HOUSE OF ASSEMBLY

Wednesday 9 September 2009

The DEPUTY SPEAKER (Ms M.G. Thompson) took the chair at 11:01 and read prayers.

ABORIGINAL LANDS PARLIAMENTARY STANDING COMMITTEE

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Environment and Conservation, Minister for Early Childhood Development, Minister for Aboriginal Affairs and Reconciliation, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (11:01): I move:

That the sixth annual report of the committee be noted.

I am pleased to present the sixth annual report of the Aboriginal Lands Parliamentary Standing Committee. In presenting this report today, I would first like to respectfully pay tribute to the enduring strength and resilience of the Aboriginal people of this state and their culture. I now honour the memory of those who have passed away.

A vital part of this committee's work is its engagement with Aboriginal people in their home communities and with Aboriginal leaders and elected representatives from across the state. I acknowledge and thank all of the Aboriginal communities, organisations and representatives with whom the committee has met over the past year. We deeply appreciate their frankness, astute insights and generosity of spirit that enables the committee to continue to learn so much from Aboriginal people.

These contributions and insights assist the committee to have a clear understanding of the issues that are of importance to Aboriginal communities in South Australia. During the year, the committee's executive officer, Ms Sarah Alpers, left her position and was replaced by Mr Terry Sparrow. On behalf of the committee, I would like to thank Sarah for her tireless support for the committee. I would also like to take this opportunity to thank both Sarah and Terry for their contributions in producing this annual report. I would also like to thank all the committee members for their dedication and hard work over the past year: the member for Little Para, the Hon. Lea Stevens; the member for Giles, Ms Lyn Breuer; the member for Morphett, Dr Duncan McFetridge; and the Hons. John Gazzola, Robert Brokenshire and Terry Stephens.

Over this period, members of the committee visited Aboriginal communities in the northern Flinders Ranges and the Riverland. In both places the committee was impressed by the strength of leadership and resilience within the communities and the growth of community partnerships that will result in benefits to the people of these areas.

The reporting year has also seen the establishment of South Australia's first Commissioner for Aboriginal Engagement, Mr Klynton Wanganeen, and the South Australian Aboriginal Advisory Council. Both these initiatives have been supported by the committee. The Commissioner advocates and speaks for all Aboriginal people, and the council provides advice to ensure that our policies and decisions are informed by a knowledge and understanding of Aboriginal people and their communities.

During this reporting period the committee also conducted and reported on two specific inquiries: (1) an audit of information it had received concerning the Aboriginal Lands Trust Act 1966; and (2) the Australian government's changes to the Community Development Employment Projects (CDEP) program. However, perhaps the most significant event in the reporting year was one that was profoundly important to all Aboriginal and Torres Strait Islander people. That was, of course, the apology to the stolen generation made by the Prime Minister on behalf of the federal parliament on 13 February 2008. On this historic day the parliament of South Australia extended its original apology, which was delivered on 28 May 1997. The parliament, with the committee and others, hosted over 150 guests, who came to hear the apology in the House of Assembly and to share afternoon tea.

That day we celebrated not only the sincere apology that was made but also a new determination to close the gap between indigenous and non-indigenous Australians. We still face many challenges before we overcome the hardship and inequalities that mark life for too many Aboriginal South Australians, but the Aboriginal Lands Parliamentary Standing Committee will continue to develop partnerships and positive relationships with Aboriginal South Australians so that we can achieve and maintain equality of opportunity and prosperity for all.

Dr McFETRIDGE (Morphett) (11:05): I rise to speak on the report of the Aboriginal Lands Parliamentary Standing Committee 2007-08. I note that we are a little overdue in discussing the report in this place but, unfortunately, that is typical of a lot of Aboriginal affairs. During the Reconciliation Week celebrations recently, the Premier said that Aboriginal affairs is three steps forward and two steps back. Unfortunately, the progression is very slow, but at least it is forward. There are a lot of challenges. We hear lots of bad news and examples of things that are not going well in Aboriginal communities, but there are so many things that are going exceptionally well through a number of Aboriginal communities, both in the metropolitan area and in rural and regional areas. Just recently, I met with a grannies' group down at Port Adelaide, and there are some terrific things going on there and some great opportunities arising.

The Aboriginal Lands Parliamentary Standing Committee is a unique committee of this parliament, having its own act, with the minister as the presiding member. I have some issues with that, because I know how hard working ministers are, whether they are Liberal or Labor. I have seen their diaries; they work exceptionally hard. I know that minister Weatherill is a very hard working minister and, as a result, because of commitments to this portfolio and other portfolios, unfortunately, he cannot attend all meetings. I am not attributing any blame at all or being disparaging; this is just a fact of life.

If I have the opportunity to be minister, I would propose that the minister not be the presiding member, bearing in mind that it is difficult when the minister is unable to attend meetings because of other pressing issues. Also, on occasions, the minister has to write to himself about issues, and I think that is a ridiculous situation to be in. So, the way this committee is set up is something that I would love to see changed. Having said that, when Commissioner Mullighan gave evidence just recently, he commented that he was extremely impressed by the bipartisan way this committee—comprising upper and lower house members, Liberal, Labor and Independents—has worked. I have done my very best to be as bipartisan as possible. Committee members get on exceptionally well on both a personal and political level.

We are trying to advance the cause of Aboriginal affairs in South Australia. The members of the committee are dedicated to that cause but, unfortunately, another problem with this committee is that we actually have to travel quite widely on occasions. Organising members of parliament to go on a trip is a bit like herding cats; it is very difficult and, unfortunately, a number of members have not been able to travel for various reasons and, worse still, and more embarrassingly, members have had to leave trips early. I know of one occasion where there were very few representatives speaking to some of these groups.

The minister mentioned the committee secretaries: Sarah Alpers, who went on to another position earlier in the year, has been replaced by Terry Sparrow; and Jonathan Nichols, who was our first committee secretary, worked exceptionally hard to make this committee function. These people talk to Aboriginal groups across the state, liaise on our behalf and gather information from communities, government departments and ministers. Being the secretary of this particular committee is an exceptionally difficult job. I congratulate Jonathan Nichols on the job he did, followed by Sarah Alpers, who also did a terrific job. I know that Terry Sparrow has already started off on a fantastic footing, with the foundation established by those two previous secretaries.

We recently had a trip to the West Coast, to Oak Valley, Yalata and Maralinga, and Terry did an exceptional job organising that trip. We look forward to continuing working with Terry. He has a huge breadth of knowledge of Aboriginal affairs in South Australia.

The activities of the committee are not just confined to travelling to various communities, although that is a very important part of the work we do. Visiting those communities is a real eye opener in some cases, and there are a number of issues to be considered. However, there are lots and lots of opportunities, and the positive nature of many of the people we speak to is amazing. Some of these communities face significant challenges, yet the people out there are positive and want to go ahead and advance the cause for the sake of the community, themselves, their children and their children's children. We hope that progress is not always going to be three steps forward and two steps backwards.

We visited communities far and wide. We did not visit the AP lands during the 2007-08 year, but we did visit some of the Northern Flinders Ranges communities. We visited Marree and Iga Warta. I have visited Iga Warta on a number of occasions, and it is a good example of what can be done with Aboriginal enterprise. A terrific tourist venture is being developed there. Some of the issues we saw at the nearby Nepabunna community are very common issues for Aboriginal communities to do with their remoteness, and I refer to the Nepabunna Health Clinic and

ambulance services. Proximity to more sophisticated care is an issue for them. However, once again, people working in those communities display a very positive outlook.

In the Riverland, the Gerard community has been involved in a number of farm and aquaculture issues. This concerned the people who were running the almond crop on behalf of the Gerard community, but those issues are progressing in a positive way, although, once again, slowly. We were shown some of the opportunities for tourist development in those communities. So, lots of positive things are happening in the communities we visited.

This committee needs to be supported by the whole parliament. Some members are leaving at the end of this parliamentary term, and I would encourage members of both this house and the upper house to look at this committee, see how it works and be prepared to become a member of it. This committee may not meet as often as other committees, but members are working all the time, talking to communities and making sure that the whole aim of the committee is being progressed. There is a real need, though, for the committee to be able to work in a more coordinated fashion. As I have said, as this committee does have a minister as the presiding member, it is important that committee members are able to put themselves in a position where they can travel to communities for a number of days. The communities we visit hold us in high regard, and they want to make sure that we are getting the information and are aware of the issues and the challenges they face.

So, any member who is considering becoming a member of this committee in the new parliament next year should think about it very carefully. This committee is too important for members not to put their heart and soul into it. I know that every member of the Aboriginal Lands Parliamentary Standing Committee has put their heart and soul into it, particularly my two good friends on the other side, the member for Giles and the member for Little Para. I should not be separating members out, but those two ladies in particular are really dedicated—absolutely 100 per cent dedicated—to this committee and its aims. It has been my pleasure to work with them, and I will certainly miss the member for Little Para in this place and on the committee. As for the member for Giles, in some ways I hope she is there and in other ways I hope she is not. We have a cunning plan either way.

The thing that needs to be remembered about this committee, though, is that it has been around this place for a number of years. It has had various manifestations under various ministers, but the whole purpose of the committee has not changed. In fact, 37 years ago (which is a long time ago), when I was teaching in Port Augusta, I saw the issues concerning the Davenport Mission, the Umeewarra Children's Home and the community there. Some of those issues are still there today, and that is disappointing for me personally and as a member of parliament, and it is disappointing for the committee.

This is why this committee has an opportunity to make sure that those challenges that existed 37 years ago (and some still exist today) will continue to be progressed, to make sure that we eliminate the challenges and make sure we grasp all the opportunities. With those few words, I congratulate both Sarah Alpers and Terry Sparrow in what they have done to back us up over the past 18 months to two years and hope that the committee does continue to function well for the rest of this year and into the next parliament.

Ms BREUER (Giles) (11:15): I rise to speak to this report today. I was very pleased to see that we are able to release it today. It has been some time in coming but it is not from lack of caring; it has been from other issues. In the past few weeks in our time off parliament—and, contrary to popular opinion when people think we are on holidays, I was absolutely flat out and I am glad to be back here to settle down a bit and have a quieter time—I spent virtually the whole of our break visiting my electorate. Of course, many of the communities that we deal with on this committee are in my electorate so I have entered many Aboriginal communities and spent time with many Aboriginal people. In fact, I started to feel a bit like a minority group by the end of my time.

In talking to communities, individuals and leaders, I found that the biggest issue out there is and will be housing, and I touched on this yesterday in this place. Until we resolve this housing issue, we are never really going to get where we want to be. Housing just contributes so much to the problems out there in the communities. When you have three generations of people living in one house, when you have young couples trying to start out with young babies and they are living with grandparents, when there are 20 people in a house, how do you expect the toilets and the showers to work consistently? There is absolutely no privacy. There is nowhere for children to study, so you cannot do anything about literacy levels. You cannot do anything about health levels. It is just a major problem.

We have to resolve this, and I am pleased that we have now reached an MOU. The Minister for Housing has been able to reach an agreement with the APY Executive, but there is still a long way to go. It is not just communities like the APY lands or Oak Valley, because there are similar problems in Coober Pedy where there are real issues for Aboriginal people, and in so many other communities in this state. As a committee, I think we have to concentrate on this, and certainly as a government it has to be concentrated on at both federal and state levels. We will not get anywhere until we sort out the housing.

Another issue that I found in talking to various communities is that we still seem to have what they perceive as a lack of consultation about what is happening in their communities. This also involves very much what seems to be at ground level lack of information in these communities. I am sure that the departments know what is going on, and I am sure that some of the leaders know what is going on, but the people out there seem to have this real feeling that they are not being told.

They do not understand what is happening, and I think that is a major breakdown that we have to seriously look at. I felt quite concerned because I knew that things were happening, but the local people did not seem to understand that. We have to be able to get that information through to people and let them know what is being planned, what is being done and let them have some say in what is proposed as well. That is vitally important. If you take away people's power and make them feel powerless, all sorts of problems result from that.

Another issue that is surfacing a little bit is that there seems to be a perception out there that children are again being taken away from families. I am not too sure and I have not had an opportunity to go into detail on this, but I know that many people feel quite strongly that what is happening is that with the Mulligan report, with the emphasis on solving family problems, child abuse, neglect, etc., there is quite a strong concentration by the Department for Families and Communities of working with children and working with families, and Aboriginal communities believe that they are having their children taken away.

Again, I think we have to seriously look at this issue and work out what we are doing wrong or what they are doing wrong, because they are talking about the stolen generation again. I bring this up just to flag this point so that people are aware that this is an issue that is being talked about quite strongly in Aboriginal communities. They believe that young social workers come in, do not understand and are taking their children away. I do not know the depth of the problem; as I said, it was hearsay with me but I think we also need to seriously look at that.

Another issue that seems to be arising is that, while we are doing lots of things in communities, there still seems to be some lack of cohesion between departments; one department is doing something and another department is doing something similar, while another department is doing something similar again. That has to be addressed fairly carefully, from the top level down, to make sure that people are working together and that issues are being resolved.

Another area that the old tjilpis, in particular, talked to me about was that they believed there was a lack of respect for their culture and their law in their communities—and it is not just from the white people's government, etc., going in there: it is a problem with their young people as well. I think all of us—particularly those of us in the mature age group—feel that young people no longer respect us, but this is particularly important in Aboriginal communities. It is also absolutely essential that people coming into or working in their communities—whether they be government workers, tradespeople, contract workers, or whatever—have that fundamental respect for the culture of those communities, taking into account all the difficulties, problems and mess in some areas and understanding that there is a deep culture within those communities.

I think we are doing okay but I think we can do much better, and I believe the role of this committee is to make sure that we are keeping a consistent eye on this matter. I agree with the member for Morphett and am not sure that the minister should be chairing this committee; I think it puts him in a very difficult position. I have great respect for minister Weatherill. I worked with the late Terry Roberts when he was minister, and was very concerned after he passed away and wondered if anyone would be able to manage the job as he did. However, I am very comfortable with minister Weatherill; I think he does an excellent job—and it is an extremely difficult job. I pay tribute to him, because he has done extremely well. In fact, I asked him yesterday if he intended to be minister after the next election, because I am very concerned about who would be able to fill his shoes. I will not tell you his response. However, I agree that the minister is not quite appropriate for that position, and I think that after the next election we should look at that and have someone else chair the committee.

The committee membership is absolutely vital. It is not about the money, and people should not be looking for the extra money they get from this committee; that should be the last thing on their agenda. I do not even know how much extra money I get for being on that committee; I have never checked it out. It is certainly not a status committee, and it should not be something you put on your CV; it is a hard working committee. I have been involved now for eight years and I have seen good and bad members on the committee. We must have people who are committed, who understand Aboriginal communities and who understand Aboriginal culture. There is no point being on the committee because you think it would be fun to work with the natives or whatever. You have to be absolutely committed and, after the next election, I would beg that we do get very committed people on that committee. We will not achieve anything unless we have people there who really care about what they are doing and who really want to make some changes.

This committee is seen by Aboriginal communities as something of a conduit to government. It is certainly seen as a sounding board, and we are seen as mediators, so we play a vital role for them. We are their only contact with parliament, and are often what they see as their only contact with government, with the Premier, with the minister, etc. So we must have good people on that committee. If you are just going on it because it would be good to have on your CV then do not bother; we do not want you there!

I have been very happy to work with the member for Morphett; I believe he has done an extremely good job. Being in opposition must be difficult, but he has managed to retain his integrity in all this and be very fair. He has been very committed to our committee. I will not mention anyone else; I mentioned the member for Morphett because he has been on the committee for as long as I have, but I do not think it would be fair to anyone if I started singling out other favourites.

I see the committee as being vital, and of course our committee secretaries have been absolutely vital as well. Jonathan Nicholls, the first secretary, did a brilliant job; I have just spent a week away with him visiting the APY lands and we managed to still be talking to each other at the end of it. He is very committed in his new role by Uniting*Care* Wesley, but he did an excellent job with our committee. We then had Sarah Alpers, who was like a breath of fresh air, and I was very sorry to see her go. We did not have much opportunity to get to know each other, but she certainly did an excellent job and put together this report we have today. Now we have Terry Sparrow, and we are still learning about each other and feeling our way. However, I believe that Terry, himself being an indigenous person, brings that little bit extra to the position, and I am very confident that he will steer us through the next few years, so we are very pleased about that.

The committee is vital, and its reports are very important. We have to get information out to people, we have to let them know what we are doing, and we have to let Aboriginal communities know that we are there and available for them to talk to. I am thankful for the opportunity to talk about this today, and I certainly hope, despite what the member for Morphett says, that I am on the committee for the next four years.

Time expired.

The Hon. L. STEVENS (Little Para) (11:25): I am very pleased to speak on this report from the Aboriginal Lands Parliamentary Standing Committee. It will be also the last time I have an opportunity to speak on this committee's work because the next report will be tabled after I have left the parliament.

I have been on the committee for just this term, and I have been very pleased to be part of it. Today, I would like to make a few comments on the 2007-08 report before us. As the minister mentioned, the first priority of the committee is to consult with Aboriginal people in their home communities and to engage with their elected representatives and leaders.

As the minister mentioned, in the time covered by the report, we visited the Northern Flinders Ranges communities of Marree, Nepabunna and Iga Warta and the Riverland area, including the Gerard community. I would particularly like to talk about Marree because it impressed me in many ways. The report states:

> Marree is run by the Arabunna Progress Association which is a unique situation with Aboriginal people at the forefront of town leadership. The town provides a relaxing lifestyle and a very safe environment for children free from negative city influences such as alcohol and other drugs. Community people are independent, all working, and have great connection and pride for their community with the community elders setting very good role models.

That was evident, and it was also evident to me that the community was going well. I pay tribute to Mr Reg Dodd, who is Chair of the Marree Arabunna People's Committee, his committee members and all those people who work together to make this the community it is. I think it is worth thinking

about that quotation, about what it is in Marree that is working and about what we can learn from its example that may be applied to other communities.

We had some time at the school, and I have to say that the Aboriginal students at the school were all engaged, and that was what really struck me—they were all engaged. I have not seen that anywhere else, but I certainly saw it at Marree.

I know that a number of innovative things have happened there, including the special relationship with Pembroke School and the work done by Campbell Whalley, and I am sure that that has had a great influence on the educational aspirations of the students. I think that there are things to learn from the example of Marree that we could translate to other situations.

In spite of the fact that I have said that things are working well in terms of the Progress Association, that is not to say that they do not have issues; they certainly do, and we recorded them, listened to them and took them up. However, it was clear that their governance was right. It was working for them, and I believe there are lessons here that could be applied in other communities.

I would also like to say that there are some good things happening in all communities, but I would say too that there are still intractable issues—serious issues—that need to be addressed by us all. I think the issue of 'doing with' rather than 'doing to' is a really important principle that we need to come to terms with, that is, how we work alongside remote communities, many of whom are in a fairly passive state in terms of their future and their feeling of having some control over that future. So, there are big issues ahead, and I think this committee has a very important role in, first, learning about the issues and also publicising that learning for other members of the parliament and also the community.

I thank members of the committee for their work. It has been good going on the trips with groups of members. I thank Sarah Alpers for her work. I am sorry that her time with us was short, because she was a very conscientious and skilful person in the position that she held. She came with great experience herself in Aboriginal communities and was an asset to the committee. Certainly, she was there when we were visiting those communities and doing the work that this report focuses on.

We now have Terry Sparrow join us, as the other members have mentioned, and he is proving to be very conscientious and keen to move the committee on through a whole range of issues. I also compliment Jonathan Nicholls, a previous secretary of the committee, for the *Anangu Lands Paper Tracker* online newsletter he continues to put out. In his forensic way he has been able to really follow issues, and I certainly read each edition with interest. I congratulate Uniting*Care* Wesley on having that position.

I would like to make a comment about the committee itself; it will be my last opportunity to do so. I believe very strongly that the committee has a very important role for this parliament. I agree with the other members who have spoken: I think the minister should not be the presiding member of the committee, for all the reasons that have already been said. I think the committee needs its full complement of people attending its meetings and prepared to make the necessary commitment to visit the communities. It has been a difficulty at times to get enough people to actually make those visits, and sometimes we have had to postpone things because the usual subgroup of members who have made this commitment consistently have had things come up for them in their electorates and not be able to attend. So, we really need the seven members on board and ready to be able to do all the work together, otherwise we really cannot do justice to the job that we have been given to do.

Also, the committee is restricted in some ways. It is different from other standing committees in terms of its reporting arrangements and other things. I think that needs to be changed and that we have that opportunity in the future so that this becomes a standing committee of the parliament, as the other ones are.

I think that is about all I can add, except to say again that I have enjoyed my time on the committee. I look forward to the remaining months that I have. I know that we have a number of tasks ahead of us.

I recommend that people have a look at the report. It contains some interesting transcripts of witnesses. The evidence of Kaisu Värttö of SHine SA is in the report, and people might like to read that; she made some very good submissions to the committee. The report includes a number

of interesting things that I am sure people would be interested to read. With those words, I again thank the other committee members, and I look forward to my remaining months on the committee.

Motion carried.

PUBLIC WORKS COMMITTEE: GOOLWA CHANNEL WATER LEVEL MANAGEMENT

Ms CICCARELLO (Norwood) (11:37): I move:

That the 327th report of the committee, entitled Goolwa Channel Water Level Management, be noted.

This project involves a temporary environmental flow regulator in the Goolwa Channel at Clayton in conjunction with a low-level regulator in the mouths of each of the Finniss River and Currency Creek. These regulators will enable water levels to be raised and managed to re-submerge sediments, start a bioremediation process, and limit ecological damage and water quality impairment. Vegetation establishment and lime dosing facilities are also to be put in place to augment bioremediation.

The committee was advised that the water level in the Goolwa Channel will be raised by pumping from Lake Alexandrina and it will then be maintained between plus 0.7 metre AHD and 0.0 metre AHD by natural winter inflows from Currency Creek and Finniss River. Extremely low flows over the past three years have led to water levels in the weir pool downstream of Lock 1 falling to below sea level for the first time on record. The committee accepted that the water levels in Lake Alexandrina and the Goolwa Channel required an emergency response to manage the threat of acidification.

In the tributaries and the Goolwa Channel very large areas of acid sulphate sediments were exposed and actively acidifying. Currency Creek was completely dry and heavily acidified and large quantities of heavy metals and other metalloids were already present in the soil surface.

The committee was told that the Finniss River was drying rapidly, its remaining water was extremely high in salinity and acid generation well advanced. The combination of a regulator at Clayton and low-level regulators at the Finniss River and Clayton Creek will allow greater control and flexibility over the management of acid sulphate soils in the area. The low-level regulators will be temporary structures and will be removed after drought recovery.

It needs to be noted that recovery will be needed for the entire river, not just a local river. The trigger for removal of the regulators will be the level of storage in the Hume and Dartmouth dams, and this level of recovery is not anticipated in one season. The objectives of the flow regulator in the Goolwa channel are to:

- maintain water levels by initially pumping fresh water from Lake Alexandrina into the new pool and then partially capturing seasonal flows from the Finniss River and Currency Creek;
- mitigate the acidification of the Goolwa Channel, Finniss River and Currency Creek by raising and maintaining their water levels;
- provide a freshwater refuge to mitigate the effects of low water levels on the ecology as a result of the current drought;
- prepare to conduct calcium carbonate dosing to reduce acidity in the tributary streams; and
- maximise the natural bioremediation process to reduce acidification.

Incidentally, this project is intended to provide some relief to the boating and tourism industries in the Goolwa area through raised water levels in the channel and improved water quality. I noted Mayor Kym McHugh saying that already things had improved down there with regard to the boating activity in the area.

The low-level regulators will enable control saturation of the extensive acid sulphate sediments in the tributaries and will also enable early-season tributary flows to be ponded above the regulators, providing for in situ bioremediation to take place. The strategy with the two structures in the tributaries is to pool early-season flows long enough for natural bioremediation to occur. This will reduce the loads of acid and heavy metals naturally before spilling into the Goolwa Channel, which by that stage will almost be a chain of ponds easily overwhelmed by any acid and metals that flowed in from the tributaries.

If acidification goes beyond the tipping point, the problem will be very difficult to reverse and will require decades of management. In the absence of intervention, the deterioration of freshwater habitats in the lakes may lead to the local extinction of freshwater species such as the Murray Hardyhead and Yarra Pygmy Perch. The Lower Lakes are a stronghold of the species, and loss from the lakes would greatly increase the chances of extinction.

A temporary structure will restrict navigation by boats and fish, and the waters of Lake Alexandrina north of Hindmarsh Island will no longer be accessible from the Goolwa Channel. However, continued falling water levels in the Lower Lakes will result in the Goolwa Channel commencing to be disconnected from Lake Alexandrina in late October 2009, thereby preventing boat access.

The committee is aware of the low level of water in the Lower Lakes and the threat of soil acidification once submerged soils are exposed. Consequently, the committee was concerned to ensure that taking 30 gigalitres of water from the Lower Lakes to reduce soil and acidification in the Goolwa Channel will not accelerate the need to make critical decisions about the Lower Lakes. The committee was assured that this project will not affect the timing of decisions relating to the Lower Lakes.

We feel that this project is justified on the basis of averting a large-scale ecological catastrophe. Based upon the evidence it has considered and pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee reports to parliament that it recommends the proposed public works.

Mr PENGILLY (Finniss) (11:43): The whole subject of the Murray has been most difficult and has caused great divisions within communities up and down the length of the river, particularly in South Australia, where it has been a source of great angst. That has been added to by the so-called Clayton regulator, which is the subject we are talking about today. This side of the house supported that regulator in the Public Works Committee, and it seems a bit of a case of déjà vu, because all those months ago we talked about this, when it came to the Public Works Committee, and it seems like ancient history now that it has actually been built and come to fruition.

In her report, the member for Norwood touched on a number of details, but perhaps I should touch on why we are at this stage in the first place. It really is a result of inaction by the Rann Labor government in providing freshwater flows down the Murray and keeping those lakes in some semblance of order. The fact that we have arrived at a situation where there is no water down there and that we have had to put in a regulator is, of course, of great concern to myself and members on this side of the house and, I am sure, to many members of the wider South Australian community.

Indeed, it caused tremendous division down on the western side of Lake Alexandrina. You do not have to be a rocket scientist to understand, from the press reports—whether it be on the television, radio or in metropolitan or country papers—that it is still causing division and there is still a great deal of angst.

Having said that, I have nothing but absolute contempt for those who have attempted to railroad their own particular philosophy through the public arena. I find it absolutely outrageous and disgraceful that a former premier, Dean Brown, had a bucket of mud thrown on him down there a few weeks ago. I know that no member of this house would support that. I found that quite disgusting, and it reflects badly on that group of people—many of whom are good people—who opposed the regulator cum dam, call it what you may, at Clayton. Unfortunately, my view is that it was quite a premeditated act. From the information I have received since that day, it was quite obvious that a number of people walked out shortly before that happened. As I said, I find it disgraceful that a former premier of this state—or anyone for that matter—had that inflicted upon them. That really does their cause no good whatsoever.

However, there are some very good people who remain opposed to that regulator, people like Henry and Gloria Jones, for whom I have the utmost respect. Henry has been fishing there for decades and knows the area inside out. I find it interesting that Mayor McHugh was quoted, because there was also a fair bit of dissension within the Goolwa community about the action, or lack of action, from the Alexandrina Council. I think they have been in a difficult position and floundering somewhat as to where to go on this. I know from people who have businesses down around the river and the Goolwa Channel—whether they be marine businesses, tourism accommodation or any other sort of business—that a buzz has gone back into Goolwa that I have

not seen for a long time. The fact that the water levels are quite significant and still rising has certainly put some life back into that area.

As a matter of fact, I called for a one-off tourism promotion program for the Goolwa area only a week or two ago through the Rann Labor government and the South Australian Tourism Commission. I think it is critical. Indeed, a program was put in place after the December 2007 fires on Kangaroo Island. That got the island's tourism business, and everybody else, back and running, and I think this message needs to go out for Goolwa.

It does not matter much whether you are at Renmark or at the bottom end of Goolwa; the perception in the wider community is that there is no water in the river. That is an absolute nonsense, because up behind Lock 1, and the rest of the way up, there is basically a series of dams, and there is water there. Businesses are operating and they are encouraging visitors. It is absolutely critical that we continue to pursue that.

It is interesting that substantial problems occurred with the construction of the regulator. I will be interested to see just what it cost in the final analysis, because the dirt, rocks and whatnot continued to go down into the Murray, because that could be a taste of what might happen if they actually ever decide to build a weir at Wellington, which I remain opposed to. I remain adamantly opposed to letting sea water into Lake Alexandrina. That is not the answer. That is a fight for another day. I am sure that my colleague the member for Hammond, and others on this side, still feel the same way about that.

Overall, my view is that, if we are able to save that little bit—which is only a minuscule piece of the river in the Goolwa Channel—and keep some normality down there and also keep a freshwater option with the introduction of water from the Finniss River and Currency Creek, that is in the long-term best interests of that minuscule section of the river for the community, the environment, and a host of other reasons.

I reiterate that I am well aware of the dissent of other members of the community along the lakes and the river north of Clayton dam. So, we will watch this with interest. We all hope that there will be a return to normal seasons, and we also hope that, one of these days, the Premier may just decide to go down there and have a look for himself and take a few of his colleagues with him.

You do not need to fly over that area at 2,000 feet; you need to get down there and talk to the people. The member for Hammond and I, in particular, have attended numerous public meetings. I have attended meetings in my electorate, but the member for Hammond has attended, in his own time, a huge number of meetings from the Murray Mouth up to the South Australian border and beyond. He has done an enormous amount of work, and I commend him for it. He has a good grip of the situation along the length and breadth of the river, and I applaud him for that.

However, the subject at hand today is the regulator and the way in which the Public Works Committee dealt with that. It was an interesting and well researched process that led us to approving that. I indicate that I support the report. However, I reiterate that there are enormous divisions within the communities on the river that do not have water and do not look like having water for some substantial time.

It is a tragedy that is still unfolding, and it will continue to unfold. It is a tragedy that is largely the result of mismanagement by mankind, whether it be federal or state governments or a combination of both—or greed; call it what you may. We should never have ended up in the position we are now in. Obviously, we cannot put the drought to one side, but mismanagement has been to the fore. I think it is a sad day for Australia when we find ourselves in the dreadful position where the food basket of south-eastern Australia is in such a diabolical mess.

Mr PISONI (Unley) (11:52): I think it is fair to say that, being the representative of the seat of Unley, we get only half the story about the failure of state governments and the federal government to manage the Murray. We see what is happening at Clayton, Goolwa and the lakes district, where there has been years of neglect and dispute over water ownership, issues which have been ignored and not dealt with by state governments.

I also think that for it to get to this stage illustrates that this is after nearly eight years of the Rann government. I refer to a press release put out by Mike Rann on 18 June 2002 when he was visiting the UK, of all places, where he was launching a website 'to keep the public up to speed on the Rann government's actions'. I will read into *Hansard* one of the things he lists. It is a quote, supposedly from the Premier. He says:

The site lists decisions taken by the government since the election, including the plan to secure Mitsubishi's future in South Australia—

although I am not sure that is still on the website—

and the agreement on the River Murray with Victoria—

Something else that was listed as an achievement by the Rann government in its first 100 days. So, the website indicates a plan to secure the future of Mitsubishi and an agreement on the River Murray with Victoria. I do not know whether or not it was an historic agreement; it does not mention that in the press release. Now, of course, nearly eight years later, we see that the Premier is taking Victoria to the High Court over the agreement.

The Hon. R.B. Such: Threatening to.

Mr PISONI: Threatening to. So, we will see what happens after the election. We can see that this is part of the Mike Rann election manual. We see him making announcements from overseas, looking very important and rubbing shoulders with important people. On this very same trip, a press release came out the next day in which he boasts about meeting English movie directors—and all these movie directors were going to visit South Australia but, of course, they never did. What happened last week? Was it Arnold Schwarzenegger? That's right—he was going to visit South Australia.

The Hon. R.B. Such: 'I'll be back!'

Mr PISONI: 'I'll be back!' That will be interesting. Of course, that is part of the Hawker Britton formula, and I acknowledge the Attorney-General showing some great interest—a very good campaigner, I must say—in understanding how the Hawker Britton model works: attaching yourself to famous people, making yourself look a lot more important than you actually are and grabbing hold of the success of other people and trying to claim it as your own. It is all there in the manual that Mike Rann pulls out at every election.

I think the important thing that was raised by the member for Finniss is that we do need to understand that the river is still a great recreational activity for tourism, and I can speak from experience. My two children, who are passionate rowers, have both just returned from the Unley High School spring rowing camp. They were at Walker's Flat, which is below Lock 1. Although it was lower than in previous years, it was still a great four days for them—hard training both on and off the water. I do recommend that people get up there and visit the river and enjoy the facilities that the river offers.

I must point out, as a member of the opposition, the disappointment that we have seen in the state government's management of the River Murray. The Premier of this state was the federal president of the ALP, but even that was not enough to secure an agreement for more water for the River Murray, and we all know that, when a river dies, it dies from its mouth.

The Hon. R.B. SUCH (Fisher) (11:57): I will just make a brief contribution. Ultimately, what will save the river is substantial and sustained rainfall in the catchment area of the Murray-Darling system. I have recently been down there and I stayed at Goolwa and had a look at what was being done at Clayton and what is being also undertaken on the Finniss River and Currency Creek. Whether those mechanisms will work, I do not know. I guess it is a form of insurance. I hope they do work.

I would, however, follow up on the point just made by the member for Unley that people in Adelaide should not stop visiting these areas because there is a perception that there is no water at all in the whole Murray system. There is water. It is a bit illusory because it is held back by the locks—we know that. People should get out and visit these areas. We have some fantastic places in South Australia, down on the Fleurieu with towns like Goolwa and their wonderful history, and up in the Riverland. Many of those people are doing it tough because of the water supply.

However, we should not forget that, across the border in Victoria in areas like Merbein and Mildura, the people are doing it tough as well. I have seen where they have ripped out orchards of pistachios and oranges and so on because there is just not enough water to go around, and then you go into New South Wales and they say, 'What water shortage? We've got plenty of water.'

There is obviously something wrong in terms of the management of the river traditionally and historically which has resulted in and compounded the problem of the drought, and the fact that the water has not been able to get down to the lower reaches of the Murray. It is still a fantastic area and I think people should not avoid these places. There is fantastic local produce and

fantastic things still happening whether you go to Newman's horseradish farm or other things—there are so many things down there. The produce is better than a lot of the stuff we import.

Importantly, in the long term, I think only rain will save the Murray and it is critical in terms of food security. We are currently importing half our fish, or close to it, and half our dried fruit, and that is an unfortunate and sad commentary on the way the situation has evolved. I hope the measures taken at Clayton and elsewhere work, but the answer is that only time will tell. I commend the report to the house.

Ms CICCARELLO (Norwood) (12:00): I thank other members for their comments, and would like to reiterate what was said by the member for Finniss, that there is a lot of disagreement about what is the appropriate situation down there. Even experts from the university disagree about what is the best situation, whether it should be fresh or salt water in the Lower Lakes. Interestingly, a group of about 30 international experts are visiting the Lower Lakes today to look at the river system. Obviously water is a crisis around the world, and if we cannot manage a river system in one country they want to see how they will manage river systems in the different countries they travel through overseas. It is a vexed question.

It was also interesting to see, in this morning's paper, that there is now a lot of run-off flowing into the Murray, and we are hoping that the seasons will change and we will get more life in the river. With that, I commend the report to the house.

Motion carried.

FIRST HOME OWNER GRANT (SPECIAL ELIGIBLE TRANSACTIONS) AMENDMENT BILL

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs, Minister for Veterans' Affairs) (12:01): Obtained leave and introduced a bill for an act to amend the First Home Owner Grant Act 2000. Read a first time.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs, Minister for Veterans' Affairs) (12:01): 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 First Home Owners Boost ('the Boost') was announced by the Australian Government on 14 October 2008 and was extended in the Commonwealth Budget on 12 May 2009.

The First Home Owners Boost provides an additional $7,000 to first home buyers purchasing an established home and an additional $14,000 to first home buyers purchasing a newly-constructed home before the end of September 2009.

From 1 October 2009 to 31 December 2009, the Boost will halve to $3,500 for established homes and to $7,000 for newly-constructed homes.

The Boost is in addition to the existing First Home Owner Grant ('FHOG') and First Home Bonus Grant funded by the State Government, which provides assistance of up to $11,000 for first home buyers.

The Boost increases the assistance available to first home buyers from 14 October 2008 to 30 September 2009 to a maximum $25,000 for newly constructed homes and $18,000 for established homes.

With the halving of the Boost from 1 October 2009 to 31 December 2009, the maximum assistance available to first home buyers is $18,000 for newly-constructed homes and $14,500 for established homes in this period.

The States and Territories have agreed to administer the Boost, in addition to the existing FHOG.

To be eligible for the Boost, applicants must first satisfy all of the eligibility requirements for the existing FHOG.

To be eligible for the Boost for new homes the following additional criteria must be satisfied:

The home must not have been previously sold by the builder / vendor or ever occupied as a residence.

Construction of the home must commence within 26 weeks of entering into the contract, however the Commissioner will have a discretion to increase this period if the reasons for non commencement within 26 weeks are beyond the control of the applicant and the builder of the home.

The contract must specify a completion date of the eligible transaction within 18 months of the date of commencement of building or in any other case completion of the eligible transaction must occur within 18 months of the commencement of building.

Owner builders will be eligible for the Boost if they commence building between 14 October 2008 and 31 December 2009 and complete construction within 18 months of commencing construction.

Applicants who purchase new homes 'off-the-plan' will be eligible for the Boost if they sign a contract between 14 October 2008 and 31 December 2009 and the contract states that the eligible transaction will be completed by the relevant completion date stated in the Bill (which varies depending on the date that the contract was signed), or in any other case the eligible transaction is actually completed by the relevant date.

In addition to the above, the Commissioner will have a discretion to extend any of the completion time frames if building is delayed due to extenuating circumstances.

Home purchases and constructions which do not meet these time frames will nevertheless qualify for the existing State $7,000 FHOG and the $4,000 First Home Bonus Grant if they meet the eligibility criteria for these two existing schemes.

The Boost has been provided on an administrative basis since its announcement and this Bill will provide legislative backing to the Boost.

With the introduction of this legislation, the opportunity is also being taken to amend the *First Home Owner Grant Act 2000* ('the Act') to clarify the application of discretions provided to the Commissioner to vary statutory time periods and to clarify when the Commissioner is required to consider whether to write off a FHOG liability.

Under the current provisions of the Act, applicants must apply for the grant within 12 months of the commencement of their eligible transaction and occupy the home to which the application applies within 12 months for a continuous period of not less than 6 months.

The Commissioner has a discretion to vary these time frames.

Since the inception of the scheme in 2000, RevenueSA has interpreted the Act to enable the Commissioner to exercise his discretion to vary these time periods at any time, including after the time period has expired.

This approach provides the maximum flexibility to the Commissioner to pay the FHOG where applicants are unable to meet the strict requirements of the Act due to their particular circumstances.

RevenueSA is now concerned that, due to the structure of the FHOG Act, it is arguable that the Commissioner should only consider whether to exercise these discretions at the time that the FHOG application is made.

Given that in almost all cases the applicant is unaware of the need for the discretion to be utilised at the time of application, this would mean that the discretions are inoperative for practical purposes. It is therefore proposed to amend the Act retrospectively to give the Commissioner sufficient flexibility to exercise these discretions at any time, where there are good reasons for doing so.

In relation to the writing off of a FHOG liability, RevenueSA is concerned that the Commissioner may be under a positive duty to consider whether or not to write off a liability in all cases where it is determined that a grant is required to be paid back, regardless of whether the applicant has requested that the Commissioner consider this course of action. This concern is based on the operation of common law principles regarding the exercise of discretions.

This interpretation places a significant administrative burden on RevenueSA to seek submissions from all taxpayers who are liable to pay back a FHOG when in most cases many of these persons will have no grounds for the liability to be written off. Additionally, this interpretation would result in many applicants being given an unrealistic expectation that they may not have to repay the FHOG.

It is therefore proposed to amend the Act to override these common law principles to clarify that the Commissioner need only consider whether or not to write off a liability in cases where the applicant has specifically applied to the Commissioner for this to occur or if the Commissioner is satisfied that action to recover the debt is impractical or unwarranted.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The clause provides for the majority of the measure to be taken to have come into operation on 14 October 2008. Certain provisions will come into operation on assent.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *First Home Owner Grant Act 2000*

4—Amendment of section 12—Criterion 5—Residence requirement

Section 12 is amended by this clause to make it clear that the Commissioner may, if he or she considers that there are good reasons for doing so, vary the residence requirement in respect of a particular applicant. Under section 12(1), an applicant for a first home owner grant must occupy the home to which the application relates as his or her principal place of residence for a continuous period of at least 6 months. That period of residence is to commence within 12 months after completion of the eligible transaction. Under proposed subsection (3), the Commissioner will be able to vary the residence requirement at any time by approving a shorter residence period or a longer completion period. A residence requirement that is so varied is to be taken to have been to applicant's residence requirement from the date of the determination of his or her application.

5—Substitution of section 13A

This clause deletes the provision of the Act relating to special eligible transactions and substitutes a new section.

13A—Special eligible transactions

Under proposed section 13A, the following are special eligible transactions:

- an eligible transaction that is a contact for the purchase of a home made between 14 October 2008 and 31 December 2009 (this does not include a contract for an 'off the plan' purchase of a new home);
- an eligible transaction that is a comprehensive home building contract for a new home if it is made between 14 October 2008 and 31 December 2009 and the building work commences within 26 weeks of the contract being made and the contract states that the eligible transaction must be completed with 18 months following commencement (or the eligible transaction is so completed);
- an eligible transaction that is the building of a new home by an owner-builder if the commencement date is between 14 October 2008 and 31 December 2009 and the transaction is completed within 18 months following the commencement of the building work;
- an eligible transaction that is a contract for an 'off-the-plan' purchase of a new home if the contract is made between 14 October 2008 and 31 December 2009 and the contract states that the eligible transaction must be completed on or before 31 December 2010, 31 March 2011 or 30 June 2011 (the applicable date being determined by reference to the date on which the contract was entered into) (or the eligible transaction is completed on or before that date).

However, a contract is not a special eligible transaction if the Commissioner is satisfied that it replaces a contract for the purchase of the same home, or a comprehensive home building contract to build the same or a substantially similar home, made before 14 October 2008.

Various terms used in section 13A, including *contract for an 'off-the-plan' purchase*, *new home* and *substantially renovated home* are defined in subsection (8). Subsection (9) provides that the Governor may, by regulation, alter a date or period specified in the section, or determine some other transaction to be a special eligible transaction. Any such alteration or determination must be consistent with the Commonwealth/State scheme for the payment of grants under the Act.

6—Amendment of section 18—Amount of grant

Section 18, which specifies the amount of the first home owner grant, is amended by incorporating some of the provisions of section 18A, which is to be repealed, in an amended form.

As amended, section 18 will provide that if an eligible transaction is a special eligible transaction, the amount of the first home owner grant will be increased by an additional payment as follows:

- if the transaction is a contract for the purchase of a home that is not a new home and the commencement date of the transaction is between 14 October 2008 and 30 September 2009, the additional payment will be $7,000;
- if the transaction is a contract for the purchase of a home that is not a new home and the commencement date of the transaction is between 1 October 2009 and 31 December 2009, the additional payment will be $3,500;
- if the transaction is some other type of special eligible transaction and the commencement date of the transaction is between 14 October 2008 and 30 September 2009, the additional payment will be $14,000;
- if the transaction is some other type of special eligible transaction and the commencement date of the transaction is between 1 October 2009 and 31 December 2009, the additional payment will be $7,000.

7—Repeal of section 18A

Section 18A is repealed by this clause. That section relates to earlier special eligible transactions. Provisions relating to current transactions are to be incorporated into section 18.

8—Amendment of section 18B—Bonus grant

Section 18B(3) is deleted. The subsection is no longer required because of the insertion of section 18C by clause 9.

9—Insertion of section 18C

This clause inserts a new section.

18C—Amount of grant must not exceed consideration

Proposed section 18C has the effect of preventing the total payment made to an applicant for a first home owner grant from exceeding the consideration for the eligible transaction.

10—Amendment of section 20—Payment in anticipation of compliance with residence requirement

This amendment is consequential on the amendment made to section 12 by clause 4. The amendment is necessary because the Commissioner may, under section 12 as amended, revise an applicant's residence requirement. Under section 20 as amended, an applicant who fails to meet the original residence requirement will not be committing an offence if he or she fails, in relation to that original requirement, to fulfil the conditions specified in section 20(2).

11—Amendment of section 40—Power to recover amount paid in error etc

Section 40(6) currently provides that the Commissioner may write off the whole or part of a liability to pay an amount to which section 40 applies. The Commissioner must be satisfied that action to recover the amount outstanding is impracticable or unwarranted. The amendment made by this clause makes it clear that the Commissioner may write off a liability on application or on his or her own initiative. The Commissioner is under no obligation to consider whether to act under subsection (6) unless or until an application is made or it otherwise appears necessary for him or her to do so.

12—Insertion of section 40A

This clause inserts a new section.

40A—Extensions of time

Proposed section 40A provides that if the Commissioner is authorised to extend a time limit, or to shorten a minimum period, under the Act, he or she may extend the time limit or shorten the period even if it has already expired (but only if to do so is consistent with the provisions of the Act).

13—Amendment of section 46—Regulations

This consequential amendment removes a reference to section 18A, which is to be repealed, and substitutes a reference to section 18.

Debate adjourned on motion of Mr Hamilton-Smith.

PERSONAL PROPERTY SECURITIES (COMMONWEALTH POWERS) BILL

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs, Minister for Veterans' Affairs) (12:03): Obtained leave and introduced a bill for an act to refer certain matters relating to security interests in personal property to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth. Read a first time.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs, Minister for Veterans' Affairs) (12:03): I move:

That this bill be now read a second time.

The Personal Property Securities (Commonwealth Powers) Bill 2009 and the Commonwealth Personal Property Securities Bill 2009 will result in a reform to the law of personal property securities. The reforms are the result of much work examining existing personal property security schemes in overseas jurisdictions, and much consultation with interested parties.

The proposed bills are part of a package of reforms approved by the Council of Australian Governments aimed at moving towards a seamless national economy through the reform of business and other regulation. The reforms will make it easier for businesses to operate across state and territory borders.

The Standing Committee of Attorneys-General first considered the concept of reform of the law of personal property securities in 1991, after publication of an interim report by the Australian Law Reform Commission as a result of concerns raised by the finance and legal sectors. No further action was taken until after the publication of a favourable report on the New Zealand personal property securities legislation.

In early 2005, SCAG ministers agreed to establish an officer's working group to look at reforms in the area, and in April 2007 COAG gave its in principle support for the establishment of a national system for the registration of personal property securities, supported by a referral of legislative powers by the state to the commonwealth. As SCAG goes, that is like greased lightning.

The Personal Property Securities (Commonwealth Powers) Bill 2009 provides for the referral of power to the commonwealth parliament to establish a single national legislative scheme for the regulation and registration of security interests in personal property. Personal property is any form of property that is not land or buildings. It includes intangible property, such as contract rights, uncertified shares and intellectual property rights, such as trademarks and patents.

The personal property securities reforms will establish a single national publicly accessible electronic personal property securities register to replace the many state and territory registers and will set out the rules about the ordering priorities between competing secured interest in personal property.

The reforms will benefit individuals, consumers and businesses by delivering more certain, consistent, less complicated and cheaper arrangements for securing loans with personal property. I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The main cause of high cost under the present system is the existence of multiple regimes and multiple registers. Lenders must search multiple registers to check whether pledged property is subject to a personal property claim. Having one register will reduce costs as lenders will have to pay only one access fee for the information required, and may be able to reduce staff costs in searching and verification processes. The proposed reforms should also encourage lenders to grant loans on the basis of a security interest in personal property, where currently real property is favoured and businesses without holdings of real property are at a disadvantage when seeking debt financing.

The reforms would result in the repeal of the South Australian *Bills of Sale Act 1886, Goods Securities Act 1986, Liens on Fruit Act 1923, and Stock Mortgages and Wool Liens Act 1925,* and the transfer of the data contained on the registers under those Acts to the PPS register.

In accordance with existing practice, the Commonwealth agreed not to introduce legislation that relies on a referral from a State Parliament until at least one State had enacted referral legislation. New South Wales agreed to take the lead in introducing referral legislation and on 17 June, 2009, introduced and passed the *Personal Property Securities (Commonwealth Powers) Bill 2009.* That enabled the Commonwealth Government to introduce the Personal Property Securities Bill 2009 on 24 June, 2009.

The referral legislation is underpinned by and reflects the provisions contained in an Intergovernmental Agreement signed on 8 October, 2008. The referral legislation provides that statutory licences created under the State and Territory legislation that are transferable, will in-principle, be personal property for the purposes of the PPS legislation, but where State legislation expressly excludes a licence, right, entitlement or authority from the application of the PPS legislation, the State legislation will prevail. There may be sound public policy reasons for preventing any form of security interest being registered against a statutory licence or other entitlement. If it is considered necessary, those transferable licences and entitlements will be exempted when the Government introduces consequential amendments to various pieces of State legislation later in the year.

The referral legislation makes special provision in relation to water rights and fixtures. Although private sector stakeholders were keen to have the PPS Act apply to fixtures, their inclusion might have had an impact on the integrity and indefeasibility of the Torrens title system. The Standing Committee of Attorneys-General has agreed to further work being undertaken and to a review of the current law and the future treatment of fixtures as personal property for the purposes of the PPS Bill. Consequently, the referral legislation includes separate commencement provisions in relation to these matters.

Finally, the referral legislation does not refer power regarding State laws that provide for the confiscation, seizure, extinguishment or other forfeiture of property or interests in property, in connection with the enforcement of Sate laws.

Industry supports the proposed reforms to personal property securities and is working to revise business practices before the commencement of the scheme in 2010.

I am pleased that the Government is now also introducing legislation to progress the reforms that will assist business operations throughout Australia and reduce costs and red-tape for businesses and individuals in South Australia.

I commend the Bill to Members.

Explanation of Clauses

1—Name and purpose of Act

This clause sets out the name (also called the short title) and the purpose of the proposed Act.

2—Commencement

This clause provides for the commencement of the provisions of the proposed Act (other than proposed section 6(2), (3) and (4)) on the date of assent to the proposed Act. Proposed section 6(2), (3) and (4) (which make the amendment references to the Commonwealth Parliament) will commence on a day or days appointed by proclamation of the Governor.

3—Definitions

This clause defines certain terms and expressions used in the proposed Act, including the following.

The expression *law of the State* is defined to mean any Act of the State or any instrument made under such an Act, whenever enacted or made and as in force from time to time. The expression is intended to cover both existing and future Acts and instruments as enacted, made and amended from time to time.

The expression *excluded State statutory right* is defined to mean a right, entitlement or authority that is granted by or under a law of the State (which is referred to in the proposed Act as a *State statutory right*) that is declared by that law not to be personal property for the purposes of the Commonwealth PPS Act. As a result of the ambulatory nature of the definition of *law of the State* referred to above, the expression will extend to declarations that are made in relation to both existing and future State statutory rights.

The expression *express amendment* is defined to mean the direct amendment of the text of the Commonwealth PPS Act, but as not including enactment of a provision having substantive effect otherwise than as part of the text of that Act. Each of the amendment references is limited to the express amendment of the Commonwealth PPS Act. This ensures that the matters covered by the amendment references cannot be the source of power for other Commonwealth legislation.

The expression *personal property* is defined to mean property (including a licence) other than—

(a) land; or

(b) an excluded State statutory right.

The term *licence* is defined to mean either of the following:

(a) a transferable right, entitlement or authority to do 1 or more of the following:

(i) to manufacture, produce, sell, transport or otherwise deal with personal property;

(ii) to provide services;

(iii) to explore for, exploit or use a resource;

(b) a transferable authority to exercise rights comprising intellectual property.

The term *licence*, however, does not include any excluded State statutory right.

4—Meaning of referred PPS matters

This clause defines the expression *referred PPS matters* in relation to personal property that is the subject of the different amendment references under the proposed Act. The expression is defined to mean—

(a) the matter of security interests in the personal property; and

(b) without limiting the generality of paragraph (a), each of the following matters:

(i) the recording of security interests, or information with respect to security interests, in the personal property in a register;

(ii) the recording in such a register of any other information with respect to the personal property (whether or not there are any security interests in the personal property);

(iii) the enforcement of security interests in the personal property (including priorities to be given as between security interests, and as between security interests and other interests, in the personal property).

The proposed section, however, excludes from the expression the matter of making provision with respect to personal property or interests in personal property in a manner that excludes or limits the operation of a law of the State to the extent that the law makes provision with respect to—

(a) the creation, holding, transfer, assignment, disposal or forfeiture of a State statutory right; or

(b) limitations, restrictions or prohibitions concerning the kinds of interests that may be created or held in, or the kinds of persons or bodies that may create or hold interests in, a State statutory right; or

(c) without limiting the generality of paragraph (a) or (b)—any of the following matters:

(i) the forfeiture of property or interests in property (or the disposal of forfeited property or interests) in connection with the enforcement of the general law or any law of the State;

(ii) the transfer, by operation of that law of the State, of property or interests in property from any specified person or body to any other specified person or body (whether or not for valuable consideration or a fee or other reward).

Paragraphs (a) and (b) of the above exclusions from the referred PPS matters are intended to limit the power of the Commonwealth Parliament to use an amendment reference to exclude or limit the power of the State to administer, vary and abrogate any State statutory rights (such as licences) that it creates from time to time.

Paragraph (c) of the above exclusions from the referred PPS matters is intended, among other things, to preserve the operation of laws of the State that provide for the confiscation of the proceeds of crimes or for the transfer by or under a law of the State of assets from defunct bodies.

5—Meaning of security interest in personal property

This clause defines the expression *security interest* in personal property. Generally speaking, a security interest in personal property is an interest in relation to the property provided for by a transaction that, in substance, secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property). However, the proposed section also makes it clear that a security interest may encompass certain other interests provided for by a transaction regardless of whether or not the transaction secures payment or performance of an obligation. An example of such an interest is an interest of a lessee or bailor under a lease or bailment of goods.

6—Initial and amendment references

Clause 6(1) provides for the inclusion of the referred provisions in a Commonwealth Act enacted in the terms, or substantially in the terms, of the tabled text. The expression 'substantially in the terms' of the tabled text will enable minor adjustments to be made to the tabled text.

Clause 6(2) in effect refers matters to the Commonwealth Parliament in connection with the future amendment of the Commonwealth PPS Act concerning security interests in personal property (other than fixtures or water rights).

Clause 6(3) in effect refers matters to the Commonwealth Parliament in connection with the future amendment of the Commonwealth PPS Act concerning security interests in fixtures.

Clause 6(4) in effect refers matters to the Commonwealth Parliament in connection with the future amendment of the Commonwealth PPS Act concerning security interests in transferable water rights (other than excluded State statutory rights).

Clause 6(5) removes a possible argument that 1 of the references might be limited by any of the other references (except as provided by clause 6 (2), which excludes fixtures and water rights from the reference made by that proposed subsection).

Clause 6(6) makes it clear that the reference of a matter has effect only to the extent that the matter is not otherwise within the legislative power of the Commonwealth Parliament and to the extent that the matter is within the legislative power of the State Parliament.

Clause 6(7) makes it clear that the State Parliament envisages that the Commonwealth PPS Act can be amended or affected by Commonwealth legislation enacted in reliance on other powers (though this may be the subject of provisions in the Intergovernmental Agreement that will underpin the scheme) and that instruments made or issued under the Commonwealth PPS Act may affect the operation of that legislation otherwise than by express amendment.

Clause 6(8) specifies the period during which a reference has effect. Each reference will begin when the subsection that makes the reference commences and end when the period of that particular reference is terminated under the proposed Act.

7—Termination of references

This clause deals with the termination of the period of the references specified under clause 6 (namely, the period ending on a day fixed by the Governor by proclamation). The clause enables the periods of all references to be terminated at the same time or only the periods of any or all of the amendment references.

8—Effect of termination of amendment references before initial reference

This clause makes it clear that the separate termination of the period of an amendment reference does not affect laws already in place. Accordingly, the amendment reference continues to have effect to support those laws unless the period of the initial reference is also terminated.

9—Evidence of tabled text

This clause provides for the accuracy of a copy of the tabled text containing the proposed Commonwealth PPS Act to be certified by the Clerk of the Legislative Assembly of New South Wales. Such a certificate is evidence of the accuracy of the tabled text and that the text was in fact tabled as contemplated by the Bill.

Debate adjourned on motion of Mr Hamilton-Smith.

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

The Hon. P. CAICA (Colton—Minister for Agriculture, Food and Fisheries, Minister for Industrial Relations, Minister for Forests, Minister for Regional Development) (12:08): Obtained leave and introduced a bill for an act to amend the National Electricity (South Australia) Act 1996. Read a first time.

The Hon. P. CAICA (Colton—Minister for Agriculture, Food and Fisheries, Minister for Industrial Relations, Minister for Forests, Minister for Regional Development) (12:08): 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.

In recent years, a number of significant reforms have been made to energy markets in Australia. Under the guidance of the Ministerial Council on Energy (MCE), Australia has moved towards greater national consistency of governance and regulation. The reforms have aimed to ensure efficient infrastructure investment and promote competitive energy markets.

In February 2006, the Council of Australian Governments (COAG) agreed to a progressive national roll-out of 'smart' electricity meters to allow the introduction of time of day pricing and to allow users to better manage their demand for peak power only where benefits outweigh costs for residential users and in accordance with an implementation plan that has regard to costs and benefits and takes account of different market circumstances in each State and Territory. COAG directed MCE to oversee this process.

After reviewing a national smart metering cost benefit analysis in 2008 MCE noted a wide range of potential net benefits, but that benefits and costs were not certain in all jurisdictions. Given the potential net benefits MCE supported the development of a national smart metering framework and smart meter deployments initially in Victoria and New South Wales. Ministers agreed to further progress the smart meter roll-out by undertaking coordinated pilots and business-specific business case studies in most jurisdictions (not including South Australia and Tasmania). These pilots and business cases seek to confirm the findings of the cost-benefit analysis, reduce the range of uncertainty to inform whether a roll-out should proceed, and also inform the development of roll-out implementation plans to maximise benefits. This Bill establishes the first element of the national framework and provides support for pilots.

This Bill, although only making minor amendments to Australia's national energy market legislation, reflects another significant reform of the energy sector overseen by MCE. The Bill amends the National Electricity Law (the NEL), a schedule to the National Electricity (South Australia) Act 1996, to provide heads of power for State and Territory energy Ministers to decide the scope and timing of smart meter pilots and roll-outs of smart meters for their jurisdiction. Ministers will be able to require an electricity distributor to conduct a pilot or roll-out where the Minister is satisfied that the requirement would be in the long-term interests of consumers.

The Bill:

- supports timely and nationally co-ordinated pilots, the outcomes of which will better inform the development of jurisdictional roll-outs and the national cost benefit analysis;
- facilitates information sharing across jurisdictions conducting smart metering activities by enabling a Minister to specify that a distributor must provide the information derived from smart meter pilots; and
- facilitates cost recovery by distribution businesses.

The Bill provides a mechanism to roll out or pilot smart meters in a jurisdiction by introducing a head of power allowing jurisdictional Ministers to make a Ministerial smart metering determination that would require a distribution business to conduct a trial, assessment or roll-out of smart metering and related technologies. The Bill has no effect, including on any existing smart metering deployments, except where a minister issues a smart metering determination.

A Ministerial smart metering determination will have the effect of changing the regulatory obligation on the distribution business, triggering a mechanism for recovery of efficient direct costs in accordance with the National Electricity Rules (the Rules). Ministers also recognise the importance of promptly passing on cost efficiencies resulting from smart metering to customers affected by the costs of a roll-out.

The sharing of information obtained from smart meter trials and assessments is essential to the MCE commitment to smart meters. In 2012, MCE will review the smart meter cost benefit analysis in light of the results of smart meter trials and assessments, at which time Ministers will review jurisdictional deployment timelines and any requirement for further analysis. Ministers will be relying on this information to decide if a roll-out should proceed, and to assist in the development of roll-out implementation plans to maximise benefits. The MCE is conscious of the commercial interests of businesses involved in pilots. Therefore, a determination cannot oblige a distribution business to make information publicly available in a way that would identify the person to whom the information relates unless the business has the written consent of the relevant person.

Before issuing a pilot determination a Minister must consult with a person or body that the Minister considers has an interest in the determination.

Direct load control (DLC) is showing itself to be an important and beneficial way of assisting consumers to manage their energy consumption during peak times, whether independently or in conjunction with smart meters. Direct load control focuses on remotely switching loads such as air conditioning, pool pumps or water heaters that are operating during peak load periods. Consequently, the head of power included in the Bill that supports pilots of smart metering and related technologies, also captures direct load control trials. Technology created primarily for the purpose of direct load control is specifically included as a 'related technology' to smart meters in the trial context. While the national smart metering cost benefit analysis does not support further trials or roll-outs of smart meters in South Australia at this point, direct load control shows strong potential to reduce costs for consumers in a way that works for them. This government will continue to support further development of direct load control to help contain electricity costs for consumers.

The Bill allows a jurisdictional Minister to make a Ministerial smart meter roll-out determination, placing a regulatory obligation on a distribution business to roll out smart meters.

Before issuing a Ministerial roll-out determination, a Minister must consult publicly on it and must have regard to the National Electricity Objective. These conditions provide a safeguard that the determination is appropriate and the long-term interests of electricity consumers are protected.

A Ministerial roll-out determination cannot be inconsistent with the National Electricity Rules, which will contain the detailed elements of the national framework for smart meters. The prescription of detailed requirements under the National Electricity Rules places them under the transparent institutional governance arrangements that this Parliament has established on behalf of all Australians for the process by which Rules are made. It also provides an expectation of long-term consistency of requirements for smart metering, increasing the national character of arrangements for the electricity market. The Bill does, however, provide individual Ministers with the discretion to specify the date or dates by which infrastructure and services must be provided, allowing different levels of service to be delivered in different locations and times during the roll-out period. This discretion allows specific differences in circumstances to be taken into account in support of the objective of delivering long-term net benefits for electricity consumers.

Businesses are required to comply with a Ministerial smart meter roll-out determination despite any other contract or agreement. This is to support the benefits a mass roll-out can deliver. In having regard to the National Electricity Objective, a Minister would be expected to consider implications for existing contracts as advised by businesses during consultation.

In complying with a Ministerial smart meter roll-out determination, a specified regulated distribution network operator will be the exclusive provider of metering services for relevant metering installations. An MCE Initial Rule will be inserted in Chapter 11 (Savings and Transitional Rules) of the Rules. The Initial Rule implements, as a transitional measure, MCE's Statement of Policy Principles with regard to responsibility for smart metering during a roll-out. Section 90C of the Bill includes the necessary head of power to allow this Rule to be made.

Where a jurisdiction has already developed and mandated a smart meter program consistent with COAG and MCE commitments, it is anticipated that the jurisdiction will establish an appropriate transition arrangement. Further, in the case of Victoria, it is understood that the State will seek support to have the major elements of its current advanced metering infrastructure project recognised as consistent with the national framework.

As jurisdictions roll out smart meters over different periods and at different times, the costs and benefits as shown by pilots should become clearer for each jurisdiction. These amendments are intended as transitional arrangements to support the mandate of smart meters and as such should not remain as law in perpetuity. MCE will therefore review, by 2020, the ongoing need for these NEL amendments.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause provides that the measure amends the *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996*.

Part 2—Amendment of *National Electricity Law*

Division 1—Smart meter amendments

4—Amendment of section 2—Definitions

This clause provides new definitions for the definition section (section 2) of the *National Electricity Law*.

5—Insertion of Part 8A

This inserts a new Part concerning smart metering services.

Part 8A—Smart metering services

Division 1—Interpretation

118A—Definitions

This section provides new definitions for Part 8A.

Division 2—Ministerial pilot metering determinations

118B—Ministerial pilot metering determinations

This section permits Ministers of participating jurisdictions to make Ministerial pilot determinations. A Ministerial pilot determination may include trials of direct load control technologies.

118C—Consultation with interested persons required before making Ministerial pilot metering determination

This provision requires Ministers to consult before making a pilot determination.

Division 3—Ministerial smart meter rollout determinations

118D—Ministerial smart meter rollout determinations

This section permits Ministers of participating jurisdictions to make Ministerial smart meter rollout determinations and specifies what a determination may or must contain, including when the determination expires.

118E—Public consultation required before making Ministerial smart meter rollout metering determination

This section requires Ministers to consult before making smart meter rollout determinations.

Division 4—Provisions applicable to Ministerial smart metering determinations

118F—Compliance with Ministerial smart metering determinations

This section requires a regulated distribution system operator to comply with a Ministerial smart metering determination.

118G—Minister of participating jurisdiction must consult with other participating jurisdiction Ministers

This section requires a Minister of a participating jurisdiction to consult with the Ministers of other participating jurisdictions before making a Ministerial smart metering determination.

118H—Content of Ministerial smart metering determinations

This section lists the content of a Ministerial smart metering determination.

118I—Publication and giving of Ministerial smart metering determinations

This section requires publication of a Ministerial smart metering determination.

118J—When Ministerial smart metering determinations take effect

This section provides for the determination of the date of effect of a Ministerial smart metering determination.

118K—AEMC must publish Ministerial smart metering determination it receives on its website

This section requires the AEMC to publish Ministerial smart metering determinations on its website.

Division 2—Other related amendments

6—Insertion of section 90C

Proposed new section 90C allows the South Australian Minister to make initial Rules concerning smart metering services.

Debate adjourned on motion of Mr Hamilton-Smith.

NATIONAL GAS (SOUTH AUSTRALIA) (SHORT TERM TRADING MARKET) AMENDMENT BILL

The Hon. P. CAICA (Colton—Minister for Agriculture, Food and Fisheries, Minister for Industrial Relations, Minister for Forests, Minister for Regional Development) (12:09): Obtained leave and introduced a bill for an act to amend the National Gas (South Australia) Act 2008. Read a first time.

The Hon. P. CAICA (Colton—Minister for Agriculture, Food and Fisheries, Minister for Industrial Relations, Minister for Forests, Minister for Regional Development) (12:10): I move:

That this bill be now read a second time.

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

Leave granted.

A key energy commitment of the Ministerial Council on Energy (MCE) is being delivered through new legislation to increase transparency and improve efficiency in the Australian gas market, for the benefit of South Australians and all Australians.

In April 2004, the MCE agreed to a gas market reform program that would accelerate the development of a reliable, competitive and secure gas market which would further increase the penetration of natural gas. In December 2004, MCE approved a set of Principles for Gas Market Development as a basis for developing the Australian gas wholesale market.

The MCE subsequently established the Gas Market Leaders Group (GMLG) as a key industry forum to develop a Gas Market Development Plan that is consistent with the MCE Principles for Gas Market Development. The GMLG was established with an Independent Chair and broad representation from all sectors of the natural gas market, including;

- gas producers;
- gas transmission and distribution network owners and operators;
- gas retailers;
- gas retail and wholesale market operators (eg, VENCorp, REMCo or GMCo); and
- gas users.

The GMLG's Gas Market Development Plan was completed in June 2006. Included as part of the Development Plan was a recommendation to establish a single national gas market operator as well as three initiatives focussed on improving information disclosure and market transparency:

- the Natural Gas Services Bulletin Board;
- the Gas Statement of Opportunities; and
- a Short Term Trading Market (STTM) for wholesale gas.

The single national gas market operator was established as part of the Australian Energy Market Operator (AEMO) following the passage of enabling legislation earlier this year. AEMO assumed responsibility for both the gas and electricity markets on 1 July 2009.

The Natural Gas Services Bulletin Board was established in 2008 with the commencement of the new National Gas Law (NGL) and is now administered by AEMO. The legislation supporting the Gas Statement of Opportunities came into force with the establishment of AEMO in July and the first Gas Statement of Opportunities will be published by AEMO in December this year. The amendments to establish the STTM complete the implementation of the Gas Market Development Plan's initiatives to improve information disclosure and transparency in the gas market.

The GMLG has provided an important ongoing forum for stakeholders to participate in the development of these important reforms, with the MCE at its most recent meeting expressing their appreciation to the GMLG and its independent Chair, Mr Ted Woodley, for their significant contributions to the STTM design and other gas reform initiatives over the past four years.

Objectives

The STTM establishes a mandatory price based balancing mechanism for gas delivered to, and withdrawn from market hubs that will replace existing mechanisms between retailers, self-contracting users and shippers. The STTM will initially operate in South Australia and New South Wales at hubs around Adelaide and Sydney. The market has been designed to allow additional hubs in all jurisdictions to be added in the future.

The proposed trading market will not replace bilaterally negotiated long term contracts which will continue to form the basis of gas markets. Rather, it integrates long term contracts with current market conditions through a more flexible, responsive exchange system that provides opportunities to both new and established players.

The STTM will provide clear market signals to existing participants, potential entrants and consumers. These signals should encourage more informed investment and risk management decisions while facilitating secondary trading between shippers and users as well as for gas-fired power generators and for trading over interconnecting pipelines. In addition, the STTM is designed to facilitate greater demand side response by users, particularly at times of supply constraints while enhancing market liquidity.

The STTM, with its integration of long standing contracting framework and new competitive mechanisms, will provide a solid foundation for the next phase of gas market reform as it continues to evolve and expand across

Australia. It also builds upon the existing achievements of the National Electricity Market (NEM) and continues the convergence between Australian energy markets.

Subject to the passage of the enabling legislation, it is intended that the STTM commence in winter 2010.

The NGL Amendments

These amendments to the NGL contain the key provisions that provide the legislative framework for the STTM. This framework provides for the operational provisions of the STTM to be detailed in dedicated chapters of the National Gas Rules (NGR) and in a new set of Market Procedures. The changes to the NGL and NGR were developed by MCE in consultation with GMLG. The successful partnership between industry and jurisdictions has been a hallmark of gas market reform and has been critical in the development of the STTM.

The NGL provisions have been guided by the wider MCE legislative framework that has developed over the past five years. Where appropriate, provisions have been prepared with reference to similar provisions for the Victorian wholesale market and retail markets and precedents in the NEM.

The amendments to the NGL were released for public consultation in the first half of 2009, followed by the amendments to the NGR in August-September 2009.

The main elements of the NGL amendments are outlined below:

Application of the STTM

The STTM is intended to operate initially in New South Wales and South Australia in clearly defined hubs within the metropolitan areas, which will be specified in the NGR. To facilitate this process, the new s91BRA provides that the STTM provisions will only apply in jurisdictions which have legislated to adopt them. South Australia is adopting the STTM as part of this package and it is anticipated that New South Wales will adopt the provisions prior to the start of the market. Other jurisdictions may choose to adopt the STTM in the future.

AEMO's Statutory Functions

Amendments to s91A empower AEMO to perform its 'STTM Functions'. These are defined at a high level in the new s91BRB which permits AEMO to operate and administer the STTM and to make Procedures covering the operation of the market. The detail of how AEMO will perform these functions will mostly be dealt with in the NGR.

Market Participation

The new Subdivision 2 of Division 2A provides support for Rules governing registration to participate in the STTM and prohibits the injection of gas into a hub by a person who is not registered. These provisions are modelled on the market participation provisions being placed in the NGL for the Victorian wholesale market and the retail markets. They provide high level support for registration while leaving the detail of the registration process in the NGR.

STTM Procedures

Subdivision 3 of Division 2A allows AEMO to make the STTM Procedures. It is modelled on the procedure making powers for the Victorian wholesale market and the regulated retail markets. The process for making Procedures in Part 15B of the NGR will apply to these Procedures.

STTM Information

Section 91FEA obliges the following classes of people to provide information to AEMO if required by the Rules:

(a) an STTM trading participant;

(b) a service provider;

(c) a storage provider;

(d) a producer; and

(e) another person who is prescribed by the Regulations.

Failure to provide information under this provision will attract a civil penalty while providing false or misleading information is an offence under s91FEC.

AEMO will not be empowered to use market information instruments to gather information for the STTM.

Title to and Quality of Gas

The new ss91BRF and 91BRG requires any Registered Participant delivering gas to a hub to demonstrate that they have title to that gas and that the gas meets any applicable quality standards. The Rules will specify how title to gas is transferred in the STTM and which gas quality standards apply.

Urgent Rule Change

The definition of 'urgent rule' in s290 of the NGL has been amended to allow urgent rules to be made if failure to make the rule would threaten or prejudice the operation of a regulated gas market. This change makes this provision consistent with its equivalent in s87 of the *National Electricity Law*.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will come into operation by proclamation.

3—Amendment provisions

This measure will amend—

(a) the *National Gas Law*, as set out in the *National Gas (South Australia) Act 2008*; and

(b) the *National Gas (South Australia) Act 2008*.

Part 2—Amendment of *National Gas Law*

Division 1—Short term trading market amendments

4—Amendment of section 2—Definitions

This clause provides new definitions for the definition section (section 2) of the *National Gas Law*.

5—Amendment of section 3—Meaning of civil penalty provision

This clause amends section 3 of the *National Gas Law* to add to the meaning of civil penalty provision.

6—Amendment of section 4—Meaning of conduct provision

This clause amends section 4 of the *National Gas Law* to add to the meaning of conduct provision.

7—Amendment of section 74—Subject matter for National Gas Rules

This clause allows the AEMC to make Rules governing the operation of the Short Term Trading Market (STTM).

8—Amendment of section 91A—AEMO's statutory functions

This clause amends AEMO's statutory functions to allow it to operate the STTM.

9—Insertion of Chapter 2 Part 6 Division 2A

This clause inserts a new Division governing the operation of the STTM.

Division 2A—Short term trading markets

Subdivision 1—Preliminary

91BRA—Application of this Division

This section provides for the adoption of this Division by jurisdictions.

91BRB—AEMO's STTM functions

This section lists AEMO's STTM functions.

Subdivision 2—Short term trading markets

91BRC—Market participation

This section lists participants in the STTM.

91BRD—Registration required for market participation

This section requires participants in the STTM to register.

91BRE—Certificates of registration etc

This provision allows AEMO to issue certificates certifying that a person is registered to participate in the STTM.

91BRF—Title to gas

This section prohibits participants from delivering gas to an STTM hub unless they hold title to the gas.

91BRG—Gas supplied to STTM hub must meet quality specifications specified in the Rules

This section prohibits participants from delivering gas to an STTM hub unless the gas meets applicable gas quality standards.

Subdivision 3—STTM Procedures

91BRH—STTM Procedures

This section enables AEMO to, in accordance with the Rules, make STTM Procedures.

91BRI—Nature of STTM Procedures

This section outlines the requirements around making the STTM Procedures.

91BRJ—Compliance with STTM Procedures

This section outlines the need for AEMO and applicable parties to comply with a STTM Procedure.

10—Insertion of new Subdivision heading in Chapter 2 Part 6 Division 6

This clause inserts a new Subdivision heading.

11—Insertion of Chapter 2 Part 6 Division 6 Subdivision 2

This clause inserts a new Subdivision into the law concerning STTM information.

Subdivision 2—STTM information

91FEA—Obligation to give information to AEMO

This section requires certain classes of people to provide information to AEMO for the operation of the STTM.

91FEB—Person cannot rely on duty of confidence to avoid compliance with obligation

This section prevents parties from relying on duties of confidence to avoid complying with a request for information.

91FEC—Giving to AEMO false and misleading information

This section provides a criminal penalty for providing false or misleading information.

91FED—Immunity of persons giving information to AEMO

This section provides immunity for persons giving STTM information to AEMO unless they act negligently or in bad faith.

12—Insertion of section 294B

294B—South Australian Minister to make initial Rules related to AEMO's declared STTM functions

This clause allows the South Australian Minister to make initial Rules governing the STTM.

13—Amendment of Schedule 1—Subject matter for the National Gas Rules

This clause makes various amendments to Schedule 1 to allow Rules concerning the STTM.

14—Amendment of Schedule 2—Schedule applies to statutory instruments

This clause makes minor technical amendments to Schedule 2.

15—Amendment of Schedule 3—New Part 12

This clause amends Schedule 3 to allow AEMO to make the initial STTM Procedures.

Division 2—Other amendments

16—Amendment of section 2—Definitions

This clause inserts a definition of *market operator service*.

17—Amendment of section 91A—AEMO's statutory functions

This clause amends section 91A to allow AEMO to conduct market trials.

18—Insertion of Chapter 2 Part 6 Division 11

This clause inserts a new section.

Division 11—Other matters

91KD—Disclosure of information for purpose of market trials

This section allows disclosure of information for the purposes of a market trial.

19—Amendment of section 290—Definitions

This clause inserts a new definition of *urgent Rule*.

Part 3—Amendment of *National Gas (South Australia) Act 2008*

20—Insertion of section 23

The new provisions relating to the short term trading market will only apply in relation to a particular jurisdiction if the law of that jurisdiction so provides. This clause will apply the provisions to South Australia.

Debate adjourned on motion of Mr Hamilton-Smith.

STATUTES AMENDMENT (ELECTRICITY AND GAS—INFORMATION MANAGEMENT AND RETAILER OF LAST RESORT) BILL

The Hon. P. CAICA (Colton—Minister for Agriculture, Food and Fisheries, Minister for Industrial Relations, Minister for Forests, Minister for Regional Development) (12:10): Obtained leave and introduced a bill for an act to amend the Electricity Act 1996 and the Gas Act 1997. Read a first time.

The Hon. P. CAICA (Colton—Minister for Agriculture, Food and Fisheries, Minister for Industrial Relations, Minister for Forests, Minister for Regional Development) (12:11): 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 Technical Regulator has various powers and functions under the *Electricity Act 1996* and the *Gas Act 1997* (the Acts), related mainly to the monitoring and regulation of safety and technical standards with respect to the electricity and gas supply industries.

The Bill includes amendments to remove barriers in section 11 of the *Electricity Act 1996* and section 11 of the *Gas Act 1997* to the provision, by the Technical Regulator of information gained in the course of performance of the Technical Regulator's functions under the Acts, to other parties, and to extend the existing Retailer of Last Resort (RoLR) regime for a further five years to 2015.

Section 11 of each Act requires the Technical Regulator to preserve the confidentiality of information that could affect the competitive position of an electricity or gas entity or another person, or is commercially sensitive for some other reason. The only disclosure of such information that is expressly allowed is between persons engaged in the administration of the Acts, including the Essential Services Commission of South Australia (ESCOSA).

As worded, there is doubt as to whether the Technical Regulator is permitted to pass confidential information to a range of other authorities, such as the Crown Solicitor's Office for purposes of the administration or enforcement of the Acts that the Technical Regulator administers. Similarly, there is doubt as to whether confidential information may be provided to the Commissioner for Consumer Affairs, who is responsible for the licensing of electrical and gas contractors, electricians and gas fitting workers under the *Plumbers, Gas Fitters and Electricians Act 1995* and disciplinary proceedings for its enforcement. The Bill will, in specified circumstances, enable the Technical Regulator to pass information to the Crown Solicitor's Office and the Commissioner for Consumer Affairs to assist in the proceedings, as well as to ESCOSA and the Minister.

The Bill also enables, again in defined circumstances, the Technical Regulator to pass information to South Australian, interstate or Commonwealth government bodies to assist them with the administration and enforcement of other laws. This applies when, for example, persons who are the subject of an investigation for non-compliance with safety requirements under the Acts move interstate to continue such activities.

The Bill also permits confidential information to be provided to other Government agencies for purposes related to the performance of their functions. This enables the Technical Regulator to be involved in schemes such as the auditing of insulation rebates on behalf of the Commonwealth. The laying of insulation is covered by Standards, compliance with which is required by regulations under the *Electricity Act 1996*.

The Bill also clarifies that information may be provided with the consent of the person who provided the information, or to whom the information relates, as required by a court or Tribunal, and enables it to be provided as authorised by the Minister.

The Bill also deletes a reference in section 11 of the *Gas Act 1997* to the repealed *Gas Pipelines Access (South Australia) Law* and substitutes a reference to the current *National Gas (South Australia) Law*.

Retailer of Last Resort

A Retailer of Last Resort (RoLR) scheme is intended to ensure that electricity customers continue to receive supplies in circumstances where their existing retailer is unable to continue to provide that supply. This may be because the retailer ceases to be licensed to sell electricity or because it is unable to access electricity in the wholesale market to supply its customers.

ETSA Utilities is the current South Australian electricity RoLR. The requirement to provide RoLR services to cover a failed electricity retailer is imposed under section 23(1)(n)(ix) of the Electricity Act, with the Act specifying that this requirement continues until 30 June 2010.

The Bill extends ETSA's responsibility as the RoLR until 30 June 2015, pending resolution of a national RoLR framework, which will not occur until after 30 June 2010.

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 *Electricity Act 1996*

4—Amendment of section 11—Obligation to preserve confidentiality

This clause substitutes a new subsection (1a) into the *Electricity Act 1996* that provides the Technical Regulator with additional authority to share otherwise confidential information.

Proposed paragraph (a) provides that the Technical Regulator may share confidential information as reasonably required in connection with the administration or enforcement of the *Electricity Act 1996* or otherwise related to the performance of the Technical Regulator's functions under any other Act.

Proposed paragraph (b) provides that the Technical Regulator may share confidential information to a person concerned in the administration of another law of the State, or a law of the Commonwealth or another State or a Territory of the Commonwealth, for purposes related to the administration or operation of that other law.

Proposed paragraph (c) provides that the Technical Regulator may share confidential information to a government agency or instrumentality of this State, the Commonwealth or another State or Territory of the Commonwealth for purposes related to the performance of its functions (or to a person acting on behalf of such a government agency or instrumentality).

Proposed paragraph (d) provides that the Technical Regulator may share confidential information with the consent of the person who gave the information or to whom the information relates.

Proposed paragraph (e) provides that the Technical Regulator may share confidential information as required by a court or tribunal constituted by law.

Proposed paragraph (f) provides that the Technical Regulator may share confidential information as authorised by the Minister.

5—Amendment of section 23—Licences authorising operation of transmission or distribution network

Section 23 creates the retailer of last resort requirement that applies to a licence authorising the operation of a distribution network by an electricity entity. Currently, that requirement is to operate until 30 June 2010. This clause proposes to extend the operation of the retailer of last resort requirement until 30 June 2015.

Part 3—Amendment of *Gas Act 1997*

6—Amendment of section 11—Obligation to preserve confidentiality

This clause substitutes a new subsection (2) into section 11 of the *Gas Act 1997* that provides the Technical Regulator with additional authority to share otherwise confidential information.

Proposed paragraph (a) provides that the Technical Regulator may share confidential information as reasonably required in connection with the administration or enforcement of the *Gas Act 1997*, the *National Gas (South Australia) Law* or otherwise related to the performance of the Technical Regulator's functions under any other Act.

Proposed paragraph (b) provides that the Technical Regulator may share confidential information to a person concerned in the administration of another law of the State, or a law of the Commonwealth or another State or a Territory of the Commonwealth, for purposes related to the administration or operation of that other law.

Proposed paragraph (c) provides that the Technical Regulator may share confidential information to a government agency or instrumentality of this State, the Commonwealth or another State or Territory of the Commonwealth for purposes related to the performance of its functions (or to a person acting on behalf of such a government agency or instrumentality).

Proposed paragraph (d) provides that the Technical Regulator may share confidential information with the consent of the person who gave the information or to whom the information relates.

Proposed paragraph (e) provides that the Technical Regulator may share confidential information as required by a court or tribunal constituted by law.

Proposed paragraph (f) provides that the Technical Regulator may share confidential information as authorised by the Minister.

Debate adjourned on motion of Mr Hamilton-Smith.

RAIL COMMISSIONER BILL

The Hon. P. CAICA (Colton—Minister for Agriculture, Food and Fisheries, Minister for Industrial Relations, Minister for Forests, Minister for Regional Development) (12:11): Obtained leave and introduced a bill for an act to establish the Rail Commissioner; to make related amendments to the Railways (Operations and Access) Act 1997 and the TransAdelaide (Corporate Structure) Act 1998; and for other purposes. Read a first time.

The Hon. P. CAICA (Colton—Minister for Agriculture, Food and Fisheries, Minister for Industrial Relations, Minister for Forests, Minister for Regional Development) (12:11): 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 *Rail Commissioner Bill 2009* provides for the establishment of the Rail Commissioner for the purpose of acting as a rail transport operator under the *Rail Safety Act 2007* for the delivery of State Government rail infrastructure projects and to carry out any other function conferred on the Commissioner by the Minister for Transport.

One of the Strategic Objectives in the State Government's Strategic Infrastructure Plan is to encourage the shift to rail transport for passenger and freight movements where justified by environmental, economic or social imperatives. The Government has invested approximately $2 Billion over 10 years along with an additional $585 Million of Commonwealth funding contributions to implement this Objective through a number of major and minor rail infrastructure projects, to be delivered through the Department for Transport, Energy and Infrastructure.

In late 2007, the State Government determined that it would take responsibility for rail infrastructure assets previously owned by TransAdelaide, and for new major rail infrastructure works proposed on the train and tram network to allow TransAdelaide to concentrate on operating train and tram services. The infrastructure is now vested in the Minister for Transport.

In September 2008, the *Rail Safety Act 2007* was introduced, as part of a process towards a national regulatory scheme for rail safety. The new legislation carries new requirements for those seeking accreditation as a rail transport operator. A person or entity may only seek accreditation under that Act if he or she can establish that he or she has the 'effective management and control' of the proposed railway operations. This requirement is distinguished from the previous Rail Safety Act whereby the test was about merely being an 'owner' or an 'operator'.

The 2007 Act thereby removed the requirement for contractors to hold accreditation as an 'owner' but rather may perform their duties under the accreditation of the rail transport operator with 'effective management and control' of the proposed railway operations. For the Government, this means that rather than continuing to hire contractors with rail accreditation under the *Rail Safety Act 1996* to carry out its business, it had to reconsider and determine who would have the 'effective management and control' of the newly announced rail infrastructure projects.

A statutory body corporate was considered the best option to ensure the required independence from the Minister for Transport.

The Bill incorporates a number of provisions (particularly in relation to the powers and functions of the Rail Commissioner) that are similar to provisions contained in the *Highways Act 1926*, the *Passenger Transport Act 1994* and the *Rail Safety Act 2007*. In addition, it should be noted that this Bill is to be read in conjunction with the *Rail Safety Act 2007*.

The Rail Commissioner to be established under the Bill will be a body corporate with the statutory imperative to apply for and hold accreditation under the *Rail Safety Act 2007*. The Rail Commissioner will have the primary function of, and necessary powers to, deliver rail infrastructure projects as announced by the State Government. The Rail Commissioner will have the 'effective management and control' of these rail infrastructure projects, and will be subject to the limited direction of the Minister without derogating from the Rail Commissioner's 'effective management and control' of the projects. The Bill provides for a wider scope of operations to include rolling stock movement and maintenance, including movement for the purpose of operating a railway service. Although these functions will not be used immediately, there may be a requirement for the Rail Commissioner to have rolling stock accreditation for the testing and commissioning of the new trams if it is deemed that the Rail Commissioner has 'effective management and control' of that project.

The role of the Rail Commissioner at this point in time is to construct and deliver rail infrastructure projects, with the ongoing maintenance and management of the infrastructure being assigned to an appropriate accredited rail entity. This will generally be TransAdelaide, which will continue to act separately as another Government rail transport operator with its own accreditation for track maintenance and management and providing passenger transport services. It is the Government's wish that both the Rail Commissioner and TransAdelaide will work in partnership for the safety of rail in South Australia.

As an interim arrangement, so that rail construction contracts could be signed and work commenced, Rodney George Hook, the current Deputy Chief Executive of the Department for Transport, Energy and Infrastructure, was appointed by the Governor, pursuant to section 68 of the *Constitution Act 1934*, to be the Rail

Commissioner with the powers to do all things relevant to the undertaking of rail infrastructure projects for a period of no more than 12 months, or until the Rail Commissioner Bill was enacted, whichever was sooner. Although the appointed Rail Commissioner under the interim arrangement has been exempt from Part 4 Division 2 of the *Rail Safety Act 2007* which is the requirement to hold accreditation under that Act, he is required to act 'as if accredited' for the period of the interim appointment.

The present appointee will also be appointed as Rail Commissioner once the Bill is enacted. The appointment reflects the reporting arrangements in place within the Department for Transport, Energy and Infrastructure where Mr Hook, as Deputy Chief Executive of the Department for Transport, Energy and Infrastructure, has effective management and control of the rail infrastructure projects currently being delivered through the Department. The Bill allows for the appointment of one or more Deputy Rail Commissioners. These appointees will assist the Rail Commissioner to demonstrate 'effective management and control' and provide a significant role in the Rail Commissioner's governance structure.

The Bill provides that, with the approval of the Minister, the Rail Commissioner may make use of staff, equipment or facilities of an administrative unit of the Public Service or another agency or instrumentality of the Crown, under an arrangement with that body. It also specifies the responsibilities of the Rail Commissioner and the Commissioner's staff and gives them the power to undertake all works necessary to deliver the rail infrastructure projects as directed by the Government. The Rail Commissioner will use the resources within the Department for Transport, Energy and Infrastructure for staffing the office, and undertaking the rail infrastructure project works.

The Bill provides a structure and process, as well as capacity, to undertake the rail infrastructure projects, including the power to do associated roadworks and install traffic control devices. The Bill provides the Rail Commissioner with a high degree of autonomy when undertaking rail infrastructure projects; however Ministerial approval has been retained in accordance with other relevant statutes.

These rail infrastructure projects are a significant priority of this Government, and will allow the Government to achieve its Strategic Objective in relation to rail infrastructure for South Australia, particularly within the metropolitan area. The Rail Commissioner as a statutory authority will come under the scrutiny of the South Australian Rail Regulator and the Minister for Transport as required by the *Rail Safety Act 2007*. This demonstrates the Government's commitment to rail safety, the implementation of the new rail safety legislation as well as ensuring the delivery of safe and efficient transport infrastructure projects meeting the State Government's Strategic Objective for the benefit of commuters and the wider community.

The opportunity is also being taken in this Bill to rectify a technical irregularity with respect to the authority operating rolling stock on rail infrastructure that has been laid on a road; and with respect to constructing, repairing, altering and maintaining rail infrastructure placed on roads.

The Bill therefore amends the *Railways (Operations and Access) Act 1997* and the *TransAdelaide (Corporate Structure) Act 1998* to:

- allow rail transport operators to maintain and operate existing rail infrastructure and rolling stock on (as well as over, under, alongside, etc.) roads; and
- validate the existence of any rail infrastructure installed to date on a road by a rail transport operator; and
- enable rail transport operators to install and maintain rail infrastructure and operate on roads in the future with the Minister's approval (absolutely or conditionally).

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause contains definitions for the purposes of the measure. It also provides that, unless the contrary intention appears, an expression used in this measure that is defined in the *Rail Safety Act 2007* has the same meaning as in that Act.

Part 2—Rail Commissioner

Division 1—Establishment of Rail Commissioner

4—Establishment of Rail Commissioner

This clause establishes the *Rail Commissioner* (the *Commissioner*). The Commissioner—

- is a body corporate; and
- has perpetual succession and a common seal; and
- is capable of suing and being sued; and
- is an instrumentality of the Crown and holds property on behalf of the Crown; and

- has the functions assigned by or under this measure or another Act; and
- has the powers necessary or expedient for, or incidental to, the performance of the Commissioner's functions (including the power to enter into contracts), together with such other powers conferred by or under this measure or another Act.

The Commissioner falls within the description of a public sector agency for the purposes of the *Public Sector Management Act 1995* (and also the proposed *Public Sector Bill*) and so the relevant provisions of that Act will apply to the Commissioner.

5—Appointment etc of Rail Commissioner

The Commissioner will be constituted by a person appointed from time to time by the Governor for the purpose, and the Governor may also appoint 1 or more suitable persons to be a deputy of the Commissioner. A person appointed as a deputy of the Commissioner may act as the Commissioner in appropriate cases. The clause makes further provision in the usual terms relating to the removal of a person appointed under this proposed section or a vacancy in the office of the Commissioner.

6—Ministerial direction

This clause provides that the Commissioner is subject to the direction (which must be given in writing) of the Minister. Any such direction of the Minister must be tabled in Parliament and a statement of the fact that a direction was given must be included in the Commissioner's next annual report.

Division 2—Functions

7—Functions

This clause sets out the functions of the Commissioner. They are—

- to construct railways, railway tracks and associated track structures;
- to manage, commission, maintain, repair, modify, install, operate or decommission rail infrastructure;
- to commission, maintain, repair, modify, install, operate or decommission rolling stock;
- to operate or move, or cause the operation or movement of, rolling stock on a railway by any means (including for the purposes of constructing or restoring rail infrastructure);
- to move, or cause the movement of, rolling stock for the purposes of operating a railway service;
- to act as a rail transport operator for railway operations carried out by the Commissioner;
- to hold accreditation (if successful application is made) under the *Rail Safety Act 2007* as a rail transport operator in relation to railway operations carried out, or proposed to be carried out, by the Commissioner;
- to enter into agreements or arrangements relating to the management of risks associated with railway operations (including where rail infrastructure interfaces with roads);
- to operate passenger transport services by train or tram;
- to hold accreditation (if successful application is made) under the *Passenger Transport Act 1994* to operate passenger transport services by train or tram;
- to enter into service contracts relating to the operation of passenger transport services under Part 5 of the *Passenger Transport Act 1994*;
- to carry out any other function conferred on the Commissioner by the Minister.

The Rail Commissioner's functions include the carrying out of design work, roadwork and any other necessary or associated work relating to the Commissioner's functions.

Division 3—Special powers

8—Power to enter, inspect, etc railway premises etc

This clause provides the Commissioner (or a person authorised by the Commissioner) with the power to enter railway premises or any other land or premises to perform actions relating to the Commissioner's functions. The clause then sets out the procedures to be followed in relation to the exercise of this power.

9—Power to acquire land etc

This clause provides the Commissioner with the power—

- subject to the approval of the Minister, to acquire (by agreement or compulsory process) land or an interest in land for the purposes of carrying out railway operations, establishing or maintaining rail infrastructure or any other purpose connected with this measure; and
- subject to the approval of the Minister, to sell, transfer, lease or otherwise deal with or dispose of any land or interest in land vested in the Commissioner; and
- to remove or cut back any tree or other vegetation on or overhanging rail infrastructure.

The *Land Acquisition Act 1969* applies in relation to the compulsory acquisition of land under this clause.

10—Power to carry out works

This clause provides the Rail Commissioner with the power, subject to the approval of the Minister, to carry out such works as the Commissioner thinks fit in relation to the construction, commissioning and maintenance of rail infrastructure; the operation or management of rolling stock; the establishment, maintenance, extension, alteration or discontinuance of a passenger transport service; or any other function of the Commissioner. The clause sets out the procedures to be followed in relation to the exercise of this power.

11—Power to close or limit use of railways

This clause provides the Commissioner with the power, subject to the approval of the Minister—

- to close a railway temporarily or permanently; or
- limit the use of a railway temporarily or permanently,

for the purposes of railway operations carried out by the Commissioner.

Division 4—Miscellaneous

12—Staff

This clause makes provision for staffing of the Rail Commissioner's office. The Commissioner's staff will consist of Public Service employees assigned to assist the Commissioner and any person (who will not be a Public Service employee) appointed to the staff by the Commissioner with the Minister's approval.

13—Delegation

This clause provides the Rail Commissioner with the ability to delegate by written instrument any of the Commissioner's functions or powers (other than the power to delegate) to a particular person, or to the person for the time being performing particular duties or holding or acting in a particular position, and a delegated function or power may (if the instrument of delegation so provides) be further delegated.

14—Conflict of interest

This clause requires the person constituting the Rail Commissioner, or a deputy or delegate of the Commissioner, to inform the Minister in writing of—

- any direct or indirect interest that the person has or acquires in any business, or in any body corporate carrying on business, in Australia or elsewhere; or
- any other direct or indirect interest that the person has or acquires that conflicts or may conflict with the functions of the Commissioner.

The person constituting the Commissioner, or a deputy or delegate of the Commissioner, must take steps to resolve a conflict or possible conflict between a direct or indirect interest and the person's functions in relation to a particular matter, and, unless the conflict is resolved to the Minister's satisfaction, the person is disqualified from acting in relation to the matter.

15—Common seal and execution of documents

This clause makes provision for the common seal of the Commissioner, and the manner in which documents are to be executed by the Commissioner.

Part 3—Miscellaneous

16—Precedence over roads

This clause provides that, subject to any pre-existing contract, agreement, understanding or undertaking with a road maintenance authority, the construction, commissioning and maintenance of rail infrastructure takes precedence over roadwork.

The clause enables the Rail Commissioner (subject to the approval of the Minister)—

- to close a road temporarily or permanently for the purposes of railway operations (and the *Roads (Opening and Closing) Act 1991*, with such modifications as may be prescribed by regulation, applies to any such permanent road closure); and
- to require a council to construct or reconstruct a portion of road within the area of the council so as to conform with the construction, reconstruction or maintenance of rail infrastructure within the council area.

17—Inconsistency of by-laws

This clause provides that if a by-law made by a council is inconsistent with this measure or a regulation made under this measure, the measure or regulation prevails and the by-law is, to the extent of the inconsistency, invalid.

18—Regulations

This clause provides for a regulation making power for the purposes of this measure.

Schedule 1—Related amendments and transitional provisions

The Schedule contains related amendments to the *Railways (Operations and Access) Act 1997* and the *TransAdelaide (Corporate Structure) Act 1998* relating to operations over roads and provisions for matters of a transitional nature.

Debate adjourned on motion of Mr Hamilton-Smith.

FAIR WORK (COMMONWEALTH POWERS) BILL

The Hon. P. CAICA (Colton—Minister for Agriculture, Food and Fisheries, Minister for Industrial Relations, Minister for Forests, Minister for Regional Development) (12:12): Obtained leave and introduced a bill for an act to refer certain matters relating to workplace relations to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth. Read a first time.

The Hon. P. CAICA (Colton—Minister for Agriculture, Food and Fisheries, Minister for Industrial Relations, Minister for Forests, Minister for Regional Development) (12:12): I move:

That this bill be now read a second time.

The Fair Work (Commonwealth Powers) Bill 2009 is part of a legislative package of two bills that will refer power to the commonwealth to facilitate South Australia's participation in a national system of industrial relations for the private sector from 2010.

Members will recall that on 9 June this year I publicly announced South Australia's intention to participate in the national system for the private sector from 1 January 2010, subject to the finalisation of a number of issues being resolved with the commonwealth.

South Australia's private sector participation in the national industrial relations system has been the subject of extensive and detailed consultation with members of the Industrial Relations Advisory Committee and other key stakeholders. There is general support for our participation in the national system and for the proposed text based referral of powers to the commonwealth.

There are many benefits for South Australians resulting from the referral of IR powers. A streamlined national system of industrial relations will result in significant red tape reductions for business and greater administrative efficiency by eliminating regulatory overlap and duplication. Businesses will no longer have to deal with complex jurisdictional questions about which system of industrial relations they are operating in. A single set of general industrial relations laws for the private sector with the retention of a significant South Australian based education, information and enforcement service will have a positive impact on employers and employees generally but particularly on small business, young workers, women employees, employees with a disability, workers in regional areas, indigenous Australians and workers from culturally and linguistically diverse backgrounds. These were the groups identified by numerous research projects and inquiries to be the most adversely affected by the previous federal government's WorkChoices legislation.

This historic bill is the culmination of many months of multilateral and bilateral discussions with the commonwealth and other states and territories and extensive consultation with key South Australian stakeholders. The package of bills before the parliament and the associated intergovernmental agreement are prime examples of what can be achieved by cooperative federalism. This proposal builds upon the reforms to industrial relations initiated since the election of the commonwealth government in November 2007 and will ensure that South Australia has a significant and ongoing say in the industrial relations laws that will apply to our community.

The Rudd government was elected with a commitment to implement its industrial relations policy Forward with Fairness. Forward with Fairness includes the aim of creating a single national system of industrial relations for the private sector. Many in the community considered major elements of the former commonwealth government's WorkChoices legislation to be divisive. The passing of the commonwealth Fair Work Act 2009 removed the remaining vestiges of WorkChoices, established the national system, and represented the cornerstone of a balanced, fair and equitable industrial relations legislative framework.

The previous WorkChoices system also resulted in confusion for many employers and employees given the uncertainty as to whether they were covered by the former commonwealth legislation. The basis for South Australia's participation in the national system as outlined in this bill achieves the key public policy objective of providing certainty for all South Australians regarding their rights and responsibilities in the workplace.

The current commonwealth industrial relations legislation and the previous WorkChoices legislation relied mainly on the corporations power of the Australian Constitution (section 51(xx)) to regulate constitutional corporations. Most unincorporated employers and their employees remain in the South Australian industrial relations system. The difficulty has been that for some employers their status as a constitutional corporation or not was not clear and depended upon the view that might be taken by the courts and tribunals from time to time.

Section 51(xxxvii) of the Australian Constitution provides for state parliaments to refer powers to the commonwealth parliament to make laws in relation to referred matters. This bill makes use of this constitutional power to refer the making of industrial relations laws for the private sector to the commonwealth and by so doing to remove this jurisdictional uncertainty.

The bill will provide for a text based referral, an amendment reference, and a subject matter transition reference to facilitate South Australia's participation in the national system of industrial relations for the private sector. This referral of powers is similar to the most recent Victorian reference of powers to the commonwealth which is contained in the current division 2A of the commonwealth Fair Work Act 2009.

Contained in the bill is a text based reference to the commonwealth that would be adopted in a form that reflects in general terms the approach already taken to facilitate the recent Victorian reference. The referred text (a) provides for South Australia to be recognised as a referring state; (b) takes into account the provisions of this bill as they relate to the exclusion of the public sector, local government and any other relevant exclusions—for example, this means that South Australia will still meet the definition of 'referring state' even though our referral will exclude local government—and (c) applies the Fair Work Act 2009 to South Australian employers and employees who are to be brought into the national industrial relations system on account of the South Australian referral.

These provisions extend the existing definitions of 'national system employer' and 'national system employee' to include any employee and any employer in a referring state such as South Australia except for those excluded from the referral who would otherwise be outside of those definitions.

The proposed text for the text-based referral is set out in schedule 1 of the bill. I anticipate that this will be reflected in the changes to the commonwealth Fair Work Act 2009 that will be made by the commonwealth parliament to accept our referral. The advantage of this approach is that all of the Fair Work Act 2009 itself does not have to be tabled in the parliament with this bill, just the intended text of the commonwealth act to accept our referral as appended to this bill.

This bill also provides for an amendment reference that will refer power to the commonwealth to enable it to make amendments with respect to defined subject matters. The definition of 'referred subject matters' for the purposes of the amendment reference generally reflects the main elements of the current national system as contained in the Fair Work Act 2009, including minimum terms and conditions of employment, bargaining, workplace rights and responsibilities, compliance, administration and application of that act.

To enable the commonwealth to make laws dealing with the transitional matters arising from the transfer of South Australian employers and employees from the state jurisdiction into the national system, this bill provides for a referral of this power via a transition reference. It is important that the house appreciates that these subject matter references do not provide a blank cheque to the commonwealth, similar to the original 1996 Victorian reference. Our ongoing role in ensuring that this state's interests are maintained is achieved through a combination of the amendment reference and the termination provisions evident in the bill.

The amendment reference and termination provisions of this bill restrict future changes from removing agreed fundamental elements, including the scope, of the national system. These provisions expressly exclude the power to make amendments based on our referral with respect to continuing state law matters that are saved by section 27 of the Fair Work Act 2009 (including occupational health and safety, training and skills development, child labour, etc), and with respect to the public sector, local government and any other excluded sectors. This is achieved by including these matters in the definition of 'excluded subject matter' in the bill.

The bill also links the amendment reference limitations to the statutory-based governance principles unanimously agreed to by the Workplace Relations Ministers Council on 23 May 2008. A translation of these principles is set out in the definition of the 'fundamental workplace relations principles', as provided in clause 4 of the bill.

The significance of these principles is that it will permit the amendment reference to be terminated in certain circumstances by South Australia whilst retaining our status as a referring state. This is achieved as follows. The bill allows the termination of reference by proclamation of the South Australian Governor. This is a standard provision in referral legislation, and, in general terms, a period of six months' notice is normally required to be given to the commonwealth if the state intends to terminate any of its references. Should South Australia do this in isolation from other referring states, and where the agreed national system principles have not been breached, South Australia would no longer be considered to be a referring state under the terms of the Fair Work Act 2009.

However, the bill also provides for a termination of the amendment reference if the Governor, in the proclamation giving effect to the termination, declares that, in his or her opinion, the Fair Work Act 2009 has been, or will be, amended in a manner that is inconsistent with one or more of the relevant fundamental workplace relations principles.

The termination of the amendment reference in this context would require three months' notice and have the effect that the commonwealth would not, after the date of effect of the proclamation, be able to rely on South Australia's referral to enact amendments to the Fair Work Act 2009. Future amendments would not apply to non-constitutional employers and employees in South Australia, pending the resolution of the issues by the parliament.

Under these provisions the remainder of the South Australian reference would remain intact. This also means that the Fair Work Act 2009, as amended up to the date of the proclamation, would continue to apply to non-constitutional employers and employees in South Australia.

Amendments to the Fair Work Act 2009, to reflect this are set out in schedule 1 of the bill. This means that, should a future commonwealth government make changes to the Fair Work Act 2009 that are not consistent with the basis upon which we have agreed to participate in the national system, South Australia would be in a position to prevent further changes to the system applying to our referred parties until the parliaments have resolved the issues. Unlike the normal six months' notice provision, this approach would avoid the significant disruption, expense and uncertainty that would be caused by a withdrawal from the national system itself.

The government considers that this approach to the amendment reference supplements the intent of the intergovernmental agreement, which I expect will be formalised shortly. It also provides the system with the certainty and flexibility required to maintain a genuine national system into the future.

Importantly, this approach also ensures that South Australia's interests are clearly taken into account in any future changes to the commonwealth legislation. It is envisaged that if all jurisdictions were meeting their obligations under the intergovernmental agreement, the provisions of this bill for the termination of the amendment reference because of inconsistency with the fundamental workplace relations principles would not need to be applied and, in effect, would only be contemplated in the most extreme circumstances, where the agreed fundamentals of the national system are threatened.

The bill's provisions relating to the amendment reference would not constrain the commonwealth from making any minor or technical adjustments to the Fair Work Act 2009 nor from making progressive amendments to build on the fundamental principles into the future, and nor would it constrain the commonwealth from making amendments to the Fair Work Act that have been developed by jurisdictions through the consultation and governance processes anticipated by the intergovernmental agreement.

Participation in the national system in the manner proposed in this bill will also ensure that South Australia is in a direct position to influence the future industrial relations laws that will apply to our community and to ensure appropriate and comprehensive education, information and enforcement services will be provided for the national system in this state.

When this package of bills is enacted, South Australians will have an industrial relations system built on the foundation of a strong safety net; access to collective bargaining, including for the low paid; and protection of workplace rights. The new arrangements will have a positive impact on workers by removing the worst aspects of the previous WorkChoices amendments.

The commonwealth government has made special arrangements for small businesses in the unfair dismissal jurisdiction and Fair Work Australia has established a special unit to support

small businesses in the new system. An agreement has also been negotiated between the Fair Work Ombudsman and SafeWork SA to provide for local delivery of South Australian compliance, education and advisory services. As part of these service delivery arrangements, SafeWork SA officers will be undertaking a large number of education visits to workplaces, transferring from the state system to the federal jurisdiction over the next three years.

Transitional arrangements and other assistance for those employers and employees transferring to the national system are also currently being finalised between this government and the commonwealth, and the other referring states. Extensive consultation with local stakeholders on these matters has taken place and will continue. The aim is to provide a smooth transition to the national system, recognising the particular needs of both employers and employees during that process.

South Australia's participation and national system of industrial relations for the private sector reflects a new era of cooperation with the commonwealth. Although there have been numerous attempts to achieve a unified system since federation, this government has led the way in assisting to create a new, simple, fair and accessible industrial relations system for South Australian employers and employees.

I—and I am sure all members of this house—am proud to take this opportunity for South Australia to participate in a national system of industrial relations for the private sector, while maintaining a contemporary and equitable state system for the public sector and local government. I commend the bill to members. I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Interpretation

This clause defines certain terms and expressions used in the proposed Act.

4—Fundamental workplace relations principles

This clause is relevant to the operation of clause 9. It is intended to recognise certain principles as being fundamental to the arrangements under which the State is willing to grant a reference under this measure.

5—Reference of matters

This clause provides for the reference of matters to the Commonwealth.

Clause 5(1)(a) provides for the inclusion of the initial referred provisions in a Commonwealth Act enacted in the terms, or substantially in the terms, of the tabled text. The expression 'substantially in the terms' of the scheduled text will enable minor adjustments to be made to the text.

Clause 5(1)(b) provides for the reference of the matters within the definition of *referred subject matters*. This is referred to as the 'amendment reference'.

Clause 5(1)(c) provides a reference for any necessary transitional provisions associated with the transition from the old industrial relations regime to the regime provided by the Commonwealth Fair Work Act.

Clause 5(2) makes it clear that the reference of a matter has effect only to the extent that the matter is not otherwise within the legislative power of the Commonwealth Parliament and to the extent that the matter is within the legislative power of the State Parliament.

Clause 5(3) removes a possible argument that 1 of the references might be limited by any other of the references.

Clause 5(4) makes it clear that the State Parliament envisages that the Commonwealth Fair Work Act can be amended or affected by Commonwealth legislation enacted in reliance on other powers.

Clause 5(5) specifies the periods during which a reference has effect.

6—Matters excluded from the reference

The following matters are to be excluded from the reference:

(a) matters relating to Ministers, Members of Parliament, judicial officers or members of tribunals established by or under a law of the State;

(b) matters relating to public sector employees;

(c) matters relating to persons engaged as a member of a Minister's personal staff;

(d) matters relating to persons—

(i) appointed under section 68 of the *Constitution Act 1934*; or

(ii) appointed or engaged by the Governor or a Minister under any other Act, law or authority;

(e) matters relating to persons holding office as Parliamentary officers or employed under the *Parliament (Joint Services) Act 1985*;

(f) matters relating to persons holding office or employed under the *Courts Administration Act 1993*;

(g) matters relating to—

(i) members of SA Police under the *Police Act 1998*; or

(ii) police cadets, police medical officers or special constables; or

(iii) persons employed as protective security officers under the *Protective Security Act 2007*;

(h) matters relating to local government sector employees.

7—Termination of references

This clause deals with the termination of the period of the references specified under clause 5 (namely, the period ending on a day fixed by the Governor by proclamation). The clause enables the periods of all references to be terminated at the same time or only the periods of any or all of the amendment references.

8—Effect of termination of amendment reference or transition reference before initial reference

This clause makes it clear that the separate termination of the period of the amendment reference does not affect laws already in place. Accordingly, the amendment reference continues to have effect to support those laws unless the period of the initial reference is also terminated.

9—Period for termination of references

As a general proposition, a day fixed for the termination of a reference must be at least 6 months after the day on which the relevant proclamation is published. However, if the termination only relates to the amendment reference and the Governor is acting on account of an assessment that the Commonwealth is acting, or has acted, in a manner that is inconsistent with 1 or more of the fundamental workplace relations principles, the period set for the termination of the amendment reference may be reduced to 3 months. In such a case, the Minister will be required to provide a report to the Parliament relating to the matter.

Schedule 1

This schedule sets out the text for the purposes of the initial reference.

Debate adjourned on motion of Ms Chapman.

STATUTES AMENDMENT (NATIONAL INDUSTRIAL RELATIONS SYSTEM) BILL

The Hon. P. CAICA (Colton—Minister for Agriculture, Food and Fisheries, Minister for Industrial Relations, Minister for Forests, Minister for Regional Development) (12:28): Obtained leave and introduced a bill for an act to amend various acts to facilitate the integration of state and federal workplace relations systems and processes. Read a first time.

The Hon. P. CAICA (Colton—Minister for Agriculture, Food and Fisheries, Minister for Industrial Relations, Minister for Forests, Minister for Regional Development) (12:29): 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 *Statutes Amendment (National Industrial Relations System) Bill 2009* is the second part of the legislative package that will refer power to the Commonwealth to facilitate South Australia's participation in a national system of industrial relations for the private sector from January 2010. It deals with transitional and consequential amendments of State laws arising out of South Australia's participation in the national system.

Earlier today, when I introduced the *Fair Work (Commonwealth Powers) Bill 2009* (the Referral Bill) into this House, I provided members with the background to South Australia's participation in the national Industrial Relations system. To effectively implement the referral of powers to the Commonwealth, amendments to other South Australian legislation will be required. The *Statutes Amendment (National Industrial Relations System) Bill 2009* (the Bill) provides for:

- transitional arrangements for those employers and employees returning to the state system to be facilitated;
- the implementation of certain consequential changes to State law; and
- the updating of references to Commonwealth legislation and industrial instruments in South Australian statutes given the changes to the Commonwealth law that have already occurred.

In relation to the Referral Bill, I outlined that the State public sector and the local government sector were not included as part of the national system. These parties will be subject to the continuing State industrial law and so be afforded jurisdictional certainty for the first time in many years. In relation to the local government sector, the Bill provides for the recognition under the *Fair Work Act 1994* (SA) of all collective industrial instruments made by local government parties pursuant to the *Workplace Relations Act 1996* (Cth) and the *Fair Work Act 2009* (Cth). This will include recognising relevant federal awards and agreements.

The Bill also formally recognises any formal collective agreements made by local government parties in the state jurisdiction during the 2006-2009 period. This will include recognising collective agreements made under Chapter 3, Part 2 of the *Fair Work Act 1994* (SA) and referral agreements made pursuant to Schedule 1 of the *Commercial Arbitration and Industrial Referral Agreements Act 1986* (SA).

This provision is required as the status of agreements made by local government in the State jurisdiction between 2006-2009 is not beyond doubt. This is because if the council was a constitutional corporation between 2006-2009 it could only make valid agreements in the federal industrial relations jurisdiction. The same issue applies if a council made a federal agreement when it was not, in law, a constitutional corporation.

The effect of providing this recognition is to ensure that all transitioning agreements made during the 2006-2009 period are legally valid irrespective of the constitutional status of the individual council at that time.

Although the Bill does not recognise unregistered administrative agreements and Memorandums of Understanding as transitioning instruments, there will be scope for the parties to legitimise these arrangements in the state system as part of any variation and renegotiation processes.

Under this Bill provision is made for transitioning agreements to be varied by the Industrial Relations Commission of South Australia to resolve any ambiguities or uncertainty caused by recognition of these instruments under the State system. This can be achieved either by consent of the parties or by a determination of the State Commission.

The State Commission will also be given jurisdiction to vary or revoke (upon application) any term or provision of a transitioning award or enterprise agreement if it is satisfied that it is fair and reasonable to do so in the circumstances. This is a similar approach to that taken in the *Statutes Amendment (Public Sector Employment) Act 2006* which dealt with the transition of certain elements of the public sector into the state system in 2006.

All agreements transitioning into the state jurisdiction from 1 January 2010 will operate subject to the minimum standards in the *Fair Work Act 1994* (SA). The Bill further provides for these transitioning agreements to have a sunset clause of two years, or the nominal life of the agreement, whichever is the earlier, at which time they must be renegotiated.

Relevant federal awards applying to the local government sector are also to be recognised under State law by regulation from 1 January 2010.

These provisions ensure that all relevant agreements and awards are immediately recognised and validated within the state industrial relations jurisdiction, without any further action by the parties. They also ensure that the State Commission has jurisdiction to deal with any immediate issues of ambiguity and uncertainty arising from the transition.

The legislation also takes account of bargaining processes commenced by the parties. If a Council has engaged in enterprise bargaining in the federal system and the process has been concluded (including a vote by employees to accept the agreement and lodgement with the federal tribunal for approval), but the agreement has not been approved by Fair Work Australia by 31 December 2009, then the approval process will be concluded in the State system by the State Commission.

The procedural steps taken to that point (for example, the taking of votes and any application) will be deemed to have taken place under the *Fair Work Act 1994* (SA). The Bill gives the State Commission jurisdiction to waive any procedural defects and vary the agreement as required (for example to take account of the different content rules in the State system) with the consent of the parties.

In the situation when a Council has engaged in enterprise bargaining in the federal system and agreement was not reached by 31 December 2009, the bargaining process will need to recommence in the state system from 1 January 2010. However, the Bill ensures that the Commission may take the conduct of the parties prior to 1 January 2010 into account when it considers enterprise agreement matters after that date.

In relation to the public sector, most Government Business Enterprises will have their coverage confirmed under the State Industrial Relations system. This is achieved by amending the various South Australian statutes that establish Government Business Enterprises to declare that they are not national system employers for the purposes of the *Fair Work Act 2009*. These provisions are designed to operate in conjunction with the *Fair Work Act 2009* so as to exclude these entities from the national system.

The Bill provides for transitional arrangements for those Government Business Enterprises 'returning' to the state system and these are similar to those I described for the local government sector.

The aim of this Bill is to ensure that the transition for the parties in these sectors to operate as simply and smoothly as possible, whilst acknowledging existing industrial arrangements.

Some consequential amendments to the *Fair Work Act 1994* (SA) are also necessary as a result of South Australia's participation in the national system. In the context of establishing the national system on the foundation of cooperative federalism, this Bill will insert statutory encouragement provisions for the full utilisation of dual appointments in Fair Work Australia and the State Commission.

These include:

- the insertion of a provision in the objects clause of the *Fair Work Act 1994* (SA) to reflect the aim of establishing a national industrial relations system based on co-operative federalism particularly through the use of dual appointments to Commonwealth and State tribunals; and
- the insertion of operational provisions to encourage the actual use of dual appointments.

The Industrial Relations Court of South Australia (the Court) will be an eligible Court under the national Industrial Relations system and be accessible to all parties in this State. As such it is appropriate to confirm elements of its operations. In particular, the Bill re-establishes the discretionary approach to the awarding of costs as historically taken by the Court.

Following the removal of the special treatment for employer members of the Exclusive Brethren in the *Fair Work Act 2009*, this Bill also removes the special right of entry restrictions in section 140(5) of the *Fair Work Act 1994* (SA) as they relate to that group.

Provisions have been made for any references in the various State Acts mentioned in the Bill to the repealed Commonwealth *Workplace Relations Act 1996* and any references to federal awards and enterprise agreements to be amended to ensure that they are consistent with the *Fair Work Act 2009* and relevant fair work industrial instruments.

The concepts outlined in the Bill have been subject to detailed consultation with the Industrial Relations Advisory Committee and other interested parties.

The package of Bills I have introduced today are necessary to implement South Australia's participation in the national Industrial Relations system from 1 January 2010. After the new arrangements have been in place for a period, the Government also intends to undertake a further review of the State industrial relations legislation to further fine tune its operation and address any other consequences of the national system changes.

I commend this Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

Operation of the measure is to commence on a day to be fixed by proclamation. Section 7(5) of the *Acts Interpretation Act 1915* will not apply to the Act (in case it is necessary to delay the commencement of certain amendments beyond the second anniversary of assent).

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Construction Industry Long Service Leave Act 1987*

4—Amendment of section 4—Interpretation

This clause substitutes a new definition of *agreement* and amends the definition of *award*. In both cases, the changes are made for the purpose of updating obsolete references to Commonwealth legislation.

Part 3—Amendment of *Equal Opportunity Act 1984*

5—Amendment of section 85F—Exemptions

6—Amendment of section 100—Proceedings under *Fair Work Act 1994*

The purpose of the amendments made by these clauses is to replace obsolete references to State and Commonwealth legislation.

Part 4—Amendment of *Fair Work Act 1994*

7—Amendment of section 3—Objects of Act

As a consequence of this amendment to the objects section of the *Fair Work Act 1994*, an additional object of the Act will be facilitation of the establishment and operation of a national industrial relations system through co-operative federalism.

8—Amendment of section 4—Interpretation

This clause amends the interpretation provision of the *Fair Work Act 1994* for the purpose of updating obsolete references and inserting new definitions. For example, a new definition of *Commonwealth Act* is substituted so that reference is made to the *Fair Work Act 2009* of the Commonwealth. The *Commonwealth (Registered Organisations) Act* is the Commonwealth *Fair Work (Registered Organisations) Act 2009*. *Fair Work Australia* is Fair Work Australia established under the Commonwealth Act.

9—Amendment of section 29—The President

Section 29 is amended by this clause so as to require the President of the Industrial Relations Commission to perform his or her functions and exercise his or her powers in a manner that facilitates and encourages co-operation between the Commission and Fair Work Australia.

10—Amendment of section 37—Concurrent appointments

Section 37(3) provides that a member of an industrial authority constituted under the law of the Commonwealth or another State may be appointed as a member of the Commission. This clause amends the section by inserting a new subsection that makes it clear that section 34(2), which requires consultation in relation to proposed appointments, does not apply to the making of concurrent appointments under section 37(3). Also, a member of the Commission appointed under section 37(3) will not be taken into account for the purposes of section 34(3), which imposes a requirement for the number of Commissioners with experience in industrial affairs through association with the interests of employees to be equal (or almost equal) to the number of Commissioners with experience in industrial affairs through association with the interests of employers.

11—Amendment of section 79—Approval of enterprise agreement

This clause amends section 79 to remove references to the Commonwealth Act.

12—Amendment of section 92—Retrospectivity

This clause amends section 92 by removing a reference to awards or agreements under the Commonwealth Act. The section as amended will instead refer to fair work instruments under the Commonwealth Act.

13—Amendment of section 100—Adoption of principles affecting determination of remuneration and working conditions

Section 100 currently makes reference to a declaration of the Commonwealth Commission. The section as amended by this clause will refer instead to a determination of Fair Work Australia.

14—Amendment of section 119—Eligibility for registration

15—Amendment of section 122—Registration of associations

16—Amendment of section 125—Alteration of rules of registered association

17—Amendment of section 131—Eligibility for registration

18—Amendment of section 135—De-registration

19—Amendment of section 136—Federation

The amendments made by these clauses remove references to the Commonwealth Act (which is the *Fair Work Act 2009*) and substitute references to the Commonwealth (Registered Organisations) Act (that is, the *Fair Work (Registered Associations) Act 2009* of the Commonwealth).

20—Amendment of section 140—Powers of officials of employee associations

Subsection (5) of section 140 provides that, despite other provisions of the section providing for entry into workplaces in certain circumstances by officials of employee associations, an official may not enter a workplace if the employer is a member of the Christian fellowship known as *Brethren* and certain other conditions are satisfied. This clause repeals that subsection.

21—Amendment of section 141—Register of members and officers of associations

The amendment made by this clause removes a reference to the Commonwealth Act (which is the *Fair Work ACT 2009*) and substitutes a reference to the Commonwealth (Registered Organisations) Act (that is, the *Fair Work (Registered Associations) Act 2009* of the Commonwealth).

22—Amendment of section 167—Extension of time

This clause replaces a reference to the Commonwealth Commission with a reference to Fair Work Australia.

23—Amendment of section 185—Costs

Section 185 provides that the Industrial Court of South Australia may award costs in proceedings based in a monetary claim on an appeal. The section as amended by this clause will further provide that an award of costs on an appeal need not follow the event. Further, in making a determination in relation to costs on an appeal, the Court may take into account any matter it thinks fit but is required to take into account the following:

- the conduct of the parties;

- the relative positions and circumstances of the appellant and the respondent (and of the successful and unsuccessful parties);
- the nature of the question in dispute and the impact of the proceedings.

24—Amendment of section 210—Powers on appeal

The amendment made by this clause to section 210 relates to the awarding of costs on appeal and has substantially the same effect as the amendment made by clause 23 to section 185, except that section 210 is concerned with appeals to the Full Commission whereas section 185 deals with appeals to the Court.

25—Amendment of section 215—Co-operation between industrial authorities

26—Amendment of section 216—Reference of industrial matters to Fair Work Australia

These clauses amend various references to, or related to, the Commonwealth Commission by substituting appropriate references to Fair Work Australia.

27—Repeal of section 222

This clause repeals section 222, which provides for certain provisions of the Commonwealth *Workplace Relations Act 1996* relating to secondary boycotts to apply (subject to certain modifications) as laws of South Australia.

28—Amendment of section 237—Regulations

Section 237 as amended by this clause will provide for the making of regulations contemplated by or necessary or expedient for the purposes of the Act. The section will provide that the regulations may make provision for any matter relevant to the interaction between the Act and a Commonwealth Act, including matters of a saving or transitional nature.

29—Amendment of Schedule 1—Transitional provisions

This clause inserts a new transitional provision.

18—National industrial relations system

Clause 18 provides that the *Fair Work Act 1994* will operate in relation to a matter arising under that Act before the designated day, as well as a matter arising directly or indirectly out of such a matter, if the matter is not dealt with under the Commonwealth *Fair Work Act 2009* on or after the designated day. The *designated day* is the day on which a Commonwealth Act in the terms, or substantially in the terms, set out in the tabled text under the *Fair Work (Commonwealth Powers) Act 2009* comes into operation.

30—Insertion of Schedules 2 and 2A

This clause inserts two new Schedules into the *Fair Work Act 1994*.

Schedule 2—Continuity of industrial arrangements—government business enterprises

This Schedule provides for a scheme under which federal industrial instruments that relate to the employees of certain government business enterprises (*GBE*) can be 'converted' to awards or enterprise agreements (as may be appropriate) under the State Act. The scheme is similar to the scheme under the transitional provisions enacted in 2006 under the *Statutes Amendment (Public Sector Employment) Act 2006*.

Schedule 2A—Continuity of industrial arrangements—local government sector

This Schedule relates to the local government sector. Clause 2 will ensure the operation of various enterprise or industrial agreements. Other clauses will facilitate the transition of federal industrial agreements relating to the local government sector to the State scheme. This is connected with the exclusion of this sector from the Commonwealth Fair Work Act under the new scheme that is to be put in place.

Part 5—Amendment of *Housing and Urban Development (Administrative Arrangements) Act 1995*

31—Amendment of section 17—Staff

This clause amends section 17 of the *Housing and Urban Development (Administrative Arrangements) Act 1995* so that the section includes a declaration that *HomeStart Finance* is not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 6—Amendment of *Local Government Act 1999*

32—Insertion of section 302A

Under new section 302A of the *Local Government Act 1999*, inserted by this clause, the following local government sector employers are declared not to be national system employers for the purposes of the Commonwealth *Fair Work Act 2009*:

- a council;
- a subsidiary or a regional subsidiary;

- any other entity established under the *Local Government Act 1999*;
- the Local Government Association;
- any other entity established by a body referred to above.

Part 7—Amendment of *Long Service Leave Act 1987*

33—Amendment of section 3—Interpretation

34—Amendment of section 13—Failure to grant leave

35—Amendment of section 16—Act not to apply to certain workers

The amendments made by these clauses correct obsolete references to State and Commonwealth legislation in the *Long Service Leave Act 1987*.

Part 8—Amendment of *Motor Accident Commission Act 1992*

36—Amendment of section 29A—Staff

Under section 29A of the *Motor Accident Commission Act 1992* as amended by this clause, the Motor Accident Commission will be declared not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 9—Amendment of *Occupational Health, Safety and Welfare Act 1986*

37—Amendment of section 4—Interpretation

This clause amends the definition of *registered association* in the *Occupational Health, Safety and Welfare Act 1986* for the purpose of removing a reference to associations registered under Commonwealth legislation that is no longer in operation and substituting a reference to organisations registered under the *Fair Work (Registered Associations) Act 2009* of the Commonwealth.

Part 10—Amendment of *Petroleum (Submerged Lands) Act 1982*

38—Amendment of Schedule 7—Occupational health and safety

This clause amends the interpretation provision for Schedule 7 of the *Petroleum (Submerged Lands) Act 1982* by substituting new definitions of *registered organisation* and *reviewing authority*. The existing definitions include obsolete references.

Part 11—Amendment of *Public Corporations Act 1993*

39—Insertion of section 38B

Under new section 38B of the *Public Corporations Act 1993*, the following entities will be declared not to be national system employers for the purposes of the Commonwealth *Fair Work Act 2009*:

- the Adelaide Convention Centre Corporation;
- the Adelaide Entertainments Corporation;
- the Land Management Corporation.

Part 12—Amendment of *Rail Safety Act 2007*

40—Amendment of section 4—Interpretation

The definition of *registered association* in section 4 of the *Rail Safety Act* currently refers to associations registered under the *Industrial Relations Act 1988* of the Commonwealth. This clause amends that definition by substituting a reference to an organisation registered under the Commonwealth *Fair Work (Registered Organisations) Act 2009*.

Part 13—Amendment of *South Australian Forestry Corporation Act 2000*

41—Amendment of section 15—Staff

Under section 15 of the *South Australian Forestry Corporation Act 2000* as amended by this clause, the South Australian Forestry Corporation will be declared not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 14—Amendment of *South Australian Water Corporation Act 1994*

42—Amendment of section 17—Staff of Corporation

Under section 17 of the *South Australian Water Corporation Act 1994* as amended by this clause, the South Australian Water Corporation will be declared not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 15—Amendment of *Stamp Duties Act 1923*

43—Amendment of Schedule 2—Stamp duties and exemptions

This clause amends Schedule 2 of the *Stamp Duties Act 1923* by removing references to the *Workplace Relations Act 1996* and substituting references to the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth.

Part 16—Amendment of *State Lotteries Act 1966*

44—Amendment of section 13—Powers and functions of Commission

Under section 13 of the *State Lotteries Act 1966* as amended by this clause, the Lotteries Commission of South Australia will be declared not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 17—Amendment of *Superannuation Funds Management Corporation of South Australia Act 1995*

45—Amendment of section 31—Staff of Corporation

Under section 31 of the *Superannuation Funds Management Corporation of South Australia Act 1995* as amended by this clause, the Superannuation Funds Management Corporation of South Australia will be declared not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 18—Amendment of *West Beach Recreation Reserve Act 1987*

46—Amendment of section 15—Officers and employees

Under section 15 of the *West Beach Recreation Reserve Act 1987* as amended by this clause, the West Beach Trust will be declared not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 19—Amendment of *WorkCover Corporation Act 1994*

47—Insertion of section 22A

This clause inserts a new section into the *WorkCover Corporation Act 1994*. Under section 22A, the WorkCover Corporation will be declared not to be a national system employer for the purposes of the Commonwealth *Fair Work Act 2009*.

Part 20—Amendment of *Workers Rehabilitation and Compensation Act 1986*

48—Amendment of section 3—Interpretation

The definition of *industrial association* in the *Workers Rehabilitation and Compensation Act 1986* is amended by this clause to substitute a reference to organisations registered under the Commonwealth *Fair Work (Registered Organisations) Act 2009* for a reference to associations registered under the *Industrial Relations Act 1988*.

Schedule 1—Transitional provisions

1—Transitional provisions

The transitional provisions deal with any remaining references to the Australian Industrial Relations Commission or references in respect of organisations registered under the *Workplace Relations Act 1996* of the Commonwealth by providing that—

- a reference in an Act or statutory instrument to the Australian Industrial Relations Commission will be taken to be a reference to Fair Work Australia; and
- a reference in an Act or statutory instrument to the *Workplace Relations Act 1996* will, to the extent that it that relates to organisations registered under that Act, be construed as a reference to the *Fair Work (Registered Organisations) Act 2009*.

Debate adjourned on motion of Ms Chapman.

RIVER TORRENS LINEAR PARK (LINEAR PARKS) AMENDMENT BILL

Second reading.

The Hon. J.M. RANKINE (Wright—Minister for Families and Communities, Minister for Northern Suburbs, Minister for Housing, Minister for Ageing, Minister for Disability) (12:30): 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 *River Torrens Linear Park Act 2006* protects the integrity of the River Torrens Linear Park by controlling the sale or disposal of government land holdings adjacent to the River to ensure land remains in public ownership. This Act originally arose from controversy surrounding the sale of riverfront land in the former Underdale Campus of the University of South Australia to private interests by the former Liberal Government.

The current Act provides for a plan delineating the extent of the River Torrens Linear Park to be deposited in the General Registry Office by the Minister and provides that land within the park (as delineated in the GRO plan) cannot be sold or otherwise disposed of, except in accordance with a resolution passed by both Houses of Parliament.

The recently imposed Urban Growth Boundary (UGB) and current planning to significantly increase densities within the UGB have highlighted the need to extend the controls that apply in the River Torrens Linear Park to other significant waterways in Metropolitan Adelaide to ensure the long term protection of what will become increasingly important community open space assets.

This Amendment Bill will enable the Government to extend those controls to Government land holdings adjacent to the other significant waterways including:

- Gawler River
- Little Para River
- Dry Creek
- Sturt River
- Field River
- Christie Creek
- Onkaparinga River
- Pedlar Creek
- Port Willunga Creek

It is not intended that the controls will be utilised immediately. If Parliament enacts the Bill, the Department of Planning and Local Government will prepare detailed plans of the additional Linear Parks and the land holdings that will be protected, for lodgement with the General Registry Office, in close consultation with the relevant Government agencies whose land holdings may be affected.

I am sure that Parliament will appreciate the importance of protecting open space adjacent to our waterways for current and future generations of South Australians and, accordingly, 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 *River Torrens Linear Park Act 2006*

4—Amendment of long title

This clause amends the long title of the Act in line with the measure's provision for the creation of a number of Linear Parks in addition to the existing River Torrens Linear Park.

5—Amendment of section 1—Short title

This clause amends the short title of the Act as it is proposed that the Act will be concerned with the creation and regulation of a number of Linear Parks including the existing River Torrens Linear Park. The short title of the Act will be *Linear Parks Act 2006*.

6—Amendment of section 3—Interpretation

This clause proposes to delete the current definition of *Plan*, that refers only to the River Torrens Linear Park, and insert the following new definitions:

- *linear park* is to be defined as being any linear park that is defined in a plan deposited in the GRO by the Minister for the purposes of the Act, and includes the current River Torrens Linear Park (as defined by the River Torrens Linear Park Public Lands Plan);
- *plan* is to be defined as any plan defining a linear park deposited in the GRO by the Minister, or the River Torrens Linear Park Public Lands Plan (that is already deposited in the GRO);
- *River Torrens Linear Park Public Lands Plan* means Plan No 13 of 2007 deposited in the GRO on 2 March 2007, as varied or substituted from time to time. This is the plan that currently defines the River Torrens Linear Park and will continue to do so.

7—Substitution of section 4

Currently section 4 of the Act provides for the variation of the River Torrens Linear Park Public Lands Plan. This clause proposes to repeal the current section and substitute a new section 4.

4—Linear parks

Proposed section 4 will allow the Minister to constitute a linear park by the creation of a plan for deposit in the GRO and to subsequently vary any such plan by instrument lodged in the GRO (as is the case currently for the River Torrens Linear Park Public Lands Plan). The proposed section will require the Minister to consult with, and consider submissions by, any council that has the care, control or management of land affected by a new plan or the variation of a plan and clarifies that a linear park may consist of—

(1) unalienated Crown land; or

(2) land owned by, or under the control of, the Minister or another agency or instrumentality of the Crown; or

(3) land under the care, control or management of a council.

It will still be the case under this new section that a variation to a linear park plan may not be made by virtue of which land ceases to be included in a linear park except in accordance with a resolution passed by both Houses of Parliament.

8—Amendment of section 5—Sale of land

Currently section 5 of the Act provides that land within the River Torrens Linear Park may not be sold or otherwise disposed of except in accordance with a resolution passed by both Houses of Parliament or under subsection (2). This clause proposes to make the same restriction apply to land within any linear park that is defined under the Act.

9—Amendment of section 6—Special provisions relating to roads

Currently section 6 of the Act provides that an area identified as a *road area* in the River Torrens Linear Park Public Lands Plan will be taken to be a public road and to have been established in accordance with the *Roads (Opening and Closing) Act 1991*. This clause proposes to make the same provision with respect to a *road area* that is identified in any plan deposited for the purposes of the Act from the date of the depositing of the plan in the GRO.

10—Amendment of section 7—Effect of other Acts

Currently section 7 provides that the Minister may, by instrument deposited in the GRO, vary the River Torrens Linear Park Public Lands Plan to ensure consistency with the operation or effect of another Act (including an Act amending another Act) enacted after the commencement of section 7. This clause provides for section 7 to apply to all plans that are deposited for the purposes of the Act.

11—Amendment of section 8—Related matters

- Currently section 8(1) provides that the River Torrens Linear Park Public Lands Plan may be varied by the substitution of a new plan. Clause 11(1) of the measure proposes to make that same provision for all plans that are deposited for the purposes of the Act.
- Currently section 8(3) provides that the Minister and each council within whose area the River Torrens Linear Park is situated must ensure that copies of the Plan are kept available for public inspection at their respective principal offices and by discretion at other locations. Clauses 11(2),(3) and (4) propose to make that same requirements for all plans that are deposited for the purposes of the Act.

12—Amendment of section 9—Acquisition of land

Currently section 9 provides that the Minister may, subject to and in accordance with the *Land Acquisition Act 1969*, acquire land for the purpose of increasing the area of the River Torrens Linear Park. This clause proposes to make the same provision for all linear parks that are defined under the Act.

Debate adjourned on motion of Ms Chapman.

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

Second reading.

The Hon. J.M. RANKINE (Wright—Minister for Families and Communities, Minister for Northern Suburbs, Minister for Housing, Minister for Ageing, Minister for Disability) (12:31): 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 *Second-hand Vehicle Dealers (Cooling-off Rights) Amendment Bill 2009* amends the *Second-hand Vehicle Dealers Act 1995* (the Act) as follows:

(1) To introduce a cooling-off right on the sale of second-hand vehicles, with the following features:

- The cooling-off right does not apply to private sales, auction sales and purchases by companies or dealers.

- The cooling-off period will begin at the signing of the contract and expire at the end of two business days (defined to include Saturdays).
- The dealer may require payment of a deposit of not more than 10% of the contract price. If the purchaser rescinds the contract, the dealer is required to refund the money paid by the purchaser (by the end of the next clear business day), but the dealer may retain an amount equal to 2% of the contract price or $100 (whichever is the lesser).
- The dealer is entitled to offer a third party an option on a vehicle that is subject to a cooling-off period.
- The purchaser will be entitled to waive his or her rights to a cooling-off period. The waiver will contain a statement of the rights of the prospective purchaser and a statement warning a prospective purchaser of the legal effect if he or she waives the right to rescind.
- Legal title and physical possession of the vehicle remain with the dealer during the cooling-off period (although the dealer is required to allow the purchaser reasonable access to test drive or have the vehicle inspected).
- Legal title and physical possession of a trade-in vehicle offered by the purchaser remain with the purchaser until the completion of the cooling-off period.
- A credit contract entered into to finance the sale cannot take effect until the expiration of the cooling-off period and will be void if the contract for the purchase of the vehicle is rescinded.
- It will be an offence for the dealer to induce someone to waive their cooling-off right.

(2) To enhance the ability to prosecute unlicensed dealers, the definition of 'dealer' is widened to include buying and exchanging of second-hand vehicles and a rebuttable presumption included that if a second-hand vehicle is transferred into and out of a person's name, that person bought and sold the vehicle. A rebuttable presumption is also created that a person and a close associate are dealers if the person and close associate buy or offer to buy or sell or offer for sale more than six second-hand vehicles in aggregate in a 12 month period. The Bill also amends the existing rebuttable presumption that a person is a dealer if he or she sells, or offers or exposes for sale, four or more second-hand vehicles in a 12 month period by extending the presumption to the purchase as well as the sale of second-hand vehicles.

(3) The penalties in the Act have been increased to at least double, and expiation fees increased to the maximum $315.

(4) A negative licensing scheme is introduced for salespersons employed or otherwise involved in second-hand vehicle dealerships. The objective is to address recent cases the Office of Consumer and Business Affairs is aware of where people with convictions for dishonesty offences or previously disqualified as second-hand vehicle dealers have effectively remained involved or run dealerships through a third person licensee (eg a spouse or another dealer—a 'compliant third party'). Their conduct (eg negotiating sales, etc) would in many cases be within the definition of 'second-hand vehicle salesperson'. Under this scheme it would be an offence to act, or employ a person to act, as a second-hand vehicle salesperson if the person has been convicted of an indictable offence of dishonesty or, within the past 10 years, a summary offence of dishonesty, or the person has been disqualified from another regulated occupation. The scheme will allow disciplinary action to be taken against salespersons for unlawful, improper or negligent conduct and to exclude persons from being involved in the industry where they have a relevant criminal history or are suspended or disqualified from this or any other regulated occupation.

(5) The Bill proposes that the responsibility for determining claims on the Second-hand Vehicles Compensation Fund (the Fund) is transferred from the Magistrates Court to the Commissioner for Consumer Affairs. The Fund is created under the Act and administered by the Commissioner for Consumer Affairs. Dealers pay an annual contribution to the Fund of an amount prescribed by regulation. Payments are made out of the Fund to compensate consumers who suffer losses arising from the purchase of second-hand vehicles in circumstances where the loss cannot be recovered from a dealer because, for example, the dealer has died, disappeared or become insolvent. The types of loss covered by the Fund include costs of repairing vehicles under the dealer's statutory duty to repair and failure by a dealer to pay out a prior loan over the vehicle. Currently, consumers must apply to the Magistrates Court for determination of a claim on the Fund.

(6) The Bill will allow the Second-hand Vehicles Compensation Fund to be used to fund:

- prescribed education programs for the benefit of consumers, salespersons or dealers;
- investigating compliance with the Act or possible misconduct of dealers or salespersons;
- the costs of disciplinary proceedings and prosecuting offences under the Act; and
- conciliation of disputes between purchasers and dealers relating to the dealer's duty to repair.

However, after consultation with industry the Government has decided to amend the Bill, in this place, in relation to the Second-hand Vehicles Compensation Fund. The amendment proposes that the Magistrates Court should still determine claims on the Second-hand Vehicles Compensation Fund. It is also proposed to only expand use of the Second-hand Vehicles Compensation Fund to prescribed education programs and investigating compliance with the Act or possible misconduct of dealers or salespersons. The industry has indicated it accepts these changes.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The date for commencement of the measure is to be fixed by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Second-hand Vehicle Dealers Act 1995*

4—Amendment of section 3—Interpretation

This clause inserts some new definitions. *Close associate* is defined by reference to section 3A. The *cooling-off period* in relation to a contract for the sale of a second-hand vehicle is the period commencing when the contract is made and ending at the conclusion of the second clear business day following the day on which the contract is made.

Offer for sale includes exposure for sale, an invitation to treat (ie, an invitation to another to make an offer) and the publishing, or authorising the publication, of an advertisement.

A *salesperson* is a person who does any of the following for or on behalf of a dealer:

- buys or sells second-hand vehicles;
- induces or attempts to induce, or negotiates with a view to inducing, a person to buy or sell a second-hand vehicle;
- performs a function of a kind prescribed by regulation.

The definition of *dealer* is amended so that it refers to buying second-hand vehicles, and the definition of *sell* is amended to make it clear that 'sell' includes exchange.

5—Insertion of section 3A

This clause inserts section 3A, which provides that 2 persons are *close associates* if any of the following circumstances apply:

- 1 is a spouse, domestic partner, parent, brother, sister or child of the other;
- they are members of the same household;
- they are in partnership;
- they are joint venturers;
- they are related bodies corporate;
- 1 is a body corporate and the other is a director, manager, secretary or public officer of the body corporate;
- 1 is a body corporate (other than a public company whose shares are quoted on a prescribed financial market) and the other is a shareholder in the body corporate;
- 1 is a body corporate whose shares are quoted on a prescribed financial market and the other is a substantial shareholder (within the meaning of the *Corporations Act 2001* of the Commonwealth) in the body corporate;
- 1 has a right to participate (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other;
- 1 is in a position to exercise control or significant influence over the conduct of the other.

6—Amendment of section 4—Application of Act

As a consequence of this amendment, Part 3 Division 1 Subdivision 3 of the Act, which sets out the cooling-off rights of a purchaser, does not apply to a sale of a second-hand vehicle by a dealer to a credit provider on the understanding that the vehicle will be sold or let on hire to a third person.

7—Amendment of section 7—Dealers to be licensed

The maximum penalty for carrying on business as a dealer without a licence is increased from $20,000 to $100,000.

8—Amendment of section 13—Incorporated dealer's business to be properly managed and supervised

The maximum penalty for failing to ensure that a business is properly managed and supervised by a licensed dealer who is a natural person is increased by this clause from $20,000 to $100,000.

9—Insertion of section 13A

Proposed section 13A provides that it is an offence for a dealer to employ a person as a salesperson unless the person has not been convicted of an indictable offence of dishonesty and has not, during the period of 10 years preceding the employment, been convicted of a summary offence of dishonesty. Also, a dealer must not employ a person who is suspended from practising or carrying on an occupation, trade or business.

The maximum penalty is a fine of $100,000.

The proposed section also prohibits a person from acting as a salesperson unless the person—

- has not—
  - been convicted of an indictable offence of dishonesty; or
  - during the period of 10 years preceding the employment, been convicted of a summary offence of dishonesty; and
- is not suspended or disqualified from practising or carrying on an occupation, trade or business.

If a person is employed or acting as a salesperson immediately before the commencement of the new section, the prohibition against employing the person as a salesperson, or acting as a salesperson, if the person is convicted, disqualified or suspended will only apply in relation to a conviction, disqualification or suspension that occurs after the commencement.

10—Amendment of section 14—Registration of dealer's business premises

This clause increases the penalty for carrying on business as a dealer at premises that are not registered from $2,500 to $5,000. The expiation fee is increased from $105 to $315. A similar amendment is made in respect of the offence of failing to notify the Commissioner within 14 days of ceasing to carry on business at registered premises.

11—Insertion of heading to Part 3 Division 1 Subdivision 1

Part 3 Division 1 is to be divided into 3 Subdivisions. This clause inserts a heading to Subdivision 1.

12—Amendment of section 15—Application of Division

Section 15 provides that Division 1 of Part 3 does not apply to the sale of a second-hand vehicle by auction or the sale of a second-hand vehicle to a dealer. An exception is made for section 17. This clause makes a consequential amendment to section 15. The effect of the amendment is that section 18E, which is a new section, will apply to sales to which Division 1 does not otherwise apply. Section 18E deals with the options for the purchase of vehicles subject to a contract of sale.

13—Insertion of heading to Part 3 Division 1 Subdivision 2

This clause inserts a heading to Subdivision 2 of Part 1.

14—Amendment of section 16—Notices to be displayed

This clause increases a number of penalties relating to notices dealers are required to display. References to 'exposure of sale' are also deleted by this clause because the definition of *offer for sale*, inserted by clause 4, makes it clear that an offer for sale includes exposure for sale.

15—Amendment of section 17—Form of contract

Section 17(1) lists certain requirements in relation to contracts for the sale of second-hand vehicles. As a consequence of the first amendment made by this clause, such a contract will, if subject to a cooling-off period, be required to set out when the cooling-off period will expire in addition to other prescribed information.

Other amendments to section 17 increase penalties and expiation fees relating to requirements in respect of contracts for sale.

16—Amendment of section 18—Notices to be provided to purchasers of second-hand vehicles

This clause increases the maximum penalty for failing to provide certain notices to the purchaser of a second-hand vehicle. The penalty is increased from $2,500 to $5,000.

17—Insertion of Part 3 Division 1 Subdivision 3

This clause inserts a new Subdivision in Part 3 Division 1.

Subdivision 3—Cooling-off

18A—Interpretation

Section 18A provides a definition of the term *approved form*, which appears only in Subdivision 3 and means a form approved by the Commissioner.

18B—Cooling-off

Section 18B deals with the cooling-off rights of purchasers. The section applies to contracts for the sale of second-hand vehicles entered into following the commencement of the section, other than contracts for the sale of a vehicle of a prescribed class or in prescribed circumstances.

A purchaser under a contract to which the section applies may rescind the contract by giving the dealer written notice of his or her intention not to be bound by the contract before the end of the cooling-off period.

The purchaser cannot be required to make a payment in respect of the sale before the expiration of the cooling-off period, other than payment of a deposit towards the contract price of the vehicle that does not exceed 10% of that price.

If a contract is rescinded, the dealer is required to refund to the purchaser money paid in respect of the sale. However, the dealer may retain an amount equal to 2% of the contract price or $100, whichever is the lesser. The refund must be paid before the end of the next clear business day after the dealer receives the purchaser's notice of rescission.

If the purchaser enters into a credit contract (that is, a contract for the provision of credit) in connection with the purchase—

- if the contract for the purchase of the vehicle is rescinded—the credit contract is void and any associated mortgage or other security taken by the credit provider is discharged; and
- if the contract for the purchase of the vehicle is not rescinded—the credit contract does not take effect until—
    - the purchaser waives his or her right to a cooling-off period in relation to the contract for the purchase of the vehicle (this can be done under section 33); or
    - if the right to a cooling-off period is not waived— the expiration of the cooling-off period.

18C—Legal title to vehicle remains with dealer during cooling-off period

Legal title to a vehicle under a contract to which section 18B applies does not pass from the dealer to the purchaser until the cooling-off period has expired. The dealer is entitled to retain possession of the vehicle during the cooling-off period but must allow the purchaser reasonable access to the vehicle for the purpose of test driving or inspecting it. The vehicle may not be driven by a party more than 100 kilometres during the cooling-off period. The dealer is required to ensure during the cooling-off period that the vehicle is roadworthy, insured against loss or damage and is registered.

18D—Trade-in vehicles

The purchaser is to retain possession of any trade-in vehicle during the cooling-off period. Details of the condition of the trade-in vehicle at the commencement of the cooling-off period are to be recorded. Legal title to the trade-in vehicle does not pass to the dealer until the expiration of the cooling-off period.

If the vehicle, or any part of the vehicle, is altered or damaged during the cooling-off period, the dealer may rescind the contract for the sale of the vehicle (and any associated contract). If the contract for the sale of the vehicle is rescinded, any associated contract entered into by the purchaser for the provision of credit is void ,and any associated mortgage or other security taken by the credit provider is discharged.

18E—Option to purchase vehicle subject to contract for sale

Section 18E prohibits a dealer from, during the cooling-off period in relation to a contract for the sale of a second-hand vehicle, selling or offering for sale the vehicle or an interest in the vehicle. However, the dealer may sell or offer for sale an option to purchase the vehicle in the event that the contract for the sale of the vehicle is rescinded. The dealer cannot offer for sale more than 1 option. The maximum penalty for a contravention of, or failure to comply with, this provision is a fine of $20,000.

If a dealer proposes to grant an option to a person to purchase a second-hand vehicle during the cooling-off period in relation to a contract for the sale of the vehicle, the dealer—

- may require the person to pay a deposit towards the proposed contract price of the vehicle that does not exceed 2% of that price or $100, whichever is the lesser; and
- must provide the person with a notice in the approved form—

- advising that the vehicle is subject to a contract for sale and the person will only be entitled to purchase the vehicle if the contract is rescinded; and
- containing other prescribed information.

The maximum penalty for a contravention of, or failure to comply with, this provision is a fine of $5,000.

18—Amendment of section 20—Notices to be displayed in case of auction

19—Amendment of section 21—Notices to be provided to purchasers of second-hand vehicles

20—Amendment of section 22—Trade auctions

These clauses increase the maximum penalties that apply in respect of various offences. Where an expiation fee is included in a provision, the fee is also increased.

21—Amendment of section 26—Interpretation

In Part 5, a reference to a salesperson includes a reference to a former salesperson.

22—Amendment of section 27—Cause for disciplinary action

This clause amends section 27 so that there is proper cause for disciplinary action against a salesperson if the salesperson has acted unlawfully, improperly, negligently or unfairly in the course of acting as a salesperson.

23—Amendment of section 31—Disciplinary action

The maximum fine that can currently be imposed by the District Court where there is proper cause for disciplinary action is $20,000. This amendment increases the maximum to $100,000.

24—Amendment of section 32—Contravention of orders

This clause increases the maximum penalty for contravening or failing to comply with a condition imposed by the District Court. The maximum penalty is increased from $35,000 or imprisonment for 6 months to $175,000 or imprisonment for 1 year.

25—Amendment of section 33—No waiver of rights

Section 33(2) provides that a person of or above the age of 18 years may waive a right conferred by the Act in connection with the purchase of a second-hand vehicle. Under the section as amended by this clause, it will be an offence for a dealer to induce or attempt to induce a person to waive his or her right to rescind a contract for the sale of a vehicle during the cooling-off period.

If a dealer is found guilty of this offence, a person who has suffered loss or damage as a result of the offence may apply to the Magistrates Court for an order that the dealer compensate the person.

Section 33 as amended will also specify certain requirements in relation to the document for the waiver of the right to rescind a contract under section 18B. The document—

- is to contain—
  - a statement of the rights of a prospective purchaser under section 18B to rescind the contract; and
  - a statement warning a prospective purchaser of the legal effect if he or she waives the right to rescind; and
- is to be written in plain English; and
- may be completed electronically or manually but is to be signed by the prospective purchaser and witnessed by a person other than the dealer; and
- is to contain other prescribed information (if any).

The regulations may require a prescribed person or body to report to the Minister on the extent to which rights conferred by the Act have been waived under section 33.

26—Amendment of section 34—Interference with odometers prohibited

27—Amendment of section 41—False or misleading information

28—Amendment of section 42—Name in which dealer may carry on business

These clauses increase various penalties and expiation fees.

29—Amendment of section 50—Evidence

This clause amends the presumption set out in section 50(1) of the Act that a person who has sold, or offered or exposed for sale, 4 or more second-hand vehicles during a 12 month period will be presumed (in the absence of proof to the contrary) to have been a dealer during that period.

The section as amended extends the presumption to the purchase, as well as the sale, of second-hand vehicles. The presumption is also extended to the purchase and sale of second-hand vehicles by close associates of a person. If a person and another person who is a close associate of the person buy or offer to buy, or sell or offer

for sale, an aggregate of at least 6 second-hand vehicles during a 12 month period, the person and the close associate will both be presumed to have been dealers during that period (in the absence of proof to the contrary).

A further presumption is added to section 50(1). If the registration of a second-hand vehicle is transferred from 1 person to another, the transferor will be presumed to have sold the vehicle to the transferee, and the transferee will be presumed to have bought the vehicle from the transferor.

30—Amendment of section 53—Regulations

This clause amends the regulation making power so that regulations can be made requiring salespersons to comply with a code of conduct. The maximum penalty that can be imposed for contravention of, or non-compliance with, a regulation is increased from $2,500 to $5,000. The maximum expiation fee is increased from $210 to $315.

31—Amendment of Schedule 3—Second-Hand Vehicles Compensation Fund

Schedule 3 deals with the Second-hand Vehicles Compensation Fund. The Schedule is amended so that the Commissioner for Consumer Affairs, rather than the Magistrates Court, will be responsible for authorising payments from the Fund.

A number of new provisions are also added to the Schedule. These provisions provide for the following:

- a claim for compensation is to be made to the Commissioner in a manner and form determined by the Commissioner;
- the personal representative of a claimant (including a deceased claimant) is entitled to make the claim on behalf of the claimant or the claimant's estate;
- the Commissioner may require a person making a claim to furnish further information or to verify, by statutory declaration, information furnished for the purposes of making or establishing a claim;
- the Commissioner must, on receipt of a claim for compensation—
  - give the claimant and the dealer concerned written notice of the claim; and
  - allow the claimant and the dealer a reasonable opportunity to appear before the Commissioner personally or by representative to make submissions as to the claim;
- the Commissioner must on making a determination on a claim, give the claimant and the dealer written notice of the determination.

A new appeal provision is also inserted. Clause 2A provides that the claimant or dealer may appeal to the District Court within 3 months after receiving notice of the Commissioner's determination.

New clause 2B provides that, in determining a claim for compensation, any possible reduction to which the claimant's entitlement may be subject because of insufficiency of the Fund is to be disregarded.

Clause 3(2) of the Schedule lists the amounts that are to be paid out of the Fund. The list as expanded by this clause will include the following:

- amounts authorised under the Schedule;
- expenses incurred in administering the Fund;
- the costs of investigating compliance with the Act or possible misconduct of dealers or salespersons;
- the costs of conciliating disputes;
- the costs of disciplinary proceedings;
- the costs of prosecutions for offences;
- amounts, approved by the Minister, to be paid towards the cost of prescribed educational programs conducted for the benefit of dealers, salespersons or members of the public;
- amounts required to be paid into the Consolidated Account in accordance with clause 3.

Schedule 1—Related amendment

Part 1—Amendment of *Magistrates Court Act 1991*

1—Amendment of section 3—Interpretation

This clause makes a related amendment to the definition of *minor statutory proceeding* in section 3(1) of the *Magistrates Court Act 1991*. This is to ensure that proceedings under section 33(5b) of the *Second-hand Vehicle Dealers Act 1995* are minor statutory proceedings for the purposes of the *Magistrates Court Act 1991*. Under section 33(5b), which is new, a person who has suffered loss or damage as a consequence of being induced by a dealer to waive his or her right to rescind the contract may, if the dealer has been found guilty of the offence set out in subsection (5a), apply to the Magistrates Court for an order that the dealer provide compensation for the loss or damage.

Debate adjourned on motion of Ms Chapman.

CONSTITUTION (REFORM OF LEGISLATIVE COUNCIL AND SETTLEMENT OF DEADLOCKS ON LEGISLATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 July 2009. Page 3626.)

Mr HAMILTON-SMITH (Waite) (12:32): I indicate that, although I am speaking first, I am not the lead speaker: the lead speaker will be the member for Bragg. This is a very important bill. The government, as we know, has introduced two bills: the Constitution (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Amendment Bill 2009 and the Referendum (Reform of the Legislative Council and Settlement of Deadlocks on Legislation) Bill 2009, both of which propose a referendum in 2010 before principal changes to current constitutional arrangements.

The parliament must consider each proposal, based on principle, with regard only to what will deliver a fair and more democratic and more robust democracy to the people of South Australia. There can be no suggestion during this debate of self-interest on the part of any party or interest or group of MPs. I think this is a debate we must have, based on what is in the best interests of all South Australians.

There are four principal proposals, and I want to address each one. The first involves a reduction in the number of members of parliament in the Legislative Council from 22 to 16. I believe this is a populist measure, which I doubt will garner much considered support, except as one which purports to indicate that reducing the number of MPs is a good thing; in fact, it is not. The committee system and the role of the Legislative Council as a house of review depends upon the current status of at least 22 members being maintained. In fact, a very important role of the upper house in examining legislation depends upon that number being maintained, at least. I believe that measure should be opposed.

There is a second proposal that the term of office of members of the Legislative Council should be reduced from eight years to four years. This proposal has some merit and is difficult to oppose. The government argues that all MPs should face the people every four years. Why, argues the government, should House of Assembly members face the people every four years while Legislative Council members receive eight year terms? Anything that makes our parliament more responsible to the people, more accountable and more democratic, the bill argues, is a good thing. Were this measure to take effect, it would reduce the quota required for election resulting in greater representation for minor parties and less representation for major parties.

I have actually commissioned some interesting research by the parliamentary library that examines this question. Curiously it shows that in the 1993 landslide, the Liberal government of the day would have had an overwhelming majority in the upper house of 12, with six Labor members, two Democrats, one Grey Power and one Independent. At the last election in 2006, it shows that Labor would have had eight, the Liberals six, the Greens one, Family First two, and the Independent No Pokies Party five.

It is difficult in the extreme to argue that because a major party's representation might be reduced, the measure should not be supported. For a range of reasons, the measure makes sense. It is fair, it is democratic, it empowers the electorate, and it makes sense. Counterarguments, in my personal view, about the benefits of split terms are difficult to substantiate and seem to lack sound research and balance. Arguably, the measure should be supported. Sadly, however, the government has chosen to link it to the earlier measure I mentioned and the two that I am now about to move to, presenting as one package all four proposals, which creates a difficulty for the parliament.

The third proposal, giving the President a deliberative rather than a casting vote, is supported by a very weak case. The argument that the government presents is poor. The inclusion of this measure is curious. The proposal seems to lack any tangible benefit and may involve the President in debate and discussions as a matter of course that might compromise his or her impartiality. The measure should be opposed.

The fourth measure, the deadlock provision, is one of the most compelling of the government's arguments in my view. In essence, the proposition is that arrangements extant in the federal parliament regarding the Senate should apply in South Australia. The double dissolution deadlock provisions in the federal parliament have served Australia well since 1901. The exercise

of these provisions causes the Senate to reflect very carefully on its decisions and qualifies the power of veto.

The government's argument will be that this measure retains fulsomely the Legislative Council's role as a house of review and inquiry while qualifying the veto function. Ultimately, this proposal empowers the people of the state to get rid of or retain an obstructive upper house at an election. The measure then provides for a joint sitting should a newly-constituted parliament prove unable to break the deadlock. The government explains the difficulty with the existing constitution and the existing deadlock provisions in its second reading.

This measure does not diminish the Legislative Council's ability to significantly delay and review legislation, to submit it to committee and to cause public scrutiny that ultimately empowers the electorate. It is hard to argue against except on the basis of self-interest. This measure, arguably, should be supported, but again the government has linked this to the other measures as one package.

It is interesting to reflect on the history because there has been much debate in this place about constitutional reform in regard to the upper house. Inaugurated in 1857, the Legislative Council existed to fulfil two purposes: to protect democracy against tyranny by acting as a house of review and to protect property rights against democracy by limiting franchise and membership to male property owners. I have read Dean Jaensch's offering, *The Flinders history of South Australia,* where he argues that this was done by supporting the council in three elements: firstly, restricted franchise based on property, an electoral system weighted in favour of rural property and a veto power over legislation.

With these three elements, especially the veto power, the house soon found the council was a hostile, formidable institution and parliamentary sessions after 1857 soon descended into quarrels between the houses, conferences of managers and the council using its veto power. These disputes led to the creation of the 'Compact of 1857' in which council agreed to relinquish its rights to amend bills regarding the normal annual expenses of government but was permitted to suggest changes to any other bills of supply.

The greatest reforms of the upper house were during the 1970s under then Labor premier Don Dunstan. Dunstan's motivation was most likely fuelled by witnessing how the council obstructed the implementation of major Labor government policies from 1965 to 1968 by either rejecting the bills outright, making partisan amendments, or just laying them aside. Dunstan was also a firm believer in reforming the council to generate a true house of review, and his broad reforms included the introduction of an optional preferential voting system, a reduction in the sitting age qualification from 30 to 18, and an increase in the membership size of the council.

As extensive as the reforms were, popular disapproval of the upper house has not ceased, particularly driven by certain elements of the media. This may be because, while the Dunstan reforms were extensive, the changes only addressed the principles of democracy and representative government. Dunstan's reforms failed to clearly define, and hence legitimise, the chamber's role and existence in parliament. Consequently, South Australians found themselves in an interesting position: they had inherited a renovated house yet remained unconvinced of its value. The powers of the upper house are, of course, the key issue. These powers are established in various sections of the state Constitution Act 1934, and section 10 provides a broad overview:

> Except as provided in the sections of this act relating to money bills, the Legislative Council shall have equal power with the House of Assembly in respect of [all] bills.

Further, section 61 of the act stipulates:

> A money bill, or a money clause, shall originate only in the House of Assembly.

Money clause amendments are not permitted under section 62(1); however, the council does have the power, under section 62(1), to suggest amendments to bills of supply. Therefore, the powers of the Legislative Council may be said to equal those of the House of Assembly. Although they cannot introduce or amend money bills, they can suggest amendments or omissions, or even reject these bills.

Although rarely utilised, the possession of this veto power contributes to the popular image and the practicality of the second chamber being, at times, obstructive. This raises the question as to whether the council's power to veto bills hinders its ability to properly review bills. It may be argued that the removal of the veto power would result in the upper house having no other roles or interests, and therefore it would be able to concentrate entirely on the scrutiny of draft legislation.

In *The Flinders History of South Australia* Howell notes that 'the compact of 1857' resulted in the rejection of many money bills by the upper house which would have passed if members had insisted upon their lawful right to make amendments. This suggests that the veto power was employed as a political device to undermine the authority of the government of the day. It would be politically difficult to prove that hostile councils of today have continued to use the same strategy to spite the executive; however, as a number of MPs note, it s not entirely implausible.

Jan Davis, Clerk of the South Australian Legislative Council, noted in her paper 'The Upper House: a snapshot of the South Australian experience 1975-1998':

> …(from 1975 to 1998) only 1.8 per cent of government bills have been rejected outright and this was usually after going through the whole legislative process to a deadlocked conference between the houses. Excluding sessions which have been prorogued owing to the calling of an election and where the government's legislative program had not been completed, only 7.1 per cent of government bills have not passed the upper house. Bills which have been the subject of in-depth consideration have, on balance, benefited from this dual process of investigation and amendment and indeed, in certain circumstances, it has obviously been essential.

As noted by Griffith and Srinivasan, this argument does not take into account how important the defeated bills were to the government's policy program—a very important point. It does not consider where a government might have had to agree to support a minor party proposal for a promise that any aspect of its own program would not gain enough support to pass.

Griffith and Srinivasan also observed that Davis's arguments against the view that the council is an obstructive chamber does not consider 'the more analytically difficult issue of inquiring into the curtailment of the government's legislative program where it thought it could not find sufficient crossbench support in the council'.

We have had the saga over Roxby Downs. We have had the saga over the sale of ETSA. Arguably, we have had governments held back over time from being bold and creative because of this power of veto. When questioned about this particular practice, the Clerk of the Legislative Council expressed doubt that governments would shelve bills that constituted the main part of their manifesto and cited as an example the Liberal Party's repeated attempts to pass the unpopular voluntary voting bill.

Shadow ministers and former shadow cabinet ministers would refute this view and claim that the practice is common. At cabinet meetings, the probability of certain bills passing the upper house is calculated and, if the chances of success are low, bills are laid aside. Of course the power of veto affects government intentions.

While the power to veto may directly block legislation, it has also proved to be successful in indirectly discouraging the introduction of legislation that may conflict with the views of councillors. It is important to realise that, as the Legislative Council houses various minority parties and Independents, each often with different legislative priorities and agenda, the number of bills that fail to be introduced may be quite significant.

From all this, it may be understood that, while the veto power might be used to block bad legislation, it serves as a distraction to the chamber, drawn upon to prevent governments from executing their policies. If a government wants to be bold, if it does not have control of the Legislative Council it is constrained from being visionary.

This is a distraction to the chamber, a tool used to prevent governments from executing their policies. Such activity suggests that the chamber's obstructive image is justified and, in order for public perceptions to change, the council must make concerted efforts to reform itself. It must exchange its veto power for a right to delay, or we must consider the proposals in this bill.

I want to refer briefly to the history of the mother parliament, and those who have attended Westminster conferences would be familiar with it. By a quirk of history, Westminster has, through the House of Lords, given itself a most interesting device. Historically, members of the House of Lords represented the interests of the British aristocracy and often united with members of the House of Commons to check on the powers of the monarch.

The powers of the house were equal to those of the House of Commons, except that the Lords could not initiate or amend bills that imposed taxes on people, nor could it initiate or amend bills granting aid or supply. The house also maintained a right to reject supply bills; however, this was rarely utilised.

The Lords came under a double attack throughout the 1880s, and attempts to reform the chamber were made by the House of Commons, which condemned the hereditary right of a seat,

and by Liberal and Conservative peers, who wished to change membership and make the house more effective. These attempts at reform failed, as did the constitutional conference of Liberals and Conservatives in 1910.

It was only when the government introduced the Parliament Act in 1911 that reforms started to take place. The act was predominantly concerned with the powers of the upper house, and it was eventually passed by the Lords in 1911, albeit under the threat of the introduction of more Liberal peers to the chamber to ensure its ratification.

The provisions of the act concerning the powers of the Lords are summarised on the United Kingdom parliamentary website, and they are as follows: bills certified by the Speaker as money bills to receive Royal assent without amendment within one month of being sent from the Commons and at least one month before the end of the session; any other public bills, except those extending the life of the parliament, to become acts of parliament without the consent of the Lords if passed by the Commons in three successive sessions, with two years between the first reading and the final passing in the Commons and, if sent up to the Lords, at least one month before the end of each of the three sessions; and finally, the maximum duration of a parliament reduced from seven to five years.

These would have been alternative amendments that could have been made to our constitutional arrangements. Although officially an important act, the Parliament Act of 1911 was deemed only a temporary measure, as the phrasing of the provisions was seen to be unclear.

Consequently, in 1917 Viscount Bryce chaired a conference, comprising 15 appointed members from both houses, to think about the composition and specific powers of a reformed second chamber.

Although the proposals in the Bryce report 1918 were reported to parliament one year after the conference, it failed to be implemented due to the war. The proposals of the Bryce report concerned the upper house powers, including (and worth noting), first, full powers of non-financial legislation, but no power to amend or reject purely financial legislation determined by a small joint standing committee of both houses; and differences between the two houses to be resolved by a 'free conference committee of up to 30 members of each house'. In certain circumstances, a bill agreed to by the Commons and by an adequate majority of the free conference might become law without the agreement of the second chamber.

The history of the mother parliament's determinations is worth scrutiny in the context of this debate. Under the leadership of Tony Blair, the British Labour Party introduced the House of Lords Act 1999, which abolished the automatic right of hereditary peers to sit in the House of Lords and reduced the membership size of the hereditary peers. Curiously, by dint of history, Westminster has delivered itself a non-elected chamber, where some of the best minds in the country are able to contribute to legislation without necessarily blocking the government of the day from governing.

In summary, I find some of the proposals in this bill worth supporting but, because the government has chosen to link all four measures together, it is difficult to support. I will vote in accordance with the wishes of the Liberal parliamentary party, and my vote will go accordingly; but it would have been an interesting debate, if the government was serious about this measure, had it decided to break it up into the four component parts so that we could address each part bit by bit step by step.

It is very clear to MPs and political observers that South Australia's present constitutional arrangements inadequately deal with deadlocks between the houses. There needs to be change. If the government is serious about this, it needs to look at how it is handling the measure and adopt a different approach. The commonwealth constitutional arrangements are superior and well tested. I think there are aspects of the bill that are worth supporting, but unless the bill is broken up into its respective parts it is going to be a difficult exercise.

Time expired.

Ms CHAPMAN (Bragg) (12:52): I indicate that I will be the lead speaker on this bill, on behalf of the opposition. This bill, the Constitution (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Amendment Bill, will be followed by the Referendum (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Bill. One, in substance, addresses the proposed implementation of the reforms to the Legislative Council and the operation thereof, and the second facilitates the accommodation of the constitutional requirement in the event that

reforms are to be proposed for the people of South Australia's consideration. I propose to deal with the substance of both measures in the course of my contribution

These bills were introduced by the Attorney-General on 16 July 2009. I noted, when reading his contribution, that the government first announced, through the Premier's media release on 24 November 2005 (on which date he also made a ministerial statement in this parliament), an important initiative that his government was going to undertake. On that day he said that he considered that it was important that there was reform in the Legislative Council, but that the people of South Australia needed to have the opportunity to consider a number of questions. He outlined in his contribution to this house a time when he claimed:

> ...the 22 members of the Legislative Council, who have no defined electorates and no defined electorate demands, spent their wealth of time and resources to research issues, examine legislation and consider its consequences on our community.

Later he went on to say:

> The place is now intent on holding up legislation by claiming it is not ready to deal with it, referring issues off to select committees which should ordinarily be debated in the house and amending legislation to make it unworkable.

I indicate that, whilst I will take issue with a number of the claims of the Premier in relation to that statement, I note that that appears to be the motive upon which he proposes that his government would propose and effect Legislative Council reform. Later in that contribution he goes on to say:

> It is a decision for the people of this state. I want to be able to put the choice—the options—to the people of South Australia so that they have more than four years to consider, discuss and debate the issues and form a view before the 2010 referendum to be held in conjunction with the state election.

He goes further:

> Let the people decide. It is their parliament, and it is their constitution. Let the people decide. They can choose to keep the upper house, they can choose to get rid of it or they can choose to reduce the number of members of parliament.

He goes on:

> Apart from abolition, or no change at all, we want to put to the people an option for reforming the upper house. Somehow, I think the reform option could be quite popular. These reforms would include:
>
> - reducing the terms for its members from the ludicrous eight year terms down to four year terms;
> - reducing the number of members, say, from 22 MPs to 16, or maybe more;
> - reducing its ability to indefinitely delay legislation that has passed the lower house.

Near the conclusion of his contribution he said:

> No-one should be afraid of the will of the people. This is not a job for us: it is a job for the people of this state to decide whether or not they want an upper house or whether they would like to see it reformed and reduce the number of members of parliament.

Well, how things have changed! In the next eight months that elapsed, we then had the Attorney-General introducing bills which were only a shade of those high and lofty promises and commitments to South Australians that they would have an opportunity to consider a choice: whether they have a Legislative Council at all; whether they continue to have one; whether it be abolished as such; and whether it be reformed; and that it was their choice. Now, of course, we have a very different situation.

I think it is important for members to appreciate as we embark on the debate of the matters that are now before us what is the real motivation of the government, and that was made abundantly clear in the initial scathing and critical statements of the Legislative Council made by the Premier in that announcement to this parliament back on 24 November 2005.

That is where the truth lies as to the real intention and objective of the government, and that included the clear desire by the Australian Labor Party to get rid of the Legislative Council altogether and then to dress it up with the pretence that it would give the people of South Australia some real say in relation to both that and/or reform. Well, we now have the bills and the Attorney-General's second reading explanation of the reforms we are to have, and I will come to the question of whether they should be dealt with individually or as a package in due course. I seek leave to continue my remarks.

Leave granted; debate adjourned.

[Sitting suspended from 13:00 to 14:00]

ALCOHOL CONSUMPTION

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:00): I seek leave to make a ministerial statement.

Leave granted.

The Hon. M.D. RANN: This government will move to introduce legislation which promotes responsible service and consumption of alcohol and cuts red tape for business. Our proposed changes to South Australia's liquor licensing laws reflect the importance this government places on both these principles.

In South Australia, it is currently an offence to serve an intoxicated person under the act. In the past, some bar staff have had difficulty determining whether someone requesting alcohol may be drunk. Changes to the law will make it easier for licensees and their staff by clarifying intoxication for the first time in South Australian law, making it consistent with legislation already in force in Victoria, New South Wales, Western Australia and the ACT.

The proposed change will make it an offence to sell or supply liquor on licensed premises to a person who is intoxicated or in circumstances where the person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor. This will allow licensees and their staff to be more proactive in refusing to sell or supply liquor to drunk people and to better monitor their premises.

Fact sheets will be developed to aid staff training in identifying the difference between intoxication and impairment resulting from disability or a medical condition. Other changes will create an additional power to remove or refuse entry to people who supply liquor to an intoxicated person, or who are about to. Furthermore, liquor licensing amendments will ensure that licensees providing entertainment do so only in the hours set out in the liquor licence.

Currently in South Australia, restaurant patrons are only able to take home unfinished BYO wine. Under the new changes, patrons will be able to take home unfinished wine purchased at the restaurant. People have known of this dilemma for years. People have complained that they have to buy wine by the glass. They cannot buy the wine they actually want, because they do not want to consume a whole bottle on the premises. This responsible change will avoid people consuming a whole bottle in order to avoid waste and will further promote responsible alcohol consumption and safety on our roads.

In these economic times, South Australia's many producers will also benefit from the proposed change. The government's common-sense improvements to producers' licences will allow South Australia's many boutique wineries to better cater for visitors' needs while potentially saving up to $4.2 million in red tape reduction and valuable time absorbed by the preparation of additional licence applications.

Regional wine producers will be able to form a collective cellar door or operate from a second premises under their existing licence. Regional producers will also be allowed to serve at regional farmers markets or other localised events, such as regional festivals, without having to pay for additional licences.

Currently, producers are limited to selling or supplying their own product to consumers. Under the proposed changes, producers will be allowed to sell beer with a meal, thus providing a complete dining experience without the requirement to hold both a producer's licence and an additional licence to sell other types of liquor.

It will also enable them to provide samples of all types of wine during comparative tastings. This initiative will encourage further educational and innovative experiences to be developed at the cellar door and greatly benefit our tourism industry and regional economies.

Producers will also be able to seek exemption from requirements that blended wine contain a 'substantial proportion' of their product. This change will be of enormous help to producers who have suffered crop failure due to drought.

There has been debate recently regarding the dangers of the consumption of alcohol by children. In order to further support this government's commitment to the health and wellbeing of our children, it is intended to provide ministerial power to prohibit the manufacture, sale or supply of undesirable liquor products likely to appeal to minors, such as alcoholic milk drinks or alcoholic iceblocks.

It is also intended to broaden the scope of the code of practice to allow a code to deal with any matter designed to promote compliance with the provisions and objects of the Act, including: requiring staff to undertake specified accredited training; prohibiting advertising that is likely to result in the liquor having a special appeal to minors; regulating schemes for the promotion of liquor on licensed premises; preventing offensive behaviour on licensed premises, including offensive behaviour by persons providing entertainment; designing measures to minimise offence and disturbance to residents and protect the safety, health or welfare of minors, customers and staff; and ensuring public order and safety at events attended by large crowds. In order to further support our police and the courts, expiation notices will only be issued for offences that are clear cut; for example, the responsible person not wearing appropriate identification.

These proposed changes seek to reduce the cost and risk associated with regulation and support a number of this government's visions for this state in South Australia's Strategic Plan, including economic growth, competitive business climate, enhancing exports and tourism, aiding health by reducing the incidence of consumption of alcohol by intoxicated people, and reducing alcohol-related crime.

Most importantly, what is being done today benefits regional wine producers and also introduces a greater and larger measure of commonsense into liquor licensing in this state.

GLOBAL FINANCIAL CRISIS

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:07): I seek leave to make a ministerial statement.

Leave granted.

The Hon. K.O. FOLEY: I have risen to make a number of statements to the house on many occasions over the past 12 months in order to provide members with further information on economic indicators and financial results as the global financial crisis unfolds. Today I wish to do this again.

It is just three months since I handed down a tough state budget and warned of the financial challenges facing South Australia caused by the ongoing global financial crisis. In the budget the government took some difficult decisions in order to address the impact to the state's finances of projected sharp declines in GST grant revenue and state taxation revenue. Our response was to set out a pathway through these challenges—one that was endorsed by the international credit rating agencies, which almost immediately reaffirmed the state's AAA credit rating.

The government's prudent economic management continues to show every indication that South Australia may yet escape the worst extremes of the global financial crisis. Recently published indicators may give cause for cautious optimism in the long term. Just last week the Australian Bureau of Statistics published seasonally adjusted final demand for South Australia, showing an annual increase of 5.2 per cent. State final demand measures were spent by households, business and government on both consumption and capital investment.

South Australia's performance outstripped the rest of the nation and compared with a 2.5 per cent increase in Western Australia, 1.5 per cent in Victoria and 0.8 per cent in New South Wales. Queensland went backwards at negative 2.5 per cent. It demonstrates that South Australians have confidence in the way in which the state is being managed and where it is headed for the future. This confidence was further echoed in the recent BankSA State Monitor report. The report noted that confidence among South Australian consumers has dramatically rebounded in the past three months to reach the highest level in four years. The jump in optimism is the largest single increase in the 12 year history of the BankSA State Monitor and shows a return to optimism last seen in the housing boom of 2003 to 2005.

Business confidence also rose significantly. As BankSA Managing Director Rob Chapman states:

Business owners are confident about the economic outlook and are expecting to see immediate benefits for their own business.

But he warns:

Businesses remain cautious about making major investments in capital or staff. These worries are likely to disappear, if we see a period of sustained economic growth and a return in consumer spending.

However, he concludes:

The lift in both business and consumer confidence is promising for the state as it represents a strong platform for future sales growth and labour demand.

Also this week we have seen published the ANZ job advertisement analysis for August. It shows that the average number of weekly newspaper job advertisements has risen by 9.3 per cent in South Australia in seasonally adjusted terms. This is good news, but it needs to be taken in context. The average number of weekly advertisements is still 36 per cent lower than it was a year ago, and the ANZ warns that it is likely to be the middle of next year (2010) before national unemployment reaches its peak.

Whilst employers appear to be reluctant to shed workers, the number of hours worked has shown a very steep decline. This is not an unprecedented feature of a recession, but the sharp reduction in hours worked is certainly the most pronounced that we have seen for many decades.

Finally, in terms of state government revenues, including GST and payroll tax, the latter months of 2008-09 and the early part of 2009-10 have been closely tracking in line with budget expectations. There is no sign yet of stronger than expected revenue outcomes. That is a message that the opposition should understand; that at this stage there is no clear indication that revenues have increased beyond what was projected in the June budget.

Stamp duty revenues were somewhat above expectation at the turn of the financial year, but this was because of a stronger than anticipated surge in first home buyer activity, which is clearly unlikely to be sustained, and we would expect a regression back to the stamp duty forecast that we have in the budget.

Further to that, just today details of the Australian retail turnover have been published. In seasonally adjusted terms, Australian retail turnover fell 1 per cent in July, following a 0.8 per cent fall in June. The falls in the last two months followed strong growth in the previous three months. In South Australia, retail turnover fell 1.4 per cent seasonally adjusted in July following a 1.9 per cent fall in June. Annual retail growth is 5.2 nationally but, concerningly, in South Australia it is now sitting at some 1.7 per cent.

The Prime Minister said last week that, in spite of positive indicators showing the nation outperforming most of the world's developed economies, the international downturn continued to have an impact on Australia. Mr Rudd observed that the global economy is not out of the woods yet by a long stretch and that this economy—Australia's—is an integral part of the global economy. That is why I, too, sound a note of caution about the conditions in the South Australian economy.

South Australia's growth may have (and it has) outstripped the rest of the nation over the past 12 months and Australia may well, indeed, have avoided the worst of the global recession. However, we are a long way from being able to proclaim that the worst is behind us. The fact that the Australian and South Australian economies have fared better than the rest of the developed world is testament to the strong and decisive stimulus measures put in place by both federal and state governments. Much of the growth we have seen can be traced back to these decisions. However, as the Prime Minister observed, Australia is part of the global economy, and the rest of the world has not fared as well.

One area of concern is the decline in the value of our state's overseas exports—down 9.7 per cent, or nearly $1 billion, on the previous 12 months. The biggest declines were in mineral exports, which obviously is a result of the downturn in commodity demand—particularly iron, copper and lead—petroleum products, wine, wool and, of course, motor vehicles. That is evidenced by the fact that General Motors Holden, which had 50 per cent of its production exported to the United States and the Middle East, had seen that export almost dried to zero. In particular, key markets, such as the ASEAN nations, were down 20 per cent, the United States was down 15 per cent, the United Kingdom was down 25 per cent and the Middle East was down 28 per cent. No doubt the drought also had a very serious impact on the primary sector.

The international markets continue to recover slowly and fitfully from the lows they reached a few months ago. They may yet go down again, but the legacy of the collapse in the international markets is something that will be felt by investors for many years to come.

The state government's major investment funds are no different. Today, I am releasing the end of financial year results of Funds SA and the Motor Accident Commission Compulsory Third Party Fund. Decisions on these funds' investments are taken independent of government, and their performance is largely consistent with that of any number of other public and private investments over the past 12 months (and we would all be aware of this with our own private superannuation funds).

During 2008-09, the value of Funds SA's total assets under management fell by $1.6 billion, down 12.7 per cent from $14.2 billion to $12.6 billion. Cash was the only investment option to exceed its 2008-09 investment objective, with growth of 5.6 per cent. Funds SA balanced and growth multi-sector (tax exempt) funds, that represent around 78 per cent of Funds SA's total asset value, recorded negative returns of 15.3 per cent in the balanced fund and minus 17.5 per cent in the growth fund.

Funds SA positioned its portfolios more defensively during the year in response to the financial market developments, and continues to monitor developments closely. However, we would, of course, expect, with the equity market showing a significant rebound in recent months, that a large proportion of those losses would be recovered over time.

The Motor Accident Commission Compulsory Third Party Fund has been similarly affected as a result of the CTP Fund sustaining a loss of $208.5 million for the year ended 30 June 2009. It is important to note that, notwithstanding these losses, it has managed to retain the position where its assets continue to exceed its liabilities by $69.4 million.

The losses, however, have had a significant impact on the sufficient solvency target, a measure established by the government in December 2002 to protect the fund during difficult financial times. This measure, introduced by this government after being newly elected in 2002, ensured the scheme had a stronger balance sheet and a higher level of reserves than otherwise would have been the case. It has enabled the fund to withstand the extremes in the collapse of the market during the global financial crisis. As at 30 June 2009, the sufficient solvency target was $2,304 million, and in 2008 it was $2,060 million, which compares to the funds' assets of $2,103.5 million. (That seems like a bit too much information.) This equates, in an easier to read measure, to 91.3 per cent solvency against 2008 of 101.5 per cent of the required level of sufficient solvency.

Short-term fluctuations in the target can and will occur but, having easily met the target for a number of years, recent results recorded in the midst of the global financial crisis reaffirm the need to return to and maintain sufficient solvency. As a result, the Motor Accident Commission board (under the chairmanship of Roger Cook) also approved the new strategic plan earlier this year, aimed specifically at reducing claim costs, along with a range of other initiatives to improve the scheme's solvency.

The sufficient solvency target created a prudential reserve for MAC, which has effectively allowed it to weather the financial storm and still remain in a positive net asset position of $69.4 million. The sufficient solvency target has therefore fulfilled its role of underpinning the long-term viability of the CTP fund (bearing in mind the sufficient solvency target was not there under the reign of the former Liberal government).

It has been encouraging to see business investment, household spending, job ads and business and consumer confidence increase in recent months. However, as exporters, ordinary investors and, indeed, every superannuant knows, the legacy of the financial crisis has been severe and will be felt for many years to come. Therefore, the need for experienced, prudent management of our economy, the type of sound economic and financial management demonstrated by this government for more than seven years, has never been in greater need.

ECONOMIC AND FINANCE COMMITTEE

The Hon. P.L. WHITE (Taylor) (14:21): I bring up the 70th report of the committee, being the annual report July 2008 to June 2009.

Report received and ordered to be published.

LEGISLATIVE REVIEW COMMITTEE

Mrs GERAGHTY (Torrens) (14:22): I bring up the 25th report of the committee.

Report received.

PUBLIC WORKS COMMITTEE

Ms CICCARELLO (Norwood) (14:23): I bring up the 337th report of the committee on the Adelaide Film and Screen Centre, Glenside.

Report received and ordered to be published.

Ms CICCARELLO: I bring up the 338th report of the committee on the Adelaide Riverside Building North Terrace Fit-Out.

Report received and ordered to be published.

Ms CICCARELLO: I bring up the 339th report of the committee on the Flinders Medical Centre Redevelopment—Revised Emergency Department and Acute Medical Unit.

Report received and ordered to be published.

VISITORS

The SPEAKER: I draw members' attention to the presence in the gallery today of students from William Light School, who are guests of the member for Ashford, and students from Kildare College, who are guests of the member for Torrens.

QUESTION TIME

DESALINATION PLANT, RENEWABLE ENERGY

Mrs REDMOND (Heysen—Leader of the Opposition) (14:24): My question is for the Premier. Given the Premier's claim that the desalination plant will be powered by 100 per cent green energy, can he explain what happens on those days when either there is no wind or there is a strong, hot wind and the wind turbines are turned off?

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (14:25): This is possibly the dumbest question I have ever heard in this place. Can I say it would help before you ask a question about electricity to have some basic understanding of the commodity and the way the national electricity—

An honourable member: Arrogance.

The Hon. P.F. CONLON: It is not arrogant. I simply have to point out to you that this is a completely stupid question. The marketing of electricity is one of the most complex and abstract notions one could ever imagine. That is because—

Mrs Redmond interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: I will tell you one thing: the Premier would never ask a question like this.

Mr Pengilly: He won't answer it either.

The SPEAKER: Order, the member for Finniss!

Members interjecting:

The Hon. P.F. CONLON: It is a noisier opposition, but then again it should be—there are so many of them on the front bench now. My sympathies go out to Liz Penfold and Mr Gunn because they are the only two apparently not on the front bench. The new opposition slogan is 'Never mind the quality, feel the width.'

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: Electricity is invisible and you cannot store it. It has to be made as it is used. For that reason—

An honourable member interjecting:

The Hon. P.F. CONLON: It is all very simple, isn't it? For that reason, while you are paying a retailer who is paying a generator for any electricity you use, the electricity you use may not actually have been made by that generator. That is the nature of the electricity market. How it works is this: those retailers do purchase green energy; they purchase a certain amount of green energy; they are not allowed to sell more green energy than they purchase.

The fact is that, if we are purchasing 10 megawatts of green energy for a desal plant, it must be generated. Obviously, it cannot be generated from wind when the wind is not blowing, but in the overall—

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: The overall effect of that contract is that, for the energy use of the desal plant, there must be that much green energy generated to be purchased. So, it might well be that those particular electrons that are coming from a wind farm 300 kilometres away—you know, what you do not do is take the electrons, put them in a battery, put them in the back of a truck, drive them up to the desal plant and plug them in. That is just so stupid. What it does mean—

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: What it does mean—

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: What it does mean—and it is so pathetic that they are proud of their ignorance, so pathetic that they are proud of being ignorant. If I can make it this simple: it means that you buy a desal plant; for example, that desal plant uses 10 megawatts of electricity while it is running; you contract to make sure that your additional demand will be supplied by 10 megawatts of green energy generated. It means that, in the overall contribution of that desal plant to your carbon footprint, it is emissions free in the generation of electricity. That means that, whenever it is running, it is making no contribution to the carbon footprint because the people supplying that electricity must be purchasing that much green energy. The fact is that no-one in the universe can identify the electron that runs, for example, into this microphone at any given time—

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: Let me explain it. If we did not have this contract, we would be buying an additional 10 megawatts of generated carbon-rich black electricity. With this contract it means that will not be added to our demand. What will be added to our demand is 10 megawatts of green energy. I would have thought that that was a good outcome. I would have thought that, before you ask a question, you would try to understand the basic mechanics of electricity and you understand the basic operation of the electricity market.

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: It is simple: if you want to operate a piece of electrical equipment you use electricity. If you want to write a contract for that electricity you can choose green energy. You can pay a premium. It means that your net addition to demand will be met by a net generation of green electricity. That is how the rules work.

The fact is that, even if you have a wind farm sitting on top of the desal plant, depending on fluctuations in demand, you still cannot guarantee that those electrons will flow where you want them to. I do not begin to understand. It might have been your friend Faraday who first noticed that, if you move a magnet past a coil, you create an electrical current and it pushes the electrons from one end to the other, but it does that at the speed of light and they have to be used as they are, so

to speak, agitated. With that, I have thoroughly exhausted my knowledge. Any further questions on how electricity works will be answered by my friend Trish White who is, indeed, a rocket scientist.

RUBY ARTS AND CULTURAL AWARDS

Ms FOX (Bright) (14:31): Will the Premier advise the house about the 2009 Ruby arts and cultural awards?

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:32): I am delighted to say that there was a splendid celebration last night of innovation and creativity in the South Australian arts. It was good that the co-minister for the arts (the Minister for Health) was also present last night. The Ruby Awards, together with the SA chapter of the Australian Business Arts Foundation (AbaF) Awards were presented last night. Almost 600 representatives from the arts and corporate sector attended the event.

The awards are held in recognition of the achievements of those who contribute to the arts and cultural landscape of South Australia, enriching our lives and enhancing our state's reputation as a hub for world-class artists and arts events. The Rubies, named in honour of our renowned arts patron Dame Ruby Litchfield, were first introduced in 2006. I think Dame Ruby would have been very proud of last night's event. Thanks to a media partnership with *The Advertiser*, the awards, nominees and recipients have received excellent coverage throughout that time.

AbaF works to foster the important relationship between the arts and business. The AbaF Awards acknowledge exemplary partnerships. The support that both AbaF and business provide ensures this event is a fitting celebration.

Before going further, I would like to take a moment to reflect on just some of our recent achievements and to look ahead to some of the exciting arts events that are coming up. In 2009 we celebrated another outstanding festival season. The Fringe, which celebrates its 50th anniversary next year, drew attendances to paid and unpaid events of more than one million people. Just remember what the critics said (the Fringe this year was not held in a Festival year). They said to me: 'If you don't hold it in a Festival year then it can't be a Fringe and no-one will turn up.' One million people, including more than 80,000 (which included the Deputy Premier, much to my astonishment) were there on the opening night parade in the East End. He was not in the parade; he was watching the parade.

The BigPond Adelaide Film Festival proved another outstanding artistic and commercial success increasing its overall attendances by 30 per cent and featuring 22 world premieres, as well as 62 Australian premieres. Of course, there was the fantastic success of the Adelaide Film Festival Investment Fund with films that it has invested in featuring and starring at the Cannes Film Festival. Everyone remembers, of course, the extraordinary film *Samson and Delilah*.

The Come Out Festival further enhanced its status as the nation's premier youth arts event, with more than 200 schools taking part and around 35,000 students and teachers registered.

The Cabaret Festival has enjoyed its biggest result ever—again, despite the global financial downturn. Last month the 12th South Australian Living Artists Festival (SALA) featured the work of more than 2,700 artists and utilised more than 500 venues across the state. Next month we host the third OzAsia Festival that celebrates our cultural and artistic ties with Asia in all its manifestations. Congratulations to Jacinta Thompson, Douglas Gautier and the OzAsia team for winning the Ruby for best work or event for the 2008 festival.

I do not want people to be too distracted by other events, but next year the Adelaide Festival of Arts celebrates 50 fantastic years. I am eagerly awaiting the release of what promises to be a stellar program of attractions and events that will appeal to a diverse audience. To help these golden celebrations, I recently announced that next year's WOMADelaide event will be held over four days in March, not three. I expect to see a strong turnout from the opposition at WOMAD. I know the Minister for Infrastructure and Energy will be there in a cheesecloth caftan to join me. The South Australian government is proud to be continuing its strong support for the arts and artists across all art forms, and we keep championing their terrific work.

The Ruby Awards have been widely endorsed by artists and arts and cultural organisations. The number and high quality of nominations that were received in 2009 demonstrates their support.

I wish to wholeheartedly congratulate all the award winners. I would like to pay special tribute today to Fiona Hall, the recipient of the 2009 Premier's Lifetime Achievement Award for her outstanding and enduring contribution to the arts. I am sure the Leader of the Opposition would want to join me in applauding Fiona Hall. She is the first visual artist to receive this award and is recognised for her creativity and dedication to the arts throughout a career spanning three decades. Environmental themes feature strongly throughout her work. Ms Hall has exhibited widely in Australia and internationally and later this month will show her work as part of the 2009 Moscow Biennale, which I am sure that if anyone wants to attend they will.

I am also delighted to announce a new award in memory of one of South Australia's best loved independent theatre directors, Geoff Crowhurst, who passed away earlier this year. Geoff contributed to the arts in South Australia in a multitude of ways as an outstanding advocate for community theatre, a great creative talent, and an inspirational person who is missed by many. In recognition of Geoff's enormous contribution to the arts in South Australia, a new Ruby Award, known as the Geoff Crowhurst Memorial Award, will be presented from next year. It will recognise and honour an individual who has made an outstanding contribution to community cultural development in our state.

DESALINATION PLANT

Mrs REDMOND (Heysen—Leader of the Opposition) (14:38): My question is for the Minister for Water Security. Since the government's decision to double the size of the Port Stanvac desalination plant, is it still proposed that the plant will be switched on and off in response to the relative availability of water from the Hills catchments and the River Murray; and, if so, what impact has this had on the price tendered by AGL to supply electricity?

The Hon. K.A. MAYWALD (Chaffey—Minister for the River Murray, Minister for Water Security) (14:38): I thank the Leader of the Opposition for her Dorothy Dixer. The contract that we have with AGL is not a take or pay contract; it will be based on how much electricity is consumed. We will pay for the electricity that is consumed at the rate that we have negotiated in the contract for the next 20 years.

It is a good contract. If we were to run the plant at its full capacity of 100 gigalitres year in, year out it would cost about $75 million a year. However, if we do not run it at that full capacity it will, of course, cost less for the electricity.

CHILD PROTECTION

Mr BIGNELL (Mawson) (14:39): Will the Minister for Families and Communities advise the house on the progress of important child protection initiatives?

The Hon. J.M. RANKINE (Wright—Minister for Families and Communities, Minister for Northern Suburbs, Minister for Housing, Minister for Ageing, Minister for Disability) (14:39): This week is National Child Protection Week, where the national spotlight is rightly placed on how we keep our children safe. The Rann government has a proud record when it comes to child protection. So, I think it is appropriate that I draw the house's attention to a very important initiative introduced by our government, which has a strong focus on early intervention and strengthening families before they fall into difficulties with child protection agencies.

The Stronger Families, Safer Children program is part of a $190 million injection of funds into child protection in South Australia, the largest ever. These funds also provided for an important increase in payments and supports to our very important foster carers around the state. I inform the house that we are also continuing to see an increase in the number of foster carers and relative carers, meaning that we now have an increase of around 40 per cent over the past five years.

The Stronger Family, Safer Children program aims to strengthen at risk families before they fall into crisis. The initiative has been introduced for families who without expert assistance are likely to become separated due to child protection concerns. By working intensively with specialist social workers, parents learn the skills needed to look after their children to ensure that the family can stay together in the long term.

The initiative is a South Australian first and engages non-government organisations to provide high-level parenting skills and supports. When needed, they also link families to other social services, such as drug counselling and financial hardship assistance.

Aboriginal and Torres Strait Islander families are a focus area for these services. Services provided through the program reflect the social and cultural dimensions of good practice work with

Aboriginal and Torres Strait Islander families. By working together with non-government organisations, we make positive connections with families that we otherwise may not. Involvement with NGOs helps break down barriers and puts us in a better position to achieve the outcomes of stabilising and supporting families and creating safe environments where children feel encouraged to grow and learn.

Stronger Families, Safer Children bolsters the family unit with intensive and expert engagement, leading ultimately to a happier outcome for many children and their families. This work is being undertaken in close partnership with Families SA district centres.

Within the next year, the initiative aims to reduce the number of children being placed under guardianship orders by more than 100, and will continue to grow. Fifty families are already being helped. Over four years, the initiative will reach more than 500 families with its three distinct programs: targeted early intervention, intensive placement prevention and reunification support services.

This government will continue to deliver family support services that help vulnerable families and prevent children from entering or becoming entrenched in the child protection and care system. Safe families build stronger communities, and this is one of the keys to continuing growth and prosperity for South Australians.

AGL

Mr WILLIAMS (MacKillop) (14:43): Does the Minister for Energy think that the AGL contract with the state government is good for South Australia given his previous statements regarding the company? The Minister for Energy was reported in *The Advertiser* on 8 September 2006 as stating:

> It's cold-blooded and I've got a big message for AGL and its customers. There's plenty of electricity companies in South Australia now.

He went on to say:

> I'm with AGL and I won't be for very much longer. The Essential Services Commission can help people pick the retailer they'd like.

The day before, the minister was also reported in *The Advertiser* as describing AGL as 'callous' and 'disloyal'. The minister urged South Australians to 'use their judgment' and not buy power from AGL.

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (14:44): Let me explain what happened at the time: what I said, what I meant, what I did and what has changed. At the time, AGL under its new chief executive—I cannot remember his name, but I certainly did not like him or the way he did business. He flew into town, no notice, nothing at all and, despite talking to the government just a week before, sacked 300 people and flew out again.

Now, I thought it was callous. I thought the way they did it was unnecessary and weak. I said that I was appalled by it, that I had an AGL contract and that I was going to get out of it. As soon as I could get out of it without paying them any extra money I was out of it. I think I am with Origin now, not that I am giving any recommendation for Origin.

Let me tell members something else that has happened since then. I do not know whether or not the AGL board agreed with me, but the fellow who did that does not run the place any more and they now have a new chief executive. It is a company that members opposite must have loved because, despite promising to introduce competition, they sold the entire government retail business to them—despite promising to create competition. It is the power of one in competition.

I believe that, at least at that level, its approach to those sorts of decisions is completely different from that of the previous management. I am not condoning them in any other aspect of their business, but I can tell members that in that part of it they now want to talk regularly to us about the decisions they will make. In fact, one of the good things that came out of that sad period is that we picked up a government employee and an energy ombudsman from AGL because they did not really like the way in which things were going under the previous management—but that is a matter for AGL.

When we go out to buy an electricity contract, we do not go out and say, 'I like you and I don't like you.' The Auditor-General would not like that. We set up a process and go to the marketplace and judge it against objective criteria. That may be different from the way in which members opposite did the water contract. We did not have a camera run out of film in the relevant office at the time someone was putting in a bid after the bids had closed and the probity auditor had left the building.

That may be the way you do things, but the way we do things is to go to the marketplace on a tender and judge it on objective criteria. It does not come to cabinet and we say, 'Well, you won it on your merits, but we don't like AGL so we are giving it to someone else.' That would be appalling. If that is how they suggest they will do business if they are ever the government, then thank God they are not likely to be the government for a very long time.

I think opposition members need to have a chat with the Auditor-General about how these things are done. What they are suggesting is that we should give government contracts to people we like and not the people we don't like.

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: I made it absolutely clear at the time that people decide who they pick as a retailer, but I also made it clear that they are entitled to take into account the behaviour of that company. There is greater freedom in an individual picking a contract than there is with a government. One of the reasons we have probity auditors and other people do not is because we are expected to be an exemplar in this—and we are.

Ms Chapman interjecting:

The Hon. P.F. CONLON: I cannot understand why her party does not support her. She is an expert on everything. She interjects on every subject. Why won't they recognise her greatness? Why did she slide down instead of up? I do not understand it. It is just not fair.

We give contracts to the best bid on objective criteria, not to the people we like the look of and not to people we don't like the look of. That is not how it is done and it is not how it will be done.

WASTE RECYCLING

Ms BEDFORD (Florey) (14:49): My question is to the Minister for Environment and Conservation. How is the government progressing in meeting its target to reduce the amount of waste that South Australians send to landfill?

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Environment and Conservation, Minister for Early Childhood Development, Minister for Aboriginal Affairs and Reconciliation, Minister Assisting the Premier in Cabinet Business and Public Sector Management) (14:49): The ambitious target that was set by the South Australian government in this area was to reduce the total amount of waste disposed to landfill by 25 per cent by 2014. A recently released report, 'Recycling Activity in South Australia', which, as the name suggests, summarises recycling activity in South Australia over 2007-08, concluded that our diversion rate—that is, the percentage that we divert away from landfill—has reached 69.8 per cent, up from 61.5 per cent in 2003-04, due primarily to South Australia's initiatives in recycling and reuse. The report showed that, as a component of the diversion of waste from landfill, there was a 7.3 per cent increase in recycling just in the year 2006-07 to 2007-08. That is 2.6 million tonnes of material that was recycled or recovered. Not only does this save landfill but it also makes more efficient use of materials and energy.

South Australia's recycling efforts in 2007-08 prevented the equivalent of 1.02 million tonnes of CO_2 entering the atmosphere, which is also equal to about 17 per cent of the annual CO_2 emissions from the entire South Australian transport sector, or equivalent to about 1,518,419 trees or taking 234,500 cars off the road. These are extraordinary achievements through the recycling effort.

We are obviously looking forward to the 2008-09 survey to see the effect of doubling our beverage container deposit, but because we are already seeing increases in recycling of these containers even without the increase we are expecting to see further increases in the future.

The great result in this survey reflects the fact that not only are South Australians concerned about our environment but they are also willing to act and make changes in the way in which they live to ensure that this recycling effort is improved. As members would know, the community has embraced the plastic bag ban, which has been a very successful initiative.

An honourable member interjecting:

The Hon. J.W. WEATHERILL: They are, actually. Despite those opposite predicting the end of the world, it is a very popular measure.

An honourable member interjecting:

The Hon. J.W. WEATHERILL: That's right. We will test it out, shall we? All these initiatives and the enthusiastic support we receive from the community means that the amount of waste that we take from landfill will continue to decrease.

We have another important initiative that is beginning to crank up, and that is the $3 million Recycling at Work program. I think that South Australians are proud of the fact that they are excellent recyclers, and we are continuing to take the lead on that not only in South Australia but also across the nation.

AGL

Mr WILLIAMS (MacKillop) (14:53): My question is to the Minister for Energy. Is the minister aware that the ACCC's Ed Willett, who is a member of the Australian energy market regulator, has today accused AGL of price gouging in South Australia?

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (14:53): I am. I saw that, and I have to say, if he believes that he should do something about it. This is the regulator set up there. He reckons that has happened. I invite him to do something about it. That is his job. I can tell members this: as a result of this government's move on the Ministerial Council on Energy there are processes set up to fine people who engage in bidding behaviour that is not in good faith. If that is the case, I would like Mr Willett to do something about it. What I will say is that we would not be allowed to take into account, in dealing with a bidder, allegations that were not proven, because that would not be, to my mind, entirely fair.

Can I say that I saw those comments, and I will say this: I have never had much faith in the ACCC in terms of its regulation of electricity, and I would prefer that the AER did not involve the ACCC because I have seen it make too many mistakes in the past. I am concerned, have been concerned, and have voiced those concerns on a number of occasions, about the Torrens Island Power Station. Regardless of who it is operated by, it is a very big unit in a marketplace of this size. Plainly, if people want to act in bad faith, it is a tremendous opportunity to manipulate the market. However, I am sure all of that occurred to the previous government when it was selling those assets to the private sector. I am sure it thought about that. However, it is not within my power to break up the Torrens Island Power Station into little bits.

I am sure that you thought about their market influence at that time, but I will say this: we are always concerned at reports of people bidding not in good faith. We moved heaven and earth to ensure that the National Electricity Market adopted a rule that would punish with big fines people that did that. What I would say is if Mr Willett, or anyone else, has some evidence, that case should be brought against AGL, but we are not allowed to judge tenders either on the basis that we do not like people or on the basis of allegations by a regulator, no matter how well informed, unless they are actually found to be true, and I think a little bit has to go before that is the case.

I am not absolving AGL. I can say this: if AGL has engaged in that behaviour, it should be punished to the full extent of the law; and, if Mr Willett thinks the law should be improved to punish that behaviour, I am happy to hear from him. Of course, I have only ever read about him in the media—I have never actually heard from him at the Ministerial Council on Energy—so, if he does have something to say, it might be useful to say it to the body that can change the laws. Until that time, we will just have to struggle on with the facts as we know them.

HEALTH BUDGET

Mr GRIFFITHS (Goyder—Deputy Leader of the Opposition) (14:56): My question is to the Treasurer. Can the Treasurer advise the Department of Health's overspend for 2008-09 and details of the extra funds Health received in 2008-09 from cabinet approvals? The Under Treasurer told the Budget and Finance Committee on 30 June 2008:

Health have typically overspent their budget in recent years...There was an issue one year whether we showed it as an overspend in the last period before 30 June when cabinet appropriated more funds. So, technically, they did not overspend because they got the money.

The Under Treasurer confirmed to the Budget and Finance Committee on 27 July 2009 that the Department of Health overspent its 2008-09 budget and received extra funds totalling between $50 million and $100 million.

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (14:57): The overspending by the health department has been a feature not only for the seven years that we have been in office but also, I guess, the eight years of the previous government and, one would probably suggest, the best part of the 11 years of the previous government.

We call it an overspend, and that is technically the correct terminology, but it is not an overspend characterised by wilful or inappropriate spending, in the main; it is through the sheer demand levels that we have through our hospital system. One of the great problems confronting western societies, and particularly jurisdictions such as South Australia where our demographic is higher than the average age, is that health costs are rising anywhere between 9 and 11 per cent per year, compounding. I think in the last couple of years we have brought that down closer to 9 per cent, but this is a galloping figure.

When I went to COAG with the Premier, and all other premiers and treasurers to negotiate a new health care agreement, I, for one, was not satisfied that that was the best health agreement with the commonwealth that the states could have struck.

Ms Chapman interjecting:

The Hon. K.O. FOLEY: Pardon?

Mr Williams: Are you going to answer the question?

The SPEAKER: Order!

Ms Chapman interjecting:

The SPEAKER: The member for Bragg will come to order.

The Hon. K.O. FOLEY: I am trying to give a considered response to an important question. Look at her—look at the face on her! She wants me to sit down. Does the deputy leader want me to sit down? Are you happy with my answer?

Mr Griffiths: I want to hear the rest of the answer.

The Hon. K.O. FOLEY: Well, the deputy leader is happy with my answer. You are not deputy leader any more, Vickie.

Members interjecting:

Mr PISONI: I have a point of order, sir.

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

Mr PISONI: I understand that standing orders say that members should be addressed by their electorate.

The SPEAKER: Yes, you are right.

The Hon. P.F. CONLON: I rise on a point of order. I understand interjections are also out of order, Mr Speaker.

The SPEAKER: Interjections are out of order, as is responding.

The Hon. K.O. FOLEY: The shadow finance minister, the deputy leader, is keen to hear my answer. I say to the member for Unley, give this guy a chance. Give him a break before you start to knife him—

Ms Chapman: I'm the member for Bragg.

The Hon. K.O. FOLEY: The member for Bragg, give him a chance before you start to knife him; all right. Let him have a chance.

Mr Griffiths interjecting:

The Hon. K.O. FOLEY: All right; no, I am getting to that.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: They do not want to hear the answer. Do they want to hear it or not? I mean, what I am getting to is an explanation that the health care agreement that the states and the commonwealth signed, in my opinion, was not satisfactory. In fact, the Premier and I made that very clear both to the Prime Minister and the Treasurer at the time.

Mr Williams: Just tell us what the answer is.

The SPEAKER: Order! The member for MacKillop will come to order!

The Hon. K.O. FOLEY: Will you just let me answer it and then make a judgment whether or not I have answered the question? I remember John Brumby hailing it as the greatest deal ever. I had a different opinion, because the demand in our health system at a state level is of such magnitude that it is at breaking point in the state's capacity to meet that demand. Previously, historically, the split had been 50:50. Under Howard, the split had gone to 60:40, so the state had to make up more of the demand. Minister, what would be it be now, do you think?

The Hon. J.D. Hill: About 60:40.

The Hon. K.O. FOLEY: We are still about 60:40. Therefore, the states collectively are having to pick up a larger proportion of the health care cost than we had previously and it is difficult to manage.

Ms Chapman interjecting:

The SPEAKER: The member for Bragg is warned.

The Hon. K.O. FOLEY: I wish we had the capacity to control the number of people appearing in our emergency services, emergency wards, our elective surgery and our hospitals. I wish there was some magical way, but there is not. Sick people need to be treated.

Mr Williams interjecting:

The SPEAKER: Order! The member for MacKillop has already been warned.

The Hon. K.O. FOLEY: I am trying to put into context a very serious pressure—

Members interjecting:

The Hon. K.O. FOLEY: They can laugh all they like over there. I mean—

An honourable member interjecting:

The Hon. K.O. FOLEY: I will have an answer for the member. I do not have it with me.

Mr Griffiths: Well, sit down.

The Hon. K.O. FOLEY: I do not have the answer with me and I will—

Mr Williams interjecting:

The SPEAKER: The member for MacKillop will come to order! The Deputy Leader of the Opposition.

BUDGET SAVINGS TARGETS

Mr GRIFFITHS (Goyder—Deputy Leader of the Opposition) (15:02): My question is again for the Treasurer. In the 2008-09 financial year, did the government achieve the savings promised over each of the preceding four budgets which amounted to $291 million and, if not, how much of this target was achieved?

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (15:03): The savings targets that the government has outlined are largely on track, and I made that very clear in a previous statement. I am just checking whether I happen to have a specific brief with me so that I can give the member a little more information. The savings targets are on track. No, I do not have the appropriate briefing. We have said that the shared services are taking a little longer to lock in the long-term savings that we are hoping to get.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: There are some guys laughing up there. Remember the last staffers who used to laugh up there. Whatever happened to those two?

Mr GRIFFITHS: Mr Speaker, I rise on a point of order. The Treasurer is debating this issue. My question was quite specific: over the last four years, have the savings targets been met and has the $291 million been achieved?

The SPEAKER: Order! The Treasurer was not debating, but it is out of order for him to refer to people in the gallery.

The Hon. I.F. Evans interjecting:

The Hon. K.O. FOLEY: You are very sensitive, Iain, as you slide further down the frontbench.

The Hon. I.F. Evans interjecting:

The Hon. K.O. FOLEY: I will say what I wish to say in this place, member for Davenport. I have made very clear in this parliament that the shared services savings have proven a little more difficult than we would have liked, but the important point is that we are locking and will lock those savings in, and I am very confident we will get those long-term savings.

I gave a statement—and, again, I will come back to the house—in response to this, I think, in estimates that we had achieved a very high percentage of all savings that have been required in government agencies. I do not have the percentage number in front of me, but my recollection from estimates was somewhere in the order of 90-plus per cent of the savings required have been achieved in aggregate terms.

Mr Griffiths: Across all four years?

The Hon. K.O. FOLEY: Well, I will go back and have a closer look at your question and come back with a considered answer. I am sorry I do not have all of those statistics in front of me. I will go back and have a considered look at it.

Members interjecting:

The Hon. K.O. FOLEY: I am not going to—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: I can only try to answer a question to the best of my ability. If members opposite are not satisfied, I cannot do a lot about that. I am saying to you, Mr Speaker, is that this government has a financial track record second to none in this state's history.

The Hon. P.F. Conlon: According to the ratings agencies.

The Hon. K.O. FOLEY: According to the rating agencies. At a time when Queensland, which was seen as the premier financial state, was losing its AAA credit rating, this state maintained its AAA credit rating in the most difficult financial times this state has ever seen.

Mr Williams: You had to stop doing things.

The Hon. K.O. FOLEY: Had to stop doing things? Absolutely. That is called tough decisions in tough times. What were you expecting us to do?

Mr Williams interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: This goose over here said that we only kept our AAA credit rating because we stopped doing things. Yes; absolutely correct.

The Hon. P.F. Conlon: We only got those savings by cutting money.

The Hon. K.O. FOLEY: We did. We only got 90 per cent of our savings because we stopped spending the money.

Mr Williams interjecting:

The SPEAKER: The member for MacKillop is warned a second time!

The Hon. K.O. FOLEY: This excuse for an alternate government—this poor excuse for an alternate government—is out there one day saying, 'Spend, spend, spend,' the next day they are saying, 'Don't spend,' the next day they are saying, 'Why aren't you spending?', then the next day they are saying, 'You are employing too many people.' They have no consistency, no strategy, no legitimacy.

Mr WILLIAMS: A point of order, Mr Speaker: the Treasurer is obviously debating now.

The SPEAKER: Yes. The Deputy Premier is debating.

The Hon. K.O. FOLEY: I will conclude on this point: I will go back, look at the shadow finance minister's—or are you shadow treasurer?

Mr Griffiths: Shadow treasurer.

The Hon. K.O. FOLEY: Shadow treasurer—sorry. I thought Rob was shadow treasurer. I consider Rob Lucas the shadow treasurer.

The Hon. M.J. Atkinson: The shadow treasurer in exile.

The Hon. K.O. FOLEY: The shadow treasurer in exile! What I love about it is: this new fresh—

Mr GRIFFITHS: A point of order, Mr Speaker.

The SPEAKER: Order! I think the Deputy Premier has concluded. I call the member for Morialta.

ELECTIVE SURGERY

Ms SIMMONS (Morialta) (15:08): My question is to the Minister for Health. What support has the government received for the record low overdue elective surgery waiting lists?

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (15:08): I thank the member for Morialta for this excellent question. The South Australian government—

Ms Chapman interjecting:

The Hon. J.D. HILL: You are still asking questions on health, Vickie; that would be delightful. The South Australian government, in combination with the commonwealth and with the commitment of public hospital staff, last year launched a campaign to reduce waiting times for elective surgery in the hospitals in this state. This has been a very successful campaign which has ensured that people waiting the longest for elective surgery received their operation. Praise for this campaign has come from a most unusual source—the member for Morphett.

The new shadow health spokesman told the Australian Nursing Federation's *In Touch* publication recently the following:

> We need to cut hospital waiting times for emergency treatment and elective surgery and I give credit to the current hospital administrators that, having used Federal Government money, they have reduced the elective surgery waiting lists considerably.

I thank the member for Morphett for that; however, I note that the federal government and the people who run the hospitals get credit, but the state government gets none at all. If these targets had not been met, I know who would have been responsible and I know who he would have been blaming. It would not have been hospital administrators or the federal government: it would have been me. They may have changed their leader, but it is politics as usual when it comes to the health portfolio on the other side.

Through this campaign the commonwealth government provided our state with $13.6 million to undertake additional elective surgery procedures between 1 January 2008 and 31 December last year. The state government allocated an additional $55 million over four years between 2006-07 and 2009-10 to provide more elective surgery and reduce waiting time. So, the commonwealth government and the state government have both put in additional funds to try to deal with this issue.

Of course, key to the campaign were the very dedicated doctors, nurses and other staff across our public hospitals who provided their skills to ensure that these commitments were

reached. I want to pay tribute to those people who really did put their backs into it. As a result, more than 44,400 elective surgery procedures were provided to South Australians in 2008-09. This is an absolute record. That is more than 5,500 extra procedures or more than 16 per cent extra elective surgery in 2008-09 than in the last year of the previous government—16 per cent more elective surgery and 5,500 extra procedures.

At the end of June this year, there were only 32 patients waiting longer than they should have had to wait for surgery—that is using the classifications worked out by the colleges. That is down from 2,023 overdue patients in January last year. So, this surge money that the commonwealth has provided has had 98.5 per cent success in reducing those who are waiting longer than the agreed time. The work is continuing between the state and the commonwealth to get people their elective surgery even more quickly. A further $8.1 million has been allocated from the commonwealth to support infrastructure development across our hospitals for elective surgery, and I thank them for that.

After tackling elective surgery, work is now focusing on getting people timely outpatient appointments after they have been referred to specialists by their general practitioners. Again, I want to praise the work of hospital staff who really embraced this campaign. They have been integral to its success. I am hopeful that this different, more positive approach from the new shadow health spokesperson indicates an emerging bipartisanship from the opposition. I somehow doubt it, however.

UNITED WATER

Mr GRIFFITHS (Goyder—Deputy Leader of the Opposition) (15:12): My question is to the Treasurer: when did the government become aware of the dispute between SA Water and United Water about its charges under the contract and when did it advise the Auditor-General?

The Hon. K.O. FOLEY (Port Adelaide—Deputy Premier, Treasurer, Minister for Industry and Trade, Minister for Federal/State Relations) (15:12): My guess is that we became aware of it when we were told back in 2006—whoever the minister of the day was or shortly thereafter. I said yesterday in my ministerial statement that the government has been in dispute with United Water since the second pricing review, whenever that commenced. That is what I said in my statement yesterday.

An honourable member interjecting:

The Hon. K.O. FOLEY: I do not know. The Auditor-General, I assume, would have been made aware of it along the way. This has been going on for some three years. I would find it impossible to believe that the Auditor-General would not be aware of a dispute that has been going on for three years

An honourable member interjecting:

The Hon. K.O. FOLEY: And for that matter it is not really his job; his job is to audit the accounts.

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: The Auditor-General audits the financial accounts on a year-by-year basis after the accounts. We have told the Auditor-General specifically of our decision to take this matter to court. In fact, I asked for that to occur some few weeks or months ago, or whenever that time line was, to make sure—

Mr Griffiths interjecting:

The SPEAKER: Order! If the deputy leader has other questions I am happy to give him the call.

The Hon. K.O. FOLEY: Give him a ring and ask him.

Members interjecting:

The Hon. K.O. FOLEY: I will ask that question. I think that I asked the Under Treasurer, Jim Wright, to ensure that the Auditor-General was appropriately told where we were in this dispute. As I said, I would be very surprised if the Auditor-General was not aware of the dispute, given that it has been going on for so long, but I will ask the Under Treasurer if Simon O'Neill was surprised.

The Hon. M.J. Atkinson: Or astonished.

The Hon. K.O. FOLEY: Or astonished. I will come back to the house with a reflection on that, but I do not see what the great mystery is here. All the way through this, we have done this appropriately, but can I say that this is the first question that I think the shadow finance minister has asked me.

An honourable member: Treasurer!

The Hon. K.O. FOLEY: Sorry, shadow treasurer. Each morning when I wake up I am getting attacked by the shadow treasurer Rob Lucas. He is on the radio each and every morning whacking into me.

Mr GRIFFITHS: On a point of order, Mr Speaker, my question was quite specific and the Treasurer is talking about many things other than what I asked him.

The Hon. K.O. FOLEY: I will add a little bit to it, if I may, sir. This is a very important matter—

An honourable member interjecting:

The Hon. K.O. FOLEY: Well, it's a mistake by a former Liberal government. We are cleaning up the mess. I love the fresh look of the opposition, but they have gone back to the future with the shadow treasurer Rob Lucas, who was the guy sitting around the table when this whole thing was signed.

The SPEAKER: Order! The Deputy Premier is now debating.

ALDINGA STORAGE DAM

Mr WILLIAMS (MacKillop) (15:15): My question is for the Minister for Water Security. Why has SA Water failed to complete the winter storage dam at Aldinga, which would have enabled 740 megalitres of recycled wastewater to be stored and used as a substitute for a similar quantity of potable water by Willunga Basin irrigators?

The opposition has been told that SA Water's failure to complete this project will prevent the saving of some 240 megalitres of mains water and will cost McLaren Vale irrigators half a million dollars. Irrigators will continue to use high quality drinking water to irrigate their crops.

The Hon. K.A. MAYWALD (Chaffey—Minister for the River Murray, Minister for Water Security) (15:16): It is quite simple. The reason for the delay in the construction of the dam is because of the weather. In the winter months we have had substantial rain, and you cannot build dams when it is raining heavily. So, we have had to stop construction during those very wet periods. We are also now working with the—

Mr Williams interjecting:

The SPEAKER: Order, the member for MacKillop!

The Hon. K.A. MAYWALD: —Willunga Basin Water Company on alternatives for storage of water, which include aquifer storage and recovery, and we are also looking at whether or not we recommence construction of the dam or stop at this stage and provide for the, I think, 400 megalitres that is there in the construction phase as it is at the moment.

We are working productively with the Willunga Basin Water Company and the McLaren Vale irrigators to get the best outcome that we can. The Willunga Basin Water Company advises SA Water that it will probably be possible for them to transfer some people over to recycled water this year with all of the options that we are putting together with them now.

We have a good working relationship with the Willunga Basin Water Company, and the objective of both the government and the company is to get as many people as possible using recycled water and to increase and enhance our water recycling and re-use programs.

NALPA STATION

Mrs REDMOND (Heysen—Leader of the Opposition) (15:18): Now that the Premier has returned from his 23rd overseas trip, will he advise the house whether he will visit Nalpa Station where the proposed Wellington weir will be built, given that the owners have had an open invitation for the Premier to visit them for the past 2½ years?

The Hon. P.F. CONLON: On a point of order, Mr Speaker, I do hope that we will not be hearing points of order on debate, given the blatant comment engaged in by the Leader of the Opposition in her question.

The SPEAKER: The Premier.

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (15:18): Can I just say this: as Premier I will continue to go overseas to fight for our state while you fight amongst yourselves. That is the difference. I will not resile from going to see the head of General Motors about the future of Holden's, or the defence department in the US about Lockheed setting up in South Australia, or companies in Britain about getting them to locate to Techport, or a whole range of other things, because let me just tell you this: that is a much better use of members of parliament's time than going to a rave party and coming out and saying that ecstasy—which is, by the way, produced mainly by bikie gangs—ain't that bad. You have your priorities; I have mine. You can fight amongst yourselves—

Members interjecting:

The SPEAKER: Order!

Mrs REDMOND: On a point of order, Mr Speaker, not only is the Premier blatantly misrepresenting my position on any number of things, but it is highly irrelevant and he is debating the point.

Members interjecting:

The SPEAKER: Order!

The Hon. R.J. McEwen: She did invite it, sir, she leads with her chin.

The SPEAKER: I do not need the assistance of the member for Mount Gambier.

Members interjecting:

The SPEAKER: Order! In asking the question, the Leader of the Opposition made an unnecessary reference that was entirely irrelevant to the question about the Premier's overseas travel. So, taking into account the nature of the question, I have given him latitude; however, perhaps it is time for the Premier to wind up his answer.

The Hon. M.D. RANN: Thank you, sir. In the unlikely event that she became premier, her approach would clearly be that, while she is letting out murderers, going ahead with any Parole Board recommendations—

Mrs REDMOND: Point of order, Mr Speaker.

Members interjecting:

The SPEAKER: Order! The Premier will take his seat. The Leader of the Opposition.

Members interjecting:

The SPEAKER: Order!

Mrs REDMOND: The Premier is now just blatantly disregarding the order that you just gave.

The SPEAKER: Well, no; I just invited him to wind up, but I think he has now, anyway.

Members interjecting:

The SPEAKER: Order!

Mrs REDMOND: Sir, can I re-ask the question then, because the point of the question was: will he give an undertaking to visit Nalpa Station—

The Hon. J.D. Hill: That wasn't the point of the question. You know that wasn't the point of the question.

The SPEAKER: Order!

Mrs REDMOND: That was the point of the question.

Members interjecting:

The SPEAKER: Order! The house will come to order! When the Speaker is on his feet, I expect all members to be silent. No, the Leader of the Opposition cannot ask her question twice; however, she is on the call list to ask her next question. The Leader of the Opposition.

Members interjecting:

The SPEAKER: Order!

NALPA STATION

Mrs REDMOND (Heysen—Leader of the Opposition) (15:21): Is the Premier embarrassed that 30 international and Australian water delegates are today visiting the drought-affected Lower Lakes and Coorong wetlands when he has not accepted the open invitation to visit Nalpa Station?

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (15:22): No, I am not embarrassed.

EDUCATION FUNDING

Mr RAU (Enfield) (15:22): My question is to the Minister for Education. What action is being taken to ensure that the full benefit of state and commonwealth investment in education flows to young South Australians?

The Hon. J.D. LOMAX-SMITH (Adelaide—Minister for Education, Minister for Mental Health and Substance Abuse, Minister for Tourism, Minister for the City of Adelaide) (15:22): I note that I only have two minutes, but I thank the member for Enfield for his question and his optimism that I can answer in less than two minutes.

In the 2009-10 state budget, we provided, on average, $12,627 for every government school student, which is an extra $1,059 compared to the previous year, bringing the increase to around $5,000 since we have been in government. This unprecedented investment in the education and care of young South Australians builds on our record long-term reform and revitalisation of education within this state and continued investment. Part of our opportunity has been helped by our strong commitment and relationship to work with the federal government, which I have to say has shown an extraordinary interest in the importance of and dedication to funding education in this country.

Of the total $2.195 billion in the 2008-09 DECS budget, 11 per cent was funded through the commonwealth government education funding system, 85 per cent from the state and 4 per cent from other sources of revenue. In providing more for education, the state government has worked diligently to ensure that as much of the funding as possible is directly provided to schools and also to those programs directly supporting the efforts of our dedicated teachers, school support officers and school leaders.

I am very pleased to correct some of the misinformation perpetrated by those—particularly those opposite—who were unable to understand the budgeting system.

The Hon. M.J. Atkinson interjecting:

The Hon. J.D. LOMAX-SMITH: They disseminated as well. I inform the house that 95.2 per cent of the 2008-09 DECS budget was direct funding to schools, preschools, child care, programs for schools and preschools, and regional services. This included the resource entitlement statement (known as RES), which makes up 71 per cent of the $11,568 that was provided for every student in the 2008-09 year.

For those members who understand government school funding, of course, that is only part of the money that goes directly into our schools and to support teachers, because another 17 per cent is spent on school and preschool programs; for example, the Trade Schools for the Future initiative, our Children's Centres initiative, as well as our ICT internet services, transport for country students and students with disabilities, as well as student counsellors and speech pathologists, all services which benefit individually the children and schools in the region.

Around 5 per cent of the funding is for school building maintenance and refurbishments, and 2.2 per cent of the budget is for programs for schools and preschools, funded directly by commonwealth funds, particularly family day care. The remaining 4.8 per cent is for departmental costs, which include payroll services, procurement, curriculum support, IT systems and services, accounting and legal services. These are important support services to schools and, despite the

rather offensive claims of those opposite of a bloated bureaucracy at 31 Flinders Street and the misinformation that was spread in the community, 4.8 per cent is a low level for overheads and reflects very important functions that, if they were to be devolved to schools, would be significantly more expensive.

I am advised that since 2002 some $45 million has been saved in the operating costs associated with the DECS central office, and this includes achieving the revised energy and water consumption targets set in the 2006-07 year. Indeed, I understand that around 53 per cent of these costs were cut in some areas—an extraordinary achievement for a head office which, again, is playing its part in government targets.

The state government continues to balance the need to restrict corporate overheads with the requirements to provide adequate support to our schools. This ensures that young South Australians receive the full benefit of the government's record investment in public education. I take this opportunity to thank those members of the DECS staff who work in head office and who are an integral part of providing quality education in this state, not just for public schools but also by supporting activities in the private sector, whether they be involved with SAPSASA funding, the new SACE, the anti-bullying strategy or a whole range of implementation programs relating to partnerships—which are supported by the DECS budget as well.

GRIEVANCE DEBATE

STUART ELECTORATE

The Hon. G.M. GUNN (Stuart) (15:27): I want to raise a couple of issues. I say to the Minister for Education that I am a supporter of effective, good public education and the good work of the teaching staff in all the isolated schools in my electorate. I do take a great interest in the schools in my electorate, because I believe one of the most important things in which a member of parliament can be involved is supporting, enhancing and improving education services. Whoever has been critical, I do not wish to be included.

Recently I had the pleasure of attending the start-up of hot rocks drilling in the northern part of my electorate, virtually alongside Beverley uranium mine—which is also a great initiative of the previous Liberal government. On that occasion, the Premier and federal minister Ferguson were there. It was an important occasion because the potential for benefits for the people of South Australia is great. I sincerely hope that it is a successful operation, because we could expand and develop those particular programs across other parts of South Australia in suitable locations.

One of the things that was brought to my attention was the poor state of the road between the Balcanoona turn-off and the mine site. I appeal to the Minister for Transport to endeavour to have further maintenance work carried out on that road. I had to stay the night at Arkaroola and I was told before I went up there the next morning that I should be aware of the extensive potholes and rocks on the road. I was pleased that I took my four-wheel drive and did not go in a normal car, because I think there would have been a fair chance of changing certain parts of that car, particularly the suspension.

So, I appeal to the minister in relation to this particular matter because there are other roads in the Far North that need considerable maintenance. The tourist industry needs to have good, well maintained roads. Thousands of people have travelled to the north of South Australia. We are fortunate to have water in Lake Eyre, and I am concerned to make sure that those businesses in the north get the maximum benefit because they do not get this opportunity every year. Therefore, the condition of the roads is very important.

The next issue that I want to mention is that one of the things that is terribly important in a society such as ours is that we have aged-care facilities as close as possible to where people have lived all their lives. At Peterborough in my constituency there is an excellent facility which has been run by the local community for many years and which has had great community support. That facility is well managed by dedicated, hardworking people, but it needs to be expanded.

When the HAC committee (which, unfortunately, does not have the same powers as previous hospital boards) was set up it had a desire to see Nalya Lodge at Peterborough expanded. My understanding is that that community has some $700,000 of its own money, but the Sir Humphreys in the regional health groups—the bureaucrats—have declined to forward the application to the commonwealth because they think it may cost the state some money. We have never had that problem in the past, and I think it is an unfortunate set of circumstances. It clearly

indicates that the quicker we go back to giving local communities the power to run their own facilities and not have this bureaucratic oversight the better we will all be.

I discussed this matter with the mayor at the MNSEC concert the other night at Peterborough, and she is appalled by what has happened. I really want to see some common sense apply. Not too many communities have $700,000 in the bank through hard work. That community already has put in money to seal the airstrip, amongst other things, which is a good thing for Peterborough. Why should these hardworking people be denied the benefit to provide these urgently needed facilities?

Can I just say this to the Treasurer. He continues to go on about how good this government is. He fails to take into account that he was handed a set of books in good condition. The previous government rectified the sins of the Bannon government, which wrecked South Australia. That is why it was not possible to do all the things that the previous government wanted to do. However, with little money it did a lot of good. Anyone can run the business if you do not have an overdraft.

Time expired.

ADRIAN FEINT: CORNUCOPIA

Ms FOX (Bright) (15:32): I was privileged to attend the launch of a significant exhibition at Carrick Hill on Sunday—Adrian Feint: Cornucopia. It also coincided with the launch of a companion booked published by the South Australian publishers Wakefield Press. The reason I rise to speak about this is because, with this outstanding and first retrospective curated by Richard Heathcote, a new light is shone on a very important Australian artist. Since his death in 1971, Feint's work has somewhat slipped from the consciousness of Australian art lovers but with this, the largest exhibition of his work ever brought together, it is time to reconsider Adrian Feint's place in the constellation of Australian artists. Certainly, at the very least, this exhibition demands that we re-examine his oeuvre.

Although born in Sydney, Feint's work is of particular interest to South Australians because of the impact our landscape and people, especially those in and around Carrick Hill, had upon his work. Indeed, I think the biggest collections of Feint's work are still to be found in South Australia. His patrons were the Hayward family who, of course, owned John Martin's.

Adrian Feint was born in 1894 in country New South Wales and from an early age he enjoyed drawing and decorating. His studies at the Sydney Art School were interrupted by his war service on the Western Front, where he was praised for his gallantry. In 1919, when the Great War ended, he continued his studies for three months in Paris.

When he returned to Australia he began a very successful career as a graphic designer and he worked for the famous advertising guru Sydney Ure Smith. Much of his work appeared on the front covers of magazines and he was also for a time the director of the Grosvenor Galleries in Sydney. He was very well known for his etchings and wood engravings, particularly those which appeared in his bookplates—indeed, until the late 1930s he was more famous for the bookplates than anything else, and he designed bookplates for the Duke and Duchess of York. In the late 1930s he began to concentrate entirely on oil painting, receiving guidance from none other than Margaret Preston.

While his landscapes are both intimate and peculiarly evocative of urban and rural Australia, it is in his floral paintings that Feint has found his greatest achievement. In 1948 a collection of his flower paintings was published, but it is only at Carrick Hill today that we can see a comprehensive retrospective of them, garnered from galleries and private collectors all around Australia. His work is, as art historian and author Craig Judd points out, 'innately romantic, his flowers vibrant but controlled, joyous but meticulous'. Juxtaposition abounds in these enchanting oils, and they are certainly worth a visit.

The exhibition at Carrick Hill continues until 1 November this year, after which it will go to the Geelong galleries, and I urge all members to take a look. Adrian Feint deserves to take his place alongside Preston, Heysen and Hannaford in our artistic canon, and I personally think he should be there already. As Richard Heathcote, director of Carrick Hill, says in his introduction to the book:

> It is the intensity of Feint's focus on floral and landscape subjects that sets him apart from his peers and positions him as unique in the history of Australian art.

NGERIN REPLACEMENT

Mrs PENFOLD (Flinders) (15:36): For many years I have been asking the government to upgrade South Australia's research vessel, the *Ngerin*, to adequately cover the research that is needed to ensure the long-term sustainability of our fisheries and the protection of the environment. The problem our researchers have working with inadequate equipment was brought to my attention again when I read on the CSIRO website that the federal government has committed $120 million for a new 'blue water' marine research vessel to replace the *Southern Surveyor*.

The South Australian government conducts oceanographic research with the research vessel *Ngerin*, which frequently visits Port Lincoln. Now 22 years old, the *Ngerin*, which was commissioned to work in South Australia's gulfs, is being used in circumstances that it was not built for. It is no longer fit for purpose and requires urgent replacement. As a general rule, large fishing vessels have a finite life and many large vessels based in Port Lincoln are replaced as technology and their fishing purpose changes. It should be the same for South Australian government vessels.

Australia's ocean territory is the third largest in the world and includes unique biodiversity and valuable resources. With no land between South Australia's coastline and Antarctica, we have a huge area to research, recognising of course, that not all of it is under Australian jurisdiction. Marine science is critical for the sustainable management of our ocean assets, as recognised by the development of 19 marine parks around the coast. Better oceanographic facilities than the *Ngerin* has are required to understand upwelling deep ocean currents to support the integrated marine observation systems, to assess commonwealth marine parks, and for the conservation of protected species such as blue whales, humpbacks and sea lions. Additionally, the science would provide a basis for understanding the effects of climate change on our seas and the known rising CO_2 levels and acidification.

The *Ngerin* is unsuitable for the research being undertaken in the deep oceans of South Australia where many of the state's new marine research priorities are located. The size of the boat is inadequate for seas that are renowned for being treacherous, which is potentially putting lives at risk. A new research vessel would support the success of the marine innovation initiative and the commonwealth integrated observation system initiatives, leading to further establishing South Australia as an internationally recognised centre for marine science and industry. It would assist research to support the development of offshore fishing and aquaculture industries and increase the state's research profile by increasing the opportunities for universities and national research organisations to win nationally competitive research grants, while attracting international scientists undertaking oceanographic research.

Along with climate change, food has been identified as one of the major future concerns. Research is essential, therefore, to find new food sources and to ensure that all are sustainably managed. Deployment of a new ocean-going research vessel would address key points of South Australia's 10-year vision for science, technology and innovation. This includes a commitment to science, technology and innovation; further developing and supporting Marine Innovations SA (MISA); enhancing our reputation in marine science; displaying a willingness to invest in strategic research areas; supporting the education and training of scientists with relevant infrastructure; providing a flagship for engaging and educating the community about marine science; and maximising progress towards the state's seafood target.

The *Ngerin* significantly contributed to the development of the state's knowledge of marine science, such as research into egg production for the South Australian sardine (pilchard) fishery. The fishery is the largest fishery in Australia. The prawn fishery in Spencer Gulf is the best managed fishery in the world, according to the United Nations, and has also benefited.

Some of the future needs that could exceed *Ngerin's* capabilities include research of the Southern Ocean's Continental Shelf and offshore resource assessments, including pelagic fish and squid in the Great Australian Bight. Further exploration of the benthic and pelagic resources of the Great Australian Bight require a larger and better equipped vessel.

Science conducted from a purpose-built replacement vessel for the ageing *Ngerin* would assist the conservation of this state's unique marine ecosystems and protected areas. It would also support the ecologically sustainable development of South Australia's valuable fishing and aquaculture industries, which now have a gross value of around $400 million per year, plus an equivalent value from seafood processing.

Research is an essential component for developing sustainable and environmentally acceptable fish and seafood industries. This was achieved by those in the industry—not by

governments or other outside bodies—but those in the prawn fishery acknowledge what SARDI has done by working with them in reducing the fishery's ecological footprint and ensuring the sustainability of the fishery.

Time expired.

PEACHEY BELT

Mr PICCOLO (Light) (15:41): Today I wish to speak in defence of a community within my electorate. This community has been unjustly targeted by various state media outlets to the point where many of the residents living in the locality feel that they have been vilified and made the scapegoat of all the ills in our society today. I can say that an overwhelming majority of residents in the Peachey Belt are proud, that is, they are Peachey Proud.

The media have the right, indeed the responsibility, to highlight problems in our community. Equally, the media also have the responsibility to provide fair and balanced reporting. They do not have the right to 'trash' a community for the sake of a headline. When they 'trash' a community, the wounds take a long time to heal.

The Peachey Belt community has been routinely 'trashed' by some sections of the state media and its residents have been stigmatised as a result. This unfair reporting not only influences how the wider community views the Peachey Belt and its residents but, just as importantly, how local residents see themselves. I am not suggesting that the Peachey Belt has no problems or challenges to face—indeed it does. However, this community is trying very hard to lift itself, so it is very destructive when, as they try to get to their knees, some sections of the media sink the boot in and force them to the ground again.

The greatest losers in this vicious cycle of stigmatisation are the young people who live in the area. How can we expect them to believe in themselves when the rest of the community (as demonstrated through the media) does not? By all means, report the problems, but also report the success stories. The Peachey Belt has been characterised as 'Streets of fear and loathing', but, in reality, when you speak with residents and get to know them, particularly the longstanding residents of the area, you soon learn it is also the 'streets of many successes'.

The recent attack by some sections of the media on the Peachey Belt has drawn an angry response from local residents. I will read excerpts from one letter I have received regarding the recent media report. I believe this letter epitomises how most residents feel. The letter reads as follows:

> The negative reporting in this and other articles in the past about this area is of great concern to us.
>
> We [the residents] cannot understand why you would want to do a two-page spread like we saw on Saturday on this area when other suburbs that are in similar circumstances do not get this attention.
>
> It would be lovely if one day we could pick up our papers and see some positive and constructive reporting on this area.
>
> We do have a lot of positives up here and I would like to share some of them with you.

For example, there are various Imagine Peachey projects which are run by a group of residents. The Imagine Peachey group run a community fun day, a newsletter, a radio station and also the information trailer to advise the community.

There is also the Playford Alive Community Reference Group. Again, a group of residents working hard to influence policy for the Playford Alive project. There is a Peachey Belt residents group (which I attend regularly) who work very hard for their community.

There is a Street Proud project where neighbours work together. A new soccer club has been formed in the locality. A number of community projects and club events are being held at the John McVeity Community Centre for all age groups. These are just some of the projects and things happening in this community. This person goes on to say:

> I have lived in this area since 1962 and have never needed to or heard from my friends and acquaintances that they needed to 'carry a weapon' to defend themselves when they leave their homes. Please do not degrade the area because of a minority element.

Previous governments across the political spectrum have allowed a number of problems to grow in this area—in fact, some of the previous government policies have contributed to the problems—but I am proud to say that this current government, in conjunction with the local council and a number of non-government organisations, has stood up to the challenge to help rebuild this community.

New schools are proposed, as are new residential estates, new community facilities, new parks and gardens, new training programs and new family support schemes. This community is looking towards the future. Nobody has the right to drag it into the past; we can all be Peachey proud.

BALAKLAVA CUP

Mr GRIFFITHS (Goyder—Deputy Leader of the Opposition) (15:46): I want to take the opportunity to talk about a community in my electorate of which I am very proud, and that is Balaklava. Having had the opportunity to attend the Balaklava Cup last week—

The Hon. M.J. Atkinson: Who won?

Mr GRIFFITHS: I will get to that.

The Hon. M.J. Atkinson: And the track condition was what?

Mr GRIFFITHS: Dead. That is an interesting term to describe a track condition, but it was classified as dead.

The Hon. M.J. Atkinson interjecting:

Mr GRIFFITHS: I am not sure about that, Attorney. I want to focus on the positives of the day. It is a wonderful opportunity for people not just from the Adelaide Plains and the Balaklava community but from all over the state to come to a wonderful country race meeting. Balaklava did itself proud and demonstrated a wonderful degree of hospitality for the thousands of visitors who attended. From what I am advised, about 16,000 people went through the turnstiles and enjoyed a great day.

The Hon. M.J. Atkinson: There would have been more if it had been warmer.

Mr GRIFFITHS: True. It seemed that every bus in South Australia was available on the day to transport people to this wonderful event. On arriving, I jumped out of the car and walked into the race ground to see a line of about 70 marquees completely filling the straight, and I walked up and down twice to try to meet as many people as I could.

Ms Chapman interjecting:

Mr GRIFFITHS: The member for Bragg confirms that most come from her electorate.

Ms Chapman interjecting:

Mr GRIFFITHS: Yes. It was a wonderful day. About 50 buses were lined up side by side. Being very responsible, patrons take the opportunity to travel by bus instead of car and in that way can enjoy themselves during the day, have the occasional alcoholic drink and not have to worry about having any problems while driving home. Of course, many people do not drink, but the many people who attended seemed to enjoy themselves immensely.

This event is also a great opportunity for the local community not only to show pride in itself and to host 16,000 people but also to raise a lot of money for community groups. It was amazing to see the number of people from around the Balaklava area who worked behind the scenes, ensuring that the track was okay and that everything was clean. Hundreds were involved in the catering for many of the marquees placed along the track. These people provide high quality food, look after the drink supplies and, importantly, they make money that can go back into the local community.

I pay credit to the wonderful volunteers who are involved. It has been part of their way of life for many years. The age profile of the people who volunteer at the Balaklava Racing Club is quite broad. This not only reflects the community but shows that younger people are also becoming involved.

I pay tribute to Mr Wayne Henson, the chair of the Balaklava Racing Club Committee, and Mr Doug Hall, the current CEO, who in a previous life has also been the chair. They were wonderful hosts to their guests. I know that the member for Mawson has attended this event previously and enjoyed the hospitality provided in the committee rooms.

The Hon. M.J. Atkinson: I was there last year.

Mr GRIFFITHS: And the Attorney confirms that he was there for a while last year. I think that anyone who has been there appreciates the unique qualities that a country race meeting provides. Kangaroo Island also does very well when it hosts the Kangaroo Island Cup, but

Balaklava holds a special place in South Australia's country racing program. I am aware that it holds the record for attendance, betting turnover and stake money. When you go into the betting ring, there is barely room to move because there is such a crowd.

The Attorney pointed out that if the weather had been a bit nicer the crowd might have been a bit larger and that is part of the reason, I suppose, that the betting ring was overly crowded. However, the weather did not turn too many people away. I think those who were intending to go still did go. It became a little bit dark and blowy in the afternoon, which was challenging for some of the young ladies wearing not very much but, certainly, the gentleman who were there enjoyed the opportunity to mix socially with the girls and boys.

An honourable member interjecting:

Mr GRIFFITHS: No, never. It is hard to find fault, in any way, with it. Everyone who goes enjoys it and they understand that you go from the marquee to the track to watch the horses as they thunder past. Unfortunately, last Wednesday proved once again that I am a very poor judge of horse flesh because, even though I had three bets, I had no horses that placed so I had a negative return. However, it was really a wonderful opportunity for people to come together and a credit to the local community that hosts it.

The Hon. M.J. Atkinson interjecting:

Mr GRIFFITHS: Horse flesh, Attorney! I am a poor judge of horse flesh. It was a great chance for the community to be proud of itself and to build upon its history. Balaklava was established in 1850 or so and it has had a racing club since 1903. It has been the vision of many people and it has worked diligently since 1903 to establish the club as the pre-eminent regional racing club in South Australia. I take this opportunity to pay full tribute to their efforts.

Time expired.

BROCCOLI

Ms BEDFORD (Florey) (15:51): I often ask school students, especially younger ones, what their favourite vegetable is and that is because it gives me a chance to talk about my favourite vegetable, which is broccoli. It would be fair to say it is a vegetable second only to Brussels sprouts, another member of the Brassica family, which has had its fair share of bad press over the years. However, that is changing. Broccoli is back in style and in so many ways.

I refer to the heartening news for members of the Broccoli Appreciation Society broadcast by the ABC on 17 August talking about Victorian and New Zealand scientists, in a trans-Tasman collaboration, having developed a new range of vegetables branded Vital Vegetables now available in supermarkets. They have 40 per cent more anti-oxidants which ensures the vegetables are good to eat and stay fresh longer.

It has been naturally bred to specifically focus on maximising the health attributes within the vegetable based on the strongest science from the planting of the seed to the cooked broccoli on the dinner plate —it is important not to overcook any vegetable. I quote from the media release on that day, which states:

> Anti-oxidants have been proven to reduce the risk of a range of diseases such as heart disease and some types of cancer.
>
> The so-called 'booster broccoli' is the first in a group of vegetables being developed by the scientists at Victoria's Department of Primary Industries (DPI).
>
> DPI leading scientist Dr Rod Jones says the new broccoli is not the result of genetic engineering. 'All we've done is go back and minded nature's natural diversity,' he said.
>
> He said they formed partnerships with large companies and tested all of their varieties of broccoli and selected the one out of 400 tested with the highest anti-oxidant content.
>
> Now they have started to breed that variety.

He continued:

> It's a premium branded product so the returns to growers should be higher.
>
> It's also about improving the health of our population in general by getting people to eat vegetables that we know are good for them.
>
> So far more than $20 million has been invested in the project.
>
> There are another 15 products in commercial testing.

Dr. Jones says, 'Booster broccoli taste sweeter than most other broccoli varieties because it's high in sugar.' He said Australian conditions are perfect for growing the new varieties because, when the plants are stressed by lack of water, the anti-oxidant level actually goes up. He is confident they can eventually create a range of vegetables that have an even higher anti-oxidant content.

At the 2020 Forum on Health in March this year, the federal health minister (Nicola Roxon) talked about the sort of health system Australia will have to have in the future. She said one of the key focuses would be for prevention and keeping people well and out of hospital. This is intrinsically linked with lifestyle, diet and nutrition. The recent National Health and Hospitals Reform Commission report found that around 70 per cent of our health care budget is consumed by chronic conditions that are potentially preventable such as cancer, cardiovascular disease, mental disorders and diabetes.

The National Kitchen Garden Program is the way to begin a life of loving vegetables very early. I know Maggie Beer visited the kitchen at The Heights School recently and I hope she will be able to do that at the Wandana school very soon. Each participating school receives one-off funding to cover infrastructure costs associated with building kitchens and gardens. The project, inspired by top Australian chef Stephanie Alexander, is part of the federal government's plans for tackling obesity, particularly in children and adolescents.

Literature is another way to begin the education process of a good lifestyle and eating habits. On Thursday, 27 August I had the pleasure of representing the Hon. John Hill, Minister Assisting the Minister for the Arts, at a Young Writers Night in the North. I thank Barbara Wiesner for welcoming me on the night. Well-known author Elizabeth Hutchins was MC and I went with her group to hear some of the wonderful stories by the young writers of our area. In the extensive program, listing all authors participating in the evening, many of whom had their work for sale, I learnt of a book called *Leaving Jetty Road*, in brief a story about three young friends who decide to go vegetarian for a year not knowing the changes that would occur in their lives over that time.

The author, Rebecca Burton, was unfortunately unable to be present on the night, and I was disappointed because her bio spoke about a young woman who has lived within walking distance of South Australian beaches for most of her adult life. More importantly, it mentioned that readers of her books would know that she loves to eat broccoli!

So, I am heartened to see that there is more than one person singing the praises of this wonderful vegetable, and, now that we have a super variety, there is no excuse for anyone here to deny their body the goodness that it can provide.

In talking about the Wandana Primary School, I would like to mention another program that they are providing for their students, which has been having amazing results. Labs 'n Life is a not for profit community based organisation whose purpose is to encourage positive life choices by youth who have been identified at risk of marginalisation through homelessness, institutionalisation, disability, unemployment, poverty, or similar circumstances.

Young people are exposed to the positive experiences associated with forming a close relationship with and training a labrador retriever, some of which are being trained to work as Autism Assist dogs. To successfully produce a dog for such assistance requires patience, calmness, mutual respect, anger management, team skills and consistency.

The Labs 'n Life program brings up to 10 of these carefully bred dogs into schools for a weekly session, and I recently had the opportunity to see them in action. I congratulate Sue Danse and her Cavajal Labs on their wonderful work and interaction with the students.

CONSTITUTION (REFORM OF LEGISLATIVE COUNCIL AND SETTLEMENT OF DEADLOCKS ON LEGISLATION) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 3796.)

Ms CHAPMAN (Bragg) (15:57): Earlier I referred to the ministerial statement of the Premier as being on 24 November 2008; in fact it was 24 November 2005, and so my reference to the subsequent announcement by the Attorney at the time of his introduction of the bill that is the subject of this debate was not eight months later but three years eight months later.

As to the introduction of this bill, I have highlighted that the terms of the bill are a far cry from what the Premier had promised in his statement to this parliament in November 2005. But even more concerning is that at the time of the statement made by the Premier the government

had, in fact, already convened the Constitutional Convention and that had been held over two years before the Premier's statement. This is particularly important, and members will remember the Constitutional Convention.

When the Attorney-General announced this legislation in the parliament here in July he advised us of the Constitutional Convention, and in fact described it as the government's Constitutional Convention—which it was—but what is important to remember is that the former Speaker of the house, the Hon. Peter Lewis, had, of course, entered into a Compact of Good Government with the Rann government to ensure its elevation to government. This was one of his conditions, that is, that the government actually convene a Constitutional Convention.

So, let it be clear to the public of South Australia that this was not something that was an initiative of the government; this was something that they were required to do to comply with this, and then lagged a very long time before they actually convened it and made provision for it.

The announcements by the Hon. Peter Lewis at the time of the Constitutional Convention were based on the fact that he considered it necessary to have a debate on a number of constitutional and political reforms, which he described as being consistent with direct democracy. They included such things as citizen-initiated referenda, different types of voting methods, and the size and function of the houses of parliament. So, the agenda for the Constitutional Convention was quite wide. The majority of those in attendance favoured optional preferential voting, the reduction of the upper house terms from eight to four years, and citizen-initiated referenda.

On 15 July 2009, the Attorney-General disclosed two details of the post-deliberation survey results. One was that there was support for the retention of the bicameral system, that is, that we retain the upper house. In fact, he advised the house that 80 per cent of those surveyed believed in the need to continue the two houses of parliament and that 75 per cent of those surveyed believed that the terms of Legislative Council members should be four years rather than eight.

The Attorney-General gave us selective information from the Constitutional Convention outcomes. However, it is important to note that, when the Premier announced that he intended to seek the views of South Australian voters and give them a say about how they would be governed—the three choices to which I have referred—he knew full well the outcome of the Constitutional Convention and that the post-deliberation survey results had quite clearly condemned any proposal to abolish the upper house. So, when the Premier stated in 2005 that he was going to listen to the people and give them an opportunity to have a vote, he was already in direct contradiction with the information that had come from the Constitutional Convention.

Let us assume, therefore, the possibility that he might have been privy to some other information; that is, he might have conducted some polling, referendum, assessment or investigation prior—

An honourable member: Why would you assume that?

Ms CHAPMAN: Well, let us assume that that is a possibility: that there was, in fact, some support for the proposition that he announced in 2005, pretending to give to the people of South Australia the hope and expectation that they would actually have a say. If he did do any of that and if he did have such information, you would think that he might have actually told us about it to justify it. So, as members of this parliament, we can only assume that there is no such information, no such data that he collated from the 2003 Constitutional Convention survey results at the time of his announcement.

If, in fact, there was a further survey, interview or review between 2005 and 2009—that is, between the Premier's announcement and what we ultimately had served up to us in July this year in the form of this bill—one would think we would be told about it. However, absolutely no information has been presented to the parliament in the Attorney-General's second reading contribution to suggest that anything has been done to assess and confirm a change of view of the public of South Australia, either from the convention or any other event since that time. Again, we can only presume that there is none.

Somehow or other, we went from a convention, at which 80 per cent of those attending said that they wanted to retain both houses of parliament, to an announcement from the Premier in 2005 that the people were going to have a choice, to the events of July this year when we were dished up a one-size package deal—take it or leave it—with no reference to choice in the specific reforms or whether we would proceed to deal with these bigger questions including the continuation of a bicameral system of parliament.

All that suggests that the intentions of the government are disingenuous at best and otherwise consistent with—talking about cons—an absolute con on the people of South Australia that they were ever to be given a real choice, a real vote and a real involvement in any legislative or, in particular, constitutional reform of the parliament and how it operates. They were never going to be given that and that is evident by what has been dished up in this bill—and it is concerning.

Other commentators have made statements about the process on which we are being asked to deliberate; that is, you have to take the whole lot as a package or nothing. As a community we cannot peel off a bit, consistent with the whole concept of choice and the people's democracy, and so on. Others have made statements about that.

Dr Dean Jaensch, for example, is a well-known academic in South Australia. He has advocated for reform over many years. He is an author, lecturer and writer in relation to political commentary. He made an observation in a published article of 3 September 2009 about the government's introduction of this bill and its imposition of a package of reforms as a one package or nothing deal. The article states:

> We have had 19 referendums, of which 14 were multi question. In every case the government gave the voters the opportunity to decide on each question separately.

He himself poses the question in his article as follows:

> Why is the Rann government refusing the voters a similar opportunity? Surely it should be up to the voters to decide which reform proposals they support and which they oppose. The only reason I can think of is that the package as a whole contains some benefit to the Labor Party which would not be there unless all the reforms were carried.

He refers to some aspects which I will be addressing in more detail shortly, but he certainly makes the point that it is arithmetic that is sitting behind the explanation as to why the government is refusing to allow voters to choose which reforms they support and which they do not.

Of course, they have not been consulted at all in relation to what reforms we should be considering. There has been no survey of that. Again, if we rely on the 2003 Constitutional Convention as the only guide we have as to any recent consideration by the public—as a group from highly diverse backgrounds that came together and sat in this chamber and deliberated—then by popular survey we are back to support for citizen initiated referenda and support for a changed preferential voting system. They seem to have evaporated from any consideration, not just in this bill but in any explanation as to why they should be excluded.

I personally do not support citizen initiated referenda. I could easily put a case as to why that would not be a smart thing for us to do—but that is not the point. The point is that the government has pretended to be saying that it will give the people of South Australia the opportunity to choose what reforms they have, if they want any at all, and then make a decision individually on those reforms. That is being absolutely denied.

Of course, one other alternative explanation as to why they would give this one package—reject or take-the-lot only deal—is because they know full well that by presenting it in this manner it will fail, not just here in this chamber—the numbers are obvious in this chamber—but also through the houses of parliament. It was always the government's agenda to say to the people of South Australia, 'We promised we would give you some reform; we have put it into the parliament; it is that nasty opposition that has opposed it, so it has failed. The Independents have made a decision based on self-serving interests, so it has failed. We have done our bit; we have carried out our promise.' In this way, it has created a situation that it knew would abort that ever occurring.

That theory has some legs if one has a look at the budget, because the budget for this year, I think, for the electoral commission to cover this issue is about $1.5 million. Clearly, that would not be adequate to conduct a referendum if one was serious about undertaking a referendum on constitutional reform. Where would there be the budget to prepare the 'yes' and 'no' cases, whether it is a lump sum or not? Where would there be the budget to have education programs for the Attorney-General or other academics to go around South Australia and sprout the important merits of such reform? Where would there be the budgeting for adequate advertising?

The budget itself, I think, indicates some corroborative support for the theory that, in fact, the government had no intention ever of ensuring that this would get through the parliament, and it had no intention of it ever getting to the people of South Australia. It was just a political con to attempt to seduce the people of South Australia into believing that it had done its bit, that it had done as promised, and that it was those wicked opposition and Independent members who sabotaged it.

However, irrespective of whatever the motives of the government are (which do not look too good at the present time), we would still need to look at whether there is a case for reform; whether it is appropriate that we look at reform of either house of parliament with respect to how we operate and function.

I agree that we need to review and consider reform. I think it is important that we should always look at ourselves and take the opportunity for review. We had constitutional reform after the 1989 election. The Attorney-General will recall that there were issues about the majority of the South Australian vote (over 52 per cent) supporting the then Liberal Party at that election, but still it lost the election. So, we had constitutional reform to ensure, as best one can, that we would have electorates that would produce a result, so that, in future, if a party or aggregate of parties received more than 50 per cent they would win the election. That was the objective of it. So, we had a process of redrafting the boundaries (we have different rules from those of a number of other states), and we carried out that exercise.

There was another time when we looked at whether, in fact, we should have elections every four years on a date to be at the whim of the Premier or whether we should have fixed terms, and the parliament made a decision that four year fixed terms would be more sensible. Shortly after I came into the parliament the government said, 'We need to look at when that should be each year,' and it was decided that March would be better than later. I think that, under the constitution, it was to be the third Saturday on the fourth anniversary in March that we would call a general election.

So, it is appropriate, and there are meritorious arguments upon which we bring about reform as to how we operate as a parliament: how we function, our size, and how we interact between the two houses of parliament.

The next question that would be asked is: what reforms would enhance the effectiveness of the Legislative Council, if we assume for the moment that the question of whether the House of Assembly needs reform is just completely taken off the agenda? But let us assume that we look at—as we should, I think, from time to time, both houses of parliament—how we would reform to ensure an enhancement of the effectiveness of the Legislative Council. After all, it is an important partner in our bicameral system of parliament, so that is a question that needs then to be asked.

Again I say, in this exercise, the parliament and the people of South Australia have been excluded from any discussion about what should be on the table for the purposes of carrying that out. What we have is four areas of reform which the Premier and cabinet have decided is what we need and that, if we have one of them, we have to have all of them. If we do want all of them, then we do not get any, and 'This is a not negotiable package and we are not going to add anything else. So, if you think it is a really good idea we should do something else, we are not interested in that. It is not up for amendment.'

They made their own decision about what we are going to do—which is totally inconsistent, of course, with the Premier's statement back in 2005 and all that nonsense about giving the people a choice. We have been totally excluded from that exercise and the government knows full well that the Australian Labor Party has been committed for over 100 years to getting rid of the Legislative Council. It never liked it. When it could not do that, it decided it would introduce a package of reforms that would suit it. So it is absolute nonsense to suggest that it is there for the people of South Australia.

We have a bicameral system of parliament. Other speakers have, and I think will, refer to the Westminster system. Members of the house would, I am sure, when they show schoolchildren around this chamber and in the other place, emphasise the important connection we have with the Westminster system of parliament, even with the layout of the chambers.

The member for Waite made reference to the House of Lords and the reform involving the casting vote of the president and the mechanism to resolve deadlocks. In his contribution he talked about that structure. We all know what it is. The only distinction I would make, of course, between the view he espoused and that which occurs is that, of course, it is a house of hereditary peers who have an entitlement to sit in the House of Lords depending on who their parents are, and that is an entirely different situation to what we have in South Australia where you are elected, and at elections—

The Hon. M.J. Atkinson: It's a bit like you and Goldie, and Iain, and Ivan—four of you.

Ms CHAPMAN: Weatherill. Therefore, it is important that we recognise both what we have in common and also what is different.

On the question of whether we have to decide on a package, I have talked about what I see as a disingenuous approach, at best, by the government in what it is introducing in this package. I will say this: it is reasonable, at times, to put a proposal where there is a reform and, to make sure that it operates as per the intended outcome, that there be other reforms—that there be other constitutional changes, for example—and that, if you do proceed with one, you do need to have the other. So there are some situations where, if you are going to tamper with one side of a practice, you do need to actually ensure reform in another.

I am not saying that there would never be a situation where, if there was to be a change, there would not be a flow-on of necessary or consequential amendments to effect what we are doing. However, that is not what we are talking about here. What we are talking about here is that, if you only want to reduce the numbers in the upper house but you do not want to do the other things, then bad luck. If you only want to introduce change to the term—that is, the time they are entitled to sit in the parliament on election, whether it is four or eight years—and not the other changes, well, bad luck. That is the position and that is completely unacceptable.

In recognition of and with respect for the only international visitor with us today who is from Germany, I will recognise that, in other jurisdictions, important reform has occurred. In 1949, in Germany, four years after World War II, they established a federal system and wrote their constitution. It is a very good one, I might say, compared to other federal constitutions around the world, a few of which I have looked at.

The Bundestag and Bundesrat have a bicameral system of parliament. They have a chancellor. Chancellor Kohl was in charge when I was there in 1995 and, of course, now we have Merkel, who is a woman. When visiting their chambers of parliament, I learnt about what they decided in the late 1940s would be important not only for the governance of their country but the passage which legislative reform and making these new laws should take in the operation of their parliament. Of course, theirs was a much more contemporary assessment compared with what we did in the late 1800s to draw up our federal constitution—and at a state level even before that.

They are one of the more contemporary federations of the world. I think that some aspects of their bicameral system have some merit which we would look at in due course, at both federal and state level, when considering how to improve the operation of the house of review, that is, the Legislative Council. It is important to maintain that review and reform to ensure that we have the best possible situation, while being mindful of the fact that, if you tamper with one bit, you have to ensure that the flow-on effect is not significantly disadvantageous—and sometimes you cannot always anticipate that.

For example, we introduced a system of fairness in relation to the assessment of electoral boundaries with the view to having the aspirational target to which I referred before. Some would say that it has come at a huge cost of inconvenience to people who, every election, are thrown from one electorate to another, even without ever moving house. It happens every four years. I have not gone through all the debates of that time, but those consequences were probably not anticipated. You have to think about all those things and ensure that, when you tamper with something at one end of the constitution, it does not create an impractical outcome, or at least significant inconvenience, and that you get the chance to remedy it at the time of the reform rather than having to deal with it at a subsequent date.

Having considered those matters and the opportunity for reform, we are stuck with these four objectives, which I have summarised previously but which I wish to address individually. However, before doing that, I point out that the referendum bill (which will follow this bill) is necessary because section 8 of the Constitution Act stipulates that no bill which alters certain powers of the Legislative Council can be presented to the Governor for assent until it is first approved by the electors at a referendum. Accordingly, if this reform bill ever passes both houses of parliament (which I doubt), then the referendum bill is the mechanism by which it would be put to the people of South Australia at the next state election. That would effect compliance with the Constitution Act and enable the reforms to be implemented, if they passed the referendum.

I mentioned before the budget for this referendum and my cynical but accurate assessment of whether it ever gets to a referendum, given the low amount of money that has been provided for Ms Mousley to supervise and carry it out. Nevertheless, if it ever occurs, I think it is necessary that

we have information that is prepared for distribution at a cost within a budget of public funding for the 'for' and 'against'.

In anyone's language, these are complex issues, and we would need to have some explanatory material for the voters to have some understanding of what they are voting for or against. Although there has not been any clarity from the Attorney-General's contribution as to what we are going to get in this regard, it was raised at the briefing provided by the government to members of the chamber. It gives me little heart as to whether they are really genuine about doing this, but it was clear from those briefings that there is likely to be something. We want to have some assurance from the government that there would be.

However, it was at a stage when there had not even been a decision about who or what the process would be to determine who would write the 'for' or 'against' case. There had been some discussion at the briefing at the last federal constitutional referendum which was written by (or at least was under the umbrella of) Messrs Turnbull and Howard. That is something we need to make some decision on, and we say that it is incumbent on the government to disclose to the parliament what provision it is going to make and what the process is going to be—

The Hon. M.J. Atkinson: Of course we are going to do that.

Ms CHAPMAN: You didn't say that—what provision is going to be made as to who is going to select the people to do that and whether that is going to be under the supervision of the Electoral Commissioner. Whatever the rules are going to be, we need to know about that, and it should be absolutely clear.

In summary, the reforms themselves are: (1) to reduce the Legislative Council from 22 to 16 members; (2) to reduce the terms of a member of the Legislative Council from two to one assembly terms, requiring all members to retire at each election, so that it would be from an eight year term to a four year term, which would coincide with the election of the House of Assembly members; (3) altering the mechanism for the resolution of deadlocks by providing that the will of the assembly will ultimately override that of the Legislative Council through the mechanism of a joint sitting. Of course, that is the effect of the deadlock proposal that is being presented.

The Hon. M.J. Atkinson: Wouldn't that be terrible? That is the same system as the federal parliament.

Ms CHAPMAN: Not the same system. No. 4 is to give the President of the Legislative Council a deliberative vote. Remember that these are all in together or nothing. The reduction of numbers—less politicians on the face of it—

The Hon. M.J. Atkinson: Fewer politicians.

Ms CHAPMAN: Fewer politicians, on the face of it, I suspect would have some appeal to some people in the community. I think when you look at the Constitutional Convention and the surveying of the people who attended that convention of what their expectation was and what their general view was as to parliaments, there was a very substantial shift from the beginning of the convention to the end of the convention when the participants had become much more informed about how it all worked, what mechanisms were in place, why they were in place and what protection that gave to people in the community.

Therefore, it was hardly surprising that, when the convention concluded, they not only wanted to keep both houses of parliament but certainly were not in a rush to say that we should be diminishing it. This has shown up in the list and this is one which the government says is part of the package. It says that even though in the second reading explanation of the Attorney-General there is no justification outlined for reducing it.

There is a statement that says to the effect that, at various times in history, there has been between 18 and 24 members and information has been provided to all members setting out a history of South Australia's parliament and the different time periods that have applied, but there has not been any explanation given by the Attorney as to why we now need to move from 22 down to 16—no indication whatsoever.

The Hon. M.J. Atkinson: To save money.

Ms CHAPMAN: The Attorney-General interjects to say that it is to save money. It is interesting that, when you look through his contribution, there is no information from the government which supports that—

The Hon. M.J. Atkinson: It's the bleeding obvious.

Ms CHAPMAN: Again, the Attorney-General interjects to say that it is the bleeding obvious. I wonder why cabinet has expanded under the reign of the current Premier (way above what it has ever been in history) to such a size if it is so expensive. Why would you not just cut it back? The fact is that in the 7½ years of this government it has gone on expanding it, usually when it is suitable to secure some vote that it needs in the house.

The important thing to remember here is, first, if there is a case that it would save money, then we need to have the details; secondly, even if it did save money, surely we need to have presented to us what will be sacrificed in exchange for that. I will shortly refer to others who have made a contribution in this regard. The most obvious danger is that you reduce the effectiveness of the Legislative Council if you significantly reduce its number. The capacity for it to be able to function and undertake its areas of responsibility would be so severely restricted by the significant extra workload that it would render it far less effective, and one would have to balance the cost initiative and saving that the government claims there would be against that loss of effectiveness and outcome.

I suppose if one accepts the argument that the government really wants to undermine the effectiveness of the Legislative Council, then it would achieve exactly what it wants to do: that is, to minimise its capacity to function and therefore minimise its capacity to interrupt what the government views is its right to be able to govern this state without interference of the parliament. That is what it really wants to do.

The second matter involves the question of reducing the length of term. Essentially, if we look at it from a member of the Legislative Council's point of view, one would, after an election, have a four year rather than an eight year term. However, what it is actually doing is abolishing a system of staggered terms under which only half the members would retire at each election.

So, legislative councillors do come up for election every four years, but not all of them, only half of them. It is this system which involves only one half of those members retiring at each election that is the important point. It is important that we understand this and remind ourselves as to why we have it in the first place, and why we have had it for a very long time, and why, when as a parliament we have reviewed the constitution and the operation of the Legislative Council—and this is not a new thing—we have kept it. Number one, it ensures that the Legislative Council is not just a mirror image of what is the lower house, and that is a good thing. The second aspect is that the longer terms provide greater continuity of knowledge and experience, and they therefore provide a stability in the parliamentary process. That is also an important consideration.

So, the opposition takes the view that it is important to retain staggered terms, and if the people of South Australia—not that we have actually heard from them because they have not been asked—

The Hon. M.J. Atkinson interjecting:

Ms CHAPMAN: But if the people of South Australia thought we needed to be like the federal parliament, like the Senate, then in fact we would still be having staggered terms but we would be doing it every six years. The House of Assembly would be having its election every three years. So, if you want to interrupt from time to time, Attorney, and offer some reform and claim that it is consistent with another house of parliament, then let us make sure that we do actually understand what that other parliament does. And, sure, they go to the election every three years in the House of Representatives, and half of the Senate, the states' house, goes every six years. But they have maintained a staggered term system. Happy to look at that as a sensible thing.

The Hon. M.J. Atkinson: But we don't want that.

Ms CHAPMAN: No, you don't want to, and therefore nobody else is allowed to look at it. I refer to the information provided by Ms Jenni Newton from the parliamentary library, in which she also outlines the political effect of the expected outcome of an election, since 1985, in the event that we had been electing all 22 of the members of the Legislative Council, and not 11; that is, the whole lot rather than half.

The very clear outcome that she has confirmed—and members have copies of this so I will not go into any detail, but she makes it very clear that, in fact, it is the minor parties that would be significant beneficiaries of having no further staggered terms and having an election altogether. There are, arguably, some merits attached to that. I have not found one that is of any persuasion to me yet.

But, again, the government claims, through the Attorney-General, that 75 per cent of delegates at the Constitutional Convention in 2003 voted for four year terms. They hang their hat on that. They ignore the rest of what they said but hang their hat on this bit, to say that this is supported by them and that it must be a good idea. However, it should be clearly noted that this issue was rated by the delegates as only the third most important change they wished to see implemented. The optional preferential voting and the CIRs (citizen initiated referenda) were their priorities, and they are nowhere to be seen, of course, in this package.

Then we have the new deadlock provisions. The standing orders of both houses of parliament provide a formal mechanism for resolving differences: the so-called conference of managers. Its differences are not resolved by that mechanism or by negotiation. Section 41 of the constitution provides a possible avenue of resolution. In brief, the bill must pass the assembly twice, once before and once after a general election, and the bill must be twice rejected by the council. A double dissolution can then be called. However, even after this procedure—which has never occurred in South Australia—the deadlock could remain indefinitely. The reform bill, and this aspect of it, provides a new mechanism to break such deadlocks; that is, a double dissolution—

The Hon. M.J. Atkinson: So, why are you opposed to that?

Ms CHAPMAN: —I am just explaining what it is—followed by a joint sitting of both houses of the newly elected parliament. Because of the greater number of members in the assembly, it is likely that any government with a reasonable majority will prevail. I think it has been pointed out by the government that the proposed mechanism is similar to that which applies in the federal parliament. Victoria introduced a similar but somewhat more complex procedure in 2003. The new Victorian procedure provides for a formal dispute resolution committee and also for resolution by referendum in certain circumstances. The New South Wales model allows for deadlocks to be resolved by referendum.

In the Attorney-General's second reading contribution, the government describes the power of the Legislative Council as a right of veto. However, it is equally valid to say that this house (the House of Assembly) also has a right of veto. In fact, the correct—

The Hon. M.J. Atkinson: We're the people's house. The government is formed here.

Ms CHAPMAN: Don't misrepresent then what the position is. The correct categorisation is that each house is of equal power, except on money bills, over which the assembly has greater power, and we have referred to that before. If the government was truly interested in a democratic mechanism for resolving deadlocks, a purer system would require a deadlocked bill to be put to a referendum for the people to decide, rather than distorting the power relationship between the houses.

The Hon. M.J. Atkinson: So, is that what you're in favour of?

Ms CHAPMAN: Wait to hear what other people say. I will come back to the section 10 provisions in a moment, but I just want to finally address the question of the deliberative vote of the President. I think members have seen some material regarding the long history of this, comprehensively prepared by the parliamentary library, and we appreciate that. I do not think we need to go into that in detail, because members are familiar with it. But for those who are following the debate, the situation is that, in South Australia from 1856 to 1973, both the Speaker here and the President in another place had only a casting vote.

There was reform in 1973, which included a provision giving the President the power to concur in the second and third readings of any bill. I will not go into all the amendments because it would take a considerable amount of time. So, there has been some change over 100 years.

The reform bill will give the President a deliberative vote on all questions, not merely the second and third readings of a bill. The President will no longer have a casting vote. Interestingly in this reform, notwithstanding that the houses are equal, there is no mention as to whether the same should apply to the Speaker of this house. I am not quite sure why your role, Madam Deputy Speaker, or that of the Speaker, would change. They seem to be completely ignored.

The President of the Senate has a deliberative vote but not a casting vote on the ground that, as senators supposedly represent states, a state should not be denied a vote because one of its representatives is president. The Victorian constitution was changed in 2003 to give the president of the Legislative Council a deliberative but not a casting vote. There was an inquiry by the Constitution Commission and recommendations were put which were consistent with that. In

Western Australia and New South Wales only the president has a casting vote. This arrangement is based on tradition and is designed to preserve the neutrality of the chair.

Let us look at the real situation. The proposal to give the president a deliberative vote is clearly driven by the Labor Party's desire to improve its situation, its position. Plenty of its members, of course, would love to be president. This proposal is clearly self serving, a political move, to give the Labor Party the best of both worlds. It has not considered why we have this system, why it is important to have and maintain an independent chair and, if we are to look at reform in this area, why it is necessary to look at other direct consequences that would occur and at least put a proposal as to how they would be remedied.

The position of the opposition is that it opposes this package. We do not accept that it is fair in any way. We do not accept that it would make any improvement to the operation of our bicameral system of parliament. We do not see the merits of the scant and inadequate arguments put by the government to carry support for such an amendment. We reject entirely the government's approach of insisting that the people of South Australia consider only things that it deems to be meritorious in what it sees as reform.

Other important people with qualifications and experience in this area have made their own observations. We need to look at them carefully because they look at not just the political questions, some of which we have canvassed here today, but also the mess we can get into if we start to tinker with one piece of legislation in constitutional reform without understanding the full consequences of what we are doing.

I am concerned when I read some of the information in the submissions of the South Australian Bar Association and the Law Society. Their members have considered this matter, in addition to a wider consultation with other academics and professional people (to which I will refer shortly). Having raised these important points, they question whether, first, the government has even considered these things and, secondly, if it has—and I suspect that it has not—why an explanation was not inserted in the second reading explanation to support the fact that they were wrong, or there was no way around it, or it was not necessary to worry about it.

With the army of people and resources available to the government and the Attorney-General, including a myriad of lawyers—assuming there are any left who speak to him, who have not been the recipient of his vitriol and criticism over the past seven years—

The Hon. M.J. Atkinson interjecting:

Ms CHAPMAN: Nevertheless, there are people in the Crown Solicitor's Office, for example—

Mr PENGILLY: I have a point of order, Madam Deputy Speaker. My point of order is standing order 131—the Attorney-General should not interject.

The DEPUTY SPEAKER: The Attorney-General knows very well that he should not interject.

The Hon. M.J. ATKINSON: I am contrite, ma'am.

The DEPUTY SPEAKER: I ask him to constrain himself.

Mr Pisoni interjecting:

The DEPUTY SPEAKER: I wish it were so simple. The member for Bragg.

Ms CHAPMAN: Thank you for your protection, Madam Deputy Speaker. There is an army of people, including those in the Crown Solicitor's Office, on whom he could rely to get advice. One would think these issues would have been canvassed so that he could explain to the parliament why it might be necessary to ignore some of the matters that have been raised by eminent legal and academic people on constitutional matters, but we did not get a look in as far as any explanation to us as a parliament as to the mechanical and good or bad outcomes that would result from this.

The South Australian Bar Association has presented its submission, which states:

> The proposed amendments to alter the size and term of the numbers of the Legislative Council and voting by the President involve political questions upon which the association takes no position.

It makes it very clear, as it has in other parts of its submission, that that is a political matter, a matter for us in the parliament.

However, it has outlined its concerns about the government's proposed amendment which includes the repeal of section 10 and the proposed mechanism leading to a double dissolution, that is, a joint sitting to resolve deadlocks. It takes a different view on whether we need to repeal section 10 to do what the government aspires to do: that is, to ensure that whatever the government decides in the lower house is able to get through the upper house, to impose our will on them. The South Australian Bar Association makes the following observations in its submission:

4. Section 4 of the Constitution (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Bill would repeal section 10 of the Constitution Act 1934, which in turn provides that, apart from money bills, the Legislative Council has equal power with the House of Assembly.

5. The Report by the Attorney-General accompanying the Bill says that section 10 must be repealed due to the introduction of the new section 41. This does not follow:

- Existing section 41 already provides a mechanism for joint sitting to resolve a deadlock and it is clear that section 10 is subject to that section;
- Section 10 would equally be subject to the new section 41;
- In any event, even if there was concern that somehow section 10 constrained the operation of section 41, this could be put beyond doubt, out of abundance of caution, by amending section 10 to read 'Subject to section 41,except as provided...'.

6. As the bill does not otherwise alter the respective powers of the two houses, no case has been made to repeal section 10.

They go on to say, in respect of the deadlock scheme itself:

7. While the fundamental provisions for a double dissolution and a joint sitting involve political issues, the Association submits proposed section 41 produces several odd results and ought to amended in four respects.

8. First, to trigger a double dissolution, section 41(1)(c) requires that the House of Assembly must pass the bill twice in the same two consecutive sessions. There seems no reason why a double dissolution should not be triggered if the House of Assembly passes the bill twice within say three or four consecutive sessions.

9. Secondly, section 41(1)(c) requires that the house 'again passes the proposed law with or without any amendments that have been made, suggested or agreed to by the Legislative Council'. The intention appears to be that the House not make any amendments to the Bill after receiving it back from the Council other than to accept any Council-initiated amendments. Such an intent is sensible because otherwise the House might make amendments which radically change the nature and effect of the bill. Proposed section 41(1)(c) should be amended to put the position beyond doubt by adding at the end words to the effect '(and no other amendments)'.

10. Thirdly, section 41(2)(a) requires that the house 'again passes the proposed law with or without any amendments that have been made, suggested or agreed to by the Legislative Council'. The intention appears to be that the House not make any amendments to the Bill after the double dissolution other than to accept any Council-initiated amendments. Proposed section 41(1)(c) should be amended to put the position beyond doubt by adding at the end words to the effect '(and no other amendments)'.

11. Fourthly, the time limits prescribed by proposed section 41 for the Council to pass a bill the first time (45 sittings days per section 41(1)(b)), the second time (30 sitting days per section 41(1)(d)) and the third time (30 sitting days per section 41(2)(b)) are all defined in terms of sitting days of the House of Assembly: see proposed section 41(5). This is not logical as the time limits are all limits for the Council to act. The definition ought to be changed to sitting days of the Council.

So, the members of the South Australian Bar Association say, 'Look, it is up to you people down in the parliament to make the decision on the political issues. However, if you do, understand that, firstly, you do not need to repeal section 10 and, importantly, if you do invoke the new deadlock provision you need to appreciate that there are some significant consequences of your doing that.' They even offer, helpfully, some advice as to how that might be remedied. However, the important thing is to appreciate that they have identified a concern. The repealing of section 10 is the matter that really concerns me, and what the genuine intent of the government is in relation to this.

Can I explain it in this way. It is like the government has come in and said, 'Look, *The Advertiser* and Business SA are all in favour of this reform. Governments have to govern. We should not have to be obstructed in any way by our agenda through whatever the Legislative Council might do,' blah, blah, blah, but then it does not go through the detail when it provides us with a bill to tell us the whole truth.

It is a little bit like the government's recent request to have ownership of the strip of land in front of the proposed railway hospital. The Adelaide City Council, which owns that land, says, 'We

can let you traverse it. We can let you put plants on it. We can let you have a bikeway through it. We are happy to accommodate all that.' However, suddenly, the government comes along and says, 'I think we should have the title. We should become the registered proprietor.'

It does not say why that is necessary, and it raises the question of motive. Why does the government have to own that property? Similarly, why does the government have to abolish section 10, which clearly states in our constitution that the two houses are to be equal? That is a fundamental principle of the constitution. Let us go back to the parkland: is it really the intention of the government to build on it or do something else with that land in the future?

The Hon. R.B. Such: Sell it off—

Ms CHAPMAN: Exactly. It could be all sorts of things. The government needs to be honest—just like it needs to be honest here, as to what the real motive is in what it is proposing to do by abolishing section 10, when it seems clear that it does not need to do it. It is not only the Bar Association members: it is also the Law Society of South Australia's subcommittee—

The Hon. M.J. Atkinson: Surprise, surprise! The wholly owned subsidiary of the Liberal Party.

Mr PENGILLY: I rise on a point of order, Madam Deputy Speaker. I again draw your attention to standing order 131 in relation to the Attorney-General.

The DEPUTY SPEAKER: Yes, you may, but it simply delays things.

Ms CHAPMAN: The Attorney-General makes the assertion that the subcommittee of the Law Society on constitutional matters is a wholly owned subsidiary of the Liberal Party. Let me just remind the house who sits on the subcommittee and who considered these matters. The first is Rosemary Owens, Professor and Dean, University of Adelaide Law School and convener of the subcommittee; David Clark, Professor, Flinders University Law School; Kate Henning, a council member of the Law Society; Tim Mellor, an executive and council member of the Law Society; Geoffrey Lindell, Adjunct Professor, University of Adelaide Law School; and other academics at the Adelaide University Law School who assisted with advice to the subcommittee, including, in particular, Mr Matthew Stubbs.

I wonder whether these people might like to be called a wholly owned subsidiary of the Liberal Party. I doubt it. I would be very proud if they would like to be associated with the Liberal Party, but I would not be confident, Mr Attorney, that they would be rushing to be aligned, publicly, either by membership or otherwise, to a political party.

I think it is disgraceful that the Attorney-General should try to diminish the view expressed by an experienced subcommittee of any association whose members are not only legally trained but also would have more experience and expertise in this area than, frankly, the Attorney-General will ever have. So, I think it is important that we value the fact that they have given their time to consider these matters and help us, as members of the parliament—all of us, because I do not know any constitutional experts here in the House of Assembly. I might be diminishing the expertise of the member for Mitchell.

Ms Fox: Patrick Conlon won a prize.

Ms CHAPMAN: Yes, well, I recall sitting on a committee with the Minister for Transport prior to our days in this parliament. It was about constitutional reform, and it was actually an inquiry into what the South Australian structure would be, including whether we would retain our governor in the event that Australia became a republic. We both sat on that committee, and it was very interesting. As I recall, the minister wrote a dissenting report, and it was very interesting.

I do not in any way wish to diminish what the minister might claim to be his expertise in this area or make any assessment of it. He clearly has some experience. So do I, but I do not suggest for one moment that that is an area in which I, like any other member of this house, would not benefit from the valuable assistance of these eminent people who have provided advice on this matter—and I thank them for it.

They make a number of observations, firstly, in respect of the proposed repeal of section 10, which removes the equality of the legislative powers of both houses. In a nutshell but in a lot more detail, they support the contention that there is no necessity to repeal section 10. They say:

The removal of section 10 altogether would give rise to doubt regarding whether other reductions in the powers of the Legislative Council are contemplated, even though none are explicitly mentioned in the bill, the Attorney-General's ministerial and second reading speeches or the explanatory clauses of the bill.

At the very least, the government should be asked to clarify its intentions. But, if no other exception is intended to be created from the equality of the powers enjoyed by both houses, it would seem advisable to retain section 10 in the Constitution Act with an appropriate change being made to its provisions to take account of the substitution of the new section 41 in that act.

So they make it pretty clear: there is a clear endorsement of that.

Regarding a reduction in the size of the Legislative Council, they make the point that others have made and that I have already outlined, that is, you are likely to reduce the capacity of the parliament and the executive government to perform its functions adequately if you proceed with this proposal; and they make some reference to the demands on upper house members, in particular, committee work and the like.

In relation to simultaneous elections of both houses, again, without getting into the political question, what they highlight is this. Even if the government had not understood these consequences and we assume they are genuine and just came to this debate naively and had not considered these things, rather than actually knowing full well what the consequences are and pressing ahead without telling us, the consequences of the changes to which the Law Society alerts us are that: because all members of the Legislative Council stand for election every four years, there is likely to be an increase in the cost of elections (so we are on cost efficiencies, Mr Attorney); given the reduced size of the Legislative Council, there may be a greater possibility that those representing the minor parties and Independents will be elected (and that has been canvassed by other research that has been referred to)—

The Hon. M.J. Atkinson interjecting:

Ms CHAPMAN: —and there is thus a greater likelihood of fragmentation in the representation of the Legislative Council rather than a consolidation of power by the major parties. They raise those issues for our consideration, so I advise the house of their concerns.

The Hon. M.J. Atkinson interjecting:

Mr PISONI: I have a point of order, sir, under standing order 131. The Attorney-General continually interjects.

The SPEAKER: The Attorney-General must not interject. The member for Bragg.

Ms CHAPMAN: I come quickly, then, to the question of the President having a deliberative vote but not a casting vote. In their assessment, it will lead to a greater likelihood that legislation will be rejected. That is probably pretty obvious to most people, and it is even more obvious that that is exactly what the government wants. So, this is a question not of reform for reasons of some merit and fairness but so that they may ensure that there are many more cases when legislation would be rejected—because, of course, we have 22 members in the council and there could well be situations where it will be 11-all.

They also note, notwithstanding the historical reasons for having kept the system that we have, that is, so as not to politicise the office of president, their concern that the direct effect would be that the office of president would become politicised. If we as a parliament think that is a good thing, that is fine, but let us understand that we need to be appraised of this and we need to have—and are entitled to have before we are asked to vote—a decent explanation from the government about how it is going to address these problems and why it continues to insist on them without that explanation; why it has the audacity to present to us what is a pathetic second reading contribution on important constitutional reform without having addressed these issues, considering the wealth of legal advice that is available to the Attorney-General and the parliament.

If they think that there is a case for politicising the office of president, then let us hear it. The people who will vote on this legislation are entitled to have some information. Even if they bulldoze this legislation through this house and they get their way in the upper house and they come to present it to the people of South Australia, then, at that stage, at least they should have the decency to ensure that that information is available.

The Law Society outlines a number of direct consequences of the new deadlock format. I will very quickly summarise what they are. They have been provided in detail, and I understand the government has been given a copy of the submission. One of the three matters which call for further attention is the effect of present provisions which allow for an early election of the House of

Assembly in resolving deadlocks in the Legislative Council. First, neither the bill nor second reading explanation makes any mention of the relationship with the constitutional reform bill and the provisions of subsection 28A(1)(c) of the present Constitution Act 1934. That in itself raises some consequences.

The second matter is the new proposed method for resolving deadlocks between the House of Assembly and Legislative Council over legislation. The proposal to equate the length of term of the Legislative Council with that of one and not two terms of the House of Assembly may weaken the case for introducing any special procedure for settling legislative deadlocks between both houses of parliament. Thirdly, if this method is adopted, it will be wise to learn from the lessons of past experience with section 57 of the Commonwealth Constitution.

The opportunity should be taken to resolve ambiguities and deal with other difficulties, some of which are highlighted by the Constitutional Commission in its final report published in 1988. I will quickly read them. First, the need to clarify from when a three month interval which separates the two cycles of disagreement commences to run when the Legislative Council first passes a measure with amendments to which the House of Assembly will not agree. Secondly, the possible need to avoid a stockpiling of stale proposed laws as a means of obtaining early elections, rather than the resolution of deadlocks over the passage of proposed laws. Thirdly, to continue the existence of a disagreement as a condition for calling early elections. Fourthly, the need to clarify the extent to which proposed laws must retain their initial identity through the cycles of disagreement.

The two situations which call for the need to clarify that are as follows. The first situation relates to technical amendments necessitated by the subsequent passage of time. The second situation relates to whether amendments passed by the House of Assembly in the third cycle of disagreement with which the Legislative Council does not agree can be put to a joint sitting. Finally, there is the desirability of giving the Supreme Court jurisdiction to determine whether a proposed law has met the conditions of a double dissolution before an early election is called. They refer to what happened with the judicial interpretation and review of section 57 of the Australian constitution by the High Court. The detail of that is in the submission. I am happy to provide it to members, rather than read it to the house.

There are many technical aspects, but very eminent legal minds in this state have spent some time looking at this reform bill and the effect (even inadvertently) that may occur as a result of these amendments and that, even if they are deliberate, they need to be exposed and we need to have some answers before we as a parliament vote. However, at first blush, it is absolutely clear that this package of reform will not benefit South Australians. What they have been dished up by the government is not even close to being democratic in its presentation. It is inadequate, it is ill-conceived, and it will not produce any better democratic process for the people of South Australia both in the matter of governance and the protection which they are entitled to receive and which they currently receive by having a strong bicameral system, with two equal houses of parliament.

The opposition will always look to enhance and review how both houses operate. I will give the minister a couple of ideas that he might like to think about, if he comes back with anything half decent. First, he could look at how we might reform this parliament and the accountability of the government to this parliament, which is done in a number of ways but, most importantly, during question time and by putting questions on notice. We have some rules which ought bind the government in providing answers.

At the moment, on a daily basis, ministers do not answer questions, and when they are put on notice, they are ignored, and even when they take them on notice, they are often still ignored. I went through a folder today of questions I had asked the Minister for Health when I had the privilege of being the opposition spokesperson for health in this parliament over the last three and a bit years. There are well over 50 questions to which we do not even have an answer yet. They are marked and, of course, we do not have any answer. They do not care and there is no obligation. If you are thinking about constitutional reform that might be useful to ensure that the people of South Australia know what the government is doing and that it has some accountability to them through this parliament, then you might like to think about that sort of reform.

He ensured that, when we have committees of inquiry, whether they are standing committees or select committees, they are not stacked with government members and that we have some Independents, some capacity to ensure that what committees are vested with is a specific responsibility to inquire, supervise, ensure that there is a regular assessment of the performance of a particular area or jurisdiction—whatever their job is—that they are not bound by

the fact that they are placed in a situation where clearly it would be near impossible for them to produce a finding or a report to this parliament that was inconsistent with the majority of those members associated with the political party that is in power.

The one person I can remember who was probably an exception to that was the Hon. Heini Becker, who was a member of the Liberal Party, and he was a member of the former version of the Economic and Finance Committee. I cannot think what that was called.

The Hon. M.J. Atkinson: The Public Accounts Committee.

Ms CHAPMAN: The Public Accounts Committee; that is it—a useful interjection by the Attorney-General for a change. He would be pretty tough on whoever was in power. He chaired that committee, and I have reread some of those reports that would come to the parliament back in the day when they were thick enough for you to get a reasonable report about what was actually going on. To be frank, he would get stuck into whoever was in power and whoever was in charge of the Treasury arrangements in order to make sure that there was accountability to the parliament through that committee.

If the government was really serious about the transparency, accountability and all the things it keeps espousing that it represents, it could look at some really good reforms that would help to strengthen rather than sabotage and undermine the power of one of the chambers in this bicameral system by the reforms that it is dishing up to us in the form of this bill.

Mrs Geraghty: By 'us' you mean the opposition—the Liberal Party.

Ms CHAPMAN: Us, as a parliament. You, too.

The Hon. R.B. SUCH (Fisher) (17:18): I want to make a brief contribution. Back on 31 May 2006, I introduced a bill designed to bring about the reform of the Legislative Council which was called the Constitution (Legislative Council Reform) Amendment Bill 2006. It lapsed because of prorogation.

The bill before us has a couple of commendable aspects. One is reducing the term of the upper house from eight years to four years; that was in my original bill and it is something I support. It is important that we do not have the two houses identical in the way they are formulated or function, but I think that an eight year term is too long, given the rapidity of change in a modern society such as ours. The world moves on very quickly, and I think that eight years is far too long, so I strongly support the four year term. I believe the member for Mitchell conveyed that in a bill of his some time back as well.

I differ from the government in respect of trying to reduce the number of legislative councillors from 22 to 16. Given that the government is saying that the population of South Australia is likely to double in the next couple of decades, and given what should be the role of the Legislative Council in terms of committees and so on, I do not believe 16 is a large enough number to sustain those committees effectively. In fact, many of our local councils have a membership of elected members which is far greater than would be the case under this bill if the government gets it through. For some of them, I think that is far too large but for the upper house of this state (the Legislative Council) 16 is too small and I disagree with that reduction in membership.

The deadlock provisions in this bill are certainly workable. I had a slightly different approach in terms of a deadlock provision, but nevertheless you need some mechanism. In fairness to those in the Legislative Council, and those who have been there before in recent years, I am not aware that it has been unduly obstructive in any way and I would like to see the evidence that the Legislative Council has been unnecessarily obstructive. They have acted as a brake on some things, but I do not think it has been in any way unduly obstructive.

All governments want to be able to do what they like, when they like, how they like; but unless you want the system with the person with the little moustache you are going to have a system where you have some checks and balances and, even though our bicameral system is imperfect, it provides some degree of a check on the government of the day.

When I introduced my bill in 2006, I mentioned that I had the privilege of going to the Isle of Man—and, as I said at the time, probably they should change the name to the 'Isle of Person'. They have a tricameral system where the upper house and the lower house formally meet together to resolve issues. We have always had a procedure in terms of a deadlock provision through a committee but various other models exist around the world.

I will confidently predict that the only part of the bill before us that may get accepted—and I say 'may'—is the provision relating to the reduction of the term from eight years to four years.

I do not believe the rest of it will. The deadlock provision may get up—I doubt it. However, I think the plan to reduce the number of members from 22 to 16 has little or no chance of getting through. I am pleased that the government moved away from the original proposal, which was canvassed back in 2006, to abolish the Legislative Council. I think the government read, quite correctly, the electorate view that it would not support the abolition of the Legislative Council.

I do not see any evidence that, in Queensland, where they did vote themselves out—that is, the upper house members back in about 1927—they have benefited from that. We have moved a long way forward from the days when we had a restricted franchise for the upper house, and we have moved a long way from the days when we had no women members in parliament.

What we have—and, as I say, imperfect as it may be—is a system which does have some checks and balances built into it. I certainly agree with the member for Bragg in that we should look in our own backyard in respect of reforming how we operate in this chamber. We have been very slow in bringing about any reform whatsoever in this house compared to other parliaments. No matter which one you look at they have moved way ahead of where we are and they have a much more efficient system, in my view.

If the government wants to reform something it should be looking at reforming local government. I do not believe it is going to do anything before the election—am not so naive as to believe that it would—but, when you have in the metropolitan area over 240 elected members in councils, a budget for all those councils which is only half the size of the City of Brisbane but operating at greater cost, there is the potential to maintain a democratic system at local government level but to save millions of dollars for ratepayers.

I understand that we are close to an election and that the government is not going to rattle the cage but, in my view, it needs to look at reforming how we operate in this house. It is not just things like estimates committees, which I have been on about for years. Nothing ever seems to change in the way of reform. We have question time but we do not necessarily have answer time, and it goes on and on. However, the biggest area for reform, in my view, is in relation to local government.

I will conclude by saying that I would be more interested in seeing some far-reaching reforms in terms of things like the Police Complaints Authority and issues like that. The Police Complaints Authority is in urgent need of reform and, if the government can reform in some of those areas, then I think we can avoid a costly ICAC.

I am happy to expedite things by concluding my remarks but I predict that this bill will be savagely mauled. It may be accepted in respect of reducing the eight-year term to a four-year term but, beyond that, I think the other aspects have a limited future.

Mrs PENFOLD (Flinders) (17:26): The government's ill-advised attempts to grab unlimited power through the abolition of the Legislative Council have been thwarted by their own supporters, in particular, the Public Service Association. That Public Service Association threatened to run a campaign against Labor in order to block the Premier's lust for power. The Public Service Association secretary, Jan McMahon, remarked in a radio interview that:

> There have been many instances where the Public Service Association members and the community have really benefited from being able to have an independent review of legislation and nobody should ever walk away from the ability to have their own legislation reviewed and have amendments made that are in the best interests of South Australians.

The Premier has realised that his grab for unlimited power has been recognised as just that—a grab for more power—and he has given up on the abolition of the Legislative Council for the time being. I stress the phrase 'for the time being'.

We can look at one of Labor's strongholds, Queensland, to learn how Labor operates in order to get its own way in the end and to silence opposing voices. In 1917 the Queensland Labor government unsuccessfully petitioned, by means of a referendum, for the abolition of the state's upper house. The referendum was soundly defeated. However, that was not the end of the matter for the power-hungry Laborites. Over the next few years Labor governments advised the Governor to appoint a total of 30 new Labor members of the Legislative Council—

The Hon. M.J. Atkinson: The suicide squad.

Mrs PENFOLD: —until the party had sufficient voting strength to pass its push for abolition of the council. As the Attorney-General said, 'The suicide squad.' Nicolas Aroney and Scott Presser commented: 'The politics of Queensland have ever since been determined by this concentration of power—executive and legislative—in the hands of a small coterie of politicians.' Perhaps this is what the Attorney-General had in mind when he said:

> The government cannot call a referendum without the passing of the bills...This means that for reform to occur the Legislative Council must vote to reform itself.

Is it the first step in a long-term Labor aim to abolish the Legislative Council?

There are many different ways to change the operation of the two houses of the South Australian parliament, far more than the narrow approach taken by Labor, and this applies especially to the upper house. It is also interesting that the Attorney-General ignores the Independent and minor party councillors and puts all the ability for change on the Liberal Party. I am pleased that the honourable member for Croydon recognises the integrity, probity and strength of the Liberal Party.

While other states have, at times, been plagued by government corruption, Queensland has arguably experienced more of it. In recent times, Queensland governments have attempted to deal with a lack of government accountability associated with the 'winner takes all' power in a single house through the establishment of a Crime and Misconduct Commission and parliamentary committees. It is worth noting that we already have parliamentary committees where legislative councillors provide input. Hence, Queensland is only setting up what this state already has.

Queensland's attempts to provide a brake on corruption and corrupt practices with the Crime and Misconduct Commission have been unsuccessful since the members of the commission are appointed by the government and each parliamentary committee has a majority of government members. Abolishing the Legislative Council on the argument that it would save money is flawed reasoning that ignores the reality of the need for these bodies. It also demolishes the argument that funding now spent on the Legislative Council could be directed elsewhere. The process is simply a smokescreen to bamboozle the gullible and to fool the unwary. It would be cheaper and more effective for Queensland to reinstate its upper house. Queensland's President of the National Civic Council, Ron Munn, said:

> In part, Tony Fitzgerald QC (commemorating the 20th anniversary of his report on government corruption) said of the Queensland Labor government, 'Ethics are always tested by incumbency. Secrecy was re-established by sham claims that voluminous documents were "cabinet-in-confidence". Access can now be purchased, patronage dispensed, mates and supporters are appointed and retired politicians exploit their political connections to obtain "success fees" for deals between business and government'.

We come to the bill before us. The number of councillors and the operations of the Legislative Council have changed at times over the years. There is always support for change when change is an improvement on current practices. However, the government has given no satisfactory explanation for its push for change. Parliamentary committees, in which councillors play a large role, are a thorn in the side of Labor's quest for domination without responsibility and/or scrutiny. Our Premier is very quick to show his dislike of opposition and/or adverse criticism, usually by a sustained rush of bullying, abuse and harassment by his head kickers. It is a ploy that has often succeeded since it focuses attention on the acting ability of ministers while deflecting attention away from valid issues.

It seems obvious that legislative councillors have blunted Labor's push for unchallenged power, hence Labor's suggested reduction in the number of councillors. This would allow the council to be controlled more easily and for their investigative work in committees to be diluted. It is curious that the Premier does not want proper scrutiny of his ministers and government. Perhaps he is frightened by the actions of legislative councillors in New South Wales who, supported by decisions of the New South Wales Supreme Court, forced the government to produce documents on matters of public concern in situations where the government wanted to protect itself by keeping the documents secret. The first disclosures of disturbing information about the financial entanglements of Sydney's cross-city tunnel were the result of a New South Wales council order.

Labor governments in New South Wales have done some extraordinary deals with private enterprise to push projects through at the expense of taxpayers.

The Hon. M.J. Atkinson: That would be extraordinary.

Mrs PENFOLD: Just because the Attorney-General has probably had better education than I have, coming from a small country school with three classes in one room, he need not be

arrogant about it. Labor governments in New South Wales have done some extraordinary deals with private enterprise to push projects through at the expense of taxpayers.

Members interjecting:

The SPEAKER: Order! The member for Light is not in his seat.

Mrs PENFOLD: I have been told of the financing of toll roads, where users are reimbursed by governments for the tolls they pay to the owners of toll roads. The mind boggles at the possibility for preferred treatment for favoured developers or companies when there is no brake on the power that a one-house parliament confers on the ruling government.

South Australia enjoyed a Liberal government when the federal government conducted a referendum into whether or not Australia should become a republic. The Liberal state government set up a committee comprising representatives of the three parties who then had members in either state house—Liberal, Labor and Democrat—to research how South Australia may have been affected if the referendum succeeded.

One of the surprising conclusions from that extensive research was that we are not over-governed. We have a lesser number of politicians per capita compared with other democracies. Another conclusion was that we are likely to end up with more politicians than we have now if the state tier of governments were abolished and Australia moved to only federal and regional governments.

Another furphy that we hear and that Labor likes to trumpet is the incorrect notion that the Legislative Council is particularly obstructionist. In the 23 years from 1975 to 1998, only 1.8 per cent of government bills were rejected outright, and this was usually after exhausting the legislative process, resulting in a deadlocked conference between the houses.

Excluding sessions which were prorogued due to the calling of an election, only 7.1 per cent of government bills did not pass the upper house over that 23 year period which, incidentally, covered both Liberal and Labor governments. Likewise, in the eight years from 1997 to 2008—again covering both Liberal and Labor government—only 2.9 per cent of all bills were negatived or laid aside in the Legislative Council. It is also acknowledged that many of these—possibly a majority—were private members' bills and not, therefore, government legislation.

The Consent to Medical Treatment and Palliative Care Bill is an instance where the scrutiny provided under the bicameral system produced a worthwhile piece of legislation due to the numerous committee stages and subsequent amendments introduced in the Legislative Council. The bill was introduced by a Labor government in 1992 and was eventually passed 2½ years later by a Liberal government. The operation of government should always be subject to not only scrutiny but to a real mechanism that can check its action, as enabled by the existing provisions pertaining to the upper house.

Reducing the effectiveness and authority of the upper house in a bicameral system produces governments which eventually embrace tyranny (because humanity tends towards corruption, as illustrated around the world), thus an effective check on the operation of government is needed. One way this is done successfully is to subject bills to a second chamber, the way in which now happens under the two-house system of the South Australian parliament. Restraint on government occurs as the upper house examines every proposal of the House of Assembly (the lower house) in which government is formed, and vice versa, as governments rarely control both chambers.

The election of half the legislative councillors at each election—which Labor wants to throw out—is a protection against electoral swings. This helps shield the parliament from major swings that may otherwise largely fill both houses with members of one party, or the anomaly, in the upper house, as with the Xenophon factor, which I understand would have given us six more Xenophon anti-pokies members if it had been an election of the whole of the upper house at the time.

When the federal Liberal government under John Howard proposed radical changes to Australia's gun laws, a very strong, vocal and active gun lobby was formed, with candidates standing for election in all available domains. When a candidate stands for election there is always the possibility that that candidate could be elected, no matter how bizarre or way out their policies and intentions. Our nation would be a very different place if a large number of the Shooters Party had been elected, bringing with it the gun mentality of the United States of America. A society controlled by that mentality is radically different from accepted Australian values and ethics.

Consideration of long-term impacts is more likely when members of the Legislative Council serve for a term twice the length of members of the House of Assembly. We only have to look at the way in which governments have dealt with the world financial crisis to see the value of long-term views. The Australian Labor government, despite its plunging the nation into unprecedented levels of billions of dollars worth of debt, after being left billions of dollars by the former Howard Liberal government, can only predict more difficult times for our country and its people. The Prime Minister is anxious to get an election out of the way and hoping to be re-elected before the levels of debt, as a result of his mishandling of the Australian economy, become insurmountable and our economy slides.

Reconsideration of policy is an important aspect of the Legislative Council and is more likely to happen when two sets of members have to consider and pass proposed legislation. This enables scrutiny, public awareness and an increased community response. Two chamber parliaments where all legislation is debated and voted on twice is a safety measure against human frailty, either by deliberate tyranny or unintended errors. We cannot afford to weaken it.

We are one of the few countries that has not seen violent elections involving major corruption. I believe that this is because of the soundness of our bicameral system of government which, while annoying at times to all sides—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order!

Mrs PENFOLD: —is much preferable to what we see happening around the world in countries without a similar system.

The Hon. G.M. GUNN (Stuart) (17:40): I rise to oppose the bill because I do not believe there is any public demand for these provisions. These are purely old-fashioned bigoted Labor Party attitudes because members opposite cannot bear to have people's rights protected by having a second opinion. If the argument to downgrade or abolish the Legislative Council was so important to the community, they would be writing to us by the dozen.

Mrs Geraghty interjecting:

The Hon. G.M. GUNN: The honourable member is deluding herself if she thinks that. I will give an analogy. When you are sick and go to the doctor, if the doctor is really concerned he seeks a second opinion. He sends you to a specialist so there can be no doubt that the treatment prescribed or the operation recommended is absolutely necessary.

When we are talking about changing laws, which can affect the rights and welfare of every citizen of this state, two fundamental principles in democracy must be observed. First, it should not be rushed. People should have the chance to consider, absorb and comment upon it. Secondly, they should have the right to have a second chamber consider it, change it, organise discussion between the two houses or reject it.

The Hon. M.J. Atkinson: Why not a third chamber?

The Hon. G.M. GUNN: You are the only person who would be so foolish and naive to make that off-handed comment. Surely, the Attorney-General—Her Majesty's first law officer—can do better than that. This is a serious matter because we are talking about the role of parliament to have the opportunity to contain and restrict the executive. That is a fundamental principle in a democratic system.

The Hon. M.J. Atkinson: And to review the issuing of infringement notices.

The Hon. G.M. GUNN: Well, if the Attorney-General thinks that, I have a number of bills on the *Notice Paper* which the Government Whip is blocking. I call upon the Attorney-General to bring on debate in relation to those issues. I look forward to them—and I will tell him what they are. There is one important one.

The Hon. M.J. Atkinson: How many of your bills have become law in 38 years?

The SPEAKER: Order!

The Hon. G.M. GUNN: There is one thing for which the Attorney-General can never claim credit. Even though he and his cohorts set out to remove me, they have never been successful. If I had wanted to come back here again I could have, but in a democracy I should let a young person of Liberal persuasion come in and take my place.

I have an important bill entitled the Constitution (Basic Democratic Principles) Amendment Bill. The basis of it comes from the German constitution which provides that it is an offence—

The Hon. M.J. Atkinson: In what period?

The Hon. G.M. GUNN: The current one, because it comes about as a result of what took place over the Kaiser and Nazi regimes. This democratic bill provides that it is an offence to bind a member of parliament to vote against their conscience. That should be the law in this state and across the country. The provision that we currently have before us is to reduce the size of the house to make it ineffective and to put other provisions in there which not only are unwise and unnecessary but which are not in the long-term interests of the people of South Australia.

A great deal has been said about what has taken place in Queensland. I would recommend that all members of parliament read the editorial that appeared in *The Australian* of 18 July. It ought to be compulsory reading for members of parliament, because it talks about the corruption in Queensland—more corruption than anywhere else in Australia; the only place that does not have an upper house. The editorial states:

> Labor's abolition of the Legislative Council in 1922 concentrated power in the hands of a small coterie. The committee system was reformed by Wayne Goss but in practice it is often lame and tame compared with other jurisdictions.

Of course, the Legislative Council in Queensland was abolished against the wishes of the people. They filled it up with their cronies and got the Lieutenant-Governor, in the absence of the Governor, to sign to abolish it, contrary—

The Hon. M.J. Atkinson: Why are you afraid of it having a vote? Why are you afraid of going to the polls?

The SPEAKER: Order!

The Hon. G.M. GUNN: I have never been afraid of going to the polls. I put to the Attorney-General this is not about that. He knows what the result will be, anyway. So do we. This is a political stunt, organised because—

The Hon. M.J. Atkinson: Organised by the SDA!

The Hon. G.M. GUNN: You are accusing your friends of organising it. You may be correct; I do not know. They are not my mates; they are your mates in the SDA, Senator Don Farrell and those people. If they are calling the shots I will let the Attorney account for that. However, this proposal is a political stunt, because they went out and criticised the Legislative Council; they went out and made comments that this was a reforming government, 'We are going to reform,' and of course they were stuck with it. So, at the last moment, in the last 17 or 18 sitting days of this parliament before the election, they put up this bill. They put it up in a particular way knowing full well that it has little or no chance of getting through the parliament, because they are asking one question when there is more than one. They have lumped them all together knowing full well what the result will be. It is an unnecessary stunt and it would be an expensive stunt. However, even worse than that—

The Hon. M.J. Atkinson interjecting:

The Hon. G.M. GUNN: It is a pity that the Attorney cannot contain himself, and we need a Legislative Council to contain people like the Attorney who have a narrow point of view. Therefore, the Legislative Council brings in the people who are able to contain him. He cannot get away with some of his radical ideas, and that in itself is a good thing. That is one reason why I would want to oppose him, because if he got his way they would not be able to contain people like him. If the Attorney in his wisdom—and I give him the benefit of some wisdom, I am a charitable character, but at the end of the day—

The Hon. M.J. Atkinson: We saw that when you were Speaker.

The Hon. G.M. GUNN: If the honourable member wants to talk about that, the only reason he got into trouble is because he would not conform to the standing orders—and I note that he has not changed them since, so he must agree they were right.

The Hon. M.J. Atkinson: What about commander Quirke: why didn't he get into trouble?

The Hon. G.M. GUNN: Because he behaved himself—and if you were to follow the same example you would not have got into trouble either, nor would some of your colleagues, the Deputy Premier and others.

The Hon. M.J. Atkinson: If we had been part of the fraternity of firearms we would not have got into trouble.

The Hon. G.M. GUNN: I thought you were pro firearms.

The Hon. M.J. Atkinson: I am.

The Hon. G.M. GUNN: There you are! So you have contradicted yourself again. I do not know why the member wants to pay so much attention to my comments, because it takes a lot to get me on my feet. It has taken me all day to work myself up to this speech!

I was fortunate to read what I thought was a very good article (it was historic and covered a lot of facts) in the *VoxPoint* publication of August 2009, FamilyVoice Australia. It has a photo of Senator Fielding on it—not always the wisest senator, but a well meaning character. It says here—

The Hon. M.J. Atkinson: An outstanding senator.

The Hon. G.M. GUNN: He has stood in the way of some of the more radical foolishness of the Rudd government: I give him credit for that. The article states, 'Do parliaments need an upper house?' and, of course, of answer is yes, they do need an upper house.

The Hon. M.J. Atkinson: Which magazine is this?

The Hon. G.M. GUNN: I am surprised that you have not read it, because I would have thought it would have been something that the honourable member would read as soon as it came across his desk. It goes through the history of upper houses and why we need a bicameral system and why we need these provisions. However, at the end of the day, we are not talking about the rights of members of parliament: we are talking about protecting the rights of the average citizen of this state. That is what it is all about. It is not the role of this legislature or any legislature to grant absolute power to the executive government. It is not the role of this parliament to legislate for and on behalf of powerful bureaucrats.

The Hon. M.J. Atkinson: Except when the Liberal Party is in office.

The Hon. G.M. GUNN: No—and I will prove my point by saying that I think I am one of the few people who chaired a select committee that directed the Sergeant-at-Arms to go to the minister's office and seize the files. I did it because this parliament—this House of Assembly—had set up a select committee and asked that committee to inquire into certain very important matters. I for my sins was made the chair of that committee and I made it my responsibility to be able to truthfully report to this parliament. When it became evident that certain people were giving less than forthright or accurate information, I took the next step and directed the Sergeant-at-Arms to go and get the information from the minister's office without advising the minister or forewarning them. It was, in my view, a proper exercise by the parliament over the executive of the day. I have to say that I did not endear myself to the minister.

The Hon. M.J. Atkinson: Who was the minister?

The Hon. G.M. GUNN: Dorothy Kotz. She got very cross with me, and I was not on the morning tea list of the premier of the day; I think I got a telephone call at 6.30 in the morning. That was all right. Not only did we do that, but also we sent the secretary of the committee to Mount Gambier to clean out the office down there to make sure we had the files.

The Attorney cannot say that people on this side do not stand up to the bureaucracy in government, because we did. I believe that was an important test case, and it is important that parliamentary committees in the future stand up to governments. The NRM parliamentary committee did the right thing when it made people come back and apologise for giving inaccurate information to that committee. That is its proper role.

An honourable member interjecting:

The Hon. G.M. GUNN: Well, those NRM committees leave a fair bit to be desired, in my view.

Mrs Geraghty: You like the bureaucrats.

The Hon. G.M. GUNN: No, because you have appointed people on them, not elected people. Where you have appointed people they become self-important. Where you have elected people, the people who are affected by their decisions have the ability to replace them. Appointed bureaucrats become insular and self-important and, at the end of the day, often they are not acting in the best interests of those they serve.

So, not only is this bill, in my view, unnecessary but it is also a threat to proper parliamentary democracy. What happens? This house should be fully aware that, where you have backbenchers who are not capable or game to take on the executive, governments bring forward legislation that in some cases is unwise and not in the long-term best interests of the people of this state. If you have one house of parliament, as there is in Queensland, you see what happens.

Under Bjelke-Petersen they suspended standing orders and passed a bill overnight and the law had been changed when people woke next morning. That is an outrage! Also, look what happened to the member of parliament who first exposed 'Dr Death' in Queensland and how he was publicly ridiculed for bringing that to the attention of the parliament. He had parliamentary privilege, but they ridiculed him. They let Nuttall off for misleading a budget estimates committee, because the executive had total and absolute power. That is something that this parliament should never permit.

I know governments of both persuasions do not like the Legislative Council amending their legislation, sending it back, questioning it and holding it up, but, at the end of the day, what is the most important element in legislating? Is it to get it right? Is it to make sure it is fair? Is it to make sure that we are not legislating deliberately to enhance minority interest groups improperly? It should be there to ensure that we are bringing a balanced, responsible view which is going to have long-term benefits to all citizens, and we should not take away their rights.

I have seen ministers get terribly angry at conferences between the houses and threaten all sorts of things, but some of those amendments that eventually were put on the statute book have never been changed. Those modifications and responsible actions have never been changed and they have stood the test of time because they applied common sense and a sensible arrangement. We all recall in the early days here when we had another premier shouting about the Legislative Council but hoping that it modified some of the silly radical legislation that he knew was a nonsense but it was only put up because the activists in the Labor Party had forced him to do so. And he was pleased because it saved him from the power of the ballot box.

Obviously, this legislation has a fair way to go, and I sincerely hope that it does not see the light of day because it is not a genuine attempt to do something positive. I hear the member for Fisher talking about parliamentary reform. What does he actually mean? What does he actually want? At the end of the day we all come into this place knowing what the rules are, but what do they actually want? Do they want a parliament to be responsible and to be able to properly engage the government of the day? Do they want a parliament that can question and challenge, or do they want some sort of rubber stamp that is part time?

In my view, we have a pretty good system. There could be some improvements and, if you are talking about parliamentary reform, you should be looking at some of the provisions in the United Kingdom where some of the important committees are chaired by a prominent person from the opposition so that you can make sure that matters are not stymied from being debated or investigated by those committees.

The Hon. M.J. Atkinson: So, what did you do to bring that about in your eight years of government?

The Hon. G.M. GUNN: One of the things I have done is stick up for the rights of members of parliament always. I do not know whether the honourable member has done that, but what he has done is continued to occasionally involve himself in odd personalities. I have never been sued and cost the taxpayers lots of money because of my unwise comments. I have got a clear conscience in my nearly 40 years here, so the honourable member can throw all the bouquets across the chamber to me that he likes, but at the end—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order!

The Hon. G.M. GUNN: Can I say I have a very clear conscience, and I continue to be received in a very happy and harmonious way in my electorate and around the state where I have been involved.

The Hon. M.J. Atkinson: Don't retire, Gunny. Go again.

The Hon. G.M. GUNN: At the end of the day, I have a clear conscience and I think I have been involved in making some small improvement in the welfare of the people that I have represented, and I am pleased to say that I have the opportunity of voting against this ill-conceived measure.

[Sitting suspended from 18:00 to 19:30]

Mr VENNING (Schubert) (19:30): It would appear that I am the last speaker from this side, and the last on the second reading tonight. I was not going to make a comment, but I want to make an admission. I made comments in the early days of my being elected—and that is 19 years now—and publicly expressed what I thought about upper houses.

The Hon. M.J. Atkinson: It was different from what you are going to say now.

Mr VENNING: The Attorney perceives it very well; I have changed. Back in the days of the Hon. Legh Davis we had many a stoush in relation to the value and place in our parliamentary system of upper houses, and back then I thought we did not need them. Queensland had done alright without one, and without all the rhetoric that goes with that. However, I have changed my mind, and I will tell you why. Being here for all the years I have, I have seen the opportunity for governments—of all persuasions—to get it wrong.

There is also the spurious argument that it is too high a cost to have two houses, but the argument is just that, spurious. I believe that the cost of our upper house is nothing compared to the cost of getting it wrong. Today we see parliaments—and not just this one, all of them—in most countries of the world spending more and more money on spin, more and more money on government-paid advertising, and more and more money on professional—

The Hon. M.J. Atkinson: You never said anything about this when you were in government.

Mr VENNING: It really has reached a height now—

The SPEAKER: Order! The Attorney-General will have his opportunity to respond.

Mr VENNING: I think the cost of the Legislative Council is cheap when you consider what could be done. You only need look at Queensland today; it is one of the poorest performing states in the country. There is no excuse for that, but one of the biggest reasons for it is that it lacks the accountability of an upper house. I am biting my tongue here, because one only has to read *Hansard* to see some of the things I said back in 1991, 1992 and 1993. Joined with the then—

The Hon. M.J. Atkinson interjecting:

Mr VENNING: If the Attorney would allow me to finish he will see the proviso I put on all this at the end. I often discussed this with Heini Becker, another member with me in those days, who is still with us and still very knowledgeable, and, because some of our upper house colleagues were fairly 'bolshie' (the word I would use in those days), we had these very strong debates about the value of an upper house.

However, I have to say that today we have governments that are hesitant about setting up ICACs, that are hesitant about accountability, that are running from facts, and that do not answer questions at question time. Everything is spin; and there are professional spin teams to help you do it. In fact, when you are spending $19 million in an economy the size of ours it is a disgrace. It has been getting worse over the years, but it has now come to the point where people have had enough. They are asking the opposition to look at an ICAC; they are supporting anything that keeps governments accountable.

Every day we hear about—well, I will not say shonky, but about potentially doubtful deals. We are hearing about access for cash; ministers charging $2,000 or $3,000 for access—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order, the Attorney-General!

Mr VENNING: In all this, am I allowed, with the Attorney-General's permission, to reconsider my position? Why would I now ask—

An honourable member interjecting:

Mr VENNING: —to keep an umpire present. Why would I ask that we keep a second opinion there, a house of review? I think it is in this climate that we do support it. I will admit—and not too many MPs would—to earlier comments I have made as a younger person without the wisdom of time. In this climate today I will go back on that, and I will say that, at this point in time, I am happy to support the retention of our upper house.

I am concerned, though, that there is opportunity for certain individuals to grandstand up there and certainly have more than their fair share of say, without naming anybody. At least in this house, in support of us, we each have approximately 25,000 electors, and we are all responsible to them. In the upper house you can—and people do—hide behind party tickets. I would just love—and it will not happen, Mr Speaker—

The Hon. M.J. Atkinson: You wouldn't be able to pursue this if you weren't a Liberal.

Mr VENNING: I'd like to test you on that one.

An honourable member interjecting:

Mr VENNING: I have learnt from the member for Spence and now the member for whatever it is—

The Hon. M.J. Atkinson interjecting:

Mr VENNING: On the end of Barton Road. Is that right? We know all about this. What is your record like, Attorney-General? When you were in opposition you were going to fix that road, and, have you? No. Irrespective of all the hoo-ha that has been going on with you—

The Hon. M.J. Atkinson: Watch this space.

Mr VENNING: I've been here a little longer than—

The Hon. M.J. Atkinson: I've been here longer than you.

Mr VENNING: You have. You came in one year before me.

The Hon. M.J. Atkinson: I campaigned against you in the by-election in which you were elected.

Mr VENNING: That's why I was elected.

The Hon. M.J. Atkinson: I doorknocked Hamley Bridge.

Mr VENNING: I know you did, and that's why I got a big vote in Hamley Bridge.

The Hon. M.J. Atkinson: We win Hamley Bridge now.

Mr VENNING: As much as I regret it, I am no longer the member there now. I digress. Let's get back to the subject. Certainly, I believe that, with what we are seeing today in modern politics, we need the checks and balances provided by the upper house. Going back to a previous opinion, I have changed my mind, because of the experience I have gained and the concern I have about what is actually happening and how modern governments are governing. With all the opportunity for fraudulent activity and the corruption that can go on, particularly in the area of planning, we see all sorts of deals that are done, and yet a lot of them are all—

The Hon. M.J. Atkinson: People lying to parliament.

Mr VENNING: I have never lied to parliament.

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order! The Attorney-General will have an opportunity to respond.

Mr VENNING: I cannot believe all these red herrings. You have a very complex thought process, Attorney-General. You do not seem to be able to keep on the subject. I will not go on for much longer because the shadow minister is here. I congratulate her on the conveyance of this very important bill for the Liberal Party. We have given this matter a lot of thought over a long time, and I think our position is certainly supportable.

The Hon. M.J. Atkinson interjecting:

Mr VENNING: If he would stop yapping long enough to listen, I would ask the Attorney-General whether he has ever had his ears tested. I do not think he has; either that or he doesn't use them. In looking at what I said many years ago and reflecting on what I think today, I think that the upper house should remain there for as long as we have a state parliament. I think we can see the day coming when some people, probably younger members in this house, may make a strong push to eventually phase out state parliaments altogether. There is so much duplication coming in now. I do not think I will see it, and I am not in a hurry to do this, but you can see the duplication we are having in health, education and many other areas.

With the waste that is going on, particularly at the moment with this state government, and the duplication of services, particularly within the Public Service, I am sure that there are a lot of efficiencies to be made by eventually phasing out state parliaments altogether. I probably will not see that while I live, but I am sure that the member for Bright will, because I think that is what is coming. While we retain the state parliament, and while it has to be effective, I put on the public record that I support the retention of an upper house.

As I said to you this evening, sir, it always annoys me that the members of the other house are honourable and we are not. That always upsets me—because I try to be a nice fellow—when you are out in public and you get introduced as mister, and the others are honourable, even though they have been in the job for five minutes and I have been here for nearly 20 years, but that is part of the tradition of the place and you get used to it.

I know it annoys the previous member for Unley, the Hon. Mark Brindal; in fact, he is not honourable, because he missed out by about a month. These are the sorts of things, the inequity—

Mr Bignell interjecting:

Mr VENNING: That is a reasonable interjection: when he was minister, yes. These are the little things, the inequities, that you often consider. We have some excellent members who have served many years, like Heini Becker, and I do not think he is an honourable, yet he served here for—

The Hon. M.J. Atkinson: No, because your party would not make him a minister.

Mr VENNING: —way over 20 years, irrespective. As with you, Mr Speaker; you are honourable while you are here, but I understand that unless you do it for a second term you are not going to be honourable either. So, these little things come in to the differences between the houses, and they are different.

As I was saying before you interrupted, one thing I would love is to see us return to the time when we had the upper house representing regions. As I said earlier, I do not like the way it is now; I never have. I do not like the fact that a member can hide behind a party preselection. You only have to go to your caucus or the state council—

The Hon. M.J. Atkinson: What do you do in Schubert?

The Hon. I.F. Evans: An excellent job.

The Hon. M.J. Atkinson: Do you think they would elect you as an Independent?

Mr VENNING: Yes.

The SPEAKER: Order!

The Hon. M.J. Atkinson: Try that on 20 March.

The SPEAKER: Order!

The Hon. I.F. Evans: Do you think they would elect you as an Independent?

Mr VENNING: Would you take the risk in Croydon?

The Hon. M.J. Atkinson: I'm happy with my party.

Mr VENNING: I am happy with my party—very happy—to the point where I will serve my party long after I have left here. I will serve my party as long as I can, as long as I have the capacity, and I will.

The Hon. M.J. Atkinson: Longer than they want you to.

Mr VENNING: This fellow is full of confidence, isn't he? You have called me all sorts of weird things. You have called me the bag man for the Liberal Party. I have been called all these insulting things. I do not care. It does not worry me. I have a thick skin. I have a conscience, and I have nothing to worry about. I do not know how you sleep at night.

Irrespective of that, why can we not go back to the regions, as they do, say, in Tasmania, although I do not like the Hare-Clark system there. If we go back to the regions, as we used to have prior to Dunstan changing it all, where members represented a region, then when you need to target certain people with a problem you could actually vote for them in a region. Members actually represented an area, not like they do now under a whole of state franchise. I can remember upper house regions like Midlands, Northern and South-East. I think we had five or six across the state. When my father first tried for parliament he stood for preselection for Northern in the Legislative Council.

The Hon. M.J. Atkinson: The other thing you liked was stopping people who didn't have property from voting. That was a Liberal Party measure.

Mr VENNING: This is a blast from the past. The gentlemen is talking about things as they were in the 1930s and 1940s.

The Hon. M.J. Atkinson: That was the 1970s.

Mr VENNING: I am not going to waste the time of the house even arguing on that line. I want to sit down shortly, but I will just say, look: I have changed my mind. I still have a strong desire—if it was possible, but I do not think it is—to bring regions back to the upper house, as they have in a lot of the other bicameral systems around the world, so that these people can be more responsible to their areas.

At the moment if you have a party ideologue as the No. 1 or 2 candidate on your ticket, whether it be Labor or Liberal, you are stuck with them; you are not going to get rid of them. I will not name them, but there are a couple on the other side who have a long history and who have been around for many years. If you had a region where there were only two or three members then it would be quite easy to vote for the person that you want.

As a lower house member, you can work with the upper house member who is working with you in that region—if you look at the old regions, I would probably have had an upper house member serving at least two state seats—so you would know who your colleague was in relation to representing the people.

With those few words, I commend the shadow minister for the work we have done, and I ask that members consider our position. I think our record in this area has been strong, consistent, loyal and responsible. I heard the member for Stuart this afternoon, and it was the good, strong solid speech we are accustomed to hearing from him.

Certainly, for me, it is a change of heart, and I am the first to admit it. The member for Stuart would say, 'About bloody time. It has only taken 13 years,' but it is on the record. All I can say is that today, more than anything else, we need an upper house, and we also need an ICAC.

Mr HANNA (Mitchell) (19:46): We finally have some measure of constitutional reform from the government. I believe it was an election promise leading up to the last election that the Labor Party would put a referendum to the people to abolish the upper house. Since then, it has been very quiet about it and, indeed, the principal measure that was talked about—abolition of the upper house—it has entirely backed away from.

It sounds like one of those policies that was made on the run for the sake of a good press release that day. Upon closer examination, the feet turned cold in the knowledge that the measure was not truly popular. The measure that is brought forward is curious in a way because I cannot but suspect that the Labor government does not intend for this bill to succeed and does not intend for any referendum to succeed. It seems like the minimum it could do to fulfil an election promise without any spirit whatsoever.

It has borrowed from John Howard's referendum on the republic tactics. It has put a question in which there is enough for each separate party and individual to object to that very few people will agree to the whole package. There is no need for several questions to be rolled into one in this legislation, or in the proposed referendum, yet that is what the government has chosen to do.

The principal measure in the bill, as far as I am concerned, is the suggestion that the upper house should have four year terms, and I support that. However, the reduction in the number of members, I believe, is purely a piece of populist politics, and what I mean by that is that it is not necessarily there to appeal to reasoning voters who are familiar with the workings of parliament. It is there to appeal to the popular prejudice that is often peddled in parts of the media which suggests that MPs work for three days a week on about 20 weeks a year and have the rest of the time on holiday. That is actually true in very few cases, if any.

Indeed, in respect of upper house members, the hardest working members, apart from ministers, would be those who are in the minor parties or among the Independents. I realise that Liberal and Labor backbenchers, whether they be in this house or the other house, have somewhat less to do because they do not have to think about the legislation going through; they simply vote the way they are told.

Nonetheless, numerous permanent committees are established in the upper house and, also, committees are set up from time to time that are of considerable value. One of the reasons that I suspect that the Labor government is just playing political games with this legislation is the numerous barbs and provocative remarks inserted by the Attorney-General into the second reading explanation for this legislation. For example, the reference to 'members in the other place are justifying their existence by setting up a committee to examine everything under the sun' is just rhetoric.

The Hon. M.J. Atkinson: The committees don't even meet or report.

Mr HANNA: It is being personal without being productive in terms of the debate. Some good committee work is done in the upper house, particularly in relation to examining the budget, for example. The upper house process for examining the budget is a lot more effective than the estimates committees process we have for the lower house—which is the equivalent of a show trial.

The other terms of this proposal include a change to the president's vote. No real case is made out for that. There is also an elaborate deadlock procedure that is the mechanism for resolving the issue if the upper house and lower house groups of MPs have different views on a particular piece of legislation. It must be resolved one way or the other, and we have an adequate means of resolving disputes already set out in the constitution.

The Hon. M.J. Atkinson: You're joking! The House of Assembly goes to the polls twice before it gets a joint sitting.

Mr HANNA: Section 28A provides for legislation, if refused by the upper house, to be reintroduced after a general election in order to be tested again in the upper house. Section 41 also provides for a bill of special importance as the trigger for an election. In sections 28A and 41 we already have two possible means for an early election being called as a result of contentious legislation, so we do not need this elaborate Senate-style process introduced by the government.

If the government really wanted to introduce a cheaper, more effective means of resolving deadlocks it could suggest a joint sitting of the houses without going to an election at all. There is some democratic argument for that to this extent: when the House of Assembly has a very strong majority, which would suggest a significant mandate for the ruling party, then it would probably have the numbers to carry the day in a joint sitting. If the election was in the usual course reasonably close then it would not have the numbers to impose its will through a joint sitting of the parliament; so that is something for the government to think about. I am quite content, however, with the provisions as they are.

Of course, this is in the context of legislation which is almost always passed by the upper house. The number of bills that have been rejected by the upper house or abandoned by the government over the past five years I could count on one hand. In terms of amendments, a significant number of bills are amended. About a third of the upper house bills, as I recall, are amended in the upper house. However, a lot of the amendments are from the government. That is to say that the government considers legislation after it leaves the House of Assembly and thinks better of its own proposals and brings in amendments in the upper house. It is not as if there is a problem to be fixed in terms of obstruction or even delay.

I must admit that my thinking in terms of the upper house has changed over the years. Soon after I entered parliament in 1997 I gave some thought as to the appropriate political system for a province such as South Australia, and the conclusion I came to was that we should do without

the upper house and that we should have something akin to the New Zealand system or the German provincial system; list members and constituency members. This would satisfy the two critical requirements of a democracy; that there be stability but also a plurality of voices represented in the parliament.

Over the years I have also extensively studied the prospects for multi-member electorates, and I believe they work extremely well in places such as the ACT and Tasmania. The only drawback, which I have not been able to entirely solve in terms of South Australia, is the fact that if we had multi-member electorates, such as seven members in each of seven electorates or nine members in each of five electorates or five members in each of nine electorates, we would have enormous country electorates.

I think it would work quite well in the city, because there is no great problem with people travelling from Blackwood to Brighton or from Unley to Glenelg if those areas were all contained in the one electorate. However, in the country I have to admit there would be perhaps some disconnection between the local members of parliament and their community. Indeed, there is an argument to say that already happens with our massive federal electorates in country South Australia. So, I could understand if country citizens or country members of parliament thought that multi-member electorates would not work in South Australia for that reason.

However, apart from that, there is no question in my mind that they are more democratic and produce a plurality of views but also still have a connection of each member of parliament to a particular community within South Australia.

As I have gone on I have seen how difficult it is to reform the upper house. I took great note of the Constitutional Convention held in 2003. That was particularly important, because it took several hundred South Australian citizens at random and educated them about the political process and then asked them what changes they thought ought to be made to our political process. One of the few changes that was suggested in terms of our political system was the institution of four year terms for the upper house. I think there is very strong democratic justification for that measure, because I cannot really understand why all members of parliament should not face the public one way or another at every general election.

So, it seems to me that the only worthy proposal in this legislation is the proposition that the upper house should be elected with only four year terms and that it should face general elections at the same time as the House of Assembly. For the government to have rolled up these other contentious issues in the one package, I think, dooms it to failure. However, I will make an effort, no matter how quixotic, to amend this legislation so that it only carries with it the proposal of four year terms. The other elements of the bill I reject.

The Hon. I.F. EVANS (Davenport) (19:55): I wish to contribute to the second reading debate about the bill before the house in relation to the proposal to hold a referendum in respect to reform of the upper house. I want to argue a case against the government's proposed reforms on the basis that I do not believe that we should weaken the system of government in South Australia so that any political party, regardless of colour, can get absolute control of the parliament or, indeed, the executive.

The Hon. M.J. Atkinson interjecting:

The Hon. I.F. EVANS: The Attorney keeps making inane interjections, and I am happy to argue my case despite his interjections because he will have the opportunity to respond and he will have far more opportunity to contribute to this debate than I during the committee process.

Let us look at the position on this. The Labor Party's long-held position is to abolish the upper house, so let us not misunderstand its philosophy. Its philosophy is that the parliament should be of one house and whichever party wins that house controls the parliament. What that would do to the citizens of South Australia if it were to occur is transfer the power from the parliament to the executive, that is, the cabinet office. Single house parliaments such as in Queensland are worthless because they cannot hold the government to account, because the government can come in (as happened under the Bjelke-Petersen government and, indeed, other governments) and use the guillotine to close off debate, introduce legislation at 11 o'clock at night when all the media are asleep, pass the legislation by 1 o'clock and proclaim it the next day, and no-one is the wiser.

It could be any law, in effect, that the states deal with. We deal with courts, parole systems, taxation and policing powers—there is a whole range of matters that houses of parliament deal

with. For a party to have a philosophy that we should make the parliament powerless in holding the government to account and transfer the parliament's powers, in effect, to the cabinet room is, I think, a very dangerous philosophy, and I will never support it. I will always advocate for a two-house system.

The Hon. M.J. Atkinson: You weren't doing it in the 1990s when you were in government.

The SPEAKER: Order!

The Hon. I.F. EVANS: Mr Speaker, I will pick up that interjection so it is on the record. I will invite the Attorney to show any evidence of that statement. If you cannot, Attorney, I expect an apology.

The Hon. M.J. Atkinson: You were a member of a government that wanted to change the—

The SPEAKER: Order! The Attorney will have an opportunity to respond.

The Hon. I.F. EVANS: We have never suggested abolishing the Legislative Council.

The Hon. M.J. Atkinson: I didn't say that.

The Hon. I.F. EVANS: My whole speech has been about your party's philosophy to abolish the Legislative Council.

The Hon. M.J. Atkinson: You wanted to reduce its powers when you were in government.

The Hon. I.F. EVANS: You go and read what you allege I was involved in. You will apologise, Attorney, I am sure.

The Hon. M.J. Atkinson: You were a minister.

The SPEAKER: The Attorney-General!

The Hon. I.F. EVANS: The reality is that the Labor Party's underlying philosophy is: less power to the parliament, more power to the cabinet.

Ms Chapman: Less power to the people.

The Hon. I.F. EVANS: And less power to the people: the member for Bragg is quite right. I sat in a government, as the Attorney reminds the house, when the Labor Party held up the lease of the electricity assets legislation for 500 days.

The Hon. M.J. Atkinson: Yes, that's right.

The Hon. I.F. EVANS: 'That's right,' says the Attorney. Did we have the Premier and the Attorney coming into the parliament saying, 'This is outrageous. Get rid of the upper house because we are holding up the government's legislation for 500 days'? Did we hear the argument then? Did we have the amendments moved and the referendums proposed? Did we have the press conferences called to say, 'This is an outrageous abuse of power by the upper house. We should be passing the legislation as the government wants'? No. So, do not sit there, Attorney, and lecture this side of the house about a position of convenience—a conversion of convenience—because, on every occasion the Labor Party has been able to use the upper house to block legislation or amend it, it has done it for its own political gain.

I support that. I support the upper house having its current powers because it prevents cabinets getting too much power. I do not trust cabinets with the power of a single house parliament.

The Hon. M.J. Atkinson: Except when you are in one.

The SPEAKER: Order!

The Hon. I.F. EVANS: I have never been in a cabinet of a single house parliament. Never.

The Hon. M.J. Atkinson: In a cabinet.

The Hon. I.F. EVANS: In a single house parliament. Never.

The Hon. M.J. Atkinson: Your party wanted to change the upper house ballot.

The SPEAKER: The Attorney-General will come to order!

The Hon. I.F. EVANS: He is carrying on like a pox doctor's clerk. The issue then becomes this: if the Labor Party cannot win the argument about abolishing the upper house because it is simply unacceptable to the people of the state, what is the next best thing? The next best thing is to weaken the upper house or to change the construction of the upper house or the way it works so that any government has a better chance of getting control of the upper house, and so the upper house becomes a rubber stamp. Now, the last thing we need in South Australia is the upper house becoming a rubber stamp, whether that be for a Liberal government, a Labor government or a government of any other complexion in the future, because I do not have faith that cabinets are incorruptible. Why would I say that?

The Hon. M.J. Atkinson: Well, you served with Dale Baker.

The Hon. I.F. EVANS: I will get that on the record, because the Attorney has again suggested that Dale Baker was somehow involved in corruption. Mr Baker has never been charged. The Attorney continually and recklessly attacks the reputation of people contrary to the ministerial code of conduct. I mean, this bloke has form, as we know. What do they now call him in cabinet? Cannon fodder, I think they call him, do they not? This bloke has form in attacking people's reputation unfairly. To my knowledge, Dale Baker has never been charged with corruption.

The reality is that this bill is about the second best option to weaken the upper house so that future governments are more likely to get control. If you want to look at what happens when governments gain control, go to Queensland. Look at the number of ministers of every political colour who have been charged with corruption because the system has given them too much power. It is not just the Labor side: there are people on the conservative side who have been caught under the system up there. Have a look at the last argument; that is, we are used to having ministers saying, 'Yes, I took $300,000, but I made no decision to the benefit of the donor and therefore it is not corruption.' Hello! How bad does the system have to get? South Australians should be very wary of this bill, and I suspect South Australians will vote down this bill.

The Hon. M.J. Atkinson: No, because you will not give them the opportunity to vote it down.

The Hon. I.F. EVANS: The upper house may not give them the opportunity to vote down this bill, but, Attorney, you have constructed this bill so it will lose.

The Hon. M.J. Atkinson: I don't know how you can say that.

The Hon. I.F. EVANS: I just said it—and the Attorney smiled as he said it. Everyone here sees the body language of the Attorney. It is crystal clear what the tactic is: design a bill so it loses and blame the Liberal Party for not letting the people have a say. The people will have a say—

The Hon. M.J. Atkinson: No, they won't.

The Hon. I.F. EVANS: Yes, they will. At the election, they can vote for your reform, because you will give a commitment, will you not, Attorney, to reintroduce it next time? Attorney, you will give a commitment at the election that, if this bill is lost, you will reintroduce it next time. I am sure that will be the position of the Labor Party, because you are so passionately committed to this bill—I do not think so.

Let us walk through some of the technical matters of the bill: 22 members down to 16. I share the view of the member for Mitchell that this is nothing but a cheap political appeal to the populist notion that there are too many politicians. Interesting, was it not, that when the member for Hammond negotiated the government into having the Constitutional Convention about citizens' initiated referenda and all the other matters, what was the one thing that came out? The one thing that did come out was that people wanted more—not fewer—politicians, because when they understood the role and the benefits of having MPs they actually wanted more of them. But, of course, that is not in the bill. The other issue is four year terms. I actually agree with staggered terms, regardless of whether it is an eight year or a six year term, for the Senate.

An honourable member: Or a 12 year term?

The Hon. I.F. EVANS: No-one is proposing 12 year terms. Not even the Attorney, in his moments of madness, has suggested a 12 year term. I support staggered terms. I will give the example of the Liberal government in 1993, when it won 37 seats but did not win control in the upper house. So, there was a brake on the excesses of power; there was a brake on the cabinet. There was a second set of eyes second guessing the cabinet. The Attorney and others will roll out

a whole range of allegations about the previous Liberal government, but I would ask: didn't the upper house serve a role in bringing some of those issues to the public's attention?'

So, I am a supporter of staggered terms. My personal view—not the party view—is that we should have shorter terms. I would support a three year lower house term and a six year upper house term, as is the case in the Senate. I think a four year term gives governments too long to do nothing, particularly early in their term. In this parliament, the government was elected in 2006 and said, 'Ah; what the heck; it's only March. I tell you what, we'll bring a budget down; we'll make it the end of September.' So, six months of the term was wasted while the government sat around trying to work out how the hell it was going to get itself out of the financial mess it had got itself into. You could not do that with a three year term. So, I actually support shorter terms but a staggered term for the upper house, because I think it prevents any party from getting hold of both houses and therefore the excesses of power.

There is a concept of giving the upper house president a deliberative vote. Why would the upper house president need a deliberative vote after all these years? Well, the reason the president would need a deliberative vote is that the government is not getting its way as often as it wants. That makes the government think, 'We'll change the system. We'll weaken it that little bit, and we'll give the president a deliberative vote.' Obviously, that means the government will have more chance to win its argument in the other place. If the government wins its argument in the other place on all occasions, you are effectively forfeiting the parliament to the cabinet.

Let's go through some of the really good cabinets we have had in this place. I will take up the Attorney's argument. If you asked the Attorney if he would really want the great personalities of the Liberal cabinets of 1993, 1997 and 2002 to have unfettered power, I think his answer would be no. It might surprise the Attorney, but I actually do not want a Labor government, particularly this Labor government, to have unfettered power with the parliament not holding that cabinet accountable.

Let's have a look at Labor parties all around Australia. What have they done? They have essentially dumbed down the parliament. How have they done that? Well, have a look at Victoria: question time is half an hour, and the opposition has five questions. Gee whiz! The reality is that the Victorian parliament and others—

The Hon. M.J. Atkinson interjecting:

The Hon. I.F. EVANS: The Attorney does not know what my view was about that. He makes a very broad assumption, as usual, and he is wrong. The reality is that the Labor Party all around Australia has attempted to dumb down the parliament so that there is less accountability—it is as simple as that—and what that is all about is giving the parliament less power and giving the cabinet more power to escape scrutiny.

I think a good way to sum up the Labor Party's philosophy is simply this: more ministers but less scrutiny—and that is exactly what we have with these particular processes. Imagine having the cabinet not accountable to the parliament, because the parliament would be ineffective if the government had control of both houses. How would you get information out of the government? 'Oh; we could FOI it.' Really? Try to FOI some information out of the government and see what you actually get. You do not get much at all. The Premier, of course—

The Hon. M.J. Atkinson: The government tried to stop the Anderson report being FOI'd, and you were a party to it.

The SPEAKER: Order!

The Hon. I.F. EVANS: The Attorney can apologise for that as well because Iain Evans as a minister was not FOI'd, neither was my department, on the Anderson report. I had no influence in respect of other ministers' departments; the Attorney knows that. I know that the Attorney likes to stick his bib into every other minister's department and protect them from questioning and other measures of accountability, because that is his wish. I did not operate that way. I ran my department. If the Attorney—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order, the Attorney-General!

The Hon. I.F. EVANS: —can show me any evidence that Iain Evans interfered, table it; otherwise, stop making—

The Hon. M.J. Atkinson interjecting:

The Hon. I.F. EVANS: And the FOI application did not go to cabinet.

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order!

The Hon. I.F. EVANS: The Attorney—

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order! The Attorney-General is warned.

The Hon. I.F. EVANS: The other issue I raise is that, if the government is serious about reforming the upper house because it wants to get control, it could look at other measures about the way Independents can also get control of this house. You can look at this rather cute practice of now signing agreements with Independents that they will undertake certain action or that they will not undertake certain action on the basis of actions taken by the government and whether that is a good or bad thing for the people of South Australia.

To summarise briefly, having been in this place for 16 years and having been an observer of politics for probably 40 years, I have seen enough of the system under any colour of government to know that we should not in any way, shape or form be weakening the system so that cabinet becomes more powerful and the parliament becomes less powerful because, if that occurs, we will live to regret it, just as Queensland is living to regret it.

I will say this to the house: I think Queensland will reintroduce an upper house. I think that Queenslanders are sick to death of seeing the corruption that is within their system. I think there is an argument mounting in Queensland that the political parties need to be brought into line, and the way to bring political parties into line is to make sure they do not get absolute control. The way they do not get absolute control is to have an upper house.

The Attorney-General's government has designed this bill so that it will lose—and lose it will—either in the parliament or at the election. That is what the government is about. As the member for Mitchell suggested, this is a tick box to say that we made a promise one day in a rush of blood, and it was good media for a couple of weeks. This is about distracting the media between now and the 2010 election to fill a lot of media space about an issue that is not going to go anywhere. So, my view is that this will be defeated either in the upper house or at the 2010 election. I hope that South Australians are smart enough to realise that we should keep a strong upper house, because you cannot trust cabinet with the power.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs, Minister for Veterans' Affairs) (20:19): I will respond to some of the points that have been made by speakers on the bill. I am surprised that the member for Mitchell regards the deadlock provisions as adequate.

Mr Hanna: We've never had to use them.

The Hon. M.J. ATKINSON: Well, we have never used them because they are so burdensome to the people's house.

Mr Hanna: There's been no need—just no need.

The Hon. M.J. ATKINSON: No government, no House of Assembly, would go through the constitutional equivalent of the Great Eastern Steeplechase in trying to prevail over the other place. It is, I think, unfair that, under these deadlock provisions, the Assembly is sent to the polls and the other place, which has rejected the bill, does not go to the polls. If the member for Mitchell thinks that is adequate then we have a different notions of democracy.

Mr Hanna: We sure do; yours is closer to fascism.

The Hon. M.J. ATKINSON: I will put that interjection on the record; it is part of the constant personal abuse of the member for Mitchell, which reminds me of nothing so much as Rik Mayall from *The Young Ones*—everything that the member for Mitchell opposes is fascist.

The member for Bragg asserted that the houses are equal. If the houses are equal why does the parliamentary Liberal Party not choose its premiers or its leaders of the opposition from the other place? Indeed, the case for the Hon. Rob Lucas to lead the parliamentary Liberal Party at points in its history has been unanswerable.

The member for Davenport should be aware that more than 10 years ago the Australian Labor Party changed its policy on the upper house. That is to say, the State Convention of the Australian Labor Party decided that it was no longer in favour of abolishing the upper house.

Members interjecting:

The Hon. M.J. ATKINSON: The government does not, as members opposite assert, have a better chance to control the other place under these bills. The quota for election to the other place is lower under the government's proposal, therefore making it easier for Independents and minor parties to be elected there.

The projections on what the outcome would have been under these provisions from 1975 onwards show—and I think every member of the house has access to those projections—that the Labor Party would not have gained a majority in the other place at any election. So, for the future, the Australian Labor Party accepts that it will not have a majority in the other place.

Indeed, the member for Davenport seems to imply in his contribution that he would not want his party to have a majority in the other place should it form a government. I have some sympathy with that point of view because the expectations of a governing party that had a majority in both houses would be burdensome indeed.

The bills to amend the Constitution Act will pass only if an absolute majority of the whole number of members of the house concur at the second and third readings, and that is required by section 8A of the Constitution Act. So I wanted to make that clear.

The budget for the referendum, in the unlikely event that the parliamentary Liberal Party allowed the people to be asked to vote on these proposals, would be $1.434 million for the electoral commission and $300,000 for the Department of the Premier and Cabinet for communication and publicity, namely the cost of a 'yes and no' case.

Ms Chapman: How pathetic!

The Hon. M.J. ATKINSON: How pathetic?

Ms Chapman: Clearly you don't intend to have it.

The Hon. M.J. ATKINSON: So it's not enough money?

Ms Chapman: Clearly not!

The Hon. M.J. ATKINSON: Not enough money in the view of the member for Bragg. So that is $1.734 million. The member for Bragg says that is not sufficient to send out a 'yes and no' case to the electors and to hold the referendum. Obviously the member for Bragg has long experience of government in estimating costs.

The member for Bragg complained that my second reading speech does not address the points raised by the Law Society of South Australia and the South Australian Bar Association. That would be odd if it did because the Law Society submission arrived with me on Monday 7 September and the Bar Association submission was received today. My recollection is that my second reading on this was in July so I would have to be a clairvoyant to know what the Law Society and Bar Association opinions are.

Members interjecting:

The Hon. M.J. ATKINSON: Yes, well, first of all they have to formulate a submission before I can know what it is. I am not a mind-reader. The other thing to say is that the member for Bragg implied that I was saying about the Constitutional Committee of the Law Society that it was a wholly-owned subsidiary of the Liberal Party. No; I was referring to the president.

The Hon. I.F. Evans: Another reckless attack on someone! Unbelievable!

The Hon. M.J. ATKINSON: I've told him to his face. Clause 11 of the bill would become section 41. The Bar Association says that there should not be a requirement that the bill be passed in the same or two consecutive sessions. It sees no reason why it should not be passed twice within three or four consecutive sessions. The aim of the bill is to speed up the processes that can lead to a double dissolution election and possibly a joint sitting. The Bar Association proposal would slow that down.

The proposed new subsection 41(1)(c) is the same as section 57 of the Commonwealth Constitution. It is what the deadlock provision of the bill is modelled on. I am astonished that so

many members opposite, so many members of the parliamentary Liberal Party, regard adopting the federal deadlock provisions as an attempt to undermine bicameralism. Astonishing! It has been there for more than a hundred years.

The Bar Association says the sitting days referred to in section 41 should be upper house sitting days, not House of Assembly sitting days. Well, that would enable the other place to frustrate the government in the House of Assembly by not sitting. With those responses, I commend the bill to the house.

Members interjecting:

The SPEAKER: Order! This bill seeks to alter the constitution of a house of the legislature. In accordance with section 8 of the Constitution Act 1934 and standing order 242, it is necessary that both the second and third readings of the bill be passed by an absolute majority of all the members of the house. There not being an absolute majority of members present, ring the bells.

An absolute majority of the whole number of members being present:

The house divided on the second reading:

AYES (23)

Atkinson, M.J. (teller)	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Brock, G.G.	Caica, P.
Ciccarello, V.	Foley, K.O.	Fox, C.C.
Geraghty, R.K.	Hanna, K.	Hill, J.D.
Kenyon, T.R.	Key, S.W.	Koutsantonis, A.
Lomax-Smith, J.D.	O'Brien, M.F.	Piccolo, T.
Simmons, L.A.	Stevens, L.	Thompson, M.G.
Weatherill, J.W.	White, P.L.	

NOES (9)

Chapman, V.A. (teller)	Evans, I.F.	Goldsworthy, M.R.
Griffiths, S.P.	Gunn, G.M.	Maywald, K.A.
McEwen, R.J.	Penfold, E.M.	Venning, I.H.

PAIRS (10)

Portolesi, G.	Redmond, I.M.
Rann, M.D.	Pederick, A.S.
Rankine, J.M.	Pisoni, D.G.
Conlon, P.F.	Williams, M.R.
Wright, M.J.	Hamilton-Smith, M.L.J.

The SPEAKER: There are 23 ayes and 9 noes. As this does not meet the constitutional requirement of an absolute majority, the second reading is thus negatived.

SERIOUS AND ORGANISED CRIME (UNEXPLAINED WEALTH) BILL

Adjourned debate on second reading.

(Continued from 16 July 2009. Page 3623.)

Ms CHAPMAN (Bragg) (20:42): I indicate that the opposition will be supporting this bill—with amendment. The bill was introduced by the Attorney-General on 16 July 2009 to amend the Criminal Assets Confiscation Act 2005. Many members of the house will remember the debate during the introduction of that act, which essentially was to set a new regime for the capacity for law enforcers to confiscate assets accumulated as a result of criminal activity. The act allowed for the proceeds or instruments of crime to be forfeited to the state. However, the key feature of that legislation was that the forfeiture related to proceedings that occurred only where it was shown, on a civil onus of proof, that the person had been convicted of a serious offence or that the person was suspected on reasonable grounds of having committed a serious offence, and that the relevant property was either the proceeds of or an instrument of that crime.

Quite a high threshold applied before there was the capacity for an order to be made to forfeit assets, a conviction made, or suspicion on reasonable grounds, and the property having some connection with the crime. It is relative to what we are considering today. It is narrow in its effect, and, clearly, provided for an attachment to an offence rather than what we are considering now.

We debated his matter in 2005. When that act was debated, then as a bill, we raised with the government the fact that the South Australian jurisdiction was one of the last, after the commonwealth and other jurisdictions, to have a civil forfeiture system with the recovery of criminal assets. It was disappointing for us that the South Australian state government had been so slow to initiate legislation to enable there to be a recovery of this kind. Nevertheless, we supported it.

We outlined at the time that the Court Liberal government, under premier Richard Court, had introduced a criminal property confiscation bill in June 2000—so we are talking, at that stage, some five years before—which included an unexplained wealth provision. At that stage we thought there was some merit in looking at that and that, quite possibly, we would need to consider that as necessary to close the web on those who might acquire assets.

The situation now—some four years later, five years since the introduction of that bill for the current legislation, the principal act which now prevails—is that the government now comes back to the parliament and says, 'Well, we now need to consider what you thought might have been a good idea five years ago.' So, it is disappointing in that sense.

Perhaps the government was right in saying, 'Well, let us introduce this first stage. It is secure. It will have support. It is not out there as far as legislation goes. We are not changing the onus of proof and we are not really going to the edge of what is acceptable in many legal concepts, and we will look at that first and see how it progresses.' But, in the usual way, the government has come back and said, 'Well, we think the act is limited. We now need to look at how we might deal with an expanded group, and that limiting it to proving that the defendant, or some other person, has committed a serious offence, and that the assets were attached to that conduct, is too limited and we need to be able to expand it.'

It is disappointing to note that the government, in coming back to the parliament to say that they need to expand it further, has not provided any information, either to the parliament or in the briefing that was provided to members of this house, as to how successful or otherwise the legislation that we passed back in 2005 has been.

As it had not been detailed in the second reading explanation of the Attorney, as the opposition spokesperson on justice and attorney-general matters I asked at the briefing that certain information be provided, including: how many people had actually been prosecuted under the existing act; how many had been successful; for how many had it been determined that there be an order issued for the confiscation of assets; how many orders had been applied for and had failed, and why; and how many had been suspected of having criminal assets, of which the current law was inadequate to provide for? These are all reasonable questions, I think, to actually ask, as some comparator. The Attorney-General introduced this bill to replicate what the situation is in Western Australia, which has been in effect now for nine years. We ask: well, what is the situation in Western Australia? How many dollars, millions, or otherwise, has been—

The Hon. M.J. Atkinson interjecting:

Ms CHAPMAN: The Attorney-General interjects. I take it that he is mitigating any criticism of why his department has failed to provide any of this information by saying, 'If we gave that to you, you would just ask for some more.'

The Hon. M.J. Atkinson: You'd ask for something else.

Ms CHAPMAN: Yes—something else. That is just completely unacceptable and shows the arrogance of this government. The Attorney-General says that they did not need to give us any of this information when we asked for it in briefings to be satisfied on the progress of the matter. We are told, 'Well, we're not going to give it to you because you might ask for some more.' If that is standard the Attorney-General is going to apply, what is the point in having briefings at all?

I have indicated to the parliament and to the Attorney-General that we have considered this bill, independent of the information we have sought—having looked at the question in Western Australia, having raised this issue in 2005 and having considered the objections by the Law Society and the Bar Association and others to this bill—and we are still prepared to support the government on it.

However, the government is so arrogant that it says, 'We're not going to give you the information you ask for because you might ask for something else.' That is a disgrace and completely undermines the reason we ever have any briefings or place any reliance upon being offered or provided with the information if it is available. I had this briefing some weeks ago, but not one bit of information has been forthcoming.

Of the other bills on which I had briefings in relation to the Attorney-General, I have not had that information either, yet at the same time—in fact, shortly thereafter—I had a briefing from people involved in the development of child protection legislation under minister Rankine's portfolio and that information was provided within a week. There is absolutely no excuse. The Attorney-General grandly offers briefings, where we seek information, but nothing is provided. For the future, we note clearly what the Attorney-General's position is on this.

This legislation will impose, after a certain process (which I will refer to in a moment), an obligation or an onus on a person with unexplained wealth to explain that position. It will reverse the onus of proof, and that is a major change of concept. In general terms, the new regime under this bill provides that the Crown will be authorised to apply to the court for a declaration that the person, including the incorporated body, has unexplained wealth. If the value of the approved wealth, calculated in accordance with the legislation, exceeds the lawfully obtained wealth, any wealth that cannot be explained will be assessed and form the basis of a civil judgment debt due from the defendant to the government.

It is important to note that this is not confiscation of a suspect's assets. This formula will apply if the assessment by the court is such that there is a difference between what they have and what they should have. That will create a debt, and it will be a debt recoverable the same as any other judgment debt. For the purposes of defining it under this legislation, 'wealth' relates to everything a person has ever owned or controlled, whether before or after the act came into force. So, it is extensive.

Key features of the bill are, essentially, as follows. The process will usually begin with an application for a restraining order of up to 21 days, unless an application for the unexplained wealth order is made. A preliminary protection process is proposed. The key safeguard is that the court may refuse if the crown makes no appropriate undertaking for payment of damages or costs or both, should the target satisfactorily explain his or her wealth. In other words, this is a mechanism which sends a very clear notice to the Crown that it may not even get past first base unless it is prepared to give an undertaking. This is consistent with most civil actions in which someone's liberty or control of assets is placed under an injunctive type order, upon which the court usually requires the applicant to give an undertaking. It is consistent with that usual process.

Police are to be given investigative powers and may issue a notice to a deposit holder to provide information on accounts and report certain transactions. The Commissioner of Police may apply for an order to give evidence and for a warrant authorising search and seizure. The powers can only be used against those convicted of or found liable to supervision for a serious offence, those subject to a control order under the Serious and Organised Crime (Control) Act 2008, or those whom the Crown Solicitor has reasonable grounds to suspect have engaged in serious criminal activity, associate with those who engage or have engaged in serious criminal activity, are a member of a declared organisation or who have acquired property as a gift from the deceased estate of some person.

It is quite extensive in the sense of those who may be caught in this web. I will have a little to say about the role of the Crown Solicitor, but clearly the power of the Crown Solicitor to make this assessment on reasonable grounds is not reviewable by any court. It is claimed in the Attorney-General's second reading explanation that this is unnecessary, because there are other mechanisms in the application procedure before the court which protect it.

There is no criminal threshold of proof for making the application. It only requires the Crown Solicitor to 'reasonably suspect'. The legislation effectively deems all private wealth to have been unlawfully acquired once the application has been made. The respondent bears the onus of establishing that his or her wealth has been lawfully obtained. The crown only has to prove that the respondent owns or effectively controls the wealth.

There are manifestly unjust provisions upon which a court may refuse to make an order, and the order is not a confiscation order. As I have indicated, it is an order for the payment of moneys; it is a judgment order only. Where the declaration is made, the respondent is required to

pay the judgment amount to the crown, and there are enforceable provisions under the Enforcement of Judgments Act 1991.

There is no obligation on the Crown to establish criminality or link a particular asset to a particular crime, and the ordinary rules of civil procedure apply, including rules of discovery. There is a protection of information clause where it may prejudice criminal investigations, and this formal provision was declared unconstitutional in the High Court case of K Generation Pty Ltd v Liquor Licensing Court (2009) HCA 4. There is more detail of that in the second reading explanation.

Mr Matthew Goode—who, no doubt, has considerable experience in this area and has always been helpful in providing information about how a bill has been structured—attended the briefing and said that this second wave of legislation comes out of the motorcycle gang working group as a result of an extensive list of stakeholders being consulted. We were told that the Chief Justice of the Supreme Court had been advised of the proposed legislation because, obviously, members of the judiciary would be called upon in their court time to consider applications for these declarations, and that would take some time. The opposition was informed that the Chief Justice had responded by declining to comment; that he was concerned about the impact of the cost on the court system, as we would be, as we know—

The Hon. M.J. Atkinson: Not your leader. She wants this.

Ms CHAPMAN: I have indicated that we are supporting it. What is of concern to the Chief Justice (as it is to the opposition and as it ought to be to the Attorney-General) with respect to this obligation once it is law is that its application will obviously take up court time. Every law we pass in here affects someone's life, and it is important to appreciate that usually its implementation or supervision or application or prosecution requires some money. So, it is reasonable for the Chief Justice to say, 'Whatever you churn out down there in Parliament House, we need the resource to make sure that we are covered. If we don't have it, what do you want us to get rid of, Attorney? What do you want us to delay to ensure that we can make provision for it? What should be sacrificed to ensure that we can accommodate this?' These are reasonable questions and, as members of this parliament, we would expect that the Attorney would have some answers for us in this regard.

I hope that in the Attorney's contribution he will explain to the parliament how he will ensure that others who are waiting for civil and criminal cases in our state courts will not be prejudiced as a result of this proposed extra legislation. Perhaps when he does provide the parliament with this information and enlighten us, he will also provide us with the information we sought at the briefing as to what has happened in the last five years and how the current legislation under the principal act has applied and whether it has been successful and useful. I hope that it has. We supported it at the time in the expectation that it would add at least one level of armoury to the war against those who are undertaking criminal activity, and we would like to have some feedback in that regard.

The opposition has considered the Western Australian act, and we understand that it is the Director of Public Prosecutions (DPP) who has the responsibility under the act to make an assessment and, where appropriate, apply to have a declaration or an order made for someone to be liable for the assessment, and not the Crown Solicitor, as has been proposed in this bill.

I foreshadow an amendment that will make provision for the DPP to have that role. It is not because our current Director of Public Prosecutions is an ex-Western Australian; not at all. We are still left without the information. However, it does seem unusual to us on this side of the house that the Crown Solicitor would become involved in this type of assessment, and that it would ordinarily be in the realm of the Director of Public Prosecutions.

However, there may be some good reason. There may be some other jurisdiction that applies this and invokes the Crown Solicitor or their equivalent to undertake this role in other states, and it might have worked and it may be more efficient and more cost effective. We do not know the answer to that, but I foreshadow that we will be moving an amendment for the DPP to be the responsible party who, in an unreviewable way, can make an assessment as to whether an application would be lodged.

The DPP already has a role in making a determination in individual cases as to whether it is appropriate to prosecute a case. So, they are experienced in making these assessments. They are clearly well trained and understand the procedure. On that basis, it would seem to be appropriate, at least to the opposition, in the absence of any other information provided, that the Crown Solicitor provision be deleted and replaced with the DPP.

I have also received from the member for Mitchell an indication that there be a significant restriction on who the Crown Solicitor may apply to for consideration and, in particular, to restrict it only to persons who have either previously forfeited proceeds of an offence or against whom a confiscation order has previously been made. That, in effect, would restrict this to someone who had already had a conviction and that, in the opposition's view, would unreasonably restrict the purpose of this bill and effectively make only a minor adjustment to those who previously had their assets confiscated. It would simply mean that you could have assessment and recovery for people who had prior form.

The Law Society and, in particular, the Bar Association have raised concerns principally about two things: first, the reversal of the onus of proof. This is always potentially a dangerous thing but one which, in certain circumstances, has been accepted. It is not without precedent in this house that we pass legislation where there has been a reversal of onus. The opposition is always cautious in considering whether that is appropriate or necessary and, in this instance, has accepted that that is reasonable.

The second area of concern is that it be effective for persons who are assessed under some reasonable suspect category rather than a conviction and, obviously, this does considerably expand the likely application if this legislation is passed. Careful consideration has been given to that as well but, on balance, it is the opposition's view that the government should be supported on this initiative.

We would hope that the government shows some level of goodwill, notwithstanding the Attorney's petulant statement earlier in this debate in which he suggested that they will not provide information to us because we are only going to ask for something else. That really is unconscionable, and we would hope that the Attorney understands the importance of ensuring that parliamentary members are given information to assist when good law is presented and should be reasonably considered, supported and passed, which the opposition is prepared to do. We are prepared to do that on this occasion, but we expect some level of mutual respect in that process.

Bill read a second time.

In committee.

Clause 1 passed.

Progress reported; committee to sit again.

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

Adjourned debate on second reading.

(Continued from 13 May 2009. Page 2709.)

Ms CHAPMAN (Bragg) (21:10): I indicate to the house that the Attorney-General introduced this bill in May. I may be wrong about that, but it was some time ago. The aim of the bill is to address the issue of repeat offending by a number of young offenders in our society. The government claims that this bill is necessary to amend the Criminal Law Consolidation Act 1935, the Criminal Law Sentencing Act 1988 and the Young Offenders Act 1993 to make provision for a declaration of a youth who is a repeat offender and who would then be labelled 'a recidivist youth offender' under proposed section 20C. It is our understanding that, once a youth is declared as such, then he or she would be the subject of a much stricter sentencing regime; namely, the Criminal Law (Sentencing) (Serious Repeat Offenders) Amendment Act 2003 for repeat offenders would apply to youths declared as recidivist young offenders—the same as adult repeat offenders.

This parliament has considered this legislation for adult repeat offenders and the opposition was prepared to support the government on that initiative. How successful that has been, I suppose, we need to allow some time to identify. Nevertheless, how this works, as we understand it, is that the rules of proportionality do not apply and therefore a recidivist young offender, once they have this label, would need to serve four-fifths of their sentence of detention before becoming eligible for release; whereas, generally, a youth is required to serve three-fourths of his or her detention before release is considered.

The consequence of having been declared a RYO (recidivist youth offender) is that, instead of serving 75 per cent of the detained period before release is considered, you have to serve 80 per cent. We are not talking about a big difference in the sense of what the direct

consequence will be, but this would be a mandatory imposition once you have 'graduated' to be assessed or labelled in this way.

The amendments to the Young Offenders Act 1993 will allow for the Youth Parole Board to review any RYO case, with the inclusion of a victims register. The victims register is based on the adult victims register, as per the Correctional Services Act, where a victim of crime committed by an RYO will be notified of any possible release of the offender and have the opportunity to make a submission in relation to the possible release of the offender.

The Young Offenders Act 1993 will also be amended to ensure that informal cautions given can be kept on record but not disclosed as part of a criminal history check. It is proposed that the bill, if enacted, will be reviewed within three years from its commencement, in consultation with the Attorney-General and the Commissioner for Social Inclusion.

In summary, the opposition's position is as follows. First, we totally oppose and reject absolutely the proposed RYO procedure for juveniles, and I will refer to those matters in some detail. However, I do indicate to the Attorney that the opposition does accept that a victims register is a reasonable thing, although not specifically attached to an RYO. We do consider that victims of crime, whether they are the victim of an adult offender or a youth offender, do need some consideration in regard to their understanding of the issues and that it is reasonable that they be kept in the loop, essentially, about when the offender is to be released and so on.

Historically, this is not applied to juvenile offenders because of privacy issues and the fact that we treat juveniles in an entirely different way. If there has been a conviction and there is a circumstance where it is reasonable for a victim at least to know these things—if a child has been incarcerated—the opposition feels that it is reasonable that that information be transferred. When we had a look at this matter, it also became clear to us that quite often in these cases the other party (that is, the victim) is also a child. This whole question of having a system to ensure the protection of the privacy of a child offender is significantly watered down, so the opposition is prepared to support a victims register process.

Finally, I indicate that the opposition also supports the position relating to informal cautions. Shortly after coming into the parliament, I joined our leader, Isobel Redmond, and other members of the parliament in a select committee inquiry into the juvenile justice system, which was chaired by the Hon. Bob Such, the member for Fisher. It was quite an extensive inquiry, and we provided what became the Youth Justice System Report, which was tabled in this house on 4 July 2005. Recommendation 34 of that report provided that 'informal cautions be officially recorded'.

It was the view of the committee that they should be kept by the police 'so that patterns of at-risk, antisocial, illegal activity could be noted and collated'. Further, it was stated that the database contain the names of young people who have been formally or informally cautioned, family conferenced or had received a Youth Court order; and, further, that the Guardian for Children and Young People would oversee the database and chart any trends. It further stated that there was no suggestion in the report that it would be used in some way to be taken into account in sentencing.

The government's initiative in this report that there be a recording of informal cautions is consistent with the recommendations of the select committee and is supported by the opposition. One of the disturbing things that became evident from the information which came out of that select committee and which I think all members of the committee found quite concerning was the age at which children came to the attention of police officers on a regular basis.

As we know, the age when children have the capacity to be charged with criminal offences is usually 10 years. It was being reported to us that children as young as six to eight were at large, perhaps homeless, but at least in the company of other young people who were sometimes a bit older at 10, 12 or 14 years of age. These children were regularly exposed to contact with the police as a result of their association with other, older juveniles. They came to the attention of the police, of course, usually in circumstances where they were reasonably suspected of being involved in activity that was antisocial, illegal or otherwise. This was concerning, because there was little they could do with children of this age, and they felt it was very important that the committee be aware that some of these children showed up time and time again.

When it gets to the age that they could see these children in the street, the responsible thing for a police officer to do, if they find an eight year old on the street or in the company of an older juvenile, especially if they are involved in some criminal activity, is to take that child into care and immediately place them with the appropriate authority, which is the Department for Families

and Communities. They have their processes to invoke to protect the child and provide the child with shelter, protection and security.

However, often they are not and, if the children as a group are moved on and an older person in the group says that they are their older brother and that they are taking the child home with them, then the child could be at large. But once that child attains the age of 10 years and the police are able to go through some further processes, this initiative will enable the authorities who come into contact with these children to be able to make an assessment about whether they are new on the scene or, in fact, whether they have been around for some time.

So, the committee was concerned—and it is reflected in its recommendation—that there be a way of trying to capture these children a bit earlier and identify that they are already in serious trouble once they get to the criminal capacity age as such and if they had not been assisted successfully or had been resistant to assistance by other authorities in that time. I think this is an important initiative of the government, and the opposition is prepared to support it.

It is fair to say that the substantial initiative in this bill is the proposed application of recidivist youth offender declarations or assessments applying to a person under the age of 18 years. So, as an opposition, we could either oppose the whole bill or we could move to vote against just that portion, although I indicate it is clearly the most significant in the bill in the sense of substantive change. It is the most controversial, and it can be dealt with by amendment in order to delete the provisions to which it applies. It is in that way that we propose to deal with it.

In addition to that, and on the basis that we are not successful in defeating those provisions, I foreshadow that we will be moving a further amendment which will provide under the three year review proposal that the Social Development Committee be the forum which undertakes the assessment and inquiry and reports back to the parliament on whether this initiative (which we are opposing but which the government may be successful in passing) should provide that supervision and report back to the parliament—not the minister and the Commissioner for Social Inclusion.

From time to time, when novel legislation is introduced or when there is some level of concern or controversy, clauses are put in—sunset clauses, review clauses and the like. We accept that the government acknowledges that it is reasonable to have a review clause and it has it in its own field. However, it thinks that it needs to be reviewed by the minister and the Commissioner for Social Inclusion. We say they are not the appropriate persons. It is almost like Caesar reviewing Caesar. What is appropriate is that if a review occurs it be undertaken by the independent assessment of the Social Development Committee of this parliament.

I will address the question of whether we should have RYO orders at all. When I obtained a briefing on this matter I was informed that various parties and relevant stakeholders (the usual suspects, as one would expect) had been consulted. This included the Social Inclusion Unit and commissioner, the Department for Families and Communities, the Director of Public Prosecutions, the Department for Correctional Services, the Chief Justice, the Senior Judge of the Youth Court and the Victims of Crime Commissioner. Of those who had responded, the Law Society of South Australia had been the most ardent in its objection.

The Hon. M.J. Atkinson: Surprise, surprise!

Ms CHAPMAN: The minister interjects but (and I am sure the Attorney was listening attentively) the Law Society had strongly opposed the unexplained wealth bill, an initiative which was the subject previously canvassed and debated here tonight and which the opposition had considered and—notwithstanding the Law Society's opposition—supported.

The opposition is always respectful and mindful of what the Law Society advises, particularly in regard to its jurisdictional committees which deal with these matters. That does not mean we always agree with the society, as was evident in the debate which we have just concluded. Of all the submissions I have seen from the Law Society, this would have been one of the strongest in its opposition and in its expression of great concern that the government would even follow this line.

It is interesting to note that when I inquired about the view expressed on this matter by the Commissioner for Social Inclusion (Monsignor Cappo) I was told there had been no response. That is very interesting because one would have thought that this is something on which he would have a very significant view. He has not been backward in coming forward and saying what is appropriate for youth and, in particular, those who go off the rails, so to speak, committing

offences, breaching criminal legislation or generally undertaking criminal conduct, whether they are poor and homeless or victims of abuse. Monsignor Cappo has often expressed very strongly his view on what would be appropriate for their support, recovery and rehabilitation. However, apparently, from this briefing, there has been no response at all—not just by saying, 'I don't want to put in a submission,' but absolutely no response whatsoever.

The parties who have considered it, particularly after the opposition extended the list of stakeholders, offered some comment and indicated whose advice we had sought, have been coming in thick and fast.

Let me start with the Youth Affairs Council of South Australia. It has provided an extensive submission and I am happy to make a copy of that available to any members. Indeed, any of these submissions would be available. In the interest of brevity, I point out that YACSA considers that the administration of the youth justice system in South Australia must be consistent with the provisions of the United Nations Convention on the Rights of the Child, to which Australia is a signatory. Most significantly, YACSA considers that the youth justice system must hold the interests of children and young people as being its primary priority. The submission states:

> YACSA does not support changes to legislation that do not support the primacy of this objective. YACSA members persistently note that young people's offending behaviours are often the result of developmental issues rather than offending issues. Similarly, members are concerned that some young people are entering the juvenile justice system not so much because they are offending but because a mental health issue is causing them to behave unpredictably and in a manner that brings them to the attention of the police.

> Messages relating to the removal of liberty are ineffective on people experiencing issues relating to mental health, substance abuse or from unstable or disadvantaged backgrounds. Paradoxically, when young offenders are incarcerated, they may have access to a greater structure, safety and supports than they do living in the broader community.

It is a very extensive submission but really the gist of it is that the legislation is in breach of the Convention on the Rights of Children as issued by the United Nations, it will not work, it is inappropriate and, on balance, you will do more harm than good.

The South Australian Bar Association talks about this as though it is an extension of the 80 per cent nonparole period for youths once they have been declared SROs, in which case, as we have indicated, the principle of proportionality is not mandatory and the nonparole period must be at least 80 per cent of the custodial sentence. Its submission states:

> The entire criminal justice system makes a fundamental distinction between sentencing adults and children. In respect of adults, principles of sentencing include deterrents to the offender and others as well as rehabilitation. In respect of children, rehabilitation is paramount due to their young age. Sentencing proceeds on the basis that they can become useful members of society.

The submission refers to the then chief justice Len King's judgment in Vartzokas v Zanker 1981 as to the principles of rehabilitation. Again that information is available. The submission states:

> The making of a declaration that a child is a serious repeat offender with the consequence of mandatory minimum nonparole period when a custodial sentence…will almost guarantee that that child will become a career criminal as an adult. This is clearly not in the interests of the community, nor is it in the interests of the child to increase the criminal education of children who will have horrendous consequences. There is no justification for depriving the court of its ability to fix a nonparole period of less than 80 per cent. There is no justification for removing the mandatory principle of proportionality from sentencing in the case of children even if they are repeat offenders.

The Bar Association also makes comment about the Magill Training Centre and the abandonment of its rebuild but in particular that it is an unacceptable institution in this century to house and imprison children and is, in any event, at full capacity. All of these matters are factors for the basis on which the Bar Association rejects absolutely this proposed legislation.

The Law Society this month has a specific paper published in respect of the Magill Training Centre and the government's abandoning the building of a new facility at Cavan for children. The Magill Youth Training Centre, as most members would know, is really the children's prison in South Australia. We have two. Children up to about 14 are usually housed at Magill; there are 50 or so kept there. The older children are usually at Cavan—14 to 19 or 20 sometimes. There are mental age issues that relate to children over 18 who are kept at that facility. So, that is where they are incarcerated. Obviously, as one would expect, it is the extreme cases, the repeat offenders or those who commit very serious crimes who are incarcerated there.

Let's be under no illusion. Notwithstanding the criticism that this cancelled project has attracted, we need to understand in this house—which was very evident to me again when we did

the juvenile justice inquiry chaired by the Hon. Bob Such—that the situation is the same as it was 20 years ago, when I regularly appeared at the Youth Court. It was called the Children's Court in those days. The profile of young, serious repeat offenders is that they are young, male, poor and predominantly Aboriginal. That is the category of youth that was there 20 years ago and is there now, and that category is still over-represented today. It is very disturbing to think that, with all the different programs and things we have been doing over the years, the children who are still slipping through the net are poor, male Aboriginals.

What is very concerning to us is that, when I contacted the Aboriginal Legal Rights Movement on its view of this bill, it had not heard of it. They did not know how it might affect people who are more than likely in the category—that is, their clientele who are over-represented in that category—so, we forwarded it to them. We have not yet had a response but, certainly on the initial expression of concern that was raised by the chief executive officer, I expect they are concerned and will have something to say about this.

Perhaps this is consistent with the Attorney-General's previous comment during the debate on the bill that we have just considered; that is, we asked for information at the briefing. It has not turned up. It is not as if some bits have arrived and the rest has evaporated as far as our request goes. We do not have this information. We sought an indication as to how many children this prospective legislation would expect to cover each year.

If we are putting into prison for either short or prolonged periods 200 children a year—I do not know how many—how many of those are likely to be vulnerable to a declaration pursuant to this proposed legislation? Is it four, five, less than 10 or more than 10 a year? There was no clear indication at the meeting. They thought it would be a small number. Let's assume it is less than 10. We need to understand and have some information about this so that we can make some assessment about what we should really be doing to help rehabilitate those children rather than expose them to an order such as this.

One of the other things raised in the course of our consultation was the concern that, if a young person had been so irreverent, disrespectful and non-compliant with any instruction, advice, counselling or rehabilitation and angry with authorities, rejecting any kind of instruction or assistance, would they consider that receiving one of these declarations would to them be more like a badge of honour rather than actually having some therapeutic effect by saying, 'You're so bad that you have to be labelled this, and you are going to have to have an extra penalty because you have repeat offended'?

The Attorney called out before, 'You're soft on law and order. What about the gang of 49?' I will come to them in a minute. Commissioner Cappo, in his report on prevention and rehabilitation responses to serious repeat offending by young people, entitled 'To Break the Cycle', which was provided to the minister and subsequently tabled in this parliament several years ago, made specific comment about how some of these children can really be quite difficult. What he did not do is go so far as to say that we need to completely undermine the juvenile system we operate—which is completely distinguished from the adult system, for the reasons which are well known to members of this house—and move to what is a very radical, and novel at best, approach by this government to apply a declaration procedure on children. Not only does this not operate anywhere else in Australia, but those advising at the briefing were not able to identify any other jurisdiction in the world where it applied.

It is all very well to say that we will be tough on law and order, that we will deal with these three, four, five (or whatever it is) people a year who are totally resistant to rehabilitation but who are under the age of 18, that we will make them have 80 per cent rather than 75 per cent, and think that this will make a scrap of difference. Not only do we not have the numbers to whom this will apply, there is no other jurisdiction identified in the world that has applied it.

I think the government has failed the test to start with, but I will continue to refer to a few other people who have made a contribution. We know that there is absolute silence from Commissioner Cappo; there is nothing from him. His report does not at any time say that if all these other things fail they should be given a big stamp on the back as an RYO and everything will be fixed. No, he does not mention it in his report. He certainly does not come up with this idea; this has come from the government, and it has to take complete responsibility for it.

SACOSS has made statements, and was even critical when the government introduced previous legislation that was designed to strengthen the fight against juvenile crime. The gang of 49 issue was being reported extensively in the press and there was concern in the community, and

Commissioner Cappo had even supported the initiative of legislative reform to enable child offenders to be dealt with in adult courts. The procedures would apply to them as though they were adults, even though they had committed the offence whilst under the age of 18 years.

There was some power to deal with that even before that legislation, but Commissioner Cappo said that it was something that needed to be considered in some exceptional cases (and I am paraphrasing his report in this regard). He was prepared to give some endorsement, and that is fine. At that time SACOSS and the Youth Affairs Council made a very public condemnation of Monsignor Cappo and the government for even making this assertion. They interpreted it as throwing away the key, that the government was really just turning its back on young people, giving up on them and surrendering in the face of any challenge; but it was not acceptable that it just throw away the key.

Notwithstanding the criticism it raised in the circumstances prevailing at that time, the opposition considered it at length, and felt that there were some circumstances where that may apply. It felt that, under the scrutiny of judicial determination and the protection of the court process, there may be cases that would justify that, and the opposition was prepared to support the government on that initiative.

I now move to Chris Varney, the Australian youth representative to the United Nations. I am sure people have heard his comments; he visited here recently, and on 10 August spent five hours at the Magill Training Centre. Mr Varney described the conditions at the centre as appalling, frightening and inhumane, and an abuse of children's and young people's rights. He went on, of course, condemning the situation. If this bill becomes law it will propose to keep children incarcerated in a facility such as this for even longer. He said:

> It is simply unjust that successive South Australian governments have tolerated the conditions in Magill Training Centre and let it get progressively worse. The Rann government needs to assess the delegation of its state's funds and do its utmost to ensure the very worst conditions in Magill are remedied and that money is starting to be allocated to a new centre altogether.

The previous Liberal government set aside significant moneys to commence the rebuild of a new children's prison; it lost office, as we know, in 2002, and the government scrapped that. We have had the report of the committee, as I have indicated. After some years, the government picked up that initiative. It was the number one recommendation that a new children's prison be built. We were pleased that it did. We welcomed it, and we gave it credit and certainly commended it for that initiative.

No sooner did it make it than we are back here, and it has now been cancelled. Of course, the excuse is that we are in a global financial crisis. We are in such a global financial crisis that we are continuing to build a $43 million film hub in the middle of a mental health hospital at Glenside, but we do not have enough money to deal with a prison for these children, which, under current estimates is up to $100 million (it was $79 million in the original budget) and for which a big swathe of money can come in from the sale proceeds of Magill, bearing in mind that a new prison is proposed and could be built at Cavan, and that would deal with that financially.

Even today we heard the Treasurer tell us how we are on track, that things are going pretty well again and not to get too over-excited. We had Rob Chapman and all sorts of other experts. He told the parliament that we are on the road to recovery. Yet, do we hear of any restoration of this critical project being put back on the financial books? No; not a word.

[Sitting extended beyond 22:00 on motion of Hon. M.J. Atkinson]

Then we have Professor David Kennedy. He was described in the annual report of the Attorney-General's Department 2007-08 as an internationally renowned expert in youth crime from the John Jay College of Criminal Justice in New York. Apparently, he visited Adelaide earlier in 2008. I did not have the privilege of meeting him but, obviously, he was considered to be sufficiently important to be recorded in all the star priorities and features in the annual report. A media release states:

> As a result of his visit the department is committed to developing during 2008-09 a cross-government initiative aimed at enhancing criminal justice, community and individual responsibility and resilience in young South Australians...Professor Kennedy will devise a program tailored to address the state's youth offending problems. [His] grass-roots approach has resulted in remarkable drops in crime in many towns and cities of the world.

In everything that I have read—and it has not been much—of Professor David Kennedy's, there is not one mention of this proposal. You would think that, if there was something at the forefront for people who work in this area, such as academics who are acclaimed enough for us to bring them here and get advice from them, we would have heard it from just one stakeholder; but they are absent.

Judge Peggy Fulton Hora is the current Thinker in Residence. They last month I was able to attend her inaugural lecture in Adelaide. Ms Hora gave a very interesting address about how the gaols in the United States have some 11 million people in them. They have 50 per cent of the world's gaols. They seem to know a thing or two about the profile of people in prison and those who offend, and also about the alarming level of alcohol and drug dependency and mental health issues among that population of prisoners, those who are in this repeat offender group that we are talking about. With the cost up to some $90,000 a prisoner per year, they had had enough in the United States and they introduced specialist courts, some of which have already been established here for more than 10 years now.

Ms Hora discussed the problem-solving courts, the importance of rehabilitation and how it worked. In a nutshell, instead of having a whole lot of parole officers, probation people, counsellors and social workers, some of whom were still there, in the United States they introduced—and she advocated—a high level of scrutiny by judges. Presumably, that means that you need a whole lot more of them, but the process of having recidivist young offenders come back and forth to a judge rather than a visit from the parole officer, or probation officer, was demonstrably more effective, and she put the case for that. The important thing, again, is to establish a leader in terms of how we deal with this problem.

When I indicated to her that some consideration was being given in South Australia to a process dealing with serious repeat offenders, which of course is the subject of this legislation, and I asked whether she considered that that would be an effective tool in the armoury of dealing with these young people, Ms Hora's response was one of wholesale rejection. In fact, she said that we need to understand that young people between 18 and 25—people in an age group to whom we give the right to vote, get married, go to war, own a firearm, drive a car and all sorts of other things—are what she described as apprentice adults and, even in that age group, need consideration.

The Law Society made a very extensive submission, and I just want to paraphrase it. It is a very well considered submission and it is very lengthy. Indeed, I appreciate the effort that the Law Society has put into its consideration of this matter. It brings to our attention its concern about the breach of the United Nations Charter on Children's Rights, but it also raises some other concerns. It takes the view that, due to the definition of 'serious offence', the bill will cast a wider net than its stated intention.

It claims that it will have no material impact on the rates of recidivism, that it creates a subclass of offenders, that imposing longer detention orders on children is in breach of human rights, and indicates that it supports the establishment of a victims register, a matter on which I have already indicated the opposition's view: so do we. It opposes the recording of informal cautions, as it claims that it defeats the purpose of making the caution informal and is a lack of specificity, etc.

I have already indicated that we will support the government in that regard, but the Law Society is very concerned about the declaration procedure under this bill and it is very clear in its condemnation of this proposal. In the absence of any known person, body, profession or expert anywhere that supports this proposal, in the absence of any further information from the government that would suggest otherwise, and in the knowledge that no-one else in the world even applies this, we think it is rather audacious, arrogant and foolish for the government even to attempt to present it.

Is there any kind of last-minute justification for labelling children in this way and having such disregard for all the professional people who have been consulted on this and other issues in relation to juvenile crime and rehabilitation? Their own Commissioner Cappo investigated this issue and provided extensive advice to the government, but it is proceeding in the face of opposition and without support.

It concerns me that the government would press ahead with something like this, which begs the question: why on earth would it try to do this? However, when you look at the history of what the government has done, it becomes clear that it has failed in so many other ways that

perhaps this is just one last desperate attempt to try to convince the public that what it is doing is useful and effective, rather than its asking the real question, that is, what is necessary for us to deal with this small group of children who end up in our prisons, who are repeat offenders and who have a life history worse than a Shakespearean tragedy?

What can we do for these children? What intense resources do we need and what must we spend to make sure that they do not become the cast of the next *Underbelly* series? I note that the courageous candidate for Morialta published in today's paper his condemnation of the government's failure to rebuild a children's prison—John Gardner, the great champion of the children. Good luck to him, and we thank him for being brave with all the other people who have had the courage to come out publicly and say what needs to happen and be prepared to deal with it.

This is briefly the history of the government. First, in January 2007, I note that my leader, the member for Heysen, was then shadow attorney-general. She was concerned about the lack of action by the government in not activating any of the 43 recommendations of the select committee youth inquiry to which I referred. She was damning of that and concerned that the government had ignored all the recommendations, that it had jumped to this concept of recidivist young offenders and that it was considering this populist option.

Ten months later, the headline was, 'Government puts a jam on youth crime revolving door.' This related to an announcement by the Premier and the Attorney-General that there would be major reforms in the juvenile justice laws designed to block the revolving door of youth crime and repeat offending. They outlined the young offenders bill and the response to Monsignor Cappo's report.

As I indicated, it received condemnation from the Youth Council. We supported those initiatives, saying that we were not happy with some of this but that we would look at sentencing in higher courts for some of these young people. We were prepared to support the government on this and give it a go. It failed.

The government announced that it would appoint Port Adelaide Football Club legend, Gavin Wanganeen. I have to confess that I am a Port Adelaide supporter, so I have a bit of a conflict of interest here, I suppose. He is a great young person and a great role model for young people. However, appointing him as the Ambassador for Youth Opportunity was going to be some sort of panacea and part of the David Cappo led revolution on how we might deal with young offenders.

It seemed to recognise that the profile of many of these young people was that they were young Aboriginal boys and that we needed to take this initiative. It was a two year term (and I am not sure whether it has been extended), but I have never had any feedback on whether it has helped; however it was terrific that he took on that position. In February 2008, there was a big announcement by the government that the new laws we had supported had come into effect, and that was fine.

We had the accolades—again recorded in the Attorney-General's Department's Annual Report 2007-08—that this legislation provided new pathways for serious repeat young offenders to be dealt with as adults, as though this was some great, fantastic aspect. Finally, on 22 May 2008—just over 12 months ago—the Attorney-General announced $11.5 million to break the cycle of youth offending. This was going to be devoted to this particular task. Young offenders and children at risk of being involved in crime would be the focus of a coordinated package aimed at stopping youth crime at every stage, and so on. It then sets out the teams that would be there, including school retention programs, and so on.

Most of these programs—and I do not want to diminish them by saying this—relate to funding for a counsellor, adviser or coordinator—someone extra—who gets a salary to try to connect, coordinate and inspire the rehabilitation and recovery of young people. As meritorious as that is, we are still back here in 2009. I do not know how many of the gang of 49 or of that profile of young people in this category are still at large or non-rehabilitated, or whatever, but I do know that we have not addressed the problem. We still have a serious problem.

The opposition is prepared to do whatever it can to support the government in its initiatives to try to turn this around, but we will not accept grabbing some headline and trying to say, 'We will be even tougher on these kids, we will badge them, give them a stamp and say to them, "Here is your recidivist young offenders badge," and you are going to spend 80 per cent of your time in prison instead of 75 per cent and this will make you a better citizen.' What a joke!

I will read to the house letters from some of the children we are talking about here. If this legislation passes these children—

Members interjecting:

Ms CHAPMAN: Madam Deputy Speaker, I wonder if you might invite members to resume their seats.

The DEPUTY SPEAKER: Order! Could members hold loud conversations outside the chamber. Member for Bragg.

Ms CHAPMAN: Thank you, Madam Deputy Speaker. These are some of the children we are talking about here. We are talking about young boys who are repeat offenders and currently incarcerated at Magill Training Centre, the children's prison. These are the children that the Attorney-General wants to tattoo with this badge. This letter is addressed to the Prime Minister and it states:

Dear Kevin Rudd,

My name is [C].

I will not say his full name in order to keep it private. It continues:

I am 14 years old. I grew up in a family with drugs and alcohol problems. I never knew my real father. I was left with my brother and mother. Dad was always in gaol. I'm at the Magill Training Centre. I'm looking at serving two years. There really needs to be some more programs—for all residents with no bias towards race. There needs to be more drug and alcohol programs and more support from teachers. The rooms in Magill are absolutely shocking. It stinks, there's no light—it's dark, shit, piss, you name it, they've done it. You've got just enough to do a push-up.

I think he is referring to the size of the room. The letter continues:

A pin board to put up family photos needs to be put up. The clothing situation—the clothes are the same as 18 months ago. Same cups and plates. Should be able to have your own clothes.

The rooms smell like urine. It is really unhygienic and disgusting. Reading materials are inadequate—destroyed—

and I cannot read the rest of that.

When I was growing up I never knew if my mum would come home at night. I was left by myself at night and because of how I lived, I associated with the wrong people just to survive. I got addicted to drugs and then everything went downhill. I had to get drugs, do crime and hurt people to fit in and just survive. I then got put into foster care when my mum got into gambling, drugs and alcohol. But that made it worse because I didn't know who I was with and so I kept running away. I met some new people on the street and kept getting into fights. That's all I've known and all I've seen.

When I was 14 I had a daughter. I want to turn my life around for her, my girlfriend, my mother, who has got her life together, and my brother, who passed away in 2007...Currently the support services aren't there to help me achieve this and if they were my brother might still be alive. I hope they are improved and I am taught new skills for when I get out.

They need to start looking at doctors and vets and stop giving out cough medicine and ketamine (horse tranquilliser) which are sources of the drugs that are out there. The cops really need to stop the spread of drugs. They need to raid clubs and prevent ODs. Drugs are a menace and ruin people's lives. More control of dope and make it safer. Maybe legalising it will sort people out.

Alcohol is a man-made poison..Yet it's sold. It needs to be controlled. Cigarettes are also disgusting. You might as well sell gear at the Smokemart. I really hope you try and read everyone's letters because people need to be heard. The things I've talked about also need to be addressed and fixed. Change will be better for all the kids in here.

The letter is signed by that young man. There are many other letters, but there is one short one to which I will refer members, and that was from B. He writes:

Dear Kev,

My name is [B]. I am 15 years old and currently at Magill Training Centre in SA. I have been coming here since I was 11 years old, the longest I've done here is four months. I grew up with not much in the fridge—my mum had a problem, she took a bit of speed for a while. I have never known my dad. My older brother looked after me until I was 14. When I was a kid I went to school only a few times. I felt really lost at school because I couldn't read and write, which meant that I couldn't really work on the computers. All up, I went to six primary schools and three high schools. My third high school was really good—Paralowie Youth Service.

At Paralowie, there was really good support. I kept getting in racial fights, they became really violent, almost deadly. The only reason it stopped was because of friends who looked after each other. At this point I left high school, teachers had been really unsupportive. After that I started smoking weed and getting in trouble with police. Around this time I was also homeless—I stayed at people's houses for a long time. I found that motorbikes

chilled me out—but if I'd had something else to distract me I would have done that—something more practical, like giving me skills.

2004 was the first year at Magill for me. The conditions here are really bad—you have to wear old clothes and socks. The worst thing are the gangs and the violence in here. I think they really need a new centre. I think there needs to be more programs in here. As a job I would like to be a motorbike mechanic. If there were more speakers inside, visits from different industries and courses, I could achieve this. And Kev, drop the bikies law.

He has obviously been reading the newspapers, at least. It concludes:

Thank you Kev. B of Adelaide.

Next is a rather sad story from one of the few girls at Magill. Members would be aware that the overwhelming majority of detainees at Magill are young men. This is from a young girl, and she says:

Dear Kevin—

again, referring to the Prime Minister—

My name is J. I am 16 years old. From the age of eight years I have been back and forth between homes. My mum has been locked up most of my life. I have been surrounded by drugs and alcohol and violence and I really think that we should have more support, more people to turn to when we get stressed. I've just been sentenced to 14 months in Magill. I have been [through] so much stuff in my life and I can honestly say that being locked up and surrounded by positive adults has helped me so much. I would like to see more positive people in our life. How are we meant to get on with life and not do crime if that is all we know of? It is not fair. I feel that the only way I have is changed is because I have got locked up. Please come. Can you help me to put us more support out here? From J.

Here we have a child who is 16 years of age and been in and out of homes since she was 11, and she is begging to stay locked up because it is the only place that she is safe and can actually get any protection, but she is begging for some extra services. How tragic that is. This letter is from L, and it says:

Dear Kevin, I think that the centre should get toilets and showers in their rooms. I have been coming here since I was 10 years old. This place has become a regular part of my life. I would like to see these things happen to us in the room. Better quality shoes. We should be able to have a barbecue on the oval. These things would help my time and other people's time better. I think there should be more teaching staff, more living skills for our youth today. Thank you, L.

And he goes on to write some further correspondence, all in the same vein; and there is another heart-wrenching story from a boy who is also about 14 years of age.

These children are the ones that we are talking about, the ones who are repeat offenders who are currently going in and out of prison. They are the ones that this government wants to say to, 'We are going to deal with you now by badging you with this label.' It is a disgrace, and I urge all members of the house to understand what a serious situation this will initiate. As novel as it might be, it is what I would call draconian and unacceptable, and contrary to any human rights charter that you can look at.

What is necessary is that members in this parliament need to stand up and say, 'We will support the government in doing whatever it takes to help these children have some chance to lead a normal life, but we will totally reject branding them further and permanently placing them into the gutter.' These are children who have literary skills which I think it is fair to say are limited for the age at which they present, from the information that I have just read.

From my own personal observation, many of these children have very low oral skills, and the oral ability of children in these circumstances is something which I personally have always been concerned about. It is one thing to have someone learn to read and write—and they are very important skills for work, lifestyle, relationships, communication; in fact, everything—but the capacity to be able to speak confidently and clearly and to be able to communicate with others orally is obviously a very important life skill.

It is what we call the 'yep, nup, dunno' syndrome in young people who have grown up in households where they have been isolated from what many children in our own families and neighbourhoods enjoy, and that is a rich environment of nourishment and a very expanded vocabulary because they have caring, competent parents who are concerned for the education, wellbeing and development of their children. The children to whom I refer live in communities which are supportive. They have the opportunity to go to school, they are healthy and they are given a chance in life.

We hear the stories of these children whom this government wants to condemn under this new program, when really what we should be doing is saying: how can we ensure these children

have the skills for which they are begging? They want a room that does not stink of urine; they want clothes that are not months old; they want some decent things to write with; they want some extra programs; and they might even want to have a barbecue on the oval. They also want a chance in life.

Our obligation is to work with anyone who is in government and who is prepared to commit to ensuring that these children have a chance and not do what is clearly the intention of this government; that is, to say, 'We are writing you lot off. There may not be very many of you, but we are going to be saying to the public of South Australia that we are tough on law and order. Those wicked Liberals are soft on law and order. They are not supporting this legislation but we are, and this is how we will deal with it.'

I also note on page 9 of this month's *Adelaide Review* an impressive article by Jillian Paull, the South Australian State Director of Mission Australia. This is a very powerful article. It implores that South Australia's approach to juvenile justice must change. It is reported that Australia's youth detention centres are bursting at the seams. Incarceration rates are at a four year high and more than 1,000 young people are locked up around the country every night. Obviously, there is scathing comment (as we have heard from so many others) about the fact that the government had cancelled the rebuild of the children's prison. She joins the chorus of others such as Ms Pam Simmons, who is the children's guardian and who has been quite public in describing the cancellation of this project as very concerning but, in particular, pointing out that the current conditions at the Magill Training Centre are disgraceful and inhumane.

We have the children pleading for relief. We in this parliament have the privilege of having a say on this matter. Some of us have seen these children and some of us have worked in youth crime. I have seen them at the pointy end. I have seen them when they come into my office, with or without mum and dad, charged with a string of offences. The first thing some of them do is try to flog the pencils on your table while you are doing the interview to work out whether or not they will plead guilty. These are seriously damaged children who are pleading for help and who have every adviser, advocate and representative in the community saying to the government, 'It's time you understood that you are going down the wrong track and that your approach to juvenile crime is wrong, and this new initiative is totally wrong. It is unacceptable and we are very much on the wrong track.'

Some have tried to convince the government in some other ways that the outcomes of this type of approach are not only dangerous to the children but also proving to be a very expensive outcome for the taxpayer. Tragically, some of these children will come to an early demise as a result of drug or alcohol addiction, will be involved in a crime in which they are injured or killed, will have a car accident or will commit suicide. These children will be released from these institutions at some stage and they will be living next door to us. Undoubtedly, they will perpetuate the same behaviour, which will not only be destructive to their own lives but potentially highly destructive to the lives of others. They will obviously be a very poor role model for other children living in the community It is important that we understand the danger of that. Jillian Paull highlights considerable research that says a number of things, one being that more than half of young Australians released from detention will reoffend. She says:

> The picture is even worse in South Australia, where about 90 per cent of young clients released from custody reoffend within two years. No doubt, that is partly why the average number of young people in custody in South Australia on any one day stands at 72, when in 2005-06 it was 52. The younger a person is when they first enter the juvenile justice system, the more likely they will return as they get older.
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> Another symptom of the system's failure is the over-representation of minority groups. Only five per cent of 10 to 17 year old Australians are indigenous, but 40 per cent of all young people under supervision or in custody are of this background. These are dismal outcomes and come at a high cost to the community. It costs the government tens of thousands of dollars to keep a young person in custody in South Australia—and we get off lightly. In New South Wales, the cost exceeds $150,000 to keep a juvenile in custody for 12 months.
>
> Detention intensifies the need for greater levels of expensive post-release support. So, the community pays for the system's failure well into the future. Add to that the cost of renovating Magill or building a new detention centre at Cavan, and I think South Australians are entitled to ask whether they receive a good result from the money that is spent.

So, what is the alternative? Most of these people are very experienced in what they are dealing with, and they do not usually come out with just a criticism: they are forthcoming in providing ideas as to how the problem should be dealt with. This is what Jillian Paul says:

> Mission Australia runs programs around the country that have had enormous success in keeping young people out of trouble and preventing crime—sometimes 50 times cheaper than locking a young person up. The

results of Mission Australia's Pasifika program, aimed at young offenders from South Pacific Island backgrounds in Sydney, are a good example.

In the six months after their referral to the program, offence rates amongst participants were cut by more than half. Serious offences such as assault were reduced by close to two-thirds. Sixty-five per cent of participants have not reoffended within 12 months of program completion. Stunningly, these outcomes were achieved for the princely sum of about $2,500 per person, the average cost of an individual receiving Pasifika support for between three to six months.

These diversionary programs help divert a person from entering or re-entering the juvenile justice system. They are about addressing the root cause of a young person's problem, as well as showing them that they can have a future outside of stealing cars or break and enters. They receive help with education, personal and social skills, finding work, health and wellbeing, reducing alcohol and other drug consumption, and financial literacy.

Arguably, the most effective support of all is in encouraging open communication between young people and their families and helping the families understand and reconcile the range of expectations placed on young people by their parents, their peers and school institutions. Many juveniles in custody have some form of serious abuse in their past, including violence and neglect; this is a more appropriate response to what is lying at the root of their problem than locking them up. It is certainly more successful.

Jillian Paull goes on to refer to Mission Australia's providing encouragement for what the government needs to do and its indication that it can be achieved. So, we have NGOs who are demonstrably reporting to us, through the publication of this information and their reports, programs that work, yet no-one seems to be taking any notice.

We, on the Select Committee on the Juvenile Justice System, had programs presented to us that worked, but then we found out that they would be cancelled. We put forward recommendations that there be extra funding into Operation Flinders and programs like that when we found a program that worked. But it was soul destroying to find a program that worked which was then cancelled. Sometimes it is necessary to cancel programs because they do not work and because you need to put that money into something that will work. A program for one child will not necessarily be as effective as for another child.

Nobody expects to find one single program that is the silver bullet to all these problems—of course not. We need to tailor activity that is of interest to young boys, and it is quite distinct from activities that interest older boys or young girls in a similar situation. Remember that some of the girls in this situation are already mothers at the age of 13, 14 or 15. They have had some life experiences which frankly some of us will never experience in our lifetime, and we would hope not to; they have had to shoulder responsibility way beyond their years, and we wonder why they are incapable of being able to manage serious responsibility like having young children and being able to care properly for them, let alone themselves.

It is terribly important that we review the situation, that the government takes stock of how absurd this approach is and their persistence with it. This model may be unique and novel—it may be the world's best practice, first class, and whatever they say it is—but the truth is that nobody else thinks so, and I am yet to find one single organisation or representative body that understands about children.

If you have another thinker in residence who says your current thinker in residence, Judge Hora, is wrong and, if you have an expert on juvenile crime other than Professor David Kennedy, fine; let's hear from them. But so far, everyone who has been either appointed or presented by the government or welcomed here to help us with some of these difficult issues or representative bodies who have this responsibility in our community says no. They say it is wrong and that you are demonstrably undermining the opportunity for these children not just to rehabilitate but also to have any chance in life. The government members should hang their head in shame if they have been prepared to sit with you, Attorney, in cabinet and approve such an approach. I have to ask myself, as I am sure others in the parliament would, what other members of cabinet who have responsibility for children would have sat there and let this happen?

The Hon. M.J. Atkinson: Well, let's have a debate about it.

Ms CHAPMAN: I will be very interested to hear what the minister for women and families and communities has to say, and what support she might have from her department that would justify this action in a proposal that clearly you have taken to cabinet, Attorney, and had their support on. This is a dangerous road to go down and it is totally destructive and unacceptable for any future chance of these children who otherwise would be suffocated by circumstances which are plainly highly destructive and on which you are pouring fuel and exacerbating.

We still have some stakeholders to hear from, as I said, like Mr Gillespie at the Aboriginal Legal Rights Movement. We think we should know about what he says because he is someone who works with children. Obviously, we hear from the other experts and from the information that has been put before this house by the high profile indigenous young people who are in this category, and they should have say. I am very disappointed that the government has not, before it has even started with something like this, gone to people like Mr Gillespie and sat down with him and said, 'We are at our wits' end and we do not know what else to do. We have appointed Gavin Wanganeen; we have ambassadors for youth; we have had these programs; we have dished in money here and we have done all this and tried everything. Before we proceed with this idea, which is novel but we think might have some merit, what do you think?'

You would think, wouldn't you, that they would do that. But again, you have to ask the question: why haven't they sat down with these people? They are the very people who would be able to throw some light on the subject for the government and say to the government, 'Why waste your money? Why go through this whole process of having legislative reform and a whole lot of new legal processes, why pay more lawyers to learn about it, have more arguments in court about the interpretation of it, create more work for the courts to do at more cost, if it is not going to work?'

I think we are at the end, Mr Attorney, of all the programs that you have thrown up in the parliament which we have been prepared to support and which we have given the benefit of the doubt to the government, even if you have not demonstrated it to us with much detail, we have been prepared to accept it in the past and we have been prepared to say, 'Okay, it sounds reasonable; we're prepared to give it a go.' But you have really taken us far beyond the pale on this, Mr Attorney, and we are not prepared to sacrifice the state's children with this initiative. It is completely unacceptable to us.

I foreshadow amendments to delete all provisions which provide for processes in the three acts of parliament that we have referred to which would facilitate the introduction of a recidivist young offender declaration procedure. In the event that that is unsuccessful and the government, therefore, has its way in passing this part of the bill (which, in fact, would go through with the rest of it because we are happy to support the rest of it), then we foreshadow that there will be an amendment to ensure that the review is ultimately done by someone who is independent of the government.

The second amendment is, of course, to ensure that we do not have a Caesar reviewing Caesar situation but that we have an independent body. In the past, when we have reviewed the operation of courts (for example, the Nunga Court or the Drug Court—and the Attorney would be familiar with this because I remember it being the subject of deadlock proceedings on a bill in this house), on those occasions when there have been 10 year reviews, for example, of the operation of courts that provided alternate judicial processes (the Drug Court and so on) the government of the day commissioned independent parties to conduct a review.

They would be paid an appropriate fee and would provide a review report to the Attorney-General and, in the cases that I was aware of, the Attorney kept it. In fact, in the course of some discussions on another bill, we had asked to see them because they had never been tabled in parliament. It was a bit surprising to me and, I think, the Hon. Robert Lawson in another place (who had been an attorney-general himself) that these review reports had not ever been tabled.

There may not have been any obligation in those circumstances to table them but you would think that, if you had a report reviewing whether alternate court processes work, you would come back to the parliament and say, 'Look, we've found that we've reduced the recidivism of offenders in the Drug Court and it is working in this way. We have been successful in this age group'–or otherwise—and that they would be willing and, in fact, rushing to come in with a report to show us that.

Equally, if it was not successful, they would come back to say, 'Look, the reports indicated we were not making any headway in this area so now we want to try XYZ.' That would seem to be the logical purpose of having an independent review and ensuring that it does what it has to do—and that is to tell us how something is going and, if it needs to be remedied or appealed or removed or amended, then we can do it.

If you never know what is in those reports or you get someone to do a report who is potentially unable to provide an impartial and independent assessment because they are too close to the scene, it raises the question whether there is any point at all in having a review. So, the government in this instance is saying, 'Well, we acknowledge there might need to be a review. We

suggest that it be at three years and that it be done in tandem by the minister and Monsignor Cappo, or whoever is in charge of the Social Inclusion Unit.' The government appoints the person in charge of the Social Inclusion Unit and, obviously, the minister and the Attorney-General are members of the government which has brought in the legislation in the first place. So, on anyone's assessment, it could not be described as independent.

Here is what is really interesting. If the government's proposal was one which valued the view of Monsignor Cappo (or whoever might hold the position of head of the Social Inclusion Unit), so much so that it wanted to support him to have the responsibility to do the review, and his advice would be important, valued and useful in that process, then one has to wonder why on earth the government has not asked Monsignor Cappo to give it a report on what he thinks about the proposal in the first place.

As I said at the briefing, the opposition was informed that Monsignor Cappo had been forwarded a copy of the bill and the second reading speech. I do not know whether or not any other explanatory material went with it or whether he received it by email or courier pigeon, but it was sent off. The advice we had at the briefing was that there had been no response from Monsignor Cappo. We do not know whether he even got it, whether he considered it or whether he had an opportunity to investigate this proposal, but what we do know is that the government is pressing ahead with this legislation.

The Hon. P.F. CONLON: On a point of order, Mr Speaker: standing order 128 deals with irrelevance or tedious repetition. I have been listening carefully for 15 minutes and I have not heard a discernible point made by the speaker. There is no doubt, after having seen a note handed to the speaker to keep talking until someone gives her further advice, that she has no intention of making a point. The standing orders require that the speaker at some point make a point. I have been listening for 25 minutes. She is plainly engaging in irrelevance and tedious repetition.

The Hon. I.F. EVANS: On a point of order, sir, standing order 128 only gives the Speaker the opportunity to raise that point, not a member. The point of order raised by the minister is out of order.

Members interjecting:

The SPEAKER: Order! The house will come to order! It is still reasonable enough for a member to raise standing order 128 with the Speaker. It is at the Speaker's discretion whether a member is engaging in tedious repetition—I think they are the words of the standing order. I will listen carefully to what the member for Bragg is saying. Standing order 128 is one I am loath to invoke. It has not been used in the light of members having a time limit of 20 minutes for their speeches but, given that the member is the lead speaker and so has unlimited speaking time, I will listen to what she is saying. If I think she is not speaking to the bill or engaging in tedious repetition, I will pull her up. The member for Bragg.

Ms CHAPMAN: So, the government's decision to have a procedure of review by the minister responsible—that is, the Attorney-General—and Monsignor Cappo is a case of Caesar reviewing Caesar, and that is not acceptable; it is not independent and it does not in any way make provision—

The Hon. P.F. CONLON: I rise on a point of order. Those exact words were used some 20 minutes ago.

The SPEAKER: I will listen to the member for Bragg.

Ms CHAPMAN: During the course of the briefing, a question was raised by a person on the staff of a member in another place on the issue of providing for victims of youth offenders rights commensurate with victims of adult offenders. This is the question of allowing for the provision of a victims register. Historically, there has been a rejection of the principle involving the provision of information about youth offenders, including details of the time they might be released, details of the sentence when they are, in fact, sentenced, and also details surrounding the escape of any offender from custody. These are all things that, under our adult offenders law, are provided for by having a victims register, with the opportunity that such information provides. However, it has historically been denied to victims of child offenders, following the principle not only that children should be treated differently in terms of their sentencing, but that the confidentiality—that is, the non-publication of information—is an important part of protecting them against public humiliation and scrutiny, which is deemed to be unproductive for children. It is consistent with the principle that supports and underpins the fact that we have a different system of justice for children.

For example, the system that operates for youths is such that it is the exception rather than the rule that members of the public are allowed into the courtroom. It is the exception rather than the rule that children's names are published in any way—either in the cause list or in the reporting of their trial or sentence—and their anonymity is broken. That is a pattern which underpins the basis upon which we treat children differently and by which we have a totally different and distinct set of rules under our juvenile justice procedures. Part of that is the privacy of that information about them and, I suppose, quarantining them from—

The Hon. P.F. CONLON: I rise on a point of order. Not only is there absolutely nothing in the bill about this, but I again raise standing order 128. The member spoke about how the system of youth law protects the publication of the person's name in any way. She then went on to describe the many ways it might do so, after having said it protected disclosure in any way, and she then went on to talk about the privacy. If that is not tedious repetition of a point! I make this point: we know, in this house, that she has been asked to keep talking for reasons other than this bill, and so she is tediously repeating over and over again points that are not relevant to this debate. I ask you, Mr Speaker, whether it is appropriate that she keep getting notes from other members of the opposition to fuel her tedious repetition?

The SPEAKER: Order! I was distracted, so I did not hear the points that the member was making, but I will listen closely, and if she is engaging in tedious repetition I will draw her attention to that.

Ms CHAPMAN: Thank you, Mr Speaker. For your benefit, I was referring to the matter that was raised by a member of staff at the briefing of a member in another place. During the course of the briefing, the question of the victim's register and an anticipated amendment to this bill was raised. It was raised on the basis—and I will read the correspondence in a minute, which followed it, from the member of parliament's office to me—of that information and the foreshadowed amendment, a copy of which I have received.

The Hon. M.J. Atkinson: So?

Ms CHAPMAN: And, I will be reading it all out. The issue that it was under scrutiny by the member was the historical position that we have taken in the privacy of the information about a juvenile offender that underpins the reason that we do not let victims of children have that information. We do not tell them the sentence that these children receive or the offence that they are ultimately convicted of. We do not tell them what date they are going into detention, or wether they are going into detention. We do not tell them the details of the sentence. We do not tell them what reparation order is made. We do not tell them all these things that normally a victim of an adult offender gets access to. I can see that the minister has been following this debate carefully, and that he will realise that it relate to clause 21 of the bill.

The Hon. P.F. CONLON: Mr Speaker, I rise on a point of order. The lead speaker for the opposition has reinforced my point: she has just repeated what she has said before. I do not know how obvious it is to this chamber, but she, having thought of nothing new, is deliberately trying to wind out this debate for reasons not associated with this debate, and I do not know what is less relevant than that.

The SPEAKER: Order! The member for Bragg must not engage in repetition.

Ms CHAPMAN: So, the clause proposed to be amended is clause 21, which, if the minister is following this debate, is to remedy this problem, where, in relation to an offence for which a youth is sentenced, there is a registered victim, and the release of the youth, under this provision, is subject to a condition that relates to the registered victim or the registered victim's family. The registered victim must be informed of the terms of the condition of release.

The opposition can certainly see some merit in that. I have indicated that we will support the government's register of victims proposal but that we would also support an amendment along those lines, whether by the government or by the member in another place who has foreshadowed it. However, they do qualify some of this by a proposed new clause 21A, which would be an amendment to section 64, namely, information about a youth may be given in certain circumstances. Section 64, after its present content, is proposed to insert the following:

2. Any eligible person may apply in writing to the chief executive for the release to him or her of any of the following information relating to a recidivist young offender.

(a) details of the sentence or sentence of detention that the recidivist young offender is liable to serve.

(b) the date on which and the circumstances under which the recidivist young offender was, is to be, or is likely to be released from detention for any reason.

(c) details of any escape from custody by the recidivist young offender.

3. A person is an ineligible person if he or she is:

(a) a registered victim in relation to the offence for which the recidivist young offender is detained…

Mr Speaker, I am sure you are listening attentively to this debate and following this bill, so you would know that that is part of the procedure which the government is proposing and which we are supporting.

(b) a member of the recidivist young offenders family or a close associate of the recidivist young offender; or

(c) a legal practitioner who represents a recidivist young offender; or

(d) any other person who the chief executive thinks has a proper interest in the release of such information.

4. The chief executive has an absolute discretion to grant or refuse an application for release of information to an eligible person.

5. A decision of the chief executive as to whether a person is an eligible person, or to grant or refuse an application under this section is final and is not reviewable by a court.

6. The chief executive must not release information relating to a recidivist young offender's conditional release from detention without the consent of the Youth Parole Board (but the board may waive this requirement in such circumstances as it thinks fit).

One other aspect of the discussion with this—because there was some inquiry by representatives there for the government; I am not sure whether they were from the department or the minister's office—was what the view was of Mr Michael O'Connor, who is the Commissioner of Victims' Rights. As has been indicated earlier, he had been sent a copy of the bill and he had, apparently, not registered any objection to the bill. This is what he had to say to the Hon. Ann Bressington MLC, who is a member of the Legislative Council, who had sent her amendments to this to Mr O'Connor. He says:

Dear Ann Bressington MLC,

Re: Youth Parole Board—Victims' Rights

I refer to your letter inviting me to comment on amendments that you propose to the Statutes Amendment (Recidivist Young Offenders and Youth Parole Board) Bill 2009. May I first thank you for your invitation and note your intent to advance victims' rights in our state.

Please know that I make the following comment as the Commissioner of Victims Rights and nothing I provide should be construed as representing the government's policy and/or the views of the Attorney-General, Hon. Michael Atkinson MP.

Please also note that the Attorney-General did consult me on the bill. Furthermore, you should note that I support the separation of so-called 'hard-core' or 'recidivist' young offenders from other young offenders, and for that reason I support the concept of a Youth Parole Board.

It seems to me that the vast majority of young offenders are not recidivists. Much youth offending is irritating for the public but also can foster antagonism between young people and others. Public demands have grown for tougher screening of young offenders and a greater focus on recidivists.

From a victim perspective, no matter who commits the crime; crime hurts. Very occasionally that hurt manifests in anger, even hostility. Many victims, however, want offenders, especially young offenders, to stop committing crime. Victims have talked to me about the need for constructive rehabilitation programs and treatment for drug dependent offenders and those with mental illness. They do not want others to be hurt like them. Practices such as family conferencing have shown that there are ways to develop favourable (not forgiving) victims' attitudes towards young offenders and victim empathy among young offenders.

It is my firm view, however, that the recidivist young offenders who become eligible for consideration by the proposed Youth Parole Board have forfeited their right to certain liberties, including the usual right to confidentiality, as reflected in the privacy provisions of the Young Offenders Act (YOA).

The Declaration of Principles Governing Treatment of Victims of Crime that is enshrined in the Victims of Crime Act 2001 is commonly portrayed as a declaration on victims' rights. If the principles are rights, then victims have rights to information about offenders and prisoners. The declaration does not discriminate on the basis of the offender or prisoner being young or old; child or adult.

Pursuant to the declaration, victims who ask are entitled to information about, amongst other things:

- The charge laid and details of the place and date of proceedings on the charge.

- If a person has been charged with the offence—the name of the alleged offender.
- If an application for bail is made by the alleged offender—the outcome of the application.
- The outcome of the proceedings based on the charge and of any appeal from those proceedings.
- Details of any sentence imposed on the offender for the offence.
- If the release of the offender into the community is imminent—details of when the offender is to be released.
- If the offender was ordered to undertake community service—whether the offender completed the community service.
- If the offender was subject to a bond—whether the conditions of the bond were complied with.
- If the alleged offender escapes from custody—the fact that he or she has escaped.

Victims are also entitled to make written and/or verbal submissions to the Parole Board on questions affecting the parole of a person in prison for the offence.

These rights should be respected and up-held by all public officials and public agencies.

There are confidentiality provisions in the YOA. These provisions apply in different ways. Part 2 of the YOA deals with minor offences. If an offence is a minor offence (as defined) then, in certain circumstances, the youth may not be charged with an offence but rather dealt with by way of informal cautions, formal cautions or family conference.

Debated adjourned.

SITTINGS AND BUSINESS

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (22:55): I move:

That standing orders be so far suspended as to enable the house to sit beyond midnight.

The SPEAKER: An absolute majority of the house not being present, ring the bells.

An absolute majority of the whole number of members being present:

Motion carried.

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

Second reading debate resumed.

Ms CHAPMAN (Bragg) (22:57): The letter continues, as follows:

No formal official record is kept of an informal caution. If a police officer formally cautions a youth, the officer must ask the victim whether he or she wants to be informed of the identity of the offender and how the offence is being dealt with and, if the victim indicates he or wishes that information, give the victim that information (see s8(9) YOA). The police must give the Youth Justice Coordinator certain information including the name and address of the victim of the offence. The Youth Justice Coordinator, who coordinates family conferences, must ask the victim whether he or she wishes to be informed of the identity of the offender and how the offence has been dealt with, and if the victim indicates he or she wishes that informal, give that information (see s12(11) YOA).

S13(1) YOA imposes limitations on publicity for any report of any action or proceedings taken against a youth by a police officer or family conference.

Mr Speaker, I wonder if I may have your attention—

The SPEAKER: Order! If members wish to discuss matters, take it out of the chamber. The Attorney-General has a point of order.

The Hon. M.J. ATKINSON: My point of order is that the member is now reading provisions of the bill, and the provisions of the bill are readily available to all members. They are on the file.

The SPEAKER: Order! I was going to ask the member for Bragg whether she was just reading the bill, but I think she is quoting from a letter.

Ms CHAPMAN: I am very disappointed that the Attorney as not been listening attentively as I started to read. This is a letter from Mr Michael O'Connell, the Commissioner for Victims' Rights, to Ann Bressington MLC, whose member of staff had raised this issue in the briefing. This is entirely the correspondence from the victim, someone whom the Attorney, in presenting this bill,

had been clear, through his staff, to advise me had been consulted on the bill and, as I indicated at the beginning of this letter, he had received that information from the minister. The letter continues:

Section 13(1) of the YOA imposes limitation on publicity of any report of any action or proceeding taken against a youth by a police officer or family conference. This applies to victims' and offenders' information. Section 13(2), however, provides that a person employed or engaged in the administration of the YOA must not divulge information about a youth against whom any action or proceeding has been taken, informal or formal caution or family conference, except in the course of his or her official functions, which I argue should include honouring the Declaration of Victims' Rights. Declaration creates statutory obligations or, if it does not, it should be amended to ensure that is understood.

Section 63C of the YOA imposes limitations on the publication or broadcasting of certain information about young offenders, but there is no equivalent to the aforesaid section 13(2). Section 64 of the YOA of the provides:

'If a youth is proceeded against or dealt with under this act for an alleged offence, a person who has suffered injury, loss or damage in consequence of the circumstances alleged to constitute the offence is entitled, on application in writing to the Commissioner of Police, to be informed of the name and address of that youth.'

Furthermore, those provisions do not prevent the disclosure of the names of young offenders by, for instance, the police to me as Commissioner.

In his second reading speech on amendments to the Victims of Crime Act 2001, including the declaration, the Attorney-General (the Hon. Michael Atkinson MP) made it clear that the intention of the government's amendments (which became operative on 17 July 2008) included to make it clear that the declaration extends beyond the criminal justice system to all public officials and public agencies that help victims of crime. In other words, to make it clear that the obligations created by the declaration apply to officials employed by the Department for Families and Communities, the Department of Health, and so on.

Thus, when read together, the declaration gives victims rights to information about offenders and prisoners, and the YOA gives victims certain rights to information about young offenders, in particular. In my opinion, there should not be any inconsistencies. Victims are entitled to have their perceived safety concerns taken into account by a bail authority. Victims are entitled to know the outcomes of cautions, family conferences and court hearings. Victims are entitled to know young offenders' names and home addresses on application.

It does not seem right the distinction is made when young offenders are in custody and seek release on parole. If those offenders were adults their victims would be entitled to considerable information and entitled to make submissions pre release and to the Parole Board. A victim who registers on the proposed youth offender victim register should be entitled to similar information to that afforded victims of the adult offender victim register, as well as victims registered on the mentally competent offender victim register.

In summary I would prefer victims' informational rights were stronger rather than constrained by the Statutes Amendment (Recidivist Young Offenders and Youth Parole Board) Bill 2009. With this in mind I have examined the amendments that you propose. I support your proposal to amend section 41A by inserting, after subsection (4), subsection (4a) that should require the responsible public official—

The Hon. M.J. ATKINSON: I have a point of order. My understanding of second reading is that it goes to the principle of the bill, not to a detailed consideration of the clauses. That is for the committee stage.

The SPEAKER: There is no point of order.

Ms CHAPMAN: The letter continues:

This is consistent with the obligation to tell the victim who has safety concerns, the conditions imposed by a bail authority to protect that victim. It is also consistent with the proven demand that victims in general want to be kept informed. For example, in one survey in our state, eight in 10 victims said they wanted to be kept informed.

Likewise, I support your proposed amendment to section 64 that would provide for the release of certain information to the victim about the respective young offender. Your amendment complements the existing informational rights as per the Declaration Governing Treatment of Victims of Crime but also clarifies that the age of the offender should not constrain or otherwise limit those rights. Public officials should be obliged to take reasonable steps to ensure victims get the information they want.

Victims should not be bystanders in the youth criminal justice system. Parliament created laws that extend rights to victims of crime. It is wrong to promise victims' rights with one hand and with the other to seek to take those rights away.

Those who chose to participate should be afforded respect and treated with dignity. Knowing what may happen, ahead of time, then knowing what happened, can often reduce anxiety and help the victim get through the process of healing more comfortably.

Might I conclude by pointing out that victims want equal justice. To attain that justice does not necessarily require us to strip offenders of fundamental rights. It does require a balanced approach, respectful of victims and offenders as human beings.

Yours sincerely,

Michael O'Connell

Commissioner for Victims' Rights.

Probably most people in this house would agree that brevity is not the strong point of the Commissioner for Victims' Rights. However, he very clearly outlines two things that are important. One is that, with respect to victims of offences, whether the offender is a child or an adult, it should be indiscriminate: it should be across the board. The second thing is—

The Hon. P.F. CONLON: Mr Speaker, standing order 128 means you have to stop.

The SPEAKER: Order!

The Hon. P.F. CONLON: On a point of order, having read to us at some length the letter from the Commissioner for Victims' Rights, it is not necessary, for the well educated people here, to paraphrase him and explain what he said. If there is a clearer example of tedious repetition than that, I have not seen it. We all heard the letter. We do not need it reinterpreted. It was written in English.

Mr Hanna interjecting:

The SPEAKER: Order! Yes; it is not necessary for the member for Bragg to paraphrase the correspondence that she has just read out in full.

Ms CHAPMAN: Having confirmed that the Commissioner for Victims' Rights had received the bill and the second reading from the Attorney-General, and there being no detail in this letter about what his view is on the substantive bill—none is in there—obviously, he has addressed in a rather longwinded way, some might say, his view on the anticipated amendments of Ms Bressington. Ms Bressington was not necessarily asking for that.

I ask the Attorney-General to ensure that this information comes to the house, because clearly he has this information: we were told that at the briefing. However, nowhere have we seen any response from him on the substantive bill. We need to know whether he has a view. Clearly, he has a view on the amendments. Has the Attorney-General received any response from those who are alleged to have been consulted? That is a question that I think the Attorney-General needs to answer because, clearly, this important stakeholder has a view on these other issues, and we need to know—

The Hon. P.F. CONLON: Mr Speaker, I rise on a point of order: standing order 128. Ms Chapman has now said three times that he has a point of view on those amendments and nothing on this, and it is a question that needs to be answered. She does not need to say it three times. We do speak English on this side.

The SPEAKER: Order! The member for Bragg is engaging in repetition. The member for Bragg.

Ms CHAPMAN: The other matter that has been raised, this time by the government during the course of the briefing, is the question of clarifying what I understand to be two things. I will have a look at the amendments handed to us by the government, but my understanding from the briefing, so that this is on the record, is that the government wants to achieve under this process an assurance that, if a nonparole period is imposed, it is equivalent to the nonparole period relating to the offence which has the longest penalty. So, if there are multiple offences there are different amounts, and this mandatory nonparole period is to be the amount that is calculated on the longest one.

The second area that is apparently intended to be tidied up is that there would be some fair assessment or taking into account—I am not quite sure how this operates and I will look at it in detail—of the time spent by the offender, I presume in custody, in the pre-sentence period. I am not sure why that does not apply at the moment, but the youth act apparently does not cover that. In any event, on the face of it, they seem to be reasonable things to be tidied up, and the opposition will be happy to look at those provisions. With that brief contribution, I indicate that we oppose that aspect in the bill relating to recidivist offender badging, and we will otherwise support the balance.

Debate adjourned on motion of Hon. P.F. Conlon.

CONSTITUTION (REFORM OF LEGISLATIVE COUNCIL AND SETTLEMENT OF DEADLOCKS ON LEGISLATION) AMENDMENT BILL

The SPEAKER (23:13): Following the division on the vote on the second reading of the Constitution (Reform of Legislative Council and Settlement of Deadlocks on Legislation)

Amendment Bill, I neglected to call the Clerk to read the bill a second time. I now ask the Clerk to do that.

The Hon. G.M. GUNN: I have a point of order, Mr Speaker. This matter has already been determined and you cannot retrospectively change the standing orders or the rules. Therefore, I ask for your ruling in relation to this matter. The matter has passed. The house has proceeded at some length to deal with other business. If there was a problem, the time to have brought this to the attention of the house was at the actual moment when the vote was taken, not two to three hours later when the house has determined other business.

Members interjecting:

The SPEAKER: Order! The member for Stuart will take his seat. I gather his point. Standing order 242, for the benefit of the member for Stuart, deals with what happens regarding bills that require an absolute majority of members to agree to them. It is quite clear that, if the question is carried by less than an absolute majority of all the members of the house, the bill is read a second or third time, as the case requires, but is not further proceeded with and may not be revived. So it is quite clear that the bill needs to be read a second time. I should have been aware of that but I was not, so that is why we are rectifying that particular problem.

Bill read a second time.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs, Minister for Veterans' Affairs) (23:14): I move:

That standing orders be so far suspended as to enable me to move for the rescission of a vote of the house forthwith.

Mr HANNA: I have a point of order.

Members interjecting:

The SPEAKER: Order! The member for Mitchell has a point of order.

Mr HANNA: It is clear where the Attorney-General is heading. He is heading this way so that the constitution (Legislative Council) bill can be revived, and that would be completely out of order. At this point, I suggest that the motion being put is out of order because it is part of a process to revive a bill that has already been negatived.

The SPEAKER: Whether it is or is not, it is in the hands of the house to decide how it wants to deal with it. It is quite clear that standing orders provide for motions to be rescinded, provided there is the concurrence of an absolute majority of members present. I have no option but to allow the motion to be put, provided there is an absolute majority of members present and an absolute majority of members agree to it.

Mrs Redmond interjecting:

The SPEAKER: I will deal with one point of order at a time.

Mr HANNA: If I might briefly respond to that, sir.

The SPEAKER: Order! I will not engage in a debate on it. I will quickly hear the member for Mitchell for the purpose of expediting the matter, but I will not engage in correspondence with him.

Mr HANNA: Standing order 242 is quite clear that this bill to amend the constitution cannot be revived. We know that is what the Attorney-General seeks to do. The rescission motion of itself does not do that, but it is the first step in reviving the legislation. The standing orders which were in force at the time that you gave your ruling that the bill was negatived mean that the bill cannot be revived in this session.

Members interjecting:

The SPEAKER: Order! I did say that the bill was negatived and I erred in saying that.

Mrs Redmond interjecting:

The SPEAKER: The Leader of the Opposition might not be used to hearing members of the chair admitting when they have been at fault, but it is something which I do, and I erred in saying it had been negatived. It clearly had not. The second reading had been agreed to but did not

have the constitutional majority that is required in order for it to proceed. Standing order 242 makes clear the bill should have been allowed to be read, and that has now happened.

As I say, at the heart of any ruling is the will of the house and you cannot use technicalities to try to prevent the house from making a decision, and if it is the will of house to rescind the second reading and have it recommitted, then the chair is in no position to prevent that from happening. It is entirely up to the will of the house.

Mr HANNA: In that respect, I propose to move dissent in your ruling, Mr Speaker. I will write out a suitable motion.

The SPEAKER: The member for Mitchell can bring his motion to the chair.

Mr HANNA: I will read it out in full for you, sir. I must read this out, because we need to be clear what your ruling is, sir, and I hope I have encapsulated that. I propose to move that the second reading of the Constitution (Reform of the Legislative Council and Settlement of Deadlocks on Legislation) Amendment Bill may be rescinded and the bill recommitted.

The SPEAKER: My ruling is that the Attorney-General be allowed to move a suspension of standing orders. I imagine that what the member for Mitchell is dissenting from is that the Attorney-General be allowed to move his motion.

Mr HANNA: The Attorney-General's motion, sir, specifically referred to the purpose of rescinding the second reading vote and recommittal.

The SPEAKER: I do not think it mentioned recommittal. All the motion does is to rescind; it does not mention recommittal.

Mr HANNA: Is that right, sir, that the Attorney-General's motion is to rescind a vote, but it does not specify any vote?

Members interjecting:

The SPEAKER: Order! For the purposes of the member for Mitchell, I will explain the procedure. There are two procedures, both of which require an absolute majority. The first is a motion from the Attorney-General to suspend standing orders to allow the rescission motion to be moved, which is what the Attorney-General is proposing; that is, a motion of suspension to allow the rescission motion to be moved. That requires an absolute majority of members. Following that motion, provided it is successful, the Attorney-General, I would imagine, would move the actual rescission motion itself, and that would also require an absolute majority.

So, all the Attorney-General is moving at the moment is a motion to suspend standing orders to allow a motion of rescission to be moved. I have ruled that the Attorney be allowed to move that suspension, and the member for Mitchell has moved dissent from that ruling.

Mr HANNA: The basis of my dissent then, sir, is that the motion does not specify the vote, which is the underlying purpose of the motion.

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! I do not know how I can make it any clearer. All the Attorney-General is moving at the moment is a suspension of standing orders to allow a motion to be put. I do not know how you can dissent from a ruling from the chair that a member be allowed to move a suspension of standing orders. Any member can get up at any time and move that standing orders be suspended so as to achieve something. That is all, at this stage, I am allowing the Attorney-General to move.

I can understand why the member for Mitchell may take issue with the rescission itself. That is fine, and we can have that debate. However, at this stage, all that is being dealt with is a suspension of standing orders, which would allow the Attorney-General to proceed with a motion to rescind.

I do not know on what basis you could move dissent from a ruling by the chair to suspend standing orders. Nonetheless, in order to expedite matters, if that is what the member for Mitchell wishes to do, I ask him to please do it so that we can do this as quickly as possible.

Mrs REDMOND: Can I ask for a point of clarification on your ruling, sir, because, although I see that standing order 398 allows any standing order to be suspended, standing order 403 specifically limits that. It provides:

> After the orders of the day have been called on—

which today they have been—

> no motion for suspension without notice may be entertained until the consideration of such orders is concluded...

We have not concluded the business of the house for today.

The Hon. P.F. Conlon interjecting:

Mrs REDMOND: I am in the middle of asking for a point of clarification.

The SPEAKER: Order, the Minister for Transport!

Mrs REDMOND: I am reading the standing order.

Members interjecting:

The SPEAKER: Order! The Leader of the Opposition.

Mrs REDMOND: On any plain reading of standing order 403, this motion to suspend standing orders in this particular case, because we have not concluded the business of the day, is out of order.

The SPEAKER: No, that is not the case because, if the leader will read to the end of standing order 403, the words are 'or otherwise facilitating the business of the House' which—

Members interjecting:

The SPEAKER: Order! I want to get through this as much as anybody. It has always been the practice of the house that at any time any member, including members of the opposition, has been able to rise and move to suspend standing orders. That has always been the understanding and the interpretation of standing order 403. I have a motion of dissent being proposed by the member for Mitchell and I wish to deal with it as quickly as possible. The member for Mitchell.

SPEAKER'S RULING, DISSENT

Mr HANNA (Mitchell) (23:26): I move:

> Dissent from the ruling of the Speaker allowing the Attorney-General's motion because:
>
> 1. It does not sufficiently specify the vote to be rescinded; and
>
> 2. The vote concerned is no longer business of the house per standing order 403.

The SPEAKER: Is that the motion or is that the speech?

Mr HANNA: That is the motion of dissent from your ruling, sir, specifying two grounds for dissent.

The SPEAKER: Perhaps I could encapsulate it a bit better and have the motion take the form that the house dissents from the ruling of the chair that the Attorney-General may move a motion to suspend standing orders for the purposes of rescinding a motion.

Mr HANNA: I am happy to take your guidance on that, sir.

The SPEAKER: Does the member for Mitchell wish to speak to the motion?

Mr HANNA: Yes, I do.

The SPEAKER: Is the motion seconded?

Honourable members: Yes, sir.

Mr HANNA: I need to be clear that the motion encapsulates the wording of the Attorney-General's motion which I do not have in writing but, as I recall, it was about rescinding a vote. It does not refer to any specific vote and, therefore, it is impossible for this house to consider that as business. It is like moving a motion in private members' time that 'somebody do something' without specifying who, what or why.

The suspension of standing orders, of course, can be moved at any time after orders of the day have been called unless the motion for suspension is moved for the purpose of expediting

progress or otherwise facilitating the business of the house. But in all of the cases I can recall at the moment, usually the purpose of the suspension is included in the motion. For example, I move that the standing orders be suspended so far as to allow item No. 3 to be dealt with before item No. 2, then at least we all know what we are dealing with. If the motion is only from—

The Hon. M.J. Atkinson: Yes, I have said that.

Mr HANNA: I am going from the Speaker's recapitulation of what the Attorney-General said, which was to—

The Hon. M.J. Atkinson: Move for a rescission of the vote of the house.

Mr HANNA: —move a rescission of the vote of the house. That needs to be specific. That is my point.

An honourable member: Why?

Mr HANNA: So that we know how to consider the motion.

Members interjecting:

The SPEAKER: Order!

Mr HANNA: Sir, I believe there will be one speaker on the other side after I have concluded. Really, the point is as simple as that. I do not need to go on. The Attorney-General's motion lacks specificity; therefore, how can the house consider that as business? We do not know the reason why he seeks to rescind a vote of the house. We do not know which vote he is talking about. How can we decide whether standing orders should be suspended for that purpose if we do not know which vote he is talking about?

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure, Minister for Energy) (23:30): I must say that the father of the house is here and he would know better than me, but I can never remember anyone dissenting from allowing a motion to suspend standing orders. The complaint is that it is not specific enough because it says to allow him to move a motion for rescission of a vote of the house.

I make two points about that: if rescinding the vote is contrary to standing orders and is contrary to the parliament, that is the time to make that argument, I tell the member for the Mitchell. The second point is that he says it does not have enough specificity, but I think it has sufficient specificity to have the member for Mitchell so agitated that he wants to oppose a suspension for the first time in this house in my memory. So, he knows what it is for.

Members interjecting:

The Hon. P.F. CONLON: I cannot help it if you made a fool of yourself. It is not my fault.

Members interjecting:

The SPEAKER: Order!

The Hon. P.F. CONLON: I conclude by saying this: I look directly at the father of the house and ask him to tell me whether he has ever seen a motion to suspend standing orders ruled out of order. Mr Gunn?

The Hon. G.M. Gunn: You are right.

The Hon. P.F. CONLON: Thank you, Mr Speaker.

Members interjecting:

The SPEAKER: Order! I think we are arguing somewhat at cross-purposes. Standing order 160 sets out how a resolution of the house may be rescinded. It contains two paragraphs and two parts: both parts require an absolute majority of members present, so it is quite clear that standing orders must be suspended before the motion to rescind can even be moved, and that is what the Attorney-General was planning to do.

There are two absolute majorities required: one before a member can even move a motion of rescission, and then the motion of rescission itself. I think the member for Mitchell's problems are with the rescission motion itself rather than the Attorney-General having an opportunity to move the rescission.

We are, I think debating somewhat at cross-purposes. All that I am proposing to do is to allow the Attorney to move that standing orders be suspended so far as to enable him to move the rescission motion. When you think about it, I think it answers the concerns of the member for Mitchell.

The Hon. I.F. EVANS: Mr Speaker, before you put the motion, can I just seek clarification on your ruling in relation to standing order 242? My understanding of your ruling is that you have said that you have erred in your ruling by not saying that the second reading was carried, or that the second reading had—

The SPEAKER: Order! I am not going to entertain any points of clarification until we deal with this dissent motion. Once we have dealt with that I am happy to—

The Hon. I.F. EVANS: As long as we can still raise points of order and do not go to the vote on Mr Atkinson's motion—

Members interjecting:

The SPEAKER: Order! We are dealing with a very specific motion of dissent, and that is whether the Attorney-General is allowed to move a motion to suspend standing orders in order to move a motion of rescission. I will not entertain any points of order or points of clarification until we deal with that matter.

The house divided on the motion:

AYES (11)

Chapman, V.A.	Evans, I.F.	Goldsworthy, M.R.
Griffiths, S.P.	Gunn, G.M.	Hanna, K. (teller)
Penfold, E.M.	Pisoni, D.G.	Redmond, I.M.
Venning, I.H.	Williams, M.R.	

NOES (27)

Atkinson, M.J.	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Ciccarello, V.
Conlon, P.F. (teller)	Foley, K.O.	Fox, C.C.
Geraghty, R.K.	Hill, J.D.	Kenyon, T.R.
Key, S.W.	Koutsantonis, A.	Lomax-Smith, J.D.
Maywald, K.A.	McEwen, R.J.	O'Brien, M.F.
Piccolo, T.	Rankine, J.M.	Rann, M.D.
Simmons, L.A.	Stevens, L.	Thompson, M.G.
Weatherill, J.W.	White, P.L.	Wright, M.J.

PAIRS (4)

Hamilton-Smith, M.L.J.	Portolesi, G.
Pederick, A.S.	Rau, J.R.

Majority of 16 for the noes.

Motion thus negatived.

CONSTITUTION (REFORM OF LEGISLATIVE COUNCIL AND SETTLEMENT OF DEADLOCKS ON LEGISLATION) AMENDMENT BILL

The Hon. I.F. EVANS: Mr Speaker, I rise on a point of order in relation to standing order 242 and your previous advice to the house, which I understood to be that an error had been made because the second reading should have been—or, in essence, had to be—carried. Standing order 242(3) provides:

> If the question is carried by less than the absolute majority of all the members of the house, the bill is read a second or third time, as the case requires…

As the vote was 23 to 9 and did not reach the absolute majority of 24, the second reading was dealt with 'as the case requires' because it was lost. So, no error was made. Sir, I seek clarification

on how you can advise the house that an error was made when clearly the second reading was dealt with 'as the case requires', because we did not reach the constitutional number of 24. I believe that your previous advice to the house was wrong, sir, and I seek clarification.

The SPEAKER: It is kind of the member for Davenport to reassure me that, when I thought I was wrong, in fact I was not. However, I assure him that I was wrong. 'As the case requires' refers to whether it be the second reading or the third reading. That is all it refers to.

The Hon. I.F. EVANS: Now I am confused regarding what you told us previously, sir. Were you correct in declaring the second reading lost?

The SPEAKER: No; it is quite clear from standing order 242 that the second reading was carried, and the bill should have been allowed to be read a second time. It was not negatived. I said that it had been negatived, but that was incorrect. It had not been negatived; it just had not obtained the absolute majority required for it to proceed.

The Hon. I.F. EVANS: So if the vote had been one in favour and everyone else against—

The SPEAKER: Then the motion would have been lost and it would not have been read a second time.

The Hon. I.F. EVANS: But the bill would still have been read a second time.

The SPEAKER: No.

The Hon. I.F. EVANS: Well, how is it—

The SPEAKER: Order!

The Hon. I.F. EVANS: What I am trying to clarify, sir, is whether it reached a constitutional majority.

The SPEAKER: I will explain it one more time for the purposes of the member for Davenport and, if he is still confused, could he please come up to the chair; we do not need to delay the whole house by going over it in detail. Standing order 242 explains what happens in the case of a constitutional amendment where the second reading is agreed to but does not obtain the absolute majority that is required. In that case it says that the bill is read a second or third time 'as the case requires', meaning a second or third time, but is not proceeded with further—

An honourable member interjecting:

The SPEAKER: Yes, and cannot be revived. That is presumably why the motion to rescind is being moved by the Attorney. In fact, he has not even reached that stage; he has simply moved for the suspension of standing orders. Are there any other speakers to the motion?

Mr HANNA: Mr Speaker, this is not the suspension of standing orders motion.

The SPEAKER: This is the motion to suspend standing orders. There being no further speakers, I will put the motion.

The house divided on the motion:

AYES (26)

Atkinson, M.J. (teller)	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Ciccarello, V.
Conlon, P.F.	Foley, K.O.	Fox, C.C.
Geraghty, R.K.	Hill, J.D.	Kenyon, T.R.
Key, S.W.	Koutsantonis, A.	Lomax-Smith, J.D.
McEwen, R.J.	O'Brien, M.F.	Piccolo, T.
Rankine, J.M.	Rann, M.D.	Simmons, L.A.
Stevens, L.	Thompson, M.G.	Weatherill, J.W.
White, P.L.	Wright, M.J.	

NOES (11)

Chapman, V.A.	Evans, I.F.	Goldsworthy, M.R.
Griffiths, S.P.	Gunn, G.M.	Hanna, K.
Penfold, E.M.	Pisoni, D.G.	Redmond, I.M. (teller)

NOES (11)

Venning, I.H. Williams, M.R.

PAIRS (6)

Maywald, K.A.	McFetridge, D.
Portolesi, G.	Hamilton-Smith, M.L.J.
Rau, J.R.	Pederick, A.S.

Majority of 15 for the ayes.

Motion thus carried.

The Hon. M.J. ATKINSON (Croydon—Attorney-General, Minister for Justice, Minister for Multicultural Affairs, Minister for Veterans' Affairs) (23:50): I move:

That the vote on the second reading of the Constitution (Reform of Legislative Council and Settlement of Deadlocks on Legislation) Amendment Bill be rescinded owing to its being a bill to alter the constitution of a house of the legislature and, as required by section 8 of the Constitution Act 1934, must gain the concurrence of an absolute majority of members of the house.

Mr VENNING: Mr Speaker, I have a point of clarification. Does this mean that, when recommitting the bill, we will start the bill again, or will we go on from where we left off?

The SPEAKER: No, it does not. There being an absolute majority of members present I accept the motion. Is it seconded?

An honourable member: Yes, sir.

The SPEAKER: Does the Attorney-General wish to speak to the motion?

The Hon. M.J. ATKINSON: Yes, sir. It is interesting that the rescission of a vote on a bill has occurred many times in the 19 years that I have been a member of the house. My recollection is that it has occurred most often when the Liberal Party has been in government. I will give two examples. On 5 August 1999, the votes and proceedings of the house record at No. 31 that a minister, the Hon. R.L. Brokenshire, moved the rescission of the third reading of the Emergency Services (Funding) (Miscellaneous) Amendment Bill, presumably because it was convenient for the then Olsen government to do so.

Ms CHAPMAN: I rise on a point of order, sir. Not only is this information irrelevant but the Attorney is making presumptions about what the basis of the change was.

The SPEAKER: Order! There is no point of order.

Ms Chapman interjecting:

The Hon. M.J. ATKINSON: The opposition mucked up back in 1999, did we, on the emergency services bill? I do not think so. My personal favourite occurred on 9 July 1998. Item No.28 of the votes and proceedings shows that a minister moved rescission of the third reading of the police bill. That would have been the then minister for police, correctional services and emergency services, none other than the Hon. I.F. Evans, the member for Davenport.

Members interjecting:

The SPEAKER: Order!

The Hon. M.J. ATKINSON: There is ample precedent for rescinding the vote on a bill. I would think that these bills were rescinded a greater length of time after the vote than is the case tonight. What we are seeing here is that the Liberals spend much of their time fighting each other and playing games. Let us fix it up and resume consideration tomorrow.

Mrs REDMOND (Heysen—Leader of the Opposition) (23:53): I cannot believe what I have seen here tonight. Here we have a government—

Members interjecting:

The SPEAKER: Order!

Mrs REDMOND: —in such disarray that it cannot even manage its own business in this house.

Members interjecting:

The SPEAKER: Order!

Mrs REDMOND: The Attorney-General has the audacity to stand up and say that he does not think that his government has done any recommittals. I can tell the house that there was one, and I can tell members when it was. It was during Wagner's *Ring* cycle, and I was not able to go to that because I was here as a result of a recommittal by members opposite. The fact is that this is a government in total disarray. We have already had the Treasurer get up today and tell us that he has allowed the Motor Accident Commission to get to the point where it is no longer solvent.

The Hon. M.J. ATKINSON: I rise on a point of order, sir. I am not quite sure how the Motor Accident Commission is joined up to a rescission motion on a constitutional bill.

Members interjecting:

The SPEAKER: Order! I will listen to the Leader of the Opposition. If she is straying, I will pick her up.

Mrs REDMOND: The connection is ample demonstration to the house of the inadequacy of this government in the management of anything, even the management of the house itself on its own bill. The Attorney tried to make the point that other bills had been recommitted and, indeed they have, but not—

The Hon. K.O. Foley interjecting:

The SPEAKER: The Deputy Premier is out of his seat.

Mrs REDMOND: —constitutional bills.

The Hon. M.J. Atkinson interjecting:

The SPEAKER: The Attorney-General will come to order!

Mrs REDMOND: There is a specific clause we have already referred to, a specific standing order (242) that deals with constitutional bills and the procedure that applies. It states quite clearly that as soon as the debate is concluded (which it was) on the second or third reading (and we will read that as the second reading because that is what it was) of a bill to alter the constitution of either house of the legislature (and it was a bill to alter the constitution of the Legislative Council), the bells are rung for three minutes (which they were) before the question for the second reading from the bill is put from the chair. The Speaker counts the house (which he did). If the question is carried—

Members interjecting:

The SPEAKER: Order, or I will vacate the chair! The Leader of the Opposition deserves the opportunity to be heard.

Mrs REDMOND: The third component is that, if the question is carried by less than an absolute majority of all members of the house (which it was), the bill is read a second time but is not further proceeded with and may not be revived during the same session. Ipso facto, we should not even be here discussing this.

The Hon. M.J. Atkinson: It wasn't read a second time.

Mrs REDMOND: Yes, it was.

The SPEAKER: Order!

The Hon. K.O. Foley interjecting:

The SPEAKER: The Deputy Premier will come to order!

Mrs REDMOND: The Deputy Premier wants to try to excuse the fact that—

Members interjecting:

The SPEAKER: Order! If there are any further interjections, I will vacate the chair.

Mrs REDMOND: So, I point out that this recommittal is a very separate case to any other recommittal the Attorney may have been referring to. The bills he referred to were simple bills before the house—government bills—and there was a recommittal of various things for whatever reason and from whichever side. This is a bill to change the constitution. A specific standing order applies to it, and I have just read out the details of it. All those things happened, and it certainly says that it is not further proceeded with and may not be revived during the same session.

I put to you, sir, and to the house, that it is therefore inappropriate for you to accept a motion for the recommittal of that bill. It has already been dealt with, and it should not be further dealt with. My view of this is that there is probably a conspiracy going on amongst the rabble on the other side because some of them really do not want this to go ahead—and some of them are mates with some in the upper house—and they actually want to thwart this bill.

Nevertheless, the Premier does not want it thwarted and, boy, is there going to be a bunfight in the caucus room tomorrow over what has gone on here tonight, over who was not here without permission and over who had a pair and who did not. The fact is that the government has a responsibility to have the house in order. It is its responsibility, and not the opposition's. We were here in sufficient numbers for this bill to be dealt with. It had its vote, and it need go no further and, indeed, can go no further pursuant to standing order 242.

The house divided on the motion:

AYES (26)

Atkinson, M.J. (teller)	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Ciccarello, V.
Conlon, P.F.	Foley, K.O.	Fox, C.C.
Geraghty, R.K.	Hill, J.D.	Kenyon, T.R.
Key, S.W.	Koutsantonis, A.	Lomax-Smith, J.D.
Maywald, K.A.	McEwen, R.J.	O'Brien, M.F.
Piccolo, T.	Rankine, J.M.	Rann, M.D.
Simmons, L.A.	Stevens, L.	Thompson, M.G.
Weatherill, J.W.	White, P.L.	

NOES (11)

Chapman, V.A.	Evans, I.F.	Goldsworthy, M.R.
Griffiths, S.P.	Gunn, G.M.	Hanna, K.
Penfold, E.M.	Pisoni, D.G.	Redmond, I.M. (teller)
Venning, I.H.	Williams, M.R.	

PAIRS (6)

Rau, J.R.	Pederick, A.S.
Wright, M.J.	Hamilton-Smith, M.L.J.
Portolesi, G.	McFetridge, D.

Majority of 15 for the ayes.

Motion thus carried.

The SPEAKER: The vote on the second reading of the bill be taken into consideration, minister?

The Hon. M.J. ATKINSON: Forthwith, sir.

The SPEAKER: In accordance with section 8 of the Constitution Act 1934 and standing order 242 it is necessary that both the second and third readings of the bill be passed by an absolute majority of all members of the house—in case we did not already know that.

Mr HANNA: Sir, I rise on a point of order. Notwithstanding the vote we have just taken, the fact is that standing order 242 clearly says that the bill shall not be proceeded with after certain things have happened. Those things happened: they cannot be taken back. It is a situation that cannot be remedied by a vote of the house because the standing orders in force at the time say that that bill cannot be proceeded with. It is not as simple as standing order 159, which says a further question cannot be put. It specifically refers to the constitution. So, these proceedings are not valid in relation to this bill and I urge you, Mr Speaker, to rule accordingly.

The SPEAKER: The house is the master of its own destiny, and the standing orders themselves are a creation of the house. The house, subject to the requirements of the constitution, can suspend those standing orders by an absolute majority. That is what it has done, and it is not a course of action available to the chair to defy the will of the house. The chair is the mere servant of the house.

Mr HANNA: Sir—

The Hon. K.O. FOLEY: Point of order, Mr Speaker.

Mr HANNA: —I have a procedural motion.

The Hon. K.O. FOLEY: No; I take precedence, Mr Speaker. The Leader of the Opposition just made an accusation across the chamber that the chair is the servant of the government. I would ask the leader to withdraw that remark.

Mrs Redmond interjecting:

The Hon. K.O. FOLEY: The leader has just asked me to test it. I will test it. The Leader of the Opposition just said that the Speaker of the parliament is a servant of the government. I ask her to stand, withdraw and apologise, otherwise we will test it.

Mr PISONI: I rise on a point of order, sir. Can we check with *Hansard*—

The SPEAKER: The member for Unley will take his seat.

Members interjecting:

The SPEAKER: Order! I did not hear the remark of the Leader of the Opposition. If she did say that, it is a reflection on the chair and I invite her to withdraw.

Members interjecting:

The SPEAKER: Order! I will take the Leader of the Opposition's word for whether she said it or not. If she says she did not say it, I will believe her.

Mrs Redmond interjecting:

The SPEAKER: Order! She did not say it.

Members interjecting:

The SPEAKER: Order! Did the Leader of the Opposition make a reflection upon the chair?

Mrs REDMOND: Yes, sir.

The SPEAKER: Then you must withdraw the reflection.

Mrs REDMOND: Sir, I withdraw the reflection.

The Hon. K.O. Foley: So, you said it?

The SPEAKER: Order! The motion before the house is that the bill now be read a second time. I will put the question. Those in favour—

Mr HANNA: And I am saying you cannot do it, sir.

The SPEAKER: I have already made a ruling on that.

Mr HANNA: The problem is that this never should have happened. All they are trying to do is cover up a mistake that they have made, and the purpose of the standing orders is not to do that.

The SPEAKER: Order! A motion has been moved by the Attorney-General. I propose to put the motion and members can vote accordingly.

Mr HANNA: I urge you not to do that, sir.

The SPEAKER: I thank you for your urgings, but the member for Mitchell will take his seat.

Mr Hanna interjecting:

The SPEAKER: The member for Mitchell will take his seat.

Mr Hanna interjecting:

The SPEAKER: The member for Mitchell will take his seat.

Mr Hanna interjecting:

The SPEAKER: The member for Mitchell will take his seat and stop defying the chair.

Mr Hanna interjecting:

The SPEAKER: The member for Mitchell will take his seat.

Mr Hanna interjecting:

The SPEAKER: The member for Mitchell will take his seat.

Mr Hanna interjecting:

The SPEAKER: The member for Mitchell will take his seat. I now put the motion. There being dissenting voices, the house must divide.

The house divided on the second reading:

While the division was being held:

Mr HANNA: Mr Speaker, while the bells are ringing, I point out that you did not, as required by standing order 242, count the number of members before putting the question. So, again, I say that this will not be a valid vote on the bill. That is another reason why it should not be presented to the upper house and it should not be presented to His Excellency the Governor.

Mrs REDMOND: I have a point of clarification, sir. The member for Mitchell raises what I think is a very good point. I would have thought that you have to rule on whether there is a valid commencement on this particular part. Mr Speaker, it seems to me that, in order for it to be put beyond question, you need to redo what you have just done.

The SPEAKER: I had only counted the house moments before. The bells had been ringing. It will be quite clear from the division whether or not there is an absolute majority of members present in support of the motion.

Mrs REDMOND: But, sir, the standing order clearly says that you have to count the house.

The SPEAKER: That is my ruling. There is a division in progress.

Mrs REDMOND: I dissent from that ruling, sir.

The SPEAKER: We have to conclude the division first.

Mr Hanna interjecting:

The SPEAKER: I am not entertaining any more points of order until we have concluded the division. I am not interested, member for Mitchell.

Mr Hanna interjecting:

The SPEAKER: I am not interested, member for Mitchell. We are in the process of a division.

Mr Hanna interjecting:

The SPEAKER: The member for Mitchell can take his seat.

AYES (25)

Atkinson, M.J. (teller)	Bedford, F.E.	Bignell, L.W.
Breuer, L.R.	Caica, P.	Ciccarello, V.
Conlon, P.F.	Foley, K.O.	Fox, C.C.
Geraghty, R.K.	Hill, J.D.	Kenyon, T.R.

AYES (25)

Key, S.W.	Koutsantonis, A.	Lomax-Smith, J.D.
O'Brien, M.F.	Piccolo, T.	Rankine, J.M.
Rann, M.D.	Simmons, L.A.	Stevens, L.
Thompson, M.G.	Weatherill, J.W.	White, P.L.
Wright, M.J.		

NOES (13)

Chapman, V.A.	Evans, I.F.	Goldsworthy, M.R.
Griffiths, S.P.	Gunn, G.M.	Hanna, K.
Maywald, K.A.	McEwen, R.J.	Penfold, E.M.
Pisoni, D.G.	Redmond, I.M. (teller)	Venning, I.H.
Williams, M.R.		

PAIRS (4)

Portolesi, G.	Hamilton-Smith, M.L.J.
Rau, J.R.	Pederick, A.S.

Majority of 12 for the ayes.

Second reading thus carried.

In committee.

Clause 1.

Mr HANNA: There is an issue here.

The Hon. M.J. Atkinson: Yes, I thought there would be.

Mr HANNA: Sorry, what was the Attorney-General's point?

The CHAIR: Order! The member for Mitchell will address the chair.

Mr HANNA: Yes; and the Attorney-General will not interject, I am sure, Madam Chair. I foreshadow that I do have amendments in relation to this legislation and, when I explain them, members will see the relevance to the first clause of the bill. The fact is that, as we have already said, the bill contains a mixture of basically four different propositions. One of them is quite popular in the community, one of them was favoured by the Constitutional Convention of 2003 and one of them I support. I know that there is support from many other members in the chamber for the notion that the upper house should have just four-year terms.

I object to the other three elements of the bill. They are: first, to reduce the number of members of the upper house; secondly, to give the president of the upper house an extra vote, that is to say, a deliberative vote, as well as a casting vote; and, thirdly, there is an elaborate deadlock provision which seems to have been inspired by the Senate's deadlock procedures.

As I have already indicated, not supporting those things but wishing one part of the bill to be carried through, there are a couple of options for members. One option is to vote against it at the second reading. For example, the member for Mount Gambier and the member for Chaffey did that, and I respect that point of view. Even if they favoured some elements and not others, I can understand why someone would wish to vote against the second reading outright. However, I took the view that, because I strongly favour one of the elements of the bill and not the other three, I should support the second reading of the bill and move an appropriate amendment so that, by the time it leaves this place, it has only that one proposition.

Members will note that there is an amendment in my name, and that amendment will be necessary if the proposition that the upper house should have four year terms is accepted by a majority of members in this house. We will have a debate about that when we get to the clause but, at this point, I need to foreshadow that the name of the bill will not be appropriate should the view that I am putting be accepted by a majority of members. Obviously, if I had my way, the bill would

not contain a provision dealing with the settlement of deadlocks, and that is part of the current title of the bill.

The Hon. M.J. Atkinson interjecting:

The CHAIR: Attorney, it would be useful if you would just listen in silence. The member for Mitchell.

Mr HANNA: I note that the current name of the bill refers to 'reform of Legislative Council and settlement of deadlocks on legislation', which are the words in the brackets in the formal title of the bill. I presume that, if the only remaining element of legislation after this house as a committee of the whole has dealt with it is that element which would stipulate a four year term for the upper house, we would probably just have 'reform of the Legislative Council' or 'reform of Legislative Council' or, indeed, 'four year terms for the Legislative Council', or something of that nature. I am not too fussed; perhaps that is a matter of negotiation about the precise wording. However, we certainly would not need the wording to stay as it is now.

I am not opposing the clause, but I do indicate that it would need to be recommitted if, indeed, the other three objectionable parts are knocked out and we are left with the proposition of the four year terms.

The Hon. K.A. MAYWALD: I rise to put the position of the National Party on the table and the reasons for opposing the second reading of the bill, and that is simply because the bill requires that the referendum questions will include all four components of the reform the government proposing and the National Party does not support all of them.

The National Party does support the reduction in the term from eight years to four years. The National Party has some concerns about the number being dropped from 22 to 16, but we would be happy to support that. However, we have great concerns about the issues for the settlement of deadlocks, and we will not be supporting those provisions, and the National Party does not support the other component in this bill, either.

To make it clear, there are reforms of the upper house that the National Party would like to see. We are concerned that a reduction in the number of members to 16 might be a little bit low, but we are happy to accept that one. We would be very supportive of four year terms and, if they were to be separated and voted on separately, we would be supporting those two measures but not the other two.

Mr HANNA: I want to make the point that, although I will join in the debate on these clauses, in a sense, I do so under protest; and I should not want it to be thought in acquiescence in the legitimacy of this bill.

Clause passed.

Progress reported; committee to sit again.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (R18+ FILMS) AMENDMENT BILL

Received from the Legislative Council and read a first time.

At 00:27 the house adjourned until Thursday 10 September 2009 at 10:30.