LEGISLATIVE COUNCIL

Tuesday 20 July 2010

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:19 and read prayers.

PAYROLL TAX (NEXUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

HEALTH PRACTITIONER REGULATION NATIONAL LAW (SOUTH AUSTRALIA) BILL

His Excellency the Governor assented to the bill.

SUPPLY BILL

His Excellency the Governor assented to the bill.

LAND TAX (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (SURROGACY) AMENDMENT BILL

His Excellency the Governor assented to the bill.

PAPERS

The following papers were laid on the table:

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

Regulations under the following Acts—
- National Electricity (South Australia) Act 1996—Variation
- Superannuation Funds Management Corporation of South Australia Act 1995—General

Rules of Court—
- Corporations Rules 2003—Amendment No. 6
- Magistrates Court—Magistrates Court Act 1991—
  - Civil Rules—Amendment No. 33
  - Civil Rules—Amendment No. 34
  - Magistrates Court Rules—Amendment No. 35

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

Regulations under the following Acts—
- Architectural Practice Act 2009—Election
- Development Act 1993—Open Space Contribution Scheme

By the Minister for Industrial Relations (Hon. P. Holloway)—

Approved Code of Practice—Working Hours—May 2010

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

Aboriginal Lands Trust—Report, 2008-09

Death of Ms. Jeong Shin on 17 April 2007—Report on actions taken following the Coronial Inquest

Regulations under the following Acts—
- Assisted Reproductive Treatment Act 1988—General
- Health Practitioner Regulation National Law (South Australia) Act 2010—General
- Rates and Land Tax Remission Act 1986—Remission of Water and Sewerage Rates

Corporation By-Laws—
- West Torrens—
  - No. 1—Permits and Penalties
  - No. 2—Local Government Land
  - No. 3—Roads
  - No. 4—Moveable Signs

No. 5—Dogs

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

Regulations under the following Acts—
Various Acts—Regulations Variations—Trade Measurements
Liquor Licensing Act 1997—
Dry Areas Long Term—
Grange and Henley Beach—Area 1

VISITORS

The PRESIDENT: I advise members of the presence in the gallery today of the Hon. Barry House, President of the Legislative Council in Western Australia. Welcome to South Australia, Barry.

GREEN GRID PLAN

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:23): I table a copy of a ministerial statement relating to the Green Grid plan made earlier today in another place by my colleague the Premier.

DESALINATION PLANT FATALITY

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:23): I seek leave to make a statement in relation to the tragic workplace incident that occurred at the Adelaide desalination plant at Lonsdale.

Leave granted.

The Hon. P. HOLLOWAY: I would like to express my deepest condolences to the family, friends and workmates affected by this tragic loss. It causes me great sadness that someone has died simply doing their job. This should not happen in 2010.

SafeWork SA is investigating the incident. That investigation will canvass every avenue of inquiry to establish exactly what happened and to make sure that we do everything that we can to prevent such an incident from ever happening again.

I am advised that the incident occurred while a steel beam was being lifted using a soft sling. SafeWork SA's investigation will not only examine the detail of what occurred but also review the selection and use of lifting equipment on site and the work method for lifting operations. SafeWork SA has issued compliance notices in this regard.

I fully support SafeWork SA officers in their investigation into this tragic incident. I hope that, through workers, business and government acting together, we can do everything in our power to prevent a tragedy like this from ever happening again.

'A SAFER NIGHT OUT'

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 for the City of Adelaide) (14:25): I seek leave to make a ministerial statement.

Leave granted.

The Hon. G.E. GAGO: Today, I have released a discussion paper, entitled 'A Safer Night Out', which details proposed changes to the Liquor Licensing Act 1997 to strengthen measures promoting the responsible service of alcohol in and around licensed premises, particularly in our entertainment precincts. At a national level, we are helping to develop strategies to promote safer and healthier drinking behaviours, and at a state level we are looking at liquor licensing issues which have an impact on our community.

Like our licensing laws, South Australia's entertainment areas have evolved and changed over time, resulting in 24-hour trading in our pubs and clubs in some circumstances, attracting patrons who gather in areas where these venues operate. We all know that drinking too much can create problems. Also, recent media attention has increased public concern about loutish and antisocial behaviour in our entertainment areas.

The paper I have released for public consultation includes a range of measures that give us the tools to better regulate and manage late-night trading, where police tell us alcohol-fuelled violence is most likely to occur. The proposals include several new important controls which give powers to our commissioners to take immediate action. These controls would: empower the Liquor and Gambling Commissioner to order the immediate temporary suspension of a licence in response to urgent safety matters; allow the Liquor and Gambling Commissioner to impose conditions on a licence, such as a lockout on one or a group of licensed premises in an area; and extend the powers of the Police Commissioner to temporarily shut down venues in an emergency.

Compliance is a vital part of keeping licensed venues safe for people enjoying a night out. I am also proposing an annual licence fee system for our pubs, clubs and licensed premises to go towards compliance. For most venues, this will be a modest amount, and those who choose to operate extended hours will incur an additional fee.

To balance the needs of a vibrant international city which provides a safe and fun environment for people to enjoy themselves is obviously a challenge. SAPOL has identified a link between extended late-night licensed trading hours and alcohol-fuelled violence. Mandating a compulsory shutdown of three hours for premises such as pubs and nightclubs trading late at night, as we propose in the paper, interrupts drinking behaviour and creates a clear break between night and daytime activity, which enables the area to be cleaned and revitalised as intoxicated people disperse from the area.

All licensees are required to adhere to a mandatory code of practice to minimise the harmful and hazardous use of liquor and promote the responsible sale, supply and consumption of liquor. Changes to the Liquor Licensing Act last year have paved the way to now update and improve the code. To complement the reforms I have already outlined, a discussion paper putting forward new measures in the code of practice is also being released at the same time.

Proposed changes to the draft code include measures such as mandating the training of staff and regulating to ensure responsible drinking practices. If adopted, the new code would allow the Commissioner of Liquor and Gambling to use his discretion to act where antisocial behaviour occurs in licensed venues. The commissioner can choose to apply measures such as increased security requirements or banning the use of glass in venues where it may be considered a problem.

This package of proposed initiatives will provide us with the means to both rein in unsavoury or irresponsible behaviour and encourage and foster safer entertainment areas. We think these measures provide a balance between promoting individual responsibility and safe business practices without sacrificing the vibrancy of our entertainment areas. Public comment is being sought on the discussion paper, with the closing date for submissions being Friday 3 September 2010.

ANTISOCIAL BEHAVIOUR DISCUSSION PAPERS

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 for the City of Adelaide) (14:30): I table a copy of a ministerial statement relating to the issue of liquor licence discussion papers made earlier today in another place by my colleague the Premier.

QUESTION TIME

LANDFILL

The Hon. J.M.A. LENSINK (14:32): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question regarding the EPA's standard for production and use of waste-derived fill.

Leave granted.

The Hon. J.M.A. LENSINK: For the benefit of honourable members, the EPA released a policy bearing that title in January 2010. It is a document of 75 pages and it changes what has commonly been referred to as 'clean fill' to 'waste-derived fill'. So, according to the policy, clean fill is now categorised as a stream of waste.

The policy states that for excavation of more than 100 tonnes of soil from a site where no potentially contaminating activity has occurred (which the policy acknowledges is a low risk site) where 'such work is usually conducted by commercial operators...sampling and assessment is

recommended to ensure this is the case'. The policy lists 34 chemical substances to test for what we would commonly call on-site soil excavation and 82 chemical substances for material which is derived from processing, construction and demolition waste which has had contaminants removed. Obtaining EPA approval for use of the fill will require a suitably qualified consultant or a site contaminant auditor.

A list of the organisations which were consulted on the draft policy prior to the final policy's publication in January does not include the following organisations: Civil Contractors Federation, Urban Development Institute, Property Council, Master Builders Association or Housing Industry Association. The CCF has estimated that for an excavation job for, for instance, a swimming pool, which would exceed 100 tonnes, the new regime will add $3,000 to the cost of the project because of the testing requirements and that the policy could add 20 per cent to the cost of developing a block in a brownfield subdivision. My questions to the minister are:

1. Has he been made aware that this policy represents a major change in the way that clean fill is managed?

2. Is he aware of the concerns of the construction industry in relation to this new policy?

3. Does he share their concerns that the policy will delay subdivision approvals and add considerable cost to development projects in this state?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:34): The EPA standards are really matters for my colleague the Minister for Environment and Conservation in another place, and I will refer the question to him particularly in relation to those matters about who is consulted. Obviously any representations from civil contractors and others would be to the appropriate minister.

30-YEAR PLAN FOR GREATER ADELAIDE

The Hon. J.S. LEE (14:35): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the 30-Year Plan for Greater Adelaide.

Leave granted.

The Hon. J.S. LEE: On 6 July 2009, the Minister for Urban Development and Planning reviewed the 30-Year Plan for Greater Adelaide. The Minister for Urban Development and Planning stated that the 30-year plan will give South Australia one of the most competitive planning systems in Australia, while ensuring that it remains one of the most liveable, competitive and sustainable cities in the world. The minister also said that this strategic vision is also underpinned by the largest infrastructure spend in this state's history.

In *The Advertiser* of Monday 21 June 2010, the media reported that the development industry does not believe Adelaide will be able to meet the development targets in its 30-Year Plan for Greater Adelaide, unless dramatic changes are made to council and planning regulations. In the same article, the Minister for Urban Development and Planning acknowledged that it would be a challenge to achieve the 30-year plan's objectives.

On Tuesday 29 June 2010, Adelaidenow online news had the heading, 'South Australia infrastructure "falling apart" says Engineers Australia.' Engineers Australia has released a second five-yearly report card on the state's infrastructure. The state president said that ongoing under-investment was becoming apparent as half of the state's infrastructure is in need of major or critical improvement. He said:

> It underpins our economic performance, it underpins the wellbeing of the community and it also underpins our economic strength so, if we don't invest, what we will find as a state, we slip further behind. It means our standard of living will slip and we will find overall we will become a less competitive place and a less attractive place to invest.

The PRESIDENT: The honourable member should ask her questions. This is an extremely exhausting explanation.

The Hon. J.S. LEE: My questions are, Mr President, thank you—

The PRESIDENT: Something that they don't tolerate at all in Western Australia, I might add.

The Hon. J.S. LEE: I am sure they would. My questions are:

1. How will the minister address the recommendations put forward by the Engineers Australia 2010 South Australia Infrastructure Report Card?

2. How will the minister link these recommendations to the government's 30-Year Plan for Greater Adelaide?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:37): Along with the shadow minister and the Leader of the Opposition in this place, I was at the Engineers Australia luncheon where the infrastructure report card was launched, and I think this state did reasonably well in most areas of infrastructure. It actually had improving grades, if I recall. The one area which I think was a D-rating was in relation to dealing with issues of flooding and stormwater management, which essentially is a local government responsibility.

It is one where, when this government came to office, from memory, as little as $2 million was being spent, and one of the first things this Rann government did when it came to office more than eight years ago was to significantly increase that. Of course, we also set up the Stormwater Management Authority, and there have been a number of major projects. In fact, when you have had 150 years of development in the city and under-investment for much of the time, particularly in terms of building on the flood plain, you are not going to catch up overnight even when you do double the expenditure or increase it more rapidly than that, as this government has done.

The important thing about the 30-year plan is that, for the first time within this state, the government is looking at an integrated, cohesive plan for the future that does not just look at where the city will require land to grow but looks at sustainability issues such as water sensitive urban design and also the location of key infrastructure so that we can get the most efficient outcome. If you have this sort of ad hoc development, which we have had in some parts of this city over the past few decades, you do tend to get very inefficient outcomes in terms of getting the best spend for infrastructure.

Of course, the whole thrust of the 30-year plan is to congregate the growth around our transport corridors. Adelaide does have a rail network, major lines that are spread out from the city, but we are the last mainland city to electrify our rail lines. A significant proportion of the $2 billion in infrastructure that has been announced by the government is to electrify the rail lines, which will make it more attractive for people to live near those lines.

It will also enable us to redevelop many of those areas along those transport corridors, which will give us a very significant opportunity for increasing the population along those corridors without putting undue pressure on roads and other infrastructure. The 30-year plan has been very carefully crafted to ensure that we do get the best use of our existing infrastructure, and there is the significant $2 billion dollar investment associated with that infrastructure to ensure that it comes about.

With that said, my recollection of the Engineers Australia report card was that in many of the key areas, such as public transport and the like, the grades this state received were increasing. With the rollout of the government's infrastructure plan over the next few years, we would expect that to increase. Certainly, providing infrastructure for the future is going to be a challenge. The important thing is that it will be harder and harder to fund that infrastructure, and that is why it is important that we have good planning.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: We know how the opposition manage the budget: they were in deficit every year. You can always put stuff on the bankcard or sell off assets, but the trouble is that eventually you run out of assets to sell. The reality is that, if you are to provide for infrastructure, then you need to have a budget that can fund that as well as fund all the other requirements of government. We get members opposite all the time calling on this government to spend tens of millions—in some cases, hundreds of millions, or even billions of dollars, elsewhere—but they—

An honourable member interjecting:

The Hon. P. HOLLOWAY: That's right. During the last election campaign there were many, many areas were members opposite—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Oh, I will talk about it, Mr Lucas—I will talk about it. I am very happy to talk about your period. The Hon. Mr Lucas was in this position for nearly as long as I was: for over eight years he was in this position. He was Treasurer of the state, and we know full well the sorts of tricks that that government was up to, particularly in relation to health. We have probably taken up enough of question time, much as I like to talk about the opposition's fiscal policies; it is a matter I am always happy to return to.

In relation to the 30-year plan and the engineers' report, this government believes we are on the right track, but no-one should underestimate the challenge that we face in the future in funding infrastructure.

BURNSIDE COUNCIL

The Hon. S.G. WADE (14:43): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question relating to the investigation into the Burnside council.

Leave granted.

The Hon. S.G. WADE: On 31 March this year, minister Gago announced that 'the investigator is in the final stage of the report, which is providing natural justice to those named in the report before it is provided to government'. The opposition is advised that some people expecting to be referred to in the report have been told that the confidentiality agreement letters, which marked the start of the natural justice period, were due to be issued yesterday, that is, Monday 19 July.

They have since been advised that the letters will not go out until next Friday, 23 July, a day after this parliament adjourns for its winter break; in other words, the natural justice period has not started. Last Sunday's *Sunday Mail* reported that the minister was expected to receive the completed report of the investigator last weekend. On 22 June the minister stated in this council that the investigator 'envisaged that a period of four to five weeks will be needed to complete the report', that being the natural justice period, and another 'further three weeks to finish his report'.

One month on, given that the natural justice period has not commenced, we are looking at a report being delayed as well from mid to late April, as the minister last advised us, to between 24 September and 1 October. My questions are:

1. Has the minister received the investigator's report into the Burnside council?

2. Did the minister or any member of her office or department request a delay in the commencement of the natural justice period or any other part of the process?

3. Given that the natural justice period that she announced on 31 March is yet to commence, what is the revised time frame and cost of the investigation?

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 for the City of Adelaide) (14:45): I do not think I have ever received such a low-life sort of question. I am absolutely speechless. However, I will rise to the occasion. I will soldier on and do the very best I can to respond to a question that I think is beneath the honourable member opposite me, way beneath him. It is obvious that they have run out of material and so they are just making up issues as they go along.

They clearly have come completely unprepared for question time today. The first question we had in this chamber after a number of weeks was asked of a minister whose portfolio was inappropriate. She asked a question of the wrong minister. They cannot even remember our portfolios or get them right, that is how lazy they are. They have not even got the wherewithal to direct appropriate questions to appropriate ministers.

Members interjecting:

The Hon. G.E. GAGO: I am being distracted here, but I will soldier on. Just collecting my thoughts, I have already put on the record my ministerial statement dated 22 June. I said quite categorically then:

> I have been informed that preparations for the natural justice component of the investigation are well advanced. Mr MacPherson has now informed me that, after contacting the individuals named in the report as part of the process, he envisages that a period of four to five weeks...to finish his report.

That is the information that I have been given. That is the most up-to-date information that I have at hand. In terms of the commitment that the independent investigator gave me, he indicated that he hoped that a report would be to me by mid to late August. In relation to the question of whether I have a report, no, I have not got the report.

The Hon. J.M.A. Lensink: Did you read it over the weekend?

The PRESIDENT: Interjections are out of order, and the minister should not respond to them.

The Hon. G.E. GAGO: The interjection is: did I read it over the weekend? How dense is the opposition? If I do not have a report, how on earth could I read it over the weekend? How could I possibly read a report when I have stood here in this chamber and said, 'I do not have a copy of the report'? Then I am asked, did I read it at the weekend? What does it take? How can I possibly read a report when I have stood up here in this chamber and just said, 'I do not have a copy of the report'? The level of questioning is mortifying. I am ashamed to have to stand up in a place where we have a question time of this calibre. Really, it is a disgrace. I will soldier on, I will rise to the occasion as I always do.

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: Whether I, or any of my officers, requested a delay in the report is an outrageous, mischievous question. Of course I have not requested a delay, and nor have any of my staff.

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Order! The Hon. Mr Ridgway should cop his punishment in silence.

The Hon. G.E. GAGO: I have put on the record many times in this chamber that I have done all in my powers to expedite the completion of this report. I have stood here and spoken time and time again about my commitment to do that. I have demonstrated that commitment by offering extra support, and when that request has been taken up I have provided whatever assistance and report that the independent investigator has requested—at great expense, I have to add, but never mind that.

What I have said here is that the real priority for this government is to ensure that we allow the independent investigator to do the job that he was asked to do, that he do it in an independent way and that he is able to do it with a high level of integrity. When he does provide that report to me, if and where problems are identified, it will enable me to address those problems and ensure that those matters are fixed and that those problems do not occur again.

We have given a commitment here in this place to ensure that we enable the investigator to do the best job he is able to do and to provide us with a report of very high integrity. It is important that we have confidence in our local government sector and that, if and when problems do occur, they are taken seriously. We do whatever it takes to ensure that any problems are uncovered and that, if and when that happens, we do all we can to address those problems. Our local government sector is very important to us. It plays a vital role in our community, and it is most important that members of the public have confidence in their local councils.

FOREIGN WORKERS

The Hon. I.K. HUNTER (14:52): My question is to the Minister for Industrial Relations. Is he aware of investigations into allegations of underpayment of foreign workers contracted to dismantle plant and equipment at the former Mitsubishi factory; and, if he is, will he share his understanding of this issue with the council?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:52): Yes, I am aware of investigations into alleged underpayment of foreign workers. A number of Chinese labourers were brought to South Australia last year to dismantle heavy machinery at the former Mitsubishi car plant. I can confirm that the Office of the Fair Work Ombudsman has conducted investigations into the alleged underpayment of wages of a number of Chinese employees of SANAN Pty Ltd who decommissioned the plant at Mitsubishi's former Clovelly Park factory.

I am advised that the investigations have resulted in the initiation of wage recovery and prosecution proceedings in the Federal Magistrates Court against SANAN. The Office of the Fair Work Ombudsman has advised that the proceedings involve 24 employees of SANAN who were allegedly underpaid more than $131,000 between 29 October 2009 and March 2010. The relevant instrument in establishing the alleged underpayment is the federal minimum wage, which at the time was $14.31 per hour.

The migrant workers engaged in the dismantling project at Clovelly Park were initially issued with subclass 456 visas, which are designed for short stay business visits of up to three months for specialised, non-ongoing work. These visas were subsequently found to be unsuitable for the type of work being undertaken by the workers at the Clovelly plant and were cancelled by the Department of Immigration and Citizenship.

I am advised that the majority of workers were then issued with subclass 457 visas, which are employer-sponsored, short stay, skilled visas. The Department of Immigration and Citizenship and the Office of the Fair Work Ombudsman have both confirmed that the alleged underpayment of wages occurred in relation to the period when the workers were issued with subclass 456 visas.

Although there are no prescribed salary or sponsorship requirements under 456 visas, there are still employer obligations to comply with local minimum wage requirements. The Department of Immigration and Citizenship advises that it is currently investigating employment conditions for the subsequent period when the workers were issued with 457 visas.

SafeWork SA industrial relations inspectors had no role in the investigation of the alleged underpayment of wages by SANAN. The investigation has been exclusively conducted by the inspectorate and litigation unit of the Office of the Fair Work Ombudsman. This is because at the time of the alleged breach the employment conditions of the Chinese workers were regulated in the federal system of industrial relations.

However, on 11 December 2009, SafeWork SA occupational health and safety inspectors conducted compliance orders at Clovelly Park and issued two statutory notices under the Occupational, Health, Safety and Welfare Act 1986. These related to the use of unsafe elevated work platforms and the use of temporary electrical power to the designated equipment dismantling work areas.

SafeWork SA has also had discussions with a contractor facilitating the coordination of the project in relation to licensing arrangements for the operation of high risk plant at the site. SafeWork SA has also monitored and reviewed the competency standards of foreign workers at the Clovelly Park plant to ensure the minimum standards have been met.

SafeWork SA recently provided a submission to the Department of Immigration and Citizenship's independent review of the impact of the Migration Amendment (Employer Sanctions) Act 2007 of the commonwealth. Through this review, SafeWork SA is seeking further collaboration with the Department of Immigration and Citizenship, with a view to establishing a memorandum of understanding to greater facilitate access to relevant lists of third-party agents who are sourcing immigrant workers and facilitating their placements in South Australia. This will allow SafeWork SA to build on the collaborative work that it currently undertakes with the Office of the Fair Work Ombudsman to audit for compliance with the Fair Work Act 2009.

Previously, SafeWork SA has liaised closely with Immigration SA in relation to the working conditions of 457 visa workers. SafeWork SA is interested in exploring ways to improve the level of information exchange between Immigration SA, the Department of Immigration and Citizenship and SafeWork SA to ensure that workers coming to South Australia are provided with fair and safe working environments.

In its submission to the current review, SafeWork SA suggested that, should the outcome of the review demonstrate that the Department of Immigration and Citizenship does not have the capacity, particularly in rural and regional areas of South Australia, to audit visa requirements relating to working conditions covering both wages and other entitlements, along with occupational, health, safety and welfare matters, it should consider engaging SafeWork SA to assist in undertaking these functions.

This is particularly relevant, given that SafeWork SA is currently working in partnership with the Fair Work Ombudsman to deliver industrial relations compliance and education services within the national industrial relations system and given that it is also effectively the sole regulator of occupational health and safety laws in South Australia.

I can advise that SafeWork SA has conducted a number of claimant-specific investigations within our pre-2010 industrial relations jurisdiction in conjunction with the Fair Work Ombudsman, as well as under our current contractual arrangements with the Fair Work Ombudsman and the federal government. Since January this year, SafeWork SA has begun undertaking industrial relations activities, such as targeted education visits, as well as responding to complaints and full investigations on a performance-based contractual basis for the Office of the Fair Work Ombudsman.

Anecdotal information from SafeWork SA and the Fair Work Ombudsman demonstrates a high level of non-reporting of underpayment of wages and occupational health and safety complaints by migrant workers on temporary visas. This appears to have a direct relationship to the vulnerability of the overseas workers, with higher levels of under-reporting than SafeWork SA experiences with other vulnerable groups, such as young workers, apprentices and trainees.

SafeWork SA is well placed to contribute to the compliance and enforcement activities relating to the employment of overseas workers. I will be encouraging the agency to engage with the Department of Immigration and Citizenship and other relevant agencies to ensure that migrant workers in South Australia are treated with respect and that, at the very least, they receive their statutory minimum entitlements.

PRISONS, DRUG USE

The Hon. R.L. BROKENSHIRE (14:59): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations, representing the Minister for Correctional Services, a question about drug use in prisons.

Leave granted.

The Hon. R.L. BROKENSHIRE: I will paraphrase a segment that ran on FIVEaa on 20 October 2009. A caller to the morning program alleged that he had developed a drug habit whilst in gaol and that at the Cadell and Mobilong prisons in particular drugs are dropped off to the gaol, the prisoners have mobile phones and are virtually 'running the show up there'.

In response to that interview, my colleague the Hon. Dennis Hood spoke on the program expressing the view of Family First (and no doubt most South Australians) that there should be a zero incidence rate of drugs in prison. The Minister for Correctional Services immediately replied:

> I agree with Dennis completely. There is zero tolerance for drugs in prison. We monitor prisoners' phone calls, we monitor their mail, we have the latest in surveillance equipment on our prison perimeters.

That may be so, but information I have received from whistleblowers in recent weeks indicates that a blind eye is being turned to illicit drug testing in prisons and the minister's zero tolerance regime is being hoodwinked. My questions therefore are:

1. Will the minister immediately investigate these allegations about subversion of prison drug testing, particularly with respect to urine tests and inappropriate practices and procedures?

2. Will the minister guarantee that any allegations of cover-up or corruption will be followed through and, where sufficient evidence exists, referred to South Australian police for prosecution?

3. Can the minister confirm that the page 24 story from the *Sunday Mail* of 18 July 2010 does not relate to South Australian prison experience; namely, that (a) prisoners cannot request illicit drugs over the internet; and (b) that South Australian prisoners do not have Facebook, other social networking or internet access at all?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:02): I thank the honourable member for his question and I will refer it to the Minister for Correctional Services in another place and bring back a response. Of course, if the honourable member does wish specific allegations to be investigated, then clearly it will be helpful to have any information that the honourable member might have in relation to those allegations so that they can be investigated.

For about a six-month period back in the mid-nineties, I was shadow minister for correctional services and I remember visiting the prison at Mount Gambier. It is quite amazing to see the means by which prisoners are able to smuggle drugs in. One of the ways they were doing it

was getting tennis balls and other things that had drugs in them over the fence, and there were a whole lot of other ways.

That was 15 years ago. It was a problem then, and I am sure that it is a never-ending battle to try to keep drugs out of gaol. I know that my colleague the Minister for Correctional Services is very committed to ensuring that everything is done to prevent that happening but I will be happy to refer the question to him and bring back a response.

PREMIER'S COUNCIL FOR WOMEN

The Hon. CARMEL ZOLLO (15:03): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about the Premier's Council for Women consultations.

Leave granted.

The Hon. CARMEL ZOLLO: Established in December 2002 by the Rann government, the Premier's Council for Women (PCW) provides leadership and advice to ensure that the interests of women are at the forefront of government policies and strategies. Will the minister provide the chamber with information on how the PCW is engaging with South Australian women?

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 for the City of Adelaide) (15:04): I thank the honourable member for her most important question. South Australian women are being urged to help shape the future of South Australia by participating in public forums organised by the Premier's Council for Women.

Public forums are currently being held across the state to enable South Australian women to put forward their views on the issues affecting them. A number of public forums in regional and metro locations are providing the platform for hundreds of women to share their views on important issues such as employment, money, family, safety and wellbeing, to mention just a few.

Forums specifically for Aboriginal and Torres Strait Islander communities, multicultural groups, as well as sessions for younger women and older women, are being held to ensure the concerns of diverse groups of women in our society are captured.

I am pleased to advise that the Adelaide City Forum held on 29 June was attended by over 80 people, which I think is an impressive turnout. It highlights the importance of providing a forum for members of the community to participate in and be heard. I am advised that consultations with women living in the north will be held at the Salisbury council on 21 July. Other consultations will include Noarlunga, Port Augusta and Tailem Bend, and I understand that this will occur in early August.

The PCW is thinking about a better future for all South Australians, and it wants to hear views on the issues that affect South Australian women. To encourage the participation of as many women as possible, I am advised that forums are being advertised in the *Sunday Mail,* the Messenger Press and other local papers, and flyers are also being distributed to around 500 stakeholders, including approximately 300 multicultural organisations. I understand that the ideas and views gathered from the forums will be used to update South Australia's Strategic Plan as well as help the Premier's Council for Women set agendas for the coming years. Last updated in 2006, South Australia's Strategic Plan is a plan for business, the community and government, and it aims to create opportunities for all South Australians wherever they are and whatever they do.

Following these consultation rounds, the Premier's Council for Women will then make recommendations to help ensure that the updated strategic plan accurately reflects the real views and needs of women in South Australia. The council comprises 16 very influential and competent women, who come from a wide range of different areas and who offer advice on a range of issues, including health and safety, work and the representation of women in leadership positions, such as boards and committees. I believe that these consultations, and the council's recommendations, will help us continue to ensure improved outcomes for South Australian women.

FAMILIES SA

The Hon. A. BRESSINGTON (15:08): I seek leave to make a brief explanation before asking the minister representing the Minister for Families and Communities a question about Families SA.

Leave granted.

The Hon. A. BRESSINGTON: On 25 May this year, I asked a series of questions concerning the case of a mother desperately seeking assistance for her son who has severe behavioural problems. Believing it to be the only option open to her, she entered into a three-month voluntary agreement with Families SA in 2007. After that, Families SA stated that it would be better able to care for the child and sought a guardianship order until the child reaches the age of 18. Referring to the lack of support services provided to the boy and his deteriorating behaviour since being in care, in March I asked the minister the following:

> When a child in the care of the minister in a residential facility is not attending school, is staying out all night during the week and on weekends and is arrested for criminal activity at the age of 12, what guarantee will the minister provide the mother—a caring and loving mother—that the situation will improve, and what oversight will be provided to guarantee the care and protection of that child under those circumstances?

Since asking that question, the mother, who previously enjoyed regular unsupervised access, has been denied all access to her son, with no reasonable explanation given. Despite no safety concerns being raised directly about the mother, she has been told that, when access resumes, it will be strictly supervised.

Additionally, the mother is being denied basic information about her son's welfare, including whether he is incarcerated and outcomes of court proceedings, and has recently been told that she will not be able to attend the Youth Court when her son faces criminal charges in August. Her once friendly relations with staff at the son's residential facility have been severed, with the mother being told that she is to make no contact whatsoever with that facility. The time line between when I asked the question in this place and the restrictions mentioned being placed on the mother's access was just 24 hours. This is by no means the first occasion that a constituent has suffered retribution for seeking my assistance on these matters.

In a meeting on 3 June and then again in a letter on 2 July, I endeavoured to seek an explanation from the Executive Director of Families SA as to why the mother's access was cut, and I have expressed my concerns that the reasons may be vindictive and an attempt to limit an information flow about this child's welfare. My questions to the minister are:

1. Will she explain why, the day after I asked a question in parliament, this mother's access was suspended and she was instructed not to contact her son's residential facility at all?

2. Will she consult with the Executive Director of Families SA to determine the reason for the inordinate delay in responding to my concerns?

3. Will she instruct Families SA to allow the mother to attend the Youth Court proceedings in order to be able to support her son?

4. Will she provide a response to the concerns raised about the care and support the boy is receiving still while in state care?

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 for the City of Adelaide) (15:11): I thank the honourable member for her important questions and will refer them to the Minister for Families and Communities in another place and bring back a response.

PAYROLL TAX

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:11): I seek leave to make a brief explanation before asking the Leader of the Government a question about his embarrassing time while he was acting treasurer.

Members interjecting:

The PRESIDENT: Order! Leave is granted, but you can leave out those wild opinions.

The Hon. D.W. RIDGWAY: The government promised during the election campaign to match the Liberal promise to amend the Payroll Tax Act to exempt trainees and apprentices from payroll tax as from 1 July 2010. The Commissioner of Taxation sent out a notice on 5 July advising businesses that the government had advised him that the parliament had been too busy to introduce the relevant legislation and the rebates would be postponed until at least 1 January 2011. My questions are:

1. Did the minister, as acting treasurer, instruct Treasury—

The Hon. B.V. Finnigan: He's not acting treasurer now.

The Hon. D.W. RIDGWAY: I didn't realise I was talking to you. Did the minister, as acting treasurer, instruct Treasury to delay the introduction of the payroll tax exemptions for apprentices and trainees until at least 1 January 2011 and, if he did not, who gave that instruction?

2. Given that parliament has been sitting for more than four full weeks since its opening day and adjourned early on nearly every one of those days, who advised the taxation commissioner that the parliament has been too busy and on what grounds was that advice given?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:13): In relation to the latter matters, I will refer them to the Treasurer's office. I am no longer the acting treasurer and those matters happened beforehand.

However, in relation to the issue of the parliamentary timetable, I think it is a little rich for the Leader of the Opposition to talk about us going home early when on the last Thursday of sitting I don't believe he was here, and I believe he is going off this evening when we have matters. That is fair enough, Mr President, because all of us have pairs. However, we have had the mining bill here, which was first introduced into this parliament back in November or December last year.

The Hon. D.W. Ridgway: And last night you filed an amendment to it.

The Hon. P. HOLLOWAY: Yes, I did. The reality is, as the honourable member well knows, we had an election this year that obviously delayed significantly the opening of parliament, so there were limited days before the end of the financial year. That is why the government had to give priority. It is not the hours that this parliament sits: it is whether members in this parliament are ready to discuss the legislation because—

The Hon. A. Bressington: That's a load of rubbish.

The Hon. P. HOLLOWAY: It is not rubbish. The fact is, as I have said, some of the bills have been on the *Notice Paper* here for six months or more. I understand how this place works, and I think most members know that it generally works on a consensus basis of members being ready to debate and, because we have so many minor parties, there are often amendments, so it all takes a long time to get these things through. That is the reality, and any members who have worked in this place for any time understand that, and I think it ill behoves them to go out to the media and try to suggest, knowing how that works, that somehow or another you can get every bill through in a very short period.

I appreciate the cooperation that we get from members and I appreciate the cooperation we had from members here in getting a number of bills through before the end of the financial year, but there is a limited number, and I am sure if we had added another one or more to that list, that would have been pushing the limits of the time available. Whereas I am grateful for the support that we received at the time, there are limits. Now, as I said to the Leader of the Opposition's interjection, I will refer those instructions to the Treasurer; he is responsible for the advice.

PETROLEUM INDUSTRY

The Hon. R.P. WORTLEY (15:16): My question is to the Minister for Mineral Resources Development. Will he provide details of recent initiatives undertaken within the petroleum industry to address options for identifying infrastructure and technologies required if this state's potential for developing unconventional gas is realised?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:16): I thank the honourable member for his question.

Members interjecting:

The Hon. P. HOLLOWAY: I can remember when the Hon. Mr Lucas was an acting health minister at the time there was a tragic incident involving Garibaldi, if I recall. As an acting minister at the time, I am sure the honourable member knows what the conventions are in relation to questions.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes, I remember it, too. I thank the Hon. Mr Wortley for his question. The South Australian government has provided and will continue to provide tangible support to encourage upstream petroleum and geothermal investment in this state. This includes a world-class efficient and effective regulatory framework, with the one-stop shop approach for petroleum and geothermal project facilitation, approvals and nation-leading processes for expeditious land access through Primary Industries and Resources SA. South Australia also has a long history of funding pre-competitive data acquisition and research to reduce critical exploration uncertainties—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Gazzola cannot hear.

The Hon. P. HOLLOWAY: I think I will start again, Mr President. South Australia has a long history of funding pre-competitive data acquisition and research to reduce critical exploration uncertainties in under-explored regions, and the stewardship of critical exploration data and speedy cost-effective delivery to companies. We also provide promotion of new investment opportunities nationally and internationally.

This government also funds petroleum education and research through Professor Bruce Ainsworth, the incumbent State Chair for Petroleum Geology at Adelaide University's Australian School of Petroleum. Similarly, we support geothermal research through the South Australian Centre for Geothermal Energy Research within the Institute for Minerals and Energy Research at the University of Adelaide. This government, through PIRSA, is working relentlessly to sustain this state as an attractive and trusted destination for sustainable petroleum and geothermal exploration and production investment.

One new initiative to be launched this month will be a round table for the state government, represented by PIRSA and the Department for Transport, Energy and Infrastructure, and the industry. This gathering aims to examine options for infrastructure and supporting technologies required in this state if the potential of unconventional gas is realised from the current level of exploration for shale gas, coal seam gas, low permeability reservoir gas, underground coal gasification and the gasification of mined coal. If just one of these gas plays is proven then truly large investment opportunities will arise for the export of liquefied natural gas and possibly synfuels.

The terms of reference for that round table are expected to be drafted this month. This draft will then be sent to all holders of South Australian petroleum and coal licences, to the Australian Petroleum Producers and Exploration Association (APPEA), the Australian Pipeline Industry Association, and the South Australian Chamber of Mines and Energy for their feedback. The intended focus of this round table will be supply chain infrastructure and technologies for export quantities of unconventional gas, syngas and synfuel, such as exports of liquefied petroleum gas and exports of petroleum liquids, including synfuels and biofuels.

The tangible outcome of this proposed round table could include a road map for efficient deployment of infrastructure and technologies, assuming one or more projects are successful in booking sufficient reserves of unconventional gas to underpin export of LNG and/or other petroleum liquids in excess of the capacity of our existing infrastructure. This government, through Primary Industries and Resources SA, is taking the lead to ensure that we are at the forefront of these new developments within unconventional gas sources.

ANXIOUS BAY AQUACULTURE

The Hon. M. PARNELL (15:21): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning, representing the Minister for Agriculture, Food and Fisheries, a question about aquaculture in Anxious Bay.

Leave granted.

The Hon. M. PARNELL: Members will be aware that a storm event a fortnight ago resulted in considerable damage to the abalone farm currently operating in Anxious Bay, near Elliston. From local reports, it appears that all of the 32 rings on this lease have broken free and disintegrated and that many have washed up on the nearby Waldegrave Islands Conservation Park, which is home to the protected Australian sea lion. With around 600 abalone trays per ring, that adds up to over 19,000 plastic trays, plus all the ropes and kilometres of netting, strewn through the marine environment along the coast, where they are already impacting on marine species.

After the storm I was sent a photo of a dead sea lion, washed up on a nearby beach, entangled in ropes and netting that are almost certainly part of this debris. Members might also recall that a previous storm event in 2005, in exactly the same location, saw a similar outcome, with debris strewn along more than 100 kilometres of coastline. In that event, five sea lions died, and at the time the aquaculture company said it had nothing to do with the debris, and the environment department refused to recover the bodies of the dead sea lions or to undertake autopsies to determine the exact cause of death.

This is not a new issue for us in this chamber. Members will recall that we debated in this place in March 2007 the very issue of the zoning of Anxious Bay for aquaculture, only one kilometre from a sea lion colony, without any public consultation and without even following the normal investigations and processes under the Aquaculture Act.

People writing to me over the last few days say that it is deeply disappointing that once again, as predicted, the inappropriate location of aquaculture infrastructure has caused significant damage to an extremely valuable part of our marine ecosystem. Worse still, once the aquaculture company has retrieved or replaced missing infrastructure, it is legally entitled to put it all back in exactly the same location whilst we wait for the next storm. My questions are:

1. What assurance can the minister give that similar damage will not happen again in Anxious Bay after the next storm?

2. Why, after the previous storm event in 2005, were the aquaculture operators not required by the government to undertake an assessment about the likely risk of storm damage and required to make changes to the equipment and location to ensure that it would not happen again?

3. Will the minister now review the location of aquaculture operations in close proximity to conservation parks in general, and sea lion colonies in particular, and if not, why not?

4. After two similar incidents involving storm damage at exactly the same location, will the minister use his powers, under the Aquaculture Act, to prevent the re-establishment of these aquaculture structures within close proximity of critical sea lion colonies in Anxious Bay?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:24): I will refer that question to the Minister for Agriculture, Food and Fisheries and bring back a response.

WORKCOVER CORPORATION

The Hon. R.I. LUCAS (15:24): My question is to the Leader of the Government. Has the minister been briefed by WorkCover on the unfunded liability as at 30 June 2010, and if not, when did he receive his last briefing, and what was the nature and extent of that briefing?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:25): I have not yet had a formal briefing on the unfunded liability. The chief of WorkCover did have some verbal discussions with me about some aspects of the possible outcome of that liability, but I have not received a formal briefing and I certainly will not be telling the Hon. Mr Lucas.

The Hon. R.I. Lucas: He spoke to you. We know the discussion.

The Hon. P. HOLLOWAY: You were there, were you?

The Hon. R.I. Lucas: Well, did you have a briefing?

The Hon. P. HOLLOWAY: I have answered the question. In terms of the detail, I certainly will not be making any comment on that until the full or finalised report is available, which is normally on 30 September or thereabouts.

WORKCOVER CORPORATION

The Hon. R.I. LUCAS (15:26): I have a supplementary question arising out of the answer. When was the minister briefed by the chief (as I think he called him) of WorkCover, and can he confirm whether, when he refers to the 'chief' of WorkCover, he is referring to the new chief executive officer or the chairman of the board?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the

Premier in Public Sector Management) (15:26): The chief is the chief executive officer of the corporation: that is what I was referring to. Again, I am not going to make any further comment on that.

The Hon. R.I. Lucas: When did you have the meeting?

The Hon. P. HOLLOWAY: I don't know—a week or two ago; I would have to check my diary, but does it really matter?

WORKCOVER CORPORATION

The Hon. R.I. LUCAS (15:26): I have a supplementary question arising out of the answer.

The PRESIDENT: Which answer?

The Hon. R.I. LUCAS: That answer. Can the minister indicate why he believes that discussion he had with the chief executive officer was not a formal briefing in relation to the unfunded liability?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:27): I would have thought it was pretty obvious. If you get a detailed report, particularly a written report, setting out what the actual figure might be, then that would be a formal briefing. If you just have a discussion about what may impact upon the actual figure, that is another matter. In any case I would expect that the board of WorkCover will be formally notified before I would get that briefing. I have discussions with the chief executive of WorkCover, as I do with other agencies, and we discussed a whole range of matters. I do not know the actual figure; I have not yet been provided with that.

Members interjecting:

The PRESIDENT: Order!

LOCAL GOVERNMENT ALLOWANCES

The Hon. B.V. FINNIGAN (15:28): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about allowances for councillors.

Leave granted.

The Hon. B.V. FINNIGAN: As members would be aware, council elections are due to take place later this year and, like all honourable members, I encourage those with an interest in their communities to consider running as a local government representative. Anyone wanting to run for council needs to consider carefully their circumstances before deciding to put themselves up for election. Will the minister advise the house on recent developments in setting council allowances?

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 for the City of Adelaide) (15:29): I thank the honourable member for his important question. Indeed, changes to the Local Government Act, made last year in the Statutes Amendment (Council Allowances) Act 2009, have now seen the Independent Remuneration Tribunal playing a role in this process for the first time. As we saw in the past, councils were in the often very difficult position of setting their own allowances, and we know that that sometimes caused a lot of public unrest. Some people felt that the rates set were not enough, that their councillors deserved far more than that, whereas other people believed that the rates were sometimes set too high. We know that councillors make a tremendous contribution to our society. In fact, they often dedicate and volunteer very long hours.

I understand that this reform that has been put in place has been welcomed by the local government sector, and it is pleasing to see the steps taken so far by the tribunal, before the local government elections in October and November of this year.

I am advised that the process the tribunal is following is to seek submissions from the public and other relevant stakeholders, such as the LGA; hold any hearings; and then use that information to make its decision. The tribunal has advertised broadly through its website and also by placing notices in the Saturday *Advertiser*, the Messenger newspapers, the *Stock Journal* and in the regional press seeking submissions. It also provided a guideline for submissions on its website.

The independent tribunal sets its own processes and may hold hearings, both in metropolitan and, I also understand, regional centres. I am advised that opportunities for oral

submissions will be based on need, as determined by the tribunal. After considering the written and oral submissions, the tribunal will then draft its determination and report on the allowances for members of local government, provide information to those who made submissions and have a final determination and the report published in the gazette.

The tribunal's decision is required under the act at least 14 days before the close of nominations for local government elections. I am advised that the tribunal will take into account a number of factors in making its decision, including considering the roles played by elected members, such as the nature of the work of the mayor or presiding member, and that required of a councillor. The tribunal will also take into account things like the size of the local government area, the population, the revenue or potential revenue that a council might be able to generate, and also other relevant economic, social, demographic and regional factors.

We can see that the tribunal is prepared to take into consideration a wide range of factors that might influence, if you like, the value of the work that councillors do, but also the capacity of the council to be able to afford particular rates. This is, as I have said, the first time the Remuneration Tribunal has considered the work of local government, so this year's process is likely to be more time consuming than it might be in future. This new method of setting allowances will provide, I believe, transparent, reasoned decisions by an independent body, setting the basis for council allowances now and into the future.

ANSWERS TO QUESTIONS

ENERGY EFFICIENCY RATINGS

In reply to the **Hon. J.M.A. LENSINK** (6 May 2010).

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management): I have been provided with the following information:

1. The State Strategic Plan target to increase the energy efficiency of houses by 10% is over a 10 year period. Accordingly the contribution of the incremental increase from 4 to 5 stars in 2006 is relatively small. However, as the number of new houses having this level of energy efficiency, or higher, increases as a proportion of the total housing stock the new standards will contribute towards the State Strategic Plan target, including reducing emissions by 60% of 1990 levels by 2050.

2. Changes to building requirements are as a matter of common practice not applied retrospectively. To do otherwise would require homeowners and investors to continually modify their houses to meet new building standards. Other mechanisms are used to encourage the upgrading of existing buildings. In the case of energy efficiency The National Strategy for Energy Efficiency, which has been adopted by COAG, requires the phasing in of mandatory disclosure of building performance at the time of sale or lease. South Australia is working with other jurisdictions on this and a Regulation Impact Statement is currently being prepared for public consultation. Another measure is South Australia's Residential Energy Efficiency Scheme under which energy retailers are required to deliver energy efficiency measures and energy audits to households.

3. The 2007 State Greenhouse Gas Inventory indicates that residential energy emissions amount to approximately 4 mega tonnes or 14% of South Australia's emissions. It is worth noting that since 2003 all new houses have been required to have a minimum level of energy efficiency, starting at four stars, and these now count as existing buildings.

4. In South Australia the efficiency standards for hot water systems in new houses are the same as those for replacement water heaters in existing houses and are determined by the type of heater, the capacity of the heater and the climate zone. The requirements for electric and gas boosted solar hot water systems are:

(a) An electric boosted solar heated water service or heat pump heated water service (air sourced or solar boosted) with a single tank and a volume of 400 litres or more and not more than 700 litres—

(i) At least 38 Renewable Energy Certificates in zone 3; and/or

(ii) At least 36 Renewable Energy Certificates in zone 4.

(b) An electric boosted solar heated water service or heat pump heated water service (air sourced or solar boosted) with a single tank and a volume of more than 220 litres and less than 400 litres—

(i) At least 27 Renewable Energy Certificates in zone 3; and/or

(ii) At least 26 Renewable Energy Certificates in zone 4.

(c) An electric boosted solar heated water service or heat pump heated water service (air sourced or solar boosted) with a single tank and a volume of not more than 220 litres—

(i) At least 17 Renewable Energy Certificates in zone 3; and/or

(ii) At least 16 Renewable Energy Certificates in zone 4.

(d) An electric boosted preheat solar heated water service with a series connected instantaneous booster or a second tank and a preheat tank volume of 200 litres or more and not more than 350 litres—

(i) At least 38 Renewable Energy Certificates in zone 3; and/or

(ii) At least 36 Renewable Energy Certificates in zone 4.

(e) An electric boosted preheat solar heated water service with a series connected instantaneous booster or a second tank and a preheat tank volume of more than 110 litres and less than 200 litres—

(i) At least 27 Renewable Energy Certificates in zone 3; and/or

(ii) At least 26 Renewable Energy Certificates in zone 4.

(f) An electric boosted preheat solar heated water service with a series connected instantaneous booster or a second tank and a preheat tank volume of not more than 110 litres—

(i) At least 17 Renewable Energy Certificates in zone 3; and/or

(ii) At least 16 Renewable Energy Certificates in zone 4.

(g) A natural gas or LPG boosted solar heated water service with a total tank volume of not more than 700 litres and at least 1 or more Renewable Energy Certificates in any zone.

(h) A wood combustion boosted solar water heater, with no additional heating mechanism and a total tank volume not more than 700 litres.

In these requirements Renewable Energy Certificates are those issued under the Commonwealth Government's Mandatory Renewable Energy Target Scheme and the climate zones are those according to the Australian Standard AS/NZS 4234 for *Heated Water Systems—the Calculation of Energy Consumption*.

The water heater requirements for South Australia for 2010 are the same as those used in 2009, with the addition of climate zone 4 to make provision for the South East and Kangaroo Island.

5. Six star houses can be built for either no or a very small additional cost provided they have a good design with all of the main living areas facing north. Accordingly the new provisions encourage people to choose affordable houses with good energy efficient design and construction while still allowing some flexibility regarding how the six star level is achieved.

CONTACT SPORTS

In reply to the **Hon. R.L. BROKENSHIRE** (13 May 2010).

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management): The Minister for Recreation, Sport and Racing has provided the following information:

The State Government, through the Office for Recreation and Sport, continues to develop and promote resources for community sport which address the way that members of sporting organisations behave. These initiatives include:

- the provision of constitutional templates that can be adopted by community sporting clubs which enable behavioural issues to be addressed through internal tribunals;
- the provision of 'Managing Conflict in Clubs' training courses; and
- maintaining partnerships with organisations, such as Community Mediation Services, that can provide trained mediators to help resolve internal club disputes.

The Office for Recreation and Sport will also continue to support and promote services such as the Play by the Rules resource, which provides on-line training on behavioural issues faced by sporting organisations. Play by the Rules presents strategies to deal with these issues as well as providing advice on each person's legal rights in particular situations. Although Play by the Rules is now a national program, the information provided is customised to reflect South Australian legal processes.

Through adjunct programs, such as 'Coloured Shirts for Officials', strategies are introduced that protect young and developing umpires and referees from abuse and violent behaviour. This program also uses Play by the Rules as a core component and educational tool. 'Say No to Sport Rage' is another program that directly confronts violent or inappropriate behaviour on and off the sporting field by bringing together strategies to change behaviours. Once again this is supported by Play by the Rules as a key resource.

ADELAIDE PACIFIC INTERNATIONAL COLLEGE

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 for the City of Adelaide) (15:33): I table a ministerial statement by the Hon. Jack Snelling from another place on the Adelaide Pacific International College (APIC).

STATUTES AMENDMENT (ELECTRICITY AND GAS—PRICE DETERMINATION PERIODS) BILL

Adjourned debate on second reading.

(Continued from 29 June 2010.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:34): I rise on behalf of the opposition to indicate that we will be supporting this bill that has been received from the House of Assembly. It is a relatively simple bill which allows ESCOSA (Essential Services Commission of South Australia) to make different price determination periods. Currently the price determinations are made for a period of three years and this will allow the regulator to determine the special circumstances where a price determination can be made within this three-year time frame. Special circumstances have been deemed to be events of magnitude to disturb the fundamental basis of an existing price determination so as to require a new determination to be made.

If an unexpected event occurs, ESCOSA will have the power to initiate a review to determine if this event is a special circumstance, and special circumstances will exist where the event was unable to be predicted, planned or reasonably insured against. The act does allow for a special circumstance to be determined by ESCOSA, but all flexibility in these determinations is lost as a new determination itself has to be made for three years.

Essentially the bill permits intra-period variations, which allow for special circumstances to be dealt with in a more timely and cost-effective way. I guess that one of the examples of special circumstances that might arise is the unexpected consequences at any time in the future of the implementation of an emissions trading scheme or a price on carbon, as the current Prime Minister is talking about at some point in the future. That may have an impact on electricity and gas prices, and therefore ESCOSA may then see fit to make this special circumstances determination. The opposition certainly supports this bill. It has been through the House of Assembly and, with those very few words, I indicate that we are prepared to support it in this chamber as well.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:38): I understand no other members wish to speak

in this debate but have indicated their support for the bill, and I thank them for that and commend the bill to the council.

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

RAILWAYS (OPERATIONS AND ACCESS) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 June 2010.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:39): I rise on behalf of the opposition to speak to this bill. On 26 May, the Hon. John Rau, on behalf of the transport and infrastructure minister, introduced this bill in the other place. The intention of the bill is twofold: to provide a consistent national system of economic regulation for nationally significant infrastructure, including railways; and to implement efficiencies into the act. These efficiencies will be based on recommendations following an inquiry conducted by the Essential Services Commission of South Australia.

The bill relates to major intrastate rail only, excluding the Australian Rail Track Corporation line which is covered by the national act, and indentures such as OneSteel, the Glenelg tramline and tourist and heritage rail lines. Most of the railway lines affected by this bill are primarily used for the transport of grain.

In February 2006, COAG signed the Competition and Infrastructure Reform Agreement (CIRA) to provide a simpler and consistent national system of economic regulation for nationally significant infrastructure including railways. The reform aims to reduce regulatory uncertainty and compliance costs for owners, users and investors.

The Essential Services Commission of South Australia was directed by the acting treasurer (Hon. Paul Holloway)—and obviously he handled that job with a bit more aplomb than the one he did just recently—to undertake an inquiry into whether or not South Australia's access regime is consistent with certain principles set out in clause 2 of the Competition and Infrastructure Reform Agreement.

Clause 2 commits all signatories to establish a simpler and consistent national approach to economic regulation of significant national infrastructure, in this case, railway. As such, the South Australian government made a commitment to review the intrastate rail access regime for the purposes of clause 2 of the Competition and Infrastructure Reform Agreement and implement the necessary changes to promote greater consistency.

The ESCOSA inquiry into the access regime commenced in February 2009 with the release of an issues paper for consultation. ESCOSA received submissions to that paper from the following stakeholders: ABB Grain, Asciano, Genesee & Wyoming, Gypsum Resources Australia, Penrice Soda Products and Western Plains Resources.

Following the consideration of these submissions, ESCOSA released its draft inquiry report in July 2009 and received four submissions to the draft from, again, ABB, Asciano, Genesee & Wyoming and Penrice Soda. Genesee & Wyoming expressed concerns within its submission highlighting that the issue of return on investment needed to be addressed in relation to economic efficiency. Penrice Soda Products highlighted the need for increased transparency in the form in which price information is provided by the access provider to access seekers.

ESCOSA's draft finding was that there was scope for the right of access act to better reflect the concept of economic efficiency set out in the Competition Infrastructure Reform Agreement. As such the bill amends the act, as follows:

> Section 3(c)—after railway services insert 'through the promotion of the economically efficient use and operation of, and investment in, those services'.

The aim is to provide economic efficiency and effective competition, and the bill will amend the act by inserting principles to be taken into account in relation to the price of access to a service, including a principle to protect smaller access seekers from being discriminated against by monopoly holders. A definition also to clarify the meaning of private sidings has been included as part of the improvements to the act.

In regard to the mining industry, ESCOSA expressed in the draft inquiry report that the access regime should be reviewed to ensure that it is flexible and robust enough to respond to increased mining activities. Comments were sought from stakeholders on whether or not the

coverage of the access regime should be extended to certain existing railway infrastructure, particularly to accommodate future mining developments, but no specific comments were received. It has been determined that the access regime's coverage is appropriate.

Certainly, in the future of mining activities and certainly servicing of ports on Eyre Peninsula, there may well be some scope for expansion of railway lines that would service those particular ports, and I think access to that infrastructure is important.

We do know that even the port itself, or proposed ports, will need to be common user facilities where the whole community can benefit from that investment, and certainly access by rail will be an important part of that. Similarly, in the South-East, I am not sure of the status of the Mount Gambier line—whether it is part of the ARTC network or whether it has been excised from that and is now an intrastate line that may well connect back into the main ARTC line.

As you would know, Mr President, being a Mount Gambier resident, that rail corridor still exists and has been preserved for close to 20 years now, since the Bluebirds and freight trains stopped running. It still potentially provides an important infrastructure and rail corridor servicing the South-East. With those few words, I indicate that the opposition is happy to support the bill.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:45): I thank the Hon. Mr Ridgway for his contribution and other members of the council for their indication of support. In the Hon. Mr Ridgway's comments, he referred to the mining industry. We all know what has happened in relation to access to rail lines in the Pilbara region of Western Australia and how, undoubtedly, that has led to some of these issues coming through COAG. So, the honourable member is quite correct that there is a very important need for multiple access ports and associated rail infrastructure within this state.

Although I am not currently aware of any issues that would be directly impacted by this bill, in a sense, as Minister for Mineral Resources Development, I hope that we have a number of new mining projects in the future that will need some common rail infrastructure. However, regardless of whether or not that is needed now, this is an important measure, and it does go along with the COAG agenda. I commend it to the chamber.

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

ELECTORAL (PUBLICATION OF ELECTORAL MATERIAL) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 June 2010.)

The Hon. M. PARNELL (15:49): This bill seeks to achieve two things: first, it seeks to clarify the law and remove the ability for parties and candidates to issue what have become known as dodgy how-to-vote cards during an election period and, secondly, the bill seeks to clarify the situation in relation to attribution of political comment made on the internet during election periods.

I want to deal first with the first issue, that is, how-to-vote cards. The commentary around this clearly stems from the last state election when we saw some fairly unsavoury but not unusual behaviour from the Labor Party in relation to how-to-vote cards that purported to be from Family First. I will say that the other major party is not immune to this sort of behaviour, either, and neither is the Family First Party the only victim of this type of behaviour. The Greens certainly have been on the receiving end of fairly suspect practices in state and federal elections past.

The question for this chamber is going to be whether the government's proposed amendment will, in fact, fix the problem, and I am not convinced that it will. We debated this provision before the state election, towards the end of 2009, and the point was made then that these words are similar, if not identical, to words that exist in commonwealth legislation which, as I understand it, may have been originally based on Queensland legislation; but that, regardless of their origin, they do not work, have never been applied, and have not, in fact, stopped any of the dishonest and misleading behaviour that has characterised past elections.

So the question for us is: if this is the form of words that has been chosen to be incorporated into our electoral laws and they do not work, why are we wasting our time? I am not prepared to make a final judgment on that question until we have had a fair bit more debate and, also, until we have heard from the select committee that this chamber has established to inquire into this very question.

The second matter raised in the bill deals with what the former attorney-general described as the sewer of criminal defamation that he saw flowing through the online commentary in websites such as Adelaidenow. Whether the former attorney's colourful description is accurate or whether you take an alternative view that it is real, direct democracy in action where people express their views without fear or favour in an open, clear and forthright manner, depends on your starting point.

The bill, to my mind, in some ways should be unnecessary because the nature of parliamentary debate is that, whilst the former attorney-general might have started off with a very clear position about what he wanted to ban, outlaw or regulate in his bill, by the time it got to this chamber and a number of questions had been asked, during both the second reading stage and the committee stage, it was very clear to most of us here that in fact it was not how that legislation would operate. I think, had the matter ever gone to court, there was enough evidence of the intention of the government, through ministers' answers, and also the intent of this chamber that it was never intended to restrict freedom of speech on the internet. Nevertheless, there were some who took the view that the bill as passed (the current act) did in fact have that end, so we now have this bill before us to clarify the situation—and that is not necessarily a bad thing, notwithstanding it might not actually be strictly necessary.

I also have a bill before parliament that deals with the first of these issues in relation to how-to-vote cards. The Greens' position is quite simple; that is, if you want to get rid of dodgy how-to-vote cards you can, very simply and without any harm to the democratic process, get rid of all how-to-vote cards. They are, in fact, something whose day has passed. How-to-vote cards have passed their use-by date. They are not needed in a modern democratic society and they are not needed for two very simple reasons. The first one is that we no longer have the situation where the candidate's party affiliation is not on the ballot paper. It is and it has been on the ballot paper for some time. It used to be the situation that, if you did not know which of the four candidates—Jones, Smith, Henry and Brown—represented which party, you basically needed a how-to-vote card from one of the volunteers of the parties that you wanted to support to tell you who was their candidate. We do not need that any more because the parties are on the ballot paper.

We also have a provision—I am not sure whether it is unique to South Australia, but certainly it is not universal—that how-to-vote cards can be provided to the State Electoral Office, they can be incorporated into a poster and placed in each voting compartment, which means that voters have two ways of getting the information they need. First, it is on the ballot paper itself; and, secondly, if they raise their eyes, they will see that it is on a poster directly in front of them in the voting compartment. So, we do not need people handing out how-to-vote cards. If we can get rid of how-to-vote cards, we get rid of the dodgy practices that go with how-to-vote cards.

However, my hope is that, either at the conclusion of the second reading or at some stage fairly soon, this council will adjourn debate on this bill and we will await the outcome of the select committee that this chamber has established. I have made it clear to members that I am more than happy for my bill banning how-to-vote cards to suffer the same fate, if you like. In other words, let's leave it on the *Notice Paper*, let's wait until the select committee has reported and then we can consider all the various models of electoral reform that have been put forward by the various parties in a more comprehensive way.

With those words, I look forward to the adjournment of this debate and to coming back to it some time—maybe it will be September or October, but I certainly hope it will be before the end of the year—when we can have a more thorough debate. Finally, in case members might be nervous about adjourning an important piece of legislation, I add that we need to remember that this bill and the act that it amends have no work to do for more than three years. It will not be needed until the next election comes around. So, we do not have to make a hasty decision; we can in fact make a considered decision.

Debate adjourned on motion of Hon. Carmel Zollo.

MINING (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: A number of amendments have been tabled on this bill, including a few at short notice. I understand that, because we want to get this bill underway, some issues may need to be revisited later in the debate. It would be my preference that we can make as

much progress as we can on this bill and perhaps, if necessary, recommit or revisit some clauses on which there are still discussions or people making up their mind. Given the volume of the bill, it would be useful if we can make as much headway as we can and perhaps revisit some clauses later, but I guess they will be indicated by members as we go through the debate.

The Hon. M. PARNELL: I have questions on clause 1. I want to ask the minister about the relationship between this bill and the issue of mineral exploration and mining in the Arkaroola Wilderness Sanctuary. I appreciate that I do have a specific amendment on the topic of Arkaroola, but I think this is an appropriate question for clause 1. In response to a question from me on 5 February 2009 relating to Arkaroola, in his answer the minister said, 'I will be bringing some amendments into this parliament.' That is the bill we have before us. He goes on:

> Certainly I would not be contemplating any further activity by Marathon at least and until that legislation was in place, and that might well be some time away.

The minister then went on to say:

> In any case, I think that at the very least the deficiencies of the Mining Act that were brought to light by Marathon's activities need to be corrected. Then I think the government would have to give consideration to the impact of any further exploration and in particular any public benefit that would come out of that, given the history of this matter. I am not going to consider that until at least those two preconditions are met, and I expect it would be some time at least before the legislation would be considered by this parliament.

This was over a year ago, back in February 2009—

The ACTING CHAIRMAN (Hon. B.V. Finnigan): That is some time.

The Hon. M. PARNELL: —so I am not debating with the minister that it has not been some time. It has: it was over a year ago. What I want the minister to explain to the house is this: exactly which parts of this bill does he see as relevant to resolving the question over Arkaroola?

The ACTING CHAIRMAN: I remind the honourable member this is not question time.

The Hon. P. HOLLOWAY: It is some 15 months since I made that statement. It is clear that the penalties that are provided for in the Mining Act 1971 are fairly inadequate. That is why one of the series of amendments in this bill is to increase penalties to enable the government to deal with situations, so that if there is some breach of the Mining Act there is the capacity to take appropriate action. We find in a number of bills—it is not just the Mining Act: it often comes up under the Development Act and other bills under my jurisdiction—that the options open to government are either at one extreme virtually doing nothing or else basically running the company out of business.

In fact, given that there is a range of severity of breaches that might apply, it is useful to have a range of penalties that go from doing nothing to basically revoking a licence or, perhaps if it is under the Development Act or some other act, of taking some other severe action. That is why it is important that within modern legislation we do have a range of penalties, so that there can be an appropriate penalty.

From memory—and it was 15 months ago—there were a number of issues in relation to, I think, reporting, and so one could refer to the new part 10A of this act—Programs for Environment Protection and Rehabilitation, and probably new part 10B as well—General Provisions Environmental Protection. Although the provisions in question may not have been specifically introduced with Arkaroola in mind, nonetheless some of the issues that arose in that particular incident up there and in other incidents do require strengthened legislation within those areas.

New clause 74AA—Compliance Directions, is also a provision that we believe should be in the act, and that is based, in fairness, not just on our experience with Marathon and the problems encountered up there but also on some other experiences we have had. Just off the top of my head, they are the main provisions that we had in mind as a result of what happened at Arkaroola several years ago.

The Hon. M. PARNELL: I thank the minister for his answer. Can the minister confirm that none of the increased penalties that he referred to, or the increased enforcement provisions or the increased environmental scrutiny, will be retrospective?

The Hon. P. HOLLOWAY: We do not believe so. It is not normal for legislation to be retrospective unless, of course, there are very special circumstances. Normally, the parliament does not support retrospective legislation, but since the honourable member has referred to the Arkaroola situation and Marathon, as I pointed out in answer to that question, 15 months ago, or at

least on some other occasion around then, the penalty to the company financially has been very severe. The penalty has continued, given the lengthy delay that it has had in terms of taking any further decision in relation to its activities. The company, as I indicated then, has suffered a pretty severe penalty. I think it would be inappropriate to introduce legislation retrospectively, unless there were very special reasons for doing so.

The Hon. M. PARNELL: The reason for my asking the question about retrospectivity is that I was trying to determine whether there was anything in this bill that could be used in relation to the past behaviour of Marathon Resources or its existing mineral tenement. The minister has answered that question. I have one further point on this aspect of it.

My understanding from the minister's answer is that what he is effectively saying is that we will have a better and stronger act if this bill is passed and then, if anyone misbehaves–whether it is Marathon Resources or anyone else–we will be in a better position to deal with them. In other words, your answer to me suggests that you are looking to future remedies for future breaches, rather than anything in this bill which directly deals with the past breaches by Marathon, because that is the example of their mineral exploration licence and other conditions of operation.

The Hon. P. HOLLOWAY: In relation to that particular issue, under the current act there were certainly remediations. That action was taken under the current act or environmental legislation, which of course can also apply in relation to these matters. In fact, that issue—the issue of burying waste—was remediated, and the company had undertaken that action. That took place under current law.

In relation to past behaviour, if that is relevant to future issuing of licences and so on, then I guess that could be part of the act. I do not want to suggest that the measures we are introducing are retrospective in the sense that any mining company would be subject retrospectively to one of these new provisions. One could apply a penalty for something that happened prior to the act. That would not be appropriate, and we are certainly not proposing that.

The Hon. M. PARNELL: There was one other matter the minister alluded to and, again, the Arkaroola situation provides a useful case study, but it is of general application; that is, the question of sovereign risk or the risk the state sees that it runs when a minister exercises powers under the act. For example, the minister has said in this place words to the effect that, if we do not renew a mineral tenement, or if we do not grant a brand-new mineral tenement, we as a state might somehow be at risk. So, my question of the minister is: does this bill clarify the ability of the minister to not renew or, in fact, not issue a new tenement, as a consequence of noncompliance with conditions, or a breach of some other, either legislative or policy requirement?

The Hon. P. HOLLOWAY: There are conditions under the current act that enable a minister to not renew a licence. That is judged on its merits, if there has been a clear breach of the act. So, in that situation, the exploration licence, under part 2 of the bill, clause 16, which amends section 28—Grant of an exploration licence, is pretty much unchanged. There is an amendment to section 29—Application for exploration licence, which does have some amendments. Essentially there are powers now.

The honourable member talked about sovereign risk. Obviously, that really relates to how the industry, if I can use that term, internationally would judge decisions made under the act, if you refused to grant a licence. Sovereign risk would occur if action is taken by any government under an act that is seen to be unfair or precipitate in some way.

I think the important thing here is that, if one were ever to remove a licence, there has to be a good reason for doing so—that is the bottom line here. There would have to be a clear breach, which is really where the question of sovereign risk would lie. Normally, a company that was abiding by the Mining Act, unless it had breached it in a fairly severe way—and of course, what a severe breach is can be a fairly subjective judgment—would expect its licence to be renewed. Apart from that comment, I don't think I can enlighten the chamber any further.

The Hon. D.W. RIDGWAY: I have just one question on clause 1. I asked this question of the minister in the second reading speech, in relation to the impact on a farming property, where an exploration licence has been granted and something is discovered. The case I am most familiar with is where coal, I think, has been discovered underneath a Yorke Peninsula property.

I just question the impact that it has on that particular landowner's future. It is not an actual, active mine, and I think there is an amendment—I think the Hon. Rob Brokenshire and even the minister now have an amendment—that may deal with it once a mining venture has been

established. I went through the minister's summing up and have read it a couple of times, and he answered most of the questions we had, but I do not recall his answering that one.

It appears from the reading of the amendment that it really only impacts when a mine has been established. He may well have had some legal advice as to whether, if exploration has taken place and a resource has been discovered, this amendment (which I think he will discuss with his adviser), in relation to a mine having been established, will satisfy financial institutions that the farmer will be well and truly justly compensated so that they have some certainty about the value of the asset if they wish to sell it or use it and borrow against it to expand their farming operation.

The Hon. P. HOLLOWAY: There is a big area here, as the honourable member has suggested. There was initially an amendment moved by the Hon. Mr Brokenshire. The government has moved an alternative one, which I believe mirrors what I understand is now in the Petroleum Act is a better way to do it to make it complementary. I have had discussions with the Farmers Federation in relation to this matter. The case the honourable member referred to was one in point. If you have a proposal that is still at an uncertain stage as to whether or not it may ever lead to a mining development, does that place an unnecessary burden on a landowner in terms of how they may move forward?

Fortunately, there are not that many cases of where a mine is established on farmland (mainly it happens on pastoral properties as most mineral resources are in remote regions of the state, either pastoral or other crown land), but in those few cases that exist normally the compensation clauses are such that the farmers would be more than adequately compensated as a result of the mining activity. The grey area is where a mine may occur at some stage in future—and it may be some years off because of further exploration required—and it puts a level of uncertainty over landowners. I can see that as being a real problem, and dealing with it is not easy. The government has put forward this amendment. It mirrors what is in the Petroleum Act, and the Hon. Mr Brokenshire had raised this issue. The amendment states:

If the activities of a mining operator on land substantially impair the owner's use and enjoyment of the land—

which is a well understood legal concept—

the owner may apply to the Land and Valuation Court for an order under this section.

One would hope—and certainly it is my understanding—that within the Petroleum Act this clause has worked well, and that is why we would propose putting it in the act to deal with exactly the sort of situation to which the honourable member refers. In the cases that arise here it is a fairly difficult area of law to deal with because there is inevitably some uncertainty about what may happen. Ultimately, if a mine is established the property owner can expect that he would get something, and the norm would be significantly in excess of the market value of the land. I think that in most cases mining companies would rather purchase land on generous terms to resolve these issues. Where exploration is occurring and the discovery has not yet reached the point where a decision can be made on a future mine, that may create some uncertainty and, if an owner can establish that that is impairing their use and enjoyment of the land, then they would have a claim.

The Hon. D.W. RIDGWAY: Has the minister or the department sought any legal advice in relation to that amendment he is proposing so that, from the viewpoint of financial lending institutions, they would have some security in knowing that their interests were protected along with those of the land owner? Has any advice been sought on this matter? If that advice has been sought and it has some legal standing, it may alleviate the uncertainty where, as in this particular case with which we are all familiar, we have a resource discovered on a property that may be mined at some point in future.

The Hon. P. HOLLOWAY: Obviously banks will take their own counsel on the impact of any amendment. If it is up there, all the government can reasonably do is take its own advice from crown law as to the impact. Obviously financial institutions will make their own assessment about what the impact might be.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

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

Page 4, lines 11 to 13—Delete subclause (1) and substitute:

(1) Section 6(1), definition of appropriate court, paragraph (c)—delete paragraph (c).

I advise the committee that this can be a test amendment on the concept of shifting the jurisdiction for most mining matters from the Warden's Court to the Environment, Resources and Development Court. I set out for members in the second reading why we believe this is necessary, and in essence it is because of our amendments and the government's own amendments involving groundwater and the environment as major considerations. It is our opinion, and that of others much more learned than ourselves, that the ERD Court is specialised in this area and will be a better way of managing this than the Warden's Court in determining these specific issues and other relevant issues.

The Hon. P. HOLLOWAY: The government opposes this amendment. The Warden's Court provides a mining proponent and interested parties, such as landowners, a court whereby matters pertaining to mining can be dealt with by a magistrate who has knowledge of the Mining Act—in other words, a specialist in the area. The Warden's Court has the power to call on any relevant environmental expert for information pertinent to a particular case.

The proceedings in the Warden's Court are less formal than in most other courts. In the Warden's Court, applicants may represent themselves, and they often receive guidance from the court. The honourable member's proposal would be detrimental to some landowners, as the ERD Court is a more formal court, and it may be less appropriate to represent oneself.

Starting at the ERD Court reduces the ability to appeal to a higher court that is relatively low cost. So, if you went to the ERD Court and lost, the next court of appeal would be the Supreme Court, which becomes costly for all parties, whereas with the Magistrates Court, one can, if necessary, appeal to the ERD Court.

Plaint notes lodged with the Warden's Court are heard within one week. In the ERD Court, they are heard generally within one month. Plaint notes in the Warden's Court cost $46 versus $105 in the ERD Court. When one looks at it, the Warden's Court is a specialist court. Generally, the same magistrate hears matters there, or perhaps several magistrates with expertise in this area would hear such matters.

They are very familiar with the act and, as I said, we believe that it is preferable for those who need to deal with the court to deal in a specialist low-cost jurisdiction that enables people to represent themselves more easily rather than have to go before the more expensive court where the proceedings will be more formal.

The Hon. D.W. RIDGWAY: I indicate that the opposition has sought some advice, and the shadow minister, Mitch Williams, and I have had a number of meetings on this amendment bill and all the tabled amendments. It is our view, and advice that we have received, that it is likely that this will increase the cost for litigants without really conferring any additional rights on the landowners.

Notwithstanding the Hon. Mr Brokenshire saying that there are people more learned than all of us (and there are probably a lot of people in the world more learned than all of us), the advice we have received is that there will be increased costs (and I think that the minister indicated that) without conferring additional rights and will therefore bring no advantage to landowners, so the opposition will not be supporting the Hon. Mr Brokenshire's amendment.

The Hon. M. PARNELL: I was going to speak at some length to try to convince members of the opposition that they should support this amendment, but I will be very brief now. I will say a couple of things. First of all, I have another amendment which seeks to transfer a particular jurisdiction from the Mining Warden's Court to the Environment, Resources and Development Court, and that is that jurisdiction that relates to conflicts between landowners and miners. There is possibly some argument that, where there are disputes between different mining companies, they might be more than happy with the Mining Warden's Court, but I think they would be equally happy with the Environment, Resources and Development Court.

Just to take issue with some of the things the minister said, he referred to the Mining Warden's ability to seek expert assistance. The ERD Court is in exactly the same position and, in fact, they have some dozens of expert commissioners, experts in different fields, including the sorts of fields that are relevant to mining. Experts in the fields of groundwater, for example, are included in the numbers of the part-time commissioners of the ERD Court.

The minister said that the Mining Warden's Court is less formal. I think that some of the members of the ERD Court would take exception to that because, whilst there are formal

proceedings involving lawyers, it is also a jurisdiction that prides itself on its ability to deal with unrepresented litigants.

I would remind the chamber as well that the ERD Court has in its legislation a very important provision, that is, the provision for a roundtable conference before a matter actually gets to court—the ability under section 16 of the ERD Court Act for the parties to sit around a table and see whether a resolution can be reached without the need for a court trial (it does not come any better than that), rather than having to go straight into an adversarial court case.

The minister made the point that if the ERD Court is made the relevant court, then appeals would need to go to the Supreme Court. I do not think that that is necessarily the case because, where an ERD Court comprises a commissioner or a single judge, an appeal would lie to the Full Court of the Environment, Resources and Development Court, which usually comprises a judge and two commissioners. I have been there many times over the last 15 years to know that that is the result of a challenge in many cases, and we could make sure that that was the case in this legislation.

The Hon. P. Holloway: Did you win any, though?

The Hon. M. PARNELL: The honourable minister asks whether I won many cases. In fact, he has me on a soapbox now because my record was 10-nil in the environment court at one stage, and in fact I did win this state's longest ever environment trial back in 1999 against 42 tuna feedlots in Louth Bay which unfortunately did not survive the rigours of the Supreme Court with its lack of understanding of environmental issues that the ERD Court had.

I appreciate that this amendment is not going to succeed, but I urge members to keep an open mind in relation to the more limited role that the ERD Court might play in those fairly rare but special cases of dispute between landholders and miners, rather than disputes between mining companies.

Amendment negatived.

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

Page 5, line 23—Delete the definition of 'mining operator' and substitute:

> 'mining operator' means the holder of the relevant mining tenement and includes, for the purposes of Part 9B, any person by whom, or on whose behalf, mining operations are carried out under this act;

As I indicated in my second reading contribution, in our view, there has been some confusion about exactly who the mining operator is, whether it is somebody who is just the tenement holder or, in fact, the person who is undertaking those particular actions on behalf of the tenement holder.

I note that there is some discussion within the South Australian Chamber of Mines and Energy. I will read into the record this letter that I think is on the way to the minister and indicate that it may be better to test the mood of the chamber on this particular amendment. It may even be the will of members here to perhaps recommit this particular clause if there is a change of view from the government over the coming weeks. I think the understanding is that we will progress this bill as far as we can, but we will probably not complete the committee stage before we break.

This letter is written by SACOME to Dr Ted Tyne, the Director of Mineral Resources. I will not go into all the preamble, but the letter states as follows:

> ...SACOME has a largely common position with PIRSA regarding the bill and the various proposed amendments to it. However, SACOME is not in agreement with the state regarding the proposed amendment in the bill to the definition of 'mining operator'.
>
> SACOME, through the Hon. D. Ridgway MLC, has proposed a 'compromise' amended definition which recognises the state's valid reasons for amending the definition (as it pertains to statutory obligations), but maintains the current position relative to Part 9B.
>
> In summary SACOME is of the view that the state's proposed amendment is a retrogressive step which does not take account of the provisions of Part 9B of the Mining Act and the legal interpretation, and practical implementation, of those provisions uniformly given by the resources industry in the state since the enactment of that part.
>
> SACOME thus submits that the definition as proposed by the Hon. D. Ridgway MLC should be adopted or, alternatively, that the current definition should be retained pending more detailed consultations regarding the implications of the proposed change.

With members' indulgence, I will just read the extra bit, which is about a page. The letter continues:

A. Background

1. The state's proposal to amend the definition of 'mining operator' was introduced into the bill after the completion of the lengthy consultation process with industry.

2. This late change in the bill was not drawn to SACOME's attention at that time.

3. Upon SACOME becoming aware of the change, it immediately raised its concerns with PIRSA, requested further meetings with PIRSA regarding the change and suggested that direct discussions should take place between crown law and SACOME's representatives.

4. These requests were not acceded to.

5. SACOME consequently sought the assistance of the Liberal Party and, through the Hon. D. Ridgway MLC, proposed an amended definition which sought to both recognise the reasons behind the state's proposed changes to the definition (as understood by SACOME) and the need to preserve the existing definition for the purposes of Part 9B.

B. Reasons

1. Resources industry farm in and joint venture agreements typically allow for a party farming in, who is not the registered holder of joint venture tenements (farminor), to conduct mining operations as the operator.

2. Clearly the farminor obtains its rights to carry on mining operations for the purposes of the Mining Act from the joint venture party who is the registered holder of the joint venture tenements (farminee).

3. Crown law appears to draw from this position that all contracts entered into by the farminor, as operator under the joint venture, are necessarily entered into as agent for the farminee, including native title mining agreement under Part 9B of the Mining Act.

4. The state consequently holds that the proposed new definition of 'mining operator' only clarifies the intent of the current definition, but makes no substantive change to it.

5. SACOME, and legal practitioners working for the resources industry, with whom SACOME has consulted, do not share this view.

6. On the contrary, the view of SACOME and the industry is that:

   a. at law and in practice a distinction is to be drawn between the capacity of a farminor in conducting mining operations and its capacity in entering into contracts. The fact that a farminor gains its rights to conduct mining operations from the farminee does not dictate the capacity in which the farminor enters into contracts relating to those operations;

   b. the consistent practice under joint venture agreements is for a farminor to enter into relevant contracts, as operator, in its personal capacity;

   c. this practice is consistent with the commercial context within which those contracts are entered into, i.e. the farminor is conducting on-ground operations and the farminee does not wish to bear any contractual risks for those operations (although the farminee clearly remains liable for the statutory obligations of a registered holder under the Mining Act);

   d. this practice is recognised by Part 9B of the Mining Act and, in particular, the provisions of section 63L, which defines the proponent who is recognised as the person to enter into a native title mining agreement under the part.

7. Consequently, SACOME and the industry do not see the proposed revised definition of 'mining operator' as not effecting any substantive change. On the contrary, the revised definition will, in their view, give rise to a significant, retrogressive and prejudicial change to the basis upon which native title mining agreements under Part 9B of the Mining Act have been, and continue to be, entered into, and which also does not reflect the commercial realities of resources industry joint venture agreements.

8. SACOME thus submits that the amended definition of 'mining operator' proposed by the Hon. D. Ridgway MLC should be adopted. Alternatively, given the importance of this matter and the late juncture at which limited consultations have taken place regarding it, SACOME suggests that any amendment of that definition be deferred and not included in the bill. This will enable further consultations to take place between the state and industry with a view to reaching an outcome which takes account of both parties' positions and concerns.

I am not a legal person and, to me, it is reasonably complicated. I indicate that was a draft provided to the opposition by SACOME. I think it indicates to members that there are some significant grounds for determining why we should put this to the test and hopefully get support for this particular amendment, at least, with the understanding that over the winter break, if further agreement or discussions take place between the government and SACOME and there is a different position arrived at, we would be happy to sit down and facilitate that when we return later in the year.

The Hon. P. HOLLOWAY: I thank the honourable member for his comments. This is a quite technical legal issue as to what the impact of the honourable member's amendment might be vis-a-vis the amendment put by the government in the bill. Perhaps I should firstly put the government's position on the amendment and then I will indicate how we might go forward in dealing with it. Perhaps I should also indicate at this stage that I understand there have been some further discussions between SACOME and its legal people and PIRSA and its crown law advisers in relation to this matter, but it is probably something that would benefit from further discussion.

I will indicate the government's position first. The Hon. Mr Ridgway's amendment proposes to amend the definition of 'mining operator' to provide that for the purposes of part 9B of the Mining Act, which is the part that applies to native title, the operator, not being the holder of a tenement, may enter into a native title mining agreement and be afforded the same rights as the holder for the purposes of part 9B. The definition proposed by PIRSA in the bill does not propose to change the law as it currently applies; that is, the operator is the person who has been authorised by a lease or licence to conduct mining operations. The person authorised is the person to whom the lease or licence has been granted.

It has become apparent to PIRSA that, at times, the mining industry and its legal representatives have erroneously misconstrued 'mining operator' to mean employees, subcontractors or agents that may be authorised to undertake mining operations for or on behalf of the tenement holder. The amendment proposed by PIRSA seeks to clarify beyond doubt that the operator is the tenement holder.

It is critical that the definition in the bill remains unchanged to ensure that, without doubt, it is ultimately the tenement holder who is liable for any matters relating to the tenement. The definition proposed by PIRSA is fundamental to the effective administration and regulation of the act. The further amendment, the government would argue, increases the risk of litigation for the government due to the regulatory uncertainty.

The proposed Ridgway amendment will not change the perceived ambiguity, we believe, of how a mining operator is presently defined in the act and will not provide certainty to industry, as it does not change the status quo with respect to part 9B. Interpretation of the act will still conclude that, where defined in the act, 'mining operator' is the holder of the tenement, including for the purposes of negotiating a part 9B native title mining agreement.

For the purposes of negotiating a native title mining agreement under part 9B, the tenement holder could, under a relevant and lawful authorisation (that is, a power of attorney, instrument of authorisation, etc.), give a joint venturer or mine operator the authority to enter into such an agreement on their behalf. So that capacity exists under part 9B but certainly it is strongly the government's view that it should be quite clear that the ultimate responsibility here lies with the tenement holder.

As I say, the matter is quite complicated. How I propose that we proceed is that at this stage perhaps I could indicate that the government will not oppose the amendment so that it will stay live, but we would reserve the right to recommit at a later stage when there has been further discussion on this matter.

So I indicate that, although the government does not support the amendment at this stage, we are happy to keep it live, if you like, and after further discussions we can come back and revisit this matter by way of recommittal. Should we oppose it now, I think it would be much more difficult to recommit, so we will take that course of action.

The Hon. M. PARNELL: I understand that we are not going to have a debate, necessarily, on the merits of the amendment now, but I want to ask whether the government could take at least one question on notice in relation to this when reconsidering it over the winter break, that is, whether or not there would be any scope under this new definition of 'mining operator' for companies to shift liability to perhaps subcontractors or colleagues with shallower pockets than the original tenement holder. What I would be concerned about is, especially in a bill where we are increasing penalties and making compliance a little more rigorous, that we would not want to see the person with whom the buck finally stops having no bucks at all. So, could the minister consider that question and, if we do recommit this, bring back an answer later?

The Hon. P. HOLLOWAY: I am happy to consider that matter. The government believes that you are likely to have more accountability with the definition as we propose it that says it is the tenement holder. If the honourable member is suggesting that some larger company might use an impecunious party to be a holder, I think that would be an extremely unlikely and a risky business,

given the potential value of a mining tenement. Nonetheless, the matter having been raised, I will look at it and cover that point when we revisit it.

Amendment carried.

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

Page 5, after line 23—Insert:

(8a) Section 6(1)—after the definition of surface stratum insert:

underground water means—

(a) water occurring naturally below ground level;

(b) water pumped, diverted or released into a well for storage underground;

I advise the house that this can be a test amendment on the question of legislating specifically to protect groundwater, or as it has been defined under advice from parliamentary counsel, 'underground water'. The concern expressed not only by the Farmers Federation but others is that, whilst legislating to protect the environment is welcome, to ensure that the policy direction of those enforcing the act is correctly focused on the number one environmental issue, we separately define the number one issue, in our opinion, namely, underground water. We do not believe this creates any ambiguity in the law, rather it makes it loud and clear to the department, miners, farmers and the court alike that underground water is a primary and major environmental concern.

I did ask the minister about this generally in the second reading debate. Again I have concerns and people have raised their concerns with me about inadequate protection of the underground water supply, particularly when you have the person issuing the licences having a pretty solid role in monitoring this. Mining is one of those areas where, potentially, you can put at risk significant aquifers. I think that this amendment is not a major impediment on mining but it is important in protecting our number one resource, that is, quality water.

The Hon. P. HOLLOWAY: The government opposes the amendment. It is one of a series of amendments the Hon. Mr Brokenshire has moved that proposes that underground water (as defined) shall be a relevant consideration in various aspects of the act. The Hon. Mr Brokenshire proposes to introduce a new definition of underground water. In the honourable member's speech the point was made that the Farmers Federation considered that surface and underground water should be considered separately to heighten the importance of underground water when considered pursuant to the act.

All aspects of the proposed definition of environment are equally as important and will individually be risk assessed to determine any possible impacts. The inclusive definition of 'environment' ensures all aspects of the environment are considered throughout the application of the act. It is important to understand that all aspects of the environment interact and must therefore be considered holistically, particularly when assessing against a mining proposal. So, of course, the impact on sub-surface water is a key part of many mining proposals and one needs to look at that holistically rather than, we believe, as the honourable member proposes, to sort of break up consideration with this new definition of underground water.

The Hon. D.W. RIDGWAY: I indicate the opposition will not be supporting the Hon. Robert Brokenshire's amendment, the reason being that the government's bill amends section 6, inserting after subsection (3), subsections (4), (5) and (6). New subsection (4) provides:

Subject to subsections (5) and (6), environment includes—

(a) land, air, water and (including both surface and underground water and sea water)—

It then goes on to include organisms, ecosystems, native fauna and other features or elements of the natural environment. The opposition is satisfied that the new definition as proposed to be inserted by the government does cover all water.

Notwithstanding that the Hon. Robert Brokenshire and, I think, the Farmers Federation are saying, 'Let's heighten the value or the importance placed on groundwater,' in this dry state, whether it is surface water, groundwater, rainwater, sea water, dirty water, clean water or whatever sort of water, it all has the same importance and the opposition is happy with the definition to be inserted by the government.

The Hon. M. PARNELL: There is a point of view which would say that this amendment is not necessary because water is already taken into account. I think that is probably correct. The second part of that is that water is taken into account. It is part of a more holistic definition of the

environment. In fact, I know from personal experience, having made inquiries and representations in relation to a proposed mine in the Adelaide Hills, the reopening of the Bird In Hand Mine, where impact on water is a key issue. I have talked to people in the department and they make it very clear that a water licence would be required because it is a water-affecting activity.

Having said that, the honourable member's amendment seeks to put added emphasis on water. I do not believe that is necessarily to the detriment of other aspects of the more holistic definition of the environment. We could pull out biodiversity and we could give that extra attention as well—and I would like that. My approach to amendments like this is: does it do any particular harm? Will it result in any unintended consequences? I think the answer to both those questions is: no, it will not, but it will simply single out this aspect of underground water to make sure that it is harder to ignore because it is named separately as a consideration.

Whilst I am of the belief that this amendment might not strictly be necessary for the operation of the act, because I believe the act will take groundwater into account, in any event, if push comes to shove and we have to decide whether or not to support it, we will be supporting it because we do not believe it causes any great harm.

The Hon. R.L. BROKENSHIRE: I appreciate the comments of all honourable members. I ask the minister this because of the comments of the Hon. Mark Parnell. Often a mining venture is open cut, particularly in the Greater Adelaide area (but also in other areas), but I raise the Greater Adelaide area because that is where some of our most pristine and important aquifers are. With respect to biodiversity, with an open-cut mine, they get approval to mine and you can forget the biodiversity because a bulldozer comes in and it has gone—all the vegetation has gone, the birdlife has gone, etc. I witness that regularly pretty close to home, but I wear it in the interests of the economy, as do other farmers and other people in this state.

What I want from the minister is some assurance that there is going to be absolute focus, monitoring, control and policing over the underground aquifers when mining operations are occurring. It is one thing to have it as it is now but, without a specific focus, you can have a mine that can take hundreds of metres right through the subsoil and soil structures to the point where they finish mining. On behalf of constituents and others, I am not assured at this point that, in the way it is done, there is sufficient focus, checks, controls and balances on impact on recharge and possible quality aspects to that aquifer.

What assurance can the minister give us that his department is going to have enough focus on this vital area? With mining, you could end up with the situation that they look at the environment generally, they sign off on that, in comes a massive open-cut area and the next minute food sustainability is at risk because both the recharge and the quality of the aquifer have been damaged or destroyed.

The Hon. P. HOLLOWAY: Such considerations are obviously very important. I think the Hon. Mark Parnell referred to the proposal at Bird in Hand, and I think he made the comment that it would be necessary to get a water licence. Clearly, issues such as water are absolutely crucial to any decision made on a proposal such as that. The department would rely very heavily on the advice of the Department of Water. Obviously, decisions that have any impact on groundwater are considered very closely, and the department would rely on the advice of the relevant agencies in relation to that.

The honourable member referred to the sandmining near his property; is that Glenshera? If I recall correctly, some years ago, in fact, part of that area that was mining was actually put in a reserve during my term as minister. So, there are some constraints on that which reflect the sort of compromise that one makes in such decisions.

Amendment negatived.

The Hon. R.L. BROKENSHIRE: I withdraw my amendments Nos 3 and 4 as they are consequential. I move:

Page 5, after line 39—Insert:

(7) For the purposes of this Act, South Australia's food security means a situation where—

(a) all South Australians have physical and economic access to safe and nutritious food that will meet their dietary needs and food preferences so as to be able to lead an active and healthy lifestyle; and

(b) insofar as is reasonably practicable, the food that falls within paragraph (a) may be met from food grown or produced within South Australia; and

(c) export opportunities for South Australian food producers are protected.

Family First is certainly, generally speaking, supportive of mining, and we hear of all the great opportunities occurring as a result of mining. However, equally important is national food security, and, in our case obviously, state food security. These amendments will again be a test clause on the introduction of additional consideration of food security in mining applications.

In addition to adding the environment—and that is what we have just been talking about—it also makes sense in our view to add food security considerations. We are rapidly running out of our intensive agricultural and horticultural land, as it is. Also, we are rapidly importing more food at a substandard quality from overseas. We believe that with these miscellaneous amendments we should be focusing on food security.

I am fairly active on the issue of food security generally, but so are a lot of my colleagues in this council and the lower house and, I might say, also in Canberra, both in the Senate and the House of Representatives. I am confident, as a result of what I hear from senators like Senator Bill Heffernan, that the Leader of the Opposition would realise that many elements of the Liberal Party are still very focused on food security.

We are taking a stand here on mining but, as I explained to SACOME, this is not about setting up another hurdle for mining for hurdle's sake. Those miners need to be fed like the rest of the state. As I have said before, mining brings considerable value to our economy. The National Farmers Federation recently launched a federal election manifesto which attests to the fact that the only true sustainable industry on the land is farming. We want to ensure it is protected and we believe that it is only fair and reasonable that, just like adding in the environment focus (which we welcome), food security should be a consideration.

The Hon. P. HOLLOWAY: The government opposes the amendment. The Hon. Mr Brokenshire has a series of amendments that proposes that South Australia's food security (as he defines it in his amendments) shall be a relevant consideration in various aspects of the act. The Hon. Mr Brokenshire proposes to introduce a new definition of SA's food security.

In the honourable member's speech, the point was made that the minister would be forced by the act to consider the impact that mining activity would have on our ability as a state to produce our own best quality, healthy food for not only South Australia and the nation but also export in the regions if the mining activity were allowed to proceed.

I would just make the point, and I think I did this in response at the second reading stage, that the threat that mining may pose to South Australia's food security is not really a credible risk, considering the very small footprint of mining. It was once told to me, and I am not sure how true it was, but I remember at one conference somebody said that the footprint of mining was less than hotel car parks. That might well be so, if one measured the area. Certainly, it is a very small proportion of the country's land mass and many mines are in areas that are not productive land.

South Australia's food security as a relevant consideration when assessing a lease or licence would be difficult to assess given the uncertainties about whether a food was healthy or not and the volume of food required to be considered. The current definition of environment and exempt land provisions address the economic value of the land use. I would like to suggest, and I think I made this point in the response, that urban growth is arguably a more relevant risk to South Australia's food security. Mining within the Greater Adelaide area is a temporary land use and, in many cases, full return to agricultural land is achieved. If one looks at sand mining and other forms of mining, there can be a full return to agricultural land.

Mineral resources within the Greater Adelaide area is part of one of the amendments in this series by the Hon. Mr Brokenshire—he wanted to restrict that unless it had parliamentary approval. Mineral resources in the Greater Adelaide area are predominantly extractive mineral leases. There are only two exceptions I can think of: probably the Angas mine at Strathalbyn—if that is in greater Adelaide, it might just sneak in—and, arguably the Kanmantoo mine, which was an old mine in any case and is about to reopen. Those are the only metalliferous mines I can think of. The rest of the mineral resources within the Greater Adelaide area would be predominantly extractive mineral leases. I am advised that 25 per cent of these leases are owned by the landowner. Landowners under the act already have a right of veto over extractive minerals so, clearly, in a number of these cases, the landowners have chosen to provide their land for extractive purposes.

Extractive mineral leases often supplement a landowner's income, particularly farmers. I would also make the point that hard rock quarries within the greater Adelaide area are located on

land which is generally not highly productive. That is area that is, arguably, reserved for other purposes so, if they are hard rock, almost by definition they tend not to be highly productive. To restrict mining for extractive minerals to outside the Greater Adelaide area would significantly increase costs for urban development, particularly housing, council works, road maintenance, etc., which would lead to increased rates and so on.

In other speeches, I have mentioned the fact that in Sydney, I am informed, most extractive materials there have to be railed in from some hundreds of kilometres away from Sydney because there are very few sources of extractives, and that is one of the reasons why the cost of housing and other facilities in that area are so high.

So, I think when one puts it all together, the great threat to food security is not, I would suggest, mining but that there are other, perhaps inappropriate, subdivisions. Speaking with my other hat on as Minister for Urban Development and Planning, I would say that it is actually the type of subdivisions for country living, where you have holdings that can vary from one to five or 10 hectares. I would suggest that these have far more impact on food security than a couple of metalliferous mines in the Greater Adelaide area and hard rock quarries that are used for road maintenance or other construction purposes.

They have far less impact than, as I said, inappropriate development. I think one of the things that I, as Minister for Urban Development and Planning, have made a point about on a number of occasions is that, if we are really serious about preserving high value agricultural land, we must encourage councils—or perhaps take action outside them—to ensure that we confine our urban growth to within particular boundaries and restrict subdivision, particularly those smaller sized lots, which can take a lot of land out of agricultural production. For those reasons, the government opposes this amendment.

The Hon. D.W. RIDGWAY: I indicate that the opposition will also be opposing the Hon. Robert Brokenshire's amendment. While we do have some sympathy with the farming community, I think I agree with the minister that the biggest threat to our farming areas is the encroachment of urban development. That is why the opposition was happy to support the Hon. Mr Brokenshire's Willunga Basin bill in the last parliament: we saw the importance of those particular areas.

The minister mentioned the footprint of mining and how small it is. I will relate my own personal experience when I was farming with my brother. We had an extractive minerals lease for a small sand mine on the property. The area of the extractive industries lease or extractive minerals lease was about 10 acres of some 1,400 acres of land that we owned on that site. That sand mine provided a living—and, I might add, it was probably some of the poorer quality land on the farm (quite poor in pasture and not much good for cropping)—for one of the two families who lived on the farm.

It turned a relatively unproductive piece of our farm into something that could sustain one of the families, especially if we had had a bad season—particularly drought or some particularly bad commodity prices. So, I have a real life experience of where we were able to utilise the resource and take the pressure off the rest of the farm. Certainly, I agree with the minister in terms of where you might have a landowner (such as we were) who has an extractive industries lease and is able to augment their farming income. It certainly provided a much more profitable farming business and much more diverse business, and it took the pressure off the rest of the farm.

As I said, it is the opposition's view that urban development is the biggest encroachment. The clash between mining and farming is probably relatively small, and therefore we will not be supporting the amendment. Notwithstanding the opposition's passion for protecting our farming interests, we do not believe the threat is from mining industries.

The Hon. M. PARNELL: This amendment seeks to make the issue of food security a relevant consideration to be taken into account in the issue of mining tenements or conditions attached to those. It is an important issue that has been neglected. What often happens is that, when the decision is made as to the best and highest use of land, a pecking order is created, and at the very top of the food chain is the mining industry, and effectively it will get whatever land it wants regardless of what other use it has.

The honourable member's amendment does not say that, just because someone is growing food, they will always prevail over a competing claim from a mining company, but it will be a consideration that needs to be taken into account. What we must remember is that the mining industry looks at the world very differently from the rest of us. Often their maps bear no

resemblance at all to the surface features of the land—in fact, it is geological anomalies beneath the land. Like an X-ray they go through the woodlands and the biodiversity; they go through the ploughed fields and the crops and simply look at what is underneath.

The minister referred to what he described as the small footprint of mining. That may well be the case when you look at it one way, but I have recently spent time talking to some colleagues from Queensland, who were talking about the impact of the coal seam gas mining, I think on the Darling Downs, where they are proposing to drill some 40,000 bores through some of the most productive farming land in that state. There are, in fact, hundreds of square kilometres of farming land that are going to be affected.

I know that in this bill we are talking about minerals and extractive industries, such as quarrying, rather than oil and gas. The point is that the Mining Act is for all forms of mining. Whilst we do not have strip coalmining with its huge footprint that they have elsewhere, there is certainly capacity in this act to approve that sort of mining. You would then find that the footprint is, in fact, much larger.

So, the position that the Greens bring to this amendment is that we appreciate what the mover is seeking to do. We also share his concerns about the lack of attention paid to food security. Whilst I agree with the minister that, in pure hectare-affected terms, there is a far greater threat from urban expansion, I still think that this bill would benefit from at least including in the list of relevant considerations the fact that there are other uses of land, including food production, that should be taken into account. We will be supporting the amendment.

The Hon. R.L. BROKENSHIRE: I thank honourable members for their comments. To summarise the minister's own explanation to this, he is saying, 'Look, it is a small footprint. Most of the mining is outside the Greater Adelaide area.' Of course, this does not refer specifically to the Greater Adelaide area, but I take the fact that the minister is including some other amendments. I ask the minister, given that he is saying there are so few times when it would have significant impact, what is the impost of considering food security when issuing a licence? It is obviously not going to be a major impost.

The second question I ask the minister is this. The other arm of the government's department is primary industries. Did his department go and seek a comment from primary industries before responding no to this amendment, or was it simply the mining sector, SACOME, and the mining part of PIRSA that the minister's department got a comment from, with respect to his response?

The Hon. P. HOLLOWAY: In relation to the latter, I take responsibility for the point of view that we have adopted, but I, and the minerals and energy division, have lots of discussions with other colleagues in PIRSA in relation to agricultural matters.

I think the point is that, if you start to introduce the concept of food security as yet another consideration, what really does it mean? How is it going to be assessed? In a sense, it just adds another factor that would have to be looked at. As I think most members conceded, mining, particularly the sort of mining we have in this state, generally has very limited impact on food production, but this would give rise to a number of other considerations.

I think that, in any case, as I pointed out earlier, the current definition of environment and also the exempt land provisions address the economic value of the land use. Generally speaking, the fact that there are so few mining operations within the settled and agricultural areas reflects the fact that the mining industry would rather go looking elsewhere if it can. It is only if you have a fairly attractive target, and it would have to be a very, very high value resource before you would ever contemplate developing a mine in a concentrated agricultural district. Just the difficulties around it I think would act as a sufficient deterrent, but in any case they are taken into account, I would suggest, under the act under those provisions that relate to both the definition of environment and those exempt land provisions that address the economic value of land use.

I would argue that we do take them into account in any case, not just under the letter of the law but also practically because, as I said, any mining company that was seeking to develop would, if it has the choice, concentrate on areas that are well away from primary production if they have the opportunity to do so. As I said, it is only if you have a really high value resource.

In summary, I think there is consideration given to the impact that mining has on alternative land uses. Generally speaking, the value of minerals would be vastly in excess of the value that the land will generate, although there are other cases. The Hon. Mr Ridgway said that you might have

some resources located on low value land anyway, but I would argue that there is already sufficient consideration given through the other parts of the act to the alternative uses of land for agriculture and already a number of constraints against mining in agricultural areas both explicit and taking into account the political reality of trying to develop mines in those areas.

Amendment negatived; clause as amended passed.

Clause 5 passed.

Clause 6.

The Hon. M. PARNELL: I have a number of amendments to clause 6 but, given the comments that the minister made earlier and the support for the Leader of the Opposition, there are some matters that it might be best not to resolve now. This amendment is one that falls into that category: it is the Arkaroola amendment and it relates to a location that is very remote. I know a number of honourable members are keen to go there and have a look. While I do not want to delay unnecessarily the passage of this bill, I would at least like in the first instance if we could delay consideration of amendment No. 1 until later and its companion amendment in my amendment No. 34. So if it is an appropriate procedural motion, I would like to move that consideration of amendment No. 1 [Parnell 1] be taken into consideration immediately prior to amendment No. 34 [Parnell 1].

The PRESIDENT: No, you cannot do that. I will not let you do that. You might get away with a fair bit, but you are not getting away with that.

The Hon. P. HOLLOWAY: Can I suggest an alternative to facilitate debate in the chamber? Perhaps a better way to proceed would be to postpone clause 6 and take that into consideration after the remaining clauses of the bill have been considered. I move that to facilitate the debate.

Consideration of clause 6 deferred.

Clause 7.

The Hon. M. PARNELL: I move:

Page 6, after line 7—Insert:

9AA—Waiver of exemption (including cooling-off)

(1) A mining operator may, by written notice given personally or by post to a person who has the benefit of an exemption under section 9, request the person to enter into an agreement with the operator to waive the benefit of the exemption.

(2) The notice must set out—

(a) details of the mining operations proposed for the exempt land; and

(b) details of the circumstances that the mining operator considers justify the carrying on of mining operations on the exempt land; and

(c) the terms of the proposed agreement, including any conditions designed to minimise the effect of the mining operations on the person; and

(d) the person's right to cool-off under this section; and

(e) the mining operator's right to apply under this section to the ERD Court for an order waiving the benefit of the exemption.

(3) An agreement to waive the benefit of an exemption—

(a) must be in writing; and

(b) takes effect on the expiry of the cooling-off period (unless earlier rescinded).

(4) A person who has entered into an agreement with a mining operator to waive the benefit of an exemption may, by giving the operator written notice before the expiration of the cooling-off period of the person's intention not to be bound by the agreement, rescind the agreement.

(5) A notice rescinding an agreement may be given—

(a) by giving it to the mining operator personally; or

(b) by posting it by registered post to the operator's ordinary place of business (in which case the notice is taken to have been given when the notice is posted); or

(c) by leaving it for the operator at the operator's ordinary place of business with someone apparently over the age of 16 years; or

(d) by transmitting it by fax or email to a fax number or email address provided by the operator (in which case the notice is taken to have been given at the time of transmission).

(6) If in legal proceedings the question arises whether a notice rescinding an agreement has been given in accordance with this section, the onus of proving the giving of the notice lies on the person rescinding the agreement.

(7) If a mining operator has been unable to reach an agreement to waive the benefit of an exemption with a person to whom the operator has given a notice under this section, the mining operator may apply to the ERD Court for an order waiving the benefit of the exemption for the person (the *respondent*).

(8) The ERD Court may refuse to determine an application unless the mining operator satisfies the Court that—

(a) the notice requesting the respondent to enter into an agreement complied with subsection (2); and

(b) the operator provided the respondent with information sufficient to enable the respondent to properly consider the request; and

(c) the operator made a reasonable attempt to reach agreement with the respondent.

(9) On an application, the ERD Court may—

(a) if the mining operator satisfies the Court that—

(i) exceptional circumstances exist justifying the carrying on of mining operations on the exempt land; and

(ii) the adverse effects of the proposed mining operations on the respondent can be appropriately addressed by the imposition of conditions on the mining operator (including the payment of compensation to the respondent), make an order waiving the benefit of the exemption for the respondent and imposing conditions on the mining operator; or

(b) if the Court is not so satisfied—refuse the application.

(10) The ERD Court may not make an order for costs against the respondent.

(11) If an agreement or order to waive the benefit of an exemption takes effect under this section in respect of exempt land, the land ceases to be exempt land, but the exemption revives on completion of the mining operations in respect of which the agreement or order was made or at such earlier time as may be stipulated in that agreement or order.

(12) An agreement or order to waive the benefit of an exemption under this section is binding on—

(a) successors in title to those owners of land who had the benefit of the former exemption; and

(b) the holders from time to time of any mining tenement under which mining operations (being mining operations in respect of which the agreement or order was made) are carried out.

(13) Subsections (11) and (12) apply to an agreement to waive an exemption under section 9 entered into before the commencement of this section as if it were an agreement to waive the benefit of an exemption under this section.

(14) A mining operator is liable to indemnify a person to whom the operator gives a notice under this section for the reasonable costs of obtaining legal assistance relating to the operation of this section up to $500 or, if some other amount is prescribed by regulation, that amount.

(15) In this section—

business day means a day other than a Saturday or a Sunday or other public holiday;

cooling-off period, in relation to an agreement with a mining operator to waive the benefit of an exemption, means the period commencing when the agreement is made and concluding at the end of the fifth clear business day after the day on which the agreement is made;

mining operations has the same meaning as in section 9.

The two amendments I had paired together as being consequential: one was amendment 2, relating to clause 6, but we will come back to that.

The CHAIRMAN: It will be the test case involving the second part of clause 6.

The Hon. M. PARNELL: It will be a test case for part of clause 6.

The CHAIRMAN: Yes.

The Hon. M. PARNELL: This lengthy amendment is a rewriting of that part of the act that relates to what are known as exempt lands and how the owners of exempt lands deal with mining companies that seek access to their lands. In my second reading contribution I think I went into some length as to the problems, as I saw them, with the current system. In a nutshell, those difficulties are that, even though for example, land that is within 400 metres of a dwelling house is technically exempt, it is a relatively easy thing for that exemption to be lifted, in particular by the mining company applying to the Mining Warden's Court.

The list of exempt land includes land within 400 metres of dwellings and also includes land within close proximity—150 metres—of other farm improvements. It includes orchards, cultivated fields and a range of other agricultural land uses which, on a simple reading of the act, would be seen as protected from mining by virtue of being exempt land. The current situation is that, unless the landholder voluntarily agrees to waive the exemption, the mining companies go to the Mining Warden's Court and, almost invariably, succeed in having the exempt status lifted, with or without compensation being paid to the landholder.

So, the fairly comprehensive set of amendments I have introduced here do a number of things: first, they make clearer what is expected of mining companies when seeking landholders' permission to waive the benefits of an exemption. I have incorporated a cooling-off period, not dissimilar to that which applies to door-to-door sales, for example, where the law recognises that hasty decisions can be made and a cooling-off period is needed. Through these amendments, I have ensured that any disputes between the landholder and the mining company will go to the Environment, Resources and Development Court rather than the Mining Warden's Court. We have had some small discussion already about that, but I will revisit why it is very important in these cases that the ERD Court be the appropriate court.

Perhaps most importantly in these amendments, I seek to have a test applied for the very first time as to the circumstances in which the exempt status should be lifted. That test is one of exceptional circumstances. What that means is that the presumption is in favour of this land, mostly farm land, being protected, being exempt, and the mining companies having to show that there are exceptional circumstances for the removal of that exemption.

My amendment proposes increased levels of compensation to landholders. It also proposes that landholders be protected from legal costs. I know from bitter experience that unsuccessful landholders in the Mining Warden's Court can have costs ordered against them. That in a nutshell is the amendment. I am not going to read the whole amendment out, but you can see that it is a fairly standard process that basically involves better access to information and better access to an umpire if a dispute cannot be resolved.

I will very briefly say why I think the Environment, Resources and Development Court is the appropriate court in these cases, notwithstanding that the council has not supported a previous amendment to make the ERD Court the appropriate court in all cases. The starting point is that the appropriate court is defined in the act as one of three. It is either the Supreme Court or the ERD Court or, if proceedings do not involve a monetary claim or they involve a claim for more than $150,000, it is the Mining Warden's Court.

What you find is that, when it comes to the choice of forum for resolving these disputes between landholders and mining companies, the choice is made by the mining company. It is the mining company that makes the application and it chooses where to go, and in my experience they mostly go to the Mining Warden's Court.

The question then is in what circumstances could the matter actually be dealt with by the ERD Court rather than the Mining Warden's Court? That is where you need to go to section 66A of the act, which sets a very high bar for these cases to be dealt with in the Environment, Resources and Development Court. That bar is 'a case of unusual difficulty or importance'. If that test is met then either the Mining Warden's Court itself or the ERD Court can order that the matter be transferred to the ERD Court.

The question then arises: if a matter is in the Mining Warden's Court, how on earth is the ERD Court to say, 'Hang on, we should look at it'? I think the answer is that, if the mining companies do as they normally do and go straight to the Mining Warden's Court, then the dissatisfied landholder has to bring a separate application to the Environment, Resources and Development Court, they have to convince that court that the case is of unusual difficulty or importance, and then they have to get the environment court to exercise its authority to take the case away from the Mining Warden's Court. When you put all that together the net result is: you have a dispute between a mining company and a landholder, the mining company gets to choose the forum, and it is very difficult for the landholder to do anything if they are not happy with that forum.

Another aspect of my amendment is protection from legal costs. That is important, because what we have to remember here is the landholder is exercising a right that has been given to them by legislation. That right is to have their land exempt from the operation of the Mining Act. If they voluntarily waive that exemption because they are satisfied with the compensation they receive or they are satisfied that the mining company is going to replace the fences or rebuild any improvements that have been destroyed, well and good.

No-one wants to stand in the way of the farmer, for example, and the mining company coming to a mutually beneficial arrangement. No-one wants to stop that, but that is not always the case. Often, the mining company will say to the landholder, 'You do it our way. If you don't we'll drag you to the Mining Warden's Court and you will lose,' and the mining company has enough precedent cases that they could show that that is, in fact, a real fear for the landholder.

I know I have spoken at some length. It is a lengthy amendment, but I think that it strikes the right balance between keeping the door open for mining companies who really do want access to that land to be able to reach an agreement with the landholder. However, if the landholder wants to keep the mine 400 metres from their house, which is the standard—I have not changed the standard; the legislation says 'exempt land'—then they should at least have the ability to be able to go to an umpire to reinforce the fact that that is the status.

Of course, if the mining company really wants it, they will make an offer that the landholder cannot refuse. They will buy their house, buy their farm, buy their land, if that is how badly they want to get into that area. This amendment, if it passes, I think will remove a great deal of injustice that is currently occurring in our state. I note, as other members have referred to before, that in the pre-election document that the Farmers Federation put out, this was an issue that they wanted addressed.

I understand that the opposition is sympathetic to what I am trying to do, but it did have some concerns about the forum—whether it was the ERD Court or the Mining Warden's Court—and I would simply point out those extra pieces of information, that the choice is currently exercised by the mining company.

I make the point as well, and I made it before, that section 16 of the Environment, Resources and Development Court Act sends these cases to a roundtable conference to start with, an informal discussion with a commissioner around the table to see if it can be resolved without going to a trial—a far better mechanism than going straight into an adversarial hearing in the Mining Warden's Court.

The Hon. P. HOLLOWAY: The government opposes the amendment. Exempt land is land on which you cannot conduct mining operations and these provisions have been in the act for some time and include land which is situated within 400 metres of a building or a structure used as a place of residence, within 150 metres of a spring, well, reservoir or dam, or a building or structure, etc. Land that is exempt is land that constitutes a forest reserve, any separate parcel of land of less than 2,000 square metres within any city, town or township, and land that constitutes any parklands or recreation grounds under the control of a council. All this land is outside the operation of the Mining Act so one cannot peg it, explore it or develop a mine on it.

The Hon. Mr Parnell really answered this issue himself when he said that normally if a mining company really wants to get onto land, for example, to explore it, if it is land that is otherwise exempt, the best way for them to do that would be to purchase the land, and I would have thought that the provisions as they are provide a very strong incentive in those cases for purchasing that land.

I would have thought the questions of access, which he appears to be most concerned about (and they are issues dealt with under the Warden's Court), are not so much issues of

exemption. The act is quite clear that the land defined—and it is clearly defined—is exempt land unless of course the landowner agrees otherwise.

I would have thought that most of the problems that the honourable member was talking about would come where an exploration company, for example, wanted to get onto land to explore but that is not going to worry them if clearly they cannot go with land which is exempt which is within those specified distances and so on of buildings or structures used as houses or for other purposes as set out in the act.

I am really not quite sure what problem the Hon. Mr Parnell is seeking to solve. His amendments propose to remove several provisions from the exempt land provisions of the act and replace them with this new section 9AA—Waiver of exemption, which would include provision for making an agreement between the mining operator and the person who has the benefit of the exemption, provision for a cooling-off period for the landowner, provision for the appropriate court to determine the compensation to be paid by the mining operator to the person who has the benefit of the exemption, and provision for putting conditions on such an agreement.

I just make the point that I would have thought that the issues are likely to be over access to the property for land that was not exempt, not where the land is exempt. That should be quite clear-cut. As it is, the Mining Act sets out what land is exempt, and the converse of that is the land that is not exempt. It also provides that real issues of compensation be paid by the mining operator, and so on, and that the provision for putting conditions on such an agreement and the provision and agreement under this section be binding on the successors in title to the owners of land. All these issues are really more to do with land where there is some dispute at the early stage over whether or not exploration should be allowed. Exempt land, I would not have thought, is really where the problems lie.

The Hon. M. PARNELL: I thought I would just respond to some of the things the minister said. I agree with him: what the situation should be is what the situation should be. It says that it is exempt land. You would think that means that mining companies just cannot go there. The minister read the section. There are two ways that exempt land can be accessed, whether it is for exploration or whether it is for mining. The first one is that the person who holds the benefit agrees. They say, 'Yes, I'm happy for you to come on,' and they might also agree on compensation. That is the first one, and I do not want to stand in the way of that.

The second one provides that if they cannot reach agreement that is when an appropriate court, on the application of the mining operator—in other words, the mining company takes it to the Mining Warden's Court—determines compensation to be paid, if any, because they do not always order compensation once the mining warden has made a decision.

I can tell you that, having read just about all of those cases, the mining wardens usually start their judgements with the words, 'This is an application under the Mining Act. The Mining Act is all about promoting mining. We are going to allow mining.' It is a unlevel playing field. The whole purpose of my amendment is to basically level up the playing field, attach some criteria that need to met before a court will override what this parliament has said is exempt land.

Whilst I accept what the minister is saying, that the access arrangements and the mineral exploration licence stage is probably the stage of most conflict, but where I disagree is that the mining companies do not want to buy the land at that stage. The last thing they want to do is buy land to explore and then find nothing there. When you are a mining company and not a farmer you do not want to end up with farming land that you do not want. If they are allowed to explore and they find something, chances are that they will want to buy the land, and there might be an argument over compensation

In any of those situations my amendment basically treats exempt land as it was intended by the act, that is, it is exempt unless there are very good reasons for taking it out of that status. That is really the entire purpose. I do agree with minister that a simple reading of the legislation would indicate that there is not a problem, but in practice there is, because of the waiver provisions, which I have rewritten in this amendment and, secondly, the fact that it is the mining wardens who over a period of years have developed a line of reasoning, which, in my view, favours the mining companies at the expense of landholders.

The Hon. R.L. BROKENSHIRE: I advise the committee that Family First will be supporting the Hon. Mark Parnell's amendments. I will briefly speak to them and remind members that further into this debate we have amendments. Except for one clause, which I need to talk to the minister about during the winter recess, I am pleased to see that the minister has now

introduced the same amendment as Family First, and that is about looking after people in a situation where there is mining occurring. We support the Hon. Mark Parnell's clause. It ties in with our amendments to the ERD Court in any case for the reasons that we highlighted earlier in this committee stage.

I declare a conflict of interest here myself; I am privileged to have had a bit to do with legislation and negotiation. However, Visionstream is running around South Australia at the moment on behalf of the commonwealth government putting in broadband, and they have similar legal rights to those with respect to mining exploration at the moment.

It is pretty nerve racking and stressful for run-of-the-mill landowners to know where to go when it comes to the impact of machinery on their properties, fences being cut, and so on. It does not worry a contractor and it does not worry someone exploring for mining. Where do these people go to get a ruling or help after someone has gone on the land to explore or if it is damaged or impediments are put in their place?

As the Hon. Mark Parnell has said, one thing that worries us—and it is not an anti-mining thing—is that the focus in the Warden's Court is so much on the miner. It is almost like the miner gets all the attention and the rights and the poor old landowner has to try to battle away. All this will do is really give a bit more of a level playing field, as far as we are concerned. We do not think that it will be a real impediment on the miners at all; it is just about fairness.

The Hon. D.W. RIDGWAY: This amendment seeks to insert new section 9AA which establishes a new set of processes for establishing waivers of exemption, as members have already discussed. These amendments increase the onus on the mining operator in negotiations with the landowner and provides a cooling-off period where a waiver of exemption is agreed.

Alternatively, it makes directions to the ERD Court, as opposed to the Warden's Court, as the Hon. Mark Parnell has indicated, for those cases where agreement cannot be reached by waiver, increasing the landowner's powers. As the Hon. Mark Parnell said:

> The Warden's Court, having established the principle, expressed as follows:
>
> The purpose of the Mining Act is to encourage mining and the Warden's Court, in making its decision, should seek to enable mining to occur.

It is argued that, invariably, the Warden's Court finds in favour of the miner. We have listened to the debate about exempt lands, and I am sure that a number of us have been approached by a couple of landowners who were approached by mining companies. In one particular case of a farming property in the Barossa, the entire farm would have been exempt because the proposed mine was within 400 metres of the house or, I think, it was within 150 metres of other infrastructure—whether that be a bore, a fence, a trough or cultivated lands, etc.

I think I raised in my second reading speech that there was a concern at the time that this right of entry was served on the landowner and that he had little time to respond. It was the timeliness of it. He was seeding at the time, and that is a very time-sensitive operation. The same could be argued at the other end of the farming cycle—harvest time or vintage, if it was a vineyard.

The Warden's Court is a relatively low-cost jurisdiction. The opposition was only inclined to support this amendment if it remained in the Warden's Court because we felt that the cost to the landowner could just skyrocket out of control. We note that new subsection (10) of this amendment provides that, 'The ERD Court may not make an order for costs against the respondent.' I am not a legal expert, but my understanding is that, in that case, it means costs may not be awarded against the farmer, so they may well be awarded against the mining company.

I think that the opposition agrees with the Hon. Mark Parnell and the Hon. Robert Brokenshire that this perhaps levels up the playing field a little for those areas, especially as I hope for our economy's sake that we go back to a time of increased commodity prices when, as commodity prices increase, we see some of the older mining areas, such as the Barossa and the Adelaide Hills (where they probably have low-grade ore that was unviable when commodity prices were low) become attractive to mining companies because there is a resource of low value but it is close to infrastructure and close to a labour force. A whole range of other factors might make the establishment of mines in some of the older settled farming areas a little more attractive.

So, given the distress that has been caused to a number of farming operators who came to see me when I had the pleasure of being the shadow minister a couple of years ago, it is the view of the opposition that we are comfortable with this amendment, provided that costs are not necessarily burdened upon the farmer.

The Hon. M. PARNELL: The words are, 'The ERD Court may not make an order for costs against the respondent.' The respondent would be the landholder, and the applicant would be the mining company. Because the landholder has not been able to reach any agreement and has not signed the waiver, the mining company has to take the initiative to take the matter to court, so it then becomes the applicant and the landholder is the respondent. Win, lose or draw, the respondent will not be ordered to pay the mining company's costs.

The Hon. P. HOLLOWAY: Obviously, questions of access at the exploration stage were key issues relating to this bill. The government's approach to that comes later in the bill with the amendments to section 58A—Notice of entry. I am sure that issues that other honourable members have raised are ones that we want to address. Clearly, there should be a presumption, in a mining act, in favour of mining, for the simple reason, as we have discussed already, that the footprint of mining is very small but its value can be significantly large.

Historically, there has been this presumption in favour of mining, but it has to be a qualified presumption; there has to be reasonableness that occurs. So, apart from these exempt land provisions, later on in the bill when we come to part 9—Entry upon land, compensation and restoration, there will be not only amendments that we are moving but also a number of regulations that the government intends to introduce after this bill passes, which hopefully it will. We will then deal with these sorts of issues about reasonableness of access, so that one can regulate it to ensure that access at that exploration stage is reasonable.

That, if you like, is the approach that the government prefers, and I guess that is why we are opposing this amendment in preference to the approach that the bill sets out later when we deal with these other provisions involving entry and the related amendments. I put on the record that the government concedes that one of the reasons it has introduced these amendments in the bill is to ensure that there is some more reasonableness and fairness relating to access.

Any mining bill has to have a presumption, ultimately, that mining will deliver enormous wealth to the community on a relatively small footprint, so the capacity for mining to operate has to be a presumption in the act, but there needs to be some balance relating to reasonableness; that is our preferred approach for doing it. Although we will be opposing this particular amendment, we accept the fact that there should be some balancing of the ledger, if you like, and some greater controls over access. Indeed, the government has done a number of things in terms of negotiating with the Farmers Federation and other groups in ensuring that, even though, ultimately, mining may take place, the grounds on which mining companies access land are much less deleterious to farmers.

The committee divided on the amendment:

AYES (14)

Bressington, A.	Brokenshire, R.L.	Darley, J.A.
Dawkins, J.S.L.	Hood, D.G.E.	Jennings, T.A.
Lee, J.S.	Lensink, J.M.A.	Lucas, R.I.
Parnell, M. (teller)	Ridgway, D.W.	Stephens, T.J.
Vincent, K.L.	Wade, S.G.	

NOES (7)

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

Majority of 7 for the ayes.

Amendment thus carried.

Progress reported; committee to sit again.

TRUSTEE (CHARITABLE TRUSTS) AMENDMENT BILL

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

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (17:56): I move:

That this bill be now read a second time.

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

Leave granted.

The Bill addresses a relatively simple matter, but one that is of considerable concern to the country communities of South Australia.

During the passage of the then Health Care Bill, the Government made a commitment to the Parliament that incorporated Health Advisory Councils established by that Bill would continue to hold and receive donations and bequests previously held by the local incorporated hospitals on trust for the local hospital. This commitment was reflected in the provisions of the *Health Care Act 2008* which gave the necessary powers to incorporated Health Advisory Councils (HACs) to undertake these functions.

Donations and other gifts to an incorporated HAC will only be tax deductible if the HAC is endorsed by the Australian Taxation Office (ATO) as a deductible gift recipient (DGR) for the operation of its gift fund. The gift fund, in turn must be established and maintained by the HAC as a valid charitable trust. At the time the then Bill was being considered, the Department of Health advised the ATO of the proposed governance changes but had not received any advice that there may be an ATO concern about the DGR endorsement about the HACs and any gift funds they may establish.

Not long before the Act was to come into force, and as the Department of Health was preparing to progress the applications for DGR endorsement to the ATO, the ATO advised that incorporated HACs could not be DGR endorsed because they were not a public hospital or a charity. Further, a HAC could not be DGR endorsed for its gift fund because any trust established by the HAC solely for the purposes of distributing money, property or benefits to government institutions, namely public hospitals or public ambulance services, would not (in the ATO's view) be a valid charitable trust because of its connection to government. This view was based on statements in certain English and Australian cases that government entities could not be the objects of valid charitable trusts.

The ATO advice caused concern to the HACs, and the country community more generally, to whom the commitment was made that HACs would continue to be able to establish and manage gift funds, including any existing ones, in their community. This commitment is consistent with the decision of the Parliament at the time to pass the *Health Care Act 2008*.

As a possible solution to the problem, the ATO advised that a similar issue was addressed in New South Wales and Victoria by amendments to their respective Acts equivalent to the South Australia's *Trustee Act 1936* and that South Australia may choose to look to a similar pathway to address this matter.

The Bill before the House makes amendments to the *Trustee Act 1936* that will ensure that a trust does not fail simply because of its connection to Government. In effect, the Bill ensures that a gift fund established to hold donations or other gifts for the benefit of a government instrumentality, such as a public hospital or ambulance service, can hold the donations or gifts on trust without being at risk of becoming an invalid charitable trust from the perspective of the ATO A fund established by, for example a HAC, would therefore be considered charitable despite its connection to government. DGR endorsement could then be sought, in relation to the fund and the gifts and donations in the fund utilised for the benefit of the local operations of Country Health SA Hospital Inc and SA Ambulance Service Inc.

The Bill will enable a gift fund to operate in a way that is consistent with the ATO advice as well as meet community expectations about who should be responsible for their donations and bequests to a hospital.

The amendments before the House will therefore enable the incorporated HACs to hold and manage on trust the donations and bequests and to utilise them without risk to the validity of the trust.

The amendments will also address a more general risk to bodies or trusts that was identified as arising out of the original ATO. opinion. Although the ATO's views specifically related to HACs and their gift funds, in principle the advice may put at risk any gift fund that is established that provides benefits to a government instrumentality.

The Bill will have an impact outside of the health sector by ensuring that any existing or future trust does not fail because of its connection to Government. In effect, it ensures the charitable status of a body or a gift fund established by a body that holds, on trust, donations or other gifts for the benefit of a Government instrumentality such as a hospital, an educational institution, a museum or gallery.

Once the Bill is passed, SA Health will progress the applications to the ATO for DGR endorsement. It remains of course ultimately the decision of the ATO to grant the DGR endorsement to a body or gift fund.

The Bill, apart from addressing a concern for HACs, also addresses a previously unknown risk for all charitable trusts that are associated with Government. It is essential to ensure the community can have faith that a donation or bequest can be utilised as intended without jeopardising its charitable or taxable status.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Trustee Act 1936*

3—Insertion of section 69D

This clause inserts section 69D into the principal Act. The inserted clause deems a trust to be a charitable trust if the trust provides money, property or any other benefit to or for the purposes of an entity that would, but for the connection of the entity to government, be a charity. The clause effectively permits a charitable trust to exist in respect of an entity that is a charity despite the fact that—

(a) the entity receives government funding; or

(b) the entity is required to implement government policy; or

(c) the entity or the governing body of the entity is comprised of persons appointed by the Governor, a Minister or an agency or instrumentality of the Crown; or

(d) the entity or the governing body of the entity is subject to control or direction by a Minister.

Schedule 1—Transitional provisions

1—Interpretation

This clause defines *principal Act* as the *Trustee Act 1936*.

2—Validation of acts under trusts deemed charitable under section 69D

This clause validates acts done or purportedly done under a trust of a kind referred to in proposed section 69D before the commencement of that section.

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

TRUSTEE COMPANIES (COMMONWEALTH REGULATION) 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 Industrial Relations, Minister Assisting the Premier in Public Sector Management) (17:57): 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.

On 2 June 2008, the Council of Australian Governments (*COAG*) agreed that the Commonwealth Government would assume responsibility for regulating trustee companies at the entity level.

On 12 February 2009, the Premier signed the 'National Partnerships Agreement To Deliver a Seamless National Economy' (the *NPA*). The NPA requires the Commonwealth, the States and the Territories to enact the legislation necessary to give effect to 27 deregulation priorities, including the regulation of trustee companies. The NPA provides for the payment by the Commonwealth to the State of 'reward' payments. These payments are contingent on the States and Territories meeting their obligations for the seamless national reform program, including the regulation of trustee companies. If South Australia does not meet its obligations for the regulation of trustee companies, the NPA reward payments are at risk.

The NPA Implementation Plan requires the Commonwealth and the States and Territories to enact the legislation necessary to give effect to COAG's agreement on the regulation of trustee companies.

The *Trustee Companies (Commonwealth Regulation) Amendment Bill 2010* implements South Australia's obligations under the NPA to give effect to the COAG agreement on the regulation of trustee companies.

A trustee company is a company under the *Corporations Act 2001* of the Commonwealth (the *Corporations Act*) authorised, under State and Territory legislation, to perform personal trustee and deceased estate administration services (*traditional trustee company services*).

In South Australia, the primary legislation is the *Trustee Companies Act 1988* (the *Trustee Companies Act*). Only companies listed in Schedule 1 of that Act can provide traditional trustee company services in South Australia.

The trustee company industry is small. Currently there are 10 trustee companies listed in Schedule 1 of the Trustee Companies Act. Most of these trustee companies were licensed or approved under the legislation of, and have operations in, many jurisdictions.

Most trustee companies have expanded their activities into other areas of wealth creation, management and transfer. They now offer a range of financial services, including acting as superannuation trustees, acting as

Responsible Entities for managed funds, providing custodial or depository services, and acting as trustees for debenture holders. They are regulated under Commonwealth legislation for these other financial activities.

Whereas a trustee company can provide these other financial services across Australia by dint of their licensing or approval under Commonwealth legislation, under the State and Territory regulated trustee company regime they also had to be licensed or authorised in each State or Territory in which they offer traditional trustee company services.

In addition to being subject to the respective trustee companies' legislation, trustee companies are subject to other State and Territory legislation when undertaking traditional trustee company services. For example, each State and Territory has a *Trustee Act* as well as legislation about wills, administration and probate.

The *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009* of the Commonwealth commenced on 6 May 2010. Schedule 2 of that Act inserts a new Chapter 5D into the Corporations Act, and makes consequential amendments to Chapters 7 and 10 of the Corporations Act. These provisions (the *Commonwealth trustee company provisions*) implement the transfer of entity level trustee company regulation to the Commonwealth.

Under the Commonwealth trustee company provisions, traditional functions of trustee companies (administering charitable and other trusts, obtaining probate, acting as the executor of a deceased estate or under power of attorney) are deemed to be financial services for the purposes of the Corporations Act. Both settlors/testators and beneficiaries will be 'retail clients' of trustee companies for the purposes of Chapter 7 of the Corporations Act. Retail clients are afforded greater protection under Chapter 7 than non-retail clients.

The Commonwealth provisions provide that authorised trustee companies are—

- required to be an Australian registered public company or a wholly-owned subsidiary of a public company;
- regulated by ASIC;
- required to hold an Australian Financial Services Licence (*AFSL*) with an appropriate authorisation to carry out traditional trustee companies services;
- subject to the consumer protection, licensing and conduct requirements of the Corporations Act and the *Australian Securities and Investment Commission Act 2001* of the Commonwealth;
- to the extent appropriate—subject to the disclosure requirements of the Corporations Act;
- required to have suitable internal and external dispute resolution arrangements;
- in the case of charitable trusts—subject to fee regulation, in the form of 'grandfathering' of fees charged to existing clients, and capping of fees charged to new clients, with a review of these arrangements after 2 years;
- in the case of non-charitable trusts and estates—subject to deregulation of the fees that can be charged to clients (provided that the fee schedule is disclosed on the Internet and that no more than the fees specified in the published fee schedule at the time the administration of the trust/estate is begun are charged);
- subject to director and employee liability arrangements that are consistent with the obligations in place for other corporations under the Corporations Act;
- subject to a $5 million capital adequacy requirement;
- subject to a cap of 15% on the shareholding of any single shareholder and associates, together with a divestment regime and a Ministerial discretion to consent to share acquisitions above the cap (for example, for wholly-owned subsidiaries); and
- permitted to hold common funds, which are able to continue to attract external investment.

State and Territory Public Trustees will not be subject to the new Commonwealth regulatory regime unless the relevant Government consents to this occurring.

The Bill amends the Trustee Companies Act to—

- delete the definition of 'trustee company' and substitute a definition that a trustee company is a licensed trustee company within the meaning of Chapter 5D of the Corporations Act;
- repeal provisions that are inconsistent with the Commonwealth trustee company provisions (Chapter 5D, 7 and 10 of the Corporations Act);
- facilitate the transfer of a trustee company's business to another licensed trustee company if its licence is cancelled;
- allow for the making of regulations to provide for the voluntary transfer of business between 2 (Commonwealth) licensed trustee companies; and
- allow for necessary transitional matters to be dealt with by regulation.

The Bill also amends the definition of 'trustee company' in the *Administration and Probate Act 1919*, the *Financial Institutions Duty Act 1983*, the *Guardian and Administration Act 1993*, the *Legal Practitioners Act 1981* and the *Trustee Act 1936* as a consequence of the proposed amendments to the Trustee Companies Act.

These amendments are necessary if South Australia is to comply with its obligations under the COAG agreement and the NPA about the regulation of trustee companies. All States and Territories have enacted, or will enact, similar legislation.

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 *Trustee Companies Act 1988*

4—Amendment to long title

This proposed amendment is a drafting amendment.

5—Amendment of section 3—Interpretation

The amendments proposed to this section are consequential on the taking over of entity level regulation by the Commonwealth. In particular, a *trustee company* will, in the future, be defined as a licensed trustee company within the meaning of Chapter 5D of the *Corporations Act 2001* of the Commonwealth (the *Corporations Act*).

6—Repeal of sections 9 to 12

Currently, sections 9 to 12 make provision for the fees, commission and other charges that may be charged by a trustee company in relation to the administration or management of an estate or perpetual trust. These sections are to be repealed as a result of the Commonwealth taking responsibility for the regulation of such matters.

7—Amendment of section 13—Investment of trust funds

This proposed amendment is consequential on the Commonwealth taking over responsibility for the regulation of common funds.

8—Repeal of sections 15 to 15B

Currently, sections 15 to 15B make provision for the establishment and management of common funds by trustee companies. These sections are to be repealed as a result of the Commonwealth taking over responsibility for the regulation of such matters.

9—Amendment of section 16—Power of trustee company acting in representative capacity to hold its own shares etc

This proposed amendment is consequential.

10—Repeal of section 16A

This section is to be repealed. It currently makes provision for the recovery of GST and will be otiose once the Commonwealth has responsibility for the regulation of trustee companies.

11—Repeal of sections 17 to 22

Currently, sections 17 to 22 make provision for returns, accounts, audits, prospectuses and other information required to be provided by trustee companies. The repeal of these sections is consequential on the regulation of trustee companies being assumed by the Commonwealth.

12—Insertion of Part 3A

New Part 3A makes provision for the regulation of the transfer of estate assets and liabilities under Part 5D.6 of the Corporations Act. The Australian Securities and Investments Commission (*ASIC*) will be the regulator of such matters.

Part 3A—Transfer of estate assets and liabilities

Division 1—Preliminary

25A—Interpretation

This section contains definitions for the purposes of this new Part. In particular, an expression used in this Part that is defined in the Corporations Act will, unless the contrary intention appears, have the same meaning as in that Act.

Division 2—Compulsory transfers

25B—Purpose and application of Division

New section 25B provides that the purpose of this Division is to facilitate compulsory transfers of estate assets and liabilities under Part 5D.6 of the Corporations Act.

This Division applies if ASIC—

(a) cancels the licence of a trustee company (the *transferring company*) and makes a compulsory transfer determination under section 601WBA of the Corporations Act that there is to be a transfer of estate assets and liabilities from the transferring company to another licensed trustee company (the *receiving company*); and

(b) issues a certificate of transfer under section 601WBG of the Corporations Act stating that the transfer is to take effect.

25C—Compulsory transfers of transferring company's estate assets and liabilities

New section 25B provides that, to the extent of the transfer, the receiving company is taken to be the successor in law of the transferring company. Details of just what that means are then set out in the section.

25D—Certificates evidencing operation of Division

This section makes provision for the issuing of certificates by ASIC as evidence of the transfer of ownership to a receiving company of specified assets or liabilities.

25E—Registration or record of transfer

This section authorises and requires the Registrar-General or other authority to register or record in an appropriate manner the transfer of assets and liabilities.

25F—Exemption from State taxes

This section provides that no State taxes are chargeable in respect of a compulsory transfer of estate assets or liabilities facilitated under this Division.

Division 3—Voluntary transfers

25G—Voluntary transfer of transferring company's estate assets and liabilities

This section allows regulations to be made to facilitate the voluntary transfer of estate assets and liabilities from 1 trustee company to another trustee company where ASIC has made a determination under the Corporations Act allowing the transfer.

Division 4—Relationship of Part with other laws

25H—Relationship of Part with other laws

This section provides that new Part 3A has effect despite anything in a contract, deed, undertaking, agreement or other instrument. In addition, nothing done by or under new Part 3A—

(a) places a receiving company, a transferring company or another person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong; or

(b) places a receiving company, a transferring company or another person in breach of—

(i) a law of the State; or

(ii) a contractual provision prohibiting, restricting or regulating the assignment or transfer of an asset or liability or the disclosure of information; or

(c) releases a surety, wholly or partly, from all or any of the surety's obligations.

13—Repeal of section 27

Current section 27 provides that if a trustee company is guilty of an offence, the manager and each company director is also guilty of an offence. Deemed criminal liability is contrary to Commonwealth policy and thus the repeal of this section is related to the Commonwealth assuming the regulation of trustee companies.

14—Repeal of section 30

This proposed amendment is a drafting amendment.

15—Amendment of section 31—Regulations

This proposed amendment adds a new regulation making power to provide for the making of regulations of a saving or transitional nature consequent on the amendment of the principal Act by any other Act, or relevant to the interaction between the principal Act and an Act of the Commonwealth.

16—Repeal of Schedule 1

This Schedule currently lists the companies that are trustee companies under the principal Act. The Schedule is to be repealed as a consequence of the insertion of the new definition of *trustee company* in section 3 of the principal Act.

17—Repeal of Schedule 2

Schedule 2 is spent and so is to be repealed.

Schedule 1—Consequential amendments and transitional provisions

Part 1—Amendment of *Administration and Probate Act 1919*

Part 2—Amendment of *Guardianship and Administration Act 1993*

Part 3—Amendment of *Legal Practitioners Act 1981*

Part 4—Amendment of *Trustee Act 1936*

The amendments to these Acts are consequential on the insertion of the new definition of *trustee company* in section 3 of the Trustee Companies Act.

Part 5—Transitional provisions

1—Interpretation

2—Transitional provision

The transitional provisions confirm that a company that was listed as a trustee company for the purposes of Schedule 1 of the Trustee Companies Act immediately before the commencement of this measure is a licensed trustee company within the meaning of Chapter 5D of the Corporations Act. Consequently, the repeal of Schedule 1 does not affect the appointment of a Schedule 1 trustee company made before the repeal as—

(a) the executor of a will, or the administrator of an estate of a deceased person; or

(b) a trustee, agent, attorney, manager or receiver; or

(c) the guardian of a child; or

(d) the administrator, committee, guardian or manager of the estate of a person who is unable to manage his or her own affairs.

Also, the Trustee Companies Act (as amended by this measure) continues to apply to a Schedule 1 trustee company and, except to the extent of any inconsistency with the Corporations Act—

(a) any duties, obligations, immunities, rights and privileges of a Schedule 1 trustee company arising before the repeal of that Schedule are not affected by the repeal; and

(b) the assets and liabilities of a Schedule 1 trustee company are not affected by the repeal; and

(c) any action taken or notice given by a Schedule 1 trustee company before the repeal of that Schedule or the amendment of the Trustee Companies Act by this measure is not affected by the repeal or amendment.

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

CONTROLLED SUBSTANCES (MISCELLANEOUS) 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 Industrial Relations, Minister Assisting the Premier in Public Sector Management) (17:58): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill amends the *Controlled Substances Act 1984* to implement the 2010 Labor election commitment to create a new aggravated offence of trafficking controlled drugs in or around licensed premises and entertainment venues. It also contains some miscellaneous technical amendments to the Act.

Trafficking in Licensed Premises

The Bill amends section 32 of the *Controlled Substances Act* to introduce a new offence, that of trafficking in controlled drugs in a prescribed area. A prescribed area is defined to mean:

(a) prescribed licensed premises or an area being used in connection with prescribed licensed premises; or

(b) premises at which members of the public are gathered for a public entertainment or an area being used in connection with such premises.

The object of the new offence is to impose a higher maximum penalty (imprisonment for 15 years or $75 000 as opposed to imprisonment for 10 years or $50 000 for the basic offence) and as a result pose a greater deterrent to drug dealing in licensed premises and at entertainment events frequented by young people. At such premises and events the combination of alcohol, atmosphere (loud music, lighting) and peer pressure makes young people particularly vulnerable to criminals selling illegal drugs.

The new offence does not apply to trafficking in all licensed premises. The Government believes this would be too broad. The aim is to target the types of venues frequented by young people and, as a result, drug dealers-

pubs, nightclubs, wine bars and the like. As such, the term prescribed licensed premises is defined to include premises in respect of which these types of liquor licenses are in force:

- a hotel licence;
- a restaurant licence that includes an extended trading authorisation;
- an entertainment venue licence;
- a club licence that includes an extended trading authorisation;
- a special circumstances licence that includes an extended trading authorisation.

The new offence also applies to the Adelaide Casino and there is scope to extend it to other types of licensed premises by regulation should the need to do so arise at some point in the future. Similarly, the definition of public entertainment event is limited to a dance, performance, exhibition or event that is calculated to attract and entertain members of the public. This will cover large outdoor concerts, such as the Big Day Out, and organised dance events (commonly referred to as raves, rave parties or dance parties) whether or not admission is restricted or open, and whether or not an admission charge is imposed or access is free. The reason for limiting the new offence in this way (rather than applying it to any public event) is two-fold:

- these are the types of events at which young people and drug dealers mix; and,
- such events are those at which the police may use their special drug detection powers under the Act.

The new offence will also apply to areas being used in connection with prescribed licensed premises and prescribed places of public entertainment, such as a car parking area specifically provided for the use of patrons of the premises and an area in which people are queuing to enter the premises. The Government is advised that such areas are often used by drug dealers to conduct business with patrons, out of sight of security staff.

Miscellaneous Amendments

The Bill contains two miscellaneous amendments to the *Controlled Substances Act*.

The first is an amendment to the definition of 'discrete dosage unit' to delete the ability to prescribe amounts for discrete dosage units by regulation. This is being done because it is not thought that there will ever be an occasion where it would be wise to exercise such a power.

The second amendment is to give an analyst the power to certify that an analysed substance is an analogue of a controlled substance and to certify as to its weight, amount or quantity. The certificate shifts the onus of proof to the defendant. It is open to the defendant to disprove those matters certified.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Controlled Substances Act 1984*

4—Amendment of section 4—Interpretation

This clause amends the definition of *discrete dosage unit* in the *Controlled Substances Act 1984* to remove the capacity to prescribe by regulation a maximum amount in relation to a controlled drug or controlled precursor contained in a discrete dosage unit.

5—Amendment of section 32—Trafficking

This clause amends section 32 to provide a new specific offence of trafficking in a controlled drug (other than any form of cannabis) in a prescribed area.

6—Amendment of section 53—Analysis

This clause makes it clear that an analysis may include a determination as to the weight, amount or quantity of any substance and allows the regulations to make provision in relation to such a determination. The clause also deletes an obsolete reference to a botanist.

7—Amendment of section 61—Evidentiary provisions

This clause amends the evidentiary provisions to make it clear that evidentiary certificates can identify a substance as an analogue of another substance and may certify as to the weight, amount or quantity of the substance analysed.

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

MOTOR VEHICLES (MISCELLANEOUS) AMENDMENT BILL

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

At 17:59 the council adjourned until Wednesday 21 July 2010 at 14:15.