LEGISLATIVE COUNCIL

Tuesday 1 December 2009

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

CONSTITUTION (APPOINTMENTS) BILL

His Excellency the Governor assented to the bill.

DEVELOPMENT (REGULATED TREES) AMENDMENT BILL

His Excellency the Governor assented to the bill.

FAIR WORK (COMMONWEALTH POWERS) BILL

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (NATIONAL INDUSTRIAL RELATIONS SYSTEM) BILL

His Excellency the Governor assented to the bill.

MARALINGA TJARUTJA LAND RIGHTS (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

SERIOUS AND ORGANISED CRIME (UNEXPLAINED WEALTH) BILL

His Excellency the Governor assented to the bill.

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

His Excellency the Governor assented to the bill.

SECOND-HAND VEHICLE DEALERS (COOLING-OFF RIGHTS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (SURROGACY) BILL

His Excellency the Governor assented to the bill.

SELECT COMMITTEE ON COLLECTION OF PROPERTY TAXES BY STATE AND LOCAL GOVERNMENT, INCLUDING SEWERAGE CHARGES BY SA WATER

The Hon. I.K. HUNTER (14:25): I bring up the report of the committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

SELECT COMMITTEE ON ALLEGEDLY UNLAWFUL PRACTICES RAISED IN THE AUDITOR-GENERAL'S REPORT 2003-04

The Hon. B.V. FINNIGAN (14:25): I bring up the report of the committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

SELECT COMMITTEE ON SA WATER

The Hon. M. PARNELL (14:25): I bring up the report of the committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

SELECT COMMITTEE ON TAX-PAYER FUNDED GOVERNMENT ADVERTISING CAMPAIGNS

The Hon. M. PARNELL (14:25): I bring up the report of the committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

SELECT COMMITTEE ON STAFFING, RESOURCING AND EFFICIENCY OF SOUTH AUSTRALIA POLICE

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:26): I bring up the report of the committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

SELECT COMMITTEE ON TAXI INDUSTRY IN SOUTH AUSTRALIA

The Hon. R.L. BROKENSHIRE (14:26): I bring up the report of the committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. CARMEL ZOLLO (14:27): I bring up the report of the committee on an inquiry into the Office of the Public Trustee.

Report received and ordered to be published.

SELECT COMMITTEE ON CERTAIN MATTERS RELATING TO HORSE RACING IN SOUTH AUSTRALIA

The Hon. T.J. STEPHENS (14:27): I bring up the interim report of the committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. R.P. WORTLEY (14:27): I bring up the final report of the committee on Public Transport.

Report received and ordered to be published.

PAPERS

The following papers were laid on the table:

By the President—

Reports, 2008-09—
- District Council—
  - Alexandrina
  - Ceduna
  - Clare and Gilbert Valleys
  - Elliston
  - Goyder
  - Kimba
  - Lower Eyre Peninsula
  - Mount Barker
  - Murray Bridge
  - Port Augusta
  - Port Lincoln
  - Streaky Bay
  - Tumby Bay
  - Victor Harbor
  - Wudinna

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

Reports, 2008-09—
- Capital City Committee
- Defence SA
- Department of Trade and Economic Development
- Department of Treasury and Finance
- Distribution Lessor Corporation
- Essential Services Commission of South Australia

Funds SA
Generation Lessor Corporation
Guardianship Board
Legal Practitioners Disciplinary Tribunal
Motor Accident Commission
Murray-Darling Basin Authority
Operations of the Auditor-General's Department
Police Superannuation Board
Promotion and Grievance Appeals Tribunal
Public Trustee
RESI Corporation
SA Metropolitan Fire Service Superannuation Scheme
South Australian Asset Management Corporation
South Australian Government Financing Authority
South Australian Motor Sport Board
South Australian Parliamentary Superannuation Scheme
South Australian Superannuation Board
South Australian Water Corporation
State of the Service
State Procurement Board
Stormwater Management Authority
Transmission Lessor Corporation

Essential Services Commission of South Australia—2009 SA Rail Access Regime Inquiry—Final Inquiry Report—October 2009

Section 74B of the Summary Offences Act 1953—Road Block Establishment Authorisations for the period 1 July 2009 to 30 September 2009

Section 83B of the Summary Offences Act 1953—Dangerous Area Declarations for the period 1 July 2009 to 30 September 2009

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

The Administration of the Development Act 1993—The Planning Strategy—Report, 2008-09

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

Reports, 2008-09—
Administration of the Radiation Protection and Control Act 1982
Department for Environment and Heritage
Department for Transport, Energy and Infrastructure—Addendum—Overseas Travel
Environment Protection Authority
Pika Wiya Health Advisory Council
South Australian Abortion Reporting Committee
Southern Adelaide Health Service
Wilderness Advisory Committee
Zero Waste SA

Government Response—State of the Environment Report of South Australia—Report, 2008

Regulations under the following Acts—
Environment Protection Act 1993—Exemption from Act—Maralinga
Fees Regulation Act 1927—Incidental SA AS Services
Upper South East Dryland Salinity and Flood Management Act 2002—Establishment of Project Scheme

By-laws—District Council
Mount Gambier—By-law F—Smoking on Council Land
Tatiara—
No. 5—Dogs
No. 6—Cats

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

Regulations under the following Acts—

Liquor Licensing Act 1997—Dry Areas—
Short Term—
Alexandrina Council
Spalding
Stirling
Long Term—
Paringa and Renmark

WATER TRADING, HIGH COURT CHALLENGE

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:33): I table a copy of a ministerial statement relating to the High Court challenge against Victoria on water made today by the Premier.

ST CLAIR 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) (14:33): I seek leave to make a ministerial statement about the St Clair land swap.

Leave granted.

The Hon. G.E. GAGO: I have given instructions to consent to an order by the Supreme Court to have my decision set aside. This decision should put an end to the current Supreme Court proceedings. If the court does set aside my decision, the state government will undertake further assessment of the proposed St Clair land swap at Woodville.

The government does not believe that it is in the public interest to be involved in lengthy and costly litigation with residents. The essence of the residents' claim is that they want a review of the decision of the Charles Sturt council. If the court sets aside my decision, I will delegate my authority to the southern suburbs minister, the Hon. John Hill, under the Local Government Act 1999 to deal with the matter. That will meet the request by the residents to have the decision of the Charles Sturt council reviewed.

Minister Hill will look afresh at the application by the City of Charles Sturt to revoke the community land status. Once he has considered the council's proposal afresh, the City of Charles Sturt will need to consider minister Hill's decision in relation to community land revocation at a full council meeting.

QUESTION TIME

ST CLAIR LAND SWAP

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:36): 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: It is with interest that we note that, today, the minister has backflipped on her decision and asked that that decision be set aside and has relinquished her rights to the Minister for the Southern Suburbs. My question to the minister is: will this next decision by the Minister for the Southern Suburbs be made prior to the 20 March election so that the residents of the western suburbs can be fully aware of the government's intentions prior to that election?

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 am very pleased to say that this government has acted in an extremely responsive way to community concerns; it has prioritised those concerns and issues and acted as expeditiously as it can within a responsible framework. Obviously it has considered all the matters very carefully, it has acted with a high degree of diligence and in good faith, and—

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: Just listen. Obviously, this government has also acted with advice. I announced today that I have sought to have my decision set aside. My understanding is that that will be before the Supreme Court later this week—either tomorrow or Thursday—and I understand that there are discussions taking place around that, so it is being considered. If the court does decide to set aside my decision then I have indicated that I will delegate my authority to the Hon. John Hill to conduct the decision afresh, just as the community around St Clair has requested.

This government has decided that it is in no-one's interest to have a protracted legal issue going on. It is important that the matter be resolved quickly so that the community can get on with its day to day business. I believe this is the best outcome for everyone, and I am very pleased to be able to deal with the matter in this way.

In relation to minister Hill and any process that he would undertake, or the time he would take to deal with that, that would be absolutely a matter for that minister. He would need to consider that and the matters that he believes are relevant to his decision-making. He would need to undertake that process according to all of those very important considerations. However, I have already put on the record that this issue is a priority for this government and we have given a commitment—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: —to expedite this matter. I believe it is in the interests of the community to deal with this matter expeditiously, given the level of diligence that needs to be applied. I have already gone on the record and said that this government has prioritised this matter and that we will deal with it in an expeditious way.

ST CLAIR LAND SWAP

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:41): Will it be heard and dealt with before the election—a yes or no answer?

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) (14:41): I have answered the question very clearly. If the court decides to set aside my decision then I will delegate the responsibility to minister Hill and he will deal with the matter in a way that he sees fit. He will be renewing the decision afresh. It would be completely inappropriate for me to be directing another minister as to the time frame. It is ridiculous; the Hon. David Ridgway is being completely irresponsible. I have stated very clearly that this government has prioritised this issue. We think it is an important issue and we believe it is in the public interest to expedite this matter.

Members interjecting:

The PRESIDENT: Order!

ST CLAIR LAND SWAP

The Hon. DAVID WINDERLICH (14:42): What steps will the minister be taking to address concerns about conflicts of interest in the Charles Sturt council itself in relation to this decision?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:43): Again, I have already put on the record that I have received no evidence of a conflict of interest relating to this matter. If there are any allegations that have evidence, then there are opportunities and due process available to members of the public to put those matters forward and have them investigated. As usual, the Hon. Mr Winderlich puts forward snide innuendo. If he has some facts that he believes constitute evidence of a conflict of interest, then let him put them forward. As I put on the record before, to the best of my knowledge, I have not received any evidence that suggests there is impropriety relating to the matters involving St Clair.

SA LOTTERIES

The Hon. J.M.A. LENSINK (14:44): I seek leave to make a brief explanation before asking the Minister for Government Enterprises a question on the subject of SA Lotteries.

Leave granted.

The Hon. J.M.A. LENSINK: Honourable members may recall that I asked some questions relating to SA Lotteries advertising earlier this year involving, in particular, concerns that had been raised regarding the 'Dreams Live Here' campaign. The Auditor-General's Report revealed that spending on the Oz Lotto product had nearly doubled, and the belief was that this was being driven by the record jackpots. My questions are:

1. Is there an intention to continue running the Dreams Live Here campaign?

2. What relationship does it have to increasing the consumer spend on lotteries products?

3. What are the ongoing costs of print and electronic media campaigns for the Dreams Live Here 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) (14:45): I thank the honourable member for her questions. I have put on record before answers to questions around advertising. In relation to the latter question about how long that campaign is going for, I do not have those details but I am sure they are available and I am happy to bring those back to the chamber. I remind people that SA Lotteries does have a commitment to responsible gambling.

An honourable member: It is a world leader.

The Hon. G.E. GAGO: And, in fact, it is a world leader. Research shows that it is rare for lottery play to be associated with problem gambling, as stated in the 'Gambling Prevalence in South Australia' 2005 study, commissioned by the South Australian Department for Families and Communities and the IGA, and the Productivity Commission's draft report 'Gambling', released in October 2009. SA Lotteries is committed to responsible play practices in all aspects of its operations and the effective maintenance of harm minimisation measures across its statewide agency network.

SA Lotteries has proactively applied a gamble responsibility warning message to all its game advertising since November 2003. In 2004, in accordance with the State Lotteries Act as amended, SA Lotteries adopted the Independent Gambling Authority's approved State Lotteries Advertising Code of Practice and State Lotteries Responsible Gambling Code of Practice. Both codes of practice were updated by the IGA effective from 1 December 2008. The major impact to SA Lotteries from these revisions was the introduction of expanded warning messages and a framework for their application. So, agreements with SA Lotteries agents incorporate the requirements of the code.

SA Lotteries has established an internal problem gambling report group which is convened when reported incidents are received, allowing further action to be considered. SA Lotteries has been well recognised for its important adherence to those standards. There are also significant standards in place for SA Lotteries agents, and I will not go through all those details but, as I said, considerable measures are put in place to ensure that those standards are adhered to in a proper way.

I mentioned that some of the increased expenditure on lotteries—and I have already put that information on record in here before—was related to some of the very large prize pools that came into play this year. I think there was a significant increase. I cannot remember the prize pool amounts but they were unprecedented, and they caused significant public interest and a very large increase in our lotteries patronage. As I said, in relation to the details about that advertising campaign, it meets the codes and standards for advertising, as do all of the practices of lotteries, as I have been advised. I am happy to take on notice those other specific details and bring back a response.

DOMESTIC VIOLENCE

The Hon. S.G. WADE (14:49): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about domestic violence.

Leave granted.

The Hon. S.G. WADE: On Wednesday 25 November, the Mount Barker *Courier* reported on a forum on the rising domestic violence trend of children abusing their parents. The forum was organised by the Mount Barker Family Violence Investigation Unit's Senior Constable Sam Massey

and Child and Mental Health Services counsellor Martin Gare. *The Courier* quotes psychologist, social worker and family therapist Eddy Gallagher as follows:

> 'While the assumption is that teenagers will act out and rebel against their parents, violence and abuse should not be the norm.' Mr Gallagher said while other types of violence were declining, he believed violence by children towards parents was rising...He added that women were leaving their abusive husbands, only to deal with similar behaviour from their children...Mr Gallagher said one of the main reasons this type of domestic violence went unnoticed was parents felt 'guilty' about asking for help with their children's behaviour when it was seen as their responsibility.

My questions are:

1. Do government statistics and feedback from services confirm an increase in domestic violence against parents by children and young people?

2. Does the government consider that domestic violence prevention and response measures and legislation are flexible enough to deal with issues of parental abuse by children and young people?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:51): I thank the honourable member for his most important question and indeed am delighted to report that our new intervention orders act successfully passed through the lower house today in completion. It was substantially dealt with in our last sitting week of parliament, but a few minor amendments had to be dealt with today. So, this very important reform legislation is though through both houses.

One of the very important elements of that legislation is to increase the scope of those persons who are capable of the offence of abuse. The honourable member might recall that traditionally that scope has really only included domestic partners. The new reform legislation increases that to include children and grandparents. There are also some indigenous kinship rules in there and it also covers carers who are non-employed, that is, volunteer carers who for instance might be living in as friends or companions.

The reason that we added particularly the children into that legislation was to address what we understand to be the very real issue that, most unfortunately, young people are involved in the abuse of their parents, particularly mothers. Young people, particularly 16 and 17 year olds, can be very well developed physically, and they are in a position where they can cause significant threat and physical assault and abuse, particularly to mothers. I am sure there are instances of assaults on fathers as well, but we know that women are more commonly involved in domestic violence as victims than men. I am very pleased that we have accommodated that in legislation.

I also point out that our response to domestic violence has been a multi-pronged approach. Not only does it include legislative change around domestic violence but also fairly recently we have reformed the legislation around sexual assault and rape. We are already in the throes of conducting a public awareness campaign around domestic and other violence. That campaign is particularly targeted towards young people. We are particularly trying to reach those people and influence their attitudes towards respectful relationships at an early stage.

A series of educational grants are also part of that campaign—up to $10,000 for any group or organisation—in an attempt to ensure that the message reaches as many people as possible. We have those grants to enable those groups that may not be as affected by the mainstream message as others to translate or ensure the message is delivered in a culturally appropriate way to a range of other groups.

This government has been very active in terms of its approach to domestic violence. We have also rolled out our family safety framework to three more police areas, I am pleased to advise. That family safety framework is a case management type service to those women and their families at high risk of domestic violence. That strategy wraps services around those people at high risk and ensures that the appropriate services needed by that particular family are put in place and followed through. That framework would also have the capacity to address the issue of children perpetrators, I am advised.

DEVELOPMENT PLANS

The Hon. CARMEL ZOLLO (14:56): Is the Minister for Urban Development and Planning aware of any work being carried out by local councils to adapt their development plans to introduce

planning controls that preserve local character, whilst still providing a mechanism to allow for replacement and renewal?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:57): Adelaide has its own distinct charm and character, and this has been acknowledged in the government's 30-Year Plan for Greater Adelaide. The squares of the city centre, North Adelaide and the Parklands are central to our city's image. This image is also supported by the character of our inner suburbs, where architectural types and building materials create a quintessentially Adelaide streetscape.

An important element of the 30-year plan has been policies to preserve those streetscapes and concentrate new development along major transport corridors. Last week I finalised the City of Unley Village Living and Desirable Neighbourhoods Development Plan Amendment, Stage 1. This development plan amendment has been under interim operation since November 2008 and has now been gazetted. I congratulate the City of Unley on its work in identifying the area's unique local heritage and character aspects through this pioneering style of development plan. Approval of the final version follows three years of negotiation with the local council, and I thank the Unley mayor, Richard Thorne, his fellow councillors and the council staff for their patience and cooperation, which has been critical to the successful completion of this development plan amendment process.

I also acknowledge the work of the Department of Planning and Local Government in helping the City of Unley to develop this innovative form of town planning. The City of Unley can now focus its attention on developing zoning and planning policies for arterial roads and major transport corridors that are consistent with the 30-year plan. The 30-year plan aims to concentrate further development along our city's major transport corridors in a way that allows for about 80 per cent of the metropolitan Adelaide area to remain largely unchanged.

The City of Unley's development plan amendment provides a broad template for guiding other councils on how best to manage residential development within that 80 per cent, especially within our cherished dress-circle suburbs. The most innovative element of this development plan is that it provides a framework to manage both the continued demand for growth and renewal within Unley with a desire to preserve the area's quintessential character. This is achieved by ensuring that buildings within the identified residential streetscapes can only be demolished once a replacement is assessed to be consistent with the area's specific character. One of the major challenges of the 30-year plan is to provide urban renewal in older developed areas by harnessing industrial land for higher density housing as the government intends to do at the Clipsal site in Bowden.

The City of Unley has provided direction on how we can still allow for the replacement of some of the older housing stock or build on long-vacant blocks in areas that have an agreed and identified character streetscape. As I have said before in this place, there will always be people who have an aspiration to live within Adelaide's dress-circle suburbs. For them the preferred option to enter that market is to develop some of the few remaining vacant lots or replace some of the run-down housing stock.

While many of the heritage and character homes have been well maintained, vacant blocks and rundown and derelict housing stock provide some opportunities for redevelopment within the suburbs. However, these opportunities have to be managed so as not to clash with the existing heritage and character, and the best way to achieve this is through a development plan. Planning policies contained within the new development plan also identify a new residential historic conservation zone that encompasses all the heritage areas of the City of Unley.

Stage 2 of Unley's development plan amendment process will consider the long-term vision for this council area and the opportunities for continued population growth close to the city. I suspect that this will be achieved by increasing housing density and diversity in some of the remaining residential areas of the council area that are not included in the local heritage or character zones. This will probably mean some substantial upscaling along existing rail and traffic corridors and in key activity centres within the City of Unley. Such an approach is consistent with the objectives of the 30-year plan, and I look forward to working with the City of Unley in developing the stage 2 development plan amendment in a way that allows us to achieve those goals.

DEVELOPMENT PLANS

The Hon. J.M.A. LENSINK (15:01): I have a supplementary question. Has the minister yet approved the City of Adelaide heritage DPAs and, if not, when will he do so?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:01): I have not yet received the final report from the department which is still doing some evaluation. I am not sure how long that will take.

PORT LINCOLN IRON ORE EXPORT FACILITY

The Hon. R.L. BROKENSHIRE (15:01): I seek leave to make a brief explanation before asking the Minister for Mineral Resources and Development a question about the export of minerals through the city of Port Lincoln.

Leave granted.

The Hon. R.L. BROKENSHIRE: I repeat Family First's support generally for the mining industry and the tuna industry, and our belief that a middle road can be achieved on Eyre Peninsula for those two industries.

I refer the minister to comments in today's *Port Lincoln Times* (which, in fairness to the minister, he may not have had a chance to read due to his busy schedule) by the Port Lincoln mayor, Peter Davis. He said he was 'appalled at the news another mining company wants to join Centrex Metals in exporting iron ore through the city's main wharf'.

The story states that Lincoln Minerals announced last week that it wants to export haematite iron ore, just as Centrex has been given permission to do. In fact, in documentation I have seen from Lincoln Minerals it says that it can see no reason why it should not be able to access the port of Port Lincoln. Mayor Davis also stated:

> It is sheer bloody-minded stupidity to export ore out of our beautiful harbour.

I understand that there are significant impediments to minerals being taken by rail from most or all of Eyre Peninsula to a deep-sea port for export. I understand the difficulty for the minister in trying to get what is potentially billions of dollars worth of iron ore from the West Coast but, notwithstanding the minister's difficulty, I do have some specific questions regarding Port Lincoln. My questions are:

1. Over the next 10 years, how many other mining ventures are likely to be in a position to begin exporting ore or other minerals from Eyre Peninsula and will be reliant upon the approved bulk handling facility at Port Lincoln?

2. What is the status of private and public interest in the proposed deep-sea port facility at Sheep Hill, approximately 50 kilometres north of Port Lincoln?

3. Does the minister concede that his government has set a precedent by approving the rights of Centrex Metals to export and that its hands are tied in considering a proposal from Lincoln Minerals or, indeed, any future companies to utilise the Port Lincoln port?

4. If not, can the minister outline the process for all miners who want to use Port Lincoln in the future for mineral export, particularly prior to the next 10 years when we hope to see a more extensive port?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:03): I thank the honourable member for his important questions. In relation to the first question (which I think was how many other mining companies are likely to wish to export ore from lower Eyre Peninsula), I am aware of at least one other that would have the potential for it. Obviously a lot of exploration is going on in lower and middle Eyre Peninsula. Some of that exploration has turned up promising results, but they may not yet meet JORC compliance—in other words, the resource established to the level of JORC compliance so that any further development of that site would be possible.

While there are some promising exploration results on the peninsula, it is difficult to say exactly how many of those may proceed. Certainly there are other significant potential iron ore deposits on the peninsula and, of course, one of the reasons why the government would like to establish an iron ore industry here is that it will provide economic diversity to the region. Ultimately, it will be on such a scale that it will provide, I believe, investment in another port, which brings me to the second question asked by the honourable member, which I think was about the public-private interest in the potential location of a port at Sheep Hill.

As I understand it, Centrex Metals itself, which has been given permission to export from Lincoln, at least has an option over some of the land there and some work has been done

investigating that particular site. I have not visited the site myself, but I am told that there is water that is 20 metres deep within half a kilometre offshore. If the tides and the orientation and prevailing winds and the like are suitable, obviously that is a location that has a great deal of potential.

I am aware that, particularly now that the Foreign Investment Review Board has given approval for Wuhan to invest within the deposit and the development of that deposit at Wilgerup, there is the potential for a port to be developed and some further work to be done in the future. Obviously, the government will encourage that.

The honourable member referred to the expressions of Lincoln Minerals to export from Port Lincoln. Let me say that I have not yet officially been contacted by that group. I did have a meeting with them 12 months ago or more, but I certainly have not, in recent times, been in contact with them. The first I knew that they were seeking approval was through the media.

I think the honourable member referred in his question to the fact that the rail line and the capacity of Port Lincoln is somewhat constrained. I indicated in reply to a question about the Centrex proposal that permission to export from Port Lincoln was purely related to the project at Wilgerup. In that sense, I do not believe that the Wilgerup approval does set a precedent. It was made clear that any other application would have to be studied completely independently. I would not agree that the government's hands are tied in any way in relation to that.

To any company that wishes to look at these issues, either through Port Lincoln or any other port, my advice would be that they contact the government and discuss these issues with them. If projects are becoming more viable in that region, that does provide the capacity for investment within the area at Sheep Hill. That is obviously something that the government would need to consider when there is interest in that. My advice to any company—Lincoln Minerals or any other—is that they should talk to the government soon and do it directly by contacting us rather than going through the media.

I do not accept that it sets any precedent. As I said, it was made clear at the time that the approval was given—remember: that was the Wilgerup approval for Centrex to export iron ore through Port Lincoln—that it was considered as a crown development sponsored by DTEI, which is responsible, of course, for marine areas, and it was assessed appropriately, with the Development Assessment Commission making a recommendation to me as Minister for Urban Development and Planning. That is how I became involved in that decision, not as Minister for Mineral Resources Development.

In relation to any future application, obviously they would have to discuss that not only with the government but also the port operator and the rail operator and others to see whether, in fact, there is any capacity because, as I indicated in my answer to that previous question, it is somewhat constrained. I stress this point: just because Centrex was given approval for its use of Port Lincoln for 10 years for the 1.6 million tonnes, it certainly does not mean that the government has its hands tied as the honourable member suggested in relation to supporting other export operations.

I have probably covered the last part of the honourable member's question, which was about the process involved. Obviously, Centrex, the company involved then, had approached the transport and infrastructure departments, and they had facilitated consideration of the port, through a crown development. Obviously, if any other miner on Lower Eyre Peninsula wishes to look to the future, they should really contact the government, and we can look at the issues. I would hope that, at some stage in the near future, a new port will be developed at Port Lincoln. I understand that even the grain industry is somewhat constrained at present. I think I read some reports recently indicating that even grain exports from Port Lincoln were somewhat constrained because of the capacity of the system to cope.

A new port development could well be in the interests of Eyre Peninsula, but obviously it is a 'chicken and the egg' situation in that for that to happen sufficient throughput is needed to justify the investment. Once that happens, I have no doubt that, in the next decade, a new port will be developed within Spencer Gulf.

I repeat the point I made in answer to previous questions, and that is that one of the benefits of letting the Centrex proposal go ahead is that it proves to the major customers in the world the undertaking's viability and the fact that Eyre Peninsula is and can be a reliable source of high quality iron ore. I believe that the significant volumes coming out of that area justify infrastructure investment in the future. Certainly, my advice to Lincoln Minerals is that it talks to Flinders Ports and the rail companies and then goes to the government and not do it through the media.

REPLIES TO QUESTIONS

The Hon. C.V. SCHAEFER (15:12): I seek leave to make a brief explanation before asking the Leader of the Government in this chamber a question about replies to questions I have asked previously.

Leave granted.

The Hon. C.V. SCHAEFER: A check of my files has shown that I now have answers to 30 questions outstanding, dating back to 2006. How many of those questions does the minister anticipate I will receive answers to before the end of my parliamentary career?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:13): I do not anticipate such issues, but what I do know is that, when these issues are raised—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: And Mr Lucas is a great one for raising this issue in the media; often, when you go and check, you find that some of the questions that he claims have not been answered have, in fact, been answered one way or another. Once the council adjourns, what will happen—

The Hon. J.S.L. Dawkins interjecting:

The Hon. P. HOLLOWAY: Well, it is obviously the responsibility of the minister concerned. I believe that very few questions that have been referred to me from another place are outstanding. Over the Christmas break—and this is what normally happens—the department will continue to prepare answers to questions. I think the usual practice is to provide honourable members with written answers, and they are then incorporated in *Hansard* on our return. I certainly know that, in past years over the summer and winter breaks, a number of questions are answered and sent in letter form. However, if there are any questions in particular to which the honourable member wishes to have answers, she should raise them with me and I will see what can be done.

The PRESIDENT: I am sure the Hon. Caroline Schaefer will be reading *Hansard* as she drives the tractor through the grapevines!

PRODUCT SAFETY

The Hon. I.K. HUNTER (15:15): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about product safety.

Leave granted.

The Hon. I.K. HUNTER: Under the Trade Standards Act 1979, persons in the course of a trade or business cannot manufacture or supply goods that do not comply with an applicable safety standard, or supply goods in contravention of an applicable safety standard. The Minister for Consumer Affairs authorises standards officers under the act to monitor, inspect and test products to ensure that they comply with applicable safety standards. Will the minister advise the chamber about the recent product safety monitoring and product safety testing by the Office of Consumer and Business Affairs, particularly in the lead up to our gift-giving season?

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) (15:15): I thank the honourable member for his important question on the activity undertaken by the Office of Consumer and Business Affairs (OCBA). As members may recall, OCBA conducts compliance activities each year, and one of those activities involves the lead up to Christmas to ensure that products offered for sale are safe, particularly for our children. This year OCBA's main focus was on toys for children, particularly those for children under the age of three, along with pedal bicycles and flotation devices.

Product safety officers inspected about 445 products in a total of 80 stores spread throughout metropolitan and country South Australia—about four times the number of stores visited at this time last year. The 80 stores were mostly department and discount variety-type stores, and they were inspected over a roughly three-week period up to 18 November 2009. The officers identified 83 products worthy of closer scrutiny, and I can report that, disappointingly, 21 of those products failed the mandatory safety requirements. This is an increase on last year's pre-Christmas product inspections, when 16 products failed the mandatory safety requirements; however, the

increase is explainable by the fourfold increase in the number of stores visited this year, which I mentioned.

Of the 21 unsafe products detected, nine were children's toys which had small parts that were released when subjected to the drop test. As members would realise, young children are prone to putting objects in their mouths, and small parts that come loose can present an unacceptable ingestion and choking hazard. The remaining unsafe products included:

- a toy bow and arrow set that had protective end caps which were able to be removed, making the toy far more likely to cause injury, especially to unprotected eyes;
- three children's folding chairs which were found to have potentially hazardous finger-trapping spaces when folding or unfolding the chair; they did not have the mandatory gap between those folding parts which is, I think, about four millimetres;
- one child's flotation swimsuit did not have the mandatory labelling requirements; and
- one baby pacifier had a shield which was too small, making the dummy an ingestion or choking hazard.

The sale of even one unsafe product is unacceptable, especially when the products are toys marketed to children. All traders who were found to be selling unsafe products were requested to immediately remove them from sale, and inspectors will monitor those businesses to ensure that this happens. This will be done without giving notice of the inspector's visit to these businesses. Traders found to be selling unsafe products have been given warning letters, or expiation fines have been issued. Further non-compliance could result in penalties of up to $10,000 being imposed on sellers of unsafe products, so they are being put on notice.

Many of the products found to be unsafe are cheap, mass-produced goods and most found this year were, unfortunately, made in China. However, just because a product is cheap does not mean that consumers are not entitled to the full protection afforded by the Trade Standards Act. The sellers, distributors and manufacturers of the products have a duty and a legal obligation to ensure that the products they offer for sale meet the mandatory safety requirements. They have been put on notice that those who fail to do so will be caught and will pay the penalty. While some of those children's toys sold at Christmas may be cheap, the life of a child most certainly is not, and this government will continue to act to maintain the rigorous standards required to ensure that the public is protected from unsafe products.

FAMILIES SA

The Hon. A. BRESSINGTON (15:20): I seek leave to make a brief explanation before asking the minister representing the Attorney-General a question on Families SA.

Leave granted.

The Hon. A. BRESSINGTON: On 4 March and 24 March 2009, I asked a series of questions of the Attorney-General and the Minister for Families and Communities about the abuse of public office, lack of enforcement of court orders and the lack of compliance with policy and procedures of Families SA by case workers, arising from the detailed chronology provided to all members by Mr John Ternezis concerning his daughter's case.

On 22 September 2009, I received a wholly insufficient answer to my questions, which in part read:

> The minister, the Ombudsman and the Crown Solicitor's Office do not agree with Mr Ternezis and the honourable member about the facts, or that the law does not make them guilty of these allegations.

This follows a long history of ministers and public officials denying any wrongdoing on the part of the state in this case, despite irrefutable facts to the contrary. Simply, the facts are that Mr Ternezis' daughter ran away from home at the age of 13 and subsequently came under the control of the minister via a Youth Court order, which included a residency order and a curfew, which the state was responsible for enforcing.

Despite the state having effective control, Mr Ternezis' daughter ended up, at the age of 14, living with three men, who were supplying her with drugs, resulting in a serious drug habit. She then got pregnant to one of the adult men at age 15 and had a baby. This all occurred while Katrina was in the custody of the minister and with the department's knowledge, as detailed in the chronology provided.

Yet, it is these facts with which the Attorney-General disagrees. Worse still, the Attorney-General, like other ministers, the Ombudsman, and Families SA before him, has failed to provide any rationale for his denial. My questions are:

1. Of the facts that Mr John Ternezis and I have provided, which facts in particular does the Attorney-General disagree with?

2. Given that the Attorney-General in answering my question also spoke on behalf of the Crown Solicitor's Office and the Ombudsman, will the Attorney-General inform the council of which facts they disagree with and inform the council of any advice that they have provided?

3. Does the Attorney-General disagree that this 15 year old child became pregnant to an adult while in the care and control of the minister and, if so, what facts does he have to support that disagreement?

4. On what basis does the Attorney-General say that the law does not require the department to comply with the requirements imposed by the Children's Protection Act 1993, its own policy and procedural guidelines and orders made by the Youth Court of South Australia, as set out in the chronology provided?

5. Is the Attorney-General stating in his answer that the law is so deficient that it does not hold the state accountable for breach of duty of care to a child under the control of the minister?

6. Given the liability of the state in this case, will the Attorney-General concede that his previous answer is just another example of this government putting its own interests before children and the truth?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:23): I will refer those questions to the Attorney and bring back a reply.

POWERS OF ATTORNEY

The Hon. R.D. LAWSON (15:23): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Attorney-General, a question on the subject of advance directions and powers of attorney.

Leave granted.

The Hon. R.D. LAWSON: Three pieces of South Australian legislation presently empower citizens to get others to make important decisions on their behalf. They are, first, a conventional power of attorney to act during one's absence or incapacity; secondly, an enduring power of attorney for financial decisions; thirdly, a medical power of attorney for medical decisions; and fourthly, an enduring power of guardianship for health and residential decisions.

In April 2007, the government established a group called the Advance Directives Review Committee, chaired by the Hon. Martyn Evans. It released an issues paper in which the government acknowledged the present unsatisfactory situation. In publicity, it said:

> At the moment, completing advance directive forms can be confusing and complicated. Right now, you need to complete two or three different forms with different rules to appoint someone to make health, lifestyle or financial decisions...

The government further said:

> The South Australian Government is concerned that currently advance directives are too complicated for people to complete easily and confidently. The Government has decided that advance directives need to be examined to find ways to make them easier to use.

In September 2008, the review committee published two substantial reports and made 36 recommendations. The principal recommendation was that the four forms be brought together under a single act and that an advance directives act be introduced with supporting forms and guidelines in simple non-legislative language. A report also emphasised the fact that there is a lack of awareness in the community of the present regime and that the advance directives are little used because they are not properly understood. *The Advertiser* reported in October that a senior government source had said that the government is too 'petrified' to open the 'Pandora's box' of end-of-life issues before next year's general election. The Attorney-General was quoted in *The Advertiser* as saying that he had read the reports and he found their reasoning 'impeccable'. He continued:

> They will make life easier for thousands of families. The Rann government has a keen interest in making it easier for people to plan where and how they want to live, how they want their finances managed and what treatment they want to be offered...

Following that statement, quietly the reports of the advance directives committees have been put on a website. My questions are:

1. Is it true that the government has decided that it does not want to address this issue which has been recognised for so long before the state election?

2. When will the government announce what action it proposes to take in relation to these important matters?

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 his questions. I will refer them to the Attorney-General and bring back a reply.

WEST TERRACE CEMETERY

The Hon. R.P. WORTLEY (15:28): My question is to the Minister for Urban Development and Planning in regard to his portfolio responsibilities for the Adelaide Cemeteries Authority. Is the minister aware of any moves by the authority to acknowledge the South Australians buried in unmarked graves at the West Terrace Cemetery?

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 his question. I can inform the council that I am aware of plans by the cemeteries authority to construct a new memorial that honours people buried in unmarked graves at West Terrace Cemetery. The proposed memorial will provide families (in many cases, several generations removed), who feel a lack of a place to visit and want to honour the memory of their ancestors, the opportunity to purchase and place a lasting tribute.

There has been a renewed interest in genealogy and tracing back our family history in South Australia. We see that in the number of people tracing their lineage back to the early settlers or paying respect to their ancestors who served in the two world wars and perhaps died in action, to be buried in a commonwealth war grave in the Middle East, Turkey or Western Europe. For those interested in uncovering a past, there is often a desire to track down their ancestors' gravesites. But there are some early settlers, and even as recently as the mid-20th century, where there has been no grave marker to visit—no fitting record bestowed—as they are buried in unmarked pauper graves. From the earliest days of settlement many families facing hardship had to rely on the state to bury their loved ones. This often translated into burial in common graves and without religious rites. Poor management and record-keeping practices in the 19th century means that the burial locations of many are unknown. This approach reflected societal attitudes at the time both in Australia and overseas and contrasts sharply with government and community values in the 21st century. Of course, today, government assisted funerals ensure that grieving families and the deceased are treated with the same level of dignity and respect as is any other member of the community.

The Adelaide Cemeteries Authority has decided that a more fitting tribute is required and, while it is impossible to place markers on common graves, there is an opportunity to erect a nearby memorial. I took the opportunity to visit the West Terrace Cemetery last week to look first hand at this section, where many South Australians have been buried, towards the south-western boundary. From the proposed site of the new memorial you can look out across to an area of unmarked common ground burial graves. In fact, the proposed site is quite close to the memorial for stillborn babies that was erected under the previous Liberal government.

The Adelaide Cemeteries Authority has worked closely with landscape architects Oxigen to design a modern, innovative memorial. The fusion of contemporary design, natural materials and native planting will provide a shaded, beautifully landscaped area for contemplation and remembrance for families to visit. The authority is also encouraging families with connections to West Terrace Cemetery and who wish to create a permanent memorial for their ancestors buried in unmarked graves to contact them. I understand that an application for planning approval for the memorial will be lodged soon with the Development Assessment Commission and the Department for Environment and Heritage—as obviously it is a heritage cemetery—with the expectation that work will commence in the new year. I am confident that the proposed memorial is a fitting

development to mark the 20th anniversary of West Terrace Cemetery's listing on the state Heritage Register.

TRAMS

The Hon. D.G.E. HOOD (15:31): I seek leave to make a brief explanation before asking the minister representing the Minister for Transport a question regarding Adelaide's tram services.

Leave granted.

The Hon. D.G.E. HOOD: Recently a response to a freedom of information request that I made some time ago indicates that every month for the past 18 months tram drivers have reported concerns with traffic light sequencing within the CBD in particular. Their requests for improvement in traffic light sequencing have appeared each month in those reports dating back to January 2008 in the tram on-time running report, but the requests do not appear to have been acted on to this point. Given the poor synchronisation that is recorded in the reports, according to the drivers themselves (some have suggested that it is actually quicker to walk than use the service provided), will the minister provide an undertaking to investigate this matter and rectify it if appropriate?

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) (15:32): I thank the honourable member for his most important question, and I am happy to refer it to the appropriate minister in another place and bring back a response. I would like to take this opportunity to remind honourable members that DTEI's capital program for 2009-10 is $1.1 billion, up $160 million on eight years ago, and that $3 billion will be spent over the next four years on transport alone. This includes work on the rail revitalisation program.

We have a massive capital program for our transport system, with rail revitalisation, the coast to coast rail, additional trams, the rail car depot being relocated, the South Road/Anzac Highway underpass, the Glenelg tram overpass, the bus fleet, and the list goes on. As I said, we have spent unprecedented amounts on our public transport system, but I am happy to take the specific question that the honourable member raises and refer it to the Minister for Transport in another place.

REAL ESTATE INDUSTRY

The Hon. T.J. STEPHENS (15:34): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about the real estate industry.

Leave granted.

The Hon. T.J. STEPHENS: As I stated in my recent question to the minister, it has now been about 12 months since this government's new real estate laws have been in effect. The opposition has received a great deal of feedback about the legislation. One of the new laws has introduced a measure whereby every consumer attending an open inspection be offered a government prescribed form known as R3. Form R3 gives consumers information about issues they should consider before purchasing a property. This form is required to be given when the contract of sale is executed and is attached to the vendor's disclosure statement.

This means the form will be offered on three separate occasions and, given the number of open inspections consumers usually visit, one can see that consumers are given the form an inordinate number of times. The feedback we received from agents is that it is an added and unnecessary cost for them and that consumers are annoyed by the number of times they must receive the form, often blaming the agent for wasting paper. This appears to be just bad drafting and, surely, given this government's false claim of green credentials, the whole requirement is a waste of paper. My question to the minister is: given the negative feedback about this requirement, will the minister review it immediately?

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) (15:36): It is like a broken old record. They have obviously run out of original questions. I am happy to take the opportunity to put on record yet again the very successful reforms overall that this government has put into the real estate sector.

Since last year's introduction of sweeping changes to laws concerning the real estate industry, the Office of Consumer and Business Affairs has been conducting an intensive

compliance monitoring program to ensure and assess compliance with these laws. I am happy to say, yet again in this place, that the vast majority of real estate agents and salespeople have been complying with these new requirements. In the past 11 months OCBA officers have attended 556 open inspections and 162 auctions, checked in excess of 900 advertisements and examined files at around 22 agents' premises.

In particular, officers were looking for evidence of outlawed practices, including dummy bidding. Do members remember dummy bidding, which occurred at almost every auction? It is almost a thing of the past since this government actively put in place laws to take up and respond to the concerns of people wanting to enter into auctions. Remember the under quoting of prices to attract buyers? Thankfully during this evaluation no evidence of such was found. However, a number of warnings were put in place and officers did use that monitoring opportunity to ensure that the real estate industry was well informed of the new changes.

In relation to the R4 form, to which the honourable member refers yet again, like a broken old record—he cannot come into this place with an original question. He blows the dust off old questions and brings them in here and reads them, like a broken old record. The R4 forms—

The Hon. T.J. Stephens: It's an R3.

The Hon. G.E. GAGO: I can talk about R3 forms—you mentioned R4, but I am happy to talk about the R3, which is the buyers information notice. This form ensures that appropriate information is made available to potential buyers. I have put on record in this place before that this government has put in place a process not only to monitor what is going on but also to review how these things are going.

We have committed to a two-year review and I have met with the industry representatives a number of times to talk to them about these proposals and they have indicated that they want the opportunity to deal with some matters earlier than that. I have said, 'My door is always open, feel free to come in if there are matters that need to be addressed prior to the two-year review and there is a good reason to address them—I am happy to look at them.' I am awaiting the industry's response.

ANSWERS TO QUESTIONS

GAWLER RACECOURSE REDEVELOPMENT

In reply to the **Hon. M. PARNELL** (3 June 2009).

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:

Connor Holmes has not been engaged by the Department of Planning and Local Government (DPLG) to help prepare the Gawler Racecourse Development Plan Amendment (DPA).

On 25 September, I initiated a DPA to investigate the rezoning of approximately 4.3 hectares of surplus land at the Gawler Racecourse and to review the current policies of the Special Uses Zone (which applies to the racecourse site).

Thoroughbred Racing South Australia (TRSA) is undertaking investigations to inform the DPA and have engaged planning consultants. I am advised that those consultants are Connor Holmes. The work being undertaken is on behalf of the TRSA.

TRSA is currently in the process of implementing its overall strategy for venue enhancement and allocations of race meetings, with a view to creating a self-sufficient and sustainable racing industry. The restructuring has been underway for some time and has seen the rationalisation of venues in order to retire outstanding debt, reduce overall operating costs and attend to further upgrades of their remaining racing facilities.

The redevelopment of the Gawler Racecourse envisages a comprehensive upgrade and reconfiguration of track infrastructure and racing facilities, the incorporation of water reuse initiatives and open space opportunities, together with the construction of a new, multi-purpose function facility at a combined, estimated cost of $13 million.

When the investigations have been completed, TRSA will forward them to DPLG for consideration in the preparation of the DPA.

The DPA has been prepared by the DPLG, and a draft made available for public and agency consultation.

Being a Ministerial DPA, the Development Policy Advisory Committee (DPAC) conducts the consultation process. The DPAC is an independent statutory body, established under the Development Act. The role of the Committee is to make sure that I receive independent advice on the issues raised in the consultation phase and to make sure submissions are appropriately addressed.

All written submissions are made to the DPAC. A public consultation meeting is also conducted by the DPAC.

After the public meeting the DPAC will prepare a Report on the consultation and submit the Report to me together with the consultation submissions. I will then review the Report and submissions and consider the DPA for final determination. If approved, the DPA will then be forwarded to the Environment, Resources and Development Committee which will undertake a review of the DPA process and outcomes.

SMALL BUSINESS

In reply to the **Hon. D.W. RIDGWAY (Leader of the Opposition)** (4 June 2009).

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

The total savings to South Australian wine producers from streamlining wine labelling requirements were estimated to be $14,367,400 per annum. This figure was derived using a methodology developed by the Australian Bureau of Agricultural and Resource Economics (ABARE). The savings were attributed equally to the Department of Primary Industries and Resources SA (PIRSA) and the Department of Justice who jointly implemented the initiative. The savings figure of $7,183,700 in Appendix 2.7.5, which is the amount attributed to PIRSA, was independently verified by Deloitte as the auditor for the Government's red tape reduction program.

The Government implemented this initiative more than a year ago, through amendments to the Trade Measurement (Pre-Packed Articles) Regulations which commenced on 1 September 2008.

STATUTES AMENDMENT (PUBLIC SECTOR CONSEQUENTIAL AMENDMENTS) BILL

Adjourned debate on second reading.

(Continued from 19 November 2009. Page 3943.)

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) (15:41): When last we sat, I sought leave to conclude my remarks. I have not received any further questions from honourable members to impede further progress of the debate. Mind you, if there are further questions we can, of course, deal with them during the committee stage. I would like to thank the Hon. Rob Lucas for his detailed analysis and contribution, and I look forward to dealing with the committee stage.

Bill read a second time.

In committee.

Clause 1.

The Hon. R.I. LUCAS: I thank the minister and her officers for the answers to questions raised in the second reading. Those answers have been included in the minister's reply to the second reading, and I appreciate that and the further information that has been provided by government officers.

Given the structure and outline of the bill, I propose to make some general comments and ask questions at clause 1 and then, subject to that, probably refer to only one or two specific areas (mercifully) out of the 387 clauses in the bill.

The first point is that, in thanking the minister for her responses, I note the concession that the government has made that there are indeed non-consequential amendments included in this

legislation, which is the point that I made in the second reading. The government's position, to be fair, is that it believes that they are of no significance but, essentially, that is ultimately a decision for the parliament and its members to take.

Whilst on this occasion in relation to the examples I do not have a different conclusion to the minister's advisers that the amendments are not of any great significance, the important principle remains that, if a bill is described to members in this chamber as being consequential to previous legislation and largely technical in nature, and if there is no reference at all in the second reading explanation of the minister in either the other place or this place that there are indeed a small number of non-consequential amendments, that is unacceptable practice.

It is the members in this chamber who ultimately need to make those judgment calls as to whether they are indeed significant or insignificant and, in the end, whether they agree or disagree. A minister's second reading explanation should explain what is in the bill. If 99 per cent of the bill is a consequential amendment and the government is taking the opportunity to tidy up a number of other matters in the legislation, again that is an entirely acceptable approach for the government to take.

Governments of all persuasions have taken that approach but in my experience have always advised the chamber and members that that is what is in fact going on: 'Ninety-nine per cent of this bill is consequential to the previous legislation; however, we are taking the opportunity to tidy up a number of other issues.' That ought to be described in the second reading explanation for all members. It should not be a requirement of members having to establish that and ascertain that and then bring that to the attention of other members in this chamber.

That is the first point, and I thank the minister for acknowledging that that is indeed the case: that there are amendments in this bill that are in no way directly related to the previous legislation. As I said, the government's position is—and I do not disagree with it on this occasion—that they are not significant issues of dispute but, as I said, ultimately that should be a decision for members to take. It is not a judgment call just for the government of the day to say, 'Well, we don't think it's important; we therefore don't need to draw parliament's attention to these particular issues in the second reading explanation.'

The second issue that the minister has responded to is the changes to the honesty and accountability provisions right throughout the very many clauses in the legislation. In her response, the minister says:

> The honourable member questions changes to levels of penalties in relation to the honesty and accountability provisions. The time for debating the levels of penalties applicable for offences relating to disclosures of potential conflicts as compared to offences of acting dishonestly or entering into unauthorised transactions etc. was in 2003 when the Statutes Amendment (Honesty and Accountability in Government) Bill was before the house.

My first question to the minister is: is it not correct that, if this bill is not passed today, if the parliament delays this legislation or defeats it, the existing penalties that remain in very many statutes, such as the WorkCover Corporation legislation, would remain as the penalties would apply to the directors of the board of the WorkCover Corporation?

The Hon. G.E. GAGO: I have been advised that that is so.

The Hon. R.I. LUCAS: I thank the minister for that because that is indeed my view as well. In other words, whilst in 2003 parliament debated a possible and appropriate template that might be applied in relation to honesty and accountability provisions for government corporations and in other statutes as well, ultimately the final decision in relation to the appropriateness of changes can be taken only when you debate the changes to the particular pieces of legislation. Indeed, in this particular bill, the government—and the opposition has supported it—has, for a number of reasons, exempted particular pieces of legislation, such as the Essential Services Commission legislation and a range of other legislation I will not repeat; that is, even though there was this template discussed back in 2003, the government, for its own reasons and, as I understand it, having taken advice from some boards, authorities and others, has decided to exempt certain boards and authorities from these template provisions.

In this legislation, the government is now seeking to apply the template in relation to honesty and accountability to a whole range of other boards and authorities. As the minister has just acknowledged, if this bill was either defeated or amended, the existing penalties would remain.

So, I do not accept the minister's response in the second reading, which was, 'Well, you had the chance to debate this in 2003. You didn't raise any significant objections in 2003, so why

on earth do you have the gall to raise an objection when we are debating it in 2009?' As I have said, the simple answer to that is that it is only through this final legislation—the legislation we are debating today—should it be passed, that we actually change the penalties and the honesty and accountability provisions in all these pieces of legislation.

We could choose as a parliament to amend the bill to exempt some of these acts, in the same way the government has already chosen to exempt, in certain pieces of legislation, certain bodies because it believes the penalties as it relates to those bodies, even though they do not fit the template, are nevertheless appropriate. That is entirely within the province and power of this chamber if it chooses to go down that path.

So, I point blank reject the government's position that in some way it is inappropriate to raise these issues in 2009—that, indeed, if the opposition had any concern about these issues, it should have raised them back in 2003. Of course, in 2003 we would not at that stage have known. I am sure that, if we had asked the questions of the minister at the time, 'To which statutes will you apply the template, to which ones will you not be applying the template and which ones will you be exempting?', we would have received the response from the minister, on advice from the officers, 'Well, at this stage, we don't know,' because, clearly, it has taken six years for parliamentary counsel and government advisers to go through the statutes and prepare this legislation, which is the follow-up legislation to the 2003 legislation.

So, if we had asked the questions in 2003, I am sure we would have received that advice, and one could have understood that response at that time. Again, I repeat that we reject the contention that, in some way, these issues should not be raised in 2009 and that they should have been raised years ago when these issues were first raised.

The significant issues I want to raise to highlight the general principles and about which I want to ask some questions relate to the WorkCover Corporation Act (and I referred to those in the second reading), and that is one of the very last clauses of the bill. I propose to make a few more general comments, and then I am happy for us to move through to the WorkCover Corporation section.

In summary, as I understand the government's advice (and we will explore this in detail when we get to the WorkCover Corporation), what we are being told is that, in relation to the current and future board members of WorkCover, the government has decided to do two things. One is to remove the possibility of a prison term for various offences, which exists at the moment, and the second is to provide WorkCover Board members with greater protection against being sued. Obviously, both those decisions provide greater protection to both current and future members of the WorkCover Board, and I will have some questions for the minister on that when we move to the particular clause.

Clause passed.

Clauses 2 to 370 passed.

Clause 371.

The Hon. R.I. LUCAS: I note that there are many other provisions where I could repeat this debate but, for the benefit of the committee and the expedition of the consideration of legislation this week, I do not intend to repeat the debate in all the provisions. However, the Motor Accident Commission has similar provisions, and there are others that have similar provisions as well.

My first question to the minister is: why does the government believe that the current penalty for WorkCover Board members in relation to conflict issues, which includes a term of imprisonment, is no longer appropriate?

The Hon. G.E. GAGO: The government believes that the standard reached on honesty and accountability provisions during the 2003 debate is the proper standard that should apply right throughout government, and that it should also apply to the WorkCover Board. There is no reason for that being dealt with differently.

The Hon. R.I. LUCAS: Again, without repeating my second reading contribution I did highlight that evidence has been taken in other fora of the parliament regarding allegations of conflict of interest in relation to a member of the current WorkCover Board. I hasten to say that the WorkCover Corporation and, as I understand it, the government reject those particular allegations. Nevertheless, the WorkCover Corporation is a significant body that, at the moment, presides over

an unfunded liability of $1.1 billion. That has increased from just over $55 million in, about, 2001, and there are other significant issues which, obviously, now is not the time to debate. It has been involved in significant issues and contracts involving many tens of millions of dollars, whether they relate to claims management, legal advisers, actuarial advisers, rehabilitation service providers and a range of other contracts—as I say, up to the size of some tens of millions of dollars.

The government has chosen to exempt a number of other bodies and authorities from this template, and the minister says that that is appropriate. Can the minister explain why those other bodies were deemed appropriate for exemption and not the WorkCover Corporation, given its size and significance?

The Hon. G.E. GAGO: I have been advised, in relation to your concerns, that the WorkCover Board is a significant body and therefore somehow there is an implied statement that it should be treated differently. There are many other significant bodies, boards and authorities that perform very important functions in our community; in fact, I would hazard a guess and say that they are all extremely important.

In relation to your issue of exemptions, I have been informed that the real issue is that there are no other boards or authorities that have an imprisonment penalty for breaches in respect of honesty and accountability. So, we are simply applying the same standard across all of our boards that, as I said, I believe, all perform very critical and important functions for our community.

The Hon. R.I. LUCAS: The second aspect of the honesty and accountability provisions that I raised was the issue relating to immunity. The minister's response was:

> The immunity provision for members of WorkCover is in the form that refers to an honest act or admission, but not extending to culpable negligence.

The response refers to the Motor Accident Commission and then states:

> Both of these approaches leave the member open to being sued personally by a person who suffers loss.

So, the minister is advising that under the current accountability arrangements a WorkCover Board member is currently open to being sued personally by a person who suffers loss. Can the minister explain why the government believes that that accountability measure, which obviously is significant in relation to a person who serves on the WorkCover Board, is no longer appropriate under the accountability arrangements that the government seeks to impose?

The Hon. G.E. GAGO: I have been advised that, under section 74 of the Public Sector Act, which was debated in both houses recently, parliament decided that the immunity relative to official powers and functions that might otherwise lie against an individual lies against the Crown. This does not prejudice the rights of the Crown in respect of an act or omission not in good faith, and the same rationale is being applied to other bodies affected by this consequential amendment, including the WorkCover Board.

I am also advised that significant fines will still be available for conflict of interests offences, and imprisonment will be available for offences of dishonesty. These are sufficient accountability measures for the WorkCover Board, as for most other boards in government. The decision was taken that the right to sue be against the Crown and not against individuals, and the Crown can then take action against the individual.

The Hon. R.I. LUCAS: I thank the minister for that response. If I come back to the summary of the position, I understand that the advice the minister has now confirmed in the committee is that current accountability provisions which apply to WorkCover Board members are that possible imprisonment applies and that they can be sued personally by somebody who suffers loss, and the government has removed both of those or changed both of those current provisions.

I would assume that the individual board members of WorkCover would be delighted by the government's changes, because they significantly reduce the penalties and also reduce the capacity for them to be sued in certain circumstances. My question to the minister is: what consultation was conducted with the WorkCover Corporation board, and what was the response of the WorkCover Board to these changes? As I said, I am assuming they would have jumped in the air with glee over these provisions, but I nevertheless ask the minister to place on the record the WorkCover Corporation board's response.

The Hon. G.E. GAGO: I have been advised that the draft was sent to all agencies, including the WorkCover Board and that the WorkCover Board was consulted in the same way as all other agencies. I am not aware of any specific response from the WorkCover Board.

The Hon. R.I. LUCAS: I do not propose to seek to delay the committee, but I seek an undertaking from the minister responsible for the legislation to correspond with me after passage of the legislation to indicate what the formal response of the WorkCover Board was to the changed provisions. If the minister is prepared to give that undertaking, I am happy not to seek to delay the committee stage.

The Hon. G.E. GAGO: I just need to clarify for the record that the draft was sent to the WorkCover Corporation, not the board, and I am happy to accept the undertaking to follow up on a more formal response if one was received.

The Hon. R.I. LUCAS: I am assuming that, if it was sent to the agency, that means it was sent to the CEO, Julia Davison, and I would imagine a good CEO would bring that to the attention of the board, given that it was reducing the penalty, that is, removing the possibility of imprisonment for a board member, and also it was changing the immunity provisions as they relate to the board members. I would expect that the Chief Executive Officer, Julia Davidson, would or should have raised those issues with the board. In the end it may well be that the response came back via the Chief Executive Officer after consultation with the board, but nevertheless I am happy to accept the minister's undertaking to provide that response after the passage of the legislation.

In the minister's responses she noted, as she did in the second reading, that it was the government's view that the imprisonment penalty should be removed from the conflict provisions, but they have been retained for the honesty provisions. Can the minister explain why the government has kept imprisonment for the honesty provisions but has decided to remove the imprisonment penalty for what are, for some of us, very significant conflict of interest issues as they relate to the WorkCover Corporation?

The Hon. G.E. GAGO: I have been advised that the answer is as I have given, namely, that parliament decided during its debate in 2003 that that was the proper standard and that it should be applied right across government.

The Hon. R.I. LUCAS: The parliament agreed in the end with the position the government put, which I think is what the minister is saying. I am asking, now that I have raised the issue in relation to the WorkCover Corporation, why the government believed, when it introduced the 2003 legislation and why it retains the position now, that a penalty for an offence under the honesty provisions should be a prison term, but an offence against very significant conflict of interest provisions for a WorkCover Board member should not include a prison term.

The Hon. G.E. GAGO: I have been advised that at this point we are not able to expand on that answer any further without revisiting the whole of the 2003 debate. I remind the honourable member that, when the honesty and accountability provisions were being debated in 2003, I understand the opposition was generally supportive of those provisions. However, at the time it expressed clear concern that the provisions might be too draconian and would lead to good people not being prepared to serve on boards. We cannot have it both ways.

The Hon. R.I. LUCAS: One of the great joys of being in the Liberal Party is that you can have it both ways because we are a very broad church and, unlike government members, we are entitled, as we have discovered in recent days in Canberra, to express our individual views on legislation. The minister in response is quoting an opposition member in 2003, which is heartening, but I am actually asking why the government took the policy position in relation to removal of the term and not why an opposition member might have expressed his or her agreement to the issue.

I gather from the minister's response that she, not being the minister responsible, does not have the original reasons as to why the government chose to remove the penalty of imprisonment, and I accept that. If the minister, in the response coming back in relation to the WorkCover Corporation, has any further information to indicate why the government originally in 2003 took the position, rather than why an opposition member may or may not have agreed with it in 2006, I would be pleased to receive it, but I will not delay the proceedings of the committee any further on the issue. I thank the minister for her answers to the questions.

Clause passed.

Remaining clauses (372 to 387) and title passed.

Bill reported without amendment.

Bill read a third time and passed.

EDUCATION WORKS

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (16:23): I table a ministerial statement relating to Education Works made earlier today in another place by my colleague the Minister for Education, the Hon. Jane Lomax-Smith.

LOCAL GOVERNMENT (ACCOUNTABILITY FRAMEWORK) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 November 2009. Page 3879.)

The Hon. J.S.L. DAWKINS (16:23): I rise to indicate support for the second reading and complement the comments made by the Leader of the Opposition in this place (the Hon. Mr Ridgway) in relation to the bill and the significant number of amendments that were flagged at that stage. My understanding is that there are even more to come. I also commend the work of the shadow minister for local government (the member for Kavel in another place) in relation to this matter and other local government matters that we have been dealing with in recent times.

Today I wish to read into *Hansard* some excerpts from a letter that I received from the City of Playford. The City of Playford does a very good job in communicating with members of parliament, and I am grateful for the opportunity to be on the Playford Partnership elected members group. In addition to that, it also provides briefings for other members of parliament.

I will read a letter from Martin Lindsell (the mayor of the City of Playford) dated 23 October 2009 which states:

> As you are aware the Minister has put forward the Local Government (Accountability Framework) Amendment Bill 2000 which we have discussed with you at recent City of Playford hosted MP briefings.
>
> Please find attached the Council's submission to the proposed Bill which has been sent on to the Minister as part of the consultation process for the proposed bill.
>
> As outlined in our submission, the City of Playford believes the Bill is primarily focused on the State Government's premise that Local Governments need a higher level of regulation to ensure good governance; our submission proposes and investigates alternatives to that approach.
>
> The City of Playford believes that this type of legislation will create a Parent-Child relationship which works contrary to the idea that Local Government should self-manage its own operations as it is answerable to the electorate just like any other level of government.
>
> We would like to thank you for your early input in the development of this submission. The City of Playford had earlier outlined its opposition to a higher level of regulation of local government when the Accountability Proposals Paper was circulated by the Minister. We appreciate the feedback by our local Members of Parliament on the need to provide an alternative to that approach when making our submission in response to the Bill this time.
>
> As our enclosed submission shows, the City of Playford proposes a Good Governance Accreditation Program (similar to the one proposed by the LGA) which would provide a rating system regarding governance and accountability for Councils across South Australia. It would provide a mechanism to compare councils and to show areas of success and areas of improvement for each council overall.

While the City of Playford recognises that the legislation is likely to go through as is, it is putting this as an alternative and something for the long term. I would now like to quote a few paragraphs from the submission that the letter refers to. It states:

> Councils continue to come under scrutiny for their governance practices. The focus on transparency and openness within local government has meant that there is an increased expectation by communities and State Parliament to enhance governance performance.
>
> The Good Governance Accreditation Program must be conducted by one independent body. This would provide for an unbiased and unprejudiced assessment of each Council's governance policies and procedures and would ensure consistent assessments across the State. Companies seeking to profit from an audit of governance processes should not be used to ensure that the results are not tainted in any way.
>
> Therefore, it seems appropriate the Good Governance Accreditation Program be conducted by the Local Government Association. The relationship of the LGA meets the requirements of an independent not-for-profit body and is closely connected with councils across South Australia.

I commend the City of Playford for making those views known and for not only criticising some aspects of the bill but for coming up with an alternative, as it says it may be considered in the long term.

Before concluding my remarks, I would like to flag to the minister that, in the committee stage, I would like to get some clarification in relation to the impact of this bill on the regional organisations of councils, otherwise known as regional local government associations.

I have had some queries raised with me in relation to that and I will seek some clarification at clause 1. With those remarks, I would again like to congratulate the Leader of the Opposition in this place for his comments in relation to the significant issues that we are about to deal with in committee, and again I indicate that I support the second reading of the bill.

The Hon. DAVID WINDERLICH (16:31): I also rise to support the second reading of the bill. I should say at the outset that, although I have been prominently critical of a small number of particular councils, I see myself as a supporter of local government.

I think local government is coming under unprecedented criticism for several reasons. One is the new pressures of development and the potential for conflicts of interest that that creates. There are specific councils with specific problems but, most of all, I think local government is under intense pressure because it is acting as a lightning rod for dissatisfaction in the community about how it is consulted and whether it is consulted properly and listened to. The community is able to express that dissatisfaction clearly with local government because it is close to the people and because it is open.

If we could actually sit in on cabinet meetings and watch those deliberations and if exclusion from those sorts of discussions was the exception rather than the rule, it would create a very different and more democratic expectation, and when that expectation was actually denied, people would be much more upset. I think that is essentially what happens with local government: we see it warts and all, and residents are able to act against local government decisions much more readily and quickly because it is at the grassroots.

There are a number of positive measures in this bill and there are a number of new controls around financial management. I have a number of amendments. Members will have my third set of amendments, and I believe that is the final one. Members need not keep the first two; the third one incorporates all the previous ones and makes some changes based on additional discussions with the LGA.

My first amendment to clause 11 essentially makes it more explicit that the Ombudsman may investigate complaints to do with conflict of interest. We have some recent cases in local government where it is clear that management of conflict of interest is an issue. I think the most charitable thing you could say about recent events at Charles Sturt council is that that council did not manage potential conflicts of interest appropriately.

I was also struck, when speaking about the Ombudsman's inquiry into the St Clair land revocation process, that at least one honourable member here was surprised to learn that it was against the law, in fact, to caucus on council decisions as a group outside of council. I think that shows that we do, for whatever reason, seem to have slipped in our understanding of conflict of interest. There are concerns about conflict of interest and I think there needs to be more explicit provision for the Ombudsman to investigate those.

Public notice of council meetings is dealt with in clause 11A. If the previous one was a Charles Sturt amendment, this is a Copper Coast amendment but I think it has wider application. These amendments (11A and 11B) are essentially about making sure that people have access to council documents. The current act talks about agendas and minutes and so forth being at the principal office of the council. Particularly in large country councils that can be several hours' drive away. Not everyone has the internet and, even if they have the internet, they do not necessarily have broadband. This simply would ensure, in effect, that those sorts of documents were on display at, at least, one centre in a township where there was a council office operating.

My third amendment concerns the disposal of community land. This is another St Clair amendment, in effect—another Charles Sturt amendment. Essentially, this would require a poll of electors before community land could be disposed of, but the check on this being used frivolously or for insignificant decisions, or simply to make mischief, is that the trigger would be a petition signed by 200 or 5 per cent of residents, whichever is the larger. The figure of 200 is to account for country councils where some of them are very small. There are not many over 1,000 ratepayers in several country councils, so 200 would be the trigger there. On the other hand, with a council area such as Charles Sturt or Playford, you would be talking about 5,000, 6,000 or 7,000 signatures. It is not a trivial thing; you could not trigger this poll unless there was widespread community concern.

My fourth amendment is to do with an interim report. This is a Burnside amendment. I believe it is possible, as I have argued on a number of occasions in this chamber, to call on the minister to call for an interim report which I believe would give her the power to then give directions to Burnside council. Burnside continues on its way. In fact, after the events of a couple of weeks ago, it is now moving a recision motion to withdraw the electors' meeting that they voted for, which is guaranteed to throw petrol on the fire.

The Hon. P. Holloway: What? You'll have to storm in and disrupt it again, will you? Is that how you do it?

The Hon. DAVID WINDERLICH: Well, in the history of the labour movement (and I know it is ancient history to you people), sometimes when confronted with bureaucracies and corporations and governments that will not listen, that is the sort of the thing that people eventually do. The way you avoid that is by listening and making good decisions in the first place. Anyone who has ever been involved with a community at the grassroots knows that it is not as though there is this huge rent-a-crowd out there that you can just whip up without any effort. It takes enormous effort to get people to do things like that.

Once they start doing things like storming into council meetings, it is a clear sign that there is a real problem. As someone who has spent probably a couple of decades at different times community-organising on different issues, I know that it is not an easy thing to do. There is not a rent-a-crowd out there, especially not in local councils. As I said, anyone who has had anything to do with that level of grassroots democracy would know that.

This amendment makes it explicit that the minister can call for an interim report, that the interim report would be provided to the council to comment on and that the interim report would empower the minister to then give directions to council, so that there could be no attempt by the minister to evade that or to say that that was not a power.

The irony of the current situation is that in some ways, if the Minister for State/Local Government Relations is correct, she has less power over a council under investigation than she has over a council that is not under investigation, because, when a council is not under investigation, there is at least the threat of an investigation being launched. When a council is under investigation, if it is determined to go feral and make what decisions it can before the axe falls, it can do so, and apparently there is no way to stop that, and that seems to me a strange situation.

Amendment No. 5 is about the minister laying a copy of the investigator's report before both houses of parliament within six sitting days after it is presented to the minister. That is simply an issue of transparency. Currently, a report can disappear, never to be seen or heard of again, and no-one will know what it says and what action it recommends to be taken. Again, if you take, say, the hypothetical example, which has strange echoes in recent reality, of a government being involved in trying to get a decision through council, that would never show up in a report that can never appear in the public light. So, it seems a basic issue of transparency to me.

Amendment No. 6 is about a declaration of a caretaker period, which follows on and is triggered by an interim report. If the minister receives an interim report that indicates serious problems, the minister can then institute caretaker provisions on that council. Again, this is to remedy the situation where we seem to have less control over a council under investigation, presumably at least for potentially serious breaches of the Local Government Act, than we have over a council that is not under investigation. So, the caretaker provisions would be triggered by an interim report, and the then minister could act on them. Again, as in my first set of amendments, that would not be an automatic component of an investigation or a default provision: it would occur only if an interim report identified issues.

Amendment No. 7 simply brings whistleblowing provisions in the Public Sector Management Act into the Local Government Act. Amendment No. 8 requires more detail on the register of interests. In the next day or two, I will have some information to share about the number of councillors who seem to be employed by the Department of Treasury and Finance which, as we know, pays the salary of electorate staff and political advisers.

Currently, all a councillor has to show on their register of interests is their source of income. So, they can put down 'Department of Treasury and Finance' when, in fact, they are an electorate officer or political adviser. This amendment would require that more detail be provided to make sure that the community was clear about the interests of their councillors.

I look forward to the committee stage. As I said, I think there are a number of positive amendments in this bill. I have put up a series of other amendments, which I think will make local government much more accountable. Recent events in the Burnside and Charles Sturt councils highlight at the very least some of the potential loopholes in local government that can be abused by people. I will put forward these amendments to close some of those loopholes in order to create greater transparency and accountability.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (16:41): I thank honourable members for their contribution to the second reading debate. I am able to deal with some of the issues now, particularly those issues raised by the Hon. David Ridgway. In relation to good public administration, the Hon. David Ridgway asked whether I wished to place on the record a definition of the term 'good public administration', which the bill proposes to insert in the Local Government Act. I am advised that it would be inadvisable to insert such a definition in the act for two reasons: first, such a definition would be long; and, secondly, and more importantly, an understanding of what constitutes good public administration is continually evolving as standards change. Sufficient material—

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: At least we have standards, unlike the former government. I will not be distracted, because we have important legislation in front of us. Sufficient material exists elsewhere for the purpose of guiding local government. The Hon. David Ridgway has invited me to respond to several requests for—

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: I do not want to repeat this during the committee stage. The Hon. Mr Ridgway has invited me to respond to several requests from the LGA that it would be involved in preparing model documentation for the purpose of having that model documentation incorporated in regulations, under various clauses of this bill. The government intends to work cooperatively with the LGA, as we always do, in all cases where regulations are being considered. The government would welcome the LGA's assistance in this matter, as we welcome its assistance in all other relevant matters.

The Hon. David Ridgway has, as has the LGA, asked me to define the meaning of the term 'reasonable time'. I am sure that ratepayers will let councils know if they consider that council documents are not being provided on line within a reasonable time—and each council can be responsive to its community in that regard. There are many other pieces of legislation that use the term 'reasonable', and the courts do not tend to have problems with interpreting that term.

In relation to annual service charges for waste collection, I note the Hon. David Ridgway's concerns that the changing waste collection regime adopted by the District Council of Yorke Peninsula is 'inherently unfair'. The Hon. Mr Ridgway has asked for my assurance that this amendment will not affect the imposition of a special rate struck by a council to provide a service to a particular community. I believe the honourable member was referring to a separate rate, which is dealt with under section 154 of the Local Government Act. There is no proposal in this bill to amend section 154, and I am happy to give the assurance sought by the honourable member that separate rates under section 154 are not affected by any part of this bill.

In relation to clause 46, in taking up another concern raised by the LGA, the Hon. David Ridgway has asked about the process that would apply if a local government regional subsidiary wished to be exempt from the provisions requiring the establishment of an audit committee. Clause 46 proposes that exemptions, if any, are to be effected by regulation; therefore, there is to be no application process as such. I intend to consult with the LGA on the making of any regulations under this provision.

I note that honourable members have raised some concerns and that various amendments have been placed on file, and I ask that I be allowed to respond to each of these matters in turn during the committee stage, to which I look forward.

Bill read a second time.

In committee.

Clause 1.

The Hon. J.S.L. DAWKINS: As I indicated in my second reading contribution, a number of participants in regional local government associations have raised the issue of the impact of this bill on those organisations. Could the minister clarify what is the impact of the bill on the various local government associations in regional areas? I think there is also one larger body in the metropolitan area.

The Hon. G.E. GAGO: I have been advised that the government is not aware of any specific concerns that have been raised by the LGA or, through the consultation period, in relation to any direct untoward impact on local government associations, whether they be regional or metropolitan.

A number of issues have been raised and, fundamentally, they are being dealt with by the amendments. They are the issues of most concern. The LGA has clearly articulated its concerns, but I do not believe that any of those specifically impact on the regional associations per se—at least, not that I am aware.

The Hon. J.S.L. DAWKINS: I thank the minister for that. For members who are not aware of it, those associations are funded by the councils they represent, and they carry out regional coordination and advocacy in an admirable manner on what some might say is the smell of an oily rag. The concern may be that those very lean bodies could be impacted by this legislation. Could the minister say what changes there will be for those bodies as a result of the passage of this legislation?

The Hon. G.E. GAGO: Which bodies are you talking about?

The Hon. J.S.L. DAWKINS: Could the minister just clarify the overall impact on those associations of the passage of this legislation?

The Hon. G.E. GAGO: I have already put it on record; I do not have any additional information to add to that. I am not aware of any direct impact per se. The issues that are of concern have been identified, and we will deal with each one by one; however, I am not aware of any specific impact, positive or negative, on the associations.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

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

Page 3, after line 11—Insert:

(1) Section 4(1)—After the definition of 'council subsidiary' insert:

'CPI' means the Consumer Price Index (All Groups Index for Adelaide) published by the Australian Bureau of Statistics;

This amendment inserts a definition of CPI. This definition relates to amendments to clause 8 for the prudential reports required to be prepared by councils for projects over $4 million. The CPI is to be used to index the $4 million threshold in future years. This will allow the threshold to move in line with inflation.

Amendment carried; clause as amended passed.

Clauses 5 to 7 passed.

Clause 8.

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

Page 4, after line 27—Insert:

(3a) Section 48(1)(b)(ii)—After '$4 000 000' insert:

(indexed)

This amendment is consequential.

Amendment carried.

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

Page 4, lines 35 to 37 [clause 8(6), inserted subsection (4a)]—Delete subsection (4a) and substitute:

(4a) A report under subsection (1) must not be prepared by a person who has an interest in the relevant project (but may be prepared by a person who is an employee of the council).

This amendment will delete the restriction originally proposed in the bill on council employees preparing prudential reports. After representations from the LGA I believe that there are some instances where council staff are suitably qualified to undertake this work and, as such, councils should not be put to additional expense. We believe that there are sufficient safeguards around prudential reports, as evidenced by clause 8(1) of the bill, which allows for the development of regulations that guide prudential management policies, practices and procedures.

Amendment carried.

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

Page 5, after line 37 [clause 8(7)]—Insert:

(6ca) In this section, $4,000,000 (indexed) means that that amount is to be adjusted for the purposes of this section on 1 January of each year, starting on 1 January 2011, by multiplying the amount by a proportion obtained by dividing the CPI for the September quarter of the immediately preceding year by the CPI for the September quarter, 2009.

This amendment is linked to other amendments standing in my name in relation to clause 8. It sets the threshold for a council to seek a prudential report at $4 million (indexed). So, it is consequential.

Amendment carried; clause as amended passed.

Clauses 9 and 10 passed.

Clause 11.

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

Page 6, after line 25—Insert:

(a1) Section 74(4)—After paragraph (d) insert:

or

(e) seek to gain access to any documents or reports in the possession of the council that relate to that matter to any significant extent.

This amendment relates to members' disclosure of interests. In moving this amendment, we think it provides greater accountability and, also, more clarity when it comes to members of council declaring matters of interest.

The Hon. G.E. GAGO: The government opposes this amendment; in fact, we do not support these two amendments. We believe it is an ill-considered response to a problem for which there is already a suitable remedy in the act. There is no loophole in the act about this; such behaviour is a serious crime. Honourable members could examine section 62(3) of the Local Government Act, which provides:

> A member or former member of a council must not, whether within or outside the state, make improper use of information acquired by virtue of his or her position as a member of the council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the council.
>
> Maximum penalty: $10,000 or imprisonment for two years.

It is not a crime for a councillor to obtain information on a council agenda about confidential items; however, it is a crime to use that information for improper advantage, and, as I have outlined, there is a significant penalty for that: they could face imprisonment. Therefore, we believe the amendments are unwarranted.

The amendments amount to suggesting that a council CEO (an unelected official) should be required to censor each meeting agenda, trying to anticipate which items might raise potential conflicts for each council. That is not an appropriate role for any CEO. It is also pre-empting the councillor's own decision whether or not to declare a conflict of interest.

The amendments reflect a misunderstanding of the existing provisions in the act and should be opposed at this time. As the chamber is aware, there is currently an investigation occurring into the City of Burnside, and it is possible that some recommendations will flow from that investigation about conflict of interest provisions in the act. If that is the case, then I am more than happy to reconsider the issue at that particular time.

At present, the onus is on individual board and council members—and this is a principle that generally goes across both government and private sectors—to know and understand their own business and to identify any conflict, if and when it arises. That could be quite complex and it could span a wide range of different issues.

It would be near impossible for a CEO to understand all of the intricacies of individuals' interests and then be able to make a determination. Even if a member has identified a conflict, even if that has occurred, the CEO would not be able to understand the extent of that and to follow it through, in all its nuances, to a wide range of matters as they might apply to an agenda.

So, it is logical and reasonable to continue that the onus rest with that individual. As I have stated, there are significant safeguards in place to protect that, and fairly significant penalties. It does not get any more severe than imprisoning someone.

Amendment negatived.

The Hon. DAVID WINDERLICH: I move:

Page 6, after line 38—Insert:

(3) Section 74—After subsection (5) insert:

(5a) In addition to the operation of subsection (5), the Ombudsman may, on the complaint of a person with an interest considered by the Ombudsman to be sufficient in the circumstances, investigate an allegation of a breach of this section.

(5b) If the Ombudsman decides to conduct an investigation under subsection (5a)—

(a) the Ombudsman may exercise the powers of the Ombudsman under the *Ombudsman Act 1972* as if carrying out an investigation under that act, subject to such modifications as may be necessary, or as may be prescribed; and

(b) at the conclusion of the investigation, the Ombudsman may prepare a report on any aspect of the investigation and may publish the report, a part of the report, or a summary of the report, in such a manner as the Ombudsman thinks fit.

As I said in my second reading contribution, the amendment makes it quite explicit that complaints about conflict of interest can be considered by the Ombudsman. There are broad powers in the Ombudsman Act at the moment relating to local government where it would be possible for the Ombudsman to do this, but, as is the case with the debate about interim reports, sometimes there is a benefit in making this quite explicit and to flag to the Ombudsman that this is an emerging issue, as recent events have, indeed, shown that it is, that conflicts of interest are becoming more problematic and more controversial in local government.

This amendment makes it quite explicit that the Ombudsman may focus on conflicts of interest, and that will also send a signal to community members as well, with concerns about this, to take up potential conflicts of interest with the Ombudsman.

The Hon. D.W. RIDGWAY: The opposition will be supporting the Hon. David Winderlich's amendment.

The Hon. G.E. GAGO: The government does not support this amendment, simply because we believe it is unnecessary. We believe that, under the Ombudsman Act 1972, the Ombudsman can investigate and report on any administrative act; the parliament may also refer matters to the Ombudsman. Therefore, this amendment would appear to add nothing to the Ombudsman's existing powers.

The committee divided on the amendment:

AYES (12)

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

NOES (9)

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

Majority of 3 for the ayes.

Amendment thus carried; clause as amended passed.

New clause 11A.

The Hon. DAVID WINDERLICH: I move:

Page 6, after line 38—Insert:

11A—Amendment of section 84—Public notice of council meetings

(1) Section 84—After subsection (1) insert:

(1a) The chief executive officer must give the notice required under subsection (1) in the following manner:

(a) by causing a copy of the notice and the agenda for the meeting to be placed on public display at each office of the council that is open to the public for the general administration of council business within its area; and

(b) by publishing the notice and the agenda for the meeting on a website determined by the chief executive officer.

(2) Section 84(2)—Delete 'Notice under subsection (1) is given by causing a copy of the notice and agenda for a meeting to be placed on public display at the principal office of the council—' and substitute:

The notice required under subsection (1) must be given—

(3) Section 84(2a)—Delete 'The' and substitute:

Without derogating from subsection (1a), the

(4) Section 84(3)—Delete 'subsection (2)' and substitute:

subsection (1a)(a)

(5) Section 84(4)—Delete 'under subsection (2)' and substitute:

, and continue to be published on the website, under subsection (1a)

I do not believe I need to explain this provision any further.

New clause inserted.

New clause 11B.

The Hon. DAVID WINDERLICH: I move:

11B—Amendment of section 88—Public notice of committee meetings

(1) Section 88—After subsection (1) insert:

(1a) The chief executive officer must give the notice required under subsection (1) in the following manner:

(a) by causing a copy of the notice and the agenda for the meeting to be placed on public display at each office of the council that is open to the public for the general administration of council business within its area; and

(b) by publishing the notice and the agenda for the meeting on a website determined by the chief executive officer.

(2) Section 88(2)—Delete 'Notice under subsection (1) is given by causing a copy of the notice and agenda for a meeting to be placed on public display at the principal office of the council' and substitute:

The notice required under subsection (1) must be given

(3) Section 88(2a)—Delete 'The' and substitute:

Without derogating from subsection (1a), the

(4) Section 88(3)—Delete 'subsection (2)' and substitute:

subsection (1a)(a)

(5) Section 88(4)—Delete 'under subsection (2)' and substitute:

, and continue to be published on the website, under subsection (1a)

New clause inserted.

Clauses 12 to 15 passed.

Clause 16.

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

Page 8—

Line 19 [clause 16(6), inserted subsection (5a)]—Delete 'report' and substitute:

opinions

Line 27 [clause 16(6), inserted subsection (5b)]—Delete 'report' and substitute:

opinions

Line 33 [clause 16(6), inserted subsection (5b)(b)]—Delete 'report' and substitute:

opinions

Line 39 [clause 16(6), inserted subsection (5b)(b)]—Delete 'report' and substitute:

opinions

Page 9—

Line 1 [clause 16(6), inserted subsection (5c)]—Delete 'report' and substitute:

opinions

Line 5 [clause 16(6), inserted subsection (5d)]—Delete 'report under subsection (3) may be kept confidential until it is' and substitute:

opinions under subsection (3) may be kept confidential until they are

Line 29 [clause 16(10), inserted subsection (9)]—Delete 'A report' and substitute:

The opinions

There are seven amendments involved here that relate to a similar issue, and they merely correct an oversight in the drafting of this clause. Clause 16 as drafted replaces the need for an auditor to provide a report and instead requires the auditor to provide two opinions. These amendments are consequential and ensure that subsequent references in section 129 are to the opinions rather than a non-existent report.

Amendments carried; clause as amended passed.

Clauses 17 to 21 passed.

Clause 22.

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

Page 11, line 14—Delete 'a prescribed service' and substitute:

a waste collection service

If this amendment is defeated I will not proceed with a number of further consequential amendments to clause 22, which all relate particularly to the issue of waste collection. This amendment is to address the issues in relation to the District Council of Yorke Peninsula and in particular to its waste collection charges. It provides more clarity and certainty in relation to that service.

The Hon. G.E. GAGO: The government opposes this amendment and the consequential amendments from the honourable member, who seeks to confine the effect of this new section 155(11) to the waste collection charge. The government does not believe that the changes to section 155 need to be confined in this way. The wording of the amendment would prevent a council from recovering in a single service charge the cost of a whole waste management cycle, including education, collection and disposal. We believe that this should, at least potentially, apply to all those services covered by a service charge that involve true property availability. At present

the government intends in this instance to look only at waste collection. However, we believe that the principle is a sound one and, if problems arise concerning other services to the land, we do not want to have to come back and reopen the whole bill. We believe it is a sound principle and should apply potentially to all services.

Amendment negatived.

The Hon. J.A. DARLEY: I move:

Page 11, after line 16—Insert:

(12) Despite a preceding subsection, if land does not have capacity to generate waste to any material degree, a service rate or annual service charge in respect of the provision of a waste collection service cannot be imposed in relation to that particular piece of land.

My amendment very simply prohibits a council from charging a waste collection fee for properties that have no or very little capacity to generate waste that is suitable for kerbside collection. I have been prompted to move this amendment due to the large number of constituents who have contacted my office with concerns that land, especially primary production land, has attracted full waste collection charges where there is no or very limited capacity to generate waste that can be disposed of through kerbside collection.

When questioned about this, councils have provided the response that any property which has the capacity to generate waste will be charged the full waste collection fee regardless of whether or not the service is utilised and regardless of what type of waste could possibly be generated by the property. That is to say that, because the service is provided to the property, a fee will be levied even though it will not be used.

I believe that councils would not be impressed should property owners decide to dispose of the waste generated on primary production land in kerbside collection bins, especially in the case of waste from livestock, and therefore believe it only fair that land that has only limited capacity to generate waste suitable for kerbside collection should not be charged a waste collection fee by councils, as the service will not be utilised.

The Hon. D.W. RIDGWAY: I indicate that, given that the first amendment I moved was defeated (and I did not proceed with others because they were consequential), in particular this makes good sense that a piece of land that has no capacity to generate waste should not be charged a fee, so the opposition will support the Hon. Mr Darley's amendment.

The Hon. G.E. GAGO: The government opposes this amendment of the Hon. John Darley. This amendment would prevent a council imposing service rates or annual service charges for waste collection if the land does not have the capacity to generate waste to any material degree. There are two problems with the amendment. The first problem is that this amendment is vague and uncertain, so it is not clear what is meant by the capacity to generate waste. There are no recognised standards for distinguishing between land that can generate waste and land that cannot. Land that is vacant or used for primary production can generate waste from time to time and it is not practical to suggest that council officers should be patrolling land to determine the extent to which it is capable of generating waste.

The second difficulty is that this amendment would undermine a council's efforts to make waste collection services available across a wide part of its area. Councils on the fringe of urban areas and in rural parts of the state cannot necessarily afford to provide waste collection services available to all land. They usually establish a bin collection route, and all properties along that route have the potential to benefit from that service because the council has incurred the cost of sending a waste collection truck past the land. Accordingly, it is appropriate that all properties that have the potential to benefit should pay a service charge to reflect the service that the council is making available by sending the truck past the land.

If a council receives no revenue from vacant properties on a bin route, it will increase the likelihood that a route may be financially unviable and the service to other properties along that route may have to be discarded. Because there is a potential to provide services that might not be directly available at the land, nevertheless waste collection routes can be made available in a number of outlying areas, so there is some potential benefit but not necessarily the same type of benefit for those who have services directly delivered to the land.

We believe there should at least be scope for those properties to be included in some sort of charge, as waste collection is a costly service and it is important that councils have access to generate revenue from as broad a base as is reasonably possible, and we believe this amendment

could end up providing an unreasonable elimination of some property owners who can potentially derive some benefit.

The Hon. DAVID WINDERLICH: Could the minister give some examples of other specific levies for services in local government that are charged when the service is not delivered?

The Hon. G.E. GAGO: I have been advised on a number of fronts of the example of community waste water management schemes. It is important that we at least continue to provide that potential and, although I am sympathetic to the honourable member's amendment, it would end up being a very restrictive impost on councils.

Amendment negatived; clause passed.

Clause 23 passed.

Clause 24.

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

Page 12, after line 10—Insert:

(2) Section 161—After subsection (4) insert:

(5) The Crown will be liable to reimburse a council for the amount of any rebate of rates under this section that relates to supported accommodation that consists of accommodation for persons provided by housing associations registered under the South Australian Co-operative and Community Housing Act 1991 under a scheme established by the Minister for the purposes of this subsection after consultation with the LGA.

I will talk to my amendment No.1 and to a consequential amendment that I have after further consultation with the LGA. In essence, these amendments are about preventing a cost shift, as we see it, or cost imposition by the state government to local government by the introduction of this provision within the bill we are debating.

Family First supports the expansion of the rebate on rates for community housing and congratulates the government for the concept of the initiative of rebating on community housing. However, the concern we have is that simply with the stroke of the government's pen councils will be deprived of the rating revenue from all those properties which were (a) once purely administrative offices of a community housing organisation but now will be considered community housing related and eligible for the exemption and (b) once public housing provided by the government as Housing SA stock, but as the government gradually vacates the public housing sector by selling those to community housing the rates the government once paid at 100 per cent to council for public housing will now, in effect, become 25 per cent of those rates as community housing.

Whilst we strongly support the concept of community and public housing, we have enormous concerns about cost shift. I understand that local government has complained to members about this cost shift or imposition, and we are moving these two amendments to ensure that the minister creates a scheme to reimburse councils for the lost rates as a result of the impact of this clause. We considered it too cumbersome to prescribe the parameters of this scheme within the clause, so we have left it to the minister to develop a scheme.

In conclusion, I will speak to the consequential amendment, which impacts upon whether members support my amendment No.1. It is a consequential amendment arising from further consultation with the LGA. In essence, the LGA would like to see this clause deleted from these amendments: that would be its preferred position. However, given that we are sympathetic to rebates for community housing, we believe that this is an option that will not be an impost on councils but will achieve the goal that the government wanted, from the point of view of making it easier for residents of community housing.

In essence, the LGA decided that there was some compulsion upon the minister to draw up the scheme. Initially, my amendment did not specifically have that wording so the operative provision of my second amendment is amendment No. 4, with the first three amendments being consequential to the fourth amendment to schedule 1 of the bill. It is my understanding that the LGA supports these amendments. Frankly, to summarise, it is not really any skin off the government's nose, as I understand it, because at the moment it is already paying this money, and I am told that the government will save as much as $2.9 million.

However, if that becomes an impost on councils two things will happen—and bear in mind that it will primarily be councils like Playford, Onkaparinga and Port Adelaide Enfield, which already have heavy demand on them for infrastructure support services to the community. Either they will have to pull $2.9 million worth of services out of the community or the other ratepayers will have to cop additional rates to offset that reduction. That is why I am moving this amendment.

The Hon. G.E. GAGO: The government opposes this amendment, which would require the Crown to reimburse council for the amount of any rebate of rates that a council must provide to community housing associations. This is, we believe, a very misguided amendment. Councils are currently required to provide rate rebates to a wide variety of organisations and landholders.

The act requires rebates of 100 per cent to be granted to hospitals, health centres, churches, cemeteries and zoos. The act also requires rebates of at least 75 per cent to be offered to community service organisations, schools and a wide variety of organisations delivering community services. The act provides that any of the following are community services:

- provision of emergency accommodation;
- provision of food or clothing for disadvantaged persons;
- provision of supported accommodation;
- provision of essential services or employment support for persons with mental health disabilities or with intellectual or physical disabilities;
- provision of legal services for disadvantaged persons; and
- provision of drug or alcohol rehab services or the conduct of research into or the provision of community education about diseases or illnesses or the provision of palliative care to persons who suffer from diseases or illnesses.

I highlight to honourable members that supported accommodation is only one of the many types of community services that are mentioned in section 161. As honourable members might recall from our earlier debate on clause 4, there has been some disagreement in recent years over the definition of 'supported accommodation'. Legal advisers to local government have suggested that councils can adopt, if they choose, a very narrow definition of 'supported accommodation' drawn in line with another unrelated act. They have suggested that 'supported accommodation' should be interpreted to mean only accommodation that involves personal services.

I am advised that the effect has been to disadvantage these very important and worthy organisations. The government believes that the definition is too narrow and so, in clause 4 (earlier in this bill), we have made it explicit that supported accommodation does include housing provided by community housing associations. When this chamber supported clause 4 it chose to agree with that definition.

Therefore, it makes no sense to single out this one form of community service and say that the state government should fund this rebate when local government itself funds all other forms of rebates for hospitals, health centres, churches, cemeteries, zoos, schools, community service organisations, etc.

Perhaps the honourable member, in moving this amendment, is under the false impression that the government is not providing support to local government in this area. Let me put the record straight. The current year's state budget includes the following estimated allocations to local government:

- $33.2 million in local council rate concessions for pensioners and self-funded retirees (many of these concessions would be paid in respect of supported accommodation);
- $17.2 million for public library services;
- $11 million through planning and development grants for improvements to regional open space and the public realm;
- $5.7 million to the home and community care program;
- $3.5 million for community waste management systems;
- $2.1 million for the state Black Spot Program; and
- $4.3 million for stormwater infrastructure, etc.

Those are the major state government contributions to local government this year. Clause 4 of this bill (that we debated earlier) has merely insisted that local government step up and stop trying to deny that the community housing organisations are providing a community service, alongside all the other community services that receive a 75 per cent rate rebate. There is no justification for inserting this in section 161, a response that would impose a new obligation on the state government's budget.

We are not cost shifting. I am advised that, under the South Australian Co-operative and Community Housing Act 1991, the state's payment of concessions would continue for any Community Housing Association house where the tenant is entitled to a remission. There is no changed plan for that particular entitlement, so to accuse us of cost shifting is incorrect.

I put on notice, for added reassurance for honourable members, that later on I intend to move a transitional provision for rebate of rates that will allow for the provision of a phase-in for the 75 per cent rate rebate for community housing potentially over a period of three years at a council's discretion, if it so chooses.

We have listened to the concerns of the LGA and said, 'All right, we will listen to your concerns.' To reduce the impost of this, councils will be able to use their discretion and if they choose to do it all in one year that is fine, but they will have the potential to phase in this particular rebate over three years. For instance, they might go 25 per cent in year one, 50 per cent in year two and 75 per cent for the third year. We believe that is a very considered way to ensure that local councils can adjust their financial and business plans and rates etc. to account for any impost if it occurs.

The Hon. D.W. RIDGWAY: I have a question of the mover, given that we have two different point of views at present. The mover of the amendment is saying that it is a cost shift of potentially $2.9 million onto local government. The minister is saying that we do not have a cost shift. I just ask the member whether he is able to give us an explanation of exactly how he sees that cost shift happening.

The Hon. R.L. BROKENSHIRE: It is a cost shift from my point of view. It is commendable that the minister talks about all the exemptions that local government already gives, but where I use the term 'cost shift' it is from the point of view that at the moment local government does not have to come up with what is approximately $2 million by virtue of the government saying, 'Right, we are making this amendment.' It is moving another amendment now that it will be over three years, but the bottom line is it that this is an additional $2 million of cost shift from either residents and/or the government with community housing that will have an impact on every other resident in that area.

I call it a cost shift because at the moment that $2.9 million is not coming off the bottom line of local government and, whilst we support the rebates to community housing, it is an additional increase in the rebated structure requirements as the minister has indicated because the minister has said that this is over and above all those others. From my point of view, it is actually going to hit local government and therefore all the ratepayers by approximately $2.9 million.

Therefore, I say that it is a cost shift depending on how you define 'cost shift'. If the government is moving this sort of thing in this chamber that has an impact on all the other ratepayers and on councils' bottom line, then whilst its intent is good, it should back that up with some money so that there is no cost shift.

The Hon. D.W. RIDGWAY: I indicate that the opposition will be supporting the Hon. Mr Robert Brokenshire's amendment.

The Hon. M. PARNELL: The Greens will not be supporting the amendments largely for the same reasons that the minister gave. There is a range of land uses that have a community benefit, and I certainly include these cooperative and community housing ventures in that category. However, I think we do need to treat them together in terms of where the cost burden finally lies, and I do not think it is reasonable to pull this one sector out for special treatment.

The Hon. G.E. GAGO: I have just been given some additional information that might assist members. Apparently, we did some estimated costings in terms of the effect that this might have on councils. For instance, there was some work done on the City of Mount Gambier, and I am informed that it budgeted for rate revenue of about $12.4 million this financial year, based on 12,857 rateable properties.

The effect of this measure would be either to cut Mount Gambier's predicted rate revenue by a quarter of 1 per cent or to increase the burden on other ratepayers. I cannot see how many properties are indentified. The community housing associations, which own 81 houses in Mount Gambier, would get a combined benefit of $47,250, but cutting the rates on these 81 properties that have been identified as coming under this would require the owners of the other 12,776 properties to make up the difference.

It is estimated that this would be an average of 27¢ for each other ratepayer, so it is really just not reasonable to suggest that this is having some sort of significant adverse effect. We believe Mount Gambier is an average example of how these things might fall out. It is not a significant impost and, like I said, it is unreasonable to separate out community housing. We will also be proposing transitional arrangements for any council that believes that this might be difficult to adjust for and, as I said, they will have the potential to be able to do that over three separate financial years.

The Hon. DAVID WINDERLICH: I have a question for the minister. What assistance would the state government provide if the rate rebates were a significant proportion of the budget of a particular council?

The Hon. G.E. GAGO: We would listen to their concerns. As I said, we have done some modelling so we do not believe that there is a huge impost. We have provided for a three year transition period. If a council then determined that that would still have some significant adverse impact on their particular council area, I would be happy to hear from that council and we would sit down and work out some sort of accommodating arrangement.

The Hon. R.L. BROKENSHIRE: I would just like to advise colleagues, in their consideration of this amendment, that the South Australian Institute of Rate Administrators Incorporated did an assessment of this particular amendment. Whilst the minister highlighted Mount Gambier, it says in this document that the impact of this proposal is significant for councils.

The document states that, for example, the cost to ratepayers for the 2009-10 rating year for only six councils—Onkaparinga, Salisbury, Tea Tree Gully, Holdfast Bay, Adelaide and Port Adelaide-Enfield—would be approximately $1.02 million. It goes on to say that, for the estimated 4,520 properties in this state, that cost would escalate to somewhere around $2.9 million. That is based on an average rate of only $850 per property.

The only other point that I would ask the minister is: is it true that the government would see in the future a significant increase in community housing, because I think that is something to consider as well? As community housing grows (and I believe that it will grow for the right reasons), clearly this becomes even more of a burden, and someone will have to pay for this or services will have to be cut. That is my concern.

The Hon. G.E. GAGO: I will answer that. The LGA and the SAIRA state that there are 4,520 properties throughout the state liable to be affected by this amendment. This is an exaggeration. On 7 September 2009, there were 3,452 community housing association properties. The higher quoted figure, we believe, seems to have mistakenly included housing cooperatives as well, but housing cooperatives are not mentioned in the amendment. So, the figure is very much exaggerated. We believe that some of the 3,452 might already be correctly receiving the rebate.

In relation to the SAIRA submission, which states that the expansion of Housing Association-owned properties has been significant in recent years and that it is anticipated that this trend will continue, advice from the Office of Community Housing is that the amendment would apply to no more than 3,452 houses statewide. Some of these properties would already be correctly receiving the 75 per cent rate rebate.

The Office of Community Housing has advised that the number of Housing Association properties has stabilised or plateaued in recent years. Many housing associations have long waiting lists, and some of them are not accepting any new registrations. However, it is true that there is likely to be some growth in this particular sector, largely as a result of the commonwealth government's Nation Building—Economic Stimulus Plan.

Stimulus funding has been directed to some of the larger community housing associations because they house people with high needs. We believe that a bit of scaremongering is going on here. As I have said, the government has listened to the LGA and those councils involved, and we have attempted to reduce any impost by allowing councils the discretion to absorb that impact over three separate financial years.

The Hon. DAVID WINDERLICH: I indicate that I will be supporting the government. I think the Hon. Rob Brokenshire has raised an important issue about future growth and how that might increase costs, but I do not think it makes sense to pull this one sector out of the mish-mash of cross-subsidies between state and local government.

Amendment negatived; clause passed.

Clause 25.

The Hon. DAVID WINDERLICH: I move:

Page 12, after line 14—Insert:

(2) Section 194—After subsection (2) insert:

(2a) The report prepared under subsection (2)(a) must be published in accordance with the regulations.

(2b) A public consultation policy for the purposes of subsection (2)(b) must include a period of at least two months from the first publication of a report under subsection (2a) for community consultation in relation to the proposal.

(2c) If during the period of two months referred to in subsection (2b) the council receives a petition in the prescribed form signed by not less than the prescribed number of electors (being electors at the time of signing), the proposal to revoke the classification of the land as community land cannot proceed unless the council obtains majority support for the proposal at a poll of electors for the area of the council conducted in accordance with subsection (2d).

(2d) The following provisions apply to a poll under subsection (2c):

(a) the Local Government (Elections) Act 1999 will apply to the poll subject to modifications, exclusions or additions prescribed by regulation;

(b) the council will have majority support for the proposal to revoke the classification of the land as community land if a majority of electors voting at the poll approve the revocation;

(c) the council must publish the results of the poll in a newspaper circulating within the area of the council.

(3) Section 194(3)—Delete 'of subsection (2)' and substitute:

set out above, and subject to the outcome of any poll conducted under subsection (2c).

(4) Section 194—After subsection (6) insert:

(7) For the purposes of a petition under subsection (2c)—

(a) a person who signs another person's name to a petition or who knowingly signs a petition more than once, or who, not being an elector for the relevant council, knowingly signs a petition, is guilty of an offence;

(b) a person who gives or offers or promises to give any money or other material benefit to a person to obtain the person's signature to a petition is guilty of an offence;

(c) a person who, without reasonable excuse, hinders or obstructs a person from collecting signatures for a petition is guilty of an offence;

(d) a person who uses or makes available to any person any particulars obtained from a petition about a signatory to a petition for a purpose that is not connected with the administration of this act is guilty of an offence.

(8) A person who is found guilty of an offence against subsection (7) is liable to a penalty not exceeding $5,000.

(9) In subsection (2c)—

Prescribed number of electors means, in relation to a petition that relates to a proposal to revoke the classification of land as community land—

(a) 200 electors in respect of places of residence within the area of the relevant council; or

(b) five per cent of electors in respect of places of residence within the area of the relevant council,

whichever is the greater.

As I explained in my second reading speech, this amendment would require a poll of residents in relation to the disposal of community land. This amendment was inspired from St Clair. This is not something you would want to be used frequently, lightly or mischievously. The triggers for a poll are essentially that 200 or five per cent of residents, whichever is the greater, would have to call for such a poll in a petition.

The 200 relates to small country councils, which might have only 1,000 or 1,200 ratepayers. The 5 per cent of ratepayers or residents relates to larger metropolitan councils. If you take the example of St Clair, which I think has about 100,000 ratepayers, such a poll would require something like 5,000 people to sign a petition. So, it is quite a high hurdle to jump for a community group that is concerned about a council decision, in that they could not do it very easily. However, the amendment does give an opportunity for that sort of direct exercise of democracy if there is enough concern. As I have said, it cannot be used lightly or easily, but it will give that option to a community that is really concerned about a decision their council is making.

The Hon. G.E. GAGO: I oppose this amendment, which proposes to revoke the classification of community land which may be subject to veto in a poll of electors, the requirement to be triggered by a petition, which must be signed by at least 200 or 5 per cent of electors, whichever is the greater. The figure of 5 per cent is particularly low and would allow a very small minority to control important strategic decisions of the council.

To the best of my knowledge, the LGA does not support this amendment. Under the amendment, if a requirement for a poll is triggered by a petition, the default position is refusal. In other words, the revocation is to be prevented, unless the majority of those voting approve the revocation. The government clearly does not support this proposal.

Ratepayers elect their council to make decisions in the best interests of their community. Councils must take a long-term view, and sometimes this means making decisions that not everyone likes or agrees with. Apart from community land, councils can make controversial decisions on many other topics, including the setting of rates, which is something we often see. It would make the business of local government unworkable if every controversial decision had to be referred to voters for a decision. Elected members must take into account the best interests of the broader community, not just a particular group or section of the community.

Sometimes the decisions councils take are not popular, but it is government's task to make tough decisions. It is not a popularity contest: it is about planning for the future of local communities. Councils are required to have policies on how they consult with their communities. They must use these processes on many occasions; for example, when they want to change their rating structure and also when they want to revoke the status of community land.

Consultation includes methods such as putting advertisements in newspapers or erecting signs, and sending letters, etc. If ratepayers are unhappy with the council's decisions, they can make their views known through the ballot box, just as they can with the state and federal governments. There are only two cases in which the Local Government Act provides for polls of electors with binding effect. One relates to structural reforms proposed by the Boundary Adjustment Facilitation Panel, based on a submission from electors—that is when boundaries of councils are sought to be changed; and the other relates to council representation review proposals to change the method of election of a principal member.

In both these cases, these are matters that relate to the fundamental issue of the way in which councils' representation is structured, not the decisions that councils make in the ordinary course of their fulfilling their role and responsibilities. However, even in these constitutional-type polls a base level of voter turnout must be reached before the poll has a binding effect. In the case of the structural reform proposal, to which I referred, the turnout figure is 40 per cent, so there is a pretty significant safeguard there. In the case of a poll relating to a change in the way a principal member is elected, the turnout that must be reached before the poll is binding is a percentage of electors equal to half the percentage turnout of that council at its last periodic election. So, again, safeguards are structured in there.

These formulae take into account that, under voluntary voting, the results of any simple majority poll will be skewed towards rejection—opponents being more motivated to vote than those who agree or who do not have an interest, or a particularly strong interest—and the poll may not be

an accurate reflection of the dominant elector view. This amendment has no such turnout requirement, making it possible for the same relatively small number of electors that trigger a poll to defeat the proposal if other electors are unconcerned or not particularly interested, and few vote.

The Hon. D.W. RIDGWAY: The opposition supports the Hon. David Winderlich's amendment, particularly in light of the St Clair issue. I would think that 5 per cent of electors in the City of Charles Sturt would be about 5,000 or possibly more, and I think today we have seen the minister—

The Hon. B.V. Finnigan interjecting:

The Hon. D.W. RIDGWAY: The Hon. Bernard Finnigan interjects that the Hon. Michael Atkinson, one of the local members close to the City of Charles Sturt, would brainwash them and control everything out there.

The ACTING CHAIRMAN (Hon. J.S.L. Dawkins): The Hon. Mr Finnigan's interjections are out of order.

The Hon. D.W. RIDGWAY: It is the most intelligent thing he has said today, Mr Acting Chairman. However, today we have seen the minister do a backflip on her decision in relation to St Clair. I was not at the meeting last Monday, but I was told that there were about 600 people present; I do not know whether that is accurate but it is somewhere around that figure and not 5,000. The minister has said that it would result in a very small number of people having an impact on a council decision; well, today we have seen the minister embarrassed by 600 people turning up to a meeting of the council, and she has asked the Supreme Court to set aside her decision. Clearly, this is an matter that is current because of the St Claire issue, but it certainly warrants the support of the opposition, and we are happy to provide that.

The Hon. M. PARNELL: The Greens support the concept of local councils being able to revoke community land, because it does provide a little flexibility when the needs of the community change. One can imagine that what are often, but not always, small parcels of land that really have no strategic or future use for a local council could be declassified and then swapped or sold for some genuine community benefit. Certainly, the St Clair land swap situation has focused our minds on how that arrangement can go terribly wrong.

For me the test is different to the one that the minister applied, where she talked about binding ballots or plebiscites being related to only structural or administrative-type arrangements such as the moving of boundaries or the method of election. For me, the test is that if the decision in question is one that, once made, cannot or will not be undone then we need a very high bar before we allow even a democratically elected council to go down that path.

When it comes to places like St Clair, once the community land classification has been revoked the council is free to sell it, and it is cold comfort to say to the residents, 'Well, next election you can throw out all those people who resolved to declassify that park.' It will be too late; the park will have been sold or disposed of, and houses will have been built on it. So, when it comes to important decisions such as this I believe it is appropriate to go to the people and ask for their views. I support the amendment.

Amendment carried; clause as amended passed.

Progress reported; committee to sit again.

MAGISTRATES COURT (SPECIAL JUSTICES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 November 2009. Page 4090.)

The Hon. R.P. WORTLEY (17:51): I rise today to address the Magistrates Court (Special Justices) Amendment Bill. This is a short piece of legislation that has considerable ramifications. It concerns the expanded role for special justices, who are justices of the peace appointed under the Justices of the Peace Act 2009.

This is a venerable office. The origin of justices of the peace has been traced back to Britain in 1195 when knights appointed by the king, and known as keepers of the peace, were responsible for ensuring that the law was upheld. By the mid-14th century these peacekeepers were known as justices of the peace, and they had powers to hear and determine certain offences and punish offenders. Consequently, the office of JP is one of the oldest in the common-law system.

Over time, justices of the peace in Britain were authorised to perform more various functions. The office was recognised in the Australian colonies from 1788, and South Australia's first justice of the peace was appointed in 1836. Our special justices, like JPs, perform their role on a voluntary basis, although when sitting they receive a small honorarium. They are not legal practitioners; they have completed a training course at TAFE SA. Theirs is, indeed, a public service.

This bill essentially provides for the Magistrates Court to be constituted of a special justice in the following circumstances: when sitting in its petty sessions division; when hearing uncontested applications of a class prescribed by the regulations; or in any other case when there is no magistrate available to constitute the court. I note that, where a court is constituted of a special justice in criminal proceedings, a sentence of imprisonment may not be imposed. This bill provides, however, that prescribed uncontested applications may be heard by a special justice.

Essentially, the jurisdiction of the petty sessions division will be broadened to allow for the hearing, and determination, of a charge of an offence against the Road Traffic Act 1961, provided that no term of imprisonment applies. These charges are: a charge of an expiable offence where the alleged offender elects to be prosecuted for the offence; a charge of a prescribed offence being an offence where the maximum penalty is a fine of $2,500 or less but includes imprisonment, and the offence is prescribed by the regulations for this purpose; and a charge of any other offence if the maximum penalty is a fine of $2,500 or less or includes imprisonment, but may include disqualification from holding or obtaining a driver's licence.

The new provisions will also allow for applications for the conduct of a review of an enforcement order under sections 10 and 14 of the Expiation of Offences Act 1996. Moreover, the procedural and administrative powers of the court will be able to be exercised by a registrar, special justice or justice, in accordance with the terms of an amended section 15.

These moves are intended to allow a greater range of minor offences to be dealt with by special justices which will, in turn, free up stipendiary magistrates to deal with the more serious of the criminal offences. What will the result be? Improved access to the justice system for those who are engaged in it; improved outcomes for the victims of crime; and improved functioning and efficiency in our courts.

It is without doubt that the two main barriers to the effective function of our judicial system, overall, are cost and delay. Everyone knows how much litigation can cost. Often the courts are seen to be available, in the main, only to the wealthy or to corporations. As for delay, modern case management systems and services, such as alternative dispute resolution, have removed some of the burden, but it remains the case that people have to wait, sometimes for a considerable period, for their day in court. The consequences are obvious. As the Chief Justice of our High Court said in an address to the Supreme Court of Japan:

> In the administration of civil and criminal justice, Australian courts, like most courts throughout the world, suffer from the twin problems of cost and delay. The capacity of courts to conduct their business with reasonable efficiency depends to a large extent upon groups who are independent of each other, and whose interests are often in conflict. The executive governments, which fund the courts, the lawyers, and the litigants, all affect the manner in which the 'system' functions. Cooperation is not the hallmark of an adversary system of justice.
>
> The cost of litigation, which principally involves the fees paid by parties to their lawyers and others whose advice and assistance is needed in the conduct of litigation, is influenced by the length of cases, which has increased substantially in recent years. We still have juries for most major criminal trials, and the increasing length of such trials is a matter of concern.

The need for greater efficiency and a less adversarial system (where appropriate) has clearly been recognised and there has been constructive movement. It is essential that taxpayers have confidence in the system: that they believe that it is representational of community interests, and acting on their behalf. They are, after all, paying for it. Indeed, much of the reform has been driven by the courts themselves. This is reflected in the High Court's recent *Aon* decision. In that case Chief Justice French observed:

> The adversarial system has been qualified by changing practices in the courts directed to the reduction of costs and delay and the realisation that the courts are concerned not only with justice between the parties, which remains their priority, but also with the public interest in the proper and efficient use of public resources.

His Honour is correct: it is in the interests of justice and increased efficiency in the justice system's use of public funds that this bill has come before us today. With these few reflections, I commend the bill.

The Hon. A. BRESSINGTON (17:58): I rise briefly to indicate my support for this bill and, in doing so, I would like briefly to reiterate the contribution of the member for Mitchell in the other place with which I am in full agreement.

If we are going to be creating a fourth arm of our judiciary, on which we will be increasingly relying, we must begin to dignify special justices' contributions. This, of course, would involve a commensurate increase in the special justices' honorarium, along with their jurisdiction. They are paid a paltry $50 a day, which would not cover their expenses, and this is shameful in comparison to the wages paid to those surrounding them, but this also includes the esteem in which they are held within the judiciary and the courts.

That special justices are solely doing paperwork in our busiest metropolitan Magistrates Court, despite having the power to preside over proceedings, suggests to me that they are not being respected by the magistrates they are there to relieve. This may be, in part, a failing of the training provided to special justices, and we can hardly expect the courts to embrace them if they are not well versed in their responsibilities and in the law they are expected to administer.

I repeat the call of the member for Mitchell for a review of the training presently provided and ask whether TAFE is the most appropriate institution to be delivering that training. However, this could also be somewhat rectified if a mentoring system were established, in which serving or retired magistrates could provide new recruits with on-the-job training, particularly in court processes and systems, that they are unlikely to learn from a textbook. With those remarks, I indicate my support for the bill.

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

[Sitting suspended from 18:00 to 19:45]

VALUATION OF LAND (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the bill with the amendments indicated by the following schedule, to which amendments the House of Assembly desires the concurrence of the Legislative Council:

No. 1. Clause 3, page 2, lines 8 to 12—Delete clause 3 and substitute:

3—Amendment of section 19—Amendment to valuation roll

Section 19—After subsection (2) insert:

(3) The Valuer-General may amend a valuation and the valuation roll if he or she discovers or receives notice that the valuation is not consistent with other valuations in force under this act (provided that this subsection only applies if the amended valuation will be less than the original valuation).

No. 2. Clause 5—Delete this clause

No. 3. Clauses 6 and 7, page 3, lines 4 to 20—Delete clauses 6 and 7

No. 4. Clause 8, page 3, lines 22 to 28 [clause 8(1) and (2)]—Delete subclauses (1) and (2) and substitute:

Section 24—After subsection (1d) insert:

(1e) Despite any other provision of this section, the Valuer-General may, for reasonable cause shown by a person entitled to make an objection to a valuation, extend the period within which the objection may be made (whether or not the period for objection to the valuation that would otherwise apply under this section has already expired).

Consideration in committee.

The Hon. J.A. DARLEY: I move:

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

The Hon. P. HOLLOWAY: On behalf of the government, my understanding is that these amendments were made by the House of Assembly to the Hon. Mr Darley's bill. I believe that the Hon. Mr Darley accepts the amendments, so we are happy for the bill to proceed.

Motion carried.

INTERVENTION ORDERS (PREVENTION OF ABUSE) BILL

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

STATUTES AMENDMENT (VICTIMS OF CRIME) BILL

The House of Assembly requested that a conference be granted to it respecting the amendments in the bill. In the event of a conference being agreed to, the House of Assembly would be represented at the conference by five managers.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (19:54): I move:

That a message be sent to the House of Assembly granting a conference as requested by the house; that the time and place for holding it be the Plaza Room at 4pm on Wednesday 2 December 2009; and that the Hons J.A. Darley, B.V. Finnigan, P. Holloway, R.D. Lawson, and S.G. Wade be the managers on the part of this council.

Motion carried.

MOTOR VEHICLES (MISCELLANEOUS NO. 2) AMENDMENT BILL

The House of Assembly agreed to amendment No. 1 made by the Legislative Council without any amendment; disagreed to amendment No. 2; and made alternative/consequential amendments as indicated in the following schedule in lieu thereof:

Clause 9, page 8, lines 38 to 40 and page 9, lines 1 to 13 [clause 9, inserted section 75A(16)]—Delete subsection (16) and substitute:

(16) The holder of a learner's permit must not drive a motor vehicle on the road in any part of the State at a speed exceeding 100 kilometres an hour.

Maximum penalty: $1,250.

And makes the following consequential amendment:

Schedule 1, page 27, after line 18 [schedule 1, clause 4]—After paragraph (b) insert:

(c) On the commencement of section 9 of this Act, section 75A(5aa) of the principal Act (as in force immediately before that commencement) ceases to apply to the holder of the permit;

(d) Section 75A(16) of the principal Act (as in force after that commencement) applies to the holder of such a permit as if the permit had been issued after that commencement.

Consideration in committee.

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

That the Legislative Council do not insist on amendment No. 2 and agrees to accept the alternative/consequential amendments made in lieu thereof.

The government supports the alternative amendment, which arises from an amendment put forward by the Hon. David Ridgway in relation to his amendment No. 2, which deals with an increase in the maximum learner driver speed to 100 km/h for those learner drivers outside metropolitan Adelaide. There was some concern about the definition of what constituted a metropolitan and non-metropolitan area, so to resolve those differences we have come to an agreement about an alternative amendment, which is similar to the original amendment but simpler. It removes the reference to metropolitan Adelaide. This enables a learner driver to drive up to 100 km/h subject to applicable speed limits. There is also a consequential amendment that will ensure the maximum speed will apply from the date the amendment comes into consideration. I therefore support the alternative amendment.

The Hon. D.W. RIDGWAY: The opposition is delighted that commonsense has prevailed, having moved this amendment. Removing the confusion about the metropolitan area makes a lot of sense and it will be welcomed by learner drivers across the state who will be able to learn with all the road conditions and at all the speed limits. In the past 7½ years I have been in this place this is probably one of the few times common sense has prevailed with the government.

Motion carried.

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

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

OUTBACK COMMUNITIES (ADMINISTRATION AND MANAGEMENT) BILL

The House of Assembly agreed to the bill with the amendments indicated by the following schedule, to which amendments the House of Assembly desires the concurrence of the Legislative Council:

No. 1. Clause 9, page 6, line 3—Delete 'Public Sector Management Act 1995' and substitute:

Public Sector (Honesty and Accountability) Act 1995

No. 2 Clause 11, page 7, line 6—Delete 'Public Sector Management Act 1995' and substitute:

Public Sector (Honesty and Accountability) Act 1995

No. 3 Clause 21, page 12—Delete clause 21 and substitute:

21—Rates on land—asset sustainability levies and community contributions

(1) The Authority may impose—

(a) asset sustainability levies on land in the outback to raise revenue for the maintenance of public services and facilities in the outback; and

(b) community contributions on land in an area of the outback to raise revenue for the purposes of planning, carrying out, making available, supporting, maintaining or improving an activity that is, or is intended to be, of particular benefit to the outback community in that area or to visitors to that community.

(2) An asset sustainability levy is to be imposed in the same way as a council imposes general rates on land in its council area, except that the levy must be based on a fixed charge approved by the Minister.

(3) A community contribution is to be imposed in the same way as a council imposes separate rates on land in its council area, except that—

(a) a contribution may only be imposed if it is authorised by a community affairs resourcing and management agreement; and

(b) a contribution must be based on a fixed charge approved by the Minister.

(4) The fixed charge approved by the Minister for an asset sustainability levy or community contribution may vary according to the use of the land, the locality of the land or any other factor (but not one based on a valuation of the land).

(4a) The Minister must not approve a fixed charge for an asset sustainability levy for a financial year that will result in an increase in the levy from the previous financial year (other than a CPI increase) unless—

(a) a notice of the proposed fixed charge has been laid before both Houses of Parliament, together with an explanation of the reasons for the increase; and

(b) after 6 sitting days (which need not fall within the same Parliament or the same session of Parliament) no resolution has been passed by either House of Parliament prohibiting the approval.

(5) For the purposes of this section, Chapter 10 Part 1 of the Local Government Act 1999 applies as if it formed part of this Part, subject to the following modifications:

(a) a reference to a council is to be read as a reference to the Authority;

(b) a reference to the area of a council is to be read as a reference to the outback;

(c) a reference to local government purposes is to be read as a reference to the purposes of the Authority;

(d) a reference to a general rate is to be read as a reference to an asset sustainability levy;

(e) a reference to a separate rate is to be read as a reference to a community contribution;

(f) a reference to the chief executive of a council is to be read as a reference to the presiding member of the Authority;

(g) any other modifications prescribed by regulation.

(6) The revenue raised from asset sustainability levies and community contributions in respect of a particular financial year need not be completely expended in that year.

(7) The first asset sustainability levy notice for a financial year must be accompanied by—

(a) a summary of the Authority's business plan for the financial year; and

(b) an assessment of the activities of the Authority against its business plan for the previous financial year.

(8) Asset sustainability levies and community contributions cannot be challenged on a ground based on non-compliance with this section, or on a ground based on the contents of a plan, budget or assessment prepared under this Act.

(9) In this section—

CPI increase means an increase reflecting the all groups consumer price index for Adelaide published by the Australian Bureau of Statistics.

Consideration in committee.

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

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

I understand that we are agreeing to an amendment that was moved and agreed to in the other house concerning the levy provision and processes around that. I also understand that the bill returns with an amendment to clause 21 dealing with the provisions which apply to the asset sustainability levy. The levy is based on the idea of a shared community responsibility to contribute to the maintenance of existing public use facilities and infrastructure in the Outback and includes those assets which are believed to be of benefit to the whole of the Outback such as airstrips, toilets and UHF repeater network infrastructure.

Following the rigorous process undertaken by the new authority in the first instance to construct a levy, the levy amount will not be able to be increased by more than CPI without scrutiny of both houses of parliament. Each house may disallow the levy within six sitting days. The amendment to which the government has agreed in the other place adds to the many safeguards around this levy. The amendment, which I do not believe is necessary, is a concession by the government to ensure that the valuable changes made by this bill can be implemented. I am pleased to be able to commend this amendment agreed to in the other place to this committee.

The Hon. S.G. WADE: Without wanting to take the minister's account of facts as accurate—I do not think the opposition supported it in the other place—we are not going to disagree with it tonight, but I take the opportunity to indicate that the opposition welcomes the fact that the government, through this amendment, is going to accept that these charges will be disallowable by either house of parliament having laid the matter on the table. We believe that that is a significant improvement in the legislation but we reiterate our fundamental objection to a situation where we have a form of local government in the northern areas of the state where people are not being allowed to have full local representation. As the Hon. Mr Gunn said in the other place:

...the Liberal Party will change this in government; make no mistake about it, and we will make sure that communities in the Outback will have the ability to elect who they want and not have who the government wants them to have.

I can assure you that the Hon. Graham Gunn has been a strong presence in the Liberal Party party room for many years, and I am sure that his ghost will make sure that we honour that commitment. We have every intention of making sure that the Outback communities have the level of representation of any other South Australians. Nonetheless, until we are able to form government, we will support this motion.

The Hon. G.E. GAGO: Also implicit in agreeing to this amendment is the money clause that was inserted in the other place. That was discussed here formally but it went to the other place because it was not able to be introduced here. That money clause has also come back to this chamber, so I just need to make sure that everyone is clear that, in agreeing to these amendments, we are also agreeing to that money clause, which goes to the levies.

Motion carried.

ANANGU PITJANTJATJARA YANKUNYTJATJARA LAND RIGHTS (MINTABIE) 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) (20:07): 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.

Introduction

This Bill amends the *Anangu Pitjantjatjara Yankunytjatjara (APY) Land Rights Act 1981* (the APY Land Rights Act), some by-laws under the Act and the *Opal Mining Act 1995*. The amendments are necessary for the implementation of a new lease for the Mintabie opal mining township, which is located on land owned by Anangu Pitjantjatjara Yankunytjatjara (APY) pursuant to the APY Land Rights Act.

The changes have been based on consultation with APY and traditional owners as well as the Mintabie Miners Progress Association and relevant government agencies and will enable more effective management of the township.

Background

The township of Mintabie is located about 1100 kilometres north of Adelaide on the Mintabie Precious Stones Field. The Precious Stones Field has an area of approximately 100 square kilometres and the township is about 5 square kilometres in size.

Opal mining at Mintabie and the township were established before land was vested to APY in 1981. In recognition of this, the APY Land Rights Act included special provisions in relation to Mintabie.

Section 28 of the APY Land Rights Act leased the town area to the Crown through the Minister for Lands for 21 years. That statutory lease expired on 1 October 2002. Since that time the APY Executive Board has provided a series of interim lease extensions while a new lease has been negotiated.

Description of the Mintabie township

At its peak in about 1990 almost 1,000 people were estimated to be living at Mintabie. It currently has a population of 100—150 people.

The main commercial activities at Mintabie are a hotel, four shops and second hand motor vehicle sales. With the decline of opal mining at Mintabie, most of Mintabie's commercial trade is now with Anangu.

Under the current APY by-laws, the hotel is not permitted to sell alcohol to Anangu. The current by-laws permit Mintabie residents to bring unlimited quantities of alcohol into Mintabie for personal consumption.

There is an Area School at Mintabie, which has about 30 students. The Mintabie school was built in the 1990s to replace the Marla school.

Town municipal activities such as the maintenance of internal roads and the airstrip, provision of water and rubbish collection are self managed through the Mintabie Miners Progress Association (MMPA), which is a voluntary body of Mintabie residents. There is a Mintabie tele-centre that was set up with funding provided by the Australian Government.

Management of the Mintabie township

There have been deficiencies over many years in the management of Mintabie, which has resulted in a range of problems. This has occurred despite provisions in the APY Land Rights Act for a Mintabie Consultative Committee comprising the State, APY and the MMPA to deal with issues relating to the administration of the precious stones field and township.

For example, there has been little regulation of the location of dwellings and other structures at Mintabie. As a result, about thirty per cent of the houses at Mintabie have been built outside the original town lease area established under the APY Land Rights Act. The town waste dump was also established outside the town lease area without direct agreement from APY. Many buildings at Mintabie have been erected without relevant approvals under the Development Act or the earlier Planning Act. No process was established to identify Aboriginal heritage areas to ensure buildings and other developments were not located near culturally significant sites. Environmental protection issues have not been adequately dealt with. The collection of site licence fees from Mintabie residents and the regular indexation of fees have also been deficient. In addition, there has been a failure to enforce permit requirements for visiting Mintabie, with most visitors not obtaining a permit and being unaware of the requirement to do so.

This Bill and the proposed new lease arrangements seek to address these and other longstanding issues where appropriate.

Mintabie Township lease negotiations

While the Mintabie Precious Stones Field continues indefinitely unless changed by Government, a new town lease allowing people to live and operate businesses at Mintabie requires APY approval. Negotiations for a new town lease, led by Primary Industries and Resources SA (PIRSA), which administers the precious stones field, began several years before the lease expired in 2002.

At that time, the APY Executive Board nominated Yankunytjatjara Council, represented by the Pitjantjatjara Council, as the appropriate body to represent traditional owners in the lease negotiations. Through this process a new town lease was prepared, but it was not endorsed when put to a general meeting of APY in mid-2002.

One reason for its failure was concern about activities at Mintabie that were causing problems on the Lands. A second reason was the strong disagreement at the time between the Pitjantjatjara Council and the APY Executive Board.

Following this set back, PIRSA and the Department of State Aboriginal Affairs (now the Aboriginal Affairs and Reconciliation Division of the Department of the Premier and Cabinet) recommenced negotiations, with assistance from the Crown Solicitor's Office. Recent lease negotiations have been with the APY Executive Board rather than Yankunytjatjara Council, although local traditional owners continue to have input.

In the last three years there have been four Special General Meetings of APY to discuss the Mintabie township lease, plus meetings with the APY Executive Board members and officers and the MMPA.

The APY position is that it agrees to the Mintabie township remaining provided a number of legal and illegal activities contributing to social and economic problems on the Lands are dealt with.

Issues that APY want addressed

In addition to the issues described above, APY's chief concerns are:

- alcohol and other drugs (mainly cannabis) entering the broader APY lands through Mintabie
- the operation of a second hand motor vehicle dealer at Mintabie. There have been allegations that vehicles bought by Anangu soon break down, which is contributing to financial hardship because they are often purchased on credit
- credit or 'book up' practices and the retention of Anangu bank key-cards by Mintabie shop keepers, which is seen contributing to financial hardship and is in conflict with the APY Mai Wiru stores policy.

  Note—

  Mai Wiru is a Pitjantjatjara/ Yankunytjatjara word that means 'good food'. The central aims of the Mai Wiru stores policy are to ensure stores on the APY lands sell healthy foods at affordable prices and comply with fair trading legislation.
- sale of pornography to Anangu at Mintabie.

SAPOL and the Office of Consumer and Business Affairs (which has investigated trading practices at Mintabie), have confirmed many of these concerns.

At Special General Meetings of APY about Mintabie in 2007 and 2008, APY determined that the following conditions needed to be met before it would agree to a new township lease:

- alcohol to only be consumed at the Mintabie hotel or at approved licensed functions;
- Mintabie residents no longer permitted to bring alcohol into the town;
- Mintabie residents to undergo police criminal history checks as part of licences for town sites similar to the practice for most others living or working on the Lands;
- no commercial second hand motor vehicle sales to be allowed at Mintabie;
- relevant aspects of the Mai Wiru stores policy to apply at Mintabie stores including sorting out problems with 'book up' using key cards, in consultation with APY and affected Mintabie store owners;
- prompter procedures for removing people from Mintabie who are engaging in activities seen as detrimental to the welfare of Anangu.

APY and the MMPA also agreed that the Mintabie Consultative Committee should be established under the Mintabie Township Lease Agreement rather than the Act because this will provide a more flexible and administratively simpler operating structure.

Amendments to the APY Land Rights Act

The Bill replaces existing sections 25-28 of the APY Land Rights Act with new sections. The Minister responsible for the new Mintabie provisions will be the Minister for Mineral Resources Development, as for existing Mintabie provisions.

The Bill establishes procedures for the Minister to delegate powers in relation to the Mintabie precious stones field, ensures that the State and APY are not responsible for maintaining licensed sites in the Mintabie town area, makes provisions concerning the Walatina grazing leases, sets out new procedures for entering and remaining at Mintabie, creates new Ministerial powers in relation to issuing site licences, makes an offence of entering and remaining at Mintabie or operating a business at Mintabie without a licence and establishes procedures for reviewing licensing decisions. The Bill also includes powers for APY to delegate the management of entry permits for Mintabie to approved persons.

These provisions are described in more detail below.

Retail and residential tenancies legislation

The Bill provides that the Retail and Commercial Tenancies Act and the Residential Tenancies Act do not apply to residential, camp site and commercial licences at Mintabie. Licensees currently only pay a ground rent of $400 to $600 a year for residential sites and more for commercial sites. Licensees have in some cases built substantial structures but no-one expects MMPA, APY or the State to be responsible for maintaining these buildings in the way expected of a landlord. Clause 29E of the Bill articulates this by stating that the Crown, APY and MMPA are not responsible for the repair of premises at Mintabie.

Walatina grazing leases

Section 29B deals with grazing leases granted by APY to the Walatina Aboriginal Corporation. Mr Yami Lester and his family operate Walatina. The grazing leases currently include land proposed to be in the Mintabie township lease area. Section 29B provides that the leases will not apply to the land in the township lease area so long as the Mintabie town lease exists. The area affected is about five square kilometres. This short circuits the usual processes of partial surrender of the grazing leases and later re-registration of a new lease over the town lease area. Walatina has a total lease area of some 9,000 square kilometres and does not currently graze cattle near Mintabie. Mr Lester and his family support the provision.

Provisions for entering and remaining at Mintabie

Section 25 of the APY Land Rights Act sets out the current statutory requirements for entering and remaining at Mintabie. Experiences since 1981 have shown that this section needs to be amended to better manage access.

Section 29C of the Bill specifies who can enter and remain on the Mintabie precious stones field and section 29D establishes new licence procedures for occupying land in the Mintabie township lease area. These provisions establish an administrative process whereby the Minister has discretion over the granting of licences to persons wanting to live at Mintabie. The Minister may require applicants for a licence to provide a criminal history check and can include relevant conditions on licences.

Under the Bill's provisions, people wanting to visit or reside at Mintabie will require an APY permit unless they:

- have a site licence to live at Mintabie;
- are a person named on a site licence;
- hold a Mintabie precious stones prospecting permit;
- are a member of a specified class of person, including students (and their parents/guardians) attending the Mintabie school from outside the APY lands (eg Marla), persons who work at the Mintabie school, employees of the Royal Flying Doctor Service, health care workers, ministers of religion and other approved classes of persons.

Unlike the current arrangements, these new provisions will enable PIRSA and SAPOL to readily determine who is legally permitted to be at Mintabie.

To remove an ambiguity, Section 29C(8) of the Bill specifies access and egress to Mintabie must be directly from the Stuart Highway.

Mintabie Consultative Committee

Section 26 of the current APY Land Rights Act establishes the Mintabie Consultative Committee. The purpose of the Committee is to provide advice to the Minister for Mineral Resources Development about issues related to the administration of the Mintabie precious stones field. The Governor appoints committee members and membership comprises two Anangu, a SAPOL representative, a representative of the Minister for Mineral Resources Development and a representative of the MMPA. The statutory committee will be replaced by a similar committee be provided for in the Mintabie Township Lease Agreement.

Exclusion of persons from Mintabie

Section 27 currently contains provisions for prohibiting persons from entering or remaining at Mintabie. The process involves an application to the Magistrates Court for an order prohibiting a person from being in Mintabie. Section 27(2) sets out the grounds on which an order can be made, which includes certain criminal convictions. The Bill retains these provisions and adds drug offences under part 5 of the Controlled Substances Act as grounds for exclusion.

To further strengthen the exclusion powers, the Bill includes at section 29F new offences of residing at Mintabie without a licence and operating a business at Mintabie without a licence. These provisions will enable PIRSA and SAPOL to act more promptly to remove any person at Mintabie who is a threat to good order and good relations with Anangu.

Mintabie site licences

Section 29D of the Bill sets out the process by which the Minister issues licences to occupy land in the Mintabie township area. Fees for licensees are based on a Schedule in the Mintabie Township Lease Agreement.

Section 29G includes procedures for reviewing licence decisions at the request of affected licence holders or applicants.

Opal Mining Act

Schedule 1 part 1 of the Bill sets out changes to the Opal Mining Act. New section 10A of the Opal Mining Act requires persons holding a precious stones prospecting permit to obtain an additional authorisation to operate at Mintabie.

Similar Mintabie-specific provisions are included for opal mining tenements (new sections 18A, 18B and 19A). This is because a person holding an opal mining tenement at Mintabie does not need to have a precious stones prospecting permit.

Similar to other areas of the Opal Mining Act, various administrative decisions related to Mintabie precious stones prospecting permits and opal mining tenements at Mintabie will be subject to review by the Warden's Court.

APY alcohol by-laws

As part of the township lease negotiations, APY has proposed changes to the APY alcohol by-laws. Under the new provisions it will only be permissible to consume alcohol on the Mintabie precious stones field at licensed premises or at specially licensed events unless APY agrees to additional rights to possess alcohol at Mintabie pursuant to relevant provisions of the APY alcohol by-laws . Persons delivering alcohol to Mintabie will also be required to notify the Marla police at least 24 hours beforehand.

Mintabie Township Lease Agreement and lease

The Mintabie Township Lease Agreement mentioned in the Bill will set out many of the details about how management of Mintabie township will occur. The substantive content of both the formal lease and the Mintabie Township Lease Agreement have been negotiated. It is proposed that these documents will be signed after this Bill has been finalised.

Transitional provisions

Schedule 2 makes transitional provisions for town site licences, the relatives of persons holding precious stones prospecting permits and opal mining tenements at Mintabie. Existing precious stones prospecting permits and opal mining tenements will continue until their expiry date but are altered to include conditions set out in the Bill. This will avoid the administrative difficulty for PIRSA that would have occurred if all opal mining authorities had to be renewed at the commencement of this amending Act. New town site licences will be required prior to the commencement of this new legislation.

Conclusion

This Bill represents an important step in providing for the continuation of the opal mining township of Mintabie whilst also addressing a range of longstanding issues that have been of concern to APY.

The Bill demonstrates the government's commitment to negotiating agreements on Aboriginal lands that provide fair outcomes for all parties.

I would like to acknowledge the active involvement of the previous Brown and Olsen governments, which commenced the negotiations for a new Mintabie township lease and agreement. I also want to thank the Anangu Pitjantjatjara Yankunytjatjara, the Walatina Aboriginal Corporation and the Mintabie Miners Progress Association who have all participated in and assisted negotiations.

After the passage of this Bill the new Mintabie township lease and related Agreement can be operating within a few months.

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 *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*

4—Amendment of section 4—Interpretation

This clause deletes the redundant definition of 'Mintabie resident' and inserts definitions of terms used in the Act as amended by the measure.

5—Substitution of Part 3 Division 4

This clause substitutes a new Division 4 into Part 3 of the Act as follows:

Division 4—Mintabie precious stones field

25—Interpretation

This clause defines terms used in the proposed new Division.

In particular, it provides that the Minister, for the purposes of the Division, is the Minister to whom the administration of the *Opal Mining Act 1995* is committed, rather than the Minister to whom the principal Act is committed.

26—Expiry of Division

This clause provides that the proposed Division will expire should the Mintabie precious stones field cease to be a precious stones field for the purposes of the *Opal Mining Act 1995*.

27—Interaction of this Division with other Acts

In addition to preserving the effect of current section 29 of the Act, this clause provides that the proposed Division does not derogate from the provisions of the *Mining Act 1971* or the *Opal Mining Act 1995*. It also provides that the *Retail and Commercial Leases Act 1995* and the *Residential Tenancies Act 1995* do not apply in relation to premises or land in the Mintabie township lease area.

28—Delegation

This clause provides a power of delegation to the Minister in relation to the powers and functions of the Minister under the proposed Division.

29—Delegation of power to permit entry to Mintabie precious stones field

This clause provides that, despite sections 9F and 19(3) of the Act (which operate to prevent the Executive Board from delegating the power to grant a permit under the Act), the Executive Board may delegate the power to grant permission under the Act in relation to entry of persons to the Mintabie precious stones field.

29A—Inspection of Mintabie Township Lease Agreement

This clause ensures that a copy of the Mintabie Township Lease Agreement is available for inspection, without charge, at the specified times and places.

29B—Walatina leases not to apply to Mintabie township

This clause provides that the Walatina leases, being leases granted over the lands to the Walatina Aboriginal Corporation, do not apply to the Mintabie township lease area, although, should the proposed Division expire under proposed section 26, the relevant area will once again be subject to those leases.

29C—Entry to Mintabie precious stones field etc.

This clause provides that a person must not enter or remain on the Mintabie precious stones field unless he or she is a person to whom proposed section 29C(2) applies, or he or she is otherwise entitled under the Act to be on the field (such as Anangu). The people referred in that proposed subsection are, in general terms, people who have rights in relation to, or responsibilities on, the Mintabie precious stones field, rather than those who are simply visitors to the lands. The clause sets out procedural matters related to the approval of the persons referred to in section 29C(2)(b), (h) or (i).

29D—Minister may issue etc licence to occupy land in Mintabie township lease area

This clause enables the Minister to issue (as well as vary, revoke and renew) licenses to entitle a person, and certain persons specified by that person, to occupy specified land within the Mintabie township lease area, should the area be leased by Anangu Pitjantjatjara Yankunytjatjara to the Crown in accordance with the Act. The clause sets out procedural matters in relation to the issue of a licence, including the persons to whom, and the circumstances in which, such a licence can or cannot be issued.

29E—Crown etc not required to keep premises in good repair

This clause clarifies that the Crown, Anangu Pitjantjatjara Yankunytjatjara or the Mintabie Miners Progress Association are not required to keep premises in the Mintabie township lease area in good repair.

29F—Offence to reside etc on Mintabie township lease area without licence

This clause provides that it is an offence for a person to reside in the Mintabie township lease area except in accordance with a licence under proposed section 29D. The offence carries a maximum penalty of a fine of $2 000, plus an additional maximum of $500 for each day during which the convicted person resided in the Mintabie township lease area in contravention of this subsection. A similar offence is provided in relation to the conduct of a business in the area other than in accordance with a licence.

29G—Review of certain decisions of Minister

This clause provides a right of review for a person aggrieved by a decision of the Minister under proposed section 29C or 29D, and sets out procedural matters in relation to such a review.

29H—Exclusion of certain persons from the Mintabie precious stones field

This clause is essentially a relocation of current section 27 of the Act, providing a court with the power to exclude a person from the Mintabie precious stones field, although it has been slightly modified to enable offences against Part 5 of the *Controlled Substances Act 1984* (being serious drug offences such as trafficking) to ground such an order.

Schedule 1—Related amendments and transitional provisions

Part 1—Amendment of the *Opal Mining Act 1995*

1—Insertion of section 10A

This clause inserts new section 10A into the principal Act, providing that a precious stones prospecting permit does not authorise a person to prospect for precious stones on the Mintabie precious stones field unless the permit has been endorsed by a mining registrar as authorising such prospecting, and setting out procedural and administrative matters in relation to such endorsements.

2—Insertion of sections 18A and 18B

This clause inserts new sections 18A and 18B into the principal Act as follows:

18A—Special conditions for tenements in relation to Mintabie precious stones field

This proposed section provides for the imposition of conditions on precious stones tenements located on the Mintabie precious stones field, in particular a condition that the holder of the tenement must not reside on the Mintabie precious stones field other than in the Mintabie township lease area in accordance with a licence issued under this measure, or as otherwise allowed under the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*.

18B—Director may cancel tenement on the Mintabie precious stones field

This proposed section makes special provision for the cancellation of the registration of a tenement on the Mintabie precious stones field.

Proposed subsection (1) requires the Director to cancel the registration of a person's tenement or tenements on the Mintabie precious stones field in the circumstances set out in the subsection.

Proposed subsection (2) provides that the Director may cancel the registration of a person's tenement or tenements on the Mintabie precious stones field in the circumstances set out in the subsection.

The proposed section also provides a right of review in relation to a cancellation arising because the holder of a tenement acted detrimentally to the welfare of Anangu or to the welfare of others on the precious stones field.

3—Insertion of section 19A

This clause inserts new section 19A into the principal Act, providing that the Director may require an applicant for registration of a precious stones tenement on the Mintabie precious stones field to provide with the application any other information reasonably required by the Director (including, in the case of an applicant who is of or above 18 years of age, information in relation to the criminal history of the applicant).

Proposed section 19A(2) provides that the Mining Registrar must refuse to register, or refuse to renew the registration of, a precious stones tenement on the Mintabie precious stones field in the circumstances set out in the subsection.

Proposed section 19A(3) provides that the Mining Registrar may refuse to register, or refuse to renew the registration of, a precious stones tenement on the Mintabie precious stones field in the circumstances set out in the subsection.

The proposed section also provides a right of review in relation to a refusal to register arising because the holder of a tenement acted detrimentally to the welfare of Anangu or to the welfare of others on the precious stones field.

Part 2—Variation of *Pitjantjatjara Land Rights (Control of Alcoholic Liquor) By-Laws 1987*

4—Variation of by-laws

5—Variation of by-law 1

6—Substitution of by-laws 6 and 7

7—Variation of by-laws 8 and 9

8—Variation of by-law 11

These clauses vary the by-laws made under the principal Act to make those by-laws consistent with the changes made by this measure, and to change obsolete references.

Part 3—Variation of *Pitjantjatjara Land Rights (Control of Gambling) By-Laws 1987*

9—Variation of by-laws

10—Variation of by-law 1

These clauses vary the by-laws made under the principal Act to change obsolete references.

Part 4—Variation of *Pitjantjatjara Land Rights (Control of Petrol) By-Laws 1987*

11—Variation of by-laws

12—Variation of by-law 1

These clauses vary the by-laws made under the principal Act to change obsolete references.

Part 5—Transitional provisions

13—Transitional provision—*Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*

This transitional clause provides that the spouses etc of holders of current precious stones prospecting permits who (until the repeal of section 25 of the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*) are entitled to enter and remain on the precious stones field because of their relationship to the person with such a permit, will remain so entitled until the expiry of the current precious stones prospecting permit.

The clause also enables (despite section 29D(6)) the Minister to issue a licence under proposed section 29D(1) to a person who, in the 6 months preceding the commencement of that section, was entitled to occupy land within the Mintabie township lease area.

14—Transitional provision—*Opal Mining Act 1995*

This clause provides that a precious stones prospecting permit in force immediately before the commencement of clause 1 of this Schedule will be taken to be endorsed by a mining registrar as authorising a person to prospect for precious stones on the Mintabie precious stones field. This preserves the current rights of prospecting enjoyed by the holder of a precious stones prospecting permit until the expiry of that permit in accordance with the principal Act, with any future or renewed permits requiring an application for endorsement as contemplated by proposed section 10A of the *Opal Mining Act 1995*.

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

LOCAL GOVERNMENT (ACCOUNTABILITY FRAMEWORK) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 4136.)

Clauses 26 and 27 passed.

Clause 28.

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

Page 13, after line 8—Insert:

(3a) An application under subsection (3) must be made within five years after the declaration is made under this section.

This is an amendment to section 210 and talks about the conversion of private road to public road and supports a time limit on compensation claims which we are now suggesting be five years after the declaration is made under this section. I encourage all members to support the amendment.

The Hon. G.E. GAGO: The government opposes this amendment. Section 210 sets up a mechanism for a council to convert a private road into a public road and it allows for compensation to be paid to the owner of the road either by agreement or by application to the Land and Valuation Court.

Clause 28 amends section 210 by providing that it is not only the owner but also the holders of other registered interests who may receive compensation. This is likely to affect any mortgagees or lessees of the land. Section 210(4) provides that any compensation on an application under subsection (3) will be assessed in accordance with the appropriate provisions of the Land Acquisition Act 1969.

When this matter arises, compensation issues will always be determined promptly because the council must notify the owners of the land, as well as any holders of other registered legal interests in the land. The council may offer compensation but, if the person concerned is not satisfied with the council's offer, that person may make application to the Land and Valuation Court.

There are no provisions in section 210 of the Local Government Act that impose a time limit on applications to the Land and Valuation Court. If any time limits were considered necessary, then those limits would be included in the Land Acquisition Act 1969 or the Limitation of Actions Act 1936. However, no time limits have been specified because there is no need for them. It is not likely to be worthwhile for any person holding a legal interest in land to delay, for several years, before making an application for compensation.

The court also has its own rules limiting the time in which an action may be brought so, if a person was tardy in making an application, the court itself might refuse to accept the application. It would not make sense to introduce the concept of a time limit in section 210 confined only to

mortgagees and the lessees when no time limit currently exists or is regarded as necessary for landowners. The government, therefore, opposes this amendment.

The committee divided on the amendment:

AYES (10)

Bressington, A.	Darley, J.A.	Dawkins, J.S.L.
Lawson, R.D.	Lensink, J.M.A.	Parnell, M.
Ridgway, D.W. (teller)	Schaefer, C.V.	Wade, S.G.
Winderlich, D.N.		

NOES (7)

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

PAIRS (4)

Brokenshire, R.L.	Stephens, T.J.
Lucas, R.I.	Wortley, R.P.

Majority of 3 for the ayes.

Amendment thus carried; clause as amended passed.

Clauses 29 to 37 passed.

Clause 38.

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

Page 17, after line 23 [clause 38, inserted section 271A(2)]—Insert:

(ab) must incorporate a statement setting out the reasons for the request; and

This provision provides the minister with the power to ask a council in writing for specific information. This provision is not intended to hinder the regular informal free flow of information between councils and the minister. Rather, it provides a specific mechanism that may be relied upon where the information being sought might be regarded as sensitive. New section 271A also protects the council if it divulges information to the minister that might be confidential or relevant to contractual matters.

The LGA sought an amendment that would require the minister to provide reasons before requesting information from councils. The LGA points out that most councils willingly cooperate, and I put on the record that indeed they do when I request information, and I freely acknowledged that point in my second reading speech on the bill.

I expect that in the future, as in the past, most requests for information will be made informally. New section 271A is not intended to be relied upon for the day-to-day informal contacts between my officers and various councils. It is expected to be of use only when the information being sought is sensitive in some way and the council might have some hesitation, perhaps fearing that it might be breaching a contract or a duty of confidence by handing the information over to me.

In these circumstances, I consider that it would create no difficulty for me to provide reasons when requesting the information. Usually, when information is requested, it is well understood why I am asking for it; it is usually because I have received information in a letter or by phone call or a media article raising a possible concern or issue.

When a matter concerning any local government is brought to my attention, it is helpful to have the council's perspective on the matter before I respond; therefore, I have accepted the LGA's view and placed on file amendment No. 8. This amendment provides that, when a minister formally requests information of a council under this provision, the minister must provide the council with reasons for the request.

Amendment carried; clause as amended passed.

Clause 39.

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

Page 19, after line 15 [clause 39(5)]—Insert:

(6b) The Minister must, as part of the consultation process under subsection (6a), give the council a reasonable opportunity to make submissions to the Minister in relation to the matter unless the Minister considers that providing such an opportunity would be likely to undermine the investigation.

This clause is linked to the previous two clauses. Clause 39(5) also broadens the powers of an investigator to broaden inquiries into matters other than the ones that originally prompted the investigation.

The LGA sought an amendment so that, before an investigator could have the scope of an investigation broadened, an affected council would have an opportunity to make submissions to the minister. I have considered the LGA's view, and I am prepared to accept this idea; therefore, amendment No. 9 allows the council to make submissions about the possible widening of an inquiry. The amendment allows for an exception when it is considered that giving such an opportunity might undermine the investigation.

Amendment carried.

The Hon. DAVID WINDERLICH: I move:

Page 19, after line 15—Insert:

(6ab) The investigator or investigators must, at the request of the Minister, provide to the Minister an interim report relating to the investigation, or to any aspect of the investigation specified by the Minister.

(6ac) The Minister must supply the council with a copy of a report provided under subsection (6b) and give the council a reasonable opportunity to make submissions to the Minister in relation to the matter unless the Minister considers that providing the report or such an opportunity would be likely to undermine the investigation.

This amendment simply makes it absolutely clear that the investigator can provide an interim report to the minister at the minister's request and that the minister supplies the council with a copy of the report to give the council a reasonable opportunity to make submissions to the minister in relation to the matter.

This is a Burnside amendment and the reasoning is that, since the investigation commenced at Burnside council, there have been ongoing problems, ongoing breaches of the act and—

The Hon. P. Holloway: Yes, someone keeps disrupting their meetings.

The Hon. DAVID WINDERLICH: Quite a number of those breaches have actually been by the council itself. According to the minister, the impression is clear that she does not believe that she has power to direct the council. I actually believe she does currently under the act, and also the terms of reference talk about provision of an interim report.

I argue that that interim report would trigger the minister's ability to make recommendations, give directions or even sack the council, but there seems to be some ambiguity about this in the mind of the minister. This amendment makes it absolutely clear that the minister could, in fact, request an interim report, and that would enable her to use those powers to make recommendations, give directions or sack the council.

As I believe I have mentioned a couple of times, the reason this is important is that we seem to have a situation where a council can be under investigation because it is likely to have seriously breached the provisions of the Local Government Act, but the minister appears to have no power over that council while it is under investigation, and that seems to be a strange situation. So, a council could do a whole range of things.

If a council really was to go feral while it was under investigation, it seems that, under the minister's interpretation of current provisions of the act, there would be nothing to stop the council from doing that, and that does not make a lot of sense to me. This amendment would simply make it absolutely clear that it is possible for the minister to get an interim report and then to act.

The Hon. G.E. GAGO: The government strongly opposes this amendment, which would require that a person investigating a council must provide an interim report whenever requested by the minister. From time to time, it may be appropriate in some circumstances for an interim report to be provided, but the government does not consider it necessary to formalise any duty to provide an interim report.

The expectation that interim reports can be produced on demand would tend to put an investigator under undue pressure to produce a tentative result or perhaps a series of tentative results, rather than a fully considered, detailed case at hand and a considered recommendation at the end of the process leading to a positive and fair outcome for all parties concerned. It is called natural justice.

I have to say that it takes my breath away when I think about when a government starts to think of itself as judge and jury. The possibility of interim reports may be considered on a case by case basis, and that provision is available to us currently. It should be a matter of discretion and agreement between the minister and an appointed investigator, rather than a statutory obligation where the investigator must provide an interim report. For instance, I put on the record that, in relation to Burnside, the reason I have not requested an interim report at this point in time is that evidence is still being taken—the taking of evidence has not been completed. So, it would be unfair, unreasonable and unjust to require that the investigator must provide me with a report that is incomplete, and it would be very easy for that to be construed in all sorts of ways.

It is important that due process be completed—that an investigator be able, independently and at arm's length from government, to make an assessment about what is required to conduct and complete an investigation in order to come to final recommendations. It is called due process and natural justice. It is unreasonable that an investigator be required to give a report on unfinished evidence because that report and any recommendations or outcomes from that could be misconstrued unfairly.

The process of an investigation requires that evidence be taken and considered and that natural justice be afforded to those people where evidence may be found against them. This investigatory process not only allows for the investigator to complete their evidence but also allows for the investigator to prepare allegations and then put those allegations to those people who are the subject of those allegations and allow them the opportunity to respond. That is called natural justice. It is only after that that the investigator would make their final recommendations.

I cannot stress strongly enough that we have set up a process at arm's length from the minister to ensure that the appropriate investigations are carried out and that adequate expertise is applied to that investigation. We now have an honourable member wanting the government to interfere with the process and, before evidence may be fully completed and before due process and natural justice is done—that is, allegations are put and they have an opportunity to explain—force an investigator to provide an interim report. It is fraught with problems and I do not believe it enhances the integrity of the process at all; in fact, it will serve only to undermine it.

We have set up a process at arm's length from government to ensure that these things are assessed and investigated on a fair and reasonable basis. Let the investigators get on with doing their job. Currently there is a provision that, where it is considered appropriate, ministers can ask for an interim report, but to require that an investigator must provide an interim report is extremely bad process.

The Hon. D.W. RIDGWAY: I have been advised by the shadow minister, Mark Goldsworthy, that the opposition will support the amendment.

The Hon. M. PARNELL: I will weigh in on this amendment, because I think the minister has overreacted to the way it would be applied. This amendment may be applied to an inquiry or investigation with very complex terms of reference dealing with multiple issues. There may well be five issues at stake, one of which is complex and time-consuming and for which it will take months to gather evidence, but four of which could be disposed of very quickly.

The first thing to note is that the request for an interim report will come from the minister. If the minister, through discussions with the investigator, or whatever other means, discovers that four of the five issues are complete and that there is no more work to do and nothing to stop those being reported on, the minister can request an interim report on those matters. Whether it is 'must' or 'may'—

An honourable member interjecting:

The Hon. M. PARNELL: The honourable leader's interjection suggests that they will do that anyway. The point is that, while the present minister remains in the role, she has clearly indicated that she will not exercise any right under this section; so this section will have no work to do under this minister, because if the minister does not request an interim report it will not be given. I also do not believe it is reasonable to say that just because an interim report is requested it will be rushed or botched, or will deny natural justice. If the investigator is worth his or her salt, if they have not finished their work and are asked for an interim report that interim report will say, 'Sorry, minister; not finished.' That will be the interim report.

So, whilst I can accept that there is an argument that this may not be necessary, I do not believe it will lead to the types of harm that the minister outlined; I cannot see that it will cause those problems. However, if the minister is minded to get a report then I think the amendment is sensible, because it does provide that a council has a reasonable opportunity to consider it. So, weighing up all the issues, I am inclined to support the amendment.

The Hon. G.E. GAGO: There are currently provisions that allow, if four of the five complex issues outlined by the honourable member had been completed, for a minister to ask for an interim report, and that would be done. I think those provisions are already there to help us deal with those particular matters; we do not need an intervention that requires that the investigator must provide an interim report.

The Hon. DAVID WINDERLICH: I would like to respond to a number of comments the minister made. There is an element of natural justice built into this amendment in subclause (6c), which provides:

> The minister must supply the council with a copy of a report provided under subsection (6b) and give the council a reasonable opportunity to make submissions to the minister in relation to the matter unless the minister considers that providing the report or such an opportunity would be likely to undermine the investigation.

So, there is provision for the council to have an opportunity to respond to an interim report. In that sense, I think that is the natural justice the minister is seeking. The minister has said—and it is the first time I have heard her clearly say this, and I have been pursuing this for probably three months—that current provisions allow for an interim report.

It is the very reluctance of the minister to exercise those provisions that has led me to make this much more explicit. The reason for that is, as the Hon. Mark Parnell said, there may be a number of matters being considered by an investigation, some of them may need further investigation, others may be clear cut, and others may need to be dealt with fairly quickly.

I call this the Burnside amendment. The example that stands out is the issue of the chief executive officer of Burnside council: is he entitled to be there or not? We have legal opinion saying not, we have councillors saying not, we apparently have a legal opinion, unsighted, that says it is okay, and apparently the investigator himself raised the question. We still do not know whether the minister has an answer from the council relating to that. It is an important question that should be cleared up.

The Hon. G.E. Gago: That has been put on the record. What are you talking about?

The Hon. DAVID WINDERLICH: I will go back and look at that. I think that would have been at least seven weeks after the question. I will come back to that; I will pursue that. Under a situation like that it would be useful for a minister to have a power to give directions to a council, if there was a serious problem. That power comes from a report. If the final date of the report is pushed out, then being able to have an interim report is quite useful.

In terms of undue pressure on the investigator, again I think that depends on appointing good investigators. An interim report—again, the Hon. Mark Parnell started developing this argument—might say, 'No problem. There is nothing here to worry about and no action for you to take,' or it might identify something that needed urgent action.

Because the minister's ability to make recommendations, direct a council or dismiss a council, depends on the receipt of a report, it makes sense to have some way of fast tracking that in case it is needed. The obvious way to do it is with an interim report. Given that there has been a reluctance to exercise that or, even until tonight, to acknowledge that that was a possibility under the act, I think it is worth making it explicit.

The Hon. G.E. GAGO: Indeed, the legal advice that we received was from the mayor of Burnside, which I have clarified and put on the record. So, it was legal advice referred to us by the mayor.

The committee divided on the amendment:

AYES (10)

Bressington, A.	Darley, J.A.	Dawkins, J.S.L.
Lawson, R.D.	Lensink, J.M.A.	Parnell, M.
Ridgway, D.W.	Schaefer, C.V.	Wade, S.G.
Winderlich, D.N. (teller)		

NOES (7)

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

PAIRS (4)

Lucas, R.I.	Wortley, R.P.
Stephens, T.J.	Brokenshire, R.L.

Majority of 3 for the ayes.

Amendment thus carried.

The Hon. DAVID WINDERLICH: I move:

Page 19, after line 15—Insert:

(6) Section 272—After subsection (8) insert:

(8a) The Minister must also cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after it is presented to the Minister under subsection (7).

This amendment simply would require that a copy of the investigator's report be laid before both houses of parliament within six sitting days after it is presented to the minister under subsection (7). My initial amendment had this being referred to the Legislative Review Committee. In consultation with the LGA, they prefer it to be laid before both houses of parliament. It is a very simple issue of ensuring openness and accountability in terms of the findings of the report, rather than having it disappear from view.

The Hon. G.E. GAGO: The government does not find this amendment particularly helpful. However, we will not be opposing it.

Amendment carried; clause as amended passed.

Clause 40.

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

Page 19, lines 23 and 24—Delete subclause (2)

This amendment seeks to amend section 273, which relates to reports on investigations. The LGA seeks this amendment to ensure that councils have the right to provide reasons for not implementing a recommendation from the Ombudsman before the minister takes any action. The amendment seeks to delete subclause (2), which relates to the section which, in the view of the opposition, provides the minister with powers that are too broad. It will allow the council a chance to provide reasons for not implementing a report.

The Hon. G.E. GAGO: This amendment is pretty much consequential; however, we do not support it. It is not possible to guess what might be included in any future report from the Ombudsman, but we believe there must be sufficient power for a minister to respond appropriately to the circumstances of each case. It may be appropriate to issue directions that do not necessarily fit into the existing labels of rectifying a matter or preventing a recurrence of the act, failure or irregularity.

It is only a matter of common sense that, in so responding, the minister's orders should be in terms that the minister thinks fit. This does not represent an opportunity for the minister to make an open slather approach and start dictating to council. It is not true to suggest, as the LGA has done in its submission, that this amendment would lead to the minister's having unfettered power. We think it is not appropriate, and therefore we oppose the amendment.

The CHAIRMAN: The minister has a further amendment to clause 40. Would she like to move her amendment now?

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

Page 19, line 24 [clause 40(2)]—After 'thinks fit' insert:

(after taking into account the contents of a relevant report)

This amendment addresses the minister's power to issue directions to a council. If the minister considers that a council has failed to respond appropriately to a recommendation of the Ombudsman or that a council has failed to address appropriately a matter that formed the basis of a request under section 271B, the minister's powers to issue a direction need to be broad enough to respond to these specific matters.

It is only a matter of common sense that, in so responding, the minister's orders should be in terms the minister thinks fit. This does not represent an opportunity for the minister to take an open slather approach and start dictating to councils. Notwithstanding this, this amendment clarifies that the power can be exercised only after taking into account the contents of a report under section 273(2).

The CHAIRMAN: The question is that all words in subclause (2) down to and including 'thinks fit' in line 24 stand as printed. It would be nice, at this hour of the night, for people to indicate to the Chair whether or not they are supporting amendments, because it is very hard to call on the voices if people do not let us know what they are doing. That question was in support of the Hon. Mr Ridgway's amendment.

An honourable member interjecting:

The CHAIRMAN: Those questions should be asked when the amendments are moved. The minister has a further amendment to the clause that will be put if this is not agreed to. Do members understand that? If members do not understand, they can always ask questions of the Chair. Members can always be happy to indicate to the Chair what they are supporting, because it will save ringing the bells, divisions and a lot of time.

The Hon. D.G.E. HOOD: Family First will be supporting the amendments.

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

The Hon. D.W. Ridgway's amendment carried; the Hon. G.E. Gago's amendment negatived; clause as amended passed.

New clause 40A.

The Hon. DAVID WINDERLICH: I move:

Page 19, after line 30—Insert:

40A—Insertion of section 273A

After section 273 insert:

273A—Declaration of caretaker period

(1) In this section—

asset means anything that must be treated as an asset for the purposes of the financial statements of a council;

caretaker period in relation to a council means a period commencing on a date fixed under subjection (2) and ending on a date determined by the Minister in the particular case (being a determination made on or after the presentation of the report to the Minister at the conclusion of the investigation under section 272(7));

lease includes an agreement for lease, but does not include a lease entered into as a result of the exercise of a right or option to renew a lease entered into before the commencement of a caretaker period.

(2) If the Minister, after receiving an interim report under section 272(6b), considers that the circumstances justify the exercise of powers under this section, the Minister may, by notice in the Gazette, fix a date from which the council will be subject to the operation of this section (the beginning of the caretaker period).

(3) Subject to this section, if during a caretaker period the council to which the period relates—

(a) enters into a contract for the appointment of a chief executive officer; or

(b) enters into a contract—

(i) the terms of which require (either unconditionally or subject to conditions) the council to make a payment exceeding $100,000, or payments exceeding $100,000 in total; or

(ii) the terms of which entitle the council to receive a payment exceeding $100,000, or payments exceeding $100,000, on account of the disposal by the council of an asset of the council; or

(c) enters into a lease under which the rent payable by the lessee in any period exceeds $100,000,

without the approval of the Minister, the contract or lease is liable to be voided by the Minister.

(4) However, subsection (3) does not apply to—

(a) a contract or lease entered into by the council to give effect to any expenditure or revenue measure contained in a budget adopted by the council before the commencement of the caretaker period; or

(b) a contract or lease of a kind excluded from the operation of that subsection by the regulations.

(5) An approval granted by the Minister for the purposes of this section has no effect unless the council had, before submitting the relevant contract or lease to the Minister for approval, resolved that it would, subject to the approval of the Minister, enter into the contract or lease.

(6) If—

(a) the Minister voids a contract or lease under this section; and

(b) the Minister or the council incurs a liability by reason of or in relation to the contract or lease,

the Minister or the council (as the case may be) may recover the whole of the amount of the liability as a debt from the persons who were members of the council at the time that the contract was made or lease was entered into or made, or from any of them, or from any one of them.

(7) The Minister must publish a copy of the Minister's determination fixing the end of a caretaker period under this section in the Gazette.

This makes provision for a caretaker period for a council under investigation. However, that caretaker period is only triggered if the minister, after receiving an interim report, considers that circumstances justify the exercise of powers under this section. The minister would then, by notice in the gazette, fix a date from which the council would be subject to the operation of this section. The caretaker period does not mean that the council could not do certain things: it would just mean it would require the approval of the minister for a contract or a lease.

There are exceptions. For example, contracts or a lease entered into by a council before the commencement of the caretaker period would not be affected, and other kinds of contracts or leases could be excluded by regulation.

This would be a very rarely used section. It would apply only if a council was seriously incompetent, seriously corrupt, seriously dysfunctional or for some reason unable to carry out its job. It is something that would be very rarely used but, again, recent events have caused me to believe that there is a need for something like this, otherwise councils can make all sorts of far-reaching and long-lasting decisions—that is, councils that are under investigation, which is not something that is done lightly. I think it is worth reminding members that the last council that was subject to this kind of investigation, I believe, was Victor Harbor council something like 15 or 19 years ago. So, even the exercise of an investigation is very infrequent. Within that infrequent sort of event we would have the ability to introduce a caretaker period, which I imagine would happen even more infrequently.

I am sure that in her response the minister will point out the difference between the caretaker period during an election, which I voted against, and contrast that with this. I think there is a world of difference between a council operating well and normally, and about to face the verdict of the people in any event, and a council that is under investigation. I think they are two different sorts of contexts. I commend the motion to members.

The Hon. G.E. GAGO: The government does not support this amendment, which we consider unnecessary. I remind honourable members of the hypocrisy of the honourable member, who voted to water down caretaker provisions during the debate on the elections bill but who now wants to hamstring councils from their ordinary day-to-day business affairs.

In a nutshell, there are three reasons why we oppose this amendment. Firstly, there is the general presumption in law that a person—God forbid—is innocent until proven guilty; that a council that is under investigation is not considered to be incompetent or to have lost its capacity to undertake government just because of an investigation. Secondly, an investigation into a council might be quite narrow, and that could amount to significant overkill. Thirdly, an investigation, whether it is broad or narrow, can often take (and very often does so) very many months, and it is impractical to suggest that a council should be prevented from conducting its normal business for many months at a time. This amendment would make it much harder for a council to deliver normal services to its ratepayers and residents for a prolonged period of time, and for those reasons we oppose it.

The Hon. D.W. RIDGWAY: I indicate that the opposition will be supporting the amendment. I note that proposed new subsection 273A(2) of the amendment provides:

> If the minister, after receiving an interim report under section 272(6b), considers that the circumstances justify the exercise of powers under this section, the minister may, by notice in the *Gazette*, fix a date from which a council will be subject to the operation of this section...

So, it is clearly in the hands of the minister. The opposition does not see that that is unreasonable. It is clearly in the hands of the minister of the day, and we support the amendment.

The Hon. M. PARNELL: I support the intent of the amendment, and I support the amendment up until the point where I think it falls over, and that is at the very end. I accept the honourable mover's premise here that it is the report that is the trigger for the caretaker period, not the fact of an investigation; there has to be a report showing something is wrong that triggers basically a bit of a brake on the council's unfettered spending power. However, the part that I cannot support is the part that says that if the minister voids a contract because the council has unlawfully entered into a contract in a caretaker period, and if there are costs and damages that result, every elected member of that council is liable jointly to have to pay those damages regardless of how they voted.

I think there is a principle there. When we have elected members exercising their duty, the fact of their having made a mistake and having improperly entered a contract in a caretaker period should not mean that the elected members become personally liable for the damages. When you think of a contract being rescinded because the minister has voided it, compensation will be sought, and I do not believe it is appropriate for the elected members to have to pay.

The Hon. A. BRESSINGTON: I will not be supporting this amendment.

The Hon. D.G.E. HOOD: Family First is not persuaded either.

The Hon. J.A. DARLEY: I will not be supporting this amendment.

New clause negatived.

Clause 41.

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

Page 20, after line 19 [clause 41(4)]—Insert:

(7b) The minister must, as part of the consultation process under subsection (7a), give the council or councils a reasonable opportunity to make submissions to the minister in relation to the matter unless the minister considers that providing such an opportunity would be likely to undermine the investigation.

This is an amendment to section 274, council subsidiaries. It matches a comparable amendment to clause 39. The LGA sought an amendment to require the minister to consult with the subsidiary

and the subsidiary's constituent councils before approving any extension to the scope of the investigation. I have considered the LGA's view and I am prepared to accept this idea.

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

Amendment carried; clause as amended passed.

Clauses 42 to 45 passed.

New clause 45A.

The Hon. DAVID WINDERLICH: I move:

Page 21, after line 34—Insert:

45A—Insertion of section 302A

After section 302 insert:

302A—Whistleblowing

Each council must ensure that a member of the staff of the council (with qualifications prescribed by the regulations) is designated as a responsible officer for the council for the purposes of the Whistleblowers Protection Act 1993.

This amendment mirrors the Public Sector Management Act and ensures that a member of staff of a council is designated as a responsible officer for the council for the purposes of the Whistleblowers Protection Act.

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

The Hon. G.E. GAGO: The government opposes the new clause because we believe it is misconceived. If the honourable member believes that there is a problem with the operation of the Whistleblowers Protection Act 1993, I am not sure why the honourable member is not seeking to amend that act.

The Hon. A. Bressington: You will not entertain amending the Whistleblowers Protection Act.

The Hon. G.E. GAGO: I believe that, if you have the numbers to make this change, you would have the numbers to amend that act. We just think it is odd that the honourable member is amending this act rather than the Whistleblowers Protection Act.

The Hon. A. BRESSINGTON: I support the new clause.

The Hon. J.A. DARLEY: I will not be supporting the new clause.

The Hon. D.G.E. HOOD: Neither will Family First.

The committee divided on the new clause:

AYES (9)

Bressington, A.	Dawkins, J.S.L.	Lawson, R.D.
Lensink, J.M.A.	Parnell, M.	Ridgway, D.W.
Schaefer, C.V.	Wade, S.G.	Winderlich, D.N. (teller)

NOES (8)

Darley, J.A.	Finnigan, B.V.	Gago, G.E.
Gazzola, J.M.	Holloway, P.	Hood, D.G.E.
Hunter, I.K.	Zollo, C.	

PAIRS (4)

Lucas, R.I.	Wortley, R.P.
Stephens, T.J.	Brokenshire, R.L.

Majority of 1 for the ayes.

New clause thus inserted.

Clause 46 passed.

New clause 46A.

The Hon. DAVID WINDERLICH: I move:

Page 22, after line 5—Insert:

46A—Amendment of Schedule 3—Register of Interests—Form of returns

Schedule 3, clause 2(3)—After paragraph (a) insert:

(ab) the name and business address of any employer of the member and, if the member is employed, the name of the office or place where the member works or a concise description of the nature of the member's work; and

This amendment amends the register of interests requirements of the act from the current provision that simply refers to the source of income of a councillor to requiring the name and business address of any employer of the member and, if the member is employed, the name of the office or place where the member works or a concise description of the nature of the member's work. This is a Charles Sturt amendment and another council that I will not name just yet. The situation with Charles Sturt shows at least the theoretical potential for a council to be taken over by a political party. In another context it could be the Liberal Party, or it might be the Greens, but so far the issue raising this provision is in relation to the Labor Party and that theoretical potential that they may have sought to take over.

The current register of interests simply requires that people put their source of income. A council that I will refer to soon has a surprisingly large number of employees employed by the Department of Treasury and Finance, which is also the employer of electorate officers and political advisers. So, it is clearly possible for members of a political party (in effect, employees of a political party through their provision of direct services to a member of a political party) to be on the council but disguise the fact that they are, in effect, working for a political party. I do not think that is an acceptable situation. I do not think most South Australians would accept that; they would want the transparency and openness. That is what this quite simple amendment to the register of interests would give them: it would clearly identify who people worked for.

The Hon. D.W. RIDGWAY: I indicate that the opposition will be supporting this amendment. Members would be aware that, as a result of a number of corruption allegations in Victoria, the Victorian government moved to make it illegal for ministerial staffers to be on council. This is not making it illegal but it is making sure that people are declaring who they work for. The opposition thinks in terms of being open and accountable. It is not excluding people and, whether it applies to members of any political party, I think the electors of that council have a right to know who is paying the person who is on council. So, the opposition has no problems at all in supporting this amendment.

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

New clause inserted.

Clauses 47 and 48 passed.

Schedule 1.

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

Page 22—

Line 21—Delete 'provision' and substitute: 'provisions'

After line 21—Insert:

a1—Interpretation

In this Schedule—

principal Act means the *Local Government Act 1999*.

Page 23—

Line 20—Delete the definition of '*principal Act*'

After line 20—Insert:

2—Transitional provision—Rebate of rates

> Despite the operation of section 161 of the principal Act, the rebate on rates on land being predominantly used for supported accommodation that consists of accommodation for persons provided by housing associations registered under the *South Australian Co-operative and Community Housing Act 1991* may, with respect to the following financial years, be as follows (if the council so decides):
>
> (a) 2010/2011—25% (or, at the discretion of the council, a higher rebate);
>
> (b) 2011/2012—50% (or, at the discretion of the council, a higher rebate).

These amendments all relate to the transitional provision, which I have spoken to at length. That relates to the supported accommodation rebates and it allows individual councils to have discretion to implement those rebates in a phased approach in an attempt to reduce any imposts on them. The arrangements are for a 25 per cent, 50 per cent or 75 per cent rebate, with the total being 75 per cent. It is discretionary, so councils can decide for themselves whether or not that arrangement is helpful.

The Hon. D.W. RIDGWAY: The opposition supports the amendments.

Amendments carried; schedule as amended passed.

Title passed.

Bill reported with amendments.

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) (21:15): I move:

> That this bill be now read a third time.

The Hon. DAVID WINDERLICH (21:16): I would like to make a few brief remarks. I would like to thank members for their support of my amendments. I would also like to thank members for their opposition to my amendments relating to caretaker provisions, because the Hon. Mark Parnell was quite right: I would not have wanted the liabilities from a decision of council to fall on elected members. I think that would have been a terrible thing. So, thank you for preventing me from achieving that, although I am sure it would have been fixed in the lower house.

Finally, we make these sorts of rules about local government because we have some degree of power over them. I would love to be able to enforce the same sort of openness at the state government level. If re-elected, I will try to import certain sections of the Local Government Act into other laws regulating the state government to get some greater degree of openness. I probably will not have a lot of success, but I pursue this course with local government, not out of any desire to persecute local government or to in any way imply that it is any less worthy than any other level of government, but simply because I am in a position to do so and, to the extent that I am able to, I will do the same with the state government.

Bill read a third time and passed.

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

Adjourned debate on second reading.

(Continued from 17 November 2009. Page 3932.)

The Hon. J.M.A. LENSINK (21:18): This bill relates to the Upper South-East project, which is defined for the purposes of this project from Lucindale in the south to Salt Creek in the North and Padthaway at its western boundary. The project is a drainage system to manage dryland salinity, water logging and the degradation of ecosystems in the Upper South-East. The project commenced in the 1990s and received legislative effect through the Upper South East Dryland Salinity and Flood Management Act 2002—known as the USE Act—which was last amended in 2006.

The project was developed initially because of the drop in the watertables. While it commenced in the 1990s, when it was much more damp, there have been significant salinity and flooding impacts. So, the project has had some success in balancing some of these effects, but it is acknowledged that it has had some negative impact on the environment with the drying out of wetlands and, therefore, habitat for some freshwater species.

There are different components to the USE scheme: first, the shallow flood control drains, which are adjacent to Keith; secondly, the deep drainage, which is the overall goal; and, thirdly, the reflows project, which is to restore environmental flows to wetlands in the Coorong instead of out to sea.

In 2007-08, the Natural Resources Committee was not sure about the Bald Hill drain and the ability of Reflows to restore environmental flows to the critical West Avenue wetlands. The USE Program Board's independent advice recommended the project. Reflows will partially redirect floodwaters along historic lines and therefore benefit wetlands and watercourses. I note that habitat is at very critical levels and that only some 0.6 per cent of pre-development wetlands are intact.

This bill seeks a further three year extension to the act to 19 December 2012, and it will facilitate Reflows within the drainage system, which will result in partially redirecting historic environmental flows, hopefully, into the Coorong. It also provides a regime for the acquisition of land by easement.

Due to recommendations made by the Natural Resources Committee in its 2007-08 annual report on the USE Act, two reviews were undertaken. The first was an independent review of the environmental implications of constructing or not constructing the proposed Bald Hill drain, and the second was an independent review of community perspectives of the Bald Hill drain and the Reflows project.

The result of these reviews was that there was a need to continue the project, as degradation would occur to those drains already established, and there was broad community support for this to occur. I note that there are some in the community in that region who are opposed to it, but I take some comfort from the Natural Resources Committee, which I think is a vigorous and very conscientious committee and examines these issues for the greater benefit.

The benefit of hindsight is a wonderful thing, and things may have been done differently if the project had initially been established in a different period in relation to how wet the conditions were in that region. However, the overwhelming recommendation of the Natural Resources Committee is to continue to complete the drains, and therefore the Liberal Party will be supporting this bill without amendment.

The Hon. M. PARNELL (21:22): The purpose of this bill is to extend the Upper South East Dryland Salinity and Flood Management Act 2002 for a further three years, from 19 December 2009 to 19 December 2012. Because we knew this bill would be coming up and needs to be passed before 19 December, and because the bill is contentious—or at least the scheme the bill extends its contentious—I took the opportunity to put a great number of questions on notice, if you like, to the minister.

Today, I was pleased to receive a written answer to the 22 questions I posed. I do not propose to take the council through all those questions and answers at the committee stage, but I will be looking for an undertaking from the minister to transform what is, in effect, an unattributed email back to me into a letter on letterhead so that the minister's answers are more formally on the record without the need to put all this into *Hansard*.

I will go through some of the themes of the questions so that members of the council have an understanding of some of the concerns with this legislation. The first series of questions was in relation to evidence that the drainage works completed so far under the scheme have, in fact, been effective in achieving the objects of the act. The minister's response to me indicates a number of areas where they say that there is proof. Some of the landholders in the South-East beg to differ and say that there is not the evidence that the objectives of the scheme are being achieved.

I have also raised issues in relation to the commitment to ongoing maintenance. Having been down and had a look at some of these drains in the company of local landholders and local conservation groups, I was certainly told by local people that a number of the drains filled with silt relatively soon after they were constructed, and that was evidence that it will be an ongoing and a continuous maintenance liability on the scheme.

I also raised questions in relation to how the overall objectives of the scheme would be managed, given the great variety of intervention works—deep drains, surface drains, things called smart drains. The most important thing, of course, is that we have an adaptive management framework, so that we can make sure that the management is responsive to changes. When it comes to managing the drains—the water in them, the wetlands—we need to make sure that it is

based on the best scientific evidence, and, if the evidence is insufficient, then the precautionary principle should kick in to ensure that the environment is protected.

One of the things concerning landholders to whom I have been talking is whether or not we have robust administrative structures in place that make sure that decision-making is objective, that the effectiveness of management actions is monitored and evaluated and that the management responses are altered as new information becomes available.

There is a whole range of questions that I have asked of the minister that relate to endangered species discovered down there and various other things. I look forward to the minister's commitment to put that in writing to me so that it can be distributed amongst the relevant landholders in the South-East.

This is the second time that this act has been sought to be extended in order to complete the drainage scheme, which is the key objective of the act. When we looked at the bill last in 2006, I voted against it, and I did so on the basis of evidence that was presented to me by local landholders that the scheme was not working as promised and, in particular, it was not adequately delivering either economic or environmental benefits.

My view in 2006 was that we should use the opportunity presented by the sunset clause to undertake a comprehensive, rigorous and independent review of the works done to date, their effectiveness and their impact on both economic production and environmental values. We now see ourselves three years later in the same position again where we are debating the expiry of the act and deciding whether or not to give it a further three years of life.

It is worth just exploring what has changed in the past three years. When we debated this bill in 2006, the scheme was around two-thirds complete. Today, as I understand it, there is really only one major drain left to complete, and that is the Bald Hill drain. A comprehensive independent review of the whole scheme up until now has not occurred, but there has been a review of the desirability of proceeding with the final part of the project, in particular that Bald Hill drain.

The findings of that review support the construction of the final drain. My view, however—and it is a view that was supported by both local landholders and even some government scientists—was that we should not build this final drain and we should seek to keep at least a small remnant of the original wetlands in some sort of natural condition to provide something of a control against which to measure the impacts of the overall scheme.

In July this year the minister announced that he had approved the Bald Hill drain. I criticised that decision at the time, and my views have not changed. As I said, this is a contentious issue locally. There are local landholders both for and against, but the opponents of the drain predict that it will severely restrict vital natural freshwater inflows, especially into the Parrakie wetlands, which have the highest biodiversity significant index rating in the Upper South-East, and the Bald Hill drain is the last in a long series of deep drains that have collectively radically affected water flows across the region. Back in July when the decision was made to proceed with this final drain, local landholders basically reaffirmed that it was not going to be acceptable for the government just to build the drain and walk away. The ongoing maintenance was something that had to be guaranteed, and we know that that will come at a cost.

However, another development since we last debated the extension of this act has been the introduction of the so-called Reflows project. 'Reflows' is an acronym that does not quite but closely enough stands for 'restoring flows to the wetlands of the Upper South-East of South Australia.' This project involves the construction of floodways to partially redirect historic environmental flows to the Upper South-East. The hope is that it will manage flood events and that it will provide more water to the environment.

Among the landholders to whom I have spoken, this aspect of the scheme is generally supported although there is a great deal of scepticism that it will actually achieve much particularly in relation to the delivery of water to the southern part of the Coorong, which is an area so desperately in need of fresh water. My understanding is that it is now something like four times the salinity of the sea.

We even see ecologists, whose solutions to environmental problems rarely involve engineering, now saying that we need to pump seawater back into the Coorong and pump the hypersaline water out, so we know from experience that engineering solutions often lead to more engineering fix-ups rather than genuinely fixing environmental problems.

Having said that, the hope of local residents and my fervent hope is that the Reflows scheme will be successful and that there will in fact be some water flowing northward back up from the South-East into the Coorong. The drains proposed for the Reflows project are different to the deep drains that have been so criticised for their impact on the natural ecosystems of the South-East and the wetlands in particular.

In summary, my view is, as it was in 2006, that we should take the opportunity of the sunset clause to stop and take stock and do a proper review of all of the operation of the scheme to date. I do not believe that the decision to build that last drain was correct, and I will not be disappointed if this bill fails to pass and we do in fact buy ourselves time to at least keep one part of the wetlands system (which I think is now down to about 6 per cent of its pre-European settlement status) in some sort of natural state, because the local landholders around the Parrakie wetlands are desperately concerned that this final drain will in fact cause irreparable damage to the wetlands.

I will not be supporting the bill, but I accept that a majority of members of the council probably will, and it is my hope that they are right in part and that at least the Reflows project will deliver some benefits to natural wetlands and ecosystems.

The Hon. C.V. SCHAEFER (21:33): I made the majority of my contribution last week when I spoke on the Natural Resources Committee report on this matter. I do not intend to speak for long tonight except to say that I disagree with the Hon. Mark Parnell inasmuch as I believe that there have been so many pauses now and so many inquiries that we can continue and continue but we are not achieving anything and we are not moving forward.

It is my belief—and I recognise that it will continue to be contentious until such time as the drains are completed—that the fresh water flows across the top will in fact top up areas such as Parrakie and that the saline water will be drained eventually into the Coorong where again it is desperately needed to support the bird life there.

I regret that I have heard this debate now for at least 10 years or probably longer. Many of us know the history of the contention in relation to the construction of the drains, involving where they should have gone and where they, in fact, ended up going for various reason. It will continue to be a contentious issue in the South-East. Therefore, I think we have the courage to either press ahead or cease. It seems to me to be quite ridiculous to have three-quarters of the jigsaw puzzle completed and then decide not to go on and finish it.

My belief is that it will be a successful drainage system and that it will improve the ecology of the South-East, but I do not believe that any of us will know that until it is a completed capital work. Sadly, only then will we know how successful or unsuccessful it is. If it is not successful, it will be a sad time for those wetlands. My belief is that those wetlands are dry because we have experienced unprecedented drought, rather than for any other reason. As I have said, I regret that the decision was not taken more courageously some time ago because, if that was the case, we would now be seeing those drains working as they should be.

The Hon. DAVID WINDERLICH (21:37): I think it is important to be aware at the outset that this is not just an environmental discussion: this is also a debate about approaches to land management. Some of the protagonists who are supportive of keeping the Parrakie wetlands, or rather seeing the drains as a threat to the Parrakie wetlands, are, in fact, successful landowners and award winning farmers.

There are also issues in this about the rights of landowners relative to the government. There is the notion that these wetlands should be kept as a reference site—that we have been conducting a gigantic experiment in the South-East. The experiment has been really widely unsuccessful so far. We have local species on the verge of extinction. In fact, we thought the Yarra Pygmy Perch was extinct. It was recently recovered, but it is still very fragile. We are down to a very small remaining portion of wetlands. So, in the context of this, keeping one portion aside is not so much not finishing the jigsaw puzzle as not putting all your eggs in one highly unproven basket.

In terms of the relationship with the Coorong, I do not remember the exact figures, but I have spoken to David Patten about how significant the volume of water would be for the scheme at the Coorong, and the conclusion is 'very insignificant'. The Coorong needs hundreds of gigalitres, and I think this would have produced about 20 at best case, but I would have to check that figure.

The Natural Resources Committee, in its past considerations of this scheme, has found that the drains have had negative environmental effects. The committee found a lack of

transparency in relation to the release of program documents, and it found that there had been rigorous and detailed scientific evidence of the rapid decline and probable local extinction of two species of freshwater fish in Henry Creek in the Upper South-East. In relation to the Yarra Pygmy Perch, they did find a remnant colony in Henry Creek. The committee recommended that no further steps be taken towards the construction of the Bald Hill drain (or Reflows) until there was thorough independent assessment of all drainage options on the West Avenue watercourse and wetlands.

There have been well documented allegations by Mr Frank Burden, a former commonwealth government senior scientists turned bee farmer in the Upper South-East, that the Department of Water, Land and Biodiversity Conservation attempted to silence various critics of the project. He drew attention to a letter written by Rob Freeman, the former chief executive of the department, in which he said, 'I would urge the committee not to publish Mr Burden's submission.'

The outcome of all that was that two reports were commissioned: one was a community perceptions report, and the other was a report on the 'Risks and Benefits to Environmental Values of the West Avenue Watercourse and Bald Hill Flat Associated with Hydrological Manipulation and Drainage'. This was put forward by minister Weatherill as justification for continuing with the drain.

If you actually read the report it is underwhelming in its endorsement. In fact, there really is no endorsement. A section from the executive summary reads:

> From an environmental assets perspective, the REFLOWS only program scored most highly as likely to provide environmental benefits, particularly to the wetlands. However, this option was considered highly likely to introduce the Eastern Gambusia…to this system, which was considered highly likely to impact on the EPBC-listed frog and fish species of the WAW [West Avenue Wetlands].

The report continued:

> The ‘Do Nothing’ option was considered likely to lead to further environmental degradation, but also provided the benefit of not conducting management actions without the knowledge necessary to accurately quantify the risks of those options. The 'Groundwater Drain Only' option was considered likely to provide some benefit to the floodplain and wetlands environment, but was considered to hold inherent risks to both the wetland and floodplain environment, given the current gaps in knowledge.
>
> The 'Groundwater and REFLOWS' option was considered likely to provide benefits to the environmental assets of the West Avenue Range but also included the individual risks of both options. These management options may be complementary but are not necessarily dependent on each other. These management options work at different temporal scales and magnitudes, which suggests that they do not directly offset each other.
>
> Refinement of the risks and benefits associated with the proposed management options will require more detailed studies in a range of areas, but particularly in regards to the floodplain and wetlands asset of the West Avenue Range. The relevant absence of vegetation health and distribution data and associated hydrologic monitoring within the watercourse has hampered capacity to effectively determine both the current underlying trends in vegetation dynamics, and identification of associated hydrologic drivers.

That is probably not the most riveting thing to hear at this hour of the night, but I will go over a few key phrases again: 'current gaps in knowledge', 'without the knowledge necessary to accurately quantify the risks of those options' and 'more detailed study is required'. The clear conclusion of this report, which is apparently the vindication of this final drain, is that we really do not know the effect it will have.

So, in the context of a scheme that so far has, at the very least, a flawed record—some would argue a disastrous record—we are now moving ahead with the next iteration of this scheme on the basis of an admitted lack of knowledge by the people assessing the environmental impact of the scheme. It does not create much confidence.

I will now read into the record an email from Frank Burden—and there are a few pages here, but there will not be too much more after this—the former commonwealth government scientist and very articulate critic of the drains program. I think it will be very useful to have this for future reference, when we look back at how this decision was made. The email reads:

> I understand that comment has been sought on the proposed amendment bill for the Upper South-East Dryland Salinity and Flood Management Act. Unfortunately this is a very hastily written email due to lack of time and pre-warning that comments had been requested. I admit to being exhausted from a battle for honesty in government, and to be highly disillusioned with what I consider to be seriously corrupted processes that allowed government officials freedom to abuse their positions and mislead parliamentarians and the public without being made accountable for their actions. While closer federal and state parliamentary scrutiny since 2005 has forced improved honesty, there remains considerable scope for improvement.
>
> Firstly, I doubt that if proper governance processes had been followed there would be a deep drain network in the USE [Upper South East]. Only selective or misrepresented science and analysis has supported the digging of deep drains. Dryland salinity and flooding problems (receding naturally for over a decade) were always grossly

exaggerated, and these were the only justifications for deep drains. Deep drains have only ever been demonstrated to be economically and environmentally effective in rare circumstances. The only good thing that has come out of the USE program has been the addition of the REFLOWS floodways to bring fresh water into the region, in order to correct the enormous damage caused by deep drains.

I have not had time to study the bill in detail, but my initial observation is that many obligations are placed on landholders but hardly any placed on officials. Recently dug deep drains have experienced major wind and water erosion, resulting in them becoming blocked, and in at least one case fences are close to collapsing into drains. One 100 metre five year old section of Mount Charles drain close to my property has experienced major wind erosion of its 4 to 5 metre high banks, which have been receding at more than 0.5 metre a year. About half of the eroded bank has fallen into and blocked the drain and the remainder blown onto the adjacent property. I understand there are several other similar blocked and eroded sections in the northern catchment of the drain network, which are visible in Google Earth.

Furthermore, government officials have allowed weeds and feral pests...to move uncontrolled within the fenced drain corridor. We had a pest free property until the drain was dug, and we are now being invaded by rabbits that are breeding uncontrolled within the fenced off drain corridor! Furthermore, we are still waiting for about 60 hectares of 'confiscated' land to be returned to us. We were advised (recorded in Hansard during original 2002 debate on the Act) that confiscated land not required for drain construction would be returned promptly to landholders. Five years later we are still waiting, and I saw no reference to dates when this would happen in the amendment bill. I note that landholder concerns regarding capital gains tax were addressed in the bill, but disappointed that the subject took so long to be addressed.

I think the implication of that particular extract of the email is that there are some essential management problems in the whole program, including maintenance of the infrastructure that has been created. The email continues:

The program, supported over the last seven years by the Upper South-East Act, has been sustained since its conception in the early 1990s by misinformation, exaggerations, and suppressed information on the adverse effects of deep drains. The most recent benefit-cost analysis of the program (2002) indicated that it was probably not viable after realistic costs were incorporated, but it still went ahead. No attempt has been made to validate the cost-effectiveness of the program. My concern is that landholders will be faced with enormous ongoing drain maintenance costs for a program that provided many with very little economical benefit. Failed agricultural trials have also not been reported. One such government trial of 21 pasture species conducted last year on my property about 700 metres from a section of deep drain failed to produce a single plant that survived more than about three months in the naturally highly saline soils. I presume the trial was conducted by officials to prove that my criticisms of the program were wrong. The trial resulted in no publicity. The trial was not an isolated failure (I know of at least four others), but I guarantee you and the public will only be offered information on successful trials...

Since its conception in the early 1990s, a small group of influential landholders in collusion with government officials appear to have been obsessed with digging the deep drain network, without giving serious consideration to its financial and environmental costs. Damage caused by deep drains is only now being addressed by the floodways component of REFLOWS. Government officials have grossly misrepresented the benefits and costs of the drain network to the environment. Unfortunately, supporters of deep drains attracted support of both the Labor and Liberal parties, and I presume that following the recent glowing but factually incorrect reports by the Liberals in both houses...majority parliamentary support for the amendment bill is a foregone conclusion. However, I still found it astonishing and presumptuous...that digging of deep drains was recently restarted even though the Upper South-East Act was due to expire within a few weeks. Examples of misleading comments used to sustain the program have been:

- There has never been strong landholder support for the program. In the early 1990s when fear of advancing dryland salinity was at its worst, only one-third of landholders who provided comments on the original EIS supported the construction of deep drains. Many landholders then, and still now, believed that more sustainable, natural solutions to the problems should have been investigated. Since then, the threat of dryland salinity, rising watertables and flooding has receded naturally.

- When the first stage of work for the program was approved, it was on condition that work would only continue to later stages after successful evaluation of the Fairview deep drain trial in 1998/1999. Despite the drain removing less than 20 per cent of predicted volumes, approval to continue to subsequent stages of work was approved.

- In 2002, a number of research reports identified serious environmental consequences associated with deep drains. None of these reports were released to the public, although most copies were supplied...In the same year, minister Hill informed parliament that productivity of upper south-east land would double as a result of the deep drain program. This might apply in very limited cases, but agricultural productivity in the region has barely benefitted from the network, at enormous environmental cost. A benefit-cost analysis of the program, also conducted in 2002, raised serious concerns about the cost-effectiveness of the program, which has never been reported publicly.

- In 2004, an independent scientist, now an employee of the DWLBC, reported that the Fairview trial drain had 'minimal impact' on watertables. His report, and other work conducted in the Northern Catchment has not yet been published. However...

- In 2006, minister Gago justified continuation of the program with the key claim that nearly 90 per cent of the upper south-east would need to be planted with deep-rooted vegetation to control rising watertables and

dryland salinity (at the time had been receding naturally for well over a decade). The revegetation area 'was considered an unattainable target'. However, the figure was a three-fold over-statement of CSIRO advice provided to the government. Indeed, the target area had been very nearly achieved in 2006...

- In late 2008, I discovered a DWLBC webpage which warned of the serious consequences of drainage and disturbance of potential acid sulphate soils, and a map identified major areas of such soils in SA. I was concerned to find that an area of several thousand hectares of such soils was located within the [Upper South-East's] Northern Catchment deep drain network. I wrote to DWLBC expressing my concerns that this information had not been used by program officials in determining where drains should be dug.

I think it is important to interrupt the email for a minute and note that one of the key strategies for managing acid sulphate soils is not to disturb them. This is in documents produced by the Coast Protection Board and other government documents. Returning to the email:

The written response was typically dismissive ('there is considerable information written on the subject'), and the warnings and the map were removed from the DWLBC website. It appears that officials appear to think that they can get around environmental problems by removing offending science from official publications. I had made copies of the webpage and written on this topic at—

and he gives a reference—

I am probably one of only very few landholders in the region who has been able to read and understand the science and analysis that underpins the program, and wherever I look I find major inconsistencies between what the public, media, and politicians are informed and what is reported in official reports. My concerns are derived from a life-time (since 1964) experience and knowledge working in science and engineering. In 2000, I resigned from a Federal Government position as a Research Leader in the grade of Senior Principal Research Scientist in order to pursue a life-time ambition of owning and operating a farm. During my professional career I received awards for my academic and professional work. My key awards were the Sir Frank Whittle Prize for academic achievements during a UK post-graduate degree in systems science and engineering in the 1980s, and in the 1990s I was presented with the Ross Treharne Shield for contributions to a specialist field of systems research. Recipients of the Ross Treharne Shield have included Professors, senior officials in the Federal Government, as well as successful members of Australian industry. I consider these peer-reviewed awards adequately demonstrate my ability to read and comment on scientific and analytical disciplines of relevance to the [Upper South-East] program...

I was unfortunate to have bought an 840 hectare farm through which a 4km long deep drain was dug in 2004. During the planning process, I met a number of senior State Government officials involved in planning and management of the program. I quickly became aware of their appalling lack of understanding of some very basic science. Their responses to some simple questions were clearly made up. This inspired my own extensive research and reading into the background of the program...This led to extensive submissions...to the 2005 Senate 'Inquiry into the extent and economic impact of salinity'...and to [the Environment, Resources and Development Committee] and NRC inquires, as well as invitations to be a witness at all inquiries. I have been maintaining a website (www.usedrains.org.au) which catalogues many other examples of inconsistencies between the science and what we have been told. Only two [Upper South-East] program officials to date...have attempted to contact me to discuss my concerns.

That is an account by someone who is well credentialled to criticise and analyse the programs.

In addition, on several visits now to the South-East, I have spoken to local landowners. I have also spoken to several supporters of the drains, and they have provided a different account, not so much a scientific critique but a very personal account of people who have invested decades and incredible attention into managing these wetlands, and if you do visit them (while they still remain), you will see that they have been outstandingly successful. They truly are quite a wonderful place.

It is quite an experience to sit on the front of the cabin at night or in the morning having a coffee with one of the owners, Jack Rasenberg, and listen to him give a running commentary on every single piece of animal life that is passing through the vicinity. He can give a commentary on which bird is in which tree and which call relates to which bird, and what call a particular animal is making. At a practical level, not a scientific level—he is not an educated man—his knowledge and love of this area is immense and extraordinarily impressive.

And so, if I stack up the evidence of the proponents of the program whose record is a flawed program, which has led not only to at least one extinction but almost two extinctions of species, and which has led to almost all the wetlands being destroyed and clear indications that the actual maintenance of the program is open to question, and I compare that to the scientific analysis of Frank Burden and the intense personal experience of this area of someone like Jack Rasenberg, I can only conclude that I think this act is a mistake.

I think that the program is most probably a mistake. Certainly, it is a terrible mistake to apply this flawed model to the very last wetlands left in the area. There is really no reason, from a lay person's point of view (such as me) to have any confidence in this program or in the proponents of this program. There is every reason to doubt it. What will be lost probably—and lost forever—is

something absolutely irreplaceable when it draws in low quality saline water containing heavy metals through the drainage program, and that is what they are predicting.

So far the predictions of the critics have proved to be very accurate and the assurances of the proponents have proved to be wrong. I think that we are making a mistake. I think that we are condemning an irreplaceable asset, and it is a sad day. I only regret that I have not done much more about this, that I have not prepared a much more compelling critique and that I was not able to be part of a sustained community campaign about this.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (21:55): I thank members for their contributions to this debate. The Hon. Mr Parnell raised a number of questions in discussions with officers of the department, and I think he has been supplied with some written information. That information will be formalised by the minister, as I understand it, as was indicated. I thank all members for their contributions and I look forward to the speedy passage of the bill.

Bill read a second time.

In committee.

Clause 1.

The Hon. M. PARNELL: I mentioned briefly at the start of my second reading contribution my appreciation for the minister having responded to the 22 questions I had put on notice. I wonder whether the minister, on behalf of his colleague in another place, is happy to say that we can have those answers on some letterhead and signed by the minister so that they can be attributed to the minister rather than simply an emailed note from one of the staff members, because it is my wish to circulate those answers to landholders in the South-East.

The Hon. P. HOLLOWAY: That is what I meant when I said that the minister has agreed to formalise them. The honourable member has described what that means. Yes, my understanding is that the minister will be happy to provide that written information on his letterhead.

Clause passed.

Clauses 2 to 11 passed.

Clause 12.

The Hon. J.M.A. LENSINK: This clause refers to fencing works and drainage reserves, and specifically states that some of these works may be required to be performed by the landholder. Is any funding available to assist landholders who may not have the resources to erect and maintain fences; and, if so, how much would be available?

The Hon. P. HOLLOWAY: My advice is that it is the government's intention to construct all of the fences in association in the first instance.

The Hon. J.M.A. LENSINK: So, to clarify, the government will construct them and pay for them; and maintenance works will then become the responsibility of land-holders.

The Hon. P. HOLLOWAY: My advice is that the overall maintenance program will become part of the subsequent legislation. I understand that that would be necessary. At this stage, as I said, it is the government's intention to fund the initial works and, in the long term, an agreement with land-holders on cost sharing would be developed.

Clause passed.

Remaining clauses (13 to 16), schedule and title passed.

Bill reported without amendment.

Bill read a third time and passed.

STATUTES AMENDMENT (CHILDREN'S PROTECTION) BILL

In committee.

Clause 1.

The Hon. G.E. GAGO: I would like to respond to questions asked by the Hon. Ann Bressington in debate on this bill. Her first question was whether the bill would allow the Minister for Families and Communities to issue a direction to a parent whose child was in care not to

communicate with that child and might result, should the parent send the child a birthday card in contravention of that direction, in their being found guilty of an offence and liable to a penalty of up to $4,000.

The answer to that question is no. New section 52AAB requires the minister, before issuing such a direction, to believe that this is reasonably necessary to avert a risk that the child will be abused or neglected or exposed to the abuse or neglect of another child or engage in or be exposed to drug activity. The sending of a simple birthday card would not fall within these criteria. There are many cases where parents whose child has been removed from their care, whether at their own request because they cannot cope or because the child is at risk of abuse of neglect when living with them, try to communicate with that child in an inappropriate way or at an inappropriate time for the child.

These parents cannot understand that sending a letter or a card to their child describing how miserable they may be, for instance, and how much they want the child to come back may make it extremely hard for the child to adjust to their new life in foster care, and it can be very distressing when there has been a history of abandonment, for instance, and multiple placements and broken parental promises. Often these parents are in extremely difficult and tragic circumstances themselves, and one cannot blame them for feeling distraught at being separated from their child. However, the minister has a duty under the Children's Protection Act to protect the child, not the parent. If the actions of the parent threaten the child's welfare, the minister must act.

Usually cases of inappropriate communication of the kind I have just described will be handled by discussion with the parent and rules about when communication is appropriate. They will not be handled by a direction under new section 52AAB.

The Hon. Ms Bressington asked for an assurance that 'the routine issuing of notices is not intended, and such an abuse of these provisions would not be tolerated'. The Hon. Ms Bressington refers here to 'parents or other caregivers who lose custody without foreseeable prospect of success'. I have already explained that, under this legislation, these notices may only be issued when a minister believes it is reasonably necessary to avert a risk that the child will be abused or neglected or exposed to the abuse or neglect of another child or engage in or be exposed to drug activity. There is nothing routine about these notices; they will be rare. Parents or other caregivers who lose custody without a foreseeable prospect of success (and I take it this means success in having the child returned to their custody) are not the intended targets for such directions and will only be subject to such notices if their actions present a real risk that the child will be abused, neglected or exposed to drug activity.

Finally, the Hon. Ms Bressington gave an example of a constituent whose 13 year old daughter was living with a 35 year old man and having sex with him in return for his providing drugs, alcohol and shelter. The Hon. Ms Bressington took action on behalf of the family and got nowhere, because the child would not cooperate and there was therefore no clear evidence of an offence. The Hon. Ms Bressington now claims that her amendments to this bill would remedy that.

However, the bill already provides a clear solution to this problem. It does not need to be amended to ensure that the child's parents will have grounds to apply for a child protection restraining order against the man without the cooperation of the child. The bill clearly states that if the court is satisfied that, as a consequence of contact or residence with this man, the child is at risk of sexual abuse or drug activity, it may make a child protection restraining order. It will determine the presence of risk using the balance of probabilities, not the criminal standard of proof, which we know is a higher standard. This determination must be done by looking at the best interests of the child, and I refer members to new section 99AAC(3).

In doing this the court must have regard to the degree of control or influence exerted by the defendant over the child, the prior criminal record (if any) of the defendant, any apparent pattern in the defendant's behaviour towards the child or other children and any apparent justification for that behaviour, the views of the child and the child's parents, and any other matter the court thinks relevant.

If the man in the Hon. Ms Bressington's example in the past 10 years has been convicted of a child sexual offence or drug offence, or has at any time been subject to a child protection restraining order, then the court does not have to determine such a risk at all: it is assumed.

The Hon. A. Bressington: Convicted is the key word.

The Hon. G.E. GAGO: I repeat that there is no need for the bill to be amended in order to achieve what the Hon. Ms Bressington wants for parents in these situations.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. S.G. WADE: This clause relates to the power to remove children from dangerous situations and sets out the circumstances under which that will occur. My question is in the context of where accommodation is not available. Is it the government's intention in these circumstances to continue to place children at Magill Training Centre or Cavan Training Centre, especially considering the government has ruled out the possibility of a therapeutic detention facility?

The Hon. G.E. GAGO: I have been advised that the temporary placement of children will be determined by the court, and I refer the honourable member to new section 99AAC(5) which provides:

> A restraining order under this section—
>
> …
>
> (b) may, subject to any current proceedings before, or orders of, the Family Court of Australia…provide for the temporary placement of the child...

The placement will be a matter for the courts, using a wide range of considerations.

Clause passed.

Clauses 5 to 11 passed.

Clause 12.

The Hon. A. BRESSINGTON: I move:

> Page 6—
>
> Line 30 [clause 12, inserted section 99AAAC(2)(c)(ii)(B)]—Delete 'and' and substitute:
>
> or
>
> After line 30 [clause 12, inserted section 99AAC(2)(c)]—After subparagraph (ii) insert:
>
> (iii) the Court is otherwise satisfied that it is not in the best interests of the child for the child to reside with the defendant; and

I will also speak to amendment No. 2 as it is consequential. These amendments, while short and simple, significantly reform the proposed child protection restraining orders, specifically what an applicant must demonstrate to the court to warrant an order being issued. Presently, the bill requires, on the balance of probabilities, the applicant—generally the parents—to demonstrate that the person harbouring a child has committed an offence of a prescribed kind in the past 10 years, has been subject to another child protection retraining order, is sexually active with the child or is exposing the child to illicit substances, and that the making of an order is appropriate in the circumstances.

While it is suspected that these criteria would have applied in most cases I have encountered, as has been highlighted by the Hon. Stephen Wade in his second reading contribution, these are narrow criteria and will not apply to all cases of a child being harboured against their parent's will and reasonable parental authority. Furthermore, even if a parent suspects that their child is being taken advantage of sexually, or is being provided with illicit substances, it is unlikely that they alone will be able to gather enough evidence to successfully satisfy the court of that fact.

Parents are not able to conduct police-style investigations, yet the bill presently expects them to. In effect, the present threshold requires parents to procure a Families SA or preferably a police investigation in order to have sufficient evidence to accompany an application for a child protection restraining order. However, as I recounted in my second reading contribution, both these services have previously conveyed to constituents that their child is not a priority and have refused to intervene. This is not uncommon.

While giving parents the power to initiate an application for a child protection restraining order and be the applicant in proceedings is a progressive yet long-overdue step, it is of no value if parents are not given a reasonable prospect of success. While retaining the present criteria, my amendment lowers the threshold to simply satisfying the court that it is not in the best interests of the child to continue residing with the defendant. If a parent can show that the person harbouring their child is allowing the child to truant from school, to consume cigarettes and alcohol, or simply to live lawlessly, why would we deny them the right to protect their child? However, the minister when addressing my amendments in summing up at the second reading disagreed, stating:

> Her amendments—

meaning mine—

> would allow a parent to apply for a child protection restraining order against anyone with whom their runaway child was 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 a home, despite the plain fact that the child is unhappy there.

This simply is not an accurate reflection of my amendments. Yes, the threshold is to be lowered to the best interests of the child, but this will not be for a parent to determine but for the court to assess. The court will also be asked to decide in each case whether it is appropriate to issue an order. Both these tests are well known to the court and, particularly the former, appear regularly in government bills. To suggest that a court, when it has this discretion available to it, would grant a child protection restraining order when a child is not doing enough homework or is allowed too much freedom is ludicrous and is a slight on the judiciary. The minister has, in arguing against my amendments, undermined the test of the best interests of the child, which is to my understanding the basis of the Children's Protection Act 1993, as is spelt out in the act's objects and principles. In fact, my amendment, unlike the government's position, is entirely consistent with the objects, which read:

> The objects of this Act are:
>
> (a) to ensure that all children are safe from harm; and
>
> (b) to ensure as far as practicable that all children are cared for in a way that allows them to reach their full potential; and
>
> (c) to promote caring attitudes and responses towards children among all sections of the community so that the need for appropriate nurture, care and protection (including protection of the child's cultural identity) is understood, risks to a child's wellbeing are quickly identified, and any necessary support, protection or care is promptly provided; and
>
> (d) to recognise the family as a primary means of providing for the nurture, care and protection of children and to accord a high priority to supporting and assisting the family to carry out its responsibilities to its children.

How the minister can argue against my amendment when the objects of the act give such priority to assisting families to carry out their responsibilities beggars belief. In arguing to restrict child protection restraining orders only to the extreme end of child harbouring cases—that is, cases in which it can be proven (and I repeat 'can be proven') that a child is being sexually exploited or has been procured to drug run—the government is ignoring that there are many other cases in which children are presently being harboured against their best interests and against their parents' will and reasonable parental authority.

In my second reading contribution, I raised as an example one such case in which the bill in its present form would offer no relief. While the parents suspected that their 14 year old daughter was having sexual intercourse and being provided with drugs by the man who was harbouring her against her will, this could not be proven. Despite numerous attempts, the parents were unable to raise the interests of either Families SA—

The CHAIRMAN: I remind the Hon. Ms Bressington to speak to the amendments—

The Hon. A. BRESSINGTON: I am.

The CHAIRMAN: —rather than making a second reading speech.

The Hon. A. BRESSINGTON: I am. I am speaking to both of my amendments at once.

The CHAIRMAN: You are going on a bit about the second reading speech. It is late in the night, and I remind the honourable member to support her amendment.

The Hon. A. BRESSINGTON: I understand, Mr Chairman, and all I am doing is responding to the comments which the minister has made about these amendments and which are quite inaccurate. I am trying to clear that up so that members can vote in a well-informed way.

The CHAIRMAN: Carry on.

The Hon. A. BRESSINGTON: Parents were unable to raise the interest of either Families SA or police and have their suspicions investigated. Short of the daughter co-operating in an application for a child protection restraining order, which would not have occurred (and I doubt ever would), these parents under the present criteria will not be able to access a child protection restraining order. It is important that members understand that parents now have to provide a burden of proof that is relevant to the criminal law act, not relevant to the child protection act, which is 'reasonable suspicion'.

All I am asking is that these amendments in this child protection bill lower the threshold to 'best interests of the child' and give parents the authority to protect their own children. It is interesting that the Attorney-General, when we discussed this with him originally, supported these two amendments and, for some strange reason, then withdrew his support without any explanation. I commend these amendments to the committee, and I hope that other members have a very clear understanding of what they will do.

The Hon. G.E. GAGO: The government is opposing amendments Nos 1 and 2. Although we acknowledge the Hon. Ann Bressington's concern about the issues that pertain to these sections, we believe that these can be achieved in other ways.

An honourable member interjecting:

The Hon. G.E. GAGO: I am happy to go on and talk to that. There were some questions in relation to these amendments about what was agreed to. I put on the record that I am told that the Attorney-General indicated he would support the amendments if they were to take a certain form, and I am advised that the Attorney-General's office had a number of interactions with the Hon. Ms Bressington's staff in an attempt to negotiate the amendments into a practical form to which both parties could agree.

I am not in a position to know how much of these discussions were communicated to the honourable member. Ultimately, an agreeable position could not be achieved on these amendments despite the government's efforts. However, the opportunity remains even now for the honourable member to take up the improvements to her proposals suggested by the Attorney-General. I will go on now to speak specifically to the amendments.

These amendments will make it a ground for restraint that residing with the defendant is not otherwise the best interests of the child—that is, otherwise than the child being at risk of sexual abuse or exposure to drug activity.

I will repeat what I said in reply about the main reasons for opposing these amendments and then mention some additional reasons. In my reply, I said that the bill was designed to meet a particular problem that Commissioner Mullighan identified in his Inquiry into Children in State Care: the exploitation of children who run away from home or care by predatory adults 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, as with many of these cases.

Most of these children have long histories—and I note that honourable members are aware of this—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.

Another reason for opposing amendments Nos 1 and 2 under clause 12 of the bill: if the ground for applying for restraint is that living or having contact with a defendant puts the child at risk of sexual abuse or exposure to drug activity. New section 99AAC(3) will require the court to make the best interests of the child a primary consideration when determining whether to make a restraining order and, if so, what its terms should be. It then sets out how the court will determine those best interests. However, these criteria are for circumstances where residing with the defendant will allegedly expose the child to sexual abuse or drug activity and not, as the Hon. Ms Bressington's amendment would allow, for circumstances where the child's living arrangements put the child at no such risk. Let us apply the criteria of new section 99AAC(3) to this scenario. A parent does not like the fact that his or her child has gone to live with a relative—let's say an aunt—and will not return home. The aunt—

The Hon. A. Bressington: Let's say a paedophile down the road.

The Hon. G.E. GAGO: The honourable member interjects and mentions a paedophile. The legislation already clearly deals with that.

The Hon. A. Bressington: Only if they've been convicted.

The Hon. G.E. GAGO: No, I am advised that the honourable member is incorrect. It not only deals with this when they have been convicted, but I will finish my statement and come back to that. Let us go back to the scenario where a child is staying with an aunt. The aunt has always had a good relationship with the child and has been someone to whom the child has turned before in moments of stress. The aunt has never done anything to harm the child. There is no suggestion that the aunt is exploiting the child; nevertheless, the parent applies for a child protection restraining order, saying that living with the aunt is not in the child's best interests, and asserting that it is in the child's best interests to live at home with the parent. In this case, the prior criminal record of the aunt and the pattern of the aunt's behaviour towards this child, or other children, and any other apparent justification for that behaviour, has little relevance if it can be shown that the aunt is genuinely concerned about this particular child's welfare.

These criteria are highly relevant when determining the best interests of a child who is living with an alleged sexual predator or drug supplier but not necessarily when determining the child's best interests at large, and certainly not when the child is not alleged to be at risk of a particular kind of harm. These amendments will give this legislation a peculiar effect and will invite an abuse of process.

In summary, applications for child protection restraining orders should not be made unless the child is at real risk of some kind of harm. They should not be made simply to achieve the parents' perhaps unrealistic ideas about the best interests of the child, when the child's welfare is not otherwise being compromised by his or her chosen living arrangement. Amendments Nos 1 and 2 would allow such applications to be made—and possibly to be granted—and the government opposes them.

Regarding the statement that proof of a conviction was required, I am advised that there is no need for proof of a conviction before a restraining order is made. Section 99AAC(2)(c)(ii) provides that a restraining order can be made if the court is satisfied that, as a consequence of the child's contact or residence with the defendant, the child is at risk of sexual abuse or engaging in or being exposed to drugs, etc. In fact, the honourable member is incorrect when she says that there is a requirement for proof of conviction. I am advised that that is not so.

The Hon. S.G. WADE: I am very disappointed to hear the minister reiterate, in the committee stage, the same misrepresentation of the Hon. Ann Bressington's amendment that she proffered at the end of the second reading stage. In fact, she used almost exactly the same words.

I would have thought that she would have done the council the courtesy of responding to the objections the Hon. Ann Bressington made at the time, which is that her provision does not depend on the subjective view of the parent; it is a determination by the court. In fact, all the minister needed to do was to read the amendment where proposed paragraph (iii) provides that the court is otherwise satisfied that it is not in the best interests of the child. It is not a matter for the parent to make a judgment.

I am reminded by the Hon. Ann Bressington in her comments (where she reminded us about the objects of the Child Protection Act) of recent discussions in this council. The minister very

strongly and passionately put forward the intervention orders legislation recently, and that was a bill that quite clearly was—

The CHAIRMAN: I remind honourable members that I am not going to allow second reading speeches. Speak to the amendment.

The Hon. S.G. WADE: This is about the amendment. When I made my second reading contribution there was no amendment so I was not able to talk about this issue.

The CHAIRMAN: You should indicate to the chamber whether you support the amendment and the reasons why.

The Hon. S.G. WADE: One of the reasons is that I think we have seen in the debate in the intervention orders legislation, and in the amendments to the Child Protection Act, that the whole point of protective legislation is that sometimes it needs to be drawn more broadly to make sure that it protects vulnerable people. The Hon. Ann Bressington is putting before us that we should have provisions in this legislation to reflect the objects and that we should focus on the best interests of the child.

For me it is not enough to say, 'Okay, as long as there is no sexual abuse that is okay, and as long as there are no drugs involved that is okay.' What if there is serious criminal activity? What if the gang of 49 is harbouring this child and this government is saying to us, 'Well, that's okay. Commissioner Mullighan didn't mention that. It doesn't involve sex and it doesn't involve drugs so it must be okay.'

I am strongly of the view that this government needs to take seriously the objects of this legislation and accept that we need to stand up for the best interests of the child. The Hon. Ann Bressington's amendments may not be perfect, but they sound an awful lot better than what the government is offering us.

The Hon. D.G.E. HOOD: I said in my second reading speech that this is a very good bill, but I think this amendment improves it. The key point that needs to be made here, which I think the Hon. Stephen Wade was trying to make, is that this amendment, if passed, really cannot be abused by parents. The government's comments were to the effect that it opposes it because it expands the possibility of being abused, or used, by parents for the wrong reasons.

However, to me the amendment is extremely clear. It provides that the court needs to be satisfied, so ultimately it is up to the court. Yes, it is possible that some ill-meaning parents could seek to misuse this provision, but ultimately that will be a matter determined by the courts. When we are dealing with the protection of children, I think it is in the interests of everyone that we have the lowest possible threshold, within reason, in order to ensure the safety of that child. This is an eminently sensible amendment, and for that reason we will be supporting it.

The Hon. G.E. GAGO: In relation to those comments, obviously what we are talking about here is parents' potential to abuse the process, and I have outlined that. In relation to the focus not being on the best interests of the child, it is just outrageous. We have a bill in front of us, which, under section 99AAC(3), quite clearly provides:

> In considering whether or not to make a restraining order under this section and in considering the terms of the restraining order, the court's primary consideration must be the best interests of the child...

To suggest that the bill before us does not primarily focus on the interests of the child is outrageous.

The Hon. DAVID WINDERLICH: I briefly indicate that I will be supporting the amendment; it makes sense to me. It is important not to be starry eyed about the role that families can play and how parents can go too far in wanting to protect their children or in seeking to harm them. That does happen. We know that most abuse occurs within the home.

On the other hand, the alternative of government care is also extremely flawed. We need no better illustration than the recent forgotten Australians apology and last year the apology to the stolen generations. As has been pointed out by other speakers, this is not giving parents power: it is giving parents the ability to take the issue to the magistrate, who will, in fact, determine the merits of the application. A safeguard is built in, and I think it is a sensible additional preventive measure and a way of giving parents some sort of influence over what is happening to their children while building in a safeguard.

Amendments carried.

The Hon. A. BRESSINGTON: I move:

Page 7—

Lines 17 to 25 [clause 12, inserted section 99AAC(5)(b)]—

Delete paragraph (b)

After line 29 [clause 12, inserted section 99AAC]—After subsection (5) insert:

(5a) If the Court has made a restraining order under this section, the Court may also, subject to any current proceedings before, or orders of, the Family Court of Australia or the Youth Court, make orders providing for the temporary placement of the child (pending, if necessary, proceedings before either of those courts)—

(a) subject to paragraphs (b) and (c), into the custody of a guardian of the child; or

(b) if the court is not satisfied that placement of the child with a guardian is in the best interests of the child, or if such a placement is not possible or appropriate—into the custody of such other person as the court directs; or

(c) if the court is not satisfied that placement of the child with a guardian or some other person is in the best interests of the child, or if such a placement is not possible or appropriate—into the custody of the minister (for a period not exceeding 28 days) and the care of such person as the Chief Executive, or the Chief Executive's nominee, directs.

I move amendment No. 3 and also amendment No. 4 as it is consequential. These amendments seek to achieve two things. First, the amendments provide the court with a preference list for safe temporary placement options if the court elects to make such an order. First preference is given, of course, to the child's parents or legal guardians.

In the majority of cases I have encountered teens have not run away because of abuse at home, but rather because they have been lured by peers (who, too often, are older than the child), lifestyle, drug use and because of rebellion and the excitement of having no rules with which they must comply.

While there is, of course, a breakdown in the relationship between the parents and the child because of the child's decisions and actions, all the parents I have encountered desperately want their child to return home and simply be safe. If, however, a parent or guardian is unavailable or it is inappropriate for a child to be placed back into the family home, then the second preferred placement option is with such other persons as the court thinks appropriate. This is, of course, intended to be another family member—say, a grandparent or auntie—or a close family friend known and trusted by the child. It goes without saying that a random person in the street will not be considered appropriate by the court.

If neither a parent nor another person is available or appropriate, my amendment then provides for the minister to be granted temporary custody of the child for a period of no longer than 28 days. I have included a 28 day limitation upon ministerial guardianship with good reason for I have no desire to create a backdoor method by which the minister may be awarded enduring custody of a child. There is already a mechanism available to the minister in the Children's Protection Act 1993 for a guardianship order. I have a lot more to read, but—

The Hon. R.I. Lucas: Hear, hear!

The Hon. A. BRESSINGTON: Well, not a lot more, but I actually will not persist with this. I have predetermined indications for support, so I will leave those amendments in the hands of the committee.

The Hon. G.E. GAGO: The government is indicating support for these two amendments.

The Hon. S.G. WADE: The opposition will also be supporting the amendments.

The Hon. D.G.E. HOOD: As will Family First.

Amendments carried.

The Hon. S.G. WADE: I ask the minister: could an order prohibit contact with the child?

The Hon. G.E. GAGO: I have been advised the answer is yes.

The Hon. S.G. WADE: The second reading explanation states:

> The order can impose whatever restraints the court thinks necessary to protect the child from apprehended risk, including restraint on any form of contact or proximity or on being in a particular place.

In clause 12, new subsection (5)(c) provides that it may include any consequential or ancillary orders that the court thinks appropriate. Could this include prohibiting the defendant from taking up residence with another child other than the subject child?

The Hon. G.E. GAGO: I have been advised that this is quite a wide power but it really only pertains to the child in question. We are trying to protect the child in question. However, if a court thinks that it is necessary to stop a defendant having contact with any other person in order to protect the particular child, it could, for instance, make such an order. However, it is considered that would be highly unlikely, and it is hard to imagine that occurring.

The Hon. S.G. WADE: In relation to clause 12(7), the definitional clause, the reference to 'guardian' includes the statement 'any other person who stands in loco parentis to the child and has done so for a significant length of time'. I am wondering what the breadth of that in loco parentis element might be and what is envisaged might come under that element.

The Hon. G.E. GAGO: We do not know what breadth might be applied by a court. We are happy to provide the honourable member with that information when we are able to provide it.

The Hon. S.G. WADE: So, very briefly, it is conceivable that a teacher, youth worker or mentor might take that role.

The Hon. G.E. GAGO: I am advised that it is most unlikely. It would be only if they were assuming a parental role.

Clause passed.

Remaining clauses (13 to 19) and title passed.

Bill reported with amendments.

Bill read a third time and passed.

MAGISTRATES COURT (SPECIAL JUSTICES) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 4138.)

The Hon. M. PARNELL (22:49): The quality of our justice system depends on many factors. One of those factors is the quality of our laws, and we are partly responsible for that in this place. Another factor is the quality of representation. However, an important factor is the quality of our judiciary, and that includes the personal attributes, the level of training and the level of experience of our judges and magistrates.

The bill before us seeks to provide for more responsibility to be put in the hands of special justices, who are people who, on the whole, do not have formal legal training. Their training consists primarily of a TAFE course and, of course, their general work experience. Clearly, there are some tasks performed by the courts that do not require a high level of experience, legal training or understanding, and it is appropriate for some of those tasks to be dealt with by people who do not necessarily have all the attributes of a full judicial officer.

It really is a case of horses for courses. There are minor matters that can be dealt with by lower level officers, and the analogy is the same: you do not need a brain surgeon to give an injection; there are other medical people, nurses especially, who are probably better at it than many doctors. What we are talking about here is the appropriate demarcation of responsibility between fully-fledged magistrates, who are judicial officers, and these so-called special justices.

Having said that I support the general thrust of the legislation, I have put an amendment on file. That amendment will come as no surprise to honourable members because it is the amendment we were asked to consider by the Law Society. I think that the Law Society has written to all members, or at least given all members a copy of its letter to the Attorney-General of 17 November, which states:

> The society supports, as a matter of principle, lessening the burden on the magistracy by expanding the jurisdiction of special justices. To that end, we support the bill save and except for one aspect of it.

It is that one aspect that is the subject of my amendment. This is probably best explained if I read a few more sentences from the Law Society's submission to the Attorney-General, as follows:

> Justices are not qualified or experienced to act as judicial officers. The proposed amendments will involve justices exercising judicial discretions. The fact that this already occurs to a minor extent is not a reason to expand it.

The letter continues:

> One of the concerns with justices adjudicating upon matters that may attract imprisonment, in the context of not having the power to imprison, is that the justices are, for the first time in the Petty Session Division, required to determine the limits of their jurisdiction. Previously, those limits were determined for them by parliament (ie, justices were only permitted to sentence for offences where a fine, and licence disqualification, was the maximum penalty).
>
> With the increased jurisdiction, the justices must now determine whether imprisonment is a sentencing option before sentencing. We believe they, as lay people, should not be called upon to exercise a judicial discretion of such magnitude. Whether a sentence of imprisonment is justified or required in a given case is a serious decision involving a consideration of a multitude of complex matters that should be reserved for judicial officers.

The Law Society concludes its submission with its recommendation:

> Our recommendation, therefore, is that the bill be amended to limit the jurisdiction of offences to those not including imprisonment as a penalty. If that amendment is made, we consider that the bill still goes some way towards enlarging the jurisdiction of the justices and, thereby, alleviating the burden on the magistracy.

The amendment I have filed is a very simple one. It basically says that where the offence is one that is punishable by imprisonment, even though the special justices cannot order imprisonment themselves, those matters should still be dealt with by fully-fledged magistrates. With that one amendment on file, I support the second reading of the bill.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (22:54): I thank honourable members for their support for this bill and take the opportunity to answer questions put by honourable members in debate.

The Hon. Robert Lawson queried why justices of the peace, who are not in the process of becoming special justices, should have to pay to undertake the TAFE course for special justices. As the honourable member pointed out, the government does pay the cost of this course when a JP is in the process of being appointed as a special justice. The government does not pay the cost of the course if a person is not seeking to become a special justice, because the course is not required for ordinary JPs.

The honourable member has asked whether it is true that special justices in some regional courts do not hear cases but, rather, are allocated only paperwork such as Form 48 reviews of enforcement orders and Form 51 reviews of cancellation of relief orders. Both Form 48s and Form 51s are, in fact, applications to the Magistrates Court. They can be dealt with in the absence of the applicant, but determination of the applications is a judicial function.

The Courts Administration Authority advises that in 2008-09 special justices sat at the following locations: Adelaide Magistrates Court, Youth Court, Christies Beach Magistrates Court, Elizabeth Magistrates Court, Holden Hill Magistrates Court, Mount Gambier Magistrates Court, Mount Barker Magistrates Court, Murray Bridge Magistrates Court, Naracoorte Magistrates Court, Port Adelaide Magistrates Court, Port Augusta Magistrates Court and Whyalla Magistrates Court. Additional funding recently committed by the government to increase the use of special justices will be used to facilitate additional sittings by special justices, including in regional locations.

Honourable members have asked what imprisonable offences it is intended to prescribe under new section 9A(1)(b)(ii) of the Magistrates Court Act, inserted by this bill. It is intended that only straightforward offences, for which imprisonment is virtually never imposed, be prescribed—offences that the Chief Magistrate describes as 'the behavioural equivalent of driving offences'. Specifically, the Chief Magistrate has proposed, and it is intended, that the offence of disorderly or offensive conduct be prescribed.

The bill would also allow special justices to deal with prescribed uncontested applications, that is, applications consented to by the opposing party. The Chief Magistrate has proposed, and it is intended, to prescribe bail applications and applications for variation of bail. It is possible in both cases, where matters may be prescribed, that after consultation with the courts, police and other interested parties, additional types of offences or applications may be identified as appropriate for inclusion in the regulations.

The Hon. Robert Lawson asked for confirmation of the current numbers of special justices. I am advised that there are currently 64 special justices, with another one currently awaiting reappointment, and another eight in the process of being appointed. Of the 64 currently appointed, 42 are in the metropolitan area and 22 are in regional areas; 45 are proclaimed to sit in the Youth Court, but only five have indicated that they are available to sit in that court.

It is intended to recruit additional special justices as well as allow for more sittings by those already appointed. Justices of the Peace Services is taking a proactive approach to encouraging more JPs to apply to become special justices and is currently working with courts on targeted recruitment in areas of need, in particular in regional areas, following the government's recent commitment of additional funding for sittings by special justices.

The honourable member has also queried figures referred to by the Attorney-General in relation to how many additional offences special justices will be able to deal with under this legislation. The 18,000 cases, or 20 per cent of the Magistrates Court's criminal case load, were statistics provided by the Office of Crime Statistics and Research. These figures correspond to the number of cases heard by the Magistrates Court during 2008-09 where the only charges considered were offences with a maximum penalty of $2,500 and no imprisonment. This is the main area in which the bill increases the jurisdiction of special justices. Currently, specific jurisdiction is given to special justices in the petty sessions division of the court only for Road Traffic Act offences for which no penalty of imprisonment is fixed.

In 2008-09, 7,395 such offences were dealt with by the Magistrates Court. The bill also gives jurisdiction to special justices to deal with additional prescribed offences that have imprisonment as a penalty. As stated earlier, it is intended to prescribe the offence of disorderly conduct. In 2008-09, the Magistrates' Court dealt with 1,489 disorderly conduct cases, which would increase the number of cases that special justices could deal with under this legislation accordingly.

In response to comments about the amount of money that special justices receive per sitting, I confirm that special justices are paid $25 per session, or $50 per day if sitting for both sessions. This is to compensate them for out-of-pocket expenses. It is not a payment for sitting, remembering that special justices are in fact volunteers. The Hon. Dennis Hood commented on the disparity between what special justices and magistrates are paid, and the Hon. Ann Bressington suggested that the payment to special justices ought to be increased. Again I point out that special justices are volunteers, and so by definition are not paid a salary. The objective of the legislation is to allow special justices to deal with the straightforward cases, thereby freeing up the magistrates who have the required legal training and experience to deal with the complex matters before the court.

The difference between what special justices are paid and what jurors receive for jury service was also queried. It must be remembered that, although jurors provide a crucial service to the justice system and the community, they are not volunteers in the same sense as special justices who freely volunteer their time and, in the spirit of volunteering, do not expect payment for their services. I am advised that a juror who has not lost wages, incurred child-care costs or other loss as a result of jury duty is paid $20 per day, plus 64¢ per kilometre in travelling expenses, whereas a juror who has incurred such loss is entitled to up to $134 per day. The payment for out-of-pocket and travel expenses is comparable to what special justices receive as out-of-pocket expenses.

As for the training undertaken by special justices to prepare them for their role, the government agrees that this is key to the use of special justices in the court. In that respect I can advise that the special justices TAFE course is currently under review, with a view to beefing it up, and the Courts Administration Authority is also currently developing a standard program of induction and continuing legal education for special justices.

I turn now to addressing the comments made on this bill by the Law Society, as requested by the Hon. Robert Lawson. I join the honourable member in thanking the Law Society for its considered comments on the bill set out in a letter to the Attorney-General which was received by his office on 18 November 2009. The Law Society stated in its letter to the Attorney-General that 'the society supports as a matter of principle lessening the burden on the magistracy by expanding the jurisdiction of special justices.' However, the Law Society explained that it did not agree with the provisions in the bill that would allow special justices to be able to deal with prescribed offences that attract imprisonment, though the bill prohibits special justices imposing imprisonment.

The society set out in its letter various reasons for taking this view to which the Hon. Robert Lawson referred in his speech on the bill. Each of these points has been considered carefully; however, the government is not persuaded that this provision should be removed. In short, the Law Society argues that giving jurisdiction to special justices over offences that attract imprisonment while prohibiting special justices from imposing a sentence of imprisonment is something anomalous and unprecedented. This is not the case and I will respond to each of the society's points specifically.

The first concern of the Law Society was that giving special justices jurisdiction over prescribed offences attracting imprisonment requires special justices to exercise judicial discretion of too great a magnitude in determining whether a sentence of imprisonment is an option. However, a major role for special justices in exercising their jurisdiction is to determine sentence. Sentencing by its very nature gives rise to determining what the appropriate penalty should be and, in the case of a special justice, if they think imprisonment is appropriate, they will adjourn the matter to a magistrate for sentencing. This precise scenario is already contemplated under section 19 of the Criminal Law Sentencing Act which provides that, if a court constituted otherwise than by a magistrate is of the opinion that a sentence of imprisonment should be imposed in any particular case, it may remand the defendant to appear for sentence before a court constituted of a magistrate.

The ultimate decision about whether imprisonment should be imposed will be made by a magistrate upon referral from the special justice. The Law Society argued that giving special justices power to determine liability on a matter that is too serious to sentence on is an anomaly, and the fragmentation of the process between liability and sentence is undesirable and unique. However, giving power to determine a matter with a penalty that exceeds the limit set on sentencing by that judicial officer is not an anomaly or, indeed, something new or unique.

There is already a direct equivalent in the sentencing limits of magistrates. Magistrates have the power to deal with minor indictable offences, which are those with a maximum penalty of between two and five years imprisonment, notwithstanding that magistrates are restricted to imposing a maximum of two years imprisonment. This is contained in section 19 of the Criminal Law (Sentencing) Act. Where a magistrate is of the opinion that a sentence should be imposed that exceeds the Magistrates Court's sentencing limits, section 19 of the Criminal Law (Sentencing) Act provides for referral to the District Court for sentencing. For the benefit of members, I will recite section 19 of the Criminal Law (Sentencing) Act:

19—Limitations on sentencing powers of Magistrates Court.

(1) The Magistrates Court does not, unless it is constituted of a magistrate, have the power to impose a sentence of imprisonment.

(2) If the court, constituted otherwise than by a magistrate, is of the opinion that a sentence of imprisonment should be imposed in any particular case, it may remand the defendant to appear for sentence before the court constituted of a magistrate.

(3) The Magistrates Court does not have the power to impose.

(a) a sentence of imprisonment that exceeds two years; or

(b) a fine that exceeds $150,000.

(4) Subsection (3) applies whether the offence to which the sentence relates is a summary offence or a minor indictable offence.

(5) If the court is of the opinion in any particular case that a sentence should be imposed that exceeds the limits prescribed by subsection (3), the court may remand the defendant to appear for sentence before the District Court.

The Chief Magistrate is confident that processes will be in place to ensure that the court filters appropriate matters for listing before special justices. With this filtering process, the incidence of sentence referral should be minimised. The Law Society has argued that providing that special justices may deal with prescribed offences with the consent of the parties is not appropriate. The bill does not, however, require or make any reference to the parties' consent.

The society was concerned that the bill increases the seriousness of the licence disqualification offences that special justices may deal with by including those with imprisonment. There are certain offences under the Road Traffic Act and the Motor Vehicles Act for which imprisonment and licence disqualification are penalties (for example, driving under the influence), which could theoretically be prescribed as offences within the jurisdiction of special justices under section 9A(1)(b)(ii) of the Magistrates Court Act as amended by this bill.

The Chief Magistrate has not asked for these offences to be prescribed: she has proposed that special justices be permitted to deal with the offence of disorderly or offensive conduct. She has also stated that complex offences, such as those where different penalties apply for subsequent offences (for example, driving under the influence), would not be listed before special justices. The Law Society suggested in its letter to the Attorney-General that special justices be permitted to deal with some adjournments and interlocutory processes.

The bill in fact amends section 15 of the Magistrates Court Act at the request of the Chief Magistrate to clarify that special justices have jurisdiction to adjourn proceedings. Some interlocutory processes could potentially be described as uncontested applications under the existing bill provisions. This suggestion by the Law Society was put to the Chief Magistrate, and she responded that she did not consider that there was a need for further amendment at this time.

The society and the Hon. Robert Lawson were concerned that the jurisdiction of special justices should be determined by parliament and not by regulation. The regulations will be able to extend the jurisdiction of special justices only within the parameters allowable under the bill and in the context of the prohibition on special justices imposing a sentence of imprisonment. The regulations are subject to disallowance by parliament in any event. Ultimately, it needs to be remembered that special justices already have power to deal with any matter, including any offence, if there is no magistrate available, subject to the prohibition on imposing a sentence of imprisonment. Parliament has already seen fit to allow the court that broad latitude in listing matters before special justices.

I reiterate that the intention of this bill in allowing a broader range of minor offences and procedural matters to be dealt with by special justices is to free stipendiary magistrates to deal with more serious criminal offences, thereby improving outcomes for victims of crime, as well as increasing access to justice. I commend the bill to members.

Bill read a second time.

At 23:11 the council adjourned until Wednesday 2 December 2009 at 11:00.