HOUSE OF ASSEMBLY

Wednesday 20 September 2006

The SPEAKER (Hon. J.J. Snelling) took the chair at 2 p.m. and read prayers.

EDUCATION WORKS

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.D. LOMAX-SMITH: I rise today to inform the house of a major reform proposal that continues this government's strong support for South Australia's public education system. Our goal is to ensure South Australia is supported by an educated community of citizens with the skills and values needed for the 21st century.

I said in this house in June that the biggest brain drain our society faces is young people not reaching their potential. The Rann government believes—

Members interjecting:

The SPEAKER: Order! The minister has been given leave.

The Hon. J.D. LOMAX-SMITH: The Rann government believes that giving all young South Australians access to high quality education and training is essential to our social and economic future. History shows that over the past 131 years of public education in South Australia, our community has often looked to education to meet the challenges of social and economic change. Whether during war time or the Depression years, economic boom or in times of rapid technological change, South Australians have recognised that education is vital to our creativity and prosperity.

We have been creative in harnessing the skills of teachers and our economic resources. We have adapted technology and applied scientific knowledge about how children learn, all in the cause of making sure that young people have better opportunities through education. The Rann government has worked with communities to build on that tradition of valuing education as the key to opportunity, creativity and prosperity. Unfortunately, we began from behind, following years of neglect and indifference by the former Liberal government.

Members interjecting:

The SPEAKER: Order!

The Hon. J.D. LOMAX-SMITH: The former government neglected our public school infrastructure and there was community anger as schools were closed with no clear vision of the future. Unlike the Liberals who chose to close 65 schools with no consultation, I reiterate my commitment that there will be no closure of schools without full consultation and the support of the local school communities. Our approach has been to listen to communities and to rebuild public education.

I attended community forums across the state, and communities consistently told me that they wanted a better start for their children, better school buildings for children to learn effectively, and better opportunities for young people to develop relevant skills. They want children to progress through child care and school without gaps and structural blocks in the way. They want better connected services so families can access health, education and family services through 'one stop shops'. We have listened and we have invested in strategies that reflect the Rann government's commitment to public education. Strategies like our $35 million literacy investment and smaller class sizes in the early years reflect our considered policy approach, as does our investment in skills and engagement of young people in education and training.

Today, as in the past, we face challenges and new opportunities to support young South Australians. Across Australia families are smaller and the number of school aged children is declining; across our state there are empty classrooms and ageing schools. While we have invested more in school maintenance in recent years, the reality is that 75 per cent of our state schools are over 25 years old and by continuing to patch them up we must ask whether we are throwing good money after bad. Meanwhile, communities want better curriculum choices that are tailored to the needs of individual young people.

Doing nothing is not in the best interests of young people, public education or the prosperity of South Australia. I inform the house today that we will embark on a new era of reform, regeneration and investment in public education. Our long-term approach, called Education Works, will build on our commitment to public education as a driver for all young people to achieve their best. Education Works will build six entirely new schools; we will reinvest in reconfigured schools; we will deliver 20 children's centres and 10 trade schools; and we will invest a further $45 million in upgrades in 20 locations.

We believe in investing in education. However, while the focus is on building, Education Works is not just about bricks and mortar. It is about creating better opportunities for all our children. Throughout our history countless teachers and others have invested their energies and skills to assist children through education, and I acknowledge and honour them. Education Works will build on that tradition in the best interests of young people, public education and the state's future.

The worst brain drain for our state is not people moving but young people not reaching their potential, and we must guarantee that they all reach their potential. Over the coming months I will attend community forums across South Australia as we work together to reinvest, revitalise and reinvigorate public education.

Honourable members: Hear, hear!

The SPEAKER: Order!

MURRAY RIVER PROJECTS

The Hon. K.A. MAYWALD (Minister for the River Murray): I seek leave to make a ministerial statement.

Leave granted.

Members interjecting:

The SPEAKER: Order!

The Hon. K.A. MAYWALD: Last week, on 14 September, the Premier and I had great pleasure in opening the $11 million Bookpurnong Salt Interception Scheme between Loxton and Berri. The scheme has been 10 years in the making, with extensive community consultation and hydrogeological testing, and is the next step in salt-proofing the River Murray in South Australia.

The Bookpurnong project originated from community concern that its irrigation development was impacting on the river environment. The community foresaw the risks of salinity damage to the local environment and the River Murray, and Bookpurnong exemplifies the community spirit

and endeavour of the Riverland. Sixteen enterprises decided to work together, with government support, to achieve some common goals and visions and provided real leadership to their community.

The Bookpurnong scheme will initially stop 50 tonnes of salt a day from entering the river—more than an Olympic size swimming pool a day. By 2035 this will rise to 110 tonnes of salt a day. The South Australian and commonwealth governments funded the scheme as part of the National Action Plan for Salinity and Water Quality, along with the Murray-Darling Basin Commission. The Bookpurnong Salt Interception Scheme joins schemes in operation at Waikerie, Woolpunda and Qualco.

Also last week, I had the pleasure of the Minister for Agriculture, Food and Fisheries joining me for the opening of the very exciting Waikerie Inland Saline Aquaculture Centre, a research and development demonstration centre initiated by the South Australian Research and Development Institute, or SARDI, that could kick-start a $20 million a year inland aquaculture industry in the Riverland. This three-year project, also funded by the state and commonwealth governments through the National Action Plan for Salinity and Water Quality, has captured the imagination of funding bodies because of its innovation in using saline groundwater from salt interception schemes to grow mulloway and, down the track, other aquatic species. The saline groundwater which currently has no real use is pumped away from the River Murray in the Waikerie region to the Stockyard Plain Disposal Basin at the rate of 30 million litres a day at a cost of $2 million a year. This groundbreaking research has the potential to turn what was previously a waste stream of saline groundwater from salt interception schemes into a valuable commodity that could form the basis of a new industry.

The research will provide information to demonstrate costs of production, feasibility and potential for commercial operators and private sector investment. In a few years' time, we could see aquaculture parks aligned to salt interception schemes in the Riverland that would be capable of producing enough mulloway to satisfy both the state and national markets with opportunities for export of wine and fish from the region. The centre will also use saline groundwater to conduct research and development on bioconcentration of water—that is, using biological systems to concentrate the salt and reduce the amount of water needing disposal. Reducing the amount of water being pumped into disposal basins may extend their life and lessen the need for another disposal basin in the area—another desirable outcome. Not only do these initiatives have the potential to bring significant environmental benefits to the River Murray, but they also bring new industry, new opportunity and new employment to the Riverland and South Australia.

LEGISLATIVE REVIEW COMMITTEE

Mrs GERAGHTY (Torrens): I bring up the 10th report of the committee.

Report received.

PUBLIC WORKS COMMITTEE

Ms CICCARELLO (Norwood): I bring up the 245th report of the committee entitled 'Adelaide Botanic Gardens Amazon Waterlily Pavilion Development'.

Report received and ordered to be published.

VISITORS TO PARLIAMENT

The SPEAKER: I draw to members' attention the presence in the chamber today of members of the Unley MENSA Club, who are guests of the member for Unley, and students from St Ignatius College, who are guests of the member for Morialta.

QUESTION TIME

SCHOOLS, CLOSURES

The Hon. I.F. EVANS (Leader of the Opposition): My question is to the Minister for Education and Children's Services. What is the estimate of the net annual saving from the proposed closures of the schools and kindergartens announced today?

The Hon. K.O. FOLEY (Treasurer): The Minister for Education has, quite rightly, given a ministerial statement, and we have outlined details of our—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: —education announcements in the budget. Issues relating to—

The Hon. I.F. Evans interjecting:

The Hon. K.O. FOLEY: I'm getting to that. Can you patiently wait for the answer? But you'll have to wait a little longer because the financial details up and above what the minister has released today will be released tomorrow in the budget.

HOSPITALS, EMERGENCY DEPARTMENTS

Ms THOMPSON (Reynell): My question is to the Minister for Health. How did the increase in presentations at emergency departments over winter affect the number of elective surgery operations performed this year?

The Hon. J.D. HILL (Minister for Health): I thank the member for Reynell for her interest. I know her strong interest in health in her community. As I informed the house yesterday, this year has seen a 4 per cent increase in winter emergency department attendances and an even greater increase in the number of hospital separations. To manage this, we introduced the Winter Demand Strategy, which has opened up more beds and closely managed the elective surgery load in public hospitals. During the winter months from May to August this year, there were, despite all these pressures, 12 942 elective surgery patient treatments. This is an increase of 473 surgery cases compared to 2005, a 3.8 per cent increase. So, despite the fact our hospitals were busier than ever and our emergency departments were busier than ever (we had a 4 per cent increase in emergency work), we were able to lift by 3.8 per cent the amount of elective surgery that occurred.

As I indicated at the time I introduced this strategy, we also had to manage the elective surgery operations and some needed to be cancelled, and I want to give the house the figures in relation to that. The number of hospital-generated cancellations was 1 475 over that winter period, compared to 1 650 the previous winter, so there was a reduction of 10.6 per cent in the number of cancellations. So we had more emergency work, more elective work and fewer cancellations compared to the year before. These figures show that the Winter Demand Strategy has had a great impact on the ability of hospitals to cope with emergency demand and increase the

number of elective surgery operations performed. We will take the information and talk to the nurses, doctors and those responsible for the emergency departments and the elective procedures to see how we can improve circumstances for next year.

For the benefit of all members, I am pleased also to announce that the latest elective surgery bulletin for the June 2006 quarter is being released—

Ms Chapman interjecting:

The Hon. J.D. HILL: —and the member for Bragg will be pleased about that. The latest bulletin shows that the median waiting time for patients—

Ms Chapman interjecting:

The Hon. J.D. HILL: She asks but she does not want to listen to the answers. The latest bulletin shows that the median waiting time for patients receiving their treatment was 42 days, with 90 per cent of patients receiving treatment within 230 days. In the last three months there was a 7.2 per cent decrease in the number of patients waiting more than 12 months for surgery. This is the last edition of the bulletin that will be produced, I am happy to tell the house. From next month, all the elective surgery information will be available from the Department of Health web site in a more accountable and timely fashion. In fact, as I understand it, there will be a monthly bulletin rather than a quarterly bulletin.

SCHOOLS, CLOSURES

The Hon. I.F. EVANS (Leader of the Opposition): My question is again to the Minister for Education. What is the expected teacher and staff reduction as a result of the closure of the schools and kindergartens announced today?

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): Unlike those opposite who closed—what was it?—65 schools without consultation or debate, without investing back into the community, this government proposes to build six entirely new schools. The catchment area that will feed those schools has industrial entitlements in place, there are ratios in place, and we have the smallest class sizes ever, thanks to our investment in public education, and all of those entitlements will remain.

WORKERS' RIGHTS

Ms CICCARELLO (Norwood): My question is to the Minister for Industrial Relations. Can the minister update the house on how this government is enhancing the rights of South Australia's workers?

The Hon. M.J. WRIGHT (Minister for Industrial Relations): I thank the member for Norwood for her question. In April of this year, a new minimum wage became operative and, for the first time ever in South Australia, award-free workers now have a guaranteed minimum wage. Also, for the first time, award-free workers have the right to access carers and bereavement leave. A new minimum standard for severance payments was introduced in May of this year. The Fair Work Act also delivered protection for outworkers. The government has also introduced a new procurement policy which assists employees of private contractors working on government contracts to continue to enjoy, as a minimum, terms and conditions no less favourable than those in place before WorkChoices came into force. We have implemented a policy to ensure that existing public sector workers do not lose their current conditions of employment.

The WorkChoices legislation has greatly reduced the power of the Australian Industrial Relations Commission to be an independent umpire. However, it does allow employers and employees to elect to use an alternative dispute resolution process facilitated by an agreed provider. Our government will ensure that our state's Industrial Relations Commission will provide free access to help resolve disputes for all South Australian workers and employers. It means that the South Australian commission can play a positive role in assisting parties to resolve disputes in both the public and private sectors. Such changes will be beneficial to small business, as they will allow parties access to our Industrial Relations Commission for dispute resolution where this is agreed in writing.

This means that, even if they are covered by WorkChoices, workplaces can go to the Industrial Relations Commission of South Australia. No matter what John Howard does, we are in there fighting for a fair go for all workers and employers.

EDUCATION, PRIVATE PUBLIC PARTNERSHIPS

The Hon. I.F. EVANS (Leader of the Opposition): My question is to the Minister for Education and Children's Services. Will any of the new education facilities proceed as private public partnerships (PPPs) if only a small number of the schools or kindergartens being proposed for closure actually agree to close?

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): Only the Liberals opposite would complain about this massive investment in public education. The reality is that this is an investment strategy with the first six entirely new schools being part of a public private partnership. However, unlike those members opposite, we do not close schools without consultation or debate. Unlike members opposite, we will go to the community—

Members interjecting:

The SPEAKER: Order! The minister has the call.

The Hon. J.D. LOMAX-SMITH: —and discuss the options for their community.

Mr Williams interjecting:

The Hon. J.D. LOMAX-SMITH: Why is it in the act?

Members interjecting:

The Hon. J.D. LOMAX-SMITH: He is right.

Members interjecting:

The Hon. J.D. LOMAX-SMITH: Who put it in the act?

An honourable member: Who put it in the act?

The Hon. J.D. LOMAX-SMITH: I think we put it in the act—of course! Unlike those members opposite, we believe in consultation. Believe me, we will go out to the community and say to the families, 'You can struggle with the backlog of maintenance that has been left for decades or we can build a brand new school and your children will have options.' What are the options? Well, 250 children in a secondary school have 18 choices of subjects in year 12 and 700 children have 44. We will say to parents, 'We are investing in the biggest way ever in the history of South Australian schools.' We are investing. We will build new schools; and, unlike members opposite, we will consult—

Members interjecting:

The SPEAKER: Order! I cannot hear the minister for the interjections.

The Hon. J.D. LOMAX-SMITH: —and we will listen. I promise the parents of the schools in the catchment areas of these proposed six new schools that if, after consultation, they

do not want a new school, there will be plenty of communities that do.

ABORIGINAL COMMUNITIES, FUNDING CUTS

Ms SIMMONS (Morialta): My question is to the Minister for Aboriginal Affairs and Reconciliation. How has the state government responded to the federal government's cuts to municipal services funding to Aboriginal communities?

The Hon. J.W. WEATHERILL (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for her question, and I acknowledge her interest in advocacy on behalf of Aboriginal people both in her electorate and more broadly. A number of South Australian Aboriginal communities have been in contact with my office concerning the proposed Australian government cuts to municipal services funding through the federal Department of Families, Community Services and Indigenous Affairs (FaCSIA). While I support, of course, the need for that funding to be made on a basis that is accountable, we have very grave concerns about what the federal government's changes will mean for communities.

FaCSIA has advised the Umoona Community Council that it intends to withdraw funding for municipal services effective from 31 December. I understand that a similar situation has occurred in Davenport and has attracted the ire of the local mayor, I think, of Port Augusta. FaCSIA intends to channel funds to the District Council of Coober Pedy in the case of Umoona to maintain the community's roads and also to collect household rubbish. The cessation of the funds will also affect Umoona Community Council Inc., Bungala CDEP program and also the Umoona Tjutagku Health Service. This will result in Umoona's Community Council having the inability to employ two municipal workers, and those municipal workers, in addition to dealing with the rubbish collection, carry out a range of other community maintenance responsibilities.

The community is gravely concerned that the standard of service will suffer in this area, with consequential effects for health and wellbeing. I do not believe that these changes have been comprehensively considered. I am informed by FaCSIA and, indeed, community representatives that FaCSIA has not sat down with either of these communities to discuss the implications of this proposal. It is vitally important that there be no loss of service to communities and no loss of funding to state and local government bodies. I have written to the federal minister Mal Brough urging him to ensure FaCSIA officials meet with the communities to examine the implications of this proposal before the arrangements take place and to ensure that there is no loss of services to Aboriginal communities either directly or indirectly as a consequence of these proposed changes.

We also need to ensure that we do not impoverish these communities in a way which threatens the governance arrangements. It is setting communities up to fail to say to them, 'Take charge of your own affairs', but then not provide them with the wherewithal to carry out their responsibilities. It is crucially important that the federal government does not head down an authoritarian agenda in relation to Aboriginal communities, as that path leads to further hopelessness and feelings of helplessness by those communities. We know that, where successes have occurred, it has been on the basis of respectful partnerships—and they can be tough partnerships. There can be expectations of accountability, but there needs to be a fundamental respect and a fundamental commitment to partnership, and we urge the federal government to involve itself in that.

EDUCATION, PRIVATE PUBLIC PARTNERSHIPS

The Hon. I.F. EVANS (Leader of the Opposition): My question is again to the Minister for Education and Children's Services. Given the minister's last answer that, if the parents of the schools and kindergartens targeted for closure do not want the new school, there are plenty of others that do, does that then mean that, if all the school communities and kindergarten communities refuse closure, there is money available for six new schools elsewhere?

The Hon. K.O. FOLEY (Treasurer): The minister has been quite clear—

Members interjecting:

The SPEAKER: Order! The Treasurer has the call.

The Hon. K.O. FOLEY: Four balanced budgets and a few more to come; four balanced budgets and four more to come. I can make this assurance to the house. The program outlined by the minister and the Premier today, as the minister has said, is the most significant reform in the school system for decades—forever—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: I will not say anything because Craig Bildstein will say how the Deputy Leader of the Opposition has irritated me, and we will not want to do that. The situation is quite simple. We have put aside a substantial amount of capacity to fund a major public private partnership program for our state schools. We have legislation in place, which, I understand, the member for Chaffey moved as a private member's bill in previous parliaments—supported by us—to put a consultation process into law. That was the member for Chaffey's law—everyone's law. We have the law and there is a process. However, if those communities choose not to head down this path, we have a program that we will deliver and we will make those funds available for other schools. It is quite simple: it is a program.

We have the capacity to fund a significant upgrade in our school system in this state through the use of our public private partnerships. The minister has picked, through her advice, a number of areas best suited for these schools. We have built the capacity. I would be very surprised if this program is not enthusiastically embraced by the community; that is what we expect. But there has been criticism that the budget is delayed—and, yes, it is delayed—and I explained soon after the election that it was delayed for a very important reason, that work has been undertaken—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: Work has been undertaken to build capacity.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: The whole idea of delaying the budget was to build capacity to meet some of the most pressing needs of our community, and they are the health of our community. We are an education government, and there is no more challenging issue, as the minister made me as Treasurer very much aware, and her cabinet colleagues. We are very much aware that there is no more urgent need for reform in terms of physical infrastructure than the quality and condition of our learning institutions, our schools. As the

minister has said, schools built for 1 000 school, through demographic change, may now have only 100 or 200 students. I have had the example in my own community, where primary schools, through the changing population shift, were open with only 100 children.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: And you know what? When those schools were closed and amalgamated under Ocean View College, from memory—and I stand to be corrected—that process started under a Liberal government. So, we got the idea from the Liberal government. You cannot walk away from where you were in government; you cannot walk away from the 60 schools you closed in government. What we are saying is that we had to build capacity in this budget, and capacity has been built.

Mr Bignell interjecting:

The SPEAKER: Order, the member for Mawson will come to order!

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: What you are seeing today, ahead of the budget, is the result and the rationale as to why we spent four months building capacity within our budget to meet the pressing needs of our education and health sectors. We have built that capacity, and that capacity is there for the use of the education department. That capacity will be there and, if these school communities do not wish to embrace this—and I would be very surprised if they do not—there is a law in place, and we will follow the law. But this is an exciting day for education, an exciting day for the minister, an exciting day for the government and an exciting day for South Australia. It is when governments have ministers, like we have in the Minister for Education, who are prepared to do what ministers opposite when in government could never do—have vision, have strength, have boldness and deliver change.

The Hon. J.D. LOMAX-SMITH: Mr Speaker, on a point of order: could I ask, I believe, the member for Finniss to withdraw and apologise for his call that I should return to England. I regard that as a racist comment.

Members interjecting:

The Hon. J.D. LOMAX-SMITH: We are a multicultural government—

Members interjecting:

The SPEAKER: Order!

The Hon. J.D. LOMAX-SMITH: —with people from many nations.

Members interjecting:

The SPEAKER: Order! The minister will take her seat. My advice is that it is not unparliamentary. I am prepared to provide an opportunity for the—

Members interjecting:

The SPEAKER: Order! It is not unparliamentary, but I am prepared to offer an opportunity for the member to withdraw the remark. It is in his hands.

Members interjecting:

The SPEAKER: Order! The comment that the minister says that the member made is not strictly unparliamentary, but if the member wishes to withdraw the remark I am happy to provide him with that opportunity to do so. The member for Finniss? No?

Members interjecting:

The SPEAKER: Order! The member for Newland.

CAR THEFT, TEA TREE GULLY

Mr KENYON (Newland): My question is to the Attorney-General. How is the Crime Prevention Unit of the Attorney-General's Department cooperating with the National Motor Vehicle Theft Reduction Council to reduce car theft in the Tea Tree Gully area?

Members interjecting:

The Hon. M.J. ATKINSON (Attorney-General): Mr Speaker, I have been out doorknocking. People are about to take citizenship of Australia at the Charles Sturt council tomorrow night, so I had to rush in immediately after doorknocking them, and I commend doorknocking as a method to the remaining Liberal members.

The National Motor Vehicle Theft Reduction Council's income of $2.25 million a year is derived from the industry and the participating state and territory governments. The contribution from state and territory jurisdictions is based on the number of registered vehicles per head of population in each jurisdiction, and recently I have endorsed the South Australian government's funding the council for three more years.

Operation Bounceback is the National Motor Vehicle Theft Reduction Council's partnership with local government. It encourages local initiatives to promote theft reduction messages in the areas identified by police data as having high numbers of older cars stolen. The National Motor Theft Reduction Council through Operation Bounceback has given more than $600 000 worth of grant packages to local government during the 2005-06 financial year. Operation Bounceback grant packages are valued at up to $35 000 per council and comprise $10 000 direct funding, $20 000 for immobiliser installations via the CAR-SAFE Immobilise Now! scheme. This equates to the installation of 100 engine immobilisers per council area. As a first priority the immobilisers are offered to people who have been victims of car theft. As a second priority, the immobilisers are offered to those who are at high risk of having their cars stolen, such as students who drive older-model cars, and $5 000 worth of in-kind education resources.

The National Motor Vehicle Theft Reduction Council targets its resources to where they are most needed, and in the case of Operation Bounceback this means providing funding for public education in the areas of the state most affected by car theft. Based on data provided to the National Motor Vehicle Theft Reduction Council and the South Australia Police, the City of Tea Tree Gully is one of the above-average car theft locations in South Australia. The City of Tea Tree Gully has been given an Operation Bounceback grant from the National Motor Vehicle Theft Reduction Council and has held two launches of the initiative: one on 22 June at Tea Tree Plaza shopping centre and other on 29 June at the Golden Grove Village shopping centre. The Crime Prevention Unit of my department has given technical advice and implementation support to the City of Tea Tree Gully and Holden Hill local service area. The project involves identifying victims of vehicle theft and owners of high-risk vehicles in the Tea Tree Gully area by using data obtained from the Holden Hill Police Local Service Area Intelligence Section working with local welfare agencies to identify the owners of vehicles at high risk of being stolen, and carrying out a public education campaign.

The Tea Tree Gully branch of the Salvation Army has been given 30 immobilisers as part of Operation Bounceback and will work with other welfare agencies to identify

residents at risk of car theft and distribute the immobilisers accordingly. I commend Operation Bounceback to the house. And, sir, when I was doorknocking subjects of Her Majesty's United Kingdom who are becoming Australian citizens at Charles Sturt council tomorrow night, I did not have the opportunity to convey a welcome message from the member for Finniss.

MENTAL HEALTH

Ms CHAPMAN (Deputy Leader of the Opposition): My question is to the Minister for Health. What is the minister's excuse for the delay in the building of mental health facilities at the Royal Adelaide Hospital, the Lyell McEwin Hospital and the Noarlunga Hospital? In the 2004-05 budget last May, 40 mental health beds were promised as part of stage 4 redevelopment of Royal Adelaide Hospital. The same budget promised 65 mental health beds for Lyell McEwin and 35 beds at Noarlunga Hospital. $10 million was supposed to be spent last financial year at the Lyell McEwin—

The Hon. K.O. Foley interjecting:

Ms CHAPMAN: It is in your budget.

The SPEAKER: Order!

Ms CHAPMAN: —and Noarlunga Hospitals, of which none has been opened.

The SPEAKER: Just before I call the Minister for Health, I will just point out to the deputy leader that if she poses her question in that way, she can hardly expect me to pull up the minister if he begins to debate the answer. The Minister for Health.

The Hon. J.D. HILL (Minister for Health): Mr Speaker, I will resist the temptation to debate the answer with that poor excuse for a deputy leader of the opposition. As the Deputy Leader of the Opposition knows, we have a minister for mental health who is in another place. I am happy to convey her question to that minister, and I am sure she will get a response. But I also point out that tomorrow the budget will be brought down and I am sure some of her answers will be in that.

COMMUNITY LEARNING STRATEGY

Ms BEDFORD (Florey): My question is to the Minister for Employment, Training and Further Education. What is the government doing to increase opportunities for South Australians to participate in a range of community learning activities?

The Hon. P. CAICA (Minister for Employment, Training and Further Education): I acknowledge the member for Florey's keen interest in community education and, indeed, in all things relating to the community: community counts, as she keeps telling us. I am pleased to advise members that the government recently announced a community learning strategy that sets out the benefits of community learning and expresses the government's commitment to investing in people in their learning and skills development.

The community learning strategy—which was, incidentally, launched by the member for Florey last week, and I thank her for that—developed by the Training and Skills Commission, in conjunction with DFEEST, is an important part of the state government's response to meeting the many social, economic and demographic challenges facing South Australia. The strategy aims to develop a culture of learning for individuals, communities, organisations, workplaces and the state, by promoting the personal, social, community, economic and environmental benefits of learning. It aims to assist individuals to improve their general well-being through participating in learning; providing diverse learning opportunities in all communities; and supporting the learning and skill development needs of organisations, workplaces and industries.

I cannot emphasise enough the importance of community learning and contributing to the continued prosperity of our state, and in assisting us to meet the forecast skills needs into the future. This is underscored by the fact that an analysis of the data from the adult literacy survey from 14 OECD countries, demonstrates that nations which achieve literacy scores that are 1 per cent higher than the average end up with labour productivity that is 2.5 per cent higher than countries which do not. The simple fact is that if we are to address our skills needs in South Australia, and indeed Australia, we have to ensure that, through adult community education, we engage those people who have been disengaged from the work force for some time.

Community learning assists those who are least likely to participate in formal learning and skills development avenues, including early school leavers, the unemployed, people not participating in the labour market, part-time and casual workers, older workers, low skilled workers, people with culturally and linguistically diverse backgrounds, people with disability, and workers in small firms. Over the next year, the government will commit over $2 million to adult community education, assisting 9 000 South Australians to participate in adult community education programs.

Community learning in South Australia is about people learning through family, workplace, community, social, voluntary and professional activities, and through organised courses or programs delivered in the community. It is about the knowledge, insights and skills gained through a less formal learning context. These less formal learning opportunities help many South Australians boost their skills and enrich their lives. They complement the more formal learning situations that are the currency of our schools, our TAFE institutions, non-government training organisations and our universities.

For many people learning is the key to overcoming educational, social and economic disadvantage. Last year at least one in nine South Australians aged between 15 and 64 participated in some form of learning activity. As well, in 2005 the number of Aboriginal students participating in vocational education and training increased by 5.1 per cent, students with a disability increased by 11.1 per cent, and students from non-English speaking backgrounds increased by 9.3 per cent.

The government is now supporting more people than ever before to develop critical skills such as reading, writing, maths and computer skills. These are a crucial foundation stone in building self-esteem and gaining the confidence to undertake further training and re-enter the work force. Through adult community education and through a broader commitment to community learning, the government is maximising opportunities for South Australians to participate in learning and ensuring that we continue to have a dynamic and skilled work force into the future.

MARGARET TOBIN CENTRE

Ms CHAPMAN (Deputy Leader of the Opposition): Can the Minister for Health inform the house how many nurses will be taken from the Glenside Hospital site to work at the Margaret Tobin Centre at the Flinders Medical Centre when it opens next month?

The Hon. J.D. HILL (Minister for Health): The Deputy Leader of the Opposition persists in asking me questions for which I am not the responsible minister, and all I can do for her is to refer them to the responsible minister in another place.

Ms Chapman interjecting:

The Hon. J.D. HILL: She can argue the point, but I am not the minister responsible for these issues.

LITERACY

Ms FOX (Bright): My question is directed to the Minister for Education and Children's Services.

An honourable member: Good luck!

Ms FOX: Easy, tiger. What is the government doing to ensure that the literacy levels of our children continue to improve?

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I thank the member for Bright for her ever germane question and for her carriage and delivery thereof. The Rann government is continuing to help children improve their literacy using our $35 million Early Years Literacy Plan.

Since 2003 a number of specialist programs have been implemented in our schools as part of this investment package. One of them, the Reading Recovery Program, is an early intervention strategy aimed at children whose reading skills are not at the level of their age cohort. This also includes specialist training for teachers in reception to year 3, and programs such as our Accelerated Literacy Program. The South Australian Accelerated Literacy Program uses age-appropriate reading material to teach reading, writing, grammar and speaking skills. Students and their teachers read and analyse a book over a period of time, giving them an opportunity to focus on author techniques and grammar. This method is far less demoralising than having those children reading down a year level or two to their ability skill, because it focuses on age-specific books that they can be expected to actually enjoy.

This nationally recognised program also encourages indigenous students to improve their literacy levels and focuses on skills in more disadvantaged areas. This year the program has allocated a full-time manager and four program consultants to help teachers implement the Accelerated Literacy Program because we find (from early results) that it is highly effective. I am delighted that this year 39 government schools have taken up the program compared to only 18 in 2005.

The Rann government remains absolutely committed to quality education and good public school education, and as part of that we recognise that literacy is the basic skill on which all other skills are developed later in life. We are starting to see results. In 2004 and 2005 more than 90 per cent of South Australian students reached the national benchmarks. We believe that the success of the Early Years Literacy Plan in bringing together these improved achievements for children is really encouraging for the future and will pay dividends in years to come.

In fact, as of August 2002, 722 schools—that is 90 per cent of all eligible schools in South Australia—are also participating in the Premier's Reading Challenge. This is another plank in our platform for improved literacy and another one of the ways in which we encourage some of the more unwilling readers to join in the joy of reading, the pleasure it can bring and its educational outcomes. It is fantastic that the percentage of South Australian students achieving high standards of literacy in South Australia is increasing and, again, it demonstrates that in South Australia the Rann-Foley government is one which dedicates itself to education.

HOSPITALS, GLENSIDE

Ms CHAPMAN (Deputy Leader of the Opposition): Will the Premier advise whether there are any plans by his government to sell a southern portion of the Glenside Hospital site for commercial use and, if so, for how much? In a media release on 24 February 2006, the Premier gave a commitment that the Glenside Hospital would not be sold and that it would be maintained for mental health purposes. The opposition is aware that past negotiations have been held with the owner of adjacent land to purchase the area south of the oval of the Glenside Hospital and boarded by the heritage wall.

The Hon. J.D. HILL (Minister for Health): The third question in question time today by the deputy leader is addressed to the minister responsible for mental health. Once again, I am happy to refer this matter to the minister for mental health, but I point out to the house that under the former government, Dean Brown, as minister for health, commenced the process to discuss getting rid of Glenside. He backtracked eventually but he started the process. He wanted to get rid of Glenside. It was this government who said we would save it and keep it as an integral part of the mental health system in South Australia.

HOSPITALS, MODBURY

Ms CHAPMAN (Deputy Leader of the Opposition): Will the Minister for Health inform the house what it will cost the government to break its contract with Healthscope when it takes over the Modbury Hospital from Healthscope?

Members interjecting:

The SPEAKER: Order!

Ms CHAPMAN: The opposition has been advised by Healthscope that it wishes to continue providing services at the Modbury Hospital until the existing contract expires in 2010. The Minister has indicated that he is negotiating with Healthscope to terminate the contract and to resume public control of the Modbury Hospital by the end of this year.

The Hon. J.D. HILL (Minister for Health): The Deputy Leader of the Opposition has made a claim, and I challenge her to prove that claim in here, because the basis of her question is on that claim. She has given no evidence of that claim: she has made an assertion. I know from past practice that leaders and deputy leaders of the opposition say many things which are not necessarily based on truth. The government, as it indicated at the election—

The Hon. J.D. Lomax-Smith: She's got form.

The Hon. J.D. HILL: She has form; that's true.

An honourable member: How did that politician get it so wrong?

The Hon. J.D. HILL: Get it so wrong. The government, as it indicated during the election period so that the public knew what they were voting for when they voted for us, indicated that it intended to de-privatise Modbury. I think that was something that the majority of South Australians strongly endorsed. We said at the time—

Ms Chapman: How much have we lost?

The Hon. J.D. HILL: Vickie, just listen quietly and—

Ms Chapman interjecting:

The Hon. J.D. HILL: Talk about the pot calling the kettle black. That is an extraordinary assertion by the deputy leader. We indicated at the time that we would de-privatise Modbury. That is of great interest to the majority of people and strongly supported by them. We have entered into the discussions with Healthscope, and I have said all along that, if the request by Healthscope for the termination of the contract were unreasonable, it will continue until 2010. However, I am optimistic that we will be able to terminate it at an earlier date, and we are hopeful—

Mrs Redmond interjecting:

The Hon. J.D. HILL: You think that I would be foolish enough to predict a cost associated with a contract. I am not going to do that.

Ms CHAPMAN: My question is again to the Minister for Health. Has the minister undertaken any—

Members interjecting:

The SPEAKER: Order! The deputy leader has the call,

Ms CHAPMAN: My question is again to the Minister for Health, Mr Speaker, thank you. In light of the minister's previous answer, if there are any costs associated with it, has the minister done any exercise and, if so, what services are considered to be cut for the costs of that?

The Hon. J.D. HILL: I think the proposition was: if we terminate the contract, will we take the costs of the termination out of services? Is that an articulate version of the question the member was trying to ask?

Ms Chapman: Yes.

The Hon. J.D. HILL: Let me answer my own question. No.

Members interjecting:

The SPEAKER: Order!

Ms CHAPMAN: My question is again to the Minister for Health. Given the minister's statement on 11 May 2006 that the Modbury Hospital will be 'transferred to the public system by the end of the year', will the minister inform the house when Modbury Hospital will now be transferred?

The Hon. J.D. HILL: Clearly, the Deputy Leader of the Opposition likes asking questions but she is not so good at listening to the answers. In answer to a question a moment ago, I indicated from the very beginning that our goal was to de-privatise Modbury but we would not be subject to an unreasonable termination contract with Healthscope, and if it was necessary it would go through to its natural termination in 2010. But our intention is to de-privatise it. It will certainly happen at that stage if not sooner. I am optimistic, as I said a minute or two ago, that it will be completed by the end of this year, but we will not enter into arrangements which are less beneficial to the citizens of our state, and we will not just give an open cheque to Healthscope.

Ms CHAPMAN: My question is again to the Minister for Health. When will the clinical outpatient services be restored at the Modbury Hospital? A statement issued by the Modbury Hospital to doctors on 11 May 2006 states:

> Modbury Hospital is not accepting new patients, other than oncology and urgent breast lump people. This is due to the government resuming responsibility for Modbury.

Members interjecting:

The Hon. J.D. HILL: Question with rising inflection! Mr Speaker, I recall in general terms the issue that was raised back in May. I seem to recall seeking advice at the time and was assured that there were no issues of substance there. I am happy to get a report for the deputy leader. I do not have a note with me at the moment but I am happy to provide it for her.

FOSTER CARE

Ms CHAPMAN (Deputy Leader of the Opposition): My question is to the Minister for Families and Communities. Why has the minister decided to leave a 14 year old foster child, who has a brain tumour, under the supervision of Noarlunga Families SA? On 29 June this year, I asked the minister why Noarlunga Families SA had neglected to have a foster child assessed for a brain tumour despite ongoing erratic and violent behaviour. The minister then investigated this case and has decided that the child will remain in the care of Noarlunga Family SA services, and in particular at the shelter (and he is nodding). However, over the past three months this child has not been in any stable accommodation; is regularly left in the Sturt assessment centre; claims to be repeatedly abused by staff; is exposed to alcohol, drugs and sexual behaviour; has been caught shoplifting; and has run away 14 times.

The Hon. J.W. WEATHERILL (Minister for Families and Communities): I thank the honourable member for her question. There is a very good reason that we do not discuss the details of individual cases in this place. One is because, generally speaking, one side of the argument is put in this place. For obvious reasons, our responsibilities as a child protection agency do not necessarily extend to providing all of the information to one of the parties to the transaction and, if it was the case that the foster parent was perhaps the person supplying the information, they may not be cognisant of all of the information that is available.

I am also reluctant to share with the house too many details about the matter because, in some circumstances, they do not necessarily reflect well on all the people who are a party to the transaction, and I think that is unnecessarily inflammatory. At the moment we are trying to take a very troubled young lady and ensure that she has a stable placement. We are trying to do that through our own agency. One of the great difficulties we have in the child protection system for children within our care is the stability of placements for those young people who have had multiple placements.

Eighty per cent of our foster care system works very well, and young people have stable placements. However, 20 per cent of those young people, though, go through multiple placements. There is a revolving door of placements. The behaviours associated with those young people can be extraordinarily difficult—running away, engaging in risky behaviours, being very difficult for foster carers to manage, putting enormous pressure on foster carers and the foster carers feeling distressed, seeking support from the agency and often feeling unsupported by the agency. That is one of the great challenges we are facing with respect to foster care.

Nothing will be gained by our traversing the personal circumstances of this very difficult case. We are working very carefully with this young woman. We are doing everything we can to ensure her safety. Short of chaining someone to the bedpost, it is very difficult to influence the behaviour of young adolescents. It is a process of careful engagement with them. It is a process of trying to build an attachment with that child. Of course, we value the work of foster parents. Sadly, I think, sometimes we ask too much of foster parents, and we must do much better in that respect.

SCHOOLS, UNLEY PRIMARY

Mr PISONI (Unley): Will the Minister for Education and Children's Services reassure this house that Unley Primary School will not lose funding for its Greek and Italian mother-tongue programs? The school council has been led to believe that the department is planning to amend the funding model for mother-tongue classes so as to exclude a school that teaches a language other than English—which is the same as the mother-tongue program—from mother-tongue funding.

The Hon. J.D. LOMAX-SMITH (Minister for Education and Children's Services): I thank the member for Unley for that question. I am not sure what he is thinking of, but I am very happy to look into it.

LOCAL GOVERNMENT ELECTIONS

Mr PICCOLO (Light): Will the Minister for State/Local Government Relations inform the house how preparations for local government elections in November are proceeding, and has the introduction of the four-year term had any adverse impact on nominations?

The Hon. J.M. RANKINE (Minister for State/Local Government Relations): I thank the member for Light for his question, and I note his ongoing interest in local government affairs. He was an excellent mayor in Gawler, and he maintains a very strong interest now that he has a new life in this place. Nominations for the upcoming local government elections due in November closed at noon yesterday. Information provided by the Local Government Association indicates that 1 237 people have nominated for the elections. More people have nominated for this council election than in 2000 or 2003.

This increase has occurred despite those members opposite opposing the move to four-year terms claiming that the extended term would see fewer people run for positions on councils. Instead, we are in a position of having 1 095 of those candidates contesting 585 council positions across the state. So, more than 80 per cent of positions are being contested, and this is despite the Adelaide City Council not going to election this year. We have a record number of mayoral elections and the lowest ever level of uncontested positions. In the past, we have had 792 positions not contested. We had 691 one year and 613 another year. This year the number is 142.

What was the opposition saying at the time we introduced legislation in relation to the four-year term? The then shadow minister for local government, the member for Morphett, said—

The SPEAKER: Order! There is a point of order. The member for Waite.

The Hon. J.M. RANKINE: —'We feel that this bill is not doing anything to enhance'—

The SPEAKER: Order! The member for Waite.

Mr HAMILTON-SMITH: Mr Speaker, I rise on a point of order. The minister is putting questions to the house, answering them and then debating the answer. I ask you to call her to order.

The SPEAKER: Order! I do not think that the minister is engaging in debate yet, but I will listen to what she has to say.

The Hon. J.M. RANKINE: It is worth putting on record what the opposition was saying at the time of the introduction of four-year terms for local government. The then shadow minister for local government, the member for Morphett, said:

> We feel that this bill is not doing anything to enhance the role of local government. It is going to deter people from wanting to put their hands up for standing for local government, and the way that mayors could have been elected—or selected, should we say—is certainly a deterrent.

What we have seen is clearly they were wrong—record numbers. The government has committed considerable time and effort to producing material encouraging nominations, particularly from under-represented groups.

I was pleased to note that, at the close of nominations, the number of women who had nominated had increased slightly but they still remain significantly under represented. What would you do if you were the mayor or chairperson of your local council? That is the question we have asked young people across the state in a competition the government has—

Ms CHAPMAN: Mr Speaker, I rise on a point of order. The minister is now posing questions to herself.

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! I did not hear what the minister had to say but, if the minister was engaging in debate, she knows the standing orders and she is not to engage in debate. The minister can complete her answer.

The Hon. J.M. RANKINE: Sir, I was not, and if the Deputy Leader of the Opposition listened to what I was saying, I was not—

The SPEAKER: Order! The minister just needs to conclude her answer.

The Hon. J.M. RANKINE: Sir, the rhetorical question that they were worried about is actually a title of a competition. So if the honourable member had listened, she would know. Give it five seconds and she will hear.

Members interjecting:

The SPEAKER: Order!

The Hon. J.M. RANKINE: The title of the competition is: 'What would you do if you were the mayor or chairperson of your local council?' That is the question we have asked young people across the state in a competition that the government has run and sponsored in conjunction with the Local Government Association, the Messenger Press and country newspapers. Our young ones have shown incredible insight and their entries have been very impressive.

Mr VENNING: Mr Speaker, I rise on a point of order. The minister should be using a ministerial statement for comments like this.

The SPEAKER: Order! That is not a point of order, as the member for Schubert well knows.

The Hon. J.M. RANKINE: In all, we have received an impressive 999 entries, with 467 entries from the metropolitan area and 532 from the country. The competition has seen students from a broad cross section of the community get involved with their local councils. Students and their families

have had the opportunity to discover what services and facilities are available in their local area and why it is important to vote in the upcoming council elections. The important point is not only to listen but to understand that individuals can make a difference by voting in the council elections in November.

Mr WILLIAMS (MacKillop): I have a supplementary question.

Members interjecting:

The SPEAKER: Order! It does not need to be a supplementary question. The call has passed to this side of the house, so whether or not it is a supplementary question does not matter.

Mr WILLIAMS: Will the Minister for Local Government provide the house with the data of how many existing members of council have renominated at the current elections? Will she also provide a comparison of those figures with the similar figures from the previous election?

The Hon. J.M. RANKINE: I do not have that information at my fingertips, but I will certainly do my best to get it for the member.

CHELTENHAM RACECOURSE

The Hon. R.G. KERIN (Frome): My question is to the Treasurer.

Members interjecting:

The SPEAKER: Order! The member for Frome has the call.

The Hon. R.G. KERIN: Will the Treasurer confirm that he gave commitments to a number of people, including Rod Sawford, that Cheltenham Racecourse, in the Treasurer's own words, 'will be sold over my dead body'?

The Hon. K.O. FOLEY (Treasurer): Sorry? You said my words? You have a copy of words I've said?

The Hon. R.G. Kerin interjecting:

The Hon. K.O. FOLEY: Where has he said that?

The Hon. R.G. Kerin interjecting:

The Hon. K.O. FOLEY: Hang on, you can't get up and make some allegation that I've made some statement and not be able to source it.

The Hon. R.G. Kerin interjecting:

The Hon. K.O. FOLEY: I was not at a public meeting last night; I was working on the budget.

The Hon. R.G. KERIN: On a point of order, sir.

The Hon. K.O. FOLEY: You can't—

The SPEAKER: Order! Will both members take their seat. I did not hear properly what the member for Frome asked—whether he was asking the Treasurer to confirm whether he had said something, or something that Rod Sawford had said.

The Hon. R.G. KERIN: No. I was not saying that the Treasurer did say it. I asked the Treasurer whether he would confirm that he gave commitments to a number of people, including Rod Sawford, that the Cheltenham Racecourse—and I will quote the Treasurer's very own words—'will be sold over my dead body'.

The Hon. K.O. FOLEY: I have just been alerted—and, again, we stand to be corrected—that, apparently, Julian Stefani, former Liberal MLC, may have said last night that I may have said something to somebody.

Members interjecting:

The Hon. K.O. FOLEY: I don't know, I wasn't there, so I might be wrong. But I am told by my colleagues who were there that Julian Stefani, a former Liberal, said that I might have said that to somebody.

Members interjecting:

The Hon. K.O. FOLEY: I don't recall making that statement. It is unlike me to make an emotive statement like that; I'm normally very careful and very considered, and I think through what I say before I say it. I don't just leap into something without thinking about it first.

Members interjecting:

The Hon. K.O. FOLEY: Well, in fact, misleading the house is an offence, so I best say that I do not recall, but, if someone said that I said that, well, maybe I did, but I cannot recall it.

The Hon. R.G. KERIN: Will the Minister for Recreation, Sport and Racing advise the house as to his current stance in relation to the proposed sale of the Cheltenham Racecourse? In September 2000, the minister committed the Labor Party to a promise to secure the long-term future of the Cheltenham Racecourse.

The SPEAKER: The Minister for Infrastructure.

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON (Minister for Infrastructure): It is great to be loved. I am always grateful for the warm enthusiasm with which I am greeted by those on the other side—and it is thoroughly deserved, I must say. I am often a victim of my own charm. I have been looking after this issue of the potential sale of the Cheltenham Racecourse for some time. Of course, there have been two views put about Cheltenham in the past. It is very funny. The member for Frome might like to verbal someone on what they said, but we know exactly what Liberal opposition members said about Cheltenham: they said that it should be sold to become an industrial park. Their friends at the SAJC wanted to sell it, and they said, 'Yes; let's make it an industrial park,' because one thing they do not care about is anyone on our side of town. Not at all.

The simple truth is that over many, many years the SAJC has demonstrated that, despite every opportunity we gave to opponents in the SAJC to take another view, they do not want to race at Cheltenham. They don't want to race at Cheltenham. There has been a whole load of people fighting that point of view and we gave them a very long time to try and mount a different argument, but the SAJC overwhelmingly has voted. They do not want to race at Cheltenham and they want to sell Cheltenham. We do not want Cheltenham to become an industrial park. We don't; we don't have your policy. The reality of it is that the SAJC want to sell Cheltenham, and it may well be that even if we prevent them they will sit and wait until, God forbid, the day comes when their friends are back on the Treasury benches and they will let them sell it as an industrial park. That was their stated position.

So what we said was that we would go to public consultation about a potential sale, and the first thing we said was that under no circumstances would there be an industrial development and that there would be a minimum of 30 per cent open space and a potential residential development based around a railway line, which is a very good piece of urban infill development. It is what you want to do in the modern world. But what we have said is that there is no sale until we are convinced that there is a net benefit for the local community. That remains our position, a very sound one, and I think it is

a much better one than selling a racecourse for industrial development.

GRIEVANCE DEBATE

EDUCATION, PUBLIC

Dr McFETRIDGE (Morphett): Today we had a ministerial announcement and a press release from the Minister for Education and Children's Services on a bold plan to reshape public education, and it certainly is a bold plan because there is no real substance to it. It is really more spin and there are broken promises, and all I have to say is: God help public education in South Australia if this is the best this government has got. We have 17 schools that are announced on the hit list here. I understand there are another 13 on another secret hit list. I want the minister to deny that. I want to know what these 17 schools have to say, and, fortunately, there is a consultation process. But let me just talk about the minister's statement that the former Liberal government had no consultation process. That is blatantly untrue. Every single one of those schools was consulted with—every single one of them. So for the minister to come out and say there was no consultation is not true.

What the minister has done here is try to put spin onto a broken promise and to put spin onto school closures. She has tried to blame the former Liberal government in one breath, and then in the next breath the minister talks about three decades. So it is the former Liberal government and the former Bannon government—the former Labor governments as well. So make up your mind, minister: whose fault is it? I know why there was a slowdown in spending in schools during the Liberal government. That was because we had a $10 billion deficit left by you people, and we would have spent more if we could have.

What we have now is public education in South Australia being let down in a huge way. We have not only the 17 schools on the hit list but we also have that other 13 on the secret hit list. We are going to have reconfigured schools. What does this mean—reconfigured schools? Well, watch this space. I tell schools to be scared, to be afraid, to be very afraid, because if this is the ACT model, that we have seen with Mr Smith and his 40 schools and reconfigured schools, well, look out. We have 10 trade schools that are going to open. Great. I was a technical studies teacher. We have not been training tech studies teachers in this state for years and years. Where are you going to get teachers from?

Members interjecting:

Dr McFETRIDGE: Ten trade schools. Where are they going to go? We are going to get six new schools. We are going to get one school a year under a PPP. The PPPs that they have had out before have been very unsuccessful. The question about the PPPs is: how are the private proponents of this going to get their money back? Is this a privatisation of schools? Are you going to be paying back private companies that build schools? So we have privatisation of schools, have we?

As for the capital works programs, we have a long list of capital works programs here which is just reannouncement after reannouncement after reannouncement. Let us take one of my own schools, Paringa Park Primary School. This was at a time when Ms White was the education minister, and that is how long ago it was that I took in a delegation and we organised the funding then. This has to be the third budget, I think, that this has been announced in. What about the other 19 schools in there? This is just a reannouncement of capital works projects that have been held over, delayed, procrastinated on, and money wasted. This is just an absolute let down of public education in South Australia.

Let us have a look at the feasibility studies for another 15 schools. What happens if they are not feasible? What are you going to do—bulldoze those schools again? Are you going to close those schools, another 15? So that is 45 schools that are on the hit list there, if they are not feasible. Public education in South Australia has been let down by this government, let down in a huge way. There has been a river of gold coming in from the federal government that is not being spent on education in this state. The proof will be in the pudding. Will we be getting more teachers? Will we be getting proper upgrades that are not delayed out to the five year distance? We are getting six new schools, but when? One a year, and we are going to close 17 in the meantime.

Members interjecting:

The SPEAKER: Order!

Dr McFETRIDGE: This education announcement is an absolute furphy. It is a spin. It has no substance. It is a broken promise. What we are going to see tomorrow in the budget are further real cuts in education. We are going to see the education budget cut by at least $70 million. This is just a bit of window-dressing, and when you look into the window, what you see is an absolute disaster. I wonder what the parents of children at the 17 schools on this hit list that has been announced are going to think when they get it? My office is making sure the people at Smithfield Plains know all about it this afternoon. If you cannot fix the problem you shut the school, you close the school.

Members interjecting:

The SPEAKER: Order!

Dr McFETRIDGE: You shut the school because you cannot fix the problem.

Members interjecting:

The SPEAKER: Order!

Dr McFETRIDGE: What about the others? What about the Ross Smith Secondary School, Gepps Cross Senior High? These are all the battler suburbs that are being let down. There are 17 schools closing, one school a year for the next how many years? We have another 13 on the secret hit list. Wait until you see the other secret hit list come out—

The SPEAKER: The member's time has expired.

Dr McFETRIDGE: —and wait until you see these other schools with their feasibility studies—

The SPEAKER: Order! The member's time has expired.

CROCFEST

Ms BEDFORD (Florey): Today I would like to report to the house about two events I recently attended on behalf of the Premier, and in one case the Minister for Aboriginal Affairs and Reconciliation and another for the Minister for Education and the Minister for Employment, Education and Further Training.

The first event was the 2006 CrocFest held at Port Augusta from 5 to 7 September. It is a 100 per cent alcohol and smoke-free event, encouraging all who visit—this year from over 50 schools—to respect themselves and to respect

their culture. Each year indigenous and non-indigenous students are exposed to a range of information on subjects such as careers, health, sport, science and environment, and performing and visual arts. The last category works really well with the fabulous items each school produces for the concerts that are part of the Global Rock Challenge, held every evening during the CrocFest. They are very similar to the variety and excellence that we see in the events in the metropolitan area in the Rock n Roll Eisteddfod that so many of us attend.

At the opening event, attended by representatives of many of the agencies involved in the displays at CrocFest, I relayed the message of the Premier and the minister emphasising the importance of encouraging every young person to celebrate being Australian, and to be part of reconciliation in practice. The young people taking part in CrocFest learn about each other's cultures, ideas and traditions. They form friendships and learn about the choices they have, or should have, in life. Congratulations go to the sponsors and community partners of the event and to the Croc Community Committee led by chair Sean Holden, and the production crew, who travel Australia to present the events in eight regional centres. To Peter and Helen Sjoquist and to senior event manager Jaoqui Corbett (in her first year of CrocFest involvement), and the entire production crew, well done on all your efforts; they are very greatly appreciated. As a regular visitor to CrocFest, I very much look forward to seeing you all there again next year.

I would also like to mention that during my visit to Port Augusta I went to the Wadlata Outback Centre, which is a fantastic interpretive site with an enormous amount of historical and cultural information brilliantly displayed. I can recommend it as a place to visit for everyone who is passing through or going to Port Augusta.

The second event was the 22nd Pedal Prix, which the member for Hammond spoke about yesterday. I acknowledge his presence at the event in the Rural City of Murray Bridge, at the Sturt Reserve. On behalf of all the schools that attend the Pedal Prix, I would also like to thank and acknowledge the Mayor Allan Arban, his wife Pam, and the councillors of the Rural City of Murray Bridge for their great support and in making sure that this prestigious event remains in South Australia. As one would expect, Victorians feature very prominently in the entries to the event, along with teams from states as far away as Western Australia, and the fact that teams travel those sorts of distances is, indeed, a testament to the event's stature and relevance. I understand that at least one school has included involvement in Pedal Prix as part of their recognised curriculum, and that other schools are also considering this.

To Pedal Prix board chairman Andrew McLachlan, event manager Gerry Geue, and the entire team, a huge thank you. No-one can underestimate the dedication and commitment you bring to this event, and the countless hours you put into making sure that building and racing these human-powered vehicles through the two heats in the city at Victoria Park—and then the marathon 24-hour event that we have just witnessed—is an experience available, this year, to thousands of students in over 230 teams from schools all over the country. We cannot repay you for the extra effort that you have put in.

The event brings mostly dads into the design and building phase and then the mums, siblings, extended families and school communities into the myriad of backroom tasks that are required to keep the riders and vehicles on the track. They look after fitness, after how they use their diet, and after the massage and recovery units, all in their little back tents. Pit Straight is just a hive of activity. Every year you see so many more new innovations, not only to the design of the actual bikes but also to the work that goes into back stage. Each team has eight riders involved, and this back room work goes into making sure that each team gets their vehicle onto the track and over the finish line—and finishing is the important part of the event. This support also includes the running repairs that are often required for vehicles, which can travel as fast as 70 kilometres an hour—and if you have tried to peddle one of those things down the track you will soon develop a healthy respect for what goes on. The TAFE team in the repair tents make sure that these repairs happen as smoothly and effectively as possible. This year the safety measures at the track were put under scrutiny and passed all tests. I commend the event to everyone.

Time expired.

TRANSPORT PORTFOLIO

Mr HAMILTON-SMITH (Waite): Today I raise two issues under the transport portfolio, and draw them to the house's attention. In particular, I call for the government to immediately investigate and report back to the parliament on public claims made today on talkback radio that the department of the Minister for Transport, Energy and Infrastructure is allowing non-English-speaking applicants to rort the drivers licence system.

Today's talkback radio claims, apparently sourced from within the department but also confirmed directly by callers to the station, alleged that non-English-speaking drivers licence applicants were having interpreters virtually sit their exam. It is possible that a fee is being paid for this service, and it raises questions about the ability of the driver to read signs and follow instructions if someone else has done their exam. We heard on radio that the success rate of these non-English-speaking applicants during the licence test has been almost faultless, raising concerns about who is answering the test questions. Claims were also made that drivers licence photo IDs of people wearing veils, with only their eyes visible, were allowed to be printed, and that seems to be in contrast to the requirement for passports. Clearly, photo IDs are a valuable and important tool and the full face should be visible.

The public also heard claims that the process for verifying non-English-speaking migrants' previous driving licence qualifications and skills may be flawed, including suggestions that people with no previous driving experience may have been granted licences in the Murray Bridge area. Talkback radio heard that the source of these claims is allegedly within the responsible government department, and from the police.

I call on the minister to get to the facts quickly and report back to the parliament by Tuesday 26 September—which, given that the budget is tomorrow, seems the most appropriate next sitting day—to advise us whether these allegations are correct. If the allegations are substantiated, then the minister has some explaining to do—when did he first know of the problems, how long has his department been aware of these weaknesses in the licensing system, and what action does he intend to take to fix the problems? I am very concerned for the safety of the applicants themselves who may be putting their lives and their family's lives at risk if they are driving without an ability to read English, to read signs or to follow instructions, and if they are inappropriately licensed. As shadow minister for multicultural affairs and

transport, I urge this Labor government to invest in more English language training for migrants and driver's licence applicants. Non-English speaking migrants need help and assistance, particularly with licences. Loopholes like these serve no-one and may be putting the lives of both migrants and the general public at enormous risk at a time when road safety is a number one priority.

I now turn to the issue of South-East roads. I draw to the attention of the house that, when I visited the South-East last week, I met with the Naracoorte Lucindale Council, Wattle Range Council, the District Council of Grant, Mount Gambier council, the Limestone Coast Development Board and SELGA. I met with a number of private businesses in the area and a number of members of the public, and I organised a public meeting attended by nearly 70 people in the town hall at Mount Gambier on Tuesday night last. I advise the house that the councils and the public are quite concerned about the condition of roads in the South-East. I draw the house's attention to a plan for transport for the South-East/Limestone Coast region of South Australia released recently which bears the logo of the government.

I interrupt my address by commending the members for Bright and Hartley who have just entered the chamber wearing exactly the same outfit. They look resplendent, but I wonder if this is a sign that Labor women are going to get in uniform and go on the march. They both look glorious, and I commend their appearance. Returning to the issue of South-East roads, I think that the proof will be in the pudding in tomorrow's budget. The call in the plan that I have mentioned is for $85 million of important work for bypasses at Penola and Mount Gambier, the upgrading of the Riddoch Highway, the reinstitution of rail, and a number of other projects. I hope that the government, since its logo appears on the plan, has heard the call and the cabinet has agreed to start setting out a plan going forward to find that $85 million worth of works.

Time expired.

ASHFORD ELECTORATE

The Hon. S.W. KEY (Ashford): I rise today to talk about some concerns raised in the electorate of Ashford regarding the regulation and impact of mobile phone towers. As members would be aware, the commonwealth Telecommunications Act 1997 and the associated Telecommunications (Low-impact Facilities) Determination 1997 regulate the provision of telecommunication facilities throughout Australia. Schedule 3 of the federal telecommunications act gives provision for carriers to go ahead with installing phone towers that are deemed to be low impact without the need for approval by council or state planning authorities. There is also no need for community consultation and there are no appeal rights. Low impact facilities are identified as aerials of up to three metres in height erected on an existing building or structure. On a state level, the most common form of telecommunication facilities require approval under the Development Act 1993, but these stand 25 to 30 metres high and they are usually described as slimline monopoles with associated antennae, a small base, usually with security fencing.

Council development assessment panels, acting under the delegation of the full council, are responsible for determining applications for development plans and planning and consent for these applications. The development plans for all council areas contain development assessment policies against which applications for telecommunication facilities must be assessed by the planning authority. These policies were augmented by the council-wide policies introduced in all council areas by a ministerial telecommunications facilities plan amendment report which was approved in August 2000 under the Olsen Liberal government. So, where we do have provisions on a state basis, the previous Olsen Liberal government was the author of that provision.

I have written to Senator Helen Coonan, the Minister for Telecommunications, Information Technology and the Arts, to seek her assistance with regard to the community action group that has been formed in the electorate of Ashford. This group is taking action against the proposed erection of a mobile phone tower at the south-western corner of South and Cross roads, Edwardstown, in the Marion area. While I commend Councillor Veliskou in particular, and also Councillor Cole, for listening to people in their wards, the council has been able to take little action. I should also mention that the Marion council was quite courageous in the past in trying to make some changes with regard to telecommunication towers.

I wrote to Senator Coonan on 17 July asking whether she would not only give further information and consideration to the regulation of telecommunication facilities, particularly mobile phone towers, but also to ensure that, where we do have regulations, they adequately protect the community's health and environmental interests. I invited the senator—the minister—to respond to my letter and assist me in trying to work through these issues for constituents.

I might also say at a federal level that this phone tower will be erected in the federal seat of Boothby, so I have written to the federal member, Dr Andrew Southcott, also seeking his report. Unfortunately, to date, I have not received any response from the federal minister, and I am concerned that there has been no action or even an acknowledgment letter received. I call on the federal minister to not only answer her correspondence but also review schedule 3 of the federal Telecommunications Act 1997 so that residents, schools, community groups, businesses and basically anyone in the area of a proposed site is consulted, and certainly that appeal rights be made available should a decision be made that affects so many people. The mobile phone tower that has been proposed is right next to one school and will also affect another school nearby.

Time expired.

AUSTRALIAN VALUES

Mr HANNA (Mitchell): I will make some remarks today about Australian values—more particularly, about the political device which is being employed by the federal political leaders, John Howard and Kim Beazley, in the lead-up to the federal election. I am referring to a divisive debate whereby the concept of Australian values is used as a tool to appeal to people's fears and prejudice. The Leader of the Opposition (Kim Beazley) last week suggested that everyone coming to this country, including tourists, should be quizzed on whether they accept Australian values. Of course, that plays right into the hands of John Howard (the Prime Minister). He would love an election to be fought on fear and debate about so-called Australian values rather than industrial relations laws, for example.

The proposal that tourists should be quizzed about values raises all sorts of questions. Our government has taken our country to war in Iraq as a result of our foreign policy alliance with the United States, even though we had no

conflict with the people, or even the government, of Iraq, and we are therefore party to the killing of tens of thousands of innocent people in pursuit of that foreign policy. Does this represent the Australian values that the opposition leader was on about? Also, we have laws targeting prostitution, yet every day in the daily newspaper we have a couple of full pages with explicit messages advertising just such a phenomenon. Is this representative of the Australian values about which Beazley and Howard would like to quiz people coming to this country?

We know what it really is. It is a kind of code. It is an appeal to fear of the unknown and fear of the other, particularly fear of people of Islamic faith. It is not only dangerous but also an insult to many good Australians. I do want to make one positive assertion about what might be included in Australian values, however. I particularly want to mention the rule of law. It is not widely understood, although if you give people examples they know what is a fair thing and they then do agree that the rule of law is something that we would seek to uphold in Australia.

I particularly want to refer to a visit and a speech by the Rt. Hon. Lord Falconer of Thoroton, the Lord Chancellor of England and its highest ranking legal officer—equivalent to our federal Attorney-General. He visited Australia recently; and, on 13 September, he gave a speech in Sydney. It was part of a series of lectures entitled Magna Carter Lectures. The lectures often touch on human rights, and so on. In his speech, Lord Falconer said:

> The response to terrorism must be conducted in accordance with fundamental human rights principles or we cede to the terrorist. Those principles allow for a balance to be struck between the rights of the individual and the rights of the community as a whole. We must recognise that national security is not a wand which sweeps away human rights, and human rights is not a barrier which prevents a state from protecting itself against those who would destroy it.

There is a particular relevance to Australia in what he said. In another part of his speech, he said:

> It is a part of the acceptance of the rule of law that the courts will be able to exercise jurisdiction over the executive. Otherwise the conduct of the executive is not defined and restrained by law. It is because of that principle, that the USA, deliberately seeking to put the detainees beyond the reach of the law in Guantanamo Bay, is so shocking an affront to the principles of democracy.

Of course, we have an Australian held beyond the rule of law in Guantanamo Bay, David Hicks; and I, like most Australians, fully support his right to a fair trial. We know that if he was brought back to Australia there would be no law according to which he could be charged and convicted. Ironically, that seems to be why the federal government is refusing to call for him to be brought back here. That is an absurdity, it is an injustice and the tide is turning in relation to David Hicks. A news poll recently acknowledged that most Australians want to see that he gets a fair trial.

Time expired.

SHINE SA

The Hon. L. STEVENS (Little Para): I want to spend a few minutes this afternoon revisiting the issue raised by the Hon. Dennis Hood on behalf of Family First in relation to SHine SA and the claim made by him that SHine SA (a government-funded agency) was soliciting sex workers for people with a disability. That claim was accompanied by the Hon. Dennis Hood calling for a freeze on funding to SHine SA. I start first with the facts of the matter. As members would know, SHine SA emphatically denied claims that it distributes information about sex workers to people with disabilities.

I rang Ms Kaisu Vartto (Chief Executive, SHine SA) to talk with her about what had happened. Of course, SHine SA backs this up in its media statements, but Ms Vartto said to me that, in the one instance on which Family First apparently based its claim, a situation occurred where a SHine worker, in trying to be helpful to a request by a disability agency seeking information on disability-friendly sex workers, offered to get the list of workers from, I think, the sex industry network and fax that list on.

I understand from Ms Vartto that that is not their usual procedure. Their usual procedure is to refer an agency to the sex industry network. This person was trying to be particularly helpful in providing the information to them. That was the fact of the matter following her investigation of the issue. As for the allegation that SHine was training sex workers—heaven forbid, training sex workers—she told me that this training was initiated in response to complaints from parents of people with a disability because of unsafe sex practices and the ripping off of clients. Training was provided once for sex workers, and in the media release she says that SHine SA provided training once to sex workers on ethical sex work practices several years ago. It was just two hours of training.

I also asked her in our conversation whether Dennis Hood had contacted her and sought any clarification of the list that had been provided to him by an 'anonymous' person. She told me that she had had no contact with him on behalf of Family First. I think this is something we should all consider: an MP receives some information anonymously. He goes to the media, makes an issue but does not even bother to check out the facts and the situation with which he has been presented and gets some sort of coverage. I have to say that I completely agree with another statement made by Ms Vartto in her media release. She said that it is unfair and unfortunate that Family First has portrayed this organisation in a way that suggests the training or referral is common practice, or that a great deal of time has been spent on this: it is not.

All this leads me to believe that here we have Family First having yet another go at SHine. They have very carefully crafted a controversy designed to engender some moral outrage amongst the public, and I think that is a very sad state of affairs.

Time expired.

GRASSHOPPER PROGRAM

The Hon. R.J. McEWEN (Minister for Agriculture, Food and Fisheries): I seek leave to make a ministerial statement.

Leave granted.

The Hon. R.J. McEWEN: I wish to advise the house of the 2006 grasshopper management program and of activity by Primary Industries and Resources SA which began on Monday in the Orroroo-Carrieton-Jamestown area in the state's north. This week Primary Industries and Resources SA—and I note one member opposite is particularly interested in our grasshopper program—has commenced a management program to control the small plague grasshopper. This program has been planned for several months and is expected to continue until mid-November. The first reports of hatch-

ings occurred during the week starting 21 August. Hatchings were noticed east of Terowie and east of Hawker. Since then, numerous reports have been received from around Orroroo, Eurelia, Carrieton and the Boolcunda area. It appears that the hatchings are a little earlier than expected, possibly due to the warmer August.

As yet, no reports of hatchings have been received for south of Terowie. A preliminary survey was undertaken last week in the Sunderland-Bower district but no hatchings were observed. This area will be monitored over the coming weeks. The infestation of grasshoppers is not likely to be extensive as the severe outbreaks of small plague grasshoppers in the area in 1998-99. Additionally, small plague grasshoppers do not migrate far and seldom move more than 30 kilometres from where they have hatched. However, it is important that we control these grasshoppers now to avoid an even greater population and impact next year.

Primary Industries staff have facilitated a great deal of consultation and planning over several months with community groups, the South Australian Farmers Federation, NRM boards and landholders. A respected local farmer, Malcolm Byerlee, has been appointed as Chair of the Grasshopper Community Reference Group, which provides an important link between the community and Primary Industries SA and which provides valuable feedback to the operation. I would like to thank reference group members for their time and commitment. Two community meetings have been held to discuss the program with landholders: one at Orroroo earlier this month, and one at Hawker on Monday night. During these meetings, PIRSA staff detailed the behaviour of small plague grasshoppers and outlined plans for the program.

It should be noted that Primary Industries SA has actively encouraged landholders to undertake their own control programs where possible and that Primary Industries SA will assist by treating larger infestations. It is important for landholders to manage their own properties for smaller hatchings to avoid further egg laying.

A team of Primary Industries SA staff is now based at the CFS headquarters in Orroroo, and a special hotline number (8658 1532) has been set up for landholders and the community to obtain further information about grasshopper control. Information is also available on the Primary Industries SA web site.

ROAD TRAFFIC (SCHOOL BUS SEAT BELTS) AMENDMENT BILL

Mr HAMILTON-SMITH (Waite) obtained leave and introduced a bill for an act to amend the Road Traffic Act 1961. Read a first time.

Mr HAMILTON-SMITH: I move:

That this bill be now read a second time.

This is a most important bill, and I urge the house to give it the most careful consideration. I am seeking the government's support for what is clearly an important issue for parents and schools in Adelaide and across regional South Australia. Sooner or later we will have seatbelts in all dedicated school buses. I think the government recognises that through its announcement to progressively fit its own bus fleet with seatbelts, as they are replaced, but over 30 years. We Liberals want it sooner; the government wants it later, if at all.

During my consultation on this bill, support for seatbelts has been given by the Australian Education Union, the RAA, the Association of Independent Schools, Women in Agriculture and Business of South Australia Inc., and other groups which have supported the measure publicly, including the Australian Medical Association, the Primary and Secondary Principals Association, the South Australian Italian Golf Club, parents groups, the Masonic Foundation, and the Prime Minister, John Howard. It is now time for the Premier and the Labor Party to listen to the people and to act on behalf of the victims in school bus crashes. In respect of those crashes, of course, the most recent was on the Eyre Peninsula. But I would remind members that there was an earlier crash some time ago involving students from a school on the boundary of my electorate, Pasadena, the special unit, during which a number of children were seriously injured. So, my own electorate has been touched by this.

There will be differences, as we debate this bill, about how the measure will be funded and the time frame. I say at the outset that, if the government has constructive arguments to put in regard to amendments or changes to make this measure a reality, I invite it to put those amendments forward. But, if it does not have a better plan, I call on the government to agree with this plan in the interests of families. There has been a lot of talk and, I argue, a lot of procrastination, on this issue: now is the time for action. I also remind the government that it will need to be prepared to invest in school bus seatbelts not only for its buses but through contracts with private providers. After all, it is the government we look to to protect our children. Rhetoric is not enough; it takes dollars. With $2 300 million of additional revenue per year to spend, the government clearly has enough money: it simply has to get its priorities right. In my view, seatbelts must come.

There have been initiatives in other states in respect of this, and I draw members' attention to an excellent research paper done by the Parliamentary Library entitled 'Seatbelts on Buses', which goes through the situation in other states. There has certainly been expenditure in Western Australia and in Queensland on this. Victoria is also working on the problem and each state is addressing it; although if this legislation is passed, it will be the first of its kind in the country. The Parliamentary Library research is to be commended and I thank them for their work.

There has been some argument about the cost of fitting the government bus fleet and the contracted fleets, and I know that during my consultations this has been put to me, too, by the bus industry which, understandably, is concerned about the cost of this. I would draw members' attention to *The Advertiser* of 10 August during which a number of those people who provide seatbelts commented on what they felt were the costs, and they were considerably less than the $70 million or so quoted by the Minister for Education, and other ministers from time to time, and they talk about, for example, in the case of the Wiltshire business:

Mr Wiltshire said sash-style belts would cost $8 500. A complete replacement of all seating with coach-style seats with inbuilt belts and body strengthening would cost $25 000.

Competitor Adelaide Seatbelt and Seating Specialists quoted $2 500 for lap belts, $5 000 for sash style, and $23 000 for coach-style seats.

That is from *The Advertiser* of 10 August. I think there might be some fudging or some woolly figures bouncing around here on the part of the government as to what the investment required will actually be. I note the government has come up

with its own figures which I must say seem to be aimed to obfuscate, delay and evade the issue. I draw members' attention to *The Advertiser* of 14 August which further explores the issues and, of course, there has been extensive media coverage, all confirming the point that the community is now ready for this measure.

I thank the Association of Independent Schools of South Australia for its response to the public consultation on this, in particular Garry Le Duff, the executive director, who, in supporting the measure, makes the point that my bill:

> . . . raises a fundamental and emerging issue for families that have chosen a non-government school. These families are taxpayers and are entitled to expect the state government to be concerned about safety and welfare of **all** children regardless of the school they attend and to a fair share of public funds to support this objective. Comparison with ALP state governments in other states and territories illustrates that the above families in South Australia receive an inequitable share of public resources.

The point he is making is that the government needs to consider what support it can offer the private school sector if this measure is agreed to, as I hope indeed it is.

I also thank the Australian Education Union Branch President, Andrew Gohl, for his support for the measure, pretty well unqualified, and the union hopes to see it implemented, and the RAA which has indicated in its response to my consultation that it supports the phasing in of seatbelts in all new school buses in South Australia, presumably meaning both government owned and private, and an education awareness campaign to encourage children to wear seatbelts. I just want to clarify that because *The Advertiser* this morning did incorrectly indicate that they fully support my bill in its entirety, or certainly suggest that. I am not sure they have signed up to that, but they certainly have agreed that the phasing in of seatbelts in all new school buses in South Australia is something they see as being necessary.

I want to thank the Bus and Coach Association, particularly Mr James Scott, Vice President; Mr Roger Quinsey, President; Sonia St Alban, Executive Director; and Mr Gary Frazer, who have met with me and have run through a number of the issues that are of concern to them.

Just to bring them to the house's attention more specifically, I think everyone agrees that government buses should be fitted with seatbelts, and my bill provides for a time frame of three years. That is four budgets, counting tomorrow's budget, for the government to gear itself up to meet the ask. There is general agreement that those school buses contracted to the government on a permanent basis to provide almost exclusively school bus services, ought to be fitted and that—and this is a most important point—the government contract payment for that private provider must be increased to cater for the new capability. That is to say that, if the private contractor is going to have to put seatbelts into the bus, whether they are retrospectively fitted or in a new bus, they ought to receive a greater payment than before. If we want an additional service, the government must be prepared to pay for it, and certainly this is a way to amortise the cost over many years and reduce the burden.

I think the problem area for the bus industry is going to be charter buses, that is, buses that are brought in from time to time to move kids to and from the school concert or the school camp at Victor Harbor. They might be engaged on other duties or services, and the school bus component of their entire business might only be 10 or 20 per cent. The question is: will they have to fit seatbelts to their buses and what will the cost of that be? It is a big impost on their business, and that charter component of the industry is a big concern. I think they raise a fair point.

So, I say to the government that it has the resources of the department at its fingertips. I am open to an amendment to the bill. If, for example, my 2009 deadline is to be held for government buses and contracted buses, but the charter sector of the bus industry needs a longer period in order to reasonably fit out their buses without an unfair impost on their businesses, let us consider an amendment. Maybe they need a few years more to allow their business plans to accommodate that increased requirement, but let us address the issue, not run away from it.

The issue has also been raised with me about the metro ticket bus services and the three major contractors that do not require seatbelts to be fitted for general bus purposes. My bill provides that, if a particular charter or a particular purpose is to exclusively carry schoolchildren, they will need to be fitted with seatbelts. There are certain dedicated services that the three major contracted bus companies carry out. My bill requires that, if it is a dedicated school bus service, it should be fitted with seatbelts. That would require that some buses in the metro ticket fleet be fitted with seatbelts in the interests of protecting all children. Again, I am open to amendments if this is an unreasonable impost on the bus industry. I look to the government to consider the matter and to come back to me with some intelligent recommendations in respect of that.

As members examine the bill, they will note the definitions of 'school bus' and 'school student'. The school bus definition states:

> A bus that is used mainly to carry school students or is undertaking a particular trip mainly for the purpose of carrying school students.

So, that may be an area that we can debate if we want to sensibly and reasonably pick up this issue. The device I use in my bill is to make it an offence to carry children in buses that are not fitted from the set time, but I recognise that bus drivers cannot always check that all kids are wearing seat belts, so I have provided an out in the bill.

In summarising, I say to the government: if you do not support this bill, what is your plan? If there is another accident in which children are seriously injured or killed and the government has not supported the bill, what is its position? The aim here is to protect children. We need to do it. The cost needs to be accommodated. We can argue about the time frame. You say 30 years, we say three. The government can sensibly amend the bill if it feels it is unworkable. However, I do not want to be here in a year's time or two years' time if there is another accident and have it on my conscience that we had an opportunity to do something and we did nothing. I call on members to support the bill in the interest of child safety.

I seek leave to have the explanation of the clauses inserted in *Hansard*.

Leave granted.

Explanation of Clauses

Preamble

The Preamble to the Bill provides a summary of the provisions in the Bill, which are to amend the Road Traffic Act 1961 to provide for insertion of a new section 162AB—seatbelts and school buses.

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The Bill will come into operation on 1 September 2009.

Clause 3: Amendment provisions

Provides for a provision under a heading referring to the amendment of a specified Act to amend the specified Act.

Clause 4: Insertion of new section 162AB

Subclause (1)

Provides that a person must not drive a school bus unless it has seatbelts and anchorages for seatbelts installed that comply with the applicable Australian Standards.

Subclause (2)

Provides that a person must not drive a school bus unless they have taken reasonable steps to ensure that each passenger who is a school student under the age of 16 is wearing a properly adjusted fastened seatbelt.

Subclause (3)

Provides that regulations may define what constitutes the taking of reasonable steps for the purposes of subclause (2).

Subclause (4)

Provides definitions of a school bus to mean a bus that is used mainly for the purpose of carrying school students; and a school student to mean a student at a primary or secondary school.

Mrs GERAGHTY secured the adjournment of the debate.

PUBLIC WORKS COMMITTEE: TORRENS AQUEDUCT UPGRADE

Ms CICCARELLO (Norwood): I move:

That the 242nd report of the committee entitled Torrens Aqueduct Upgrade be noted.

The new Torrens Aqueduct project will be of immense importance to the residents, particularly of the north-eastern area of Adelaide. The Torrens Aqueduct forms a critical link in the supply of water from the Kangaroo Creek Reservoir to the Hope Valley Reservoir via the Gorge Weir on the Torrens River. The aqueduct comprises approximately 4.5 kilometres of concrete open channels with several tunnels, originally constructed in the 1870s. It is located within the 51 hectare reserve owned by SA Water.

The Hope Valley Water Treatment Plant supplies water to approximately 18 per cent of metropolitan Adelaide, and provides seven to 12 days of buffer water storage if the aqueduct fails or is damaged. A detailed risk assessment, conducted in July 2005 and updated in March 2006, indicated that the aqueduct channel, in its current condition, presents several risks assessed to be either high or extreme. SA Water proposes to upgrade the Torrens Aqueduct system by constructing a new underground pipeline to replace the ageing open-channel aqueduct at an estimated capital cost of $21.5 million. A new 1 750 millimetre diameter pipeline will replace the open channel aqueduct 800 metres downstream from the Gorge Weir to the entrance of the Hope Valley Reservoir.

The new pipeline, which will run through the linear park, will be 3 170 metres in length. The aqueduct reserve that will become surplus to SA Water's requirements is highly valued by the local community and is a significant green buffer area in metropolitan Adelaide and, therefore, the government intends to incorporate it into the linear park system. Consultations have begun to develop a strategy for management and eventual handover of the land.

All adverse environmental impacts associated with this project will be minimised. SA Water will undertake a consultation program to ensure that the community is informed of the proposal and its selection criteria and are continually kept up to date with construction activities. An amount of $500 000 is included in the proposal as operating costs over 10 years for natural habitat restoration of the reserve, including weed removal and revegetation of local indigenous species, and a 2.3 hectare area of remnant blue gum woodland will be conserved and enhanced as part of this restoration work.

The pipeline route will be designed to ensure minimum impact on vegetation, sites of cultural heritage significance, significant trees and public places. Construction will not affect species listed under the Environment Protection, Biodiversity and Conservation Act or any rare, vulnerable or endangered plant species. The contractor will be required to monitor any potential environmental impacts associated with the works, and SA Water will conduct environmental audits to manage and assess that process. All surplus fill excavated from the trench in the linear park will be used as backfill during decommissioning of the open channel in the aqueduct reserve. This will greatly reduce the amount of construction waste sent to landfill.

The project will provide for the current and future water supply needs of the Hope Valley Waste Water Treatment Plant and ensure security and continuity of the supply. It will also eliminate the public safety and water supply contamination risks associated with public access to the open channel as well as mitigating the risk of property damage due to the failure of the channel walls. The decision to replace the aqueduct is justified because refurbishment presents greater technical and logistical challenges compared with constructing a new pipeline, and the shorter asset life and reliability of the refurbished channel presents higher risks. The pipeline option will provide an increased capacity to 175 megalitres per day in normal capacity and 210 megalitres per day in an emergency. It will require minimal maintenance—that is, no pump station will be required—and will have a 150 year asset life.

Construction is intended to commence in March 2007 and be completed by May 2009. Disruption to the linear park during the construction phase was considered a possible disadvantage of this option; however, the option which has been chosen meets all the key objectives. The public value from the project will include:

- a reliable water supply infrastructure that provides for the expected long-term water demand of metropolitan Adelaide and allows for future system growth;
- elimination of a known public safety and property damage risk;
- minimised impact upon the environment and zero ongoing greenhouse gas impacts; and,
- provide a greater security and continuity of water supply to the Hope Valley Water Treatment Plant.

The committee has been advised that the metals market, including raw iron ore, has fluctuated dramatically in the past 12 months. As the intended pipeline material is mild steel cement-lined, volatility in the price of raw iron ore directly affects the cost of pipe; however, the committee is advised that there are alternatives to MSCL pipe should its price become prohibitive.

The committee is also advised that SA Water does not have detailed knowledge of the history of the land use and, therefore, there is a slight risk of encountering contaminated water in the trenches dug for the new pipe while dewatering operations are underway. The risk will be mitigated by contamination surveys along the proposed pipeline route conducted prior to detailed design to ensure that no areas of contamination exist. In addition, water pumped out of the trenches during construction will not be discharged to the Torrens River.

So, pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee reports to parliament that it recommends the proposed public work.

Mr HAMILTON-SMITH (Waite): The opposition supports the report, and was keenly interested in the deliberations on the matter during the Public Works Committee. However, at this point of the debate we want to bring one matter to the attention of the house, and that is the fact that SA Water will be borrowing $21.5 million to build this aqueduct so that it can continue paying more than $165 million per annum to the Treasurer to help the government's budget problems. It is a point made in the report but perhaps not emphasised. We chose not to make a minority report but, on the eve of tomorrow's budget, it is worth reminding the house and the public of South Australia that there is quite a bit of off balance sheet borrowing going on by this government.

I do not need to remind the house about the track record of Labor governments when it comes to borrowing. Those who were around in 1993 remember the $11 billion worth of debt we got ourselves into, and they remember that when Labor last handed over to a Liberal government we were $300 million per annum in the red. The person who is now the Premier was a senior minister in that government, and the person who is now the Treasurer was a senior adviser to the premier of that government, which delivered that wreckage. So, the premier and the Treasurer are the two people who had their hands all over the State Bank mess, and now we have these arrangements coming forward here and there involving off balance sheet borrowing by government-owned entities that ultimately add to the public debt.

The government announced the investment to build the new pipeline in the Torrens Linear Park to replace the ageing aqueduct to Hope Valley right back in June. There was a big public fanfare and, of course, the Premier was out there walking the route, but he did not mention at the time that public debt would be used while cash dividends were still paid to the government. Our committee heard evidence which confirms that borrowings—which are part of a much bigger borrowing portfolio, which the Auditor-General has already warned is blowing out of control—are to be applied to this project. I bring members' attention to page 1246 of the Auditor-General's Report on the South Australian Water Corporation where he warns that net cash available to SA Water is:

> . . . not sufficient to enable the payment of the level of dividend and return of capital required by the Department of Treasury and Finance. As a result the net borrowings of the Corporation have increased by $131.9 million over the last five years. Essentially, the Corporation is borrowing to fund part of its dividend payments to the Government. . .

They are the words of the Auditor-General. SA Water is borrowing to pay its dividends to the government. Here we are off the balance sheet, cranking up the debt, so that we can send money to the Treasurer to prop up his budget. In 2001, SA Water provided only $135 million to the government; that is the last year in which a Liberal government delivered a budget. Now, the dividend being extracted is $165 million—a significantly greater sum. The net borrowing will add to the public debt despite billions of dollars of GST and property tax revenue. The government is stripping SA Water of cash and borrowing to cover the gap. The opposition welcomes the infrastructure project; it is a good project. But we question the use of debt which will ultimately fall upon the taxpayer as a 'sleight-of-hand' device to prop up the government dividend revenue.

In June, we also heard, here in the parliament, that the Land Management Corporation was to borrow $50 million to back up dividends to government. Of course, when that was raised by the Leader of the Opposition, there was great gesticulation and arm-waving from the Treasurer who then had to come back into the parliament later that afternoon to apologise because his denials during question time had been proven wrong. He had to set the record straight by admitting that the $50 million in borrowings from LMC were being made. So, we have LMC and now SA Water out there borrowing money to pay off debt. I remind the house that I asked a question of the Minister for Administrative Services and Government Enterprises on 28 June about this subject to which, in essence, he gave no answer of any substance. The question was dodged.

We support the report. It is a worthwhile infrastructure project. I raise the question: can you really trust Labor governments to borrow?

Ms Ciccarello: Oh!

Mr HAMILTON-SMITH: Your track record isn't terribly good. I do not remember too many Liberal governments around the country running their states bankrupt, but I can think of at least three state Labor governments in South Australia, Victoria and Western Australia doing exactly that. I can still remember the $10 billion black hole that Beazley handed over to the current Howard government in 1996. You tax and spend, and then, when you have taxed and spent a few times over, you start to borrow. Slowly the borrowings grow, and then you find that you have an awful mess on your hands. It is usually at about that stage that you go belly up—

The Hon. S.W. KEY: A point of order: I am not really sure what this has to do with the question at hand, and I would suggest that this is not relevant to the debate.

The DEPUTY SPEAKER: Will the member for Waite please focus on the content of the matter?

Mr HAMILTON-SMITH: Thank you, Madam Deputy Speaker. I am simply relating to this project, which involves net government borrowings, the overall financial strategy of government which is very important to this project. It simply makes the point that, if we allow borrowings for projects like this to grow out of control, bit by bit they add up. We finish up with a cocktail of debt which drags the state down. These people who are in government have an unbelievable track record on this. I draw to the media's attention, as I draw to the public's account, this project where it has been confirmed by the Auditor-General, in his own words, that the government is using SA Water to borrow to pay dividends to the Treasurer. It is as simple as that. That is what this project is all about. It is a good project; we support it. But, if you had not wasted the money that you have raked in from property taxes and the GST, you would have been able to fund the project without the need to borrow. Instead, you are cranking up those debts and borrowings just to rake in even more money which you are spending as fast as you get it in. Again, Billy the Goose could balance a budget in this fiscal environment.

Mr Koutsantonis: Why didn't you?

Mr HAMILTON-SMITH: I'll tell you why, because in a financial environment with $11 billion of debt and a $300 million account deficit—try to balance a budget then.

The DEPUTY SPEAKER: Order, the member for Waite!

Mr HAMILTON-SMITH: You have no debt. You are awash with cash and you are crowing about balancing budgets. If you were not balancing budgets in this fiscal environment, with $2 300 million more—

The Hon. K.O. Foley: Lucas couldn't do it. Billy the Goose Lucas.

Mr HAMILTON-SMITH: Here we go. We had your $11 billion worth of debt. You gave us a $300 million current account deficit and you wonder why it was difficult to balance budgets. You are dead right it was. You have $2 300 million more and you are borrowing from SA Water, as the Auditor-General has confirmed, for this project to further crank up debt, and you are balancing your budget. It is a bit like the bloke who won Lotto crowing about meeting his monthly rent payment and 'Oh my God, I met the car payment this month, and I just won $1 million in Lotto'. As a responsible member of the opposition, I need to bring to the public's attention that these little off-balance sheet borrowings are occurring just so that when we add it all up, people know how much debt this Labor government has cranked up just like the last one did.

The Hon. P.L. WHITE (Taylor): I rise as a member of the Public Works Committee and with a great deal of pride in the Rann Labor government's decision to invest $21 million in a significant piece of infrastructure that will benefit the community of South Australia. I have much interest in this particular project, being a resident of the suburb which it traverses. It is a 4 kilometre—

An honourable member interjecting:

The Hon. P.L. WHITE: I am declaring an interest. The member for Waite made much ado in saying he supports the project but then punched holes in it, which really should not be surprising to members given that, for 8½ years of a Liberal government, this project was on the table for a long time, but in 8½ years the Liberal government took not one step to implement it. I will tell members why it was implemented and who was a great proponent of it, and that was Mr Tom Kenyon, the member for Newland, who advocated very strongly on behalf of his constituents—constituents who are thrilled that the state Labor Government has invested the $21 million that the Liberals refused to invest.

This particular project, time and again, went before the Liberal minister and was refused. It was never funded under the Liberal government. It had 8½ years and never took the decision to do it. It is being done by a state Labor government. We understand one of the reasons the new member became so popular in his electorate was that he advocated very strongly, and the Labor government has delivered this infrastructure project to the residents of Highbury and Hope Valley. It will provide for not only public safety, because the ancient aqueduct of course was built in, I was going to say the last century, but it was the century before that—

Mr Kenyon interjecting:

The Hon. P.L. WHITE: The Romans. It was almost the Romans. It was an open channel and there is a risk of flooding. There were no houses in that area at the time it was built but, of course, there are new subdivisions and housing where the water would flow. So there is a significant risk to the public posed by that open aqueduct, as well as of course the risk of contamination of the water supply. So it is a very worthwhile project, despite what the Liberal lead speaker will say to rubbish this particular investment by the state Labor government—

Mr Hamilton-Smith interjecting:

The Hon. P.L. WHITE: Yes, you rubbished the investment—because this $21 million is $21 million that is well spent on a vital piece of infrastructure for the people of South Australia.

Mr KENYON (Newland): I am pleased to speak today to support this project as a member of the Public Works Committee. It is a very well thought out and thoroughly investigated project. I have to say that it was a very impressive submission that was put forward by SA Water. It went into great detail about the economic and social consequences of various options and the presentation was of a very high standard in my short time on the Public Works Committee.

I cannot rise without commenting on the member for Waite's diatribe on debt. It is not unusual for corporations such as SA Water to take on debt for infrastructure projects because (and I am very pleased to be able to use a word I learned in university) intergenerational equity is a concern whereby things are taken on debt and paid off over time by a number of generations that use them. So, for the member to get up and talk about a small amount such as $21 million worth of debt, which is hardly going to break the bank and is entered into on purpose to spread the burden over a number of generations so it is paid for by most people who use it over the life of the infrastructure, just beggars belief. It is trying to make a political point about something that does not exist and blow it out of all proportion. It has occurred to me, and I do not know whether or not it is correct, that one of the reasons it is off balance sheet is because the Liberal government sold off the management of SA Water in the first place. So, to come in and whinge about the consequences of that is a bit rich, I have to say.

So, I am very happy to support it and am very pleased that, once the project is completed, the land that the aqueduct sits on now will be made part of the Torrens Linear Park, which will be a brilliant outcome for residents of Highbury, particularly, and also Newland and Modbury, on both sides of the river.

Mr Koutsantonis: And for West Torrens.

Mr KENYON: Yes, I am sure the linear park will be brilliant for them as well, but not the aqueduct land. That is a bit far away.

Mr Koutsantonis interjecting:

Mr KENYON: Although I am happy if the member for West Torrens wants to walk along the linear park.

Mr Koutsantonis: I do ride my bike—

Mr KENYON: Well, call into my electorate office and come and have a coffee. I should also thank the minister, Paul Holloway, for his work in making sure that that land is returned to the linear park—and, more than it being returned to the linear park, the linear park itself is protected from being sold off by the recent passing of the bill. Once again, I am happy to support this report and commend it to the house.

Motion carried.

ECONOMIC AND FINANCE COMMITTEE: ANNUAL REPORT 2005-06

Mr KOUTSANTONIS (West Torrens): I move:

That the 60th report of the committee entitled Annual Report 2005-06 be noted.

I want to do something a little different today. One score weeks ago a motion of the house brought forth in this building the fifth Economic and Finance Committee conceived by procedure and dedicated to the proposition that all committees are created equal (and the Economic and Finance Committee more so). I am now engaged in noting the committee's 60th report (the annual report 2005-06) and dedicate—if not consecrate or hallow—its contents in this

house. Still, the stalwart men and women of committees past and present have dedicated themselves far above our power to add or detract.

The world may little note nor long remember what we say here but it can never forget what they did here. Reports into school bus contracts, the National Competition Policy, the Construction Industry Training Fund, the Crown Solicitor's Trust Account, public liability and the emergency services levy 2007 were tabled in the reporting period. It is for us, the still living now, to be dedicated here to the unfinished work which they who sat here thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us. That from these honoured reports we take increased devotion to that cause for which they gave the last full measure of their devotion.

Their Wednesday mornings did not pass in vain that this committee shall have a new birth of fearless activity and that the powerful and influential committee of the people, by the people, for the people shall not perish from the earth. I recommend the report to the house.

The Hon. G.M. GUNN (Stuart): It is hard to follow that fine rendition by the member for West Torrens who has eloquently and adequately put on public notice the great contribution that a number of members made to that committee and how fearlessly they went about their duties. I do recall a previous occasion when the now Minister for Agriculture and I determined to disallow one of the water management plans of former minister Kotz. I must say that she took umbrage.

The Hon. R.J. McEwen: She was not happy with you.

The Hon. G.M. GUNN: Less so with you.

The Hon. R.J. McEwen: Only because you asked me to leave.

The Hon. G.M. GUNN: You took the bait. That was one of the notable moments. However, in relation to the previous committee, I thought that one of the interesting and important parts of the work of that committee was when we were dealing with the emergency services levy for which I take some responsibility. I supported it. I believed that it was a good thing. Mr Euan Ferguson gave evidence about how the Country Fire Service was going to spin the amount of revenue the service was going to get. He clearly indicated to the people of this state the urgent need to change the Native Vegetation Act so that the definition of 'burning' did not mean 'clearance' so that they could protect the public against the ravages of bushfires, as well as a number of other steps which needed to be taken.

Unfortunately, the government of this state has not accepted the advice, and I say now: woe betide it when some fires get going. It has been warned. I will give members an example. Last year that large fire burnt in Horrocks Pass at Wilmington and it was extinguished by the Country Fire Service. Graders had to be brought in to grade down the dirt road. The council person who did such a marvellous job was most concerned that he would be the victim of these fools in the Native Vegetation Council who were liable to come after him because he knocked down a few shrubs. The time has come. Mr Ferguson clearly indicated the difficulties within his organisation.

I call on the minister and the Premier to come down on these people, curtail their activities, change the act, change the regulations and protect the public. One of the good things the previous committee did was to expose the anomalies in that particular piece of legislation. I thank the member for West Torrens for the kind words he said about that committee in a most colourful manner. It is one of the most colourful speeches we have heard in relation to the tabling of an annual report. I am not sure who compiled it, but I take it that it was the member's own work, that he was the architect of this interesting contribution. I commend him for it, and I am pleased to participate.

Motion carried.

PUBLIC WORKS COMMITTEE: AFTON HOUSE REDEVELOPMENT

Ms CICCARELLO (Norwood): I move:

That the 243rd report of the committee entitled Afton House Redevelopment be noted.

This report relates to the redevelopment of Afton House, a project which, certainly, will benefit the many disadvantaged people in the city. In 1977 the South Australian Housing Trust purchased Afton House, which is located at 260 South Terrace, Adelaide. The site is separated into three distinct blocks of accommodation, and can accommodate up to 99 people in 98 bedrooms. Currently, there are no disability provisions and substantial improvements are needed to meet acceptable minimal accommodation standards. The redevelopment will provide rooms with amenity commensurate with the length residents stay.

Approximately one-third stay for longer than 12 months; one-third are medium-term residents who stay for less than 12 months; and one-third are short-term residents who stay for one week to approximately three months. The buildings fronting South Terrace will be refurbished to provide short-term accommodation. Two new buildings behind them will provide medium-term and longer-stay accommodation. The redevelopment will provide 95 rooms compromising:

- 21 rooms on a 'room only' provision for immediate, short-term housing need;
- 24 rooms with ensuite bathroom facilities for medium-term residents; and
- 50 rooms with ensuite bathroom facilities and kitchenette, providing more self-contained accommodation for longer-term residents.

Rooms without associated facilities will be serviced by communal access to bathrooms, kitchen and lounge facilities. A centralised laundry will be for the use of all residents. Nine rooms are specifically designed to allow disabled access. In these circumstances, they will be restricted to single occupancy. To give some flexibility and maximise occupancy, two of these rooms can accommodate two able-bodied residents, and this results in site occupancy of 99 people.

Afton House is heritage listed as a local townscape item. Therefore, the sides, front and roof shape of the front section of the building need to be preserved. The redevelopment proposal addresses this, and the opportunity will be taken to repair and maintain the heritage-listed terrace building fronting South Terrace. However, continual review and comment will be sought from the Adelaide City Council heritage advisers.

The development will remove a number of ad hoc additions to the site which need costly repair and maintenance and will also remove and replace damaged or inefficient infrastructure and consolidate the site. Dedicated spaces do not exist in the administration area of Afton House. These areas will be consolidated and purpose designed to improve the security and safety of the residents and staff and aid effective management of the complex. Their provision will

allow discrete and private assessments of tenants who need assistance and support to access services from agencies off site. Increased amenity levels will be provided for residents and staff in kitchen facilities, washrooms, lounge areas and laundry. The ensuite and kitchenette facilities will give tenants the opportunity to attain some self-reliance to manage their welfare and prepare them for transition into the wider community.

The site has a single public frontage to South Terrace but its public visual permeability extends to both sides of the site. Consequently, the development will have regard for the quality of external spaces and their presentation to adjoining properties and their relevance to the existing urban environment. Casual access of the public onto the site will be precluded in order to give some site security. This will maintain residents' safety and dignity and ensure similar outcomes for the public. However, design efforts will be made to provide visual stimulation of the immediate environment in keeping with the expectations of the local community and enhancement of the urban fabric.

The capital expenditure for this project is $13 million. The estimates include allowances for furniture, fixtures and equipment to fit out the redevelopment of Afton House. After completion of the redevelopment, operating recurrent costs for the tenancy and property management of Afton House will be $130 000 per annum over and above rental income received and sourced from Commonwealth-State Housing Agreement funds. The draft program predicts a 15-month construction program, with construction to be completed in March 2008. During the construction period, tenants will be relocated to appropriate alternative accommodation to enable access to a safe and clear construction site. The cost of this project for $13 million certainly is something which will enhance the lives of some very disadvantaged people within our community. Therefore, pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee reports to parliament that it recommends the proposed public work.

Mr HAMILTON-SMITH (Waite): The opposition indicates its support for the report. It is a very good use of public money. We have examined it in a fair bit of detail within committee and agree that it is a well-run project. We are looking forward to following the updates. I indicate to the Government Whip that my friend the member for Heysen would like to contribute but not today—next week. I ask the government whether we can adjourn this matter until next week and then pass it on the next Wednesday of sitting, we would be grateful. I commend the motion to the house.

Mrs GERAGHTY secured the adjournment of the debate.

PUBLIC WORKS COMMITTEE: NORTHGATE STAGE 3

Ms CICCARELLO (Norwood): I move:

That the 244th report of the committee entitled Northgate Stage 3 Land Development Joint Venture be noted.

We have another project from the very hardworking Public Works Committee today being Northgate Stage 3. Northgate Stage 3 is owned by the Land Management Corporation and comprises 91 hectares of residential zoned land at Fosters Road, Northgate—and I know that the member for Torrens has been consulted extensively about the development in her electorate. In April 2006, the LMC board approved the appointment of a wholly owned subsidiary of Canberra Investment Corporation Limited as LMC's 50 per cent joint venture partner for the Northgate Precinct One joint venture. The joint venture intends to undertake a residential land development on 37 hectares of the LMC land. Its key principles and elements will include:

- urban design, landscape design and built form, with particular attention to the road network, access and movement, open space, allotments patterns, diversity of housing;
- information and communications technology;
- a community and neighbourhood development program designed and implemented in conjunction with residents, community organisations and stakeholder agencies; and
- performance reporting to the government and LMC on the joint venture's progress in achieving the objectives and other specific requirements.

The project stresses the delivery of viable, affordable and practical urban sustainability. An integrated sustainability management system identifies, scopes and benchmarks various sustainability proposals, and then reports on the delivery of them on an annual basis. The system incorporates initiatives focusing on:

- water security;
- reduced greenhouse emissions and reduction in peak load energy usage;
- reducing reliance on private motor vehicles;
- delivering a healthy and safe community;
- an integrated community engagement, community development and sustainability education program.

The development and sale of allotments will take place over a six-year period, with the project expected to be completed in 2012.

The development incorporates the Housing Trust's social and affordable housing objectives, namely, to foster a socially equitable and mixed residential community, and to promote innovation in the delivery of 15 per cent social and affordable housing. While social housing must be dispersed throughout Northgate and be well integrated within the streetscape and neighbouring housing, it must provide for long-term redevelopment and comprise contiguous land parcels in accordance with the trust's allotment planning and location criteria.

The joint venture's development plan includes a sound diversity of housing products, including a good mix of affordable products, together with products that match the Housing Trust's requirement for high needs housing. Thirty-one per cent of all dwelling sites are priced at $70 000 or less, and a further 26 per cent are priced between $75 000 and $150 000. Strategies are proposed to ensure that there is a high level of communication and consultation with the planning authorities so that they will confidently support the subdivision and housing proposals. The commercial aspects of the baseline project feasibility have been derived from a range of sources and have been subject to refinement during negotiations. If there is a strong market resistance to the small housing allotments, the relevant lots can be converted to standard size without impact on the corporation's land payment or net profit. The development will include a retirement/nursing home site.

The parties acknowledge that the final size, configuration and location of the site needs further joint consideration. The joint venture will fully fund the cost of all headworks infrastructure and site servicing costs for the retirement site. This will lead to a slightly lower land payment to LMC, but

it is offset by LMC avoiding the need to pay a significant services contribution to the joint venture in year 2.

At a cost of $1.15 million, the project will also deliver the Northgate Community and Neighbourhood Development Program, CIC's Northgate Sustainability Management System and a significant public arts program. These, as well as mandating solar hot water systems and undergrounding the Fosters Road powerlines, are fundamental to the tender and have been accepted by LMC as worthwhile and sound outcomes. Over the 6½ year life of the project, gross sales revenue of $94.2 million (including a GST), or $86.4 million (excluding GST), is projected. The combined LMC returns and value-add arising from the precinct joint venture is expected to exceed the independent valuation of land by $23.8 million, assuming that the paramount development objectives and other mandated and sustainability outcomes are implemented.

LMC will have two revenue streams from the joint venture: a progressive land payment as each allotment settles, and 50 per cent of the joint venture profit distributions. This outcome is based on the joint venture fully funding the servicing of the retirement village/nursing home site. Over the 6.5-year life of the project, LMC will contribute 50 per cent of the project outlays, comprising $22 million, averaging $3.5 million per year.

Pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee reports to parliament that it recommends the proposed public work.

Mr HAMILTON-SMITH (Waite): I indicate that the opposition supports the motion, and we have done so in committee. It is a sensible land release. I would encourage the government to consider more. We have had a feisty debate in the public arena about the need for more land to be made available for housing development to keep house prices down. For that reason, I think this is a step in the right direction. We will monitor the financials of the project closely to ensure that the taxpayers' investment is protected. But, in principle, it is a good proposition and we look forward to seeing it progress.

Mrs GERAGHTY secured the adjournment of the debate.

PARLIAMENTARY COMMITTEES (FORESIGHT COMMITTEE) AMENDMENT BILL

The Hon. R.B. SUCH (Fisher) obtained leave and introduced a bill for an act to amend the Parliamentary Committees Act 1991. Read a first time.

The Hon. R.B. SUCH: I move:

That this bill be now read a second time.

This is a very short bill, which seeks to establish a committee called the foresight committee—not the saga, the committee. This committee is replicated in other countries in various formats. In the UK, Tony Blair has a committee within the public service; I think it is better to have it within the parliament. Japan and other countries have a similar type of approach, where they seek to look at issues arising in the future, or likely to arise, and to take steps to try to cope with those likely changes.

The committee I am proposing, which is clearly set out in the bill, would have six members—three from this house and three from the Legislative Council—and its functions would be:

. . . to inquire into, consider and report on any matter relating to medium and long-term planning for the state, including—

(i) likely future challenges for society and the economy, arising from—
  (a) social and economic trends;
  (b) population changes;
  (c) developments in science and technology;
(ii) how best to influence the future and cope with changes that are likely to emerge;

The umbrella clause is as follows:

to perform such other functions as are imposed on the committee under this or any other act or by resolution of both houses.

I seek leave to continue my remarks.

Leave granted; debate adjourned.

GENETICALLY MODIFIED CROPS MANAGEMENT (EXTENSION OF REVIEW PERIOD AND CONTROLS) AMENDMENT BILL

The Hon. R.J. McEWEN (Minister for Agriculture, Food and Fisheries) obtained leave and introduced a bill for an act to amend the Genetically Modified Crops Management Act 2004. Read a first time.

The Hon. R.J. McEWEN: 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 Commonwealth's *Gene Technology Act 2000* established a national co-operative regulatory scheme for gene technology that seeks "to protect the health and safety of people and to protect the environment by identifying risks posed by or as a result of gene technology, and by managing those risks through regulating certain dealings with GMOs". The Commonwealth's Office of the Gene Technology Regulator (OGTR) manages the scheme.

In accordance with the Commonwealth/State/Territory regulatory framework, States and Territories can regulate genetically modified (GM) crops where there are risks to markets and trade, as these are not addressed as part of the national regulatory process.

South Australia's *Genetically Modified Crops Management Act 2004* gives effect to the Government's commitment to regulate the cultivation of GM food crops in South Australia. It has the primary purpose of permitting the regulation of GM food crops in order to prevent adverse market outcomes that may otherwise occur from the unregulated introduction of GM food crops into the State's agricultural production systems. Similar legislation has been enacted by all other State/Territory jurisdictions except Queensland.

At present, GM food crops cannot be grown commercially anywhere in South Australia, by virtue of the *Genetically Modified Crops Management (Designation of Areas) Regulations 2004*. The transitional provisions of the *Genetically Modified Crops Management Act 2004* will cause these regulations to expire on 29 April 2007. The purpose of this Bill is to extend the transitional provisions so that the prohibition in South Australia expires on 29 April 2008.

The Government considers it highly desirable that any review of the regulation of GM food crops that seeks to protect market access be undertaken following consultation, and ideally in collaboration, with the other jurisdictions that have similar legislation. Victoria and New South Wales must complete reviews of their respective regulatory arrangements by the end of March 2008. Extending the transitional provisions in the current Act will allow South Australia, Victoria and New South Wales to work together to develop a shared position on the regulation of GM food crops.

Section 29(1) of the *Genetically Modified Crops Management Act 2004* requires the Minister to cause a review of the Act to be undertaken by the third anniversary of the commencement of the Act – 29 April 2007. Such a review should explore whether the conditions that resulted in the Act are still valid and if so, whether there are there alternatives to legislation to achieve the desired outcomes. A review of the Act in advance of the multi-jurisdictional consideration of market and trade issues has the potential to pre-empt efforts to achieve national consensus on these issues.

The Bill also extends the date by which a review of the Act must be undertaken from the third anniversary of the commencement of the Act to the fourth anniversary, so that the review of the *Genetically Modified Crops Management Act 2004* must be undertaken by 29 April 2008.

I am able to inform the House that the GM Crop Advisory Committee, an expert committee comprising supply chain representatives with the responsibility to provide advice on the issues and risks posed to markets by GM crops, supports the proposal to extend the prohibition and the due date for completing a review of the Act to 29 April 2008. The Gene Technology Task Force of the SA Farmers Federation also supports the 12-month extension of the prohibition on the commercial cultivation of GM food crops in South Australia.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure is to take effect on 1 January 2007. This arrangement will give a clear indication as to intention to extend the time periods under the Act.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Genetically Modified Crops Management Act 2004*

4—Amendment of section 29—Review of Act

The period for the review of the Act under section 29 is to be extended by one year.

5—Amendment of Schedule 1—Transitional provisions

The scheme for the introduction of controls on the commencement of the principal Act is to be extended by one year.

The Hon. R.G. KERIN secured the adjournment of the debate.

FOREST PROPERTY (CARBON RIGHTS) AMENDMENT BILL

The Hon. R.J. McEWEN (Minister for Forests) obtained leave and introduced a bill for an act to amend the Forest Property Act 2000. Read a first time.

The Hon. R.J. McEWEN: 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.

I am pleased to bring before the House a Bill to amend the *Forest Property Act 2000* that will enable land owners and forest owners to commercially exploit the carbon absorption capacity of forest vegetation.

The *Forest Property Act 2000* for the first time identified the right to the commercial exploitation of the carbon absorption capacity of the relevant forest vegetation, and assigned that right to the forest vegetation owner.

At the time that the *Forest Property Act* was introduced, consideration was being given to Australia ratifying the Kyoto Protocol, and the provision identifying the right to commercial exploitation of the carbon absorption capacity of forest vegetation was included in the Act to help provide greater legal recognition of such rights in advance of a possible future emissions trading system.

Although the Commonwealth has decided not to ratify the Kyoto Protocol, and Australian emitters and forest growers are unable to participate in international Kyoto-based trading mechanisms, there is steadily building interest in carbon trading and offsets within industries and firms keen to reduce and offset their greenhouse gas emissions, and a consequent increasing interest and activity in bilateral trading of carbon rights.

These amendments to the *Forest Property Act 2000* are being introduced to facilitate and encourage this growing interest in bilateral trading in carbon rights in South Australia, in advance of any emissions trading scheme that may be developed. The Bill builds on the foundations laid by the *Forest Property Act 2000* by providing a robust framework for separate ownership of land, forests and carbon rights, and the protection of the rights and interests of all three parties.

The framework of separate ownership provided by the amendments for dealing in carbon rights provides an added degree of flexibility, in that it will enable landowners to sell their carbon rights while retaining ownership of the forest vegetation on their land. This will be of particular benefit to farm foresters who will be able to realise an annual income flow from their woodlot, while retaining the benefit of their longer term investment in forestry for wood production, and will encourage landholders who have previously been deterred by the long term nature of investment in farm forestry. It will also enable landholders who establish biodiversity plantings to potentially benefit from an annual income flow from the sale of carbon rights.

The Government is committed in the South Australia Strategic Plan to meet the Australian Kyoto target of 108% of 1990 emissions in the first Kyoto commitment period, 2008-2012. The Government has extended this commitment to reduce emissions by 60 per cent of 1990 levels by 2050.

The *Climate Change and Greenhouse Emissions Reduction Bill 2006*, released for public consultation in late June, foreshadows the establishment of voluntary greenhouse emissions offset programs. Emissions offset programs allow an individual or organisation to compensate for their greenhouse emissions, specifically carbon dioxide, through sequestration, or storage. Biosequestration, the absorption of carbon dioxide by vegetation, is a common method of sequestration.

The amendments to the *Forest Property Act 2000* complement the *Climate Change and Greenhouse Emissions Reduction Bill 2006* by providing a legal framework for the transfer of carbon rights from the forest owner to third party, thereby encouraging biosequestration activities that may be relevant to any future voluntary carbon offset programs established under the climate change legislation.

The identification of carbon rights in the *Forest Property Act 2000* was a first step along the path of providing the legal framework to encourage biosequestration; these amendments represent the second step, by providing a robust legal framework for bilateral trading in carbon rights.

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 *Forest Property Act 2000*

4—Amendment of section 3—Interpretation

This clause inserts a definition of ***carbon right*** by reference to the meaning given to that term in new section 3A. It also deletes the phrase "but does not include edible fruit" in the definition of ***forest vegetation*** and deletes the definition of ***forest property owner*** from section 3 of the principal Act.

5—Insertion of section 3A

This clause inserts new section 3A

3A—Carbon absorption capacity of the forest vegetation to be a form of property

Proposed section 3A establishes that the capacity of the forest vegetation to absorb carbon is a form of property, that is a ***carbon right***, in the nature of a chose in action.

A ***carbon right*** attaches to the forest vegetation and passes with ownership of the forest vegetation unless that ownership is separated from ownership of the forest vegetation under a forest property agreement.

A forest property agreement may also relate to carbon rights in respect of the past absorption of carbon from the atmosphere as well as the absorption of carbon during the currency of the agreement.

6—Substitution of Part 2

This clause deletes existing Part 2 and substitutes a new part.

Part 2—Forest property agreements

5—Types of forest property agreements

New section 5 establishes that a forest property agreement may take the form of a forest property (vegetation) agreement or a forest property (carbon rights) agreement. The former agreement separates ownership of the forest vegetation from that of the land by transferring ownership of the forest vegetation from the owner of the land (the transferor) to another (the transferee) without severance of the vegetation from the land. A forest property (carbon rights) agreement

separates ownership of carbon rights from ownership of the vegetation by transferring ownership of the carbon rights from the owner of the vegetation (the transferor) to another (the transferee). A forest property (vegetation) agreement may reserve to the transferor the right to take edible fruits from the forest vegetation.

The proposed section also provides that if ownership of the land has or is to be separated from ownership of the forest vegetation, a forest property (carbon rights) agreement may only be made if both the owner of the land and the owner, or prospective owner, of the forest vegetation are parties to the agreement.

Similarly, if the owner of land on which forest vegetation is growing or is to be grown has entered into, or is about to enter into, a forest property (carbon rights) agreement, a forest property (vegetation) agreement separating ownership of the land from ownership of the forest vegetation may only be made if both the owner of the land and the owner, or prospective owner, of the carbon rights are parties to the agreement.

Proposed subsection (7) enables a forest property agreement to take the form of a declaration of trust in which a reference to the transferor is a reference to the owner as settlor and a reference to the transferee is a reference to the trustee under the trust.

6—Form and content of forest property agreement

New section 6(1) requires that a forest property agreement be in writing, state that it is made under the principal Act, identify the land to which it applies and describes present and future forest vegetation to which it applies to enable it to be clearly identified. If a forest property agreement is made for a specific term it must state the term of the agreement and the circumstances in which the agreement comes to an end or can be brought to an end. Furthermore, new subsection (1) states that the agreement must comply with any requirements imposed by regulation.

Proposed subsection (2) establishes that a forest property agreement may—

- require or permit any party to the agreement to take, or refrain from, specified action relating to the planting, cultivation, maintenance, care, harvesting, destruction or removal of forest vegetation
- confer on the transferee a right to enter the land to inspect the forest vegetation and to exercise rights, or carry out obligations, relating to the forest vegetation
- deal with the duty of care to be exercised by each party to the other
- deal with incidental matters.

The making of a forest agreement under this new section requires the following consents—

- in the case of a forest property agreement conferring ownership of vegetation—the holder of any registered encumbrance over the land must consent to the agreement
- in the case of a forest property agreement conferring ownership of carbon rights—the holder of a registered encumbrance over the land and the holder of any registered mortgage or charge over the vegetation must consent to the agreement.

Proposed section 6 also provides, however, that the Court may dispense with a consent on the ground that—

- the consent has been unreasonably withheld
- or there is some other good reason to dispense with it.

The new section also states that an agreement is ineffective unless the consents required by it have either been obtained or dispensed with.

7—Registration of forest property agreement

Proposed section 7(1) establishes that a forest property agreement may be registered. Proposed subsection (2) establishes that if the agreement is unregistered, the interest of the transferee is an equitable interest and therefore liable to be defeated by a purchaser who acquires an interest in the subject matter of the agreement in good faith, for value and without notice of the agreement.

The proposed section establishes that the interest of the transferee under a registered forest property agreement has priority over—

- the interests of the holders of encumbrances over the land who consented to the registration of the agreement or whose consent was dispensed with and, in the case of a forest property (carbon rights) agreement, the interests of the holders of mortgages or charges over the vegetation who consented to the registration of the agreement or whose consent was dispensed with
- the interests of the holders of encumbrances over the land registered after the registration of the forest property agreement and the interests of holders of mortgages or charges over the vegetation registered after the registration of the forest property agreement
- the interests of all persons with unregistered interests in the land—including interests under unregistered forest property agreements

Proposed subsection (4) outlines the necessary process for registering an agreement in the form of a declaration of trust under the *Real Property Act 1886* despite the operation of section 162 of that Act.

8—Dealing with interest of transferee

Subject to the terms of the agreement, proposed section 8 enables a transferee under a forest property agreement to assign, mortgage or charge the interest conferred by a forest property agreement.

If the transaction under this proposed section relates to the interest conferred by a forest property (vegetation) agreement, proposed subsection (2) requires the following consents for a transaction under new section 8—

- the owner of the land must consent to the transaction
- if the ownership of carbon rights is separated from ownership of the vegetation under a forest property (carbon rights) agreement—the owner of the carbon rights must also consent
- in the case of an assignment—the holder of any registered encumbrance over the land, and the holder of any registered mortgage or charge over the vegetation must consent to the transaction.

If the transaction under the new section relates to the interest conferred by a forest property (carbon rights) agreement, proposed subsection (2) requires the following consents for a transaction under new section 8—

- the owner of the relevant vegetation must consent to the transaction and, if that person is not the owner of the land, the owner of the land must also consent
- in the case of an assignment—the holder of any registered encumbrance over the land, and the holder of any registered mortgage or charge over the vegetation or the carbon rights, must also consent to the transaction.

The Court may dispense with a consent under proposed subsection (2) on the ground that—

- the consent has been unreasonably withheld
- there is some other good reason to dispense with it.

A transaction under this new section is ineffective unless the required consents have been obtained or dispensed with.

A transaction under proposed section 8 affecting the interest conferred by a registered forest property agreement may be registered under this Act and, unless or until registered, any interest conferred by the transaction is equitable only and therefore liable to be defeated by a purchaser who acquires an interest in the subject matter of the transaction in good faith, for value and without notice of the transaction.

New subsection (6) provides that if the transferee under a forest property agreement assigns its interest under the agreement, and the assignment is registered, the assignee succeeds at law to all the rights and obligations of the transferee under the agreement (and references in this Act to the transferee are to be read as references to the assignee).

9—Enforceability of registered forest property agreement by and against successors in title to the original parties

Proposed section 9 provides that a registered forest property agreement is binding on, and enforceable by and against, the persons for the time being registered as—

- the owner of the land to which the agreement relates
- if the agreement transfers ownership of forest vegetation—the owner of the forest vegetation

· if the agreement transfers ownership of carbon rights—the owner of the carbon rights.

New subsection (2) ensures that a registered forest property agreement is no longer binding if the person ceases to be registered as—

· the owner of the land to which the agreement relates

· the owner of forest vegetation

· the owner of carbon rights.

However, this does not relieve a person from liabilities that had accrued under the agreement before the person ceased to be so registered.

10—Variation and revocation of forest property agreement

New section 10(1) provides for the variation and revocation of a forest property agreement by agreement between—

· the owner of the land on which the relevant forest vegetation is situated

· if the owner of the land is not the owner of the relevant forest vegetation—the owner of the forest vegetation

· if the owner of the forest vegetation is not the owner of the carbon rights—the owner of the carbon rights or

if the forest property agreement provides for unilateral variation or revocation, or variation of revocation in some other way—in accordance with the agreement or if the transferee under the forest property agreement cannot be found or has abandoned the exercise of rights under the agreement—by order of the court.

Proposed subsection (2) provides for the variation or revocation of a forest property agreement if a forest property agreement takes the form of a declaration of trust but only with the agreement of all beneficiaries of the trust or as otherwise provided in the instrument of trust.

New subsection (3) provides that if the transferee's interest under a registered forest property agreement is subject to a registered encumbrance, the agreement cannot be varied or revoked unless—

· the holder of the encumbrance consents or

· the Court dispenses with the consent on the ground that the consent has been unreasonably withheld or there is some other good reason to dispense with it.

New subsection (4) states that the variation or revocation of a registered forest property agreement does not take effect under proposed section 10 unless or until the agreement, order or other instrument of variation or revocation is registered. Until the agreement is registered the variation or revocation will only have effect in equity and cannot affect the interests of a purchaser who acts in good faith, for value and without notice.)

Proposed subsection (5) makes it clear that if a forest property (vegetation) agreement is revoked or terminates for some other reason, the property in vegetation to which the agreement related reverts to the owner of the land on which the vegetation is growing.

Proposed subsection (6) states that if a forest property (carbon rights) agreement is revoked or terminates for some other reason, the property in the carbon rights reverts to the owner of the relevant vegetation and ownership of the rights will then pass with ownership of the vegetation unless a further forest property (carbon rights) agreement separates ownership of the carbon rights from ownership of the vegetation.

11—Applications for registration

New section 11 enables an application for registration to be made by a party to the agreement or transaction in a form approved by the Registrar-General for the following—

· a forest property agreement

· the variation, revocation or termination of a forest property agreement

· a transaction affecting an interest conferred by a forest property agreement.

An application under new section 11 must be endorsed with a certificate signed by the parties to the agreement or transaction—

· stating the name and address of every person whose consent is required under the principal Act for the agreement or transaction to which the application relates

· certifying in relation to each of those persons that the required consent has been given in writing or that consent has been dispensed with.

An application must also be endorsed with a certificate signed by a legal practitioner or registered conveyancer—

· certifying that every consent required under the principal Act for the agreement or transaction to which the application relates has been given or dispensed with

· certifying that the application is otherwise correct for the purposes of the relevant registration law.

An application must also be accompanied by—

· any survey, duplicate certificate of title, judgment, or other document the Registrar-General may require

· the fee required by the regulations.

Proposed subsection (3) provides that in proceedings relating to a registered forest property agreement, a court may direct the Registrar-General to make a specified variation to, or to cancel the registration of, an instrument or other document registered under the principal Act and the Registrar-General must, on application by a party to the proceedings, in a form approved by the Registrar-General, comply with the direction.

The Registrar-General is entitled to rely on a certificate endorsed on an application and may act on the certificate without further inquiry.

12—Application of relevant registration law

New section 12 establishes that subject to Part 2 of the principal Act, the provisions of a relevant registration law apply to, and in relation to, the registration of a forest property agreement or a transaction affecting a forest property agreement as if a forest property agreement were a profit àprendre.

13—Transitional provision for forest property agreements made before the relevant date

New section 13 operates as a transitional provision to provide that a forest property agreement in force under the principal Act immediately before the commencement of the *Forest Property (Carbon Rights) Amendment Act 2006* continues in force, subject to its terms and the provisions of the principal Act, as a forest property (vegetation) agreement with a reservation of edible fruits to the owner of the land.

The Hon. R.G. KERIN secured the adjournment of the debate.

STATUTES AMENDMENT (PUBLIC SECTOR EMPLOYMENT) BILL

The Hon. M.J. WRIGHT (Minister for Industrial Relations) obtained leave and introduced a bill for an act to amend various acts in order to provide for new employment arrangements within the public sector on account of the enactment of commonwealth legislation relating to workplace relations. Read a first time.

The Hon. M.J. WRIGHT: 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 27 March 2006 the federal government's *Workplace Relations Amendment (Work Choices) Act 2005* came into operation. The federal government has relied on the Corporations power in section 51(xx) of the Australian Constitution to enact this legislation. This State Government has vigorously opposed this federal attack on ordinary working men and women and has joined with other States in a High Court challenge against the legislation.

The so-called "Work Choices" legislation leaves ordinary workers with no choice; it doesn't mention fairness and it has greatly reduced the power of the Australian Industrial Relations Commission to be an "independent umpire". It is commonly referred to as the "No Choice" Act of the federal government.

Although the decision of the High Court is pending, this State Government is not prepared to sit and wait while tens of thousands of public sector employees are at serious risk of being dragged into the complexities and uncertainties of "Work Choices" because a corporate sole of the State Government employs them. Nor does this Government want decent private sector employers and employees to be without an easy effective process for fairly resolving issues that they agree need to be resolved by a fair independent umpire.

The "Work Choices" legislation is a 1 000 page nightmare for ordinary working employees and reasonable employers.

For the public sector, there are even greater vagaries and uncertainties about its operation and application. "Work Choices" applies to "constitutional corporations". What is a "constitutional corporation"? It is defined in the federal legislation as "*a corporation to which paragraph 51(xx) of the Constitution applies*": What does that mean? I am told that that means: foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth. What does that mean? How does one determine whether the corporation is a "trading or financial corporation"? Again, I'm told the legal test in relation to each corporate employer is whether the trading activities are 'substantial' or 'not insubstantial'; or if they constitute a 'sufficiently significant proportion of its overall activities' (a trading corporation); or if it borrows and lends or otherwise deals in finance as its principal or characteristic activity (a financial corporation).

Assessing whether a public sector corporate entity is a trading or financial corporation is therefore fraught with difficulty and uncertainty in the absence of a determination by a Court. The same difficulty does not apply to private sector corporate entities because generally (but not necessarily) the entity will be involved in trading or financial activities to a sufficient extent. What at least is clear is that administrative units of the public service are not "constitutional corporations" because they are not corporate entities.

There are very many corporate entities in the public sector undertaking a variety of roles and functions. Some have been established by governments to operate as Government Business Enterprises (eg. Forestry SA, SA Water, TransAdelaide, SA Lotteries, Funds SA). Others have been established for governmental purposes (such as providing public health services) but engage in some "trading activities" (eg. public hospitals charging private patients for services; TAFE Institutes charging for training courses; Education charging for overseas students; SA Ambulance Service charging for patient transport).

The federal "Work Choices" legislation creates great uncertainty for this latter group of corporate entities and their employees.

This Bill will create certainty and industrial fairness for about 61 000 public sector employees employed in the public health and public education sectors, as well as in a number of other public sector corporate entities.

It will do so by establishing under the Acts within the ambit of this Bill a non-corporate "employing authority" that will be a person designated by proclamation. Consequently "Work Choices" won't apply and 61 000 public sector employees will have the certainty of coming within State industrial legislation and will have access to the fair processes, entitlements and remedies that our *Fair Work Act 1994* provides.

The amendments are generally based on a model that:

- Defines employing authority as the person designated by proclamation, which can be varied from time to time. It is the intent that generally the person designated will be the chief executive of the portfolio to which the entity is assigned.
- Provides for the employing authority to employ staff together with consequential issues such as delegation and the corporate entity meeting all the costs of the employing authority in connection with employing staff (eg. remuneration and conditions of employment; superannuation; costs of services, administration or any other liabilities that arise whether pursuant to statute, operational or other reasons).
- Deals with consequential and transitional matters.

In relation to the education sector, the Bill substitutes the employing authority in place of the applicable Ministers, with consequential amendments.

The Bill provides for transitional provisions that will give effect to the change in employer from the corporate entity to the non-corporate entity and will facilitate relevant awards and certified agreements becoming awards and enterprise agreements under the *Fair Work Act 1994*.

The Bill also inserts a new Schedule in the *Commercial Arbitration Act 1986* that will enable 2 or more parties to enter into a written "referral agreement" to seek the assistance of the Industrial Relations Commission of South Australia with a view to resolving an industrial matter; resolving an industrial dispute; or resolving a question about the dismissal of an employee. The Bill will enable the particular parties that have made the "referral agreement" to have access to an expeditious resolution process under the auspices of the Industrial Relations Commission of South Australia and the role of the Commission will be as specified by the parties in their particular "referral agreement". This Schedule and the new process that it provides will not apply generally to employment. It will apply only to those parties that decide between themselves to use a "referral agreement" to resolve the relevant matters. It is similar to the private arbitration process that is used by commercial parties. The name of the Act will be amended to reflect its new role in relation to industrial referral agreements.

The *Statutes Amendment (Public Sector Employment) Bill 2006* is a Bill for an Act to amend various Acts in order to provide new employment arrangements within the public sector for state government employees and many employees of state government agencies who have become subject to the "Work Choices" legislation.

The Acts to be amended are as follows:

Aboriginal Lands Trust Act 1966
Adelaide Cemeteries Authority Act 2001
Adelaide Festival Centre Trust Act 1971
Adelaide Festival Corporation Act 1998
Ambulance Services Act 1992
Children's Services Act 1985
Commercial Arbitration Act 1986
Education Act 1972
Electricity Act 1996
Fair Work Act 1994
Fire and Emergency Services Act 2005
History Trust of South Australia Act 1981
Institute of Medical and Veterinary Science Act 1982
Natural Resources Management Act 2004
Public Sector Management Act 1995
Senior Secondary Assessment Board of South Australia Act 1983
South Australian Country Arts Trust Act 1992
South Australian Film Corporation Act 1972
South Australian Health Commission Act 1976
South Australian Motor Sport Act 1984
South Australian Tourism Commission Act 1993
State Opera of South Australia Act 1976
State Theatre Company of South Australia Act 1972
Technical and Further Education Act 1975.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

This clause provides that operation of the measure will commence on a day to be fixed proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Aboriginal Lands Trust Act 1966*

4—Amendment of section 3—Interpretation

Clause 4 amends section 3 of the *Aboriginal Lands Trust Act 1966* by inserting a new definition of ***employing authority***. The employing authority for the purpose of the Act is a person designated by proclamation as being the employing authority for the purposes of the definition. Section 3 is further amended by the insertion of a new subsection that provides that a proclamation made for the purposes of the definition of ***employing authority*** may apply by reference to a specified person or by reference to the person for the time being holding or acting in a specified office or position. New subsection (2) also provides that a proclamation made for the purposes of the definition may be varied or substituted by a new proclamation.

A definition of ***employing authority*** in the same terms as the proposed new definition described above is to be inserted by this Bill into a number of Acts and is described below as the ***standard definition***.

5—Amendment of section 11A—Delegation by Trust

Section 11A(2) of the *Aboriginal Lands Trust Act 1966* provides that the Trust may not delegate certain of its powers and functions including, under paragraph (d), the appointment of an officer or employee of the Trust or the determination of a matter associated with appointment or employment of a person. This clause deletes paragraph (d) because, as a consequence of other amendments made to the Act, the Trust will no longer have the power to employ a person.

6—Substitution of section 15

Section 15 of the *Aboriginal Lands Trust Act 1966*, which provides that the Trust may appoint officers and employees as are required for the purposes of the Trust, is deleted by clause 6 and a new section substituted in its place. Under new section 15, the employing authority may employ staff to perform functions in connection with the operations or activities of the Trust. The employing authority will determine the terms and conditions of a person employed by the employing authority.

A person employed by the employing authority will be taken to be employed by or on behalf of the Crown. However, the person will not be employed in the Public Service of the State unless incorporated into an administrative unit under the *Public Sector Management Act 1995*.

Section 15(4) provides that the employing authority may direct a person employed under the section to perform functions in connection with the operations or activities of a specified public sector agency (within the meaning of the *Public Sector Management Act 1995*). A person given such a direction is required to comply with the direction.

Although the employing authority is subject to direction by the Minister, the Minister may not give a direction relating to the appointment, transfer, remuneration, discipline or termination of a particular person.

Under section 15(7), the employing authority is authorised to delegate a power or function under section 15. Subsection (8) provides that a delegation—

- must be by instrument in writing; and
- may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
- may be unconditional or subject to conditions; and
- may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
- does not derogate from the power of the employing authority to act personally in any matter; and
- may be revoked at any time by the employing authority.

Subsection (9) provides that the continuity of employment of a person employed under the section will not be affected by a change in the person who constitutes the employing authority.

The Trust is required under subsection (10) to make payments with respect to any matter arising in connection with the employment of a person under the section at the direction of the Minister, the Treasurer or the employing authority. Payments that might be made include payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities.

The Trust does not have the power to employ any person but may make use of the staff of an administrative unit by entering into an arrangement established by the Minister administering the unit.

A provision in terms substantially similar to those of new section 15 as described above is to be inserted by this Bill into a number of Acts and is referred to below as the ***model provision***.

Part 3—Amendment of *Adelaide Cemeteries Authority Act 2001*

7—Amendment of section 3—Interpretation

This clause inserts the standard definition of ***employing authority*** into the *Adelaide Cemeteries Authority Act 2001*.

8—Amendment of section 11—Common seal and execution of documents

As the Authority will no longer have the power to employ any person, this clause amends section 11 to change a reference to "an employee of the Authority" to "a person employed under this Act".

9—Substitution of section 18

This clause repeals the section under the Act that currently deals with staffing matters and substitutes a new section that is substantially the same as the model provision. The repealed section provides that the Authority may employ staff whereas under the new section, the employing authority may employ staff to perform functions in connection with the operations or activities of the Corporation. Under the new section, the Authority does not have the power to employ any person.

Part 4—Amendment of *Adelaide Festival Centre Trust Act 1971*

10—Amendment of section 4—Interpretation

This clause amends the interpretation provision of the *Adelaide Festival Centre Trust Act 1971* by inserting the standard definition of ***employing authority***.

11—Substitution of sections 21 and 22

This clause revokes sections 21 and 22 of the Act, which deal with employment matters, and substitutes the model provision.

An additional provision, new section 22, deals with matters that are currently included in section 21(3) and (4). Section 22 provides that, for various specified purposes, the employing authority may, with the approval of the Minister, determine that previous service of a person employed under the Act with an employer other than the employing authority may be regarded, to the extent approved by the Minister, as service with the employing authority.

The section also authorises the employing authority to enter into arrangements contemplated by section 5 of the *Superannuation Act 1988*. That section of the *Superannuation Act* provides that the South Australian Superannuation Board may enter into arrangements with an instrumentality or agency of the Crown or a prescribed authority, body or person under which the employees of the instrumentality, agency, authority, body or person become eligible to apply to be accepted as contributors under the *Superannuation Act 1988*.

Part 5—Amendment of *Adelaide Festival Corporation Act 1998*

12—Amendment of section 3—Interpretation

This clause amends the interpretation provision of the *Adelaide Festival Corporation Act 1998* by inserting the standard definition of ***employing authority***.

13—Amendment of section 6—Powers of the Corporation

This clause removes paragraph (a) of section 6(2) of the Act. This provision provides that the Adelaide Festival Corporation may employ staff on terms or conditions determined by the Corporation or make use of the services of staff employed in the public or private sector. The amendment is necessary because, as a consequence of the amendments made by this Bill, the employing authority, rather than the Corporation, will be responsible for the employment of staff to perform functions in connection with the operations or activities of the Corporation.

14—Insertion of new Division

This clause inserts a new Division, comprising new section 20A, into Part 4 of the Act. Section 20A is in substantially similar terms to the model provision and provides, among other things, that the employing authority may employ staff to perform functions in connection with the operations or activities of the Corporation. The section also states that the Corporation does not have the power to employ any person.

Part 6—Amendment of *Ambulance Services Act 1992*

15—Amendment of section 4—Interpretation

This clause amends the interpretation provision of the *Ambulance Services Act 1992* by inserting the standard definition of ***employing authority***.

16—Insertion of section 13A

This clause inserts a new section based on the model provision into the *Ambulance Services Act 1992*. The new section provides that the employing authority may employ persons to perform functions in connection with the operations or activities of SAAS.

Part 7—Amendment of *Children's Services Act 1985*

17—Amendment of section 3—Interpretation

Under the definition of ***employing authority*** inserted into section 3 of the *Children's Services Act 1985*, the employing authority is the Director of Children's Services or a person,

or a person holding or acting in an office or position, designated by proclamation.

18—Amendment of section 9—Delegation

Section 9, which sets out the Minister's power of delegation, is amended by the insertion of a new subsection that provides for a power or function delegated under the section to be further delegated if the instrument of delegation so provides.

19—Amendment of section 10—Director and other staff may be referred to as the Children's Services Office

As a consequence of other amendments made to the Act that will result in staff being employed by the employing authority, section 10 is amended to remove references to staff "of the Minister".

20—Amendment of section 11—Director of Children's Services

Section 11 is amended to provide the Director of Children's Services with a power of delegation. A delegation under the section is revocable at will and does not derogate from the power of the Director to act personally in any matter. A power or function delegated under the section may be further delegated if the instrument of delegation provides for such further delegation.

21—Substitution of section 12

This clause repeals section 12, which provides that the Minister may appoint officers and employees to assist the Minister to carry out his or her functions under the Act, and substitutes a new section that is substantially similar to the model provision. However, new section 12 also repeats, in a modified form, a number of provisions from existing section 12. For example, the new section provides that although the *Public Sector Management Act 1995* will not apply to a person employed under the section, the provisions of that Act with respect to long service leave apply in relation to such persons with such modifications as may be prescribed.

The new section also authorises the Minister, in connection with the operation of the Act, to make use of the services of any member of the teaching service constituted under the *Education Act 1972*.

22—Substitution of section 13

Section 13 provides that the Minister may enter into arrangements with the South Australian Superannuation Board with respect to superannuation of the Minister's officers and employees. This clause is repealed and a new section substituted. Under new section 13, the employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988*.

23—Amendment of section 14—Transfer of staff from public service or prescribed employment

24—Amendment of section 51—Recognised organisations

The amendments made by these clauses are consequential on the fact that the employing authority rather than the Minister will employ staff for the purposes of the Act.

Part 8—Amendment of *Commercial Arbitration Act 1986*

25—Amendment of section 1—Short title

The name of the Act is to be amended to reflect the fact that it will also include provisions relating to the referral of certain matters or disputes to the Industrial Relations Commission of South Australia.

26—Amendment of section 3—Application provisions

The general provisions of the Act will not apply in relation to the referral of a matter or dispute to the Industrial Relations Commission of South Australia.

27—Insertion of Schedule

This clause inserts a new Schedule into the Act. This Schedule will allow 2 or more parties to enter into an agreement in writing (a ***referral agreement***) to seek the assistance of the Industrial Relations Commission by making a referral to the Commission. A referral may be made in order to obtain—

- the resolution of an industrial matter arising between the parties; or
- the resolution of an industrial dispute between the parties; or
- the resolution of the question whether, on the balance of probabilities, the dismissal of an employee was harsh, unjust or unreasonable.

A referral agreement may relate to a particular matter or dispute, or to matters or disputes of a specified class. The parties to a referral agreement may specify in the agreement whether the Commission is—

- to act as a conciliator, mediator or arbitrator; or
- to make recommendations to the parties; or
- to make determinations or orders that the parties agree to accept or observe.

Under this scheme, the Commission has and may perform or exercise such functions or powers with respect to the referred matter as the Commission might exercise in the exercise of its jurisdiction under section 26 of the *Fair Work Act 1994* (which sets out the jurisdiction of the Commission). A referral agreement may, however, specify limitations or exclusions to the Commission's functions and powers, and the Commission may not give any form of relief outside the referral agreement.

The parties to a referral agreement may be an employer or group of employers, an employee or group of employees, a registered association or the United Trades and Labor Council. The parties to a referral agreement may amend the agreement from time to time.

Regulations may make provision for or with respect to the application of the provisions of the *Fair Work Act 1994* to the performance or exercise of functions or powers under this Schedule and may modify provisions that are to be so applied. Subject to any such regulations, the Commission for the purposes of a referral is to be constituted of a single member of the Commission.

The new provisions authorise the making of rules of the Commission in connection with the practice and procedure of the Commission in the performance or exercise of functions or powers conferred by referral agreements.

A determination, order or other decision of the Commission on a referral is binding on the parties to the referral agreement.

The Commission may make any determination as to the scope or operation of a referral agreement, or as to the meaning of any provision of an agreement. A determination of the Commission will have effect according to its terms.

The Commission may decline to proceed with a referral if it thinks fit.

The parties to a matter in respect of which a determination has been made by the Commission under the section will have a right of appeal against the determination. However, if the referral agreement provides that a determination will be final and conclusive and not subject to appeal, a party cannot appeal against the determination. An appeal will be taken to be part of the referral to the Commission under the referral agreement.

The functions and powers conferred on the Commission are in addition to, and do not derogate from, any other function or power of the Commission under the *Fair Work Act 1994*.

Part 9—Amendment of *Education Act 1972*

28—Amendment of section 5—Interpretation

The definition of ***employing authority*** inserted into section 5 of the *Education Act 1972* provides that the employing authority is the Director-General of Education or a person, or a person holding or acting in an office or position, designated by proclamation.

Under new subsection (5) of section 5, if the Director-General is the employing authority, and the Act requires that the employing authority refer a matter to the Director-General, or provides that the Director-General is to make a recommendation to the employing authority, the Director-General will be able to take action without a referral or recommendation.

29—Amendment of section 8—Power of delegation

This clause amends the section dealing with the Minister's power of delegation. A reference to the Minister's power to dismiss an officer of the teaching service is deleted and a new subsection is inserted. Under subsection (3), a power, duty, responsibility or function delegated under the section may be further delegated if the instrument of delegation provides for further delegation.

30—Amendment of section 9—General powers of Minister

Section 9(4) authorises the Minister to appoint such officers and employees (in addition to officers and employees of the Department and the teaching service) as the Minister considers necessary for the proper administration of the Act or the welfare of students of any school. Although this

subsection is deleted, a provision in substantially similar terms is included in new subsection 101B, which authorises the employing authority, rather than the Minister, to make appointments of a kind referred to in section 9(4).

31—Amendment of section 15—Appointment to teaching service

Section 15(1) presently provides that the Minister may appoint such teachers to be officers of the teaching service as the Minister thinks fit. This clause substitutes a new subsection that authorises the employing authority to appoint teachers to the teaching service. A number of consequential amendments are also made to section 15.

32—Amendment of section 15B—Appointment to promotional level positions

33—Amendment of section 16—Retrenchment of officers of the teaching service

These amendments are consequential on the employing authority becoming responsible for employment of staff in addition to related matters, such as promotion and retrenchment, under the Act.

34—Amendment of section 17—Incapacity of members of the teaching service

Section 17 authorises the Director-General of Education to take certain action where he or she is satisfied that an officer is incapacitated on account of illness or disability. As a consequence of the amendments made by this clause, the Director-General will be authorised to take steps to transfer the officer to some other employment in the Government of the State.

Under section 17(1c), if the Director-General determines to take steps to transfer an officer, he or she may recommend to the employing authority that the officer be appointed to an office or position pursuant to section 101B or attempt to secure for the officer some other appropriate employment in the Government of the State. (New section 101B authorises the employing authority to appoint other officers and employees (in addition to the employees and officers of the Department and teaching service) for the proper administration of the Act or the benefit of the students of a school.)

35—Amendment of section 21—Payment in lieu of long service leave

36—Amendment of section 22—Interruption of service

37—Amendment of section 24—Rights of persons transferred to the teaching service

38—Amendment of section 26—Disciplinary action

39—Amendment of section 27—Suspension

40—Amendment of section 53—Appeals in respect of appointments to promotional level positions

These amendments are consequential on the employing authority becoming responsible for employment of staff under the Act.

41—Insertion of section 101B and 101C

New section 101B provides that the employing authority may appoint other officers and employees (in addition to the employees and officers of the Department and teaching service) if necessary for the proper administration of the Act or the benefit of the students of any school. Although the employing authority is, in acting under the section, subject to the direction of the Minister, a Ministerial direction may not be given relating to the appointment, transfer, remuneration, discipline or termination of a particular person.

Where the Director-General is not the employing authority, the authority is required to consult with the Director-General in acting under section 101B.

Section 101C authorises the employing authority to delegate any power or function under the Act. A delegation—

- must be by instrument in writing; and
- may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
- may be unconditional or subject to conditions; and
- does not derogate from the power of the employing authority to act personally in any matter; and
- may be revoked at any time by the employing authority.

If the person who constitutes the employing authority changes, the change will not affect the continuity of employment or appointment of a person under the Act.

Part 10—Amendment of *Electricity Act 1996*

42—Amendment of section 4—Interpretation

The interpretation provision of the *Electricity Act 1996* is amended by the insertion of the standard definition of ***employing authority***.

43—Amendment of section 6F—Common seal and execution of documents

This amendment is consequential on the employing authority becoming responsible for the employment of persons to perform functions in connection with the operations or activities of the Electricity Supply Industry Planning Council.

44—Substitution of section 6L

Under current section 6L, the Minister may appoint a chief executive of the Planning Council and the Council may appoint such employees as it thinks necessary or desirable. This clause repeals section 6L and substitutes two new sections.

New section 6L provides that the employing authority may employ a chief executive of the Planning Council on terms and conditions determined by the employing authority. Under subsection (2), a person may not be employed as chief executive of the Council, and may not be removed from that office, except with the approval of the Minister.

New section 6LA, which is in substantially the same terms as the model provision, authorises the employing authority to employ persons to perform functions in connection with the operations or activities of the Planning Council. The section also provides that the Planning Council does not have the power to employ any person.

Part 11—Amendment of *Fair Work Act 1994*

45—Amendment of section 44—Protection for officers

This amendment is consequential on the extension of the jurisdiction of the Commission to industrial matters or industrial agreements referred to the Commission by two or more interested parties by agreement under the amendments to the *Commercial Arbitration Act 1986*.

Part 12—Amendment of *Fire and Emergency Services Act 2005*

46—Amendment of section 17—Staff

This clause amends section 17 of the *Fire and Emergency Services Act 2005*. That section currently provides that the staff of the South Australian Fire and Emergency Services Commission will comprise, in addition to persons employed in a public sector agency and made available to the Commission, persons appointed by the Commission on terms and conditions determined by the Commission and approved by the Commissioner for Public Employment. As a consequence of the amendments made by this clause, persons comprising the staff will be appointed by the Chief Executive of the Commission on terms and conditions determined by the Chief Executive on the basis that the Chief Executive is the employer. The Commission is to be responsible for the costs or expenses associated with the employment of a person by the Chief Executive.

47—Amendment of section 28—Deputy Chief Officer and Assistant Chief Officers

Section 28 provides that the Chief Officer of the South Australian Metropolitan Fire Service (SAMFS) may appoint a Deputy Chief Officer and one or more Assistant Chief Officers. As a consequence of the amendment made by this clause, such an appointment is made by the Chief Officer on the basis that he or she is the employer of the person appointed.

48—Amendment of section 29—Other officers and firefighters

49—Amendment of section 30—Employees

The amendments made by these clauses to sections 29 and 30 are similar to the amendment made to section 28. Other officers, firefighters and employees of SAMFS will be appointed by the Chief Officer on the basis that he or she is the employer.

50—Amendment of section 31—Staff

A new subsection inserted into section 31 provides that SAMFS is responsible for any costs or expenses associated with the employment of a member of the staff of SAMFS.

51—Amendment of section 61—Deputy Chief Officer and Assistant Chief Officers

52—Amendment of section 62—Other officers

53—Amendment of section 63—Employees

54—Amendment of section 64—Staff

The amendments made by these clauses are to sections of the Act relating to the South Australian Country Fire Service (SACFS) and are substantially the same as those made to sections relating to SAMFS. As a consequence of the amendments, appointments of the Deputy Chief Officer, Assistant Chief Officers, other officers and employees will be made by the Chief Officer of SACFS on the basis that the Chief Officer is the employer.

55—Amendment of section 110—Deputy Chief Officer and Assistant Chief Officers

56—Amendment of section 111—Other officers

57—Amendment of section 112—Employees

58—Amendment of section 113—Staff

The amendments made by these clauses are to sections of the Act relating to the South Australian State Emergency Service (SASES) and are substantially the same as those made to sections relating to SAMFS and SACFS. As a consequence of the amendments, appointments of the Deputy Chief Officer, Assistant Chief Officers, other officers and employees will be made by the Chief Officer of SASES on the basis that the Chief Officer is the employer.

Part 13—Amendment of *History Trust of South Australia Act 1981*

59—Amendment of section 4—Interpretation

This clause inserts the standard definition of ***employing authority*** into the interpretation provision of the *History Trust of South Australia Act 1981*.

60—Substitution of section 16

This clause repeals section 16, which deals with staffing matters, and substitutes a new section that is in the same terms as the model provision. The new section provides, among other things, that the employing authority may employ staff to perform activities in connection with the operations and activities of the History Trust. The Trust will no longer have the power employ any person.

Part 14—Amendment of *Institute of Medical and Veterinary Science Act 1982*

61—Amendment of section 3—Interpretation

The definition of ***employing authority*** inserted into section 3 of the *Institute of Medical and Veterinary Science Act 1982* provides that the employing authority is the Chief Executive of the Department or a person, or a person holding or acting in an office or position, designated by proclamation.

62—Amendment of section 14—Functions and powers of Institute

This amendment, which removes a reference to officers and employees of the Institute, is consequential on the fact that staff of the Institute will be employed by the employing authority.

63—Amendment of section 16—Director of Institute

The Director of the Institute is currently appointed by the council of the Institute. As a consequence of the amendments made by this clause, the Director will be appointed by the employing authority after consultation with the Institute on terms and conditions fixed by the Minister and approved by the Commissioner for Public Employment. A person may not be appointed to the office of Director or removed from that office except with the approval of the Minister. This is consistent with the current provision.

64—Substitution of section 17

This clause deletes section 17, which authorises the council of the Institute to appoint officers and employees, and substitutes a new section that is in similar terms to the model provision. Subsection (1) states that the employing authority may employ other staff for the purposes of the Act. New section 17(2) provides that the terms and conditions of employment of a person will be determined by the employing authority after complying with any recommendation of the Commissioner for Public Employment. Under subsection (3), a person employed under section 17 will be taken to be employed by or on behalf of the Crown. The *Public Sector Management Act 1995* will not apply to a person employed under the section. However, the Governor may, by regulation, declare that specified provisions of that Act apply, with such modifications as may be prescribed, in relation to a person or class of persons employed under the section.

65—Amendment of section 18—Superannuation, accrued leave rights etc

Section 18, as amended by this clause, provides that the employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988*. A number of amendments are made to the section consequential on the employing authority becoming the employer of staff for the purposes of the Act.

66—Amendment of section 21—Accounts, audit etc

This is a further consequential amendment.

67—Repeal of section 27

Section 27, which states that the Department is to be regarded as the employer of all officers and employees of the Institute for the purposes of industrial proceedings, is no longer required and is repealed.

68—Amendment of section 28—Recognised organisations

This amendment is consequential on the employing authority becoming the employer of staff for the purposes of the Act.

69—Repeal of section 29

Section 29 provides that the Director is to be taken to be the Permanent Head in relation to certain officers for the purposes of the *Public Sector Management Act 1967*. The section is redundant and is repealed by this clause.

70—Amendment of section 30—Duty to maintain confidentiality

This is a further consequential amendment.

Part 15—Amendment of *Natural Resources Management Act 2004*

71—Amendment of section 3—Interpretation

The definition of ***employing authority*** inserted into section 3 of the *Natural Resources Management Act 2004* provides that the employing authority is the Chief Executive of the Department or a person, or a person holding or acting in an office or position, designated by proclamation.

72—Amendment of section 34—Staff

Section 34 provides that the staffing arrangements for a regional NRM board will be approved by the Minister. Subsection (3) currently provides that a regional NRM board may appoint persons to the staff of the board on terms and conditions fixed by the board with the approval of the Commissioner for Public Employment, and subsection (4) states that a person appointed under subsection (3) is not a Public Service Employee.

Subsections (3) and (4) are deleted by this clause and a series of new subsections in similar terms to the model provision are inserted in their place. The new provisions provide that the employing authority may, after consultation with a regional NRM board, employ a person to perform functions in connection with the operations or activities of the board. The terms and conditions of employment are to be determined after consultation with the Commissioner for Public Employment. A regional NRM board does not have the power to employ any person.

Part 16—Amendment of *Public Sector Management Act 1995*

73—Amendment of Schedule 1—Persons excluded from Public Service

Schedule 1 of the *Public Sector Management Act 1995* specifies persons excluded from the Public Service. The Schedule includes references to officers and employees appointed by the Minister under the *Education Act 1972* and the *Technical and Further Education Act 1975*. The relevant provisions are amended by this clause to substitute "employing authority" for "Minister".

Part 17—Amendment of *Senior Secondary Assessment Board of South Australia Act 1983*

74—Amendment of section 4—Interpretation

This clause amends the interpretation provision of the *Senior Secondary Assessment Board of South Australia Act 1983* by inserting the standard definition of ***employing authority***.

75—Amendment of section 9A—Chief Executive Officer

Section 9A(3) currently provides that the appointment of the Chief Executive Officer of the Senior Secondary Assessment Board of South Australia is to be made by the Board on conditions determined by the Board and approved by the Minister. As amended by this clause, the section will provide that the Chief Executive is to be appointed by the employing authority on terms and conditions determined by the employing authority. A person may not be employed as Chief Executive Officer or removed from that office unless or until

the employing authority has consulted with the Board and obtained the approval of the Minister.

76—Amendment of section 12—Delegation

This amendment is consequential on the employing authority becoming responsible for employment of staff under the Act.

77—Substitution of section 18

Section 18 provides that the Board may engage employees to assist in carrying out its functions under the Act. The section is repealed by this clause and in its place a provision in substantially the same terms as the model provision is inserted. The new section provides, among other things, that the employing authority may employ staff to perform activities in connection with the operations or activities of the Board and that the Board does not have the power to employ any person.

Part 18—Amendment of *South Australian Country Arts Trust Act 1992*

78—Amendment of section 3—Interpretation

This clause amends the interpretation provision of the *South Australian Country Arts Trust Act 1992* by inserting the standard definition of ***employing authority***.

79—Substitution of section 13

Under section 13, the South Australian Country Arts Trust may employ persons for the purposes of the Act. This clause repeals section 13 and substitutes a new provision that is in substantially similar terms to the model provision. The new section provides, among other things, that the employing authority may employ staff to perform functions in connection with the operations or activities of the Trust and that the Trust does not have the power to employ any person.

Part 19—Amendment of *South Australian Film Corporation Act 1972*

80—Amendment of section 4—Interpretation

This clause amends the interpretation provision of the *South Australian Film Corporation Act 1972* by inserting the standard definition of ***employing authority***.

81—Substitution of section 9

Section 9 authorises the South Australian Film Corporation to appoint the Chief Executive Officer and other employees of the Corporation. The section is repealed by this clause and two new sections are substituted in its place.

New section 9A provides for the appointment of the Chief Executive Officer by the employing authority on terms and conditions determined by the authority. The section includes a requirement that the employing authority consult with the Corporation and obtain the approval of the Minister before employing a person as Chief Executive Officer or removing a person from that office.

Section 9A is in substantially the same terms as the model provision. Under the new section, the employing authority may employ other staff to perform functions in connection with the operations or activities of the Corporation. The Corporation does not have the power to employ any person.

82—Amendment of section 12—Power of Corporation to delegate powers

This amendment is consequential on the employing authority becoming responsible for employment of staff under the Act.

83—Substitution of section 26

Under new section 26, the employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988*.

84—Amendment of section 33—Regulations

The amendment made by this clause is a further consequential amendment.

Part 20—Amendment of *South Australian Health Commission Act 1976*

85—Amendment of section 6—Interpretation

The definition of ***employing authority*** inserted into section 6 of the *South Australian Health Commission Act 1976* provides that the employing authority is the Chief Executive of the Department or a person, or a person holding or acting in an office or position, designated by proclamation.

86—Amendment of section 19—Staff and facilities

This clause deletes subsection (1) and (2) of section 19. Those subsections provide that the South Australian Health Commission may be assisted by persons assigned to the staff of the Commission by the Minister and that those staff will, unless the Governor otherwise determines, be appointed and hold office subject to, and in accordance with, the *Public Sector Management Act 1995*.

Those provisions are replaced with a new subsection that provides that the Commission does not have the power to employ any person.

87—Substitution of section 30

Section 30 provides that the board of an incorporated hospital may appoint such officers and employees as it thinks necessary or desirable for the proper administration of the hospital. That section is repealed by this clause. New section 30 provides that the employing authority may employ persons to perform functions in connection with the operations or activities of an incorporated hospital. The terms and conditions of employment of a person employed under the section will be fixed by the employing authority and approved by the Commissioner of Public Employment.

Although the new section is substantially similar to the model provision, it includes in subsection (13) a statement that, on the incorporation of a hospital, any Public Service employees who had, before the date of incorporation, been assigned by the Chief Executive to work in the hospital and have been designated by the Chief Executive as employees to whom subsection (13) applies will become persons employed by the employing authority under this section on terms and conditions fixed by the Chief Executive (without reduction of salary or status). This provision is in similar terms to current section 30(4).

88—Amendment of section 31—Superannuation, accrued leave rights, etc

Section 31 is amended to provide that the employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988* with respect to a person employed at an incorporated hospital.

Other amendments made to section 31 are consequential on the employing authority becoming responsible for the employment of persons for incorporated hospitals.

89—Substitution of section 51

Under section 51, the board of an incorporated health centre may appoint such officers and employees as it thinks necessary or desirable for the proper administration of the health centre. That section is repealed by this clause. New section 51 provides that the employing authority may employ persons to perform functions in connection with the operations or activities of an incorporated hospital. The terms and conditions of employment of a person employed under the section will be fixed by the employing authority and approved by the Commissioner of Public Employment. An incorporated health centre does not have the power to employ any person. The terms of the new section are, in other respects, substantially similar to those of the model provision.

90—Amendment of section 52—Superannuation, accrued leave rights, etc

Section 52 is amended to provide that the employing authority may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988* with respect to a person employed at an incorporated health centre.

Other amendments made to section 52 are consequential on the employing authority becoming responsible for the employment of persons for incorporated health centres.

91—Amendment of section 59—Application of Public Sector Management Act to employees

Section 59, as amended by this clause, provides the Governor with a power to declare, by proclamation, that specified provisions of the *Public Sector Management Act 1995* will apply, with such modifications as may be specified, in relation to persons employed by the employing authority at designated incorporated hospitals or designated incorporated health centres, or any class of such persons.

92—Repeal of section 60

Section 60, which states (among other things) that the Department is to be regarded as the employer of all officers and employees of incorporated hospitals and incorporated health centres for the purposes of industrial proceedings, is no longer required and is repealed by this clause.

93—Amendment of section 61—Recognised organisations

94—Amendment of section 63A—Conflict of interest

95—Amendment of section 64—Duty to maintain confidentiality

The amendments made to sections 61, 63A and 64 are consequential on the employing authority becoming responsible for the employment of persons for incorporated hospitals and incorporated health centres.

Part 21—Amendment of *South Australian Motor Sport Act 1984*

96—Amendment of section 3—Interpretation

This clause amends the interpretation provision of the *South Australian Motor Sport Act 1984* by inserting the standard definition of ***employing authority***.

97—Substitution of Part 2 Division 3

The subject of Division 3 of Part 2 of the Act is the staff of the South Australian Motor Sport Board. The current provisions of Division 3 provide that there will be a Chief Executive of the Board in addition to other staff of the Board as the Board considers necessary or expedient for the proper administration of the Act.

New section 13 recasts subsections (1), (2) and (8) of the existing section so that all matters in respect of the appointment of the Chief Executive are separated from the provisions dealing with other staffing arrangements.

New section 14 provides that the employing authority may employ staff to perform functions in connection with the operations or activities of the Board. A person employed under the section is to be taken to be employed by or on behalf of the Crown but the *Public Sector Management Act 1995* will not apply to such a person unless the Governor declares by regulation that specified provisions of the *Public Sector Management Act 1995* will apply, with such modifications as may be prescribed, in relation to persons employed under the section, or any class of such persons.

The new section differs from the model provision in that, consistent with existing section 13, it provides that a person must not be employed for the purposes of the Act except under an approval of the Minister.

The provisions of the new section are, in other respects, substantially the same as those of the model provision.

Part 22—Amendment of *South Australian Tourism Commission Act 1993*

98—Amendment of section 4—Interpretation

This clause amends the interpretation provision of the *South Australian Tourism Commission Act 1993* by inserting the standard definition of ***employing authority***.

99—Amendment of section 16—Common seal and execution of documents

This amendment is consequential on the employing authority becoming responsible for the employment of staff for the South Australian Tourism Commission.

100—Insertion of Part 2 Division 5

This clause inserts a new Division into Part 2 of the Act. Division 5 consists of a new section that is based on the model provision. Section 18A provides that the employing authority may employ staff to perform functions in connection with the operations or activities of the Commission. The section states that the Commission does not have the power to employ any person.

101—Amendment of section 20—Powers of Commission

Section 20(2)(b), which authorises the Commission to employ staff or make use of the services of staff employed in the public or private sector, is deleted by this clause as the employing authority, rather than the Commission, will be the employer of staff for the purposes of the Act.

Section 20(3) provides that an employee of the Commission is not a member of the Public Service. The subsection is deleted as the Commission no longer has the power to employ any person.

Part 23—Amendment of *State Opera of South Australia Act 1976*

102—Amendment of section 4—Interpretation

This clause amends the interpretation provision of the *State Opera of South Australia Act 1976* by inserting the standard definition of ***employing authority***.

103—Amendment of section 7—Staff participation on Board

104—Repeal of section 20

The amendments made by these clauses are consequential on the employing authority becoming responsible for the employment of staff to perform functions in connection with the operations or activities of the State Opera.

105—Amendment of heading to Part 3

This amendment is also consequential on the employing authority becoming responsible for staffing arrangements of the State Opera.

106—Substitution of section 21

Section 21(1) currently provides that the Board of Management may employ such persons as employees of the State Opera as it thinks fit. This clause substitutes the model provision for section 21. Consequently, the employing authority becomes responsible for the employment of staff in lieu of the Board, which no longer has the power to employ.

The clause also inserts a new section that reflects the terms of the repealed section 21(2) and (3). Section 21A(1) authorises the employing authority to determine (with the approval of the Minister) that, for purposes associated with accrual of long service leave and leave on account of illness, previous service of a person employed under this Act with an employer other than the employing authority may be regarded as service with the employing authority.

Section 21A(2) authorises the employing authority to enter into arrangements contemplated by section 5 of the *Superannuation Act 1988*.

107—Amendment of section 22—Secretary to the Board

Section 22(2) currently states that the secretary of the Board must be an employee of the State Opera. This clause amends the provision so that the secretary must be a person employed under the Act.

Part 24—Amendment of *State Theatre Company of South Australia Act 1972*

108—Amendment of section 4—Interpretation

This clause amends the interpretation provision of the *State Theatre Company of South Australia Act 1972* by inserting the standard definition of ***employing authority***.

109—Amendment of section 6—Board of Governors

110—Amendment of section 9—Casual vacancies

111—Amendment of section 16—Declaration of interest

The amendments made by these clauses are consequential on the employing authority becoming responsible for the employment of staff in lieu of the State Theatre Company of South Australia.

112—Repeal of section 19

Section 19 authorises the Company to make use of the services of officers or employees of Departments of the public service. The section is repealed by this clause because new section 20(12) provides that the Company may, under an arrangement established by the Minister administering an administrative unit, make use of the services or staff of that administrative unit.

113—Amendment of heading to Part 3

The amendment made by this clause is consequential.

114—Substitution of sections 20 and 21

Sections 20 and 21, which deal with the employment of employees of the Company and the appointment of the artistic director, are repealed by this clause, and three new sections are inserted.

New section 20 is based on the model provision. Under the section, the employing authority may employ staff to perform functions in connection with the operations or activities of the Company. The Company does not have the power to employ any person.

New section 20A, which repeats in essence the terms of existing section 20(3), provides that the employing authority may determine (with the approval of the Minister) that, for purposes associated with accrual of long service leave and leave on account of illness, previous service of a person employed under this Act with an employer other than the employing authority may be regarded as service with the employing authority. Section 20A also authorises the employing authority to enter into arrangements contemplated by section 5 of the *Superannuation Act 1988*.

115—Amendment of section 22—Secretary to the Board

Section 22 currently requires the Board to appoint a person to be the secretary to the Board. As a consequence of the amendment made by this clause, the Board is required to appoint a person employed under Part 3 of the Act to the position of secretary.

Part 25—Amendment of *Technical and Further Education Act 1975*

116—Amendment of section 4—Interpretation

The definition of ***employing authority*** inserted into section 4 of the *Technical and Further Education Act 1975* provides that the employing authority is the Chief Executive Officer or a person, or a person holding or acting in an office or position, designated by proclamation.

Under new subsection (5) of section 5, if the Chief Executive Officer is the employing authority, and the Act requires that the employing authority refer a matter to the Chief Executive Officer, or provides that the Chief Executive Officer is to make a recommendation to the employing authority, the Chief Executive Officer will be able to take action without a referral or recommendation.

117—Amendment of section 8—Delegation by Minister

Section 8 authorises the Minister to delegate his or her powers, duties or functions under the Act. Under subsection (1)(b), the Minister may delegate to the person for the time being holding or acting in a position or office established by the Minister under section 9 or 15. The section is amended by this clause because sections 9 and 15 are to be amended by clauses 118 and 120 respectively to remove the Minister's power to employ persons or appoint officers for the purposes of the Act.

Section 8, as amended, authorises the Minister to delegate to the person for the time being holding or acting in a position or office established for the purposes of the Act. An additional subsection inserted into section 8 by this clause provides that a power, duty or function delegated under the section may, if the instrument of delegation so provides, be further delegated.

118—Amendment of section 9—General powers of Minister

Section 9(6) provides that the Minister may employ such persons (in addition to officers appointed under the Act and employees of the Department) as he or she considers necessary for the proper administration of the Act. That subsection is deleted by this clause as, under new section 39AAB(1), the employing authority is to be responsible for the employment of such persons as are currently referred to in section 9(6).

119—Amendment of section 13—Delegation by Chief Executive Officer

This amendment to the Chief Executive Officer's power of delegation is consequential on the employing authority becoming responsible for the employment of staff and the appointment of officers under the Act.

This clause also inserts a new subsection, which provides that a power, duty or function delegated under section 13 may be further delegated if the instrument of delegation so provides.

120—Amendment of section 15—Appointment of officers

Section 15(1) currently provides the Minister with a power to appoint such officers to provide technical and further education and undertake related functions for the purposes of the Act. That subsection is deleted by this clause and a new subsection inserted in its place. Under the new subsection, it is the employing authority, rather than the Minister, that is authorised to make such appointments.

An additional subsection inserted by this clause provides that the employing authority must, in acting under the section, consult with the Chief Executive Officer (unless the Chief Executive Officer is the employing authority).

121—Amendment of section 15A—Termination of appointment of officers on probation

As a consequence of the amendment to section 15A made by this clause, the employing authority, rather than the Minister, may terminate the appointment of an officer who is on probation.

A new subsection inserted by this clause provides that the employing authority must, in acting under the section, consult with the Chief Executive Officer (unless the Chief Executive Officer is the employing authority).

122—Amendment of section 16—Retrenchment of officers

As a consequence of the amendment to section 16 made by this clause, the employing authority, rather than the Minister, may retrench an officer if the authority is satisfied as to certain matters.

Again, a new subsection inserted by the clause provides that the employing authority must, in acting under the section, consult with the Chief Executive Officer (unless the Chief Executive Officer is the employing authority).

123—Amendment of section 17—Incapacity of officers

Section 17(1) authorises the Chief Executive Officer to take certain action if he or she is satisfied that an officer is incapable of performing the officer's duties satisfactorily because of mental or physical illness or incapacity. Under subsection (1)(b), the Chief Executive Officer is currently authorised to recommend to the Minister that the officer be transferred to some other employment in the Government of the State. As a consequence of the first amendment made by this clause, the Chief Executive Officer may determine to take steps to transfer the officer rather than make a recommendation to the Minister. A related subsection inserted by this clause provides that in acting under subsection (1)(b), the Chief Executive Officer may recommend to the employing authority that the officer be appointed to an office or position under section 39AAB or attempt to secure for the officer some other appropriate employment in the Government of the State. (Section 39AAB is inserted by clause 130.)

Under section 17(1)(d), as amended by this clause, the Chief Executive Officer may recommend to the employing authority that an ill or incapacitated officer be retired.

124—Amendment of section 21—Payment in lieu of long service leave

125—Amendment of section 22—Interruption of service

126—Amendment of section 23—Recognition of previous employment

127—Amendment of section 26—Disciplinary action

128—Amendment of section 27—Suspension

The amendments made by these clauses are consequential on the employing authority becoming responsible for employment of officers under Part 3 of the Act.

129—Amendment of section 39AA—Operation of industrial relations legislation

A reference in section 39AA to officers or persons employed by the Minister under the Act is amended by this clause to remove the words *by the Minister*. This is a further amendment consequential on the employing authority becoming responsible for the employment of officers and other persons under the Act.

130—Insertion of sections 39AAB and 39AAC

This clause inserts two new sections.

Section 39AAB authorises the employing authority to employ persons, in addition to officers under Part 3 and employees in the Department, necessary for the proper administration of the Act. Although the employing authority is, in acting under the section, subject to direction by the Minister, a Ministerial direction may not be given relating to the appointment, transfer, remuneration, discipline or termination of a particular person.

If the Chief Executive Officer is not the employing authority, the authority is required to consult with the Chief Executive Officer when acting under the section.

Section 39AAB also requires the Department, at the direction of the Minister or the Treasurer, to make payments with respect to any matter arising in connection with the employment of a person under this section. Such payments include, but are not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities.

Section 38AAC deals with a number of matters related to the employing authority. Under the section, the employing authority is authorised to delegate a function or power under the Act. A delegation—

- must be by instrument in writing; and
- may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
- may be unconditional or subject to conditions; and
- does not derogate from the power of the employing authority to act personally in any matter; and
- may be revoked at any time by the employing authority.

Under section 39AAC(4), the appointment and continuity of employment of a person will not be affected by a change in the person who constitutes the employing authority.

Schedule 1—Transitional provisions

1—Interpretation

This clause includes a number of definitions necessary for the purposes of the transitional provisions. The definition of ***prescribed body*** lists all those bodies that, prior to the commencement of the Act, are the employers of persons who will be, following that commencement, employed by an employing authority.

2—Transfer of employment

This clause provides that a person who was employed by a prescribed body immediately before the commencement of the clause will be taken, on that commencement, to be employed by the employing authority as defined in the Act under which the person is employed.

Subclause (2) provides that—

- a person who, immediately before the commencement of clause 2, was employed under section 6L(1) of the *Electricity Act 1996* will, on that commencement, be taken to be employed by the employing authority under that Act;
- a person who, immediately before the commencement of clause 2, was employed by the South Australian Fire and Emergency Services Commission will, on that commencement, be taken to be employed by the Chief Executive of that body;
- a person who, immediately before the commencement of clause 2, was employed by an emergency services organisation under the *Fire and Emergency Services Act 2005* will, on that commencement, be taken to be employed by the Chief Officer of that body.

Under subclause (3), the Governor may, by proclamation, provide that a person employed by a subsidiary of a public corporation under the *Public Corporations Act 1993* will be taken to be employed by a person or body designated by the Governor.

An employment arrangement effected by clause 2 will be taken to provide for continuity of employment without termination of an employee's service. Also, the employment arrangement will not affect an employee's existing conditions of employment or existing or accrued rights to leave, or a process commenced for variation of those conditions or rights.

However, if, immediately before the commencement of clause 2, a person's employment was subject to the operation of an award or certified agreement (but not an Australian Workplace Agreement) under the *Workplace Relations Act 1996* of the Commonwealth, then, on the commencement of clause 2, an award or enterprise agreement will be taken to be created under the *Fair Work Act 1994*. An award or agreement so created will have the same terms and provisions as the relevant industrial instrument under the *Workplace Relations Act 1996*. The award or agreement will also have terms or provisions that existed under an award or enterprise agreement under the *Fair Work Act 1994*, that applied in relation to employment of the kind engaged in by the person, immediately before 27 March 2006, and that ceased to apply by virtue of the operation of provisions of the Commonwealth Act that came into force on that day. These terms and provisions will be subject to any modification or exclusion prescribed by regulations.

Also, where an award or agreement is created as described above—

- the award or enterprise agreement will be taken to be made or approved under the *Fair Work Act 1994* on the day on which clause 2 commences; and
- the *Fair Work Act 1994* will apply in relation to the award or enterprise agreement subject to such modifications or exclusions as may be prescribed by regulations made for the purposes of clause 2(6); and
- the Industrial Relations Commission may, on application by the Minister to whom the administration of the *Fair Work Act 1994* is committed, or on application by a person or body recognised by regulations made for the purposes of clause 2(6), vary or revoke any term or provision of the award or enterprise agreement if the Commission is satisfied that it is fair and reasonable to do so in the circumstances.

3—Superannuation

This clause provides continuity where a prescribed body is party to an arrangement relating to the superannuation of one or more persons employed by the body. The employing authority is to become a party to the arrangement instead of the prescribed body.

4—Interpretative provision

Under this clause, the Governor may, by proclamation, direct that a reference in an instrument or a contract, agreement or other document to a prescribed body or other specified agency, instrumentality or body will have effect as if it were a reference to an employing authority, to the Minister to whom the administration of a relevant Act is committed or to some other person or body designated by the Governor.

5—Related matters

This clause provides that certain notices made under provisions amended by this Act in the *Children's Services Act 1985*, the *Institute of Medical and Veterinary Science Act 1982*, the *South Australian Health Commission Act 1976* and the *South Australian Motor Sport Act 1984* will continue to have force. The amendments effected by this Act will not affect the status of a person as an employer of public employees for the purposes of the *Fair Work Act 1994*.

6—Other provisions

This clause authorises the Governor to make additional provisions of a saving or transitional nature by regulation.

The Hon. R.G. KERIN secured the adjournment of the debate.

Mrs GERAGHTY: Mr Speaker, I draw your attention to the state of the house.

A quorum having been formed:

MOTOR VEHICLES (THIRD PARTY INSURANCE) AMENDMENT BILL

The Hon. M.J. ATKINSON (Attorney-General) obtained leave and introduced a bill for an act to amend the Motor Vehicles Act 1959. Read a first time.

The Hon. M.J. ATKINSON: 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 *Motor Vehicles Act 1959* to exclude Compulsory Third Party ("CTP") cover for acts of terrorism involving the use of a motor vehicle. Implementation of the proposal will reduce the financial risk to the State, which guarantees the CTP Fund, without reducing the scale of CTP benefits provided to South Australians as a result of ordinary motor vehicle accidents.

Under the current provisions of the *Motor Vehicles Act 1959*, there is some uncertainty as to whether CTP claims could arise as a result of a terrorism event where that event involved the use of a motor vehicle. If a very large claim or claims resulting from terrorism activity were to arise, the CTP fund solvency would be severely impaired and rectification could involve either significantly increased CTP premiums or a contribution from consolidated revenue or both (the CTP fund is guaranteed by the Crown). As the CTP benefits are defined in law there would be no flexibility to vary awards of damages to make the overall cost affordable unless an exemption from liability from terrorism claims for the scheme is legislated.

The New South Wales, Queensland and Tasmanian Governments have passed similar legislation excluding terrorism insurance cover from CTP policies in those jurisdictions.

The definition of a ***terrorist act*** in this Bill is the same as the definition in the *Terrorism (Commonwealth Powers) Act 2002*. A terrorist act means an action or threat of action where:

- it causes serious physical harm to a person, serious damage to property or causes a person's death, or endangers a person's life, or creates a serious risk to the health or safety of the public, or seriously disrupts or destroys an electronic system; and
- the action is done or a threat is made with the intention of advancing a political, religious or ideological cause; and

· the action is done or the threat is made with the intention of coercing, or influencing by intimidation the Government (either Commonwealth, State, Territory or foreign country), or intimidating the public or a section of the public.

In excluding terrorism risks from the South Australian CTP scheme, the Government is effectively limiting the scheme to the events it was intended to cover, that is, to provide protection for people injured as a result of "normal" motor vehicle accidents. The Bill removes any uncertainty as to the scope of the CTP scheme.

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 *Motor Vehicles Act 1959*

3—Amendment of section 99—Interpretation

This clause inserts a definition of ***terrorist act*** into section 99 of the *Motor Vehicles Act 1959*. That definition is the same as in the *Terrorism (Commonwealth Powers) Act 2002*.

The clause also inserts a new subsection (3a) into section 99, which provides that, for the purposes of Part 4 and Schedule 4 of the Act, death or bodily injury will not be regarded as being caused by or as arising out of the use of a motor vehicle if the death or bodily injury is caused by a terrorist act. The effect of the amendment is to remove death or bodily injury caused by terrorist act from the Compulsory Third Party scheme.

Mrs REDMOND secured the adjournment of the debate.

PUBLIC FINANCE AND AUDIT (REFUND OR RECOVERY OF SMALL AMOUNTS) AMENDMENT BILL

The Hon. M.J. ATKINSON (Attorney-General) obtained leave and introduced a bill for an act to amend the Public Finance and Audit Act 1987. Read a first time.

The Hon. M.J. ATKINSON: I move:

That this bill be now read a second time.

As I am doing it for another minister, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The *Public Finance and Audit (Refund or Recovery of Small Amounts) Amendment Bill 2006* ('the Bill') amends the *Public Finance and Audit Act 1987* ('the Act') to establish a procedure for dealing with small overpayments or underpayments of a fee, charge or other amount that is required to be paid to a public authority or public officer under an Act.

Government agencies have for a number of years implemented a practice, of administrative convenience, involving the non-collection of small underpayments or non-refunding of small overpayments. An example of small underpayments occurs when taxpayers base the payment of a fee on forms with outdated fees from a previous financial year. In many cases the cost of pursuing these small underpayments exceeds the amount being pursued.

The Auditor-General in his report for the year ended 30 June 2003 noted the practice of administrative convenience and accepted that where the amount of money is 'small', the cost of arranging a refund for an overpayment would be greater than the refunded amount. However, the Auditor-General was of the view that unless the practice is provided for in legislation, relevant agencies are obliged to refund overpayments and to pursue underpayments.

Although some legislation authorises public officers to waive specific fees and charges if it is considered impractical to collect them, there is no discretionary authority that applies to small overpayments or underpayments under an Act more generally.

The Bill establishes that where a fee, charge or other amount that is required to be paid to a public authority or public officer under an Act is overpaid by an amount not exceeding the prescribed amount, there is no requirement for the public authority or public officer to refund the overpayment unless the person who made the overpayment requests a refund within 12 months of the date of the overpayment. The Bill establishes that where a fee, charge or other amount that is required to be paid to a public authority or public officer under an Act is underpaid by an amount not exceeding the prescribed amount, an authorised person may waive recovery of the underpayment. The Bill does not compel a public authority or public officer to accept an underpayment or waive an overpayment of less than the prescribed amount. The Bill does not apply to an expiation fee, an expiation reminder fee or a fee imposed by a court or tribunal.

I commend the Bill to the honourable members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Public Finance and Audit Act 1987*

4—Insertion of section 41AA

This clause inserts a new section 41AA into the *Public Finance and Audit Act 1987*.

The proposed section outlines the general procedure to be followed for an overpayment or underpayment, not exceeding the prescribed amount, of a fee, charge or other amount that is required to be paid under an Act to a public authority or public officer.

The proposed section provides that there is no requirement on the public authority or public officer to refund an overpayment, not exceeding the prescribed amount, of a fee, charge or other amount except where the person who made the overpayment requests a refund within 12 months of the date of the overpayment.

The proposed section enables but does not impose a requirement on the public authority or an authorised person to waive an underpayment, not exceeding the prescribed amount, of a fee, charge or other amount.

The proposed section allows the Minister responsible for the Act under which a fee, charge or other amount is payable to authorise, by instrument in writing, a specified person, or person occupying a specified position, to waive the recovery of underpayments. The proposed section allows the Minister to vary or revoke an authorisation.

The proposed section does not apply to an expiation fee, an expiation reminder fee, an amount ordered to be paid by a court or tribunal or any fee, charge or other amount that is prescribed by regulation for the purposes of the proposed section.

The proposed section defines an authorised person as a person acting in accordance with an authorisation given under the proposed section by the Minister responsible for the administration of the Act.

Mrs REDMOND secured the adjournment of the debate.

STATUTES AMENDMENT (JUSTICE PORTFOLIO) BILL

The Hon. M.J. ATKINSON (Attorney-General) obtained leave and introduced a bill for an act to amend various acts within the Justice portfolio. Read a first time.

The Hon. M.J. ATKINSON: I move:

That this bill be now read a second time.

From time to time there is a need to make sundry amendments to legislation within a portfolio.

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: The member for Heysen says, 'rats and mice', and I think on this occasion she is probably correct, with perhaps one exception.

This bill makes some minor, uncontroversial amendments to legislation within the Justice portfolio. In addition, there is an amendment to the Water Efficiency Labelling Standards Act 2006. Although that may, at first glance, seem out of place—

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: Correct—the amendment deals with appeals to the District Court, and the courts and

jurisdictional matters clearly come within the Justice Portfolio.

The bill clarifies some provisions that we know from experience are uncertain or ambiguous. The bill, for example, removes any doubt that a co-operative can register as a company and makes it clear that a legal practitioner appointed under the Australian Crime Commission (South Australia) Act 1984 is a member of the staff of the Australian Crime Commission.

Indeed, I believe Judge Anderson of the District Court is headed to that very institution, creating a second vacancy on the District Court. Alas, the member for Heysen's preferred candidate is someone I cannot persuade to take the appointment, although I have offered it to him.

The bill also updates some references to repealed legislation. References to the now repealed Industrial Conciliation and Arbitration Act 1972, for example, are replaced by references to the Fair Work Act 1994.

Amendments to the Professional Standards Act 2004 and the Prisoners (Interstate Transfer) Act 1982, agreed to at a national level, are also included in the bill.

The Bill makes other minor miscellaneous and uncontroversial amendments to Acts including the Acts Interpretation Act 1915, the Judicial Administration (Auxiliary Appointments and Powers) Act 1998—so that we can bring in an interstate serving judge to sit in a matter where a justice, judge or magistrate of our courts is being sued—the Limitation of Actions Act 1936 and the Trustee Companies Act 1988, to name a few.

I should add that we are making an amendment to the Associations Incorporation Act to protect board members who act on expert advice and to give them immunity from liability if they do so. This is designed to encourage more volunteers for our clubs and associations.

I have been anxious for some time that eviction orders under section 90 of the Residential Tenancies Act—an initiative of the member for Ross Smith and I back in 1995, a successful amendment to a government bill—allow neighbours of a bad tenant to approach the tribunal to evict a tenant who is using the premises for an unlawful purpose or who is acting in a manner inconsistent with the quiet enjoyment by his neighbours of their homes, to ensure that an eviction order by the tribunal is effective.

What has happened in the suburb of prospect is that a man has been evicted on an order of the tribunal for driving the neighbourhood crazy, but the landlords are his parents. They have issued him with a new lease. So, we will be moving to allow orders of the Tribunal to be effective in that the same tenant will not be able to lease the same premises until such time as the tribunal permits it. So with those remarks, I seek leave to incorporate the remainder of my second reading in *Hansard* without my reading it.

Leave granted.

Acts Interpretation Act 1915

The Bill amends the definition of commencement in the *Acts Interpretation Act*. The term is currently defined to mean the day on which an Act or statutory instrument comes into operation. This definition does not recognise that an Act may commence at a particular time on a specified day. Part 2 of the Bill corrects this oversight.

Associations Incorporation Act 1985

A board member of an incorporated association is in a similar position to a director of a company. He owes duties to the organisation, under both the *Associations Incorporation Act 1985* and at common law. He could be liable in damages to the association for a breach of these duties. Examples of breaches are a failure to exercise due care and diligence or a conflict of interest. It is also possible that a board member could be liable to cover the debts of the association incurred while trading insolvent.

The skill and care required of a board member is that of an ordinary person in the circumstances of the particular board member. This means that board members possessing particular skills (e.g., accountancy or law) may be held to a higher standard for that skill. Executive board members may be held to a higher standard for their knowledge of the day-to-day affairs of the association. Although an association can indemnify a board member, its authority to do so limited.

The *Associations Incorporation Act 1985* is silent on the extent to which a board member may rely upon the advice of experts. The common law recognises that board members need not personally perform every task within the scope of their duties and may delegate to, and rely upon, the advice of professionals and the executive management of the organisation. However, the extent that a board member may rely upon expert advice, without making his own inquiries, is not clear.

This inconsistency was recognised by the Commonwealth in the context of directors' duties when it put its Corporate Law Economic Reform Program Act ('the CLERP Act') on director's duties through Parliament in 1998. To remedy this situation, the CLERP Bill inserted section 189 into the *Corporations Act*.

Part 3 of the Bill amends the *Associations Incorporation Act 1985* by inserting a provision similar to s189 of the *Corporations Act*. It makes it clear that an officer of an Association can rely on the advice of others where (1) the reliance is made in good faith and (2) the officer has made an independent assessment of the advice.

Businesses Names Act 1996

The amendment in Part 5 of the Bill will make the offence of trading under an unregistered business name expiable. As an assessment of whether an offence has been committed is straightforward and turns on objective criteria, the offence is suited to expiation. The penalty for the offence is $5 000 and many other offences that carry this penalty are expiable. The expiation fee will be set at $315.

Companies (Administration) Act 1982

The *Companies (Administration) Act 1982* is to be amended to allow the Corporate Affairs Commission to delegate its powers and functions to a specified position and not just a specified person. When delegations are made to a specified person those delegations must be remade each time the person takes leave or changes job. The power to delegate to both people and positions is common and it helps to overcome the problem outlined above. Part 7 of the Bill provides this power.

Correctional Services Act 1982

Before 1 July 2006, a person could be appointed (by the Prison Governor) as a Visiting Tribunal if he or she was (1) a Magistrate, (2) a Special Justice or (3) a Justice of the Peace. After the commencement of the *Justices of the Peace Act 2005*, a Justice of the Peace can no longer be appointed as a Visiting Tribunal.

Although a Justice of the Peace can no longer be appointed as a Visiting Tribunal, appointments made before the commencement of the *Justice of the Peace Act 2005* will be saved and continued by operation of section 16 of the *Acts Interpretation Act 1915*.

Section 47 of the *Correctional Services Act 1982* gives prisoners a right of appeal from Visiting Tribunals. If the Visiting Tribunal is a Magistrate, the appeal is to the District Court. If the Visiting Tribunal is a Special Justice, the appeal is to the Magistrates Court. However, there is no provision for Visiting Tribunals that are just Justices of the Peace.

Clause 12 of the Bill amends section 47 of the *Correctional Services Act 1982* so that prisoners clearly have a right to appeal to the Magistrates Court from a decision of Visiting Tribunal that is neither a magistrate nor a special justice.

Clause 11 of the Bill also amends the definition of definition of child sexual offence and the definition of sexual offence found in the interpretation provisions of the *Correctional Services Act 1982*. A child sexual offence is defined by reference to particular criminal offences. In some cases, the name of those criminal offences or the name of the Act that creates those offences has changed. It is important that the definition of child sexual offence includes, in addition to the current offences, similar offences under amended or repealed legislation. The Bill clarifies that both the definition of child sexual offence and the definition of sexual offence include offences under corresponding previous enactments.

It has also been noted that the definition of child sexual offence refers to section 58A of the *Criminal Law Consolidation Act*. Section 58A was deleted by the *Criminal Law Consolidation (Child*

Pornography) Amendment Act 2004. References to s58A are now meaningless and are to be replaced by references to Division 11A of Part 3 of the *Criminal Law Consolidation Act*.

Criminal Law Consolidation Act 1935

The Office of the D.P.P. has highlighted a problem with the operation of section 49 of the *Criminal Law Consolidation Act 1935*. Section 49 creates the offence of unlawful sexual intercourse and is divided into subsections. To prove the offence created by subsection (1), the prosecution must show that the victim was under the age of 14. To prove the offence created by subsection (3), the prosecution must show that the victim was over the age of 14. Where the conduct occurred around about the time of the victim's fourteenth birthday, it may be difficult to prove, beyond reasonable doubt, whether the victim was under, or over, the age of 14. In this case, it is possible that neither subsection (1) nor (3) would apply, even though the victim was clearly under 17 years of age. Part 10 of the Bill clarifies that where the conduct occurred around the time of the victim's fourteenth birthday, and it is unclear whether the victim was over 14 years of age, section 49(3) will apply. The same problem arises in the context of the offence of sexual servitude, created by section 66 of the Act, and clause 14 of the Bill makes a similar amendment to that offence.

Judicial Administration (Auxiliary Appointments and Powers) Act 1988

A local judge, well known to other local judges, may be a party to a dispute. The Chief Judge says that, in such cases, it would be appropriate for a judge of another jurisdiction to hear the matter. However, under the terms of the *Judicial Administration (Auxiliary Appointments and Powers) Act 1998*, a serving judge of another jurisdiction can be appointed as an auxiliary judge only if he or she is a South Australian legal practitioner. This criteria is too narrow and should be changed. Part 14 of the Bill provides for a serving judge of another jurisdiction to act in a judicial office as an auxiliary.

Limitation of Actions Act 1936

The Bill removes references to section 37 of the *Limitation of Actions Act 1936* from sections 39 & 40 of that Act. Before the *Defamation Act 2005* came into operation, section 37 of the *Limitation of Actions Act* imposed time limits on the commencement of two types of action: (1) actions for defamation; and (2) actions for penalties, damages, or sums of money given to any party by any statute. Time limits on the latter category of action were removed by the *Defamation Act*. The references to section 37, in sections 39 and 40, were only ever intended to apply to latter category of action. Since the latter category of action is no longer part of section 37, the references are obsolete and Part 16 of the Bill removes them.

Prisoners (Interstate Transfer) Act 1982

The Bill amends the *Prisoners (Interstate Transfer) Act 1982*. That Act forms part of a national co-operative legislative scheme that permits inmates to be transferred between participating jurisdictions. After a 2002 Federal Court decision, there has been some concern about the factors that the relevant Minister must consider when making a decision to refuse the transfer of a prisoner. The Standing Committee of Attorneys-General considered the decision and agreed that the Minister should be able to consider factors other than the welfare of the prisoner, for example, the protection of the public and the administration of justice. The national Parliamentary Counsels' Committee drafted a uniform amendment and Part 19 of the Bill includes this amendment.

Professional Standards Act 2004

All States and Territories have enacted professional standards legislation that provides for the approval of schemes under which the occupational liability of members of occupational or professional associations is limited in return for the members:

- holding compulsory insurance (or minimum business assets) up to a prescribed level; and
- adopting risk management and dispute-resolution procedures.

The Commonwealth legislated in 2004 to amend the *Trade Practices Act 1974* and related Acts to provide for the application in Commonwealth law of professional standards schemes in force under State law. This legislation fulfilled a pledge given by Insurance Ministers nationally in response to the insurance crisis.

South Australia's Act is based on the NSW *Professional Standards Act* and was assented to on 25 November 2004. It is not yet in operation in this State.

In late 2005, some occupational associations applying to register schemes in Victoria and renew schemes in N.S.W. raised concerns over a drafting anomaly in the legislation in those States that affected their ability to satisfy the requirements necessary to obtain capped liability where the insurance policy relied upon was cost-inclusive.

These amendments, in Part 20 of the Bill, correct this drafting anomaly by enabling professionals, who are members of capped liability schemes, to hold either costs-inclusive or costs-in-addition insurance cover. The amendments also seek to ensure that consumers of professional services will not be disadvantaged because the professional's maximum liability to the consumer will still remain up to the amount of the cap, as determined under the Act, regardless of whether the relevant professional holds a costs-inclusive or costs-in-addition insurance policy. The amendments are to be uniform national amendments and have the in-principle support of the Standing Committee of Attorneys-General and are based on a draft Bill prepared by the Parliamentary Counsel's Committee. It is necessary for South Australia to pass the amendment in Part 20 of the Bill so that the legislation remains consistent across the jurisdictions.

Residential Tenancies Act 1995

The Residential Tenancies Tribunal can, in some circumstances, terminate a residential tenancy and make an order for possession of the premises. However, where the landlord is a close relative of the tenant, it can be difficult to enforce such an order because:

- in practical terms one needs the landlord to co-operate for an eviction to occur. Neighbours, for example, do not have a key to the premises and would not be able to let the bailiff in or change the locks; and
- even if the tenant does vacate the premises, the same tenant could enter into a new residential tenancy agreement shortly after. The Tribunal can prevent the landlord from entering into a new agreement only for a maximum of three months.

Part 22 of the Bill addresses these problems. It provides the Residential Tenancies Tribunal with the power to (1) order the landlord to take action to help take possession of the premises, and (2) not permit the tenant to occupy the premises (whether as a tenant or otherwise) for a specified period or until further order.

Security and Investigation Agents Act 1995

The *Security and Investigation Agents Act 1995* was amended last year to exert stronger controls over security agents. In particular, these agents are now liable to psychological testing and fingerprinting. Those licensed as crowd controllers are also subject to drug and alcohol testing. Some small alterations are now proposed to enable these reforms to work better. The amendments are contained in Part 23 of the Bill.

- First, it has been noted that some agents, and directors of agents, who are required to undergo fingerprinting, are located outside South Australia. The South Australia Police are not able to provide a fingerprinting service in other States and so the current requirement is that those persons must travel to South Australia to have their fingerprints taken. This is often inconvenient and it would be helpful if the Commissioner for Consumer Affairs were able to make arrangements for fingerprinting to occur outside South Australia, for example, by an arrangement with the police force of another State. These amendments will open up that possibility.
- Second, the amendments will clarify the time limit for appeals against decisions to suspend or cancel a security agent's licence. The Act is silent on those time limits in some cases. That means that the time allowed by the rules of court would apply. However, it was thought helpful to specify the time limit on the face of the statute. These amendments would allow one month from the date of the decision.
- Third, in section 23E, the right of appeal is currently stated to apply to decisions of the Commissioner to suspend a licence. In fact, under sections 23A and 23B, the Commissioner can make other decisions, for example, a decision to confirm a suspension. It is intended that an appeal also lie against that decision and this amendment makes that clear.
- Fourth, the Bill inserts an immunity provision that is simply a variant of an existing immunity provision. It clarifies that the Commissioner's immunity applies not only to decisions to suspend but also to cancel a licence.

Subordinate Legislation Act 1978

Part 26 of the Bill amends the *Subordinate Legislation Act 1936* so that regulations made pursuant to an agreement for uniform legislation expire in the same way as other regulations. The rationale for the expiry of regulations is that they become outdated and should be subject to periodic review. This rationale applies also to regulations that are made pursuant to uniform legislation.

Summary Procedure Act 1921

Section 5 of the *Summary Procedure Act 1921* establishes and defines three classes of offence including: (1) summary offences (2) minor indictable offences and (3) major indictable offences. The classification of some offences is not as Parliament intended and Part 27 of the Bill corrects this.

First, an aggravated offence of serious criminal trespass, against either a residential building or non-residential building, is a major indictable offence. The *Statues Amendment and Repeal (Aggravated Offences) Act 2005*, in its current form, would result in the offence being reclassified as a minor indictable offence. The reclassification of the offence was an unintended and undesirable consequence of restructuring the provisions of the *Criminal Law Consolidation Act 1935*. Aggravated forms of the offence should continue to be tried as a major indictable offence. Clause 54(2) of the Bill will ensure that this is so.

Second, the offence of indecent assault against a child of 12 or 13 years of age is a minor indictable offence. It was intended to be and should be a major indictable offence. Section 56 of the *Criminal Law Consolidation Act* creates the offence of indecent assault. It provides for a higher maximum penalty where the victim is under 12 years of age. The *Statutes Amendment (Sentencing of Sex Offenders) Act 2005* increased the critical age from 12 years of age to 14 years of age. The increase in the critical age has not been reflected in the *Summary Procedure Act 1921*. For the purpose of classifying offences, the *Summary Procedure Act* still refers to a victim under the age of 12. Clause 54(1) of the Bill corrects this oversight and ensures that the offence of indecent assault, when committed against a child of 12 or 13 years of age, is as a major indictable offence.

Part 27 of the Bill also updates the interpretation provisions of the *Summary Procedure Act 1921*.

- It has been noted that the definition of Industrial Magistrate in the *Summary Procedure Act 1921* refers to the *Industrial Conciliation and Arbitration Act 1972*. The *Industrial Conciliation and Arbitration Act 1972* has been repealed and replaced by the *Fair Work Act 1994*. Clause 53(1) of the Bill updates the definition of Industrial Magistrate so that it refers to the *Fair Work Act 1994* instead of the repealed Act.
- Second, the meaning of the word "Justice", as it appears in the *Summary Procedure Act 1921*, is obscure and ambiguous. The definition could be interpreted to mean that (1) magistrates are authorised to act as justices of the peace; or (2) magistrates can act as Justices of the Peace, but only if they are authorised (separately) to do so. To avoid further uncertainty and confusion clause 53(2) of the Bill removes the definition of Justice from the *Summary Procedure Act 1921*. The definition of Justice in the *Acts Interpretation Act 1915* will instead apply.
- Third, with the exception of the definition provisions, the term Industrial Court is no longer found in the *Summary Procedure Act 1921*. The definition of Industrial Court serves no purpose and is removed by clause 53(3) of the Bill.
- Fourth, the definition of child sexual offence refers to section 58A of the *Criminal Law Consolidation Act*. Section 58A was deleted by the *Criminal Law Consolidation (Child Pornography) Amendment Act 2004*. References to s58A are now meaningless and are to be replaced by references to Division 11A of Part 3 of the *Criminal Law Consolidation Act*.

Trustee Companies Act 1988

Some trustee companies have changed their name. Schedule 1 of the *Trustee Companies Act 1988*, which lists the names of all trustee companies, needs to be updated to reflect this. Part 28 of the Bill deletes the name *Australian Executor Trustees Limited* from the Schedule and replaces it with the name *Tower Trust Limited*. Two other similar changes are made to provide for trustee companies that have a new name.

Water Efficiency Labelling and Standards Act 2006

The *Water Efficiency Labelling Standards Act 2006* is part of a national scheme of legislation and it provides for appeals to the District Court against decisions made by the Commonwealth Regulator. As the Act stands, it is arguable that the right of appeal is to the Civil Division of the District Court. This was not intended and it involves more complex procedures and higher fees. Part 29 of the Bill amends the *Water Efficiency Labelling and Standards Act 2006* so that it is clear that appeals are to be heard by the Administrative and Disciplinary Division of the District Court.

Amendments that clarify provisions that are uncertain or ambiguous

There are provisions that we know from experience are uncertain or ambiguous. Some changes are proposed to clarify these provisions so that they operate as intended.

- First, it was thought that a legal practitioner appointed to assist the Australian Crime Commission (the "A.C.C.") would have the same powers and obligations as a member of the staff of the A.C.C. There is some doubt about this. Part 4 of the Bill amends the *Australian Crime Commission (South Australia) Act 1984* so that it is clear that a legal practitioner appointed under the Act is a member of the staff of the A.C.C.
- Second, section 301 of the *Co-operatives Act 1997* provides for a co-operative to apply to become incorporated as a company under the *Corporations Act*. Despite this provision however, the recent case of *Medical Defences Association of Western Australia Inc. v Australian Securities & Investment Commission* suggests that a co-operative may not be able to register as a company. Part 8 of the Bill will ensure that section 301 operates as intended so that a co-operative can register as a company under the *Corporations Act*.

Amendments that remove obsolete references and updates references to provisions

The Bill also removes obsolete legislative references and updates other references to provisions.

- First, section 3(5) of the *Debtors Act 1936* purports to limit the effect of the *Debtors Act* on the provisions of the *Insolvent Act 1886*. The reference to the *Insolvent Act 1886* is outdated and consequently, section 3(5) of the *Debtors Act* has no work to do. Part 11 of the Bill repeals section 3(5) of the *Debtors Act 1936*.
- Second, the *Statutes Amendment and Repeal (Aggravated Offences) Act 2005* identifies section 64 of the *Criminal Law Consolidation Act 1935* as the section that creates the offence of procuring sexual intercourse. The relevant section is in fact section 60. Part 25 of the Bill corrects this mistake.
- Third, the accepted abbreviation for an incorporated limited partnership is I.L.P. The *Partnerships Act 1981* mistakenly lists the accepted abbreviation as L.P. As a result, both limited partnerships and incorporated limited partnerships are identified by the same abbreviation. This is confusing and misleading. Part 18 of the Bill ensures that an incorporated limited partnership will be recognised by its correct abbreviation.
- Fourth, the penalty of imprisonment *with hard labour* has been abolished in this State. However, some South Australian Acts still purport to impose a penalty of imprisonment with hard labour. References to hard labour are obsolete and are to be removed from Acts within the Justice Portfolio.
- Fifth, Part 2 of the *Civil Liability Act 1936* no longer exists. Part 2 has been redesignated as Part 5. However, section 69 of the *Civil Liability Act* still refers to Part 2 of the Act. Clause 8 of the Bill will amend section 69 so that it refers to Part 5 of the Act instead of Part 2.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Acts Interpretation Act 1915*

4—Amendment of section 4—Interpretation

The proposed amendment broadens the definition of ***commencement*** to mean the day or time on which the Act or statutory instrument comes into operation.

Part 3—Amendment of *Associations Incorporation Act 1985*

5—Insertion of section 39AB

This Act imposes duties on officers of incorporated associations that are very similar to the duties imposed on directors of companies. It is proposed to insert a new section 39AB that will deem that the reliance by an officer of an incorporated association on information or advice provided by persons who are reasonably believed to be qualified to give such advice will, in the absence of proof to the contrary, be taken to reasonable reliance. The new section

mirrors section 139 of the *Corporations Act 2001* of the Commonwealth.

Part 4—Amendment of *Australian Crime Commission (South Australia) Act 2004*

6—Amendment of section 3—Interpretation

This clause inserts a new paragraph (ga) into the definition of ***Commonwealth body or person*** to enable a legal practitioner appointed under section 7 of the principal Act to be captured by the definition.

Part 5—Amendment of *Business Names Act 1996*

7—Amendment of section 7—Certain business names to be registered

It is proposed to allow an offence against section 7(1) (trading under an unregistered business name) to be expiated on payment of a fee of $315. The maximum penalty for such an offence is a fine of $5 000.

Part 6—Amendment of *Civil Liability Act 1936*

8—Amendment of section 69—Definitions

This clause amends an incorrect cross-reference.

Part 7—Amendment of *Companies (Administration) Act 1982*

9—Substitution of section 7

It is proposed to repeal current section 7 and substitute a new section to provide for delegations by the Commission. The substituted provision is drafted in the current style and will allow a delegation by the Corporate Affairs Commission of any of its powers, authorities, functions or duties—

- to a person employed in the Public Service; or
- to the person for the time being holding a specified position in the Public Service;

and, for a delegated power, authority, function or duty to be further delegated if the instrument of delegation so provides.

Part 8—Amendment of *Co-operatives Act 1997*

10—Amendment of section 9—Exclusion of operation of Corporations Act

It is proposed to insert an additional paragraph into section 9(2) to provide that the application of provisions that relate to the registration of a co-operative as a company under Part 5B.1 of the Corporations Act are not excluded matters in relation to co-operatives.

Part 9—Amendment of *Correctional Services Act 1982*

11—Amendment of section 4—Interpretation

Subclause (1) inserts the expression "a corresponding previous enactment or" in the definition of ***chid sexual offence***. The addition of the phrase "or a corresponding previous enactment" will allow an offence under now repealed legislation that corresponds to any of the offences listed under the definition of ***chid sexual offence*** to be captured by that definition.

Subclause (2) amends an incorrect cross-reference.

Subclause (3) inserts the expression "a corresponding previous enactment or" in the definition of ***sexual offence***. This addition of the phrase "or a corresponding previous enactment" will allow an offence under now repealed legislation that corresponds to any of the offences listed under the definition of ***sexual offence*** to be captured by that definition.

12—Amendment of section 47—Appeals against orders of Visiting Tribunals

This section was amended consequentially by the *Justices of the Peace Act 2005*. Prior to the enactment of that Act, justices of the peace and not just special justices could constitute Visiting Tribunals. There are currently a number of Visiting Tribunals who are not special justices who will remain Visiting Tribunals until their appointments are revoked. It is proposed to amend this section so that appeals from decisions of such Visiting Tribunals may be made to the Magistrates Court.

Part 10—Amendment of *Criminal Law Consolidation Act 1935*

13—Amendment of section 49—Unlawful sexual intercourse

Section 49(1) provides that it is an offence carrying life imprisonment for a person to have sexual intercourse with any person who is under the age of 14 years. Section 49(3) currently provides that it is an offence for a person to have sexual intercourse with a person who is of or above the age of 14 years and under the age of 17 years, the penalty for which is imprisonment for 7 years. It is problematic to prove the exact age of a child at the time an offence is alleged to have been committed when the child victim is, at the time of the alleged offence, around about the age of 14. Should the offence charged be the offence against subsection (1) or the offence against subsection (3)? It is proposed to delete the words "of or above the age of 14 years" from subsection (3) so that the offence under that subsection will be having sexual intercourse with a person under the age of 17 years. This will mean that, where the prosecution is unable to prove that the child victim was under 14 years of age at the time of the alleged offence but is able to prove that the child victim was under the age of 17 years at the relevant time, the offence to be charged will be the offence against subsection (3).

14—Amendment of section 66—Sexual servitude and related offences

Currently, the penalties for offences against subsections (1) and (2) of this section are split so that different penalties apply depending on whether the age of the child victim at the time of the offence was under the age of 14 years or whether the child victim was of or over the age of 14 years. Thus the same difficulty as discussed above in relation to unlawful sexual intercourse might arise in prosecuting such an offence. It is proposed to delete the words "or over the age of 14 years" in the penalty provisions and substitute "under the age of 18 years". Thus, if there are difficulties in proving that the child victim was under the age of 14 years at the time of the offence, but it is proved that the child was under the age of 18 years at the time, the lesser penalty will apply.

Part 11—Amendment of *Debtors Act 1936*

15—Amendment of section 3—Abolition of imprisonment for debt

This clause deletes subsection (5). Subsection (5) makes an outdated reference to the *The Insolvent Act 1886*.

16—Amendment of section 4—Penalty for debtor absconding or attempting to abscond

The proposed amendment removes the power of the court to impose a sentence of imprisonment "with or without hard labour" for this offence. Section 73 of the *Criminal Law (Sentencing) Act 1988* prevents a court from ordering a penalty of hard labour in respect of a person sentenced to imprisonment.

Part 12—Amendment of *Drugs Act 1908*

17—Amendment of section 47—Penalties for offences

18—Amendment of section 59—Punishment for forging certificate or warranty

The proposed amendments to the principal Act remove the power of the court to impose a sentence of imprisonment "with hard labour" for either of these offences.

Part 13—Amendment of *Evidence Act 1929*

19—Amendment of section 41—Certifying a false document

The proposed amendment removes the power of the court to impose a sentence of imprisonment "with hard labour" for this offence.

Part 14—Amendment of *Judicial Administration (Auxiliary Appointments and Powers) Act 1988*

20—Amendment of section 3—Appointment of judicial auxiliaries

This clause deletes paragraph (c) and inserts new paragraphs (c) and (d) into section 3(2) of the principal Act. New paragraph (c) extends the list of specified courts. Paragraph (c) provides that a person who has retired from office as a judge of a specified court may be appointed to act in a judicial office on an auxiliary basis. New paragraph (c) also provides for the appointment of retired magistrates as judicial officers on an auxiliary basis. New paragraph (d) provides that a person may be appointed to act in a judicial office if that person currently holds office as a judge of a specified court, or, currently holds office as a magistrate.

This clause also inserts new subsection (2a) which provides that a person cannot be appointed under paragraph (d) of section 3(2) except with the concurrence of the judicial head of the other Court.

Part 15—Amendment of *Landlord and Tenant Act 1936*

21—Amendment of section 28—False declarations

The proposed amendment removes the power of the court to impose a sentence of imprisonment "with or without hard labour".

Part 16—Amendment of *Limitation of Actions Act 1936*

22—Amendment of section 39—Absence from State of person liable

23—Amendment of section 40—Absence from State of a joint debtor

These clauses amend sections 39 and 40 of the *Limitation of Actions Act 1936* to remove obsolete references to section 37 of that Act.

Until the principal Act was amended by the *Defamation Act 2005*, section 37 of the principal Act set a two year limitation period for "all actions for slander and all actions for penalties damages or sums of money given to any party by any statute". That section was repealed by the *Defamation Act* and a new section inserted. Section 37 is now limited to actions for defamation. The remainder of the repealed section (ie, the part of the section dealing with penalties damages and sums of money given to a party by statute) has not been re-enacted as it is obsolete. Although a number of current statutes include civil penalties (eg, the *Environment Protection Act 1993*, the *Development Act 1993* and the *Natural Resources Management Act 2004*), those Acts set their own time limit for the issue of proceedings for enforcement of such penalties. Sections 39 and 40 of the *Limitation of Actions Act* both refer to section 37. Section 39 provides a plaintiff with extra time to sue a person who is absent from the State or "beyond the seas" when his or her cause of action arises. Section 40 is concerned with the right of a plaintiff to sue a joint debtor who is absent from the State. Research conducted into the history of these provisions has revealed that they were only ever intended to apply to causes of action for civil penalties. As section 37 no longer makes reference to such causes of action, sections 39 and 40 are amended to remove the obsolete cross-references to section 37.

Part 17—Amendment of *Oaths Act 1936*

24—Amendment of section 27—False declaration

The proposed amendment removes the power of the court to impose a sentence of imprisonment "with hard labour".

Part 18—Amendment of *Partnership Act 1891*

25—Amendment of section 75—Identification of limited partnerships and incorporated limited partnerships

This clause amends an incorrect reference.

Part 19—Amendment of *Prisoners (Interstate Transfer) Act 1982*

26—Substitution of Part 2 heading

The current heading is to be repealed and the heading "Transfer at request of prisoner" is to be substituted. The new heading better reflects the intent of the proposed amendments.

27—Amendment of section 7—Requests for, and order of, transfer

Currently, this section allows the Minister to authorise the transfer interstate of a prisoner on the request of the prisoner where the Minister is satisfied that it is "in the interests of the welfare of the prisoner" for the prisoner to be so transferred. The welfare of the prisoner is but one of the matters to be taken into account in the proposed amendments (see clause 28) and so that phrase is to be deleted from the section.

28—Insertion of section 10A

New section 10A (Matters to which Minister may have regard) provides for a list of matters, to which the Minister may have regard in forming an opinion or exercising a discretion under Part 2.

29—Amendment of section 11—Reports

This proposed amendment provides that the Minister may refer to reports of parole and prison authorities of the State and of any participating State to assist the Minister in forming an opinion as to whether a particular prisoner should be transferred interstate.

30—Amendment of section 23—Ancillary provisions

The amendments proposed to this section are consistent with the previous amendments.

Part 20—Amendment of *Professional Standards Act 2004*

31—Amendment of section 4—Interpretation

The proposed amendments to this section insert a definition of ***costs*** (relevant to the concepts of damages and defence costs) and substitutes a definition of ***damages*** to clarify the meaning of that term and (in particular) to include in that meaning interest on costs ordered to be paid in connection with an award of damages.

A new subsection is to be inserted to ensure that references in the Act to an occupational liability insurance policy extend to a policy that provides cover that is inclusive of defence costs.

32—Substitution of section 23

33—Amendment of section 24—Limitation of liability by reference to amount of business assets

34—Amendment of section 25—Limitation of liability by multiple of charges

The proposed amendments to each of these sections are consequential on the proposed subsection to be inserted in section 4 (see above) and to omit certain words that are redundant in light of section 30(2) of the Act (and see also the proposed amendment to section 30(2)).

35—Insertion of section 28A

Proposed section 28A will make it clear that although a defence costs inclusive insurance policy may (as compared with one that is not defence costs inclusive) reduce the amount available to be paid under the policy to a scheme participant's client in respect of a claim, this does not lower the cap on the scheme participant's liability to the client. The scheme participant will continue to be liable to the client for any difference between the amount payable to the client under the policy and the amount of the cap.

36—Amendment of section 30—Limit of occupational liability by schemes

The proposed amendment to this section are consequential.

37—Insertion of Schedule 4

Proposed Schedule 4 will enable any necessary regulations of a savings and transitional nature consequential on the passage of this Part to be made and will also validate certain schemes in certain circumstances that were approved before the commencement of these proposed amendments.

Part 21—Amendment of *Renmark Irrigation Trust Act 1936*

38—Amendment of section 187—Forgery

The proposed amendment removes the power of the court to impose a sentence of imprisonment "with hard labour".

Part 22—Amendment of *Residential Tenancies Act 1995*

39—Amendment of section 90—Tribunal may terminate tenancy where tenant's conduct unacceptable

It is proposed to amend section 90 to explicitly provide that the Tribunal may (when making an order for possession on application by an interested person) order the landlord—

- to take such action as is specified in the order for the purpose of taking possession of the premises; and
- not to permit the tenant to occupy the premises (whether as a tenant or otherwise) for a specified period or until further order (and any agreement entered into in contravention of such an order is void).

Part 23—Amendment of *Security and Investigation Agents Act 1995*

40—Amendment of section 8B—Applicant for security agents licence required to provide fingerprints

Under section 8B of the *Security and Investigation Agents Act 1995*, the Commissioner for Consumer Affairs must require each applicant for a security agents licence to attend at a specified time and place for the purpose of having his or her fingerprints taken by a police officer. Police officers are presently the only persons authorised to take fingerprints for the purposes of the Act. However, under proposed new section 36AA, to be inserted by clause 46, fingerprints to be taken under the Act must be taken by a police officer *or a person authorised in writing by the Commissioner for the purpose*. The amendment made by this clause is therefore consequential on the proposed enactment of section 36AA and removes the requirement that fingerprints must be taken under the section "by a police officer".

41—Amendment of section 11AB—Power of Commissioner to require security agent to provide fingerprints

The amendment made by this clause to section 11AB is also consequential on the proposed insertion of section 36AA.

42—Amendment of section 23E—Appeal

The purpose of the first amendment made by this clause is to clarify that a person whose security agents licence has been suspended by the Commissioner may appeal against any decision made by the Commissioner under section 23A or 23B in connection with the suspension.

Section 23E does not specify a period of time within which an appeal must be instituted. This means that the appeal period is set by the rules of the District Court. The second amendment made by this clause introduces a new subsection that specifies that an appeal must be instituted within one month of the making of the decision appealed against. This is consistent with the appeal period specified in section 11 in relation to other appeals under the Act.

43—Repeal of section 23F

Section 23F, which provides an immunity for the Commissioner and the Crown in respect of the exercise in good faith of the Commissioner's power to suspend a security agents licence, is repealed by this clause. The section does not refer to the Commissioner's power to cancel a licence. The section is therefore re-enacted in substantially the same terms by proposed new section 36B, which refers to the Commissioner's power to suspend *and cancel* a security agents licence. Section 36B is to be inserted by clause 47.

The immunity provision has been moved to Part 5 of the Act (Miscellaneous) because under Part 3A Division 1, where it is currently located, the Commissioner has power to suspend, but not to cancel, a security agents licence.

44—Amendment of section 23Q—Appeal

Section 23Q, which provides a security agent with a right of appeal against a decision of the Commissioner to cancel his or her licence under section 23O, does not specify a period of time within which an appeal must be instituted. This means that the appeal period is set by the rules of the District Court. The amendment made by this clause introduces a new subsection that specifies that an appeal must be instituted within 1 month of the making of the decision appealed against. This is consistent with the appeal period specified in section 11 in relation to other appeals under the Act.

45—Amendment of section 25—Cause for disciplinary action

Section 25(1)(f) specifies possible causes for disciplinary action in relation to a person "licensed *or formerly licensed* as a security agent". Subparagraph (iii) of that provision incorrectly refers to "the licensee" rather than "the person". This amendment corrects that error.

46—Insertion of section 36AA

Proposed section 36AA(1) provides that fingerprints to be taken under the Act must be taken by a police officer or a person, or a class of persons, authorised in writing by the Commissioner for Consumer Affairs for the purpose. This widens the group of persons able to take fingerprints under the Act, which is currently limited to police officers (ie, a member of South Australia Police).

Under section 36AA(2), a notice requesting or requiring a person to attend at a specified time or place for the purpose of having his or her fingerprints taken may, if the person does not reside in South Australia, specify a place outside of this State.

47—Insertion of section 36B

Proposed section 36B inserts an immunity provision relating to the Commissioner's power to suspend or cancel a security agents licence. The new provision is re-enactment of section 23F (repealed by clause 43) but, unlike section 23F, includes a reference to the Commissioner's power to cancel a licence as well as the power to suspend. The new section is inserted into Part 5 (Miscellaneous) because under Part 3A Division 1, where section 23F is currently located, the Commissioner only has the power to suspend a licence. The Commissioner's power to cancel a security agents licence appears in Part 3A Division 2.

48—Amendment of Schedule 2—Repeal and transitional provisions

This amendment to a provision of the Schedule dealing with the taking of fingerprints is consequential on the proposed insertion of new section 36AA by clause 46. With the enactment of section 36AA, police officers will no longer be the only persons authorised to take fingerprints under the Act. Persons authorised in writing by the Commissioner for the purpose will also be able to take fingerprints.

Part 24—Amendment of *Stamp Duties Act 1923*

49—Amendment of section 108—Penalties for certain offences

The proposed amendment removes the power of the court to impose a sentence of imprisonment "with or without hard labour".

Part 25—Amendment of *Statutes Amendment and Repeal (Aggravated Offences) Act 2005*

50—Amendment of section 18—Amendment of section 60—Procuring sexual intercourse

This clause amends an incorrect cross-reference.

Part 26—Amendment of *Subordinate Legislation Act 1978*

51—Amendment of section 16A—Regulations to which this Part applies

The proposed amendment deletes paragraph (d) from section 16A of the principal Act.

52—Transitional provision

The proposed transitional provision ensures that the regulations specified in subclause (3) are brought into the expiry program under Part 3A of the principal Act.

Part 27—Amendment of *Summary Procedure Act 1921*

53—Amendment of section 4—Interpretation

This clause updates references in the principal Act following the commencement of recent amendments to the *Fair Work Act 1994*.

54—Amendment of section 5—Classification of offences

Section 5 provides for the classification of offences as summary offences or major or minor indictable offences.

Section 12 of the *Statutes Amendment (Sentencing of Sex Offenders) Act 2005* increased the threshold age of a child from 12 to 14 below which a person who indecently assaults a child is guilty of an aggravated offence. The first amendment proposed in this clause to section 5 is consequential on that change.

Subclause (2) provides for a further consequential amendment to section 5 following the restructuring of sections 169 and 170 of the *Criminal Law Consolidation Act 1935* by the *Statutes Amendment and Repeal (Aggravated Offences) Act 2005*.

55—Amendment of section 99AA—Paedophile restraining orders

Subclause (1) inserts the expression "a corresponding previous enactment or" in the definition of ***chid sexual offence***. The addition of the phrase "or a corresponding previous enactment" will allow an offence under now repealed legislation that corresponds to any of the offences listed under the definition of ***chid sexual offence*** to be captured by that definition.

Subclause (2) amends an incorrect cross-reference.

56—Amendment of section 106—Taking of evidence at preliminary examination

The proposed amendment to this section is consequential on the enactment the *Statutes Amendment (New Rules of Civil Procedure) Act 2006*.

Part 28—Amendment of *Trustee Companies Act 1988*

57—Amendment of Schedule 1—Trustee companies

The proposed amendment corrects and updates references to the list of trustee companies in Schedule 1 of the principal Act.

Part 29—Amendment of *Water Efficiency Labelling and Standards Act 2006*

58—Amendment of section 7—Definitions

The proposed amendment to section 7 will insert a definition of District Court. The new definition will mean that a reference in the Act to the District Court will mean the Administrative and Disciplinary Division of that Court. As a consequence, reviews of decisions etc under the Act will be dealt with by that Division of the Court rather than the general civil division as is currently the case. This is in keeping with other similar regulatory legislative schemes in this State.

Part 30—Amendment of *Worker's Liens Act 1893*

59—Amendment of section 33—Penalty for claim with intent to defraud

60—Amendment of section 45—Penalty on attempt to deprive worker of lien on goods

The proposed amendments delete references to hard labour.

Mrs REDMOND secured the adjournment of the debate.

MAGISTRATES (PART-TIME MAGISTRATES) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 30 August. Page 785.)

Mrs REDMOND (Heysen): I indicate that I will be leading the debate on this most difficult bill on behalf of the opposition—in fact, I expect that I will be the only speaker for the opposition. Furthermore, I do not expect to hold the house very long in relation to this particular bill because, like the one just introduced by the Attorney-General, this bill does not seem to give rise to much that could be considered contentious. At the moment magistrates in this state are appointed under the Magistrates Act of 1983, and it was something of a surprise to me to find that that act makes no provision to allow magistrates to serve part-time or to serve specifically as a resident magistrate in a country area. This bill simply seeks to address those two matters.

As I said, it came as a surprise to me that the capacity to serve part-time was not already in there because I thought it would have been obvious for some time that there would be quite a number of people who would be suitable to serve as magistrates but who may not be attracted to full-time employment. I think the Attorney-General, in his second reading speech, particularly referred to people who have the care of young children and, having spoken to a number of magistrates as they have approached retirement (and, in some cases, been induced not to retire), I suspect that working part-time would certainly be something to which some full-time magistrates approaching retirement would be attracted. Up until now the choice has been to either continue to work full-time or give up the position altogether, and I know that some magistrates have continued full-time for longer than they really wanted simply because they felt it was that or nothing—and they did not want to leave the system in the lurch through lack of magistrates. So I think this will be a quite good initiative.

Many of the female half of the profession (and I think about half the profession is now of the female gender), in particular, do take time out from work to have babies and, of course, it is always very difficult to find employment that can be done on a part-time basis. However, the nature of a magistrate's work could quite usefully lend itself to job-sharing, perhaps, between a couple of females with young children. I know that where I generally worked—in the Stirling Court (when it existed), the Mount Barker Court and the Murray Bridge Court, in particular—the magistrate would do one day at one court and one day at the next. Therefore, there would be no impediment, on what was basically a mini circuit for the magistrate working that area, to having one magistrate do one day at one court and having a different magistrate appear at the next court on another day.

I can see a great deal of merit in the idea of magistrates being able to work part-time. Of course, this bill contains provisions to enable pro rata payment of their salaries and pro rata assessments of recreational and sick leave entitlements—all the things one would expect. As I said, it was a bit of a surprise to me that it was not already in there because I would have thought someone would have dealt with it before now, so I congratulate the Attorney on his initiative in bringing this forward.

In terms of the requirements for those magistrates, I note that there is a provision to prohibit part-time magistrates from engaging in any work for fee or reward unless they obtain the permission of the Chief Justice and the concurrence of the Chief Magistrate. A part-time magistrate is also prohibited from practising law, so that it will not be possible to ensure your future as a practitioner by becoming a part-time magistrate and making sure that you have a bit of income from that to tide you over while you are running a practice on the side. You will be specifically prohibited from engaging as both a practising lawyer and a magistrate if you take up a part-time magistrate's position. However, the way the bill is worded I understand that, provided the permission of the Chief Justice and the concurrence of the Chief Magistrate is obtained, it would be possible to do some other work of a non-legal nature as well as holding down a position as a part-time magistrate. I do not expect that is going to be a much used provision because, as I said, I anticipate that most of the applicants for part-time magistracy will be people who either have responsibility for young children, and are busy doing that and not getting any recompense, or people wishing to move into retirement and work only part-time.

Interestingly, I looked at the legislation to see whether there was such a prohibition on full-time magistrates and there does not appear to be a requirement for a full-time magistrate not to work, although I did notice that there was a general direction under section 8 of the act, as it now stands, that the magistrates are subject to a direction of the Chief Magistrate as to their duties and their time and place of performance. I just alert the Attorney to the fact that, on one occasion, I have been aware of a full-time magistrate who was actually engaging in work outside the duties of the magistracy and also that that was believed by practitioners in the area to be having an adverse impact on his capacity to attend to his duties as a magistrate.

The Hon. M.J. Atkinson: An adverse impact; does that mean harm?

Mrs REDMOND: Could do. The other provision is to enable the appointment of magistrates to serve specifically as resident magistrates in a country area and—

The Hon. M.J. Atkinson: Yes, something you stopped.

Mrs REDMOND: The Attorney says that it is something I stopped, but I indicate that I did not stop any such thing.

The Hon. M.J. Atkinson: The Liberal Party.

The SPEAKER: Order!

Mrs REDMOND: I think that there can be quite good value in having someone, rather than coming in on a circuit, who has been appointed permanently to preside as a registered magistrate in an area. I note that the provisions will allow the instrument of appointment of such a magistrate, who is appointed for that particular purpose, to preside in a regional area. The instrument of appointment can contain a condition that the duties to be performed be either performed wholly or predominantly at one or more specific places in accordance with directions given by the Chief Magistrate. I have had an indication, albeit an informal one, that one magistrate is not happy about the proposal, but I note in the second reading speech of the Attorney that he indicated both the Chief Justice and the Chief Magistrate support these amendments.

As I said, they seem to me to be relatively straightforward, uncontroversial and quite sensible provisions which will enable, hopefully, some really good appointments in both the part-time magistracy and appointments of magistrates in regional areas, which I think will improve the administration of justice in the state simply by making a wider pool of people available for those particular appointments. I com-

mend the Attorney on bringing the bill into the house. I indicate the opposition's support for it.

Mr HANNA (Mitchell): I rise to speak in support of this bill. I had three concerns when I heard about the proposal and I will just air those rather than going into detailed consideration of the bill and, perhaps, the Attorney can reply to these points. In fact, one has already been assuaged as it is dealt with in the bill. That was the question of potential conflict of interest, and I see that that is dealt with by prohibiting any other paid work while the person is working as a part-time magistrate. I have two other questions, though, about how it might work in practice.

I note, in this regard, the requirement that the instrument of appointment dictates how many hours a part-time magistrate is going to work, expressed as a fraction of the week. It might say the magistrate will work 0.4 or 15 hours a week or something like that. The question is how it is going to be determined just which hours they are. At the moment, it is not an issue because full-time magistrates work Monday to Friday and on a roster for some after-hours work. So, what happens if the Chief Magistrate says that they need an extra person for Monday and Tuesday, and you have been appointed as a 0.4 magistrate, and the magistrate needs to pick up the children from child care in the afternoon and their idea of 0.4 is to work three hours a day for five days a week or whatever adds up to 0.4. How will that negotiation of precise times take place? Could there be a problem in terms of managing magistrates?

The other practical question I had is in relation to part-time magistrates whereby litigants already experience delays in the courts. I raise a potential concern that, if a magistrate is part-time, depending on how they are allocated work, it may not be possible for a matter to come back in four weeks but in eight because the person is only available on certain days. Is this going to lead to delays for some matters because of the lesser availability of a particular part-time magistrate?

Ms PORTOLESI (Hartley): It gives me an enormous pleasure today to rise in support of this bill which seeks to allow for the appointment of part-time magistrates and the appointment of resident magistrates in country areas. I will confess that my interest in this bill rests largely with the proposal to appoint part-time magistrates. This is a welcome reform. I congratulate the Attorney-General. I look forward to following its progress and implementation. Recently, I caught up informally with a friend in the legal profession, and we were discussing the merits or otherwise of this proposition. This person, whom I hold in enormous regard, went on to explain to me that, although this is to be supported in principle, the role of a magistrate is a very special one (which I agree with) which is unlike other jobs in our community, and, in some cases, people's lives depend on this work, and that is certainly true. I pointed out to her that, yes, it is an important role but, in fact, the work of doctors and people serving in other medical professions does make a difference to whether people live or die. They also work part-time and they have been able to do that successfully for many years. The second point she made was that governments did well out of part-time workers because they always got more than they paid for.

Mrs Redmond: Absolutely. You work full-time and get paid part-time.

Ms PORTOLESI: And I agree with that, particularly when it comes to women, with the notion that all workers, not just part-time workers, are working much longer hours than we ever have. This is particularly a problem in Australia. I would contend that, in fact, it probably costs government (or any employer) more because they have the associated administrative costs for two people, and she conceded that point. For many, this is a very simple proposal and, as I have said publicly, it is basically about workers' entitlements—whether they be magistrates, lawyers, doctors or factory workers—to work part-time so that we can do other things in our lives whether it is study or family commitments.

I note the bill makes a number of amendments to ensure that part-time magistrates are protected from any future conflict. A part-time magistrate must not practise the profession of the law for fee or reward, or without the written approval of the Chief Justice given with the concurrence of the Chief Magistrate, etc. These are all very sensible and practical measures.

In conclusion, this is a matter I became associated with when I became parliamentary secretary to the Attorney-General, a role—

Mrs Redmond: You relish.

Ms PORTOLESI: —I do relish, and I do like the Attorney-General quite a bit.

Members interjecting:

Ms PORTOLESI: No. In fact, please, do not publish it anywhere, Attorney. I became associated with this matter because of my desire, when I was first elected, to put the issue of work life balance in the spotlight. But I concede completely that this was an issue that was truly on the agenda before I arrived on the scene. I congratulate the Attorney-General and the magistracy on progressing this initiative and what is quite a radical reform to the profession. I commend the bill and look forward to its speedy passage.

The Hon. M.J. ATKINSON (Attorney-General): Mr Speaker, in reply to the member for Mitchell, the statute will decide how many hours the magistrate works: the Chief Magistrate will decide which hours part-time magistrates work. I trust the Chief Magistrate to make the right decision by litigants and the magistrate's family; and I also have confidence in the Chief Magistrate to manage his or her magistrates so that litigation is not unduly delayed and that a litigant is not disadvantaged by appearing before a part-timer.

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

EVIDENCE (SUPPRESSION ORDERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 August. Page 787.)

Mrs REDMOND (Heysen): Again, I indicate to the house that I will be the lead speaker for the opposition and that I do not expect to keep the house terribly long, although this is a more substantial bill than the previous one in terms of its consideration and therefore my comments might stretch a little longer. However, I also indicate that, when I say that the opposition supports the bill, it does so with one slight reservation, which will be dealt with between now and when it reaches the other place.

This bill, of course, was introduced following an election promise by Labor to update the state's laws regarding suppression orders, and my understanding of the Attorney's

second reading contribution is that, in particular, the Labor Party undertook to lower the number of suppression orders by amending section 69A of the Evidence Act, and that is precisely what is amended, amongst a few other ancillary matters raised by this bill.

The Hon. M.J. Atkinson: Raising the threshold to get one.

Mrs REDMOND: I note that the Attorney says that what is happening is that the government is raising the threshold to get one, meaning raising the threshold by which a suppression order can be obtained. I really want to hear from him. I understand that the member for Mitchell will move a couple of amendments in this matter, so we will be in committee and I will have the opportunity to explore it further, but I have to say that on my reading of the change, which I take to be really the thrust of the bill, I am a bit puzzled as to exactly how the threshold is raised in practice. I say that on the basis that existing section 69A(2) states:

> Where the question of making a suppression order (other than an interim suppression order) is under consideration by a court—
> (a) the public interest in publication of information related to court proceedings, and the consequential right of the news media to publish such information, must be recognised as considerations of substantial weight.

Proposed section 69A(2) is to be reworded to state:

> If a court is considering whether to make a suppression order (other than an interim suppression order), the court—
> (a) must recognise that a primary objective in the administration of justice is to safeguard the public interest in open justice and the consequential right of the news media to publish information relating to court proceedings.

It provides, therefore, that it is to be a primary objective in the court's consideration. I am struggling with the precise difference between a court having the consideration of the public interest and the right to publish as considerations of substantial weight compared to a court having as a primary objective—not the primary objective—the safeguarding of the public interest in open justice and the consequential right of the news media to publish. So, I fail to understand exactly what will happen in terms of the actual applications for suppression orders.

We all know from the media in this city and state, in its various forms, that it asserts, and I have no reason to disbelieve it, that this state is known as 'suppression city' because of the number of suppression orders granted here, and it therefore—justifiably, I think—raises the complaint that, until now, it has often faced suppression orders in circumstances where such suppression orders would not be granted in other jurisdictions. One of the interesting things that occurs with modern technology—and I do not think that this bill really seeks to address it, and nor can it, in many ways—is that things that are suppressed in South Australia can be freely reported, for instance, in *The Sydney Morning Herald* which people can access via computer. Really, in many ways, that makes a bit of a mockery of the whole system; and, as I said, I do not think this bill is aiming to do that.

Theoretically, this bill aims to raise the threshold thereby making suppression orders harder to obtain, which means there will be fewer suppression orders and, in a general sense, therefore more freedom of the press. Certainly, that is the intention of the bill. As I said, I have some difficulty with how using these particular provisions will make a great difference. I struggle with what the difference is between giving something substantial weight as a consideration and saying that it is a primary objective in terms of the publication.

Nevertheless, that is the stated intention of the bill. There are a number of other ancillary matters to deal with suppression orders. One important matter is that, once made, suppression orders will no longer continue indefinitely. If a court makes a suppression order during the course of proceedings, it must review that order as soon as possible after the conclusion of the proceedings and, at that point, it may confirm, vary or revoke the order. A distinction is drawn between criminal proceedings in the Magistrates Court and those which progress to higher courts.

So, if a suppression order is in place it will be reviewed at the end of committal proceedings and again at the conclusion of the appeal or, when all appeal rights have been exhausted, any remaining suppression orders will be reviewed. One important thing the bill does in a practical sense is to add some ease of access for the media, in particular. What will now happen is that all suppression orders, whether they are interim suppression orders or final suppression orders, will be immediately advised to the Registrar and the Registrar will immediately enter such a suppression order onto the register.

Until now, only non-interim orders have been entered on that register. The first change is that interim orders will now be included. However, once entered, the Registrar will then supply a copy of that to certain media outlets. I take it from the Attorney's explanation of this matter that essentially all the recognised media outlets—television and radio stations, *The Advertiser* and other substantial regional and metropolitan papers, such as the *Mount Barker Courier*—will be automatically entitled to get a copy of this order. That will be either faxed or emailed to them as a matter of course. They will have lodged with the Registrar the details of their organisation, the authorised person and so on. That should lead to some ease of access for them.

The Attorney may be well aware of my love of technology. I wonder whether we are coming along a little behind the times in the sense that the question has already been raised with me as to whether or not it should be accessible via the internet rather than being faxed—effectively having a web site. I just raise the question. I do not know that there will be any vast difficulty with the way in which it is proposed, but I just wonder whether it is the most effective and efficient way given modern technology. Nevertheless, it will be an improvement on the current system.

The provisions make it quite clear that the media, whilst they will receive that much more prompt notification of the terms of an order, cannot rely on any failure to receive that order from the court in terms of a breach. If the media, for instance, do not receive the suppression order (although they had every reason to expect they would) they inadvertently breach it because they go ahead and publish. They cannot rely on the fact that it was not sent by the Registrar. Probably that is the only way in which that issue can be handled. In other words, the onus remains with the media to ensure that they have got it right.

Of course, it does not make any change to the right which already exists in the act for people who are not the media to attend at the court during normal business hours, access the register and see what the terms of the suppression order might say. It also does not stop anyone from attending in the court—provided there is room to get in—to hear and see what is going on first-hand. It is really a matter of trying to achieve a balance between the interests of the public, the public's

right to know and the interests of people who might be harmed by a suppression order being put in place.

One of the other major things this bill does is to change the penalties for breach. I gather from the Attorney-General's contribution that breaches of suppression orders are generally prosecuted as contempt of court, and that is the mechanism provided under section 70(1)(a) of the Evidence Act rather than being pursued as a summary offence, which is the alternative provided in section 70(1)(b) of the act. That is apparently because the maximum fine specified in paragraph (b) is $2 000, and I think (if memory serves me correctly) that the alternative is up to two years imprisonment, but rarely would a sentence of imprisonment be likely to be imposed unless the contempt of court was so dramatic that it would be a contempt of court proceeding, in any event.

The Attorney asserted in his second reading explanation that this differentiation between the way in which the suppression orders are generally prosecuted as a contempt of court, rather than under section 70(1)(b) was problematic—and I refer to his contribution—'because proving the contempt is likely to be more difficult than prosecuting the alternative summary offence'. I ask the Attorney to indicate in what way proving a contempt is more difficult than prosecuting the summary offence?

I am sure that the people in the corner are taking notes about that to give him an appropriate answer. I am not altogether persuaded that it is more difficult, but nevertheless I note that the intention of the bill is to increase that $2 000 penalty (as it currently appears) to make it $10 000 for a natural person and $120 000 for a body corporate. I absolutely agree that it is appropriate to have a differential between a natural person who breaches an order suppressing details of the case and a body corporate. I have no difficulty with that.

The one reservation that I do wish to highlight to the Attorney—and this is the one qualification which we put in our support for this bill and which we will explore between the houses—is whether $120 000 for a body corporate is an appropriate amount. It is certainly a quite dramatic increase. I mean, increasing by five-fold from $2 000 to $10 000 the maximum fine for a natural person is a fairly dramatic increase, but increasing from $2 000 to $120 000 is certainly dramatic.

I accept the intention of the Attorney's interjection regarding the likelihood of major corporations to be able to pay the fine, and I note that it is a maximum. Nevertheless, I do indicate to the Attorney that we will be seeking some comment from the media as to the level of this fine between the houses. That is the reservation which I address to the Attorney in terms of our support, which is qualified by that one aspect. Although, as I said, I do accept absolutely that there is a need for a much more comprehensive deterrent for a body corporate in terms of the level of the fine than for a natural person. Fines under that section are also reflected in some increases in some other fines which are increased in this legislation, and they are the fines under section 71A, which is the restriction on reporting proceedings relating to sexual offences; section 71B, which requires publishes to report the results of certain proceedings; and section 71C, the restriction on reporting of proceedings following acquittals, and they are increased in identical ways with those in section 70(1)(b).

One other aspect which I will canvass briefly in this contribution is the reference in the Attorney-General's second reading explanation to who gets to register for the sending of the copies of the suppression orders via fax or email. I turn briefly to the Attorney's speech to quote exactly what he said. It concerns the orders being sent and the need for particular organisations being reputable. I ask the Attorney to refer in his response—or maybe we will discuss it at the committee stage—to who is to be included and who is to be excluded by this particular system. The Attorney said:

> The bill allows the Chief Justice a discretion to authorise a member of the news media.

That is, to authorise in terms of the person being able to receive the fax or email of the copy of the order.

> In this way, minor publications of doubtful integrity will not get the benefit of being supplied by the court with a suppression order.

Who will make the assessment of which is a minor publication and who will make the assessment and how of the integrity and whether or not it is doubtful?

I would have thought that print media or other media which makes application prima facie would be entitled to be registered under that particular provision so that they could get the benefit of sending it. I wonder whether there is a problem with making a decision that they are not eligible and whether one has to declare whether they are minor or of doubtful integrity in order to reach that conclusion, and whether that is an appropriate thing for the Attorney, or any officer of the court, to concern themselves with, rather than simply saying that anyone who wants to register, given that they will now pay a fee for the privilege, is entitled to get the information, rather than trying to have some determination as to which is a minor publication and which is of doubtful integrity.

As I have said, the opposition supports the intent of the bill. We have some hesitation about the level of the fines that are being so dramatically increased, although accepting that there is an appropriate distinction between a natural person and a body corporate in terms of breaches, but I think that is intended as a sop to the media in the sense that you have made a promise to fix things. As I have already said at the outset, I really do not see how, in practice, this will really change anything at all. Indeed, I was talking to one of the justices from the Supreme Court the other night, prior to the episcopal ordination of Bishop Greg O'Kelly.

The Hon. M.J. Atkinson: You mean the coronation.

Mrs REDMOND: I noticed that the Attorney made it. This justice of the Supreme Court said that, in reality, most of the time they do not have much problem, because it is generally negotiated in the courtroom. So, everyone who has an interest in the proceedings is invited to put their position, and often the parties in the courtroom come to some sort of consensus conclusion about what would be appropriate in terms of suppression in the circumstances—and, probably, for most cases, that is what happens. But I accept the need to legislate to cover the cases that are outside what mostly happens. It is commendable that the government is trying to do something, but I am not entirely persuaded that, in practice, what the government is putting up as an improvement in the raising of the threshold is, in reality, going to make any difference at all to the granting or otherwise of suppression orders in this state.

Mr HANNA (Mitchell): I am speaking in relation to the Evidence (Suppression Orders) Amendment Bill 2006. The first question in relation to the suppression orders amendments put forward by the government is whether or not to support the bill and, on balance, I am inclined to support this stage of the bill in its passage through parliament. However,

I do have one reservation, and that is that the cornerstone of the bill is an alteration to the test that is to be applied by the courts when they are deciding whether or not to impose a suppression order. The government's view is that the court should recognise that:

> . . . a primary objective in the administration of justice is to safeguard the public interest in open justice and the consequential right of the news media to publish information relating to court proceedings; and
>
> . . . may only make a suppression order if satisfied that special circumstances exist giving rise to a sufficiently serious threat of prejudice to the proper administration of justice, or undo hardship, to justify the making of the order in the particular case.

That is to be inserted into the new section 69A of the Evidence Act.

It is hard to know what it means. We do not know what the courts will make of that. Presumably, it gives a greater weight to that public interest element. I am not sure that it really assists the administration of justice or enlightens the public as to the matters before the courts in a useful way. However, there are aspects of the government's proposal that I think our worthy. For example, the obligation of the courts to review suppression orders at the conclusion of proceedings is not necessarily a bad thing. I do note, however, that it is going to entail quite a bit of administrative work to ensure that all suppression orders are reviewed at the end of proceedings, and it will, no doubt, take up extra judicial time to go through that process. How worthwhile that will be, I am not sure.

Secondly, it is, of course, a worthwhile thing to extend the recording of interim suppression orders on the register of orders. Thirdly, it is a sensible thing to have the Registrar fax or email a copy of orders to media outlets. That simply helps them to apply the law by alerting them to suppression orders. Fourthly, I also endorse the increase in penalties imposed by the government. After all, $2 000 is a paltry fine for a major media corporation, and the fine proposed by the government (that is, a maximum of $120 000 in the case of a corporation) is much more appropriate. So, there is much to commend the bill.

I must say that the background I have in relation this matter is not so much from my former legal practice but from my experience on the Legislative Review Committee, which looked at this issue exhaustively and which published a report which was tabled in the Legislative Council on 6 April 2005 (that is, parliamentary paper 195, entitled 'Supression Orders) which is available on the internet. The Legislative Review Committee considered these matters, because at least one very concerned member of the public put forward the view that people who are charged with crimes should not be identified in the media until the conclusion of proceedings—and I am absolutely sure that he was not an isolated case. I think everyone can see the justice in not having someone named as an alleged offender prior to that very issue being resolved (that is, the issue of the person's guilt or otherwise).

When the Legislative Review Committee considered this topic, fervent submissions were put by and on behalf of media corporations. We even had interstate lawyers, solicitors and barristers come to Adelaide to present arguments to the committee, suggesting that there were constitutional impediments to make it more difficult to discern the identity of accused people, etc. In the end, the committee came up with, I think, an excellent set of recommendations, although there was a majority report and a minority report. The former member of the upper house, the Hon. Angus Redford, was alone in the minority.

The critical facts which I think are relevant to this debate are to be found on page 11 of the report to which I have referred. The question is raised by the government in bringing in this legislation: is there really a problem? The facts that are quite clear are that, on average, there are fewer than 20 suppression orders a year suppressing a person's identity, pursuant to section 69A of the Evidence Act.

Some of these orders, of course, relate to witnesses or victims and not the accused. The common case or the stereotype case that is used by media organisations to say that we, the public, should have a right to know the identity of people is in relation to the accused person. In other words, if there is an alleged offender, that person's employer, neighbours or friends ought to have the right to know that they have been charged with a crime. The logic of the argument then follows that, because they have been charged with a crime, they may well be guilty and if they are guilty they might reoffend while the case is yet to be resolved. Therefore, people should have some warning of the alleged offender's propensities.

So, there is speculation on speculation involved in that logical argument. But it is important to note that many of the suppression orders granted are in relation to witnesses or victims, so this is, to some extent, a victim's rights issue as well for those who would argue for a maintenance of the level of suppression of detail in relation to our court proceedings. There are good reasons for that. We would not want a current affairs show or a news program or the newspaper to report details of a person who claims to have been raped, for example. There may be all sorts of implications for such a person if a victim is named. They certainly would not want the attention, nor perhaps the embarrassment or the shame, even though that might be without any warrant.

Let us also put the number of suppression orders in perspective. With less than 20 orders a year relating to a person's identity, we had over 30 000 criminal matters finalised in the magistrates court in the year 2002, and over 1 000 matters committed to the higher courts. The name of an accused is suppressed in very few proceedings when you consider the volume of cases before the courts.

In summary, I do not think there is really a problem, and it is uncertain, as I have said, what the effect of changing the test for suppression orders will be. I will bring forward a couple of amendments which would implement majority recommendations of the committee report to which I have referred. For those who wish to refer to that report, recommendations 1 and 5 will be the subject of the amendments I will move, although I expect to put those in more detail shortly.

First, I seek a fairly significant change by restricting publication of the identification of people until proceedings are finalised. Secondly, should that not succeed and suppression orders are granted in relation to an accused person, I say that, when there is an acquittal, the publication of the acquittal should be given the same prominence as the publication of the allegations.

The current law says that a publication of acquittal should be given reasonable prominence. I go one step further and say it should be of the same prominence. I will come to those amendments shortly, but because of the good things in the bill I will support the second reading.

[Sitting suspended from 6 to 7.30 p.m.]

The Hon. M.J. ATKINSON (Attorney-General): Before the dinner adjournment the member for Heysen posed the question of why was it more difficult to prosecute contempt rather than a summary offence. We had to get in touch with someone in the Office of the Director of Public Prosecutions to get the answer, which is that not all courts have the power to punish for contempt. Only superior courts of record can punish for contempt. The Magistrates Court and the District Court are both courts of record; however, the District Court Act, in section 48, has the same authority to deal with contempts as the Supreme Court. In order for the Magistrates Court to punish for contempt it must rely on the second limb of section 370 of the Evidence Act and use the summary offence provisions. The District and Supreme courts can use either provision.

Before the dinner adjournment the member for Heysen was also asking why there was a discretion to withhold notice of a suppression order from a media organisation of ill repute. The reason for that is that there are some media organisations which, provided with a copy of a suppression order, would, for the first time, learn of the existence of a suppression and then deliberately breach it, or breach it for profit. As the member for Mitchell aptly remarked, for some media organisations the fine for breaching a suppression order—that is, the current maximum penalty—is about two seconds' worth of advertising. The bill, as it stands, proposes that the Chief Justice have the discretion to supply notice of suppression orders to media organisations. I have discussed this with the Chief Justice and I do not think it is an authority he wishes to have, so it will be vested in the Registrar of the court and will be an administrative function—as it is in New South Wales and Victoria. Now, I am not going to list media publications of ill repute—other than *The Plod*—but I think they readily spring to mind.

In the end, I say to the member for Heysen that, as Attorney-General, I will have to take responsibility to the parliament, and through the parliament to the public, for the decisions made by the Registrar. However, I do think there are media publications, or programs, of ill repute. We have just heard of an FM station that regularly organised for employees, or associates of employees of the organisation, to ring the station pretending to be random members of the public. One of these people made up a story that defamed the Hon. Nick Xenophon, and there was no truth in the story whatsoever—

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: Well, I hope they paid for it. The Hon. Nick Xenophon is not forgiving in matters of defamation—indeed, the people of South Australia had to pay out something like $120 000 in costs and damages because the Hon. Rob Lucas defamed Nick Xenophon not once but twice. The Hon. Rob Lucas was quite happy to have his private debt paid for out of public money—and I think that gentleman sometimes gets confused between the taxpayers' money and his own money, the taxpayers' liability and his own liability. Why he should be talking about corruption at all amazes me.

There is the question of the increase in penalty. My view is that the increase is proportionate for the reasons given by the member for Mitchell in his interjection. Then there is the member for Heysen's criticism of the test. As things stand, the court has to be satisfied which of the prejudice to the proper administration of justice or undue hardship is accorded greater weight than the public's right to know. The bill allows the court to make a suppression order only if it is satisfied that special circumstances exist giving rise to a sufficiently serious threat of prejudice to the administration of justice.

I think the test is much more difficult. The threshold to obtain a suppression is now much higher and the proof will be in the application of this new law. I think that the member for Mitchell was right again when he said that the number of suppressions made of a person's identity in South Australia is really no greater proportionally than in other jurisdictions. Yes, there are suppressions on the evidence, in some cases, but what the media organisations are most upset about is suppressions of identity. South Australia is not the suppression state nor is Adelaide the suppression city on the measure of suppression of identity. Returning to the question of why the Registrar and not the Chief Justice, certainly, the Chief Justice is right in thinking that denying notice of suppressions to a media organisation is not a judicial function but a far more administrative function and, hence, with the Registrar.

This afternoon I was a little late into the chamber to move some bills, and I apologise to the house for that, but the purpose was that I was meeting the Chief Judge in my room and I was ignoring the frantic phone call from the whip so as to give my full attention to His Honour the Chief Judge. The Chief Judge was making the point that, with interim suppressions, if we are now to put all interim suppressions on the register, we ought to bear in mind that some of those interim suppressions are made—

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: The member for Heysen is on the right track. In fact, it is further; she is more right than she knows because they might be revoked the same day before the close of business. Indeed, the need for the suppression may pass away provided the radio reporter in the gallery is told not to report an aspect of the case and, indeed, the interim suppression would only be relevant to reporters present at that moment. So, the Chief Judge makes what I think is the compelling point that the requirement for the associate to leave the court and register the interim suppression, when the need for the interim suppression may evaporate by the close of business, would be a manifestly disproportionate response by the parliament. So, no, the member for Heysen is not right. I am not going to do it between the houses: I am going to do it forthwith, because don't do tomorrow what you can do today. The entry of the interim suppression order on the list will be as soon as reasonably practical rather than immediately because, of course, an interim suppression order might last for only 45 minutes to enable the court time to decide whether it was appropriate to make the suppression order.

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: I agree. On the question of raising the penalty to $120 000, I think it is worth bearing in mind that some media organisations that are in trouble for breaching suppressions are willing to bring silks from interstate at a cost vastly greater—in fact, many times greater—than the current maximum penalty. For those media organisations, it would not lie in their mouth for them to say that $120 000 was too high for the deliberate breach of a suppression. I think it is important to make the point that there is a case for suppression orders. The media in Adelaide, and *The Advertiser* in particular, campaign against suppression orders as though there should be none. Alas—

Mrs Redmond: That's not appropriate.

The Hon. M.J. ATKINSON: The member for Heysen is right to say that is not an appropriate response, and I find it a matter for regret how some politicians fall over themselves

to appease *The Advertiser* on the question of suppression orders, and the member for Heysen may have been guilty of that on the weekend when she should have been enjoying some R&R.

Mrs Redmond: I was at the end of the City to Bay, sitting on the pier of the Glenelg jetty.

The Hon. M.J. ATKINSON: Let that go on the record. Was your time quicker than the previous occasions?

Mrs Redmond: Yes.

The Hon. M.J. ATKINSON: The criminal justice system should guard against undue hardship to victims, witnesses and children, and it should also guard against trials having to be abandoned or retried because there has been prejudice to the proper administration of justice. Mr Nick Henderson, who rang me on the weekend after being stirred up by the member for Heysen, published some examples in a totally one-sided feature in this morning's edition of *The Advertiser*. A recent editorial in *The Advertiser*, concerning the case of R v C, suggested that the courts were 'protecting' criminals. In that case, Justice Nyland imposed a suppression order on the names of the children of the victim, not on the accused himself. The accused's identity could not be published because it would tend to identify the children.

I know something of this case because I live in Kilkenny where this murder occurred. The suppression order itself detailed the reasons why it was appropriate in the circumstances to grant the order. In short, the children were inextricably involved in the circumstances which resulted in the death of their mother and, as they would suffer undue hardship if their names were published, a suppression order was appropriate. In that case, the court based its decision on a wealth of material before it. There were affidavits, a psychological report and other material. The judge was of the view that the children had suffered not only from what happened on the night in question, but also from the traumatic family situation that had existed for some years before the murder. The crime arose in a domestic situation, the father pleaded guilty and was sentenced to life imprisonment with a non-parole period of 14 years. Anyone with an interest in the case was free to attend the open court and see the accused in the dock. I could not think of a worse case cited by *The Advertiser* for lifting a suppression order. I will not see children suffer throughout their life, their father having murdered their mother, for the sake of some yellow journalism.

Another case cited was this, and it happened in April 2006. The original suppression order in this case was made to prevent undue hardship to the accused's children and any indirect hardship to the victim. It is clear from the sentencing remarks that the judge considered that the victim would be exposed to undue hardship had the perpetrator's name been published. There is nothing in the sentencing remarks that refers to the woman's son having fragile self-esteem. Rather, it was the court's concern for the victim, who was still a child, that led to the suppression order being continued.

Just last month, *The Advertiser* was criticising a suppression. The order indicated that the court was concerned about undue hardship to three children should the accused be identified through lifting a suppression order. The judge was also cognisant that the trial had yet to take place and therefore that the accused had yet to be convicted. The judge made it clear that at the early stage of proceedings different considerations apply as to whether it is appropriate for a suppression order to be made.

I worked at *The Advertiser* for three years. I know that journalism is a fraternity like any other profession. I can tell you that when journalists or *Advertiser* employees were in trouble, or companies that had big advertising contracts with *The Advertiser* were before the criminal justice system, those people were treated very discreetly and gently.

If we go back to May 1999, we go back to the bodies in the barrels trial, a most unusual and notorious criminal trial. Is it in the public interest to reveal details of the case that had the potential to lead to a mistrial? The state of South Australia spent something like $20 million on the bodies in the barrels trial, and does *The Advertiser* seriously suggest that suppression orders should be lifted with the potential to abort that trial? I do not think so. Imagine the public outcry if the public was obliged to pay for these trials twice because publication of evidence was seen as against the administration of justice and the right of the accused to receive a fair trial. It was appropriate that a very careful approach was taken about suppression orders in these particular trials to ensure that the trials were not prejudiced, and we got to the end without the trials being prejudiced.

The application for a suppression order concerning the name of Wagner's dog was made by defence counsel on the basis that it could be prejudicial to the trial because it might appear that Wagner was involved in a racist or nationalist group. Remember that these are jury trials. The colour of the barrels was suppressed because it may have prejudiced the investigation. When the police ran promos to encourage witnesses to come forward, they used blue barrels in the presentation. The barrels used in the actual crime were of a different colour. Suppression of the colour of the barrels assisted police investigation by allowing them to rule out, or treat with suspicion, people who came forward as witnesses but who did not have accurate information about the barrels.

Furthermore, there are many cases where police prosecution relies on police informers. Does *The Advertiser* seriously suggest that we publish the name of police informers?

Mr Hanna: I think that is its point, yes.

The Hon. M.J. ATKINSON: I think *The Advertiser* could run a human interest story on the name, address and family of police informers. Well, we will not be giving them the scope to do that, Mr Speaker.

The Hon. G.M. Gunn: Nor should we.

The Hon. M.J. ATKINSON: Thank you for the support coming from the Liberal side from the member for Stuart. Mr Speaker, I have praised the member for Mitchell a lot tonight—

Mr Hanna: But!

The Hon. M.J. ATKINSON: —but I want to say that I cannot accept the thrust of his amendments. In my opinion, in a rule of law democracy it is important that public interest in the operation of the law be maintained. Names are news. Readers are not going to look at court reports that consist of items such as, 'A 29 year old man was today found guilty of murdering another man in North Adelaide.' Still less would anyone buy a newspaper or switch on a TV or radio to be informed of such an abstract narrative. The member for Mitchell's proposal is flatly contradictory to what we know of human nature. Should his proposal become law, no media reporter would attend the courts in any but the most exceptional circumstances, such as where the crime was so notorious or celebrated that the public already knew the name of the accused or alleged victim despite the blanket suppression.

His proposal would prevent members of the public—well, may; I could be corrected on this—attending court owing to the risk that they would tell family and friends the names of accused or post them on the internet. Indeed, I think that the member for Mitchell's proposal would be mocked by the existence of the internet. Court reporting would become the task of bloggers rather than the mainstream media. Some politicians who support the member for Mitchell's proposal mention the Family Court as an example of how blanket suppression works well.

In my experience, the most outlandish public misconceptions of how courts work occur about the Family Court. From my 11 years of doorknocking constituents and listening to talk-back radio, the Family Court is a court in which there is not a great deal of public confidence. I accept that some accused and their families are treated harshly by the naming of parties to court cases in the media. For instance, I remember a 1983 case in which a member of my football team (the one I played for) was convicted in the Adelaide Magistrates Court of urinating in a public place—

Mr Koutsantonis: A typical performance of one of your team mates.

The Hon. M.J. ATKINSON: To wit—

Mrs Redmond interjecting:

The Hon. M.J. ATKINSON: Hindley Street.

An honourable member interjecting:

The Hon. M.J. ATKINSON: He occupies a very senior and respected position. He complained to me that, of the dozens of cases like his in court that month, his was the one for which a young reporter from *The Advertiser* happened to be in the gallery. Owing to his ill luck, his name, address, occupation and offence were published. Provisions already exist in our law for suppression of names of parties if there is evidence of undue hardship to a witness or a victim, especially children. In my own circle, a local woman was badly treated by some mothers at the school at which our children attend because her husband had been gaoled for fraud.

This shunning was dreadful, I think. My wife, for one, stood against it by mixing with the woman and making her feelings known to the shunners. However, I do not think that we can legislate to suppress bad manners. Back in 1980, when I was still at law school, I read a very good booklet by the then editor of the Melbourne *Age* who, I think, put the argument well. He wrote:

> Because of what appears to be hit or miss reporting of courts, defendants can claim that they face double jeopardy. First, they face the judgment of the magistrate. Second, random court reporting may single them out from 100 other defendants and spread word of their alleged misdemeanours much wider than the confines of the court. Such inequalities cannot be allowed to override the principle of the public right to know. Because Mr and Mrs Average cannot normally attend the courts, the newspaper represents the public interest in court. In a real sense, newspapers are the only disinterested group monitoring and informing on the workings of the courts. It would be a backward step to gag newspapers by preventing and naming defendants in minor cases.

Under the member for Mitchell's proposal, we would have a report that reads like this:

> A person gaoled for being an accessory to a number of homicides in South Australia in the 1970s was today refused a non-parole period. Can you work out who it is and what the crimes were? I think the public has a legitimate interest in knowing when this man might be released from prison.

Neither public opinion nor the stakeholders in the criminal law in the media would allow blanket suppression to happen. A legal reporter for the *West Australian* wrote:

> The principle of keeping our courts freely open to the press is too important to be abandoned because of the possibility that some people charged might not be guilty.

The member for Mitchell regards it as wrong to report the names of accused, but he says nothing in his second reading contribution about the hundreds of thousands of South Australians—him included—who lap up court reporting and who would almost certainly not be interested unless there were names. I think, as I say, the member for Mitchell's proposal is contrary to the known preferences of his fellow man and his constituents. However, I do thank the members for Mitchell and Heysen for what I thought—from both of them—was a splendid examination of the merits of the bill. The bill has, indeed, been fully canvassed in the house, and I thank them.

Bill read a second time.

In committee.

Clauses 1 to 3 passed.

Clause 4.

Mr HANNA: I move:

Page 2, line 11—

Delete line 11 and substitute:

(1) Section 69A(1) and (2)—Delete subsections (1) and (2) and substitute:

(1) A court—

(a) may, subject to this section, make a suppression order if satisfied that the order should be made—

(i) to prevent prejudice to the proper administration of justice; or

(ii) to prevent undue hardship—

(A) to an alleged victim of crime; or

(B) to a witness or potential witness in civil or criminal proceedings who is not a party to those proceedings; or

(C) to a child;

(b) must, on application, make a suppression order forbidding the publication of—

(i) the name of a person who has been, or is about to be, charged with an offence; and

(ii) any other material tending to identify such a person.

This amendment is part of a package of six amendments. I then have a separate No. 7 which deals with another issue. The principle was canvassed by me earlier and the Attorney responded to it in his second reading speech. I will illustrate the problem with a few examples, though. It is right that I am suggesting that the names of accused people should not be published until the finalisation of the proceedings; that is, leaving aside any High Court challenges—they do not come up all that often. The problem is that it is not only accused people who suffer but also the families when the details of people, as well as their crimes, are published.

That is not something which we should unduly lament if the person is guilty. It is dreadful that there is the sort of shaming and shunning of innocent family members when this happens, but one has to accept that as a fact of life, to some degree, if the offender has done what he or she has done. Part of the punishment of society, unfortunately, falls on the innocent ones surrounding an offender. However, given that the Attorney acknowledges—and I think we all acknowledge—that there is a certain suffering and shame that goes with publication of a person's identity along with an alleged crime, the question is why innocent people should have to suffer that harm, given that, indeed, a proportion of innocent people are brought before the courts for both trivial and serious crimes.

When the Legislative Review Committee looked at this matter last year, it had several examples presented to it. I will

refer to one or two. This is from the committee's report which is publicly available. I am speaking in the first person of the people concerned. One person said:

> Some years ago on a talk-back radio program, during which I broached this subject, a caller related how his family had suffered for two years when he was charged with a serious offence only to be acquitted after a lengthy trial.
>
> During the trial he moved his family on no less than three occasions only to have his new location published in the media each time he had moved.

Another person wrote:

> Both I, and my family, have been affected by the publication of damaging evidence, prior to my partner going on trial on charges of threatening life, and then appearing in a Port Augusta District Court. The charges were dismissed by the presiding judge, but since the trial in 2001, my four children and I have suffered innuendo and harassment at the hands of the local community.
>
> The four children who ranged in age from five to 17, were subjected to torment, by way of false accusations, and name calling, even to the extent of being questioned by the headmaster and school coordinator, regarding the behaviour of their father.

The accused person had trouble getting work in the area, and perhaps that was particularly so in a country area where everyone tends to know other people's business, especially when it is published in the newspaper.

The Offenders Aid and Rehabilitation Service of South Australia (OARS) gave evidence that the families of offenders were targeted as though they were the offenders themselves, and gave examples of taunting, harassment, etc. There are these problems. One can understand that it is inevitable, given human nature at its current level, that the innocent will suffer when an offender has been identified in the media. We recognise that there is a harm to innocent people, and if we can avoid it by means of delaying the publication until guilt or otherwise is known, then we are actually alleviating that harm without loss of confidence, I believe, in the system. Let us bear in mind that the courts would still be open, and the media and others are still welcome to attend courts and take note of what happens.

Let us also consider the example of the Children's Court where there is certainly a hunger for news about the alleged crimes of those under 18. They are frequently reported in the newspaper and sometimes on television and radio, yet we do accept that there is a ban on the naming of children alleged to be offending. That really cuts a hole in the Attorney's argument that we would not be interested in the news if we could not identify the alleged offenders. Let us not forget, too, the infamous case where the former speaker, Peter Lewis, threatened to name someone in parliament. The very fact that someone may be named as a paedophile caused a great stir in this place and publicly, even though the name of the offender was never brought to light in this place.

The Hon. M.J. Atkinson: The alleged offender.

Mr HANNA: Thank you for correcting that, because it just illustrates the point: we would not want someone to be named unfairly. The government, indeed, took legislative steps to ensure that that would not happen.

The Hon. M.J. Atkinson: Not just for the member but for two police officers.

Mr HANNA: The Attorney appropriately interjects that the protection the government sought to place in the face of those allegations covered serving police officers, as well as a member of parliament, and I stress again that they were allegations, nothing more than that. So, there is history in this place, apart from the other examples I have given, to demonstrate that there is news and there is interest, notwithstanding the failure to publish the name of the alleged offender. I think we do no harm by passing this measure, and it does alleviate the harm that is suffered by innocent colleagues, family and associates of alleged offenders, particularly those who are ultimately acquitted.

Mrs REDMOND: I indicate that the opposition will not be supporting the proposal of the member for Mitchell. It seems to me that he partly has answered the question as well. In talking about communities that are relatively small, it would be my suggestion to him that, in fact, people know within small communities who is charged and what is happening. The reality of modern life is that many of us would read every day, in numerous newspapers, reports of people who are charged with various offences and, although we may take in the nature of the offence, I would challenge most people—perhaps, the Attorney-General, with his remarkable memory, excepted—to remember the names of the people about whom they are reading. Unless they have some particular interest in that person or that matter, people are not going to take much notice of the name of the person who has been charged. Unless it is someone they know, have some connection to or they have some interest in the case, it really just goes through to the keeper for most people.

It seems to me that the inevitable conclusion one has to jump to, though, if one goes down the path proposed by the member for Mitchell, is that you end up with a situation where, if you are going to stop the publication but still allow everyone to come into court and know exactly who is charged, what the court proceedings are doing and what suppression orders were made (and there is no prohibition on those people telling other people verbally what they saw and heard) and, certainly, the ability of everyone to go to our courts, you would end up with the problem that you would then, by natural progression, have to say, 'Well, we've got to close the courts.' That is the very balance that the legislation is trying to achieve—the balance between the legitimate interest of the public in knowing what is happening, and on this I agree with the Attorney. In a democracy, particularly, we want the public to be involved and concerned in the administration of justice and to feel that it is open and transparent and that they are aware and able to be informed about what is happening in our courts and, with some exceptions, such as the Children's Court, that is going to be the case.

It seems to me, therefore, that it is not an appropriate way to go. The member for Mitchell is assuming that, by saying, 'Well, we're not going to publish anyone's name until after conviction,' that is really going to make a great improvement in the situation. However, as I have said, people who are interested in the case will know who the person is, the charges, the progress of the case, and everything else about it, and it will spread like wildfire through all the people they know and who have an interest in the case. The rest of the community may be vaguely aware of what is going on because of press reports, but they are not going to take any notice of the name of the person, or anything else, to any great extent. For those reasons, the opposition does not support the amendment.

Amendment negatived.

The Hon. M.J. ATKINSON: I move:

> Page 3, line 22—Delete 'immediately' and substitute 'as soon as reasonably practicable'

In breach of standing orders, I canvassed the merits of this amendment during my second reading contribution, so I will not repeat the arguments.

Mrs REDMOND: I indicate on behalf of the opposition that I accept the arguments put by the Attorney. I have a great regard for the Chief Judge of the District Court and know that what he suggests is indeed true: that a suppression order, once made, will not necessarily stay in place for long enough to warrant it being put onto the register immediately, and it is indeed commonsense to change 'immediately' to 'as soon as reasonably practicable' to overcome that possibility of administrative nonsense, that is, an order being made and entered into the register and, by the time that is happening, the order being revoked or rescinded. We support the amendment.

Amendment carried.

The Hon. M.J. ATKINSON: I move:

Page 4, lines 3 and 4—Delete 'Chief Justice, at the Chief Justice's discretion,' and substitute 'Registrar (or the Registrar's nominee)

Again, I canvassed the merits of having the decision on which media to fax suppression orders to made not by the Chief Justice, because it is not a judicial function, but by the Registrar, because it is an administrative function. Although the Courts Administration Authority has a kind of independence from the executive arm of government, nevertheless, I would be responsible to the house for any decisions he made.

Mrs REDMOND: Does this proposed change from 'Chief Justice, at the Chief Justice's discretion' to 'Registrar (or the Registrar's nominee)' (and I note that there is no reference to discretion in that changed form) mean that it is now going to be the Registrar who decides which are the media publications of not sufficient repute and who are the people not allowed to receive by automatic fax or email the benefit of being listed with the Registrar for the receiving of suppression orders?

The Hon. M.J. ATKINSON: Because it is an administrative decision now, we do not think the word 'discretion' is appropriate; 'discretion' imports a quasi judicial function. We have confidence in the Registrar or the Registrar's nominee to make the decision and if there is some defect in the administrative decision making then I imagine it would be subject to judicial review.

Mrs REDMOND: Just on that point again, the Attorney said in his second reading:

In this way minor publications of doubtful integrity will not get the benefit of being supplied by the court with a suppression order.

Under the original proposal that decision was to be made by the Chief Justice at the Chief Justice's discretion. What is being substituted is that now the Registrar will make it, but there is no discretion for the Registrar. So my question is: how does the Registrar then determine who is going to be granted? Once an organisation, of whatever sort, applies how does the Registrar make a determination as to whether or not that organisation is going to get the benefit of being listed without exercising a discretion?

The Hon. M.J. ATKINSON: This is a system that is used in New South Wales and Victoria, Australia's two most popular states. There has not been any difficulty with it there. If there is difficulty then we will have to go back to the drawing board. But it seems to me a sensible provision.

Mrs REDMOND: With respect, I do not see that the Attorney has answered my question because implicit in the very nature of what he is talking about, that they are minor publications, there is a discretion to be deciding whether it is a minor publication or a larger publication of doubtful integrity. Again, there must implicit in that be exercise of a discretion in deciding what is of doubtful integrity and what is of good integrity. So, I do not see how the Registrar can possibly exercise this function. It seems to me that Registrars, if they are exercising an administrative function have to either simply receive the application and register the organisation or not receive it. I could understand the proposal if it said that the Registrar was going to do it but subject to some discretion being exercised by the Chief Justice, so that in the normal course of events the Registrar would be able to accept it and when the Registrar decided that, no, there is a problem with this one, then refer it to the Chief Justice to exercise the discretion. But I really do not see how the Registrar can be said to be exercising simply an administrative function when he is in fact on two points exercising some discretion in making a determination.

The Hon. M.J. ATKINSON: It would be disproportionate for the Registrar to fax every suppression order to every media organisation in South Australia. Does the member for Heysen seriously suggest that if bloggers apply the Registrar ought to fax the suppressions to them? I think not. So the Registrar has to make a decision about which media organisations receive notification by fax of suppression orders made in South Australian courts. Well, I trust the Registrars to make that decision. When I said 'he' earlier I was thinking of the Registrar of the District Court, who came to see me this afternoon, but, of course, the Registrar of the Supreme Court is a woman. I just trust them to do it.

Mrs REDMOND: I beg your indulgence, Madam Chair. I know that I have had three questions on this, but I do want to clarify the point, because the Attorney I think misunderstands what I am saying. I am not opposed to the nature of what you are trying to do as a administrative procedure, and I accept the ability of the Registrar to put in the people who should go in, but it seems to me that there is a discretion to be exercised at some point, and it would make more sense to me, and I would ask that the Attorney, if we pass this here now, at least reconsider it before it goes to the other place, because it seems to me that once someone has applied—and I agree, there will be certain organisations where you are going to say, 'Well, we don't want to be sending it out to everyone in the state,' but why would you then not say, 'Well, that discretion about whether someone be not included, having applied, that gets exercised by the Chief Justice.'

So for the vast majority of people, all the television and the ABC Radio and all those other people who come along, they put in their application, it is non-contentious and is automatically entered by the Registrar, but at the point when the Registrar says, 'Oh, I don't think that this person or this organisation is necessarily the one,' it seems to me as a matter of good law that it should be the Chief Justice rather than the Registrar who then exercises the discretion. So entering 95 per cent of them might not be a problem, but, for the ones where there is a problem, that gets referred to the Chief Justice who then exercises the discretion as per what you had in the original amendment.

The Hon. M.J. ATKINSON: The member for Heysen makes her point well. I understand it. I am willing to consider revising it between the houses, and perhaps she will help me reach the right formulation. But the Chief Justice does not want to make this decision because he does not see it as a judicial function. As originally drafted the Chief Justice would have been making the decision. He has asked not to make the decision. That is fair enough in my view. Again, I emphasise in New South Wales and Victoria, not a problem. I think something like 90 media organisations get the

communication in New South Wales. But I do promise between the houses we will have another look at it.

Amendment carried; clause as amended passed.

Clauses 5 to 7 passed.

Clause 8.

Mr HANNA: I move:

Page 6, before line 37—Insert:

(a1) Section 71B(1)—delete 'reasonable prominence having regard to the prominence' and substitute: at least the same prominence as had been.

This is in relation to the current section 71B of the act. Currently that section requires an acquittal of a person who has previously been reported to have allegedly committed a crime to be published with 'reasonable prominence', having regard to the prominence of the initial report, and I want to put forward a suggestion that the publication of acquittal should have at least the same prominence as the report of alleged guilt, or alleged offending.

The reason is obvious. It is simply that if there is a full frontpage story on page 1 that a person has committed a murder, allegedly, and then there is an acquittal on page 53, in small print, it is obviously not just, because the public are left with the impression that the person is guilty and are not made aware of the acquittal or the reasons for it. I know I am exaggerating in that example, but the question arises because at the moment there is a requirement that a 'reasonable prominence' be given to the acquittal news. The problem is that there is really no remedy at all for a person who complains that a less than reasonable prominence has been given. If we have an objective measure that it be given the same prominence as the news story about the alleged guilt, then we will be according that person justice.

I will give an example that the Legislative Review Committee came across. On 16 March 1999, on page 15 of the daily paper, there was a story about a 39-year old man who had pleaded not guilty to a shooting incident. The story went through the details of the incident, gave the name and suburb in which the person lived, and some details of the court proceedings. On 17 July 1999—some three months later—a similar story was run on page 28, again with all the details of identity and of what had allegedly occurred in relation to the shooting. That story said that charges had been dropped. That is just one example, but there are probably plenty of others if you start combing through the daily newspaper or start watching the tapes of TV programs that have reported the alleged guilt of particular people.

It is a commonsense and just approach to the problem. There should not be trial by media and this is the remedy. I note that the Labor and Democrat members of the Legislative Review Committee had formed part of the majority with me in relation to the previous amendment I moved. In relation to this proposal there were Labor, Democrat and Liberal members of the Legislative Review Committee, as well as myself, who concurred that this just measure should be enacted in law. I leave it for the deliberation of the house.

Mrs REDMOND: The opposition will not be supporting this proposal, although I do concede that there is some merit in what the member for Mitchell has said—in fact, considerable merit, it seems to me at times. However, we have come to the conclusion that, on balance, the current law, which provides that there must be reasonable prominence having regard to the prominence of the original article, is probably the most appropriate.

I have been trying to think of a relevant example but the only one that springs to mind is Martin Bryant. When Martin Bryant was accused (and he was subsequently, of course, convicted) our papers were full, page after page of it. One can conceive of situations where there is some massive, catastrophic type of event and an accused is acquitted; however, there has been page after page of it. It seems to me that it is not reasonable to make our law so prescriptive as to make the publisher of whatever it was (and, of course, that is only dealing with written things) go through and have X number of lines on page one or pages two and three, and so on.

We already provide that there has to be reasonable prominence having regard to the prominence of what was printed when the person was initially accused and, on balance, that seems to me to be a reasonable place to draw the line. As I said, I can see some merit in the member for Mitchell's argument, and I can well understand that it is completely unreasonable if someone has an accusation levelled against them that makes page one of the paper to then find that, some months later, on page 23 there is a tiny article saying that the person was actually acquitted. However, I think our current provision actually covers that adequately. The opposition does not intend to support the proposal.

The Hon. M.J. ATKINSON: I found the member for Mitchell most persuasive, and I undertake to take his proposal to the parliamentary Labor Party and see if we are minded to support it in another place. I am reminded of a couple of examples, although they are not strictly court cases. One was a colossal headline in a Saturday *Advertiser* alleging that the Chief Magistrate may have been guilty of corruption, allegations made by former magistrate Brian Deegan. These were then investigated, and the Chief Magistrate's conduct was found to be entirely innocent. He was exonerated, but *The Advertiser* reported his exoneration somewhere further back than page 20 in a column a couple of centimetres long. That is one example.

Another example of the cruel effect of media reporting was the vile insinuations made under parliamentary privilege by the Hon. Robert Lucas against the former Attorney-General, Chris Sumner. Let's make no mistake. Lucas was the man who did it. It was a long time ago now—about 17 or 18 years ago. He has never apologised. There was a $1 million-plus inquiry into the attorney-general and, again, he was exonerated. I was at a dinner with a QC—who I think subsequently became a judge—and, over the table, he said, 'Oh yes, Sumner was mixed up with the mafia, wasn't he?' Because it sticks. Rob Lucas knows it sticks. Mud sticks, and he has never apologised. I wish Rob Lucas was required to come into the chamber and withdraw some of the vile falsehoods he has told in the house over many years. So, I am minded to give due consideration to the member for Mitchell's proposal.

Mr HANNA: I thank honourable members for their sincere consideration of the matter. Although it may be voted down in the next few seconds, I am very impressed by the passionate, persuasive speech given in relation to this matter by the Attorney.

Amendment negatived; clause passed.

Clause 9 passed.

Title passed.

Bill reported with amendment.

The Hon. M.J. ATKINSON (Attorney-General): I move:

That this bill be now read a third time.

I want to make it clear to the house that when I referred to section 370 of the Evidence Act, I could not read my own writing. It was, in fact, section 70 of the Evidence Act. As it happened, over the dinner adjournment, we did not need to ring the DPP; we worked it out for ourselves.

Bill read a third time and passed.

ADJOURNMENT DEBATE

The Hon. M.J. ATKINSON (Attorney-General): I move:

That the house do now adjourn.

SHINE SA

The Hon. L. STEVENS (Little Para): I will not detain the house for long because I want to use some of this 10 minutes to continue on the matter I raised in grievances earlier today, which I was not able to complete. I refer to the issue raised by Family First in relation to SHineSA and the provision of a list of disability friendly sex workers to an agency, who then apparently passed it on to an anonymous client, who then passed it on to the Hon. Dennis Hood. I made a number of points in my earlier speech and I finished by saying that I was fairly concerned that the Hon. Dennis Hood had not even contacted SHineSA or spoken to them about the matter before he raced off a media release and raced himself off to *The Advertiser* and other media outlets with a story.

When I was talking to Ms Kaisu Vartto, who is the Chief Executive Officer of SHineSA, she said that this has made the agency feel vulnerable. The staff have a very sensitive job to do. They work in the area of sexual health, which by its very nature is sensitive, and, when things like this happen, it makes them feel very vulnerable. As an MP, I would have thought that, while it is important for MPs to raise sensitive issues, they should be sure of their facts and actually try to resolve situations, or at least get two sides of the story, before they go out to the media. As I said earlier, it makes one think that perhaps in the mind of Family First—and this is just how it appears to me—it was more important to get out there and have a shot rather than actually to seek the facts of the matter. It remains to be seen what the Police Commissioner says in relation to whether the behaviour of any of the players in this was unlawful. Family First believes that is the case. I would be very surprised if it is deemed to be unlawful, but we will have to wait and see what the Police Commissioner says.

Finally, I would like to mention what I think is the other odious part of this incident, and it goes back to this basic position outlined by the honourable member from Family First, and that is the assumption that providing a sexual service for people with a disability was an unethical thing to do. I think that, judging by the reaction of the public—and I guess I can only gauge that by what I have seen in the media—I think the public thought that, in fact, the holier than thou, judgmental attitude displayed was not helpful and not something that people generally agreed with. I certainly have had no phone calls to my office complaining about SHine SA and a disability agency providing information to clients about where they can get sexual services. I have had no complaints to my office, and I am not aware of any MP who has.

All in all, I think it is important for the community to express its concerns about this sort of approach by Family First. I think, generally speaking, members of the community really think that people such as the honourable member and Family First are entitled to hold their own views in terms of sexual behaviour but they should not force them down the throats of others and make those sorts of judgments about people who have not the wherewithal to get sexual services in a way that perhaps most of us can through our long-term relationships. With those words I will finish this contribution and say that I think a tactic of scaremongering and engendering moral indignation in the community in this case has backfired, and I am really pleased that it has backfired.

Motion carried.

At 8.40 p.m. the house adjourned until Thursday 21 September at 10.30 a.m.