Correctional Services will have been facilitated if it has been sent by post to the contact address.

The current practice for the department is that every endeavour is made to maintain the contact details of registered victims, whether that be a postal address, email or phone details. Whilst victims generally provide the department with their postal address, they may prefer to be contacted via email, phone or SMS, or through an alternative contact person. The proposed change to the act would limit these avenues of contact, which are quite reasonable.

The department takes its responsibility to victims extremely seriously. As it stands, letters that are sent to victims and returned marked 'Return to sender. Not at this address,' are followed up with relevant agencies, such as the Commissioner for Victims' Rights and SAPOL, to determine whether more accurate records exist.

The proposed amendment is a backward step as it removes the more proactive approach currently taken by the Department for Correctional Services to positively engage and support victims of a crime in a manner they choose, and I think that is really important. If a victim chooses to be contacted by email or SMS, rather than by post, this amendment takes that right away from the victim. So, this amendment may actually end up going against the express wishes of the victim.

It is for those reasons we believe that this amendment should not be supported. I am sympathetic with the intent of the amendment, but the effect of it, given more modern methods of communication, could be quite obstructive.

The Hon. T.J. STEPHENS: Can the minister give us an undertaking that you are using and will be using those methods to contact victims? You have access, but where is the guarantee that you will do that?

The Hon. G.E. GAGO: I advise that the current practice of the department is that every endeavour is made to maintain the contact details of registered victims, whether that be their postal or email address or phone details. The advice I have received is that, if a victim indicates a particular preference for a contact mode, the department adheres to that wherever it possibly can.

The Hon. R.L. BROKENSHIRE: I would have preferred to see the government move an amendment to my amendment. If the government wants to cover electronic addresses, etc., it

could move to insert those details. The key point of this amendment is that at least, at law, the department would have to notify the victim. It is not just policy or procedure; this amendment would put it into law. The problem I have had in the past is that there is no absolute guarantee. So, unless the minister can advise that there is an absolute and categorical guarantee that each victim would be notified, I think there is merit in this amendment. If the government wants to consider including electronic contact details and so forth, such as faxes and mobiles, it would not worry me at all. It is all about getting this into law to help the victims.

The Hon. G.E. GAGO: I am advised that the current law requires that the department has constant contact with the victim, so that it can keep the victim up to date with the movements of the perpetrator. So, the law already requires that, and I think the policy provision should be broad enough, given that the law already requires that we have contact with the victim and maintain a contact address wherever we possibly can. I believe it is within the interests of the victim that we are able to use whatever mode of contact the victim prefers.

New clause negatived.

Clauses 6 to 10 passed.

New clause 10A.

The Hon. R.L. BROKENSHIRE: I move:

Page 4, after line 33—After clause 10 insert:

10A—Amendment of section 37—Search of prisoners

(1) Section 37—after subsection (1a) insert:

(1b) The manager of a correctional institution may, in exercising a power under subsection (1a), use a detection dog.

(2) Section 37(6)—after paragraph (a) insert:

(ab) the number of times a detection dog was used during those searches; and

(3) Section 37—after subsection (6) insert:

(7) In this section—

detection dog means a dog that has completed training of a kind approved by the minister for the purpose of detecting the presence of a drug or any other prohibited item.

This amendment amends section 37 of the act to allow entry into the prison of detection dogs without the requirement for reasonable cause to suspect possession of illicit drugs, mobile phones, etc. There is evidence now that such dogs can sniff an element (cadmium) in mobile phones, so we have included those kinds of detection dogs in the definition section. We believe the minister has indicated that he is looking at this possibility. Family First passed on information to the minister about this possibility at least two years ago.

This amendment, in essence, enshrines in the act a power to order routine searches using detection dogs. Routine searches, of course, are searches in addition to any searches conducted where Correctional Services or SA Police have reasonable cause to suspect the presence of drugs or mobile phones in prison. I would ask members to consider supporting this amendment, because again only in recent times we have heard about illicit drug problems in the prison system.

There are enormous problems in not only our prison system but in probably all prison systems, when it comes to illicit drugs. Not all people who go into the prison system are illicit drug-addicted at the time or have committed crime as a result of being addicted, but it is interesting anecdotally, and from files that I have seen in the past, how many people who did not have a drug addiction when they went in end up coming out on a program and have a drug addiction problem.

Several years ago, when the department purchased one dog, a border collie that was not suitable for farm work, that border collie was trained in drug detection and used passively in the visiting rooms at Yatala. The difference that dog made to drugs coming through the system was enormous. We are seeing it now in nightclubs and venues, with the police using them.

I believe that we should take every possible step to ensure that we eliminate illicit drugs and that we are aware of issues involving mobile phones, bearing in mind what still goes on in the prison system with mobiles and TAB connections and the like. This new clause would be a good

measure in terms of strengthening the miscellaneous amendments that the government is putting forward, most of which we are supporting, and I would therefore commend it to the committee.

The Hon. T.J. STEPHENS: I indicate the opposition's support for the new clause. Why would we not use any tools that we have at our beck and call to try to make sure that our prisons are as drug free as possible? It makes complete sense to us.

The Hon. G.E. GAGO: The government does not support this amendment. Again, we have sympathy with the intention, but we believe that some quite untoward effects will result from the amendment. The amendment seeks to include specific reference to detection dogs in relation to the searching of prisoners. It further proposes the inclusion of a definition of detection dog as well as a mechanism for reporting such searches.

Detection dogs are already used whenever necessary to conduct searches in the prison system. The dogs receive extensive training to international standards and are regularly reassessed. The—

The Hon. B.V. Finnigan interjecting:

The Hon. G.E. GAGO: I'm trying to win this debate on the floor. The proposed amendment has a potentially limiting effect, as it specifically talks about dogs being used to search prisoners but is silent on other search mechanisms. To include reference to other specific search mechanisms is potentially problematic, as technology is continually changing and new detection devices are being developed and coming onto the market all the time.

However, there is a potential danger that, by including one specific search method in the legislation, other technology, both existing and emerging, would be precluded from use unless it is also indicated or included in the Correctional Services Act.

The Hon. A. Bressington interjecting:

The Hon. G.E. GAGO: Well, that's the advice that I have received. If this amendment goes ahead you then set it up for other search mechanisms to be potentially precluded.

The Hon. A. Bressington: You can't amend without new technologies if they go?

The Hon. G.E. GAGO: There are two issues: one is that this amendment specifically refers to the search by dogs. We are saying that there are other search mechanisms, including a wide range of other technology. To start listing the other search devices is limiting because that evolves, but you could list dogs and all other search technologies and methods available. You could do that, but this amendment does not seek to do that. This amendment just seeks to mention dogs.

The advice that I have received is that, by listing only dogs, the amendment could potentially result in existing and emerging search methods being precluded, because—

The Hon. R.L. Brokenshire interjecting:

The Hon. G.E. GAGO: Well, I can only go on the advice that I have received, and that is the best advice available. Why would you risk it, when we already use dogs for searching and other search methods already exist and are used wherever they are assessed as being appropriate? This would create an ambiguity, and you could fix that ambiguity by listing everything. I am saying that you need to at least list everything, but then we would have to amend the provision every time a new technology came in. Of course, that is not impossible; I am just saying that it is clunky.

At the moment, with the range of search methods available, they are used when they are assessed to be most appropriate, and we are able to use emerging technologies as they come onto the market place, because the act currently provides the flexibility for us to do so. This amendment may not allow us to do that.

The Hon. R.L. BROKENSHIRE: I cannot buy that argument; it is one of the weakest and most pathetic arguments I have ever heard the department dream up. The fact of—

The Hon. G.E. Gago: You don't want the facts to get in the way, do you?

The Hon. R.L. BROKENSHIRE: Well, I am very interested in this area, because anything that can be done to keep illicit drugs out of prisons is a very positive initiative. I would not want to see a situation such as I once reported, where a prisoner got out of prison and within 24 hours was found at the beach deceased through a drug overdose. We have to put every possible effort into combating drug distribution and its use through the prison system. If this is passed into legislation,

it certainly will not be and was never intended to be an impediment to the government of the day using any other initiative. My question is: is the Department for Correctional Services really serious about combating illicit drug use?

Tonight, at very short notice, the government moved an amendment in relation to management control over prison officers. When we move an amendment that gives the CEO, management and the department an opportunity, where there is reasonable cause, to utilise the best drug detection methods at the moment—that is, highly trained passive dogs—it wants to say no. This government is supposed to be tough on crime and prohibit illicit drug use, etc., but I shake my head. I am going to go strong on this amendment because I believe that it is a good amendment.

The Hon. T.J. STEPHENS: Minister, I think I can probably give you an undertaking from this side of the committee that we will be supportive of any amendment to legislation that you can bring forward that will try to make our prisons drug free. If this happens to be a good start or a good base, so be it, and we look forward to the work that you will do in future to be even stronger in regard to this issue.

The Hon. G.E. GAGO: Very briefly, I am very sympathetic to the intent of this amendment, and I accept that the honourable member is trying to strengthen search provisions. However, the advice I have received—whether or not he likes this advice, and he clearly does not—is that the effect of this amendment is that it is likely to weaken search provisions.

All we can do is accept the best advice available to us and share that so that members are informed. The government shares the view that we need to do everything we can in relation to strengthening search provisions. The intent of this amendment is to strengthen search provisions but, in terms of the best advice I have, I am informing members that it is highly likely that it will weaken them.

The committee divided on the new clause:

AYES (11)

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

NOES (8)

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

PAIRS (2)

Hood, D.G.E.	Winderlich, D.N.

Majority of 3 for the ayes.

New clause thus inserted.

Clause 11.

The Hon. R.L. BROKENSHIRE: I move:

Page 4, after line 35—After the present contents of the clause (now to be designated as subclause (1)) insert:

(2) Section 37A—after subsection (3) insert:

(3a) The Chief Executive Officer must consider imposing the following conditions on the release of a prisoner under this division:

(a) a condition requiring the prisoner not to smoke, consume or administer a controlled drug (within the meaning of the Controlled

Substances Act 1984) other than a controlled drug that has been lawfully prescribed for the prisoner;

(b) a condition requiring the prisoner to undergo random drug testing.

This amendment relates to home detention release conditions under section 37A(3) and seeks to provide that the chief executive must consider adding drug-free conditions for home detention. This amendment does not impose a mandatory requirement on the chief executive to impose these conditions, but they must turn their mind to imposing such additional drug control conditions, those being (a) that the person be completely free of drugs during their home detention and (b) thereby be liable to random drug testing if the chief executive considers it appropriate in all the circumstances. It is important to note that only illicit drugs, defined as controlled drugs in the amendment, are prohibited. Alcohol and prescription drugs one could call legal drugs and are not included in this matter. It remains open to the chief executive to impose conditions on legal drugs, but our amendment is only about making the chief executive consider illicit drug restrictions.

The Hon. T.J. STEPHENS: The opposition will not support the amendment. We feel that it is more than appropriate that the Parole Board look after such instances. We feel that it has reasonable powers and does a pretty reasonable job in difficult circumstances. Unfortunately we cannot support the amendment.

The Hon. G.E. GAGO: The government does not support the amendment. It requires the chief executive of the Department for Correctional Services to consider requiring home detainees to abstain from consuming alcohol or controlled drugs and requires them to submit to drug testing. Abstinence from alcohol and controlled drugs is already a standard condition of home detention. Furthermore, home detainees are considered to be prisoners and are therefore subject to the drug testing provisions outlined in the Correctional Services Act. Currently if a home detainee refuses to submit to testing or returns a positive result a breach is issued and a decision is made on whether to return the prisoner to prison. As such this amendment is considered unnecessary and is therefore not supported.

Amendment negatived, clause passed.

Clauses 12 to 16 passed.

New clause 16A.

The Hon. R.L. BROKENSHIRE: I move:

Page 5, after line 26—After clause 16 insert:

16A—Amendment of section 51—Offences by persons other than prisoners.

Section 51(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) in the case of an offence against paragraph (b) of this subsection where the prohibited item is a controlled drug (within the meaning of the Controlled Substances Act 1984)—imprisonment for 2 years;

(b) in any other case—imprisonment for 6 months.

Section 51 of the act relates to offences by persons other than prisoners and covers relatives or friends intending to smuggle things into gaol, be it through visits, by throwing drug-filled tennis balls over prison fences, or by putting illicit drug powders under postage stamps or in birthday cakes—you name it. The global maximum penalty for all offences in section 51 is six months' gaol, and the existing bill does not touch those aspects. I am seeking to amend that provision to say that, if the offence involved the bringing of a controlled drug into a correctional institution, the maximum penalty should be two years' gaol. Presently the penalty for all smuggling offences is maximum imprisonment for six months, and I advocate that it should be two years.

This leaves room for a lower penalty to be imposed for a minor act, but it allows the courts to impose a more appropriate penalty for more serious and flagrant acts, such as the tennis ball incident we all saw on our television screens earlier in the year. Unfortunately it is something that occurs all too frequently. Whilst I appreciate that people throwing tennis balls into a prison facility might be charged with a supply offence under the Controlled Substances Act, we would not want a legal technicality to get the person off that offence so that all we are left with is a six-month maximum penalty under section 51 of the Correctional Services Act.

I commend the minister for wanting to take a zero tolerance approach on drugs in prisons, and this measure takes us much closer to that approach. I understand why the minister wants to do that: it is so important to keep these illicit drugs out of the prison system, and I move this amendment to send a very strong message to anybody who thinks they can bring illicit drugs into prison that there will be extraordinary penalties.

The Hon. T.J. STEPHENS: I indicate opposition support for the new clause. The opposition agrees that any deterrent to people who think that they can take drugs into prison should be applauded.

The Hon. G.E. GAGO: The government believes that the proposed increase in penalty will act as a further deterrent in relation to the delivery or introduction of prohibited items into correctional institutions that occur without the permission of the manager. It therefore supports this new clause.

New clause inserted.

Clause 17.

The Hon. T.J. STEPHENS: I move:

Page 5, after line 31 [clause 17(1)]—After inserted paragraph (ab) insert:

(ac) a prisoner if any part of the imprisonment for which the prisoner was sentenced is in respect of an offence against section 85 (being an offence consisting of arson) or 85B of the Criminal Law Consolidation Act 1935; or

This is the first amendment, and is made to ensure that prisoners convicted of certain arson and bushfire offences who are serving a sentence of less than five years are no longer eligible for automatic parole. The opposition regards these offenders as extremely serious offenders and seeks that they appear before the Parole Board, as will the other offenders the government is targeting with this legislation. The government has recently indicated that it will consider supporting this sensible amendment, and I look forward to that support.

The Hon. R.L. BROKENSHIRE: I advise that Family First will support this amendment. To the credit of the government, and also the opposition when they were in government, there have been moves to strengthen the legal and policing issues, etc., around arson. In fact, through Euan Ferguson and others this government has actually done some pretty handy work there. However, I think the opposition's amendment sends a very strong message to people who attempt to get involved in arson about the dangers and consequences. It is a commonsense amendment that puts a real deterrent there and sends out a message to the community.

The Hon. G.E. GAGO: The government supports this amendment. It believes it improves provisions around arson and bushfires and will act as a further deterrent.

Amendment carried; clause as amended passed.

New clauses 17A and 17B.

The Hon. R.L. BROKENSHIRE: I move:

Page 6, after line 16—After clause 17 insert:

17A—Amendment of section 68—Conditions of release on parole

(1) Section 68—after subsection (1) insert:

(1aa) The board must consider imposing the following conditions on the release of the prisoner:

(a) a condition requiring the prisoner not to smoke, consume or administer a controlled drug (within the meaning of the Controlled Substances Act 1984) other than a controlled drug that has been lawfully prescribed for the prisoner;

(b) a condition requiring the prisoner to undergo random drug testing.

(2) Section 68(1a)—after paragraph (c) insert:

(d) a condition preventing the prisoner from using the internet or using the internet in a manner specified in the condition;

(e) a condition preventing the prisoner from owning, possessing or using a computer or other device that is capable of being used to gain access to the internet.

17B—Amendment of section 77—Proceedings before Board

(1) Section 77(1a)—delete subsection (1a)

(2) Section 77(4)—delete 'The' and substitute:

Subject to subsection (6), the

(3) Section 77—after subsection (5) insert:

(6) The board must, as soon as is reasonably practicable after making orders in any proceedings relating to a prisoner or parolee, give the registered victim details of the orders (including, if the prisoner is to be released on parole, details of when the prisoner is to be released on parole and where the parolee is to reside).

(7) However, the board is not required to notify the registered victim under this section if the victim has indicated to the board that he or she does not wish to be so notified.

This amendment covers three issues, and parliamentary counsel has indicated that it is procedurally necessary to deal with the three issues as the one amendment. I indicate that if I do not receive support from honourable members on the three issues canvassed I will reconsider the situation.

Drug-free parole is similar to the home detention provisions, mentioned above, on drugs in the prisoner's system. This amendment amends section 68 of the act to provide that in this case the Parole Board, and not the CEO, must consider imposing conditions that the prisoner must not have illicit drugs in their system and may be liable to random drug tests for the duration of their parole period. The same comments that I made relating to home detention apply here; namely, that this provision does not apply to legal drugs such as alcohol but only to illicit drugs as controlled drugs. Obviously, the Parole Board can impose alcohol and other legal drug bans (which it does), as the minister with the carriage of this bill in this place indicated a while ago.

The second part of this relates to child sexual offenders and internet use. An element of this amendment requires the Parole Board to consider imposing an internet ban on a parolee where the person has been in prison for a child sexual offence. The intent here is simply to give the best possible effect to the paedophile internet restraining orders regime that was established through my colleague Dennis Hood's private member's bill, restraining people who have been convicted of child sexual offences.

Finally, the third one is regarding notification to victims. The amendments we seek to make to section 77 do not propose to change the list of persons that the board must notify of the receipt of a parole application and notification of the day and time fixed for the hearing of the application—that is, the prisoner, the CEO, the Commissioner of Police and the registered victim, if any. The amendment makes it mandatory for the board to notify the registered victim of the details of the orders made on an application, unless the registered victim has indicated that he or she does not wish to be so notified.

We feel this strengthens the level of respect and notification given to the victim so that the onus is on the board to keep the victim informed and not require the victim to ring the Parole Board to find out what happened in relation to the person who assaulted them, or whatever the offender did to them in the past. That is no slight on the board or the way it operates. The board may well be notifying victims as a matter of course, but we think it is worth reversing the onus in the act so that the notification occurs as a legal matter of course, rather than as a matter of choice for the board.

Of course, as I said, the victim can decline to be notified if they wish. As indicated in amendment No. 1, there is an out for the board in relation to this: it is obliged to send a notice to the address on the register but there is no obligation on the board to make sure that the victim knows the information, other than the requirements I have just highlighted.

The Hon. G.E. GAGO: The government is not supporting these amendments. In relation to the conditions of release on parole, the amendment seeks to include additional conditions on the release of a prisoner on parole. The conditions include not to smoke, consume or administer a controlled drug and to undergo random drug testing. Further, it is proposed that prisoners sentenced for a child sex offence should be subject to a parole condition preventing them from using the internet or owning, possessing or using a computer or other device that is capable of being used to gain access to the internet.

The Parole Board routinely imposes a condition that parolees are not to use a drug or substance that has not been prescribed by a legally qualified medical practitioner—that is already in place. This condition covers the use and abuse of prescription drugs as well as illegal drugs and, therefore, has a wider scope than the proposed amendment. This amendment actually limits what is currently provided for.

Further, it is a designated condition that all parolees are subject to drug testing as directed by Community Corrections officers. Refusal by a parolee to submit to testing will result in the cancellation of parole. The second part of this amendment seeks to prohibit parolees who have been convicted of child sex offences from accessing the internet. The Parole Board routinely imposes conditions that sex offenders are not to access pornographic material or prey on children. On that basis we believe that the provisions proposed are already adequately addressed.

In relation to section 77, the proposed amendment seeks to ensure that the Parole Board provides registered victims with details such as when the prisoner is to be released on parole and where the parolee is to reside. In accordance with the Correctional Services Act, registered victims are entitled to be provided with certain information. Victims are advised of details of the orders made by the board and the date and circumstances of the release of the prisoner. Consequently, the first two parts of the proposed amendment are already legislated.

The third part of the amendment is to legislate that the registered victim must be advised of the residence of the parolee. Registered victims are not currently advised of the residential address of the parolee. The Department for Correctional Services, along with the Commissioner for Victims' Rights, is of the view that to provide a registered victim with a parolee's address is not appropriate. Providing a parolee's address may encourage vigilante-type activities whereby parolees will be targeted. It could also result in undue risk to the victim, who could be wrongly blamed for any harassment or offences that target the parolee. In such instances, the victim could be placed at greater risk due to the potential for retaliation from the parolee. It should be noted that in those instances whereby the registered victim and the parolee have had some form of relationship prior to the offence, the registered victim is most probably aware of the residence of the parolee, anyway.

Since every offender has a parole condition not to attempt to contact or associate in any way with the victim of their crime, every effort is made to ensure that victims and offenders are not placed within close proximity to each other, thereby minimising the risk of accidental encounter. I am advised that the current processes work well. Legislating that an offender's location information be provided to victims may infringe on the privacy of the parolee as he or she makes attempts to reintegrate back into the community. For those reasons, we do not support the amendment.

The Hon. T.J. STEPHENS: We have taken a party position to support the Hon. Robert Brokenshire's amendment, but I admit to having some sympathy for the minister's argument. I thank the minister for the explanation. I certainly feel more comfortable about the situation.

New clauses negatived.

New clause 17A.

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

Page 6, after line 16—After clause 17 insert:

17A—Amendment of section 82—Unauthorised dealings with prisoners prohibited

(1) Section 82(1)—After 'contract' insert 'or other dealings of a prescribed class'

(2) Section82(3)(c)—Delete 'class prescribed by the regulations for the purpose of this section' and substitute 'prescribed class.'

This amendment seeks to clarify the term 'contract' in relation to persons who enter into a contract with a prisoner. In November 2007, a new section was inserted in the Correctional Services Act to prescribe that it is an offence for certain persons to enter into a contract with a prisoner without the prior permission of the Chief Executive of the Department for Correctional Services.

In a recent test case, prosecution of a person charged under this section of the Correctional Services Act was largely unsuccessful due to the interpretation applied to the term 'contract', which relied upon the definition in common law. As a result, this amendment is proposed to clarify that a person may not, without prior approval of the Chief Executive of the Department for Correctional Services, enter into a contract or other dealing of a prescribed class with a prisoner.

The Hon. T.J. STEPHENS: At this time, the opposition has decided that it cannot support the amendment, given our normal processes. I am sure members would be aware that, in our party room, all members of the Liberal Party can always exercise a conscience vote on any issues. An amendment such as this is something we would really need more time to put to the party room.

We certainly have sympathy for the amendment. There was a concern, more so for prison officers, that something that might be extremely trivial could actually finish up resulting in a term of criminal incarceration. At this point, we do not feel that issue has been clarified sufficiently for us. So, whilst we have sympathy for the intention, I am not sure that we can support the amendment at this time.

The Hon. R.L. BROKENSHIRE: In principle, I have sympathy for the intent of this amendment, too. The only concern I have is that, if it is very minor and technical, where is there a contract and not a contract with a prisoner? I understand the situation in relation to the legal case and what the government and the department are trying to do here. If it is a situation where there is something very small—let us say that an illegal CD is traded or contracted—will that result in a criminal offence for a prison officer? With my colleague away ill, I am not in a position to explore it, given that we only received it today. Given that we are nearly through this bill and it would not take long, I am suggesting to the minister that we report progress and clean this one up when people have had a chance to consider it a little more.

The Hon. G.E. GAGO: Obviously, the honourable member is at liberty at any time to move that progress be reported, but we are almost finished and I would urge him to deal with the matter now. It can always be recommitted if the member is not satisfied with the outcome, given that amendments have been made in this place, so it has to go back to the other place and then it will come back here.

The CHAIRMAN: I do not think the honourable member has moved to report progress. I think he has suggested that we might—

The Hon. G.E. GAGO: I am responding to that. I am saying that I suggest that we proceed. If he is not happy with the outcome of this it can always be recommitted and dealt with in between the houses. I would beg his indulgence that we keep moving and he use other means to tidy things up, if need be.

New clause inserted.

Clauses 18 and 19 passed.

Clause 20.

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

Page 6, after line 34—After subclause (5) insert:

(6) Section 89(3)(b)—delete 'matters' and substitute:

persons, things

This amendment supports a previous amendment by allowing for regulations to be made that prescribe different classes of dealings for different classes of prisoners.

Amendment carried; clause as amended passed.

Schedule 1 passed.

Schedule 2

The Hon. T.J. STEPHENS: I move:

Clause 1, page 8—

Line 4—After 'Correctional Services Act 1982' insert:

(the principal act)

After line 6—After its present contents (now to be designated as subclause(1)) insert:

(2) However, if, before the commencement of this clause, the board had, under section 66 of the principal act, ordered a prisoner to be released from prison or home detention on parole, the prisoner is, subject to the provisions of part 6 division 3 of the principal act as in force immediately before that commencement, to be released on parole.

The two amendments are tied. The first one is a technical amendment; all it would do is tie amendment No. 3 to the principal act, as amendment No. 3 seeks to amend the principal. So, amendments Nos 2 and 3 would need to be accepted together.

This amendment is about the transitional provision that provides that, where the Parole Board has already decided a date of release for a prisoner who was sentenced to imprisonment of less than five years with a non-parole period, the decision stands. The reason I have moved this is that without this transitional provision the position for prisoners in these circumstances is, certainly, unclear.

With respect to natural justice, we believe that that principal is wrong. Before anyone accuses me of being soft on this particular issue, I have to say that 'do the crime, do the time' is my motto, but I do have sympathy for the concept that we would like to have better people coming out of prison than when they went in, because, ultimately, they have to live next door to somebody. Nothing would grate on a person more than their feeling that the system has unfairly treated them, and that is the reason we believe this transitional provision position is quite important.

The Hon. G.E. GAGO: The government accepts this amendment. It is an in-house amendment to the government bill based on amendments moved in the other place by the member for Davenport. The amendment relates to section 66 of the Correctional Services Act. The effect will be that any prisoner convicted of an offence of arson will now be required to apply for parole, even if sentenced to less than five years in prison.

This amendment supports the government's commitment to community protection and law and order, and after due consideration, this amendment has been accepted. I would like to thank the honourable member for putting forward this important amendment.

Amendments carried; schedule as amended passed.

Title passed.

Bill reported with amendments.

Bill read a third time and passed.

MOTOR VEHICLES (MISCELLANEOUS NO. 2) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 October 2009. Page 3858.)

The Hon. CARMEL ZOLLO (21:48): I am pleased to see this legislation before us, legislation that further improves our graduated licensing scheme (GLS). The GLS was initiated in 2005-06 by the Rann Labor government for our novice drivers in an attempt to arrest the worrying trend of driver fatalities and serious injuries.

Statistics regularly reveal that those aged between 16 and 24 years are still over-represented in our crash data; they are three times more likely to be involved in a serious road crash. These proposed new initiatives provide a balanced strengthening of the graduated licensing scheme, as a result of which we will see better trained and experienced novice drivers, as well as providing a level of safeguards. In addition, the bill provides extra restrictions for those who seriously offend.

As the first minister for road safety, I was pleased, prior to my resignation, to announce seven new initiatives that the government proposed to bring to the parliament this year. I congratulate the Minister for Road Safety in the other place on bringing these proposals to fruition, with a view to seeing our young drivers better protected. Clearly, I know the great amount of work that is required prior to legislation coming before the chamber, whether it be informing all existing novice drivers of the proposed changes to the required interagency liaison or basics, such as changing forms.

Whilst I remember writing to them, I did not get the opportunity publicly to place on the record my thanks to the Road Safety Advisory Council and its youth task force, as well as to groups representing young people and associations with road safety interests, for their assistance to the government in arriving at the changes before us, and I do so now.

One of the initiatives that required not legislative change but subordinate change by regulation was the complete prohibition on learner and P1 drivers using any type of mobile phone

function, including hands-free or Bluetooth units, while they are driving, and that has already been implemented, as we all know.

I know that we all agree that young drivers need to acquire safe driving experiences with as few distractions as possible. If I remember correctly, research shows that novice drivers often experience difficulty in balancing the many demands on their driving from perceptual, mental and physical tasks. They are also more likely to wander across traffic lanes and take longer to notice driving hazards.

Information has already been placed on the record but, very briefly, the proposed changes before us are the increase in the supervised driving time required by learner drivers, from 50 hours to 75 hours, and the increase in the minimal time on a learner's permit, from six months to 12 months. The premise of these changes is that young drivers will gain more experience over a greater length of time with the benefit of having a qualified driver in the car with them. Through all these proposed initiatives, I believe that we will see the greatest benefit in keeping novice drivers on their L's longer before progressing to their P's and driving unsupervised.

At the moment, we have in place curfew conditions, which apply to drivers returning from a serious disqualification, from midnight to 5am. This legislation proposes to strengthen that curfew by not allowing any passengers, other than the supervising qualified driver, during those hours. We know that young people suffer road trauma during those hours, and this passenger restriction is a further safety initiative for those who have seriously offended.

A common complaint I received as minister came from parents who believed that the current penalty for failure to display P-plates was unduly harsh, and that view was also shared by other stakeholders. At the moment, learner provisional drivers in South Australia have a limit of four demerit points, which incurs a six month licence disqualification.

However, P1 drivers who fail to display their P-plates are also liable for a six month licence disqualification. It is considered that there are more significant offences that attract disqualification—for example, breaching the zero alcohol requirement. Whilst in the future many parents will miss out on many an inventive story about why the novice driver did not display their plates, I am certain that it will nonetheless be a welcome change and bring us in line with other states.

At the moment, should provisional drivers who are disqualified because they have contravened a condition of their licence or incurred four demerit points wish to appeal, they need to do so under the current hardship appeal provision through the Magistrates Court. This ties up valuable court time, but this legislation will make it possible for those provisional drivers who receive a disqualification—that is, not for a serious disqualification offence—to have the opportunity to choose a safer driver agreement.

Those who are disqualified for serious offences will continue to have to appeal to the Magistrates Court. As to be expected, there are some strong conditions attached to the safer driver agreement, not the least a regression to a previous licence stage. If my memory serves me correctly, South Australia was the first state in Australia—when, in October 2006, new laws came into effect—that required disqualified L and P plate drivers to earn their licence back.

Another area that this legislation addresses is one that has caused enormous community debate and discussion. The use of high-powered vehicles by P1 and P2 platers has regrettably made for many a headline. The restriction of P1 and P2 platers under the age of 25 from driving high-powered cars is addressed, with appropriate exemptions to be placed in regulations, because none of us want to see families face undue hardships, particularly in rural South Australia. Our scheme is to be aligned with those in other states.

I understand that a number of technical or administrative amendments are also contained in this legislation to improve the operation of the act. It is not my intention to repeat the excellent second reading contribution of the minister, which provides members with all the detail, but simply to add my support for this bill. Clearly, I have a strong interest in this matter and, more importantly, I congratulate the minister in the other place on bringing it to fruition.

I think it is good to remind ourselves that, essentially, what this legislation before us does is strengthen the GLS for all those between the ages of 16 and 24 with extra training and safeguards, as well as placing those extra restrictions on those who seriously offend. Despite steady falls in South Australia's road toll over the past decade, young drivers continue to be overrepresented in road trauma statistics. People aged 16 to 24 years of age make up 12 per cent of the population

but account for 27 per cent of road fatalities and 30 per cent of serious injuries. At least they were the statistics I worked with, and I hope they have not risen again. Road safety is generally an area of strong support across all parties, and these improvements to our graduated licensing scheme is one very good example of that support.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (21:58): I rise on behalf of the opposition to speak to this bill. Given the time, I will not make a particularly long contribution. This bill passed in the House of Assembly, and the shadow minister, Mr Mark Goldsworthy (the member for Kavel), certainly outlined the opposition's position on this bill.

The bill does make some significant changes to the South Australian graduated licensing scheme for novice drivers, and the opposition has supported the amendments to this. The bill increases the supervised driving time for learner drivers from 50 to 75 hours; increases the minimum time on a learner's permit from six to 12 months for drivers under the age of 25; introduces a restriction on the driving of high-powered cars for provisional drivers—both P1 and P2—under the age of 25; changes the penalty for the failure to display two P plates from disqualification to a fine and the loss of demerit points; replaces the current hardship appeal provision with the offer of a safer driver agreement; strengthens curfew conditions applying to drivers returning from serious disqualification offences by restricting the carriage of passengers during a curfew period; and a number of other smaller technical amendments.

I note that the former minister spoke just a moment ago in relation to the restriction on high-powered cars for provisional drivers. I am glad that the government has addressed not only people in country areas but anywhere where a family only has access to a four-wheel drive, a V8 or a supercharged or turbocharged car. We might wonder why they need such a vehicle, but the Hon. Caroline Schaefer said in our party room discussions that when her children were learning to drive they had a V8 for towing a horse float to a number of country shows, and that was the main vehicle they used. I am glad the government has seen fit not to enforce that, but I am concerned that it will not be good for somebody on their P1 or P2 permit if the family has only a high-powered vehicle. I am concerned that the only way we will know that is when the police, seeing someone on P-plates in a V8 or high powered vehicle, will have to pull them up to check that they are on that level of exemption. For a young driver to be stopped by a police officer when abiding by the law seems a waste of police resources.

Will the minister explain in committee exactly how it will work? If somebody has an exemption, can they display it on their P-plate in the window so that they will not have to go through the trauma of being stopped by a police officer to check whether they have a bona fide exemption, or must anybody driving a V8 or high powered vehicle on a P-plate at all times be prepared to be stopped by the police—maybe several times a day if they happen to come under the scrutiny of a police patrol? We understand what the government is trying to do, but I am trying to work out how the mechanics of it will operate.

The other area of interest—and members will note that I have tabled an amendment—relates to people learning to drive at the speed limit. The member for Kavel (Mr Mark Goldsworthy) raised the issue of learner drivers who I understand, driving with a qualified driver, cannot drive at any more than 80 km/h on the open road. If they were with an instructor or with someone in a vehicle with dual controls or brakes they could drive at 100 km/h, but they cannot drive at that speed with another responsible qualified driver. The opposition is concerned that this presents some significant road safety issues.

If a learner driver is merging onto the freeway—coming from an off ramp onto the South-Eastern Freeway, or onto the Port Wakefield Road (I am more familiar with the South-Eastern Freeway because I had a property in the South-East and drove on that road often), and the traffic is travelling at 110 km/h, all obeying the speed limit, how does that driver, who is allowed to travel at only 80 km/h, safely merge with that traffic and learn to drive at 110 km/h if they are restricted to 80 km/h? Closer to the city the speed limit on the freeway drops back to 100 km/h: how do they safely merge into that traffic, especially at times when there are significant numbers of vehicles—it may not be so bad on a lazy Sunday afternoon—if they are travelling at only 80 km/h?

The Hon. T.J. Stephens interjecting:

The Hon. D.W. RIDGWAY: The Hon. Terry Stephens talks about the big trucks and makes a very good point. Some of the B-doubles these days doing 110 km/h weigh about 40 tonnes all up, and they may have to break suddenly because a learner driver has pulled into the flow of traffic. That does not seem sensible, given that it is the speed at which the public drive. The

same applies with a normal two-way highway: anywhere in South Australia the speed limit is 100 km/h unless otherwise sign posted. As I say, some areas are at 110 km/h, but a fair part of the network is at 100 km/h.

I have seen examples on the road from Adelaide to Bordertown where you will have a learner driver driving at 80 km/h and a significant number of vehicles queued up behind that learner driver because they are not allowed legally to go any faster, then you see other road users starting to take risks to overtake them because they are on a tight schedule or they are frustrated. I have also seen a B-double right up behind a learner driver, almost intimidating that driver, although not intentionally. Clearly, they have not realised that they are a learner driver and suddenly the whole traffic flow has slowed down.

It is my understanding that in Victoria learner drivers can drive at 100 km/h. I have anecdotal evidence from a lot of my friends in the Bordertown and Wolseley area that when the kids learn to drive they want to go to Victoria. They want mum to go shopping in Kaniva or Nhill or go to the footy, the cricket or the tennis because they are happy to drive and learn at 100 km/h. I think this is not about weakening the provisions with these important changes, but I think it highlights some inconsistencies.

I know that Mr Mark Goldsworthy raised it and the government rejected it in the House of Assembly, but I would like to hear what the minister's advisers have to say about how it is safe to allow a vehicle doing only 80 km/h to enter a stream of traffic that is doing 110 km/h or 100 km/h and how is it safe to have them doing 80 km/h out on the open highway when they are contending with vehicles that are travelling at 100 km/h to 110 km/h. It seems to create another hazard on the road.

I think the biggest risk to young drivers is not when they are with mum or dad or a responsible driver on their learner's permit; it is probably when they get to their P-plates when they are not with mum and dad and maybe with a couple of mates or there are some other distractions. It would seem to me to make good sense, as it does to the opposition, for our learner drivers to learn to drive for all road conditions, and that includes all speed limits, whether it be 40, 50, 60, 80, 90, 100 or 110 km/h. We have that whole range of speed limits across the state. It just makes sense.

I will not repeat the contribution that others have made in the House of Assembly or that made by the former minister. I think she has covered most of the points very well. I indicate that the opposition is happy to support the government's amendment. I think that is to do with the high-powered vehicles and having it defined in regulations. That certainly makes sense. The provisions as outlined in the bill are all good, sensible provisions, except we believe that learner drivers should be allowed to drive at 100 km/h.

Learner drivers in some of the country areas need to travel long distances. I know of people who have been driving back to the South-East or the Mid-North who are on a bit of a tight schedule and who have said to their kids that they cannot drive because they have to get there in a couple of hours and they cannot take 2½ hours to get there. Because they are limited to 80 km/h, the parents or the responsible qualified driver does not allow them to drive because it is simply a time consideration. I think it makes significant sense to have a look at that. Obviously, that amendment is on file and we will move it in committee. I urge those on the cross-benches—and I have spoken to a couple of them this evening—to have a close look at it because I think it makes a lot of sense. With those few words, I indicate that the opposition will be supporting the bill.

Debate adjourned on motion of Hon. I.K. Hunter.

DEVELOPMENT (REGULATED TREES) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

UPPER SOUTH EAST DRYLAND SALINITY AND FLOOD MANAGEMENT (EXTENSION OF PROJECT) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (22:10): 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 Upper South East (USE) Project was developed in the early 1990s to address community concerns about dryland salinity, waterlogging and the degradation and fragmentation of ecosystems in the Upper South East.

On 19 December 2002 the USE Project was given specific enabling legislation: the *Upper South East Dryland Salinity and Flood Management Act 2002* (USE Act).

The USE Act was extended in 2006 to ensure that construction of the drainage network could continue as it was considered essential to mitigate flood risk, remove saline groundwater to improve agricultural productivity, and provide fresh water to meet the requirements of wetlands and threatened species.

The Bill being presented today seeks a further three-year extension to the USE Act to 19 December 2012. A number of important events have taken place that contribute to the need to extend the Act.

In June 2006, a comprehensive proposal to part-fund the *Restoring Flows to the Wetlands of the Upper South East of South Australia* (REFLOWS) project, was submitted to the National Water Commission for consideration. REFLOWS involves construction of floodways to partially redirect historic environmental flows to the Upper South East. Its objective is to construct the infrastructure that will opportunistically manage excess flows created by significant episodic rainfall events. The floodways will encourage water flows back into the historic watercourses of the Upper South East, thereby managing flooding events and providing water to the environment. The project links the Lower South East drainage system to the Upper South East by diverting water to the north from Drain M (which currently flows out to sea). The intention is to provide benefit to wetlands along the watercourse and ultimately to the Coorong if the rainfall event is large enough.

In a further development, the Natural Resources Committee of Parliament tabled its annual report on the USE Act for the period July 2007-2008 in November 2008. The report made recommendations for further study and assessment of environmental risks of aspects of the Project. The Committee recommended that no further work be undertaken on the Bald Hill groundwater drain or REFLOWS floodways pending these studies.

Two reviews were therefore undertaken: an independent review of the environmental implications of constructing and not constructing the proposed Bald Hill drain and an independent review of community perspectives of the Bald Hill drain and REFLOWS project. The first of these reports revealed that if no action is taken further degradation of the West Avenue watercourse is likely to occur. The second report found there was majority support for construction of Bald Hill and REFLOWS.

While the two independent studies and the cessation of work on Bald Hill and REFLOWS has delayed construction, they have provided the certainty required to complete the Project, including the construction of REFLOWS.

In addition to seeking to extend the USE Act to provide adequate time for completion of both the Bald Hill drain and REFLOWS, this Bill also seeks to address issues relating to acquisition of land by easement to construct REFLOWS, simplify the revestment of land on completion of works, make consequential amendments to the compensation and fencing provisions to reflect the revestment of land and the establishment of easements, and update the interest rate provisions relating to non-payment of the levy.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Upper South East Dryland Salinity and Flood Management Act 2002*

4—Amendment of section 3—Interpretation

This clause proposes to insert the following definitions in section 3:

Category A project works corridor;

Category B project works corridor;

Category C project works corridor;

designated establishment date;

designated transfer date;

statutory easement.

It is also proposed to insert a new subsection (7) in the section that will provide for the making of regulations to prescribe various classes of statutory easements and the terms of such easements. Other amendments are consequential.

5—Amendment of section 10—Powers of authorised officers

The amendment proposed to this section is consequential.

6—Substitution of heading to Part 3 Division 1

It is proposed to substitute the heading to Division 1 of Part 3 as a consequence of the amendments proposed to that Division. The heading will be 'Vesting of land and creation of statutory easements'.

7—Amendment of section 12—Vesting of land (Category A and Category B project works corridors)

It is proposed to amend the section to provide that public land adjoining or adjacent to land within a Category A project works corridor may, by proclamation, be declared to be subject to a statutory easement (being an easement of a class prescribed by the regulations for the purposes of this section and being an easement that matches the nature of the land as public land and the nature of the works to be undertaken for the purposes of the Project according to a scheme set out in the regulations) in favour of the Minister over and in respect of public land.

Other proposed amendments to section 12 are related to the foregoing, or clarify the provision.

8—Insertion of sections 12A, 12B and 12C

It is proposed to insert new sections 12A, 12B and 12C in the principal Act after section 12 as proposed to be amended.

12A—Land to be revested (Category B project works corridors)

New section 12A provides that, on the commencement of this new section (the *commencement date*), all land within a Category B project works corridor will vest in—

(a) unless paragraph (b) applies—the person who, on the vesting of the land in the Minister under section 12, was the owner of the remainder of the land in the parcel of land that was affected by the vesting (the *remaining land*); or

(b) if the person referred to in paragraph (a) is not, on the commencement date, the owner of the remaining land—the person who, on the commencement date, is the owner of the remaining land.

The section then makes provision for various matters following the vesting. For example, if the vested land was, before the original vesting in the Minister, part of a road vested in a council, the land will be reinstated as a public road under the *Local Government Act 1999*. Land within a Category B project works corridor will, on the vesting under this new section, be taken to be subject to a statutory easement (being an easement of a class prescribed by the regulations for the purposes of this section and being an easement that matches the nature of the land as public land or as private land and the nature of the works to be undertaken for the purposes of the Project according to a scheme set out in the regulations) in favour of the Minister over and in respect of the land.

Land vested under this new section will be vested in the same estate as the remaining land and, on the vesting under this section, the title to the land will be taken to have been restored as if no change had ever occurred and as if the land had never been vested under section 12 (subject to any dealing with the remaining land between 19 December 2002 and the commencement date and without giving rise to any retrospective liability for any tax, rate or charge in connection with the land that has been revested).

The section makes provision for other matters that follow from the vesting under this section, the creation of the statutory easement and the restoration of title.

12B—Acquisition of interest in land by statutory easement (Category C project works corridors)

New section 12B provides that on the commencement of this new section, all land within a Category C project works corridor will, by force of this new section, be taken to be subject to a statutory easement (being an easement of a class prescribed by the regulations for the purposes of this section and being an easement that matches the nature of the land as public land or as private land and the nature of the works to be undertaken for the purposes of the Project according to a scheme set out in the regulations) in favour of the Minister over and in respect of the land.

12C—Statutory easements

New section 12C makes provision for statutory easements under section 12, 12A or 12B.

9—Amendment of section 13—Entitlement to compensation

The amendments proposed to section 13 relate to compensation with respect to land within a Category A or Category B project works corridor and relate to the return of land within the project works corridor to persons and the creation of statutory easements over the land.

Other proposed amendments are consequential on distinguishing between compensation in relation to land within a Category A project works corridor and compensation in relation to land within a Category B project works corridor. For example, the finalisation date for land within a Category A project works corridor remains unchanged from what is currently provided in the Act, while the finalisation date for land within a Category B project works

corridor will be a date that is not later than 19 December 2014 fixed by the Governor by proclamation for the purpose.

10—Insertion of section 13A

This new section is proposed to be inserted after section 13.

13A—Entitlement to compensation—Category C project works corridors

New section 13A provides that, subject to this section, the Minister is, in respect of the acquisition of a statutory easement over land within a Category C project works corridor, liable to pay compensation to any person who is the holder of an estate or interest in the land that is subject to the easement on the relevant date (and an entitlement to compensation under this section with respect to a particular easement does not arise before the relevant date).

The compensation will be determined—

(a) as if the Minister had acquired the easement on the relevant date; and

(b) as if the acquisition had occurred in accordance with the *Land Acquisition Act 1969*.

The section requires the Minister to make an offer of compensation within 6 weeks after the relevant date and that offer will be taken to have been made under section 23A of the *Land Acquisition Act 1969*. The section also defines *relevant date* and *works finalisation declaration* for the purposes of the section.

11—Amendment of section 17—Entry onto land

The amendments proposed to this section are consequential.

12—Amendment of section 21—Fencing works and drainage reserves

Current section 21 provides for the erection, repair, maintenance and replacement of fencing of Project works and drainage reserves within the Project area. It is proposed to insert new subsections that empower the Minister to require the owner of land where a statutory easement is situated to carry out specified fencing work; and provide that the owner is responsible for the maintenance and replacement of designated fencing (with, subject to the terms of an agreement, the Minister bearing half the cost).

13—Amendment of section 23—Contribution to funding of project

The proposed amendment to section 23 will substitute the current definition of *prescribed percentage* with a new definition for the purposes of calculating the interest that is to be payable on any contribution required to be paid under this section that is in arrears.

14—Amendment of section 44—Regulations

It is proposed to amend the regulation making power so as to allow for the substitution of any Rack Plan referred to in Schedule 1.

15—Amendment of section 45—Expiry of Act

This proposed amendment will postpone the expiry of the Act for 3 years until 19 December 2012. A new subsection is also proposed to be inserted to make provision in relation to statutory easements created under the Act after the Act expires.

16—Variation of Schedule 1—Project works corridors

It is proposed to amend Schedule 1 to include a description of lines for the purposes of paragraph (c) of the definition of *project works corridor*.

Schedule 1—Transitional provisions

The Schedule contains provisions.

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

At 22:11 the council adjourned until Wednesday 18 November 2009 at 11:00.