LEGISLATIVE COUNCIL

Thursday 1 November 2001

The PRESIDENT (Hon. J.C. Irwin) took the chair at 11 a.m. and read prayers.

STANDING ORDERS SUSPENSION

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15 p.m.

Motion carried.

RETAIL AND COMMERCIAL LEASES (CASUAL MALL LICENCES) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Retail and Commercial Leases Act 1995.

LAW REFORM (DELAY IN RESOLUTION OF PERSONAL INJURY CLAIMS) BILL

Adjourned debate on second reading.
(Continued from 2 October. Page 2305.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The opposition supports the bill which, first, seeks to insert into the Wrongs Act 1936 a new division entitled 'Unreasonable Delay in Resolution of Claim'. Secondly, it seeks to amend the Survival of Causes of Action Act 1940 by deleting references to obsolete causes of action.

I welcome the introduction of this bill and hope that it will address an unacceptable practice where claims for compensation have been unfairly delayed. Presently, the law provides an incentive to delay resolution of claims as a liability for damages for non-economic loss cease when the claimant dies. The bill creates a new entitlement to damages upon the application of personal representatives of a person who has claimed for damages or compensation but who has died before a resolution was reached.

Damages will be payable if a court or tribunal finds that the defendant knew, or ought to have known, that the claimant was at risk of dying before resolution of the claim and that such a claim was unreasonably delayed by the defendant. The court or tribunal will have discretion in awarding the damages, taking into account three factors as outlined by the Attorney. This includes a consideration of whether the defendant stood to be enriched or gain a benefit by the delay. That amount, when determined, is a liability for non-economic loss.

Importantly, a new section will be inserted into the Survival of Causes of Action Act to ensure that nothing in the act prevents an award for damages under section 35 (c). The second aspect of the bill seeks to delete reference to obsolete causes of actions in the Survival of Causes of Action Act 1940, which concerns actions for damages for adultery. The High Court ruled that such actions could not be maintained after 1 January 1976, leaving only defamation as an action. This amendment tidies up this aspect of the law.

I support the broad application of the government's bill which does not differentiate between causes of injuries. However, I also note the efforts of the Hon. Nick Xenophon in seeking a remedy to cases involving dust related diseases, which we also support.

The Hon. A.J. REDFORD secured the adjournment of the debate.

STATUTES AMENDMENT (MOBIL OIL REFINERIES) BILL

Adjourned debate on second reading.
(Continued from 24 October. Page 2446.)

The Hon. P. HOLLOWAY: I indicate that the opposition will not oppose this bill. Essentially, what is involved here is government industry assistance. Normally, if government was providing industry assistance to a particular firm, it would hopefully go before the Industries Development Committee of the parliament—although I understand that that has not always been the case of late, unfortunately—and it would be considered by that committee. All the details would be put forward to that committee. It is, of course, a committee that is confidential because the information that is provided to the IDC—

The Hon. A.J. Redford: Why don't you tell Kevin.

The Hon. P. HOLLOWAY: Well, if the Hon. Angus Redford looks at the act he will see that there are quite stringent confidentiality requirements.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: If the honourable member wishes to make allegations against members, let him do so. The Industry Development Committee, because it is a committee under which members are bound by significant confidentiality provisions, is normally provided with all of the details in relation to a particular proposal. The committee is assisted by government officers, and I know this because the IDC used to be a joint committee of parliament and so some of the members who have been around for a bit longer, such as the Hon. Carolyn Pickles, the Hon. Legh Davis and I, served on that committee prior to it being changed in 1992, when it became a subcommittee of the Economic and Finance Committee of parliament.

The point I am making, in relation to this debate, is that normally industry assistance of this type would be dealt with in that environment and that committee would be provided, on a confidential basis, with an analysis of the case for and against. The proposal before us has come as a result of extensive consideration. I know that because of the history of this matter as determined through the press. If we look back, we see that this matter was canvassed as far back as 4 March 2000, when the *Advertiser* announced that the state government and Mobil agreed to a rates cut of up to $770 000 for the Port Stanvac refinery and a deal to reduce Mobil's bill from about $1.1 million a year, as it then was, to as low as $330 000. So that was announced more than 18 months ago.

On 31 July last year the *Advertiser* told us that the future of Port Stanvac may be decided within a week, according to the Treasurer. Then it told us in August of that year that the Onkaparinga mayor, Ray Gilbert, expressed frustration about the continuing uncertainty over the future of local government rates. In September last year the *Advertiser* reported that a rescue package was expected to be tabled before parliament in the next 24 hours. If we move onto 2 February this year, the *Advertiser* again told us of a rescue package, thought to cost $1.2 million. The Mobil refinery manager, Glenn Henson, said 'the issue was a challenge for all concerned and

the refinery needed a more competitive formula under which to operate'. It was also around that time that the government announced changes to the composition of petroleum products, which was in itself a controversial issue, because it did add to the price of petrol at a time when the Commonwealth Government was itself reducing the GST on petrol in response—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: I am not going to go into those matters. I just point out that it may have had an impact on the arrangements and it was canvassed at the time. I just mention that for the record: this has been part of an ongoing process. On 16 May this year the *Advertiser* announced that the rescue package for Port Stanvac had been delayed by budget negotiations and then, in the last week or so, we have the announcement of this deal. As I mentioned earlier, I have not had the opportunity to study the virtues of that particular deal in detail. I suggest it would be impossible for anyone, based on the second reading explanation, to really do a thorough analysis of it. There is very limited information available to assess what the value of assistance is.

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: I am not sure about my colleague in another place. I am handling the matter for him but I assume there was a briefing on it. The point is, I do not know that any briefing in relation to the provisions of the bill itself could really do the sort of analysis that might be necessary to determine the virtues of this assistance, particularly if you are talking about the value of rate reductions. After all, the purpose of this particular measure is to reduce the rates paid by the Mobil Oil Refinery to the Onkaparinga council and, in return for the cut in rates, the state government is providing various measures of assistance to the Onkaparinga council.

We are told in the newspaper—which probably explains it better than the minister's second reading explanation (and I assume these are correct) that the government will contribute $1.5 million over six years in extra funding for emergency accommodation and community support; it will spend $532 000 on repairing erosion of the Witton Bluff at Port Noarlunga; and it will spend $390 000 over two years on economic development in the region and appoint three officers from the Department of Industry and Trade to work with the council on economic development, costing $200 000 over three years. In return, Mobil's rates will be phased down from $1.2 million in 2000-01 to $500 000 in 2003-04.

I stated earlier that, normally, this sort of assistance would not come before parliament. The only reason that it is before us now is that those adjustments to rates require a change to the indenture arrangements. There are two indentures that apply to the refinery and both of them are being adjusted to reflect the reduction in rates for the council. That is the only reason, I would suggest, why the bill has come before parliament.

Normally, industry assistance measures of this type would not come before the parliament, except through the Industries Development Committee, where they would normally be discussed. But to assess the value in terms of reduction in rates, according to the minister's explanation, if the refinery was rated using the standard formula used for other City of Onkaparinga properties, substantially lower rates would be payable. If one were to investigate that matter in any detail it would require access to local government information that would be—

The Hon. K.T. Griffin interjecting:

The Hon. P. HOLLOWAY: On what basis that is assessed, I do not know. But, as far as the opposition is concerned, this is a government industry assistance measure. We will not oppose it on that basis. We will just take the government's word that these measures are necessary to sustain the refinery in this state.

As I indicated earlier, it has been a long-running issue. All of us would be aware that refineries in Australia, particularly the smaller refineries, have been under some competitive pressure, and it is inevitable that there is a question mark over any oil refinery in this country that is not a large modern refinery. So, in principle, one has to accept that the continuity of the refinery in this state is an issue that the government will have to address.

There is one question that I would like to ask in relation to the assistance that is provided by the government, and that relates to the payment of cargo service charges on crude exports. We are told in the explanation to this bill that in 1994 the government abolished charges payable on imports of crude oil and condensate that was unloaded at Port Stanvac in return for a commitment from Mobil to a $50 million, three year investment program that has now been completed. But a charge remained on the outward loading of crude oil and condensate from the marine facilities at Port Stanvac.

It is argued that, if this charge were removed, that would enable Mobil to restructure its operations to improve the economic return of the refinery. So, for that reason, it states, the government agreed that cargo service charges payable on the outward loading of crude oil at Port Stanvac will be abolished. I ask the Treasurer: what is the cost of that measure? The history of those charges goes back to 1958, when cargo service charges were originally imposed as compensation for the loss of revenue that would have previously been received through the wharfage charges at Port Adelaide.

There is a long history to this matter. It is difficult for members who are not a party to all the negotiations that have happened over the past two or three years to assess whether or not this assistance is appropriate. As I have stated, normally in these matters, the Industries Assistance Commission would consider that sort of information, which would be provided on a confidential basis, and would make its decision accordingly. However, from the opposition's point of view, we accept that there are question marks over the future of this refinery, and some difficult issues have to be confronted. So, we will have to take the government's word that the levels of assistance provided are appropriate and, therefore, we will not oppose the bill.

The Hon. A.J. REDFORD secured the adjournment of the debate.

WATERWORKS (COMMERCIAL LAND RATING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 September. Page 2281.)

The Hon. T.G. ROBERTS: I have been chafing at the bit for the past two days to assist the government in passing this legislation.

The Hon. M.J. Elliott interjecting:

The Hon. T.G. ROBERTS: It is groundbreaking. The opposition supports the government's position in relation to the changes that it seeks to make to the system for valuing

water for commercial properties. The present system is based predominantly on a charge attached to the capital value of the land, and I am told that it is an arcane formula. I know that states have historically, when it has been in the ownership of the state, used water as a social justice initiative—in the best possible ways in some regimes; in other cases, it has been a revenue raising measure rather than the government having an eye on conservation and best possible use and encouraging minimal use of water.

I am not sure whether the new formula has those objectives but, if it is a volumetric formula (as I am told, although it is difficult for me to work that out, given the formula), if we are moving to a volumetric pay as you use formula, certainly, there will be an incentive for commercial users to minimise their costs by minimising the use and wastage. The opposition supports the bill. I was going to describe the formula, but it is adequately described in the second reading explanation and I refer those who would like to get a handle on its exact meaning and use to that. With those few words—and enthusiasm—I indicate that the opposition will support the bill.

The Hon. M.J. ELLIOTT: I rise on behalf of the Democrats to support the second reading of this bill. We get many pieces of legislation that use as an excuse the need for review under competition policy. Some of the changes we end up with are pretty ordinary, but this one is not. I think it is a necessary change. Certainly, in relation to domestic water, there is a very good argument for having a certain component of water that is provided as a matter of course, and it is only when people start using excess water (and what the appropriate level should be is another argument) that there is a pro rata charge. As I understand it, this will be pro rata charged from the first litre. That makes sense to me. I think we have to recognise that, worldwide, water is probably now being seen as the resource that will be most limited in terms of the future. I guess there was a time when people thought that oil or some other mineral would be the limited resource—perhaps food—but it really looks as though water will be the limited resource worldwide. If that is true, Australia—and South Australia—probably face some fairly special challenges in that area.

I think we need to recognise that water in South Australia probably is still too cheap. If water is an important and a limited resource, we really should be putting some very clear signals into the marketplace that encourage people to limit their use of water as much as possible. Certainly, pro rata rating is a step in the right direction. However, I think that we also should be flagging an intention to increase the price of water over a period of time—enough time for industries to accommodate, but also giving them very clear notice that things will change. Many industries already are learning that they can use water more efficiently—and, certainly, agriculture and horticulture has proven it, but some secondary industries also have done so.

I would hope that, in the near future, the government will take the next sensible step after pro rata rating and look at the price of the resource per litre and flag over a set time frame what it intends to do about it. In the longer run, that will have, I think, significant benefits for the economy. Certainly, if someone is told that one of their resources will become more expensive, they would say it is a disincentive, but we will not have a healthy economy in the long run if our water resources are not managed properly. The Democrats support the second reading.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

STATUTES AMENDMENT (ROAD SAFETY INITIATIVES) BILL

In committee.

(Continued from 25 October. Page 2470.)

Clause 8.

The Hon. DIANA LAIDLAW: I move:

Page 6, after line 14—Insert:

(7a) The Commissioner of Police must, not less than two days before the commencement of each prescribed period, cause a notice to be published in a newspaper circulating generally in the state stating the time at which the prescribed period commences and the time at which it finishes and containing advice about the powers members of the police force have under this section in relation to the prescribed period.

I indicated in summing up the second reading that the government, in response to comments made by members and representations from the RAA, would provide public notice of the declared days on which the mobile random breath testing would take place. This amendment realises that undertaking and provides:

The Commissioner of Police must, not less than two days before the commencement of each prescribed period, cause a notice to be published in a newspaper circulating generally in the state stating the time at which the prescribed period commences and the time at which it finishes and containing advice about the powers members of the police force have under this section in relation to a prescribed period.

We will be advertising at least two days before a prescribed period; it will be published in a newspaper and will include the times of operation and the powers of the police during that time of operation. I indicated, perhaps last week, that I have no doubt that the media generally, in terms of mobile random breath tests, will help us reinforce this move, through news headlines, talkback radio and television programming, and further publicise all the prescribed periods. Certainly, some of them find the time each night to advertise where speed cameras will be operating. As the prescribed periods will be only four times in a year, in addition to school holiday periods and public holidays, there will be plenty of interest in this matter.

The Hon. CAROLYN PICKLES: The opposition supports the amendment.

The Hon. T.G. CAMERON: I notice the wording is 'cause a notice to be published in a newspaper circulating generally'. Could the minister outline what she has in mind there? If it is to be a notice in the public notices section, most people will not read it. I am concerned that when this measure is introduced a lot of people will be very surprised about being pulled over by the police for no reason whatsoever and told to breathe into a breathalyser. Could the minister outline whether she intends to run a public education campaign; or will she rely merely on a notice to be published in a newspaper circulating generally? If so, could she be more forthcoming about what type of notice will be put in a newspaper? Will it be in a prominent position, for example, on the third page of the *Advertiser* so all motorists can read it?

The Hon. DIANA LAIDLAW: It can be placed anywhere in the paper and not just confined to the public notices section. As I said, I believe such a notice will lead to a general story and there will be interest in this matter. I have an undertaking in the meantime from the Minister for Police, Correctional Services and Emergency Services that the police

will be undertaking a public relations education campaign in relation to the introduction of this measure.

The Hon. T.G. CAMERON: I am a little disappointed with the minister's response. This major measure will be introduced and will impinge upon the civil liberties of the citizens of this state. Some 7 per cent to 8 per cent of the population have difficulty reading. Not everyone reads the daily newspaper. Does the minister intend to conduct any public education campaign surrounding this matter, rather than merely relying on placing an advertisement in the *Advertiser* and hoping the paper picks it up as a story and features it a little more prominently than an advertisement?

The Hon. DIANA LAIDLAW: I did indicate to members that the Minister for Police, Correctional Services and Emergency Services, through the Commissioner for Police, had indicated to me—and I pass it on to reassure the honourable member—that such an education campaign will be undertaken. That is the guarantee I have been given.

The Hon. T.G. CAMERON: Could the minister outline what public education campaigns she intends to run?

The Hon. DIANA LAIDLAW: I have said twice that this is an operational issue for the police. The Minister for Police, Correctional Services and Emergency Services, through the Commissioner for Police, will be undertaking the education campaign. The honourable member needs to think back to the Sturt Highway campaign that is being waged by the police. The media loves police stories, locally and in daily publications. I think, in terms of the general media interest in free editorials, this paid advertisement will prompt a great deal of debate and talkback. In addition, there is the public education campaign commitment by the Commissioner through the minister.

The Hon. T.G. CAMERON: As I understand the minister's answer, unless I have misunderstood it—and that is always possible—the nature of the advertisement will be determined by the police, not by the government. Is that correct?

The Hon. DIANA LAIDLAW: The amendment specifically provides that 'the Commissioner of Police must not less than two days before the commencement of each prescribed period cause a notice to be published in a newspaper circulating generally in the state'.

The Hon. T.G. CAMERON: That means that, in relation to the nature of the education campaign, and the form and nature of the notice to be published in the newspaper, provided that it contains the prescribed periods, the commencement time and finishing time and advice about the powers of police, he is at liberty to place whatever advertisement he likes and run whatever campaign, in his opinion, he thinks fit. I am a little concerned about the last two lines of that sentence, 'and containing advice about the powers members of the police force have under this section'.

Will the Commissioner of Police determine how much money is spent on the advertising campaign and, provided he meets the requirements set out in this clause, will he determine where and when the advertisement is placed, what form it takes, and so on? It provides that 'the Commissioner of Police must'. I am trying to find out what role the Minister for Police, Correctional Services and Emergency Services will play. Will he be discussing this advertisement and the education campaign? In particular, will anyone from government be having discussions with the Commissioner of Police about precisely what advice will be contained in this advertisement in respect of the powers of members of the police force? We are creating a situation here where we are going to ask the Minister for Police to set out what powers members of the police force have under this section, put it in a newspaper and make it part of a public education campaign. That all worries me a little.

The Hon. DIANA LAIDLAW: I am not sure why the honourable member is worried. I understood that he wanted people to be informed of the powers because of the civil liberties issues. Therefore, taking the honourable member's second reading contribution and his earlier comments on clause 1 into account, I thought it was prudent in this ad that the Commissioner of Police consider the powers and make it available publicly to all motorists so that they are better informed of the responsibilities and rights of the police and, equally, their rights as motorists. I would have thought that that was a good thing.

It does not generally happen, in terms of police campaigns, that notices of the campaign by law include an outline of police powers. I am genuinely surprised that, having taken this almost unprecedented step to say that the Police Commissioner must outline, in the public interest, what the police powers are during these four prescribed periods, the honourable member would be taking exception to it.

The Hon. T.G. Cameron: I am just trying to find out what he is going to put in this advertisement.

The Hon. DIANA LAIDLAW: Only the powers that you, I and other members of parliament give the police. We give the police the powers. We empower the police through the laws that we pass and only those powers, in terms of general policing, that have been facilitated through this place over decades.

The Hon. T.G. Cameron: You are putting one ad in the newspaper?

The Hon. DIANA LAIDLAW: Yes, but—

The Hon. T.G. Cameron: I am trying to ensure that we run a public education campaign and that the ads are placed prominently.

The Hon. DIANA LAIDLAW: I have given the honourable member—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: If the honourable member wishes to amend this—

The Hon. T.G. Cameron: You are telling me that it is all up to the Police Commissioner?

The Hon. DIANA LAIDLAW: It is, because it is an operational issue. I do not interfere, and the honourable member knows that. The honourable member also knows—and he is trying to beat this up a little—that operational issues are a matter for the Commissioner of Police. The honourable member knows that. He may not wish to recognise it but he knows it. Therefore, it must be the Commissioner of Police who places this ad about the operational issue. If the honourable member wishes me to amend it—and I am relaxed about doing so—and cause a notice to be published prominently in a newspaper, I am happy to do that. Would that relieve the honourable member's anxiety?

The Hon. T.G. CAMERON: When you sit down I can respond, if you like. I am happy to accept that undertaking from the minister.

The Hon. Diana Laidlaw: No; I am suggesting an amendment.

The Hon. T.G. CAMERON: I am happy to accept that suggested amendment, but the minister is either missing my point or I am not making it very well. Once we pass this clause, the Police Commissioner is required only to cause a notice to be published in a newspaper circulating generally

in the state. He is required to state the time at which the prescribed period commences and the time at which it finishes. That is it. That could be a one-inch ad on page 35 of the *Advertiser*. Despite what the new editor of the *Advertiser* might think, not everyone reads the *Advertiser*; not everyone can read.

My concern here is the opposite of what the minister is saying my position is. My concern here is to ensure that all motorists are aware that we are giving the police this power; that all motorists are aware that, during prescribed times, they can be stopped at any time for no reason whatsoever, be made to pull over and be given a breath test. The minister does not appreciate that there will be some problems when this measure is introduced. Some people will react to—perhaps even resent—being pulled over by the police.

I am concerned that innocent citizens, not aware of this law, will react and, perhaps, get themselves into more trouble by either arguing or refusing to take a breathalyser test, which raises the question: what if someone is completely unaware of this law, missed the Commissioner of Police's ad and says, 'Look, hang on a minute, I don't think you've got that right, officer. I don't intend to blow in it.'?

My understanding is that he or she is then committing a very serious offence—one which would result in an automatic loss of licence and a heavy fine. It is quite the contrary to what the minister is suggesting. I am trying to ensure that no motorist goes out on to the road during one of these prescribed periods unaware of the fact that his civil liberties have been stripped from him and that, during these periods, he can be stopped at any time of the day or night, for no reason whatsoever, and be forced to blow into a breathalyser; and, if he does not, he will be committing a serious offence.

The Hon. Carolyn Pickles interjecting:

The Hon. T.G. CAMERON: He or she. Old habits die hard. I have not learned to speak all that differently from when I was a kid. We could be creating situations where, because people are unaware of this law, they do not blow into the breathalyser and then automatically they lose their licence for six or 12 months. What I am trying to ensure, minister, is that the people of our state are made fully aware of this horrible law that you are about to foist on them. I want people to be fully aware that both the Labor and the Liberal parties are stripping people of their civil liberties before the next election.

The Hon. Carolyn Pickles interjecting:

The Hon. T.G. CAMERON: I resent the inference from the Leader of the Opposition that, in some way or other, my children are irresponsible drivers and might get killed on the road.

The Hon. Carolyn Pickles interjecting:

The Hon. T.G. CAMERON: The leader should confine her comments to her own family. She should leave my family out of this. I and their mother are their parents, not the leader. My advice to the leader is to mind her own business and just keep out of my family life. Getting back to subclause (7a)—

Members interjecting:

The Hon. T.G. CAMERON: That is my concern.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: I am now satisfied that the minister does understand it: 10 minutes ago she did not—she seemed to have the reverse view.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: If the minister wants to revert to hurling insults and taunts, if she wants to throw another one of her terrible, nasty little tantrums in this place, go ahead, minister.

The Hon. R.R. Roberts interjecting:

The Hon. T.G. CAMERON: The Hon. Ron Roberts has come in here to watch her. We may well bog down on this clause. I will now go to the second part of my concern about subclause (7a). The Commissioner of Police is going to set out in this advertisement advice about—and I am quoting from the provision—the powers members of the police force have under this provision. I ask the minister whether she could put on the parliamentary record what powers the police will have under this provision that will be appearing in this advertisement, or will that again be left entirely up to the Police Commissioner?

The Hon. DIANA LAIDLAW: The police commissioner prepares the advertisement and, as the honourable member is also aware (and it has been publicised widely this past week), a government communications group does look at government advertising and public relations campaigns. I have indicated that, through the Minister for Police, there is an undertaking that there will be a public relations campaign. It is in the government's interests, and generally parliament's interests, to see that motorists are informed. I do not believe that the honourable member would wish to suggest that we would deliberately withhold information to make life difficult for motorists.

I have said from the outset that this measure is about education as well as enforcement. Of course it is in everybody's interest that they be informed. I cannot guarantee that all motorists will wish to listen, even if we spend $100 million on a campaign. Not all motorists will wish to listen or acknowledge that they have heard the message, but certainly there will be a broad based campaign, and that will be checked off by the government communications unit. It may well include notices in envelopes for motor vehicle registration, and it may include television and radio. However, it is in the interests of motorists to be well informed, and that is part of the intention of this measure—education as well as enforcement. I remind the honourable member of the country areas issue, where seven times more people are caught drink driving than are caught in the city; and the honourable member himself volunteered the fact that 63 per cent of our road deaths are in rural areas.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: No, but that is why there is the public relations campaign—I acknowledged that.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: Good.

The Hon. T. CROTHERS: I will be brief. I am not sure that I share the same worries as my good colleague and friend the Hon. Mr Cameron, but I want to take up an issue with the minister in respect of the powers of the Commissioner of Police. Those of us who can go back that far would remember that Mr Lewis—formerly Sir Terrence—was dismissed as Commissioner of Police in Queensland after being accused of graft, corruption and dereliction of duty.

The Hon. T.G. Cameron: He was found guilty.

The Hon. T. CROTHERS: And found guilty. The problem I have with the minister is this: it is true that in respect of operational matters the Police Commissioner has control. There is no argument with that, but this parliament is responsible, as any rookie policeman will tell you, for legislation and instructions to the police. It is up to the Commissioner and his advisers to give interpretive effect to the laws passed by this parliament. To that extent I cannot

totally agree with the minister when she says that the Police Commissioner is above reproach—he is not. He is required to enforce his interpretation of the laws of this parliament. That would include instructions to him in respect of particular matters. I take issue with the minister there.

I am not as unhappy as the Hon. Mr Cameron about the matter he has raised, because I realise that there is precedent for the parliament to deal with those people. For instance, the Auditor-General is another officer of the parliament who may assume that he or she cannot be dismissed, but they can be dismissed by a joint sitting of the houses of parliament. A judge of the New South Wales Supreme Court was dismissed by the Queensland parliament. I am not unhappy with what the minister is saying, but I take issue with that. I do not know why she made that statement but, in case the statement is misinterpreted, I place what I have just said on the record.

The Hon. T.G. CAMERON: In relation to the public education program, I will not claim the credit for this as it should go to the Hon. Bob Sneath, who just suggested to me (and it is a commonsense suggestion) that the Department of Road Transport, in sending out registration or licence renewals, could also contain information telling drivers and owners of vehicles about the new powers. It is a sensible suggestion for the public education program.

The minister did not answer my question about the last two lines of this clause. The advertisement will contain advice about the powers of the police under this provision in relation to a prescribed period. Will there be any communication between the government and the Commissioner of Police? What advice will be included in the advertisement about the powers of the police?

I am about to vote on this provision, so I would like to have some idea about what the Commissioner of Police will put in the advertisement about the powers of the police, because I am not precisely clear myself and I would have thought that we should be clear. It begs the question: where are the regulations in relation to this bill? Have they been prepared? Has there been any work—

The Hon. Diana Laidlaw: I told you last week that no regulations are required.

The Hon. T.G. CAMERON: Will there be any communication between the government and the Commissioner of Police about what advice he will set out and what the advertisement will say about the powers of the police?

The Hon. DIANA LAIDLAW: With respect, the powers are those we are discussing now in relation to this bill, which introduces mobile random breath testing. They are the powers the police have and we are voting on them. There is to be this advice to members of the public through this ad, which I have suggested we should make sure is published prominently in a newspaper.

The Hon. T.G. CAMERON: It would appear that my question, despite having been asked three or four times, will not be answered.

The Hon. Diana Laidlaw: I have answered it.

The Hon. T.G. CAMERON: I am trying to ascertain precisely from you, as the minister dealing with this bill, what powers the police will have under this section.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: Perhaps you could outline it to me. It seems that this is what will go in the advertisement. If it is there, just point me to the provision and I will look at it.

The Hon. Diana Laidlaw: The provision is before you right now—we are debating it.

The Hon. T.G. CAMERON: I have just had a quick look at the bill again and I cannot see it, but perhaps the minister can point it out to me later. I come back to what powers the police will have under this provision. Will the minister advise the committee whether plain-clothes police officers travelling in unidentified police cars will also have the power to pull over people at any time for no reason? If they do have that power, will the police be required in any way whatsoever to identify themselves before a citizen pulls off to the side of the road and accepts their instruction?

The Hon. Diana Laidlaw: You know that that is always the case.

The Hon. T.G. CAMERON: Perhaps the minister could tell me what I know—I have asked the question.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: I am the one asking the question and you will not respond.

The Hon. DIANA LAIDLAW: I have responded—that is a terrifying prospect.

The Hon. T.G. Cameron: It will not take you long to tell me what I want to know.

The Hon. DIANA LAIDLAW: I know—that is why I say that it is a terrifying prospect. Under normal police responsibilities, plain-clothes police have the powers and it is required not only for police to produce their card but also to show the photograph and signature. It is a two-sided card, I understand, so that people can see not just the fact that they are a police officer but also check the photograph to see that the card has not been stolen. That is what is required. Those powers have been around since the police force started, I think.

The ACTING CHAIRMAN (Hon. J.S.L. Dawkins): I understand that the minister has not yet moved this amendment to the amendment and that the form of wording needs to be determined.

The Hon. DIANA LAIDLAW: After the word 'published' I would add the word 'prominently'.

The Hon. T.G. Cameron: Progress!

The Hon. DIANA LAIDLAW: Progress? I gave you that undertaking half an hour ago. I seek leave to move:

After the word 'published' insert the word 'prominently'.

The amendment would then read:

(7a) The Commissioner of Police must, not less than two days before the commencement of each prescribed period, cause a notice to be published prominently in a newspaper. . .

And it goes on.

Leave granted.

Amendment as amended carried.

The Hon. DIANA LAIDLAW: I move:

Page 6, lines 32 to 36—Leave out subclause (9) and insert:
(9) A certificate purporting to be signed by the minister and to certify that a specified period was a prescribed period for the purposes of this section is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matters so certified.

I have been alerted by Parliamentary Counsel to the fact that, since the bill was prepared and I introduced it, the dates of school holidays are no longer gazetted by the Minister for Education and Children's Services. This amendment allows for an evidentiary provision if this matter is ever taken to court.

Amendment carried; clause as amended passed.

Remaining clauses (9 to 11) passed.

The Hon. T.G. CAMERON: On a point of order, I was given an undertaking by the minister that I could put questions to her in relation to clause 6.

The Hon. DIANA LAIDLAW: I thought that the honourable member did not wish to pursue it. That undertaking was referred to last night. In the honourable member's absence we did not debate and pass this bill and pair him last night because I recalled the questions that he wished to ask.

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: I am kind and courteous, and anything you want to say that is pleasant! We will reconsider clause 6 to enable the Hon. Mr Cameron to ask the questions, as long as they too are reasonable.

Clause 6—reconsidered.

The Hon. T.G. CAMERON: I am just seeking clarification in relation to people who are caught exceeding the speed limit by 45km/h or more. As we look at new subsection (2)(a) it provides:

> the court must order that the person be disqualified from holding or obtaining a driver's licence for such period, being not less than three months, as the court thinks fit;

Can I get an interpretation on what that clause means? From my reading of it, a magistrate must disqualify the person from holding a driver's licence for a period of not less than three months but, if they wanted to, they could take the licence from them for 20 years. Is there any maximum there or will it be left entirely up to the court as it says, 'as the court thinks fit'? If that is the case, is the government able to explain what sort of penalties drivers might be given?

We have a 110 km/h speed limit in the country, and I am sure that all drivers at some stage or another have suddenly found that they are doing 105 or 110 in an 80 zone. That is not so bad, but if you happen to have made a mistake—and I know that sometimes drivers' mistakes cost lives, but drivers are human beings—we could have a situation where someone just overlooked the 60 km/h zone. They might even have their car on cruise control, as a lot of people do when they are driving in the country, in order to avoid going too fast and getting a speeding ticket, because it is very easy when you are driving in the country for the speed to creep up a little bit.

I know that in many instances you move from a 110 km/h zone to an 80 to a 60, but it may well be that there are some situations in which people are required to slow down from 110 to 60. So, a short oversight—in other words, being human and making a mistake—could see that person drive into a 60 km/h zone on cruise control, trying to do the right thing and not deliberately trying to flout or break the law, only to find that they have run into one of these speed camera machines that are placed so conveniently just after you move from an 80 km/h to a 60 km/h zone. Even as one is slowing down, the speed camera is positioned 200 metres past the sign and one is caught.

Are we creating a situation where we are catching somebody who has just made a mistake whereby they have simply not noticed the sign? It happens. I know it should not but it does. On my reading of this bill, that person, on hitting the 60 km/h zone, would then be liable under subclause 2(a). I would like some clarification. I do not have a problem with the automatic three-month disqualification but, if it is being left open ended so that the court can impose any kind of licence disqualification that it thinks fit, I think that we are giving the courts a little bit too much power in this instance. We very well could see a farmer—because this is where it will occur, minister, out in the country areas, in seats that are held by Liberal members of parliament, an Independent and a National Party member—on his way into town because he has a sick sheep and he wants to get it to the vet. In that particular state of mind, he may not see the sign.

The Hon. Carolyn Pickles interjecting:

The Hon. T.G. CAMERON: People who drive cars are human beings and they sometimes make a mistake. It is a question of what kind of penalty we impose when that mistake occurs. I know that mistakes cause accidents, injure and maim and, as we all know, kill people. I am trying to avoid a situation where a simple mistake is made and a farmer who might live 30 kilometres out of town and whose wife might not have a licence is severely penalised. What does that mean for his farm, his business? Let me tell you, minister, after spending a year living out in the country a few years ago, your licence is everything to you. Without it, you may as well be decapitated.

It is a little bit different here in the city. If you lose your licence for three months, you can easily walk to a bus stop to get to work, or you have a neighbour who will give you a lift; you can even catch a taxi to and from work every day if you like, although that can become horribly expensive with the cost of taxi fares these days. My concern with this provision is for country drivers, particularly those who must be in possession of a driver's licence to operate their business, which is usually a farming property.

The Hon. DIANA LAIDLAW: Disqualification from holding a licence is not a new issue to farmers. They know that that is the minimum penalty if they drink drive. We are simply extending that same minimum penalty, disqualification from holding a licence (but for a lesser period, I might add, than for a drink driving offence) to situations where there is excessive speed.

New South Wales, Victoria, Queensland and, I think, even Western Australia define excessive speed as 30 km/h above the maximum posted speed limit. In this bill we define it as 45 km/h, which is some 15 km/h lower than the other states. I do that reluctantly but I am trying to take in some of the circumstances that the honourable member has mentioned. So, in fact we have doubled again (and some would argue unwisely) what is seen as excessive speeding in all other states, the 30 km/h limit that the other states have imposed. Even the Northern Territory, which generally has unlimited speed limits, defines excessive speed as 30 km/h above the posted speed limit. It has not been suggested to me that South Australian farmers would have any greater difficulty with this than those that apply in the more populous states, even in the Northern Territory.

The Hon. T.G. CAMERON: I thank the minister for that answer, but she did not answer the nub of my question. The clause provides:

> The court must order that the person be disqualified.

And the last words are:

> . . . as the court thinks fit.

Does that mean that the court could impose any licence disqualification—six months, 12 months, 12 years? My reading of it is that they could ban somebody's licence forever.

In relation to the minister's analogy with drink driving, I point out that, when people go out and drink, it is a conscious, deliberate action. The example I gave the minister was not of somebody doing 115 km/h down Port Road or going through a 25 km/h school zone at over 70 km/h. What worries me about this clause is the impact that it will have on country people—the Liberal Party's natural constituency, if you like.

The Hon. R.R. Roberts interjecting:

The Hon. T.G. CAMERON: The Hon. Ron Roberts interjects and says, 'used to be', and he may well be right. I guess we will find out next March. My concern here is the penalty being imposed for what could be just a lapse of attention on the part of the driver. I am not trying to underestimate what that can mean in some instances. Even a split second loss of concentration can tragically end up in the loss of life. I am not talking about that. What I am talking about is the farmer who is consciously obeying the law, driving along the road and just happens to miss that sign.

The Hon. Diana Laidlaw: Negligence.

The Hon. T.G. CAMERON: It is negligence, is it? I guess country people will be pleased to hear the minister describing these situations as negligence. Negligence is driving down Port Road at 105 km/h. Out in the country, where you have been driving along for an hour or so and you just happen to miss one of these 60 km/h or 80 km/h zones, you could be placing yourself in a position where you lose your licence for the rest of your life.

The Hon. DIANA LAIDLAW: I remind the honourable member that he asked me to consider this as a member of government and, if I did not, he would introduce a private member's bill to cover exactly the circumstances that he is now talking about. If such an instance arises where a person does not see the sign and is negligent—that is how we have defined it in another amendment in this same bill—and grievously hurts or kills somebody, the incident that the honourable member is talking about now would be defined as negligent in the provisions that he has championed. I just point that out to keep this issue in some perspective. It was agreed then that, if we indicated in this place that it is okay to miss a sign, and you do not see that—

The Hon. T.G. Cameron: That is not what I am saying, minister.

The Hon. Carolyn Pickles: Traffic lights.

The Hon. DIANA LAIDLAW: Yes, traffic lights. Can you go through a traffic light and say that you made a mistake? The issue that we have—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: You can go—

The Hon. T.G. Cameron: There is no maximum here minister.

The Hon. DIANA LAIDLAW: No. That is provided for generally in the Road Traffic Act. If it is a minimum offence, we allow the court to take into account the circumstances. We did exactly the same regarding the definition of 'negligent driving': the court was to take into account the circumstances. This is what we are asking here. In terms of the honourable member saying he has championed country drivers, I would highlight the article that was in the paper—

The Hon. T.G. Cameron: That's what you say. Don't put words in my mouth.

The Hon. DIANA LAIDLAW: You said twice in the debate—

The Hon. T.G. Cameron: I didn't use the word 'championed' at all.

The Hon. DIANA LAIDLAW: Sorry, that was my interpretation. You were indicating that this was going to hit mainly country people—

The Hon. T.G. Cameron: It impacts mainly on country people.

The Hon. DIANA LAIDLAW: I would highlight the article in the paper on Monday of this week, page 13, where a driver recorded 151 km/h in a 60 km/h zone in Banksia Park. There are others. The places where the police have been focusing their attentions—the South-Eastern Freeway, the Main North Road—are the places that are considered dangerous, and I think the honourable member would be very sympathetic to this focus by the police. The issue we are raising in this measure is to provide for a specific offence of excessive speeding, to have a minimum penalty, and to provide discretion—

The Hon. T.G. Cameron: And no maximum speed.

The Hon. DIANA LAIDLAW: There are so many variable circumstances. The honourable member himself has noted that and, therefore, we have provided for the court to determine the circumstances. It would be ridiculous to see life disqualification but that could be appealed. Those provisions are there. We are simply providing the opportunity for the court to judge the circumstances based on the evidence of the police and the rights of the accused as they present their case.

The Hon. T.G. CAMERON: I thank the minister for her patience in answering my questions. There is one observation I would like to make. In South Australia we have a maximum speed limit of 110 km/h. The consequence of this clause is that, if you drive a vehicle at more than 155 km/h, even in the maximum allowed speed zone in South Australia, you can lose your licence forever. It is a fact of life that the state government—the motor vehicles registration department—registers motor vehicles to go out on our public roads. Some of those vehicles can attain speeds in excess of 300 km/h, nearly 200 km/h over the maximum allowable speed limit in this state.

In what sort of position do governments in this state place themselves if they register these vehicles, and then people go out and have an accident? Is there any way that some clever lawyer could issue a suit against the state government for registering—I hope we never get to this ridiculous point—vehicles that are capable of travelling on our roads at speeds in excess of double, and sometimes triple, the maximum allowable speed limit? We have now introduced a law where we license the driver, we register his vehicle but, if he goes out and uses it at a maximum speed of 155 km/h or more, we then take away that licence for God only knows how long. These things do not seem to be quite in sync with me. Would the minister care to make an observation?

The Hon. DIANA LAIDLAW: I have never quite understood why anybody would want one of these hotted up cars. It is mainly older men, in my understanding, who think they have an image problem. Now why they have an image problem I am not sure.

Members interjecting:

The Hon. DIANA LAIDLAW: I do not understand why you would need such a car but, if a person chooses to do so, they also choose to make that investment in the knowledge of what the law is.

The Hon. T. CROTHERS: As a former professional driver, I want to make an observation on what my colleague has said to bring him up to speed about the idiosyncrasies contained in his statement.

The Hon. T.G. Cameron: You have been a professional everything.

The Hon. T. CROTHERS: I am a professional knower of you as well. He has taken 'dirty' tablets this morning, or 'unhelpful' tablets: he has taken a dose. I want to make this point: it is very difficult to put governors on vehicles, because sometimes one needs to exceed the speed limit to get oneself out of trouble that is not of one's own making. How do you govern a vehicle when the speed limits differ from 60 km/h, to 80 km/h, to 100 km/h, to 110 km/h? They have to go to at

least 110 km/h. So what about the person? How do you protect the person who will exceed 60 km/h, or 80 km/h or 100 km/h? The question that was asked by my generally knowledgeable colleague, in my view, is a nonsense.

An honourable member interjecting:

The Hon. T. CROTHERS: Here is another one.

An honourable member: Have you been pinching my tablets?

The Hon. T. CROTHERS: Absolutely. The one thing that does concern me—

The Hon. L.H. Davis: This means war.

The Hon. T. CROTHERS: W-A-U-G-H? He is captain.

The Hon. T.G. Cameron: Only six more days.

The Hon. T. CROTHERS: The thing that concerns me, which is a much more relevant question—

The Hon. L.H. Davis: Have you 'burned rubber', Trevor?

The Hon. T. CROTHERS: It depends on what you are talking about, my friend. I will be very careful how I answer that. It could be incriminating. I think there is some risk in this law in this regard. Not many people in this state use that type of law. We are a state that seems to be going more and more for tourism. Someone who is used to driving in America on one of the freeways there, where there is almost an unlimited speed, if they are not aware of our road laws, runs the risk, though how you would deal with that person once they went back to their country of origin, I do not know. They could thumb their nose at you.

The Hon. T.G. Cameron: You write to them.

The Hon. T. CROTHERS: Even in Australia, I do not think there is a standard speed limit on the road in some areas. Basically there is, but not always. Interstate tourists, not being aware of our speeding provisions, will be captured under this law. That is why it is important, and I will agree with my colleague—

The Hon. Carolyn Pickles interjecting:

The Hon. T. CROTHERS: Yes. But slow, you see, darling, might be 100 km/h in their state and 80 km/h here. Do you not see that?

The Hon. Carolyn Pickles interjecting:

The Hon. T. CROTHERS: You cannot help people who do not have much grey matter between their ears, can you? The position is—

Members interjecting:

The Hon. T. CROTHERS: I have 'nasty' pills too. The position is, we may inadvertently catch people. I agree with what my colleague said about an education program. But how do you extend that to interstate and overseas visitors? There appears to be no defence to this matter, and that is what concerns me. There should be some form of defence. I agree with the bulk of everything that the minister is doing here but the fact that there is no defence is, to me, perhaps a potential problem in respect of attracting tourists to this state, because the best advertisement for tourism is by word of mouth of people who have previously visited this state as tourists. I would just like to hear an answer.

The Hon. DIANA LAIDLAW: I did not know about these 'dirty pills' that the Hon. Mr Cameron is alleged to have taken, but I might find out more about them later on and see whether we can avoid those days when my bills are for debate. The issues that the honourable member raised are serious matters—and they are serious whenever anyone travels to this country or generally travels overseas, and the onus is on them to be informed. I know that is not what the honourable member may think is the right practice, but it is, in terms of gaining your international driver's licence, where you are provided with a set of rules, and in each—

The Hon. T. Crothers: That is assuming that you have an international licence.

The Hon. DIANA LAIDLAW: I am not too sure that I know how to deal with that. Certainly, when hiring a car, they have to show their identification and their international driver's licence and those sorts of things and they are, again, provided with a set of our road rules. That is my understanding from the hire companies. That is why it is important in terms of how we then mark our roads, from a road safety perspective, to inform the driver who is new to an area as well as a person who is generally familiar. But the issue is broad, because the maximum speed in Victoria is 100 km/h. Our maximum speed here, and across most of Australia (except in the Northern Territory) is 110 km/h.

The Hon. T. Crothers interjecting:

The Hon. DIANA LAIDLAW: That is right. But that could happen irrespective of what we have before us now.

The CHAIRMAN: Have we completed the questions on recommitted clause 6?

The Hon. T.G. Cameron: There are no more questions.

Clause passed.

Title passed.

Bill read a third time and passed.

GENE TECHNOLOGY BILL

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

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): 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 Gene Technology Bill 2001 is the South Australian component of the national co-operative regulatory scheme for genetically modified organisms ('GMOs'). The Bill is necessary to ensure that coverage of the national scheme in this State is complete. All Australian Governments have worked together to establish the national scheme with the aim of protecting the safety of the Australian community and the Australian environment, by assessing and managing risks posed by or as a result of GMOs.

The national scheme includes the *Gene Technology Act 2000* of the Commonwealth which commenced on 21 June 2001 ('the Commonwealth Act') together with the Commonwealth Gene Technology Regulations; nationally consistent complementary State and Territory legislation, such as this Bill; a Gene Technology Intergovernmental Agreement; and, a Ministerial Council.

Tasmania has already passed its Gene Technology Bill. The Western Australian, Victorian and Queensland Governments have introduced Gene Technology Bills into their Parliaments.

The application of gene technology in the areas of medicine, agriculture, food production and environmental management is providing, or has the potential to provide benefits to South Australians. However, future benefits can only be realised if the community is confident that any associated risks are rigorously assessed and managed through regulation that is transparent and accountable.

The national regulatory scheme adopts a cautious approach to the regulation of GMOs which is transparent, accountable and based on best practice risk assessment and risk management.

Each 'dealing' with a GMO is assessed on a case by case basis to ensure that any risks are identified and that the level of regulation is commensurate with that risk. This approach will protect our community and environment without stultifying our research and development sector or unnecessarily limiting the possibility of South Australians gaining benefits from the application of gene technology.

Gene Technology Regulator

The Commonwealth Act established the Gene Technology Regulator ('the Regulator'). The Bill confers functions and powers on the Regulator in the same terms as the Commonwealth Act.

The Regulator is a statutory office holder with a high level of autonomy in administering the legislation. The Regulator has the ability to report directly to the Commonwealth Parliament. The office of the Gene Technology Regulator is located in the Commonwealth Department of Health and Aged Care.

Under this Bill and the Commonwealth Act, the Regulator is responsible for regulating 'dealings' with GMOs in South Australia through a national licensing system. 'Deal with' is defined widely in the Bill. For example it includes developing a GMO and conducting experiments with, breeding, growing, propagating and importing a GMO. Consequently it covers contained research, field trials and commercial release. The intentional release of a GMO into the environment in South Australia, such as a field trial with a GM crop or the commercial growth of a GM crop, is prohibited unless licensed by the Regulator.

In deciding whether to approve a licence authorising the release of a GMO into the environment in South Australia, such as growing a GM plant in a field trial or a general release, the Regulator considers the potential impact of the GMO on the environment and public health. The Regulator requires comprehensive information from an applicant on the impacts of the GMO on animals, plants, water, soils and biodiversity. The Regulator independently assesses the information provided, and also seeks additional information from a variety of sources.

The Regulator must be satisfied that any risks identified to the environment or public health can be managed before an application seeking authorisation of the release of a GMO into the environment can be approved. If the Regulator considers that these risks cannot be managed, the application for a licence to release that particular GMO into the environment will be rejected.

The decisions made by the Regulator are based on rigorous scientific assessment of risks to human and environmental safety and must also be consistent with policy principles issued by a Ministerial Council concerning social, cultural, ethical and other non-scientific matters.

All applications for licences which involve the release of GMOs into the environment are available to anyone who wishes to see them. Such applications are automatically provided to the States because the Regulator must seek the advice of States regarding matters relevant to the development of the risk assessment and risk management plan. The Regulator develops the risk assessment and risk management plan taking into account advice provided by States and Territory Governments; the gene technology technical advisory committee; Commonwealth agencies; local councils and the public.

In addition, the advice of the States must be sought regarding the Regulator's draft decision regarding whether or not to issue a licence authorising the release of a GMO into the environment and regarding any conditions to be applied to the licence. The Regulator also seeks the advice of the gene technology technical advisory committee; Commonwealth agencies; local councils and the public.

Ministerial Council

There is a Gene Technology Ministerial Council, on which each Australian jurisdiction will be represented, with the role of setting the policy framework within which the Regulator functions. SA is a member of the Council.

The Bill confers functions on the Ministerial Council in the same terms as the Commonwealth Act enabling it to issue policy principles on social, cultural, ethical and other non-scientific matters. The Regulator cannot act inconsistently with such policy principles. The Council can also issue policy guidelines on matters relevant to the functions of the Regulator and codes of practice which may be applied by the Regulator as a condition of licence.

Advisory committees

The Bill confers functions on three advisory committees in the same terms as the Commonwealth Act. The gene technology technical advisory committee, the gene technology community consultative committee and the gene technology ethics committee will provide advice to the Regulator and Ministerial Council.

Monitoring, enforcement and penalties

Under the Bill the Regulator has the power to appoint inspectors with extensive powers to undertake routine monitoring and spot checks in South Australia. The Bill provides for significant financial penalties and terms of imprisonment, of up to 5 years, for unlawful dealings with GMOs in this State.

Preserving the identity of non-GM crops in South Australia

The Bill and the Commonwealth Act enable the Gene Technology Ministerial Council to issue a policy principle requiring the Regulator to 'recognise areas designated under State law to separate GM and non-GM crops for marketing purposes'. This would enable, but not require States and Territories to enact legislation to designate such areas. These areas would only be recognised by the Regulator if declared for the purpose of preserving the identity of GM or non-GM crops for marketing purposes. As indicated previously, human and environmental safety are matters considered by the Regulator with advice from the gene technology technical advisory committee; State and Territory Governments; Commonwealth agencies; local councils; and, the public.

It is my objective, as the South Australian representative Minister on the Gene Technology Ministerial Council, to have that Council establish the policy principle which recognises 'GM crop restricted areas'. Once this policy principle is established then South Australian legislation can be introduced to effectively declare specific areas 'GM crop restricted areas'.

Currently only two GM crops are permitted to be grown commercially in this State. These are a violet-coloured carnation and a long vase-life carnation. A number of field trials with GM crops are being undertaken in South Australia with crops closest to readiness for commercialisation being canola and field pea. However, it is expected that these would not be commercially grown in this State prior to 2003 and then only if a licence from the Regulator allowed it.

Consequently, we have some time to deal with the issue of preserving the identity of non-GM crops in this State and this time is valuable because the issue requires the thorough consideration of a wide range of factors and implications. To facilitate community discussion of these factors and implications, the Government has released a discussion paper for public consultation titled *Preserving the identity of non-GM crops in South Australia*. The discussion paper highlights the highly complex nature of the issue.

The object of the Bill, like that of the Commonwealth Act with which it corresponds and is complementary, is to protect the safety of the community and the environment. The purpose of declaring 'GM crop restricted areas' may only relate to the marketing of crops which is clearly outside the intent of the Bill. Consequently, this Bill does not contain provisions for declaring 'GM crop restricted areas' in South Australia as it is not the appropriate place for such provisions.

If the State, after taking account of the results of the consultation process, should decide to legislate for 'GM crop restricted areas', it should be done once the Gene Technology Ministerial Council has established the policy principle and by an Act that is separate from the South Australian Gene Technology Act. Therefore, this Bill should proceed without such provisions.

In summary, the national regulatory scheme for GMOs adopts a cautious approach to the regulation of GMOs. It is transparent, accountable and based on best practice risk assessment and risk management. The Bill will form the corresponding South Australian law in the national scheme to ensure that the ability of the scheme to protect our South Australian community and South Australian environment is complete.

Explanation of clauses

The provisions of the Bill are as follows:

PART 1—PRELIMINARY

Clause 1

This clause is formal.

Clause 2

This clause will be brought into operation by proclamation.

Clause 3

Clause 3 provides that the object of this Bill is to protect the health and safety of people and the environment, by identifying risks posed by, or as a result of, gene technology, and by managing those risks through regulating certain dealings with genetically modified organisms (GMOs).

Clause 4

Clause 4 provides that the object of the Bill is to be achieved through a regulatory framework that will provide that where there are threats of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation and provides an efficient and effective system for the application of gene technologies. The object of the Bill is also to be achieved through a framework that operates in conjunction with other Commonwealth and State regulatory schemes relevant to GMOs and GMO products.

Clause 5

Clause 5 provides that it is intended by Parliament that the Bill form a component of a nationally consistent scheme for the regulation, by the Commonwealth, States and Territories, of certain dealings with GMOs.

Clause 6

Subclause (1) provides that the Bill will bind the Crown in right of South Australia and, so far as the legislative power of Parliament permits, in all its other capacities.

Subclause (2) provides that the Bill does not render the Crown liable to be prosecuted for an offence.

Clause 7

Clause 7 comprises a note that states that the Commonwealth Act includes a provision that extends that Act to every external Territory other than Norfolk Island.

Clause 8

Clause 8 comprises a note that states that the Commonwealth Act includes a provision that applies Chapter 2 of the Criminal Code to offences against that Act and construing penalty provisions in that Act.

Clause 8A

Subclauses (1) and (2) provide that in order to maintain consistency in numbering between this Bill and the *Gene Technology Act 2000* of the Commonwealth, if a section of the Commonwealth Act is not required in this Bill, the section number and heading of that section will be included in the Bill even though the body of that section will not be included.

Clause 8A further provides that if this Bill contains a clause that is not included in the Commonwealth Act, that section will be numbered so as to maintain consistency in numbering between sections common to the Bill and Commonwealth Act.

Clause 8(2) provides that a provision number and heading referred to in subclause (1)*(a)* form part of this Bill.

Clause 8B

Clause 8B provides that notes do not form part of the Bill.

Clause 8C

Clause 8C provides that the provisions appearing at the beginning of Parts 2-12, which outline those Parts, are only intended as a guide to readers regarding the general scheme and effect of that Part.

PART 2—INTERPRETATION AND OPERATION OF ACT

Division 1—Simplified outline

Clause 9

Clause 9 provides a simplified outline of this Part.

Division 2—Definitions

Clause 10

Clause 10 provides definitions of words and phrases used in the Bill.

Clause 11

Clause 11 describes the circumstances in which a dealing with a GMO will be considered to involve an intentional release into the environment.

Clause 12

Clause 12 comprises a note that states that the Commonwealth Act includes a provision defining 'corresponding State law' for the purposes of that Act.

Division 3—Operation of Act

Clause 13

Clause 13 comprises a note that states that the Commonwealth Act includes a provision about the application of that Act.

Clause 14

Clause 14 comprises a note that states that the Commonwealth Act includes a provision about the giving of wind-back notices by a State.

Clause 15

Clause 15 provides that the Bill is not intended to cover the field in respect of GMOs. The clause provides that the provisions of the Bill are in addition to, and not in substitution for, the requirements of any other law of South Australia, whether that law was passed or made before or after the commencement of this clause.

Division 4—Provisions to facilitate a nationally consistent scheme

Clause 16

Clause 16 comprises a notice that states that the Commonwealth includes a provision allowing State laws (apart from State laws prescribed for the purposes of the provision) to operate concurrently with that Act.

Clause 17

Clause 17 comprises a note that states that the Commonwealth Act includes a provision allowing corresponding State laws to confer functions, powers and duties on certain Commonwealth officers and bodies.

Clause 18

Subclause (1) provides that if an act or omission is an offence against the Bill and is also an offence against the Commonwealth Act, and the offender has been punished for the offence under the Commonwealth Act, then the offender is not liable to be punished for the offence under the Bill.

Subclause (2) provides that if a person has been ordered to pay a pecuniary penalty under the Commonwealth Act, the person is not liable to a pecuniary penalty under the Bill for the same conduct.

Clause 19

Clause 19 comprises a note about the review of decisions under the Commonwealth Act. A different scheme is provided by Part 12 of this Bill for decisions made under the South Australian law.

Clause 20

Clause 20 provides that licences, certificates and other things issued or done under the Bill remain valid although they may also have been done for the purposes of the Commonwealth Act.

Subdivision B—Policy principles, policy guidelines and codes of practice

Clause 21

Subclause (1) enables the Ministerial Council to issue policy principles in relation to specific issues.

Subclause (2) provides that the Ministerial Council must, before issuing a policy principle, be satisfied that the policy principle was developed in accordance with section 22 of the Commonwealth Act. Section 22 requires policy principles to be developed in consultation with specified bodies and groups and required that consultation must be in accordance with any guidelines issued by the Ministerial Council for the purposes of section 22.

Subclause (3) provides that regulations for the purposes of subclause (1)*(b)* may relate to matters beyond public health and safety and the environment, but they must not derogate from the protection of public health and safety or the environment.

Clause 22

Clause 22 comprises of a note that states that the Commonwealth Act includes a provision about how policy principles are to be developed.

Clause 23

Clause 23 allows the Ministerial Council to issue policy guidelines in relation to matters relevant to the Regulator's functions under this Bill or the regulations.

Clause 24

Clause 24 allows the Ministerial Council to issue codes of practice in relation to gene technology, that have been developed in accordance with the consultation requirements specified in section 24(2) of the Commonwealth Act.

Section 24(2) of the Commonwealth Act provides that the Ministerial Council must not issue a code of practice unless the code was developed by the Regulation in consultation with specific bodies and groups.

PART 3—THE GENE TECHNOLOGY REGULATOR

Clause 25

Clause 25 provides a simplified outline of the Part.

Clause 26

Clause 26 comprises a note that states that section 26 of the Commonwealth Act creates the office of Gene Technology Regulator.

Clause 27

Clause 27 sets out the functions of the Regulator.

Clause 28

Clause 28 provides that the Regulator has power to do all things necessary or convenient to be done in connection with the performance of the Regulator's functions under the Bill or the regulations.

Clause 29

Clause 29 provides that the delegates must comply with any directions of the Regulator.

Clause 30

Clause 30 provides that subject to the Bill and to other laws of South Australia, the Regulator has discretion in the performance of his or her functions or powers and the Regulator may not be directed by anyone in respect of whether or not a particular application for a GMO licence is issued or refused, nor in respect of the conditions to which a particular GMO licence is subject.

PART 4—REGULATION OF DEALINGS WITH GMOs

Division 1—Simplified outline

Clause 31

Clause 31 provides a simplified outline of the Part.

Division 2—Dealings with GMOs must be licensed

Clause 32

Clause 32 provides that dealings with GMOs are prohibited unless authorised by a GMO licence, a dealing is a notifiable low risk dealing, a dealing is an exempt dealing, or the dealing is included on the GMO Register.

Clause 33

Clause 33 describes the same offence as clause 32 but enables strict liability to apply in respect of the offence. Such offences are punishable by smaller pecuniary fines.

Clause 33(4) provides that in this clause 'exempt dealing' has the same meaning as in clause 32.

Clause 34

Clause 34(1) provides that a holder of a GMO licence is guilty of an offence if the holder intentionally acts or omits to take an action, knowing that the act or omission contravenes the licence or being reckless as to whether the act or omission contravenes the licence.

Clause 34(2) provides a similar offence for a person who is covered by GMO licence. However, in this case it will also be necessary for the prosecution to establish that the person had knowledge of the conditions of licence.

Clause 35

Clause 35 describes the same offences as clause 34 but enables strict liability to apply in respect of those offences.

Clause 36

Clause 36 provides that a person is guilty of an offence if the person deals with a GMO knowing that it is a GMO, and the dealing is on the GMO Register and contravenes a condition specified in the GMO Register (described in Part 6, Division 3) relating to the dealing. Strict liability applies in relation to establishing that the dealing is on the GMO Register and that the dealing contravened a condition on the Register.

Clause 37

Clause 37 provides that a person is guilty of an offence if the person deals with a GMO knowing that it is a GMO and the dealing is a notifiable low risk dealing, and the dealing contravenes the regulations. Strict liability applies in relation to establishing that the dealing is a notifiable low risk dealing and that it contravened the regulations.

Clause 38

Clause 38 describes the concept of an aggravated offence, as referred to in clauses 32, 33, 34 and 35. An aggravated offence is one that causes significant damage, or is likely to cause significant damage, to the health and safety of people or to the environment.

Clause 38(2) describes what the prosecution must prove in order to prove an aggravated offence.

PART 5—LICENSING SYSTEM

Division 1—Simplified Outline

Clause 39

Clause 39 provides a simplified outline of the Part.

Division 2—Licence applications

Clause 40

Clause 40 describes the requirements for applying to the Regulator for a licence authorising specified dealings with one or more specified GMOs by a person or persons.

Subclause (3) requires the application to specify whether any of the dealings proposed to be authorised by the licence would involve the intentional release of a GMO into the environment.

Subclause (4) sets out the kinds of dealings in respect of which a person may apply for a licence.

Subclause (5) provides that the applicant may apply for a licence that authorises dealings by a specified person or persons, a class of persons or all persons.

Subclause (6) requires the application to be accompanied by any application fee that may be prescribed.

Clause 41

Clause 41 allows the applicant to withdraw a licence application at any time before the licence is issued. However, the application fee is not refundable.

Clause 42

Clause 42 provides that the Regulator may by written notice require an applicant to give the Regulator further information. The notice may specify the period within which information is to be provided.

Clause 43

Clause 43 provides that the Regulator must consider an application under clause 40, but that the regulator is not required to consider the application in the circumstances listed under subclause (2).

Clause 44

Clause 44 provides that before considering an application in accordance with the requirements of Part 5, the Regulator may consult with the applicant or another regulatory agency with respect to any aspect of the application.

Clause 45

Clause 45 provides that if a person provides confidential commercial information in support of a licence application, the Regulator must not take that information into account in considering an application by another person for a GMO licence, unless the first person has given written consent for the information to be taken into account.

Division 3—Initial consideration of licences for dealing not involving intentional release of a GMO into the environment

Clause 46

Clause 46 provides that Division 3 applies to an application for a GMO licence where the Regulator is satisfied that none of the dealings proposed to be authorised by the licence would involve the intentional release of a GMO into the environment.

Clause 47

Clause 47 provides that before issuing a licence, the Regulator must prepare a risk assessment and risk management plan in relation to the dealings proposed to be authorised by the licence.

Subclause (2) and (3) provide that the matters that the Regulator must take into account in so doing and subclause (4) authorises the Regulator to consult with the States, the Gene Technology Technical Advisory Committee, relevant Commonwealth authorities, local councils and any other appropriate person, on any aspect of the application.

Division 4—Initial consideration of licences for dealings involving intentional release of a GMO into the environment

Clause 48

Clause 48 provides that Division 4 applies where the Regulator is satisfied that at least one of the dealings proposed to be authorised by the licence involves the intentional release of a GMO into the environment.

Clause 49

Clause 49 describes the process that the Regulator must follow, and the matters the Regulator must consider, if the Regulator is satisfied that at least one of the dealings proposed to be authorised by the licence may pose significant risks to the health and safety of people or the environment. This process includes publishing a notice in respect of the application in the *Gazette* and having regard to specific issues in order for the Regulator to be satisfied that the dealings may pose significant risks to public health and safety or the environment.

Clause 50

Clause 50 provides that, before issuing a licence, the Regulator must prepare a risk assessment and risk management plan with respect to the dealings proposed to be authorised by the licence.

Subclause (2) provides that the Regulator must do so irrespective of whether the Regulator was required to publish a notice under clause 49.

Subclause (3) provides that, in preparing a risk assessment and risk management plan, the Regulator must seek advice from specific parties, including the Gene Technology Technical Advisory Committee and the States.

Clause 51

Subclause (1) specifies the matters that must be considered by the Regulator in preparing the risk assessment. Those matters include the risks posed by the proposed dealings, public submissions made to the Regulator, and any advice provided by the Gene Technology Technical Advisory Committee, a Commonwealth authority or agency and the States.

Subclause (2) specifies the matters that must be considered by the Regulator in preparing the risk management plan.

Subclause (3) provides that, in ascertaining the means of managing the risks as mentioned in subclause (2)*(a)*, the Regulator is not limited to considering submissions or advice mentioned in subclauses (2)*(b)* to *(f)* and, subject to clause 45, may consider other information including relevant independent research. Clause 45 regulates the use of confidential commercial information.

Clause 52

Clause 52 describes the process the Regulator must follow after having prepared a draft risk assessment and risk management plan. This process includes publishing a notice in the *Government Gazette* advising that a risk assessment and risk management plan have been prepared and inviting submissions in relation to them. The Regulator is also required to seek advice on the risk assessment and risk

management plan from certain entities including the States and the Gene Technology Technical Advisory Committee.

Clause 53

Clause 53 allows the Regulator to take other actions for the purpose of deciding the application, in addition to those required by this Division. These actions may include holding a public hearing.

Subclauses (2) and (3) set out powers of the Regulator in relation to public hearings, including the capacity for the Regulator to give directions restricting the publication of evidence given at a public hearing.

Clause 54

Clause 54 provides that a person may request a copy of a licence application, risk assessment or risk management plan. The Regulator must provide the person with the information, excluding any confidential commercial information and any information about the applicant's relevant convictions (within the meaning of clause 58).

Division 5—Decision on licence etc.

Clause 55

Clause 55 provides that, after taking the steps required by Division 3 or 4 of Part 5 in relation to an application for a GMO licence, the Regulator must decide whether or not to issue a licence. If the Regulator decides to issue a licence, he or she may impose conditions to which the licence is subject.

Clause 56

Subclause (1) provides that the Regulator must not issue the licence unless he or she is satisfied that any risks posed by the dealings proposed to be authorised by the licence are able to be managed in such a way as to protect public health and safety and the environment.

Subclause (2) specifies the matters that the Regulator must have regard to for the purpose of subclause (1), including (where prepared) the risk management and risk management plan, and any submissions received under clause 52 in relation to the licence.

Clause 57

Clause 57 provides that the Regulator must not issue the licence if the Regulator is satisfied that issuing the licence would be inconsistent with a policy principle issued by the Ministerial Council under clause 21 and unless the Regulator is satisfied that the applicant is a suitable person to hold the licence.

Clause 58

Clause 58 provides the matters to which the Regulator must have regard to in deciding whether a natural person or a body corporate is a suitable person to hold a licence. The Regulator may have regard to other matters, in addition to those specified under subclauses (1) and (2).

Clause 59

Clause 59 provides that the Regulator must provide written notification to the applicant of the Regulator's decision, including any conditions imposed

Clause 60

Clause 60 provides that a licence issued under the Bill continues in force either until the end of a specified period, or until it is cancelled or surrendered.

Subclause (2) provides that a licence is not in force during any period of suspension.

Division 6—Conditions of licence

Clause 61

Clause 61 provides that licences may be subject to a range of conditions, including conditions set out in clauses 63, 64 and 65, conditions prescribed by the regulations and conditions imposed by the Regulator at the time of issuing the licence at any time thereafter.

Clause 62

Clause 62 describes matters which licence conditions may include and to which they may relate.

Clause 63

Clause 63 deals with conditions that must be imposed on a GMO licence.

Subclause (1) makes it a condition of a licence that the licence holder inform any person covered by the licence, to whom a particular condition of the licence applies, of the following: the particular condition applying to the person (including any variation of it), the cancellation or suspension of the licence, and the licence holder's surrender of the licence.

Subclause (2) provides that the requirements regarding the manner in which information is provided under subclause (1) may be prescribed by the regulations or specified by the Regulator.

Subclause (3) provides that such requirements may include measures relating to labelling, packaging, conducting training and providing information.

Subclause (4) makes it a condition of a licence that, where requirements for informing people covered by a licence have been prescribed or specified, the licence holder must comply with those requirements.

Clause 64

Subclause (1) provides that, where a person is authorised by a licence to deal with a GMO, and a particular licence condition applies to that dealing, it is a condition of the licence that the person authorised to deal with the GMO must allow the Regulator (or delegate) to enter premises where the dealing is being undertaken, for the purposes of auditing or monitoring the dealing.

Subclause (2) provides that subclause (1) does not limit the conditions that may be imposed by the Regulator or prescribed by the regulations.

Clause 65

This clause makes it a condition of a licence that the licence holder provides information to the Regulator in the following circumstances—

- where he or she becomes aware of additional information as to any risks to public health and safety or to the environment, associated with the dealings authorised by the licence; or
- where he or she becomes aware of any contraventions of the licence by a person covered by the licence; or
- where he or she becomes aware of any unintended effects of the dealings authorised by the licence.

Subclause (2) provides that the licence holder is taken to have become aware of additional information of the kind mentioned under subclause (1) if he or she was reckless as to whether such information existed. The licence holder is also taken to have become aware of contraventions or unintended effects of a kind mentioned in subclause (1) if he or she was reckless as to whether such contraventions had occurred or unintended effects existed.

Clause 66

This clause provides that a person covered by a licence may inform the Regulator if he or she becomes aware of the following: additional information as to any risks to public health and safety or the environment associated with the dealings authorised by the licence; any contraventions of the licence by a person covered by the licence; or any unintended effects of the authorised dealings.

Clause 67

This clause provides that civil proceedings may not be brought against a person who has given information to the Regulator under clause 65 or 66, because another person has suffered loss, damage or injury as the result of that disclosure.

Division 7—Suspension, cancellation and variation of licences

Clause 68

This clause gives the Regulator the power to suspend or cancel a licence. This power may be exercised by the Regulator by giving written notice to the licence holder. The grounds for the exercise of this power are listed in this clause and include: the Regulator's belief on reasonable grounds that there has been a breach of a licence condition; or the Regulator becoming aware of risks associated with the continuation of the authorised dealings and being satisfied that the licensee has not proposed or is not in a position to implement, adequate measures to deal with those risks.

Clause 69

This clause allows a licence holder to surrender a licence, with the consent of the Regulator.

Clause 70

Subclause (1) provides that a licence holder and a transferee may jointly apply to the Regulator for the licence to be transferred to the transferee.

Subclause (2) provides that the application must be in writing and must include information prescribed in the regulations (if any) and information specified in writing by the Regulator.

Subclause (3) requires that the Regulator must not transfer the licence unless satisfied that any risks posed by the authorised dealings will continue to be able to be managed in such a way as to protect public health and safety and the environment.

Subclause (4) provides that the Regulator must not transfer the licence unless satisfied that the transferee is a suitable person to hold the licence.

Subclause (5) requires that the Regulator provide written notice of his or her decision to the licence holder and the transferee.

Subclause (6) provides that if the Regulator decides to transfer the licence, the transfer takes effect on the date specified in the written notice and the licence continues in force as mentioned in clause 60 and is subject to the same conditions as in force immediately before the transfer.

Clause 71

This clause allows the Regulator to vary a licence at any time, by written notice given to the licence holder.

Subclause (2) provides that the Regulator must not vary a licence so as to authorise dealings involving the intentional release of a GMO into the environment if the application for the licence was originally considered under Division 3 of Part 5 (which deals with licence applications where there is to be no release of the GMO into the environment).

Subclause (3) provides that without limiting subclause (1), the Regulator may impose conditions or additional conditions, or remove or vary conditions imposed by the Regulator, or extend or reduce the authority granted by the licence.

Subclause (4) provides that the Regulator must not vary a licence unless satisfied that any risks posed by the dealings proposed to be authorised by the licence as varied, are able to be managed so as to protect public health and safety and the environment.

Clause 72

Clause 72 requires the Regulator to give written notice of a proposed suspension, cancellation or variation to the licence holder, before suspending, cancelling or varying a licence. The notice must state the Regulator's intentions with respect to the licence. The notice may require the licence holder to give the Regulator specific information which is relevant to the proposed changes to the licence, and may invite the licence holder to make a written submission to the Regulator about the proposed suspension, cancellation or variation. The notice must specify a period within which the licence holder must give information requested under subclause (2)*(b)* or make a written submission under subclause (2)*(c)*. This period must not end earlier than 30 days after the day on which the notice was given.

Subclause (5) provides that the requirements set out in this clause do not apply where the suspension, cancellation or variation has been requested by the licence holder.

Subclause (6) provides that clause 72 does not apply to a suspension, cancellation or variation of a licence if the Regulator considers such as being necessary to avoid an imminent risk of death, serious illness, serious injury or serious damage to the environment.

Division 8—Annual charge

Clause 72A

Clause 72A provides that any person who is the holder of a GMO licence at any time during a financial year is liable to pay a charge for the licence for that year.

PART 6—REGULATION OF NOTIFIABLE LOW RISK DEALINGS AND DEALINGS ON THE GMO REGISTER

Division 1—Simplified outline

Clause 73

This clause provides a simplified outline of the Part.

Division 2—Notifiable low risk dealings

Clause 74

This clause allows regulations to be made which declare a dealing with a GMO to be a notifiable low risk dealing for the purposes of this Bill.

Subclause (2) provides that before such regulations are made the Regulator must be satisfied that the dealing would not involve the intentional release of a GMO into the environment.

Subclause (3) specifies the matters to be considered by the Regulator before regulations are made prescribing notifiable low risk dealings. These include whether the GMO is biologically contained so that it is not able to survive or reproduce without human intervention and whether the dealing would involve minimal risk to public health and safety and to the environment, taking into account the properties of the GMO as a pathogen or pest and the toxicity of any proteins produced by the GMO.

Subclause (4) provides that where regulations are made prescribing certain dealings as notifiable low risk dealings, the regulations may be expressed to apply to all dealings with a GMO or specified class of GMOs; or a specified class of dealings with a GMO or with a specified class of GMOs; or one or more specified dealings with a GMO or with a specified class of GMOs.

Clause 75

Subclause (1) allows regulations to be made which regulate a specified notifiable low risk dealing, or a specified class of notifiable low risk dealings for the purpose of protecting public health and safety or the environment.

Subclause (2) specifies that the regulations may prescribe different requirements to be complied with in different situations or by different persons including requirements in relation to: the class of person who may undertake notifiable low risk dealings; notification of the dealings to the Regulator; supervision by an Institutional Biosafety Committee; and the containment level of facilities in which such dealings are undertaken.

Division 3—The GMO Register

Clause 76

This clause comprises a note that states that section 76 of the Commonwealth Act provides for the establishment and maintenance of the GMO Register.

Clause 77

This clause provides that, where the Regulator determines that a dealing with a GMO is to be included on the GMO Register, the Register must contain: a description of the dealing with the GMO; and any condition(s) to which the dealing is subject.

Clause 78

Clause 78 provides that the Regulator may place a dealing with a GMO on the Register if satisfied that the dealing is, or has been, authorised by a GMO licence or the GMO is a GM product and is a genetically modified organism only because it has been declared as such by the regulations.

Clause 79

Subclause (1) prevents the Regulator from placing a dealing with a GMO on the Register unless the Regulator is satisfied that any risks posed by the dealing are minimal, and that it is not necessary for the persons undertaking the dealing to hold, or be covered by, a GMO licence in order to protect public health and safety or the environment.

For the purposes of subclause (1) the Regulator must have regard to the matters specified under subclause (2), which include any data available to the Regulator concerning adverse effects posed by the dealing, and may have regard to any other matters that the Regulator considers relevant.

Clause 80

This clause allows the Regulator to vary the GMO Register by written determination. A variation may remove a dealing from the GMO Register; revoke or vary conditions to which the dealing is subject; or impose additional conditions on the dealing.

Clause 81

This clause comprises a note that states that section 81 of the Commonwealth Act requires the Regulator to permit any person to inspect the GMO Register.

PART 7—CERTIFICATION AND ACCREDITATION

Division 1—Simplified Outline

Clause 82

This clause provides a simplified outline of the Part.

Division 2—Certification

Clause 83

This clause allows a person to apply to the Regulator for certification of a facility to a particular containment level. The application must be in writing, must contain such information as the Regulator requires, and be accompanied by the application fee (if any) as prescribed by the regulations.

Clause 84

This clause authorises the Regulator to certify the facility to a specified containment level if it meets the containment requirements specified in guidelines issued by the Regulator under clause 90.

Clause 85

This clause authorises the Regulator to request an applicant for certification of a facility to provide further information regarding the application as the Regulator requires. The written notice which requests the information may specify the period within which information must be provided.

Clause 86

This clause provides that the certification of a facility is subject to several conditions: those imposed by the Regulator at the time of certification; those imposed after certification varying the original certification; and any conditions prescribed by the regulations.

Clause 87

This clause authorised the Regulator to vary the certification of a facility.

Clause 88

This clause authorises the Regulator to suspend or cancel the certification of a facility if he or she believes on reasonable grounds that a condition of the certification has been breached.

Clause 89

Subclause (1) requires that, before suspending, cancelling or varying a certification, the Regulator must provide written notice of this proposal to the holder of the certification.

Subclause (2) states the formal requirements for the notice and provides that the notice may require the holder of the certification to provide specific information relevant to the proposed suspension,

cancellation or variation and invite the holder to provide a written submission within a designated timeframe. This period must not be less than 30 days after the day on which the notice was given.

Subclause (4) provides that the Regulator must consider any written submissions made to him or her.

Subclause (5) provides that clause 89 does not apply where the suspension, cancellation or variation is requested by the holder of the certification.

Subclause (6) provides that clause 89 does not apply where the Regulator considers that the action is necessary to avoid an imminent risk of death, serious illness, serious injury or serious damage to the environment.

Clause 90

This clause authorises the Regulator to issue technical or procedural guidelines regarding the requirements for the certification of facilities to specified containment levels and to vary or revoke those guidelines by written instrument.

Division 3—Accredited organisations

Clause 91

This clause enables a person to apply to the Regulator for accreditation of an organisation. The application must be in writing, and contain such information as the Regulator requires.

Clause 92

Subclause (1) enables the Regulator to accredit an organisation by written instrument.

Subclause (2) provides that in deciding whether to accredit the organisation, the Regulator must have regard to several matters including whether the organisation has established, or proposes to establish, an Institutional Biosafety Committee in accordance with guidelines under clause 98.

Clause 93

This clause enables the Regulator to require an applicant for accreditation of an organisation to provide further information in relation to the application. The notice requiring the information may specify a period within which the information is to be provided.

Clause 94

This clause provides that the accreditation of an accredited organisation is subject to any conditions imposed by the Regulator at the time of the accreditation, conditions imposed by the Regulator after accreditation which vary the organisation's original accreditation, and any conditions prescribed by the regulations.

Clause 95

This clause authorises the Regulator to vary the organisation's accreditation, at any time, by notice in writing.

Clause 96

This clause authorises the Regulator to suspend or cancel the accreditation of an organisation if the Regulator believes on reasonable grounds that a condition of the accreditation has been breached.

Clause 97

This clause provides that before suspending, cancelling or varying an accreditation, the Regulator must provide notice in writing of this proposal to the holder of the accreditation.

Subclause (2) states the formal requirements for the notice and provides that the notice may require the holder of the accreditation to provide specific information relevant to the proposed suspension, cancellation or variation and may invite the holder of the accreditation to provide a written submission within a designated timeframe. This period must not be less than 30 days after the day on which the notice was given.

Subclause (4) provides that the Regulator must consider any written submissions made to him or her.

Subclause (5) provides that clause 97 does not apply where the suspension, cancellation or variation is requested by the holder of the accreditation.

Subclause (6) provides that clause 97 does not apply where the Regulator considers that the action is necessary to avoid an imminent risk of death, serious illness, serious injury or serious damage to the environment.

Clause 98

This clause authorises the Regulator to issue technical or procedural guidelines regarding requirements that must be satisfied in order for an organisation to be accredited under Division 3.

Subclause (2) provides that such guidelines may relate to, but are not limited to, the establishment and maintenance of Institutional Biosafety Committees.

Subclause (3) authorises the Regulator to vary or revoke the guidelines by written instrument.

PART 8—THE GENE TECHNOLOGY TECHNICAL ADVISORY COMMITTEE, THE GENE TECHNOLOGY COMMUNITY CONSULTATIVE COMMITTEE AND THE GENE TECHNOLOGY ETHICS COMMITTEE

Division 1—Simplified outline

Clause 99

This clause provides a simplified outline of the Part.

Division 2—The Gene Technology Technical Advisory Committee

Clause 100

This clause comprises a note that states that section 100 of the Commonwealth Act provides for the establishment and membership of the Gene Technology Technical Advisory Committee.

Clause 101

This clause provides that the function of the Gene Technology Technical Advisory Committee is to provide scientific and technical advice, on the request of the Regulator or the Ministerial Council, on a range of specific matters including gene technology, GMOs and GM products and the biosafety aspects of gene technology.

Clause 102

This clause comprises a note that states that section 102 of the Commonwealth Act provides for the appointment of expert advisers to the Gene Technology Advisory Committee.

Clause 103

This clause comprises a note that states that section 103 of the Commonwealth Act provides for the payment of remuneration and allowances to members of, and expert advisers to, the Gene Technology Technical Advisory Committee.

Clause 104

This clause comprises a note that states that section 104 of the Commonwealth Act empowers the making of regulations relating to the membership and operation of the Gene Technology Technical Advisory Committee.

Clause 105

This clause comprises a note that states that section 105 of the Commonwealth Act deals with the establishment of subcommittees by the Gene Technology Technical Advisory Committee.

Division 3—The Gene Technology Community Consultative Committee

Clause 106

This clause comprises a note that states that section 106 of the Commonwealth Act establishes the Gene Technology Community Consultative Committee.

Clause 107

This clause provides that the function of the Consultative Committee is to provide advice, on the request of the Regulator or the Ministerial Council, on specific matters including matters of general concern identified by the Regulator with respect to applications made under this Bill.

Clause 108

This clause comprises a note that states that section 108 of the Commonwealth Act provides for the membership of the Consultative Committee.

Clause 109

This clause comprises a note that states that section 109 of the Commonwealth Act provides for the payment of remuneration and allowances to members of the Consultative Committee.

Clause 110

This clause comprises a note that states that section 110 of the Commonwealth Act empowers the making of regulations relating to the membership and operation of the Consultative Committee.

Clause 110A

This clause comprises a note that states that section 110A of the Commonwealth Act deals with the establishment of subcommittees by the Consultative Committee.

Division 4—The Gene Technology Ethics Committee

Clause 111

This clause comprises a note that states that section 111 of the Commonwealth Act provides for the establishment and membership of the Gene Technology Ethics Committee.

Clause 112

This clause provides that the function of the Ethics Committee is to provide advice, on the request of the Regulator or the Ministerial Council on specific matters including ethical issues relating to gene technology.

Clause 113

This clause comprises a note that states that section 113 of the

Commonwealth Act provides for the appointment of expert advisers to the Ethics Committee.

Clause 114

This clause comprises a note that states that section 114 of the Commonwealth Act provides for the payment of remuneration and allowances to members of, and expert advisers to, the Ethics Committee.

Clause 115

This clause comprises a note that states that section 115 of the Commonwealth Act empowers the making of regulations relating to the membership and operation of the Ethics Committee.

Clause 116

This clause comprises a note that states that section 116 of the Commonwealth Act deals with the establishment of subcommittees by the Ethics Committee.

PART 9—ADMINISTRATION

Division 1—Simplified outline

Clause 117

This clause provides a simplified outline of the Part.

Division 2—Appointment and conditions of Regulator

Clause 118

This clause comprises a note that states that section 118 of the Commonwealth Act provides for the appointment of the Regulator.

Clause 119

This clause comprises a note that states that section 119 of the Commonwealth Act sets out the circumstances in which the Regulator's appointment may be terminated.

Clause 120

This clause comprises a note that states that section 120 of the Commonwealth Act requires the Regulator to disclose his or her interests to the Minister.

Clause 121

This clause comprises a note that states that section 121 of the Commonwealth Act deals with the appointment of a person to act as the Regulator.

Clause 122

This clause comprises a note that states that section 122 of the Commonwealth Act deals with the terms and conditions of appointment of the Regulator.

Clause 123

This clause comprises a note that states that section 123 of the Commonwealth Act prohibits the Regulator from engaging in paid outside employment without the approval of the Minister.

Clause 124

This clause comprises a note that states that section 124 of the Commonwealth Act provides for the payment of remuneration and allowances to the Regulator.

Clause 125

This clause comprises a note that states that section 125 of the Commonwealth Act deals with the entitlement of the Regulator to leave of absence.

Clause 126

This clause comprises a note that states that section 126 of the Commonwealth Act deals with the procedure for resignation by the Regulator.

Division 3—Money

Clause 127

This clause provides that the Regulator may charge for services provided by, or on behalf of, the Regulator in the performance of his or her functions under this Bill and the regulations.

Clause 128

As the Bill applies to the Crown in all its capacities including the Crown in right of South Australia, clause 128(1) has been included to clarify that fees and charges under the Bill and the regulations are notionally payable by the State and bodies representing the State.

Clause 129

This clause comprises a note that states that section 129 of the Commonwealth Act provides for the establishment of the Gene Technology Account.

Clause 130

This clause provides that certain amounts must be paid to the Commonwealth for crediting to the Gene Technology Account.

Subclause (2) provides that the Consolidated Fund is appropriated to the extent necessary to enable amounts to be paid to the Commonwealth in accordance with subclause (1).

Clause 131

This clause provides that the amounts specified under paragraphs *(a)* to *(c)* may be recovered in court as debts due to the State of South Australia.

Clause 132

This clause comprises a note that states that section 132 of the Commonwealth Act sets out the purposes for which money in the Gene Technology Account may be expended.

Division 4—Staffing

Clause 133

This clause comprises a note that states that section 133 of the Commonwealth Act provides for staff to be made available to assist the Regulator.

Clause 134

This clause comprises a note that states that section 134 of the Commonwealth Act enables the Regulator to engage consultants.

Clause 135

This clause comprises a note that states that section 135 of the Commonwealth Act provides for staff to be seconded to the Regulator.

Division 5—Reporting requirements

Clause 136

This clause requires the Regulator to provide the Minister with an annual report on the operations of the Regulator under this Bill and regulations.

Clause 136A

This clause requires the Regulator to provide the Minister with quarterly reports on the Regulator's operations under the Bill and the regulations. The report must include information on various matters including GMO licences issued during the quarter. The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

Clause 137

Subclause (1) provides that the Regulator may, at any time, cause a report about matters relating to the Regulator's functions under this Bill and the regulations to be laid before each House of Parliament.

Subclause (2) requires the Regulator to give a copy of the report to the Minister.

Division 6—Record of GMO and GM product dealings

Clause 138

This clause provides that the Record of GMO and GM product dealings (which is to be maintained by the Regulator) must contain specific information (other than confidential commercial information), in relation to licences issued under clause 55. The Record must also contain specific information (other than confidential commercial information) in relation to each notifiable low risk dealing that is notified in accordance with regulations under clause 75. The Record must also contain any information (excluding confidential commercial information) prescribed by the regulations regarding GM products mentioned in designated notifications provided to the Regulator under any Act.

The Record must also contain a description of each dealing on the GMO Register and any condition to which the dealing is subject. This information must be entered on the Record as soon as is reasonably practicable.

Clause 139

This clause comprises a note that states that section 139 of the Commonwealth Act requires the Regulator to permit any person to inspect the Record.

Division 7—Reviews of notifiable low risk dealings and exemptions

Clause 140

This clause allows the Regulator, at any time, to consider whether a dealing with a GMO should become a notifiable low risk dealing, or whether an existing notifiable low risk dealing should no longer be recognised as such.

Subclause (2) requires that, in making these decisions, the Regulator must consider the matters in clause 74(2) or clause 74(3). These matters include whether the proposed dealings involve an intentional release of a GMO into the environment and whether the GMO can be biologically contained so that it is not able to survive or reproduce without human intervention.

Clause 141

This clause allows the Regulator, at any time, to consider whether an exempt dealing should no longer be such and whether a dealing should be an exempt dealing.

Clause 142

This clause enables the Regulator to publish a notice, at any time, inviting submissions with respect to any matter the Regulator may consider under clauses 140 and 141. This clause also sets out the matters that the Regulator must include in the notice and requires the Regulator to notify the States, the Gene Technology Technical

Advisory Committee, and prescribed Commonwealth agencies. A notice may relate to a single matter or a class of matters.

Clause 143

This clause authorises the Regulator to recommend to the Ministerial Council that a dealing be declared a notifiable low risk dealing once the requirements under clause 143(1) are satisfied.

If a matter relates to whether an existing notifiable low risk dealing be reconsidered and after considering the matters referred to in clause 74, the Regulator considers that the dealing should not be a notifiable low risk dealing, the Regulator may recommend to the Ministerial Council that the regulations be amended accordingly. If the matter relates to whether a dealing should be an exempt dealing or should cease to be an exempt dealing the Regulator may recommend to the Ministerial Council that the regulations be amended accordingly.

Clause 144

This clause provides that the requirement to review notifiable low risk dealings or exemptions, is at the discretion of the Regulator.

PART 10—ENFORCEMENT

Clause 145

This clause provides a simplified outline of the Part.

Clause 146

This clause authorises the Regulator to give directions to the licence holder to take reasonable steps to bring that person back into compliance with the legislation, where the Regulator believes on reasonable grounds that the licence holder is not complying with the Bill or regulations and it is necessary to exercise powers under the clause to protect public health and safety or the environment.

Subclause (2) authorises the Regulator to take the same action with respect to a person covered by a GMO licence.

Subclause (3) imposes penalties for non-compliance with a notice under subclause (1) and (2).

Subclause (4) provides that the Regulator may arrange for the necessary steps to be taken where the licence holder or person does not take the steps within the designated timeframe. Subclause (5) provides that if costs are incurred by the Regulator in arranging those necessary steps, the licence holder or the person covered by the licence is liable to pay to the State an amount equal to the cost.

Clause 147

This clause provides the Supreme Court with power to grant injunctions with respect to breaches of this Bill and the regulations.

Clause 148

This clause provides that a court may order forfeiture of any thing used or involved in the commission of an offence. The forfeited thing becomes the property of the State and may be dealt with in accordance with directions of the Regulator.

PART 11—POWERS OF INSPECTION

Division 1—Simplified outline

Clause 149

This clause provides a simplified outline of the Part.

Division 2—Appointment of inspectors and identity cards

Clause 150

This clause authorises the Regulator to appoint inspectors.

Clause 151

This clause requires the regulator to issue an identity card to an inspector.

Division 3—Monitoring powers

Clause 152

This clause provides powers of entry and monitoring to inspectors for the purpose of discovering whether the Bill or regulations have been complied with.

Clause 153

This clause describes the monitoring powers that an inspector may exercise for the purposes of finding out whether the Bill or regulations have been complied with.

Division 4—Offence related powers

Clause 154

Subclause (1) provides that the clause applies if an inspector has reasonable grounds for suspecting that there may be evidential material on any premises. The clause describes the inspector's powers of entry and seizure. The warrant is taken to authorise the seizure of another thing, where the inspector believes on reasonable grounds that the thing is evidential material and that it is necessary to seize the thing.

Clause 155

This clause describes the powers an inspector may exercise under clause 154(2)*(b)*.

Clause 156

This clause authorises an inspector in specific circumstances to operate equipment at premises, seize equipment, put material in documentary form and to copy material.

Division 5—Expert assistance

Clause 157

This clause authorises the inspector on certain conditions to secure a thing until it has been operated by an expert.

Division 6—Emergency powers

Clause 158

This clause provides an inspector with powers of entry and seizure and power to secure a thing, and to require compliance with the Bill and regulations, when the inspector has reasonable grounds for suspecting that there may be a thing on premises in respect of which the Bill or regulations have not been complied with, and the inspector considers it necessary to use powers under this clause to avoid an imminent risk of death, serious illness, serious injury or to protect the environment. These powers may only be exercised to the extent that it is necessary for the purpose of avoiding an imminent risk of death, serious illness, serious injury or serious damage to the environment.

If the Regulator incurs costs through an inspector taking reasonable steps, or arranging steps to be taken, under clause 158(2)*(e)*, the Regulator can recover the costs of taking those steps.

Division 7—Obligations and incidental powers of inspection

Clause 159

This clause provides that an inspector cannot exercise any of the powers under this Part in relation to premises unless he or she produces his or her identity card upon being requested to do so by the occupier of those premises.

Clause 160

This clause provides that, before obtaining consent from a person to enter premises (under clauses 152(2)*(a)* or 154(2)*(a)*), the inspector must inform the person that he or she may refuse consent.

Clause 161

This clause requires the inspector to make available a copy of a warrant to the occupier of the premises or a person representing the occupier. This copy need not include the signature of the magistrate who issued the warrant. The inspector must also identify himself or herself.

Clause 162

This clause provides requirements for an inspector to follow before entering premises under a warrant. An inspector does not have to comply with these requirements if he or she believes on reasonable grounds that immediate entry is required to ensure a person's safety, to prevent serious damage to the environment or to ensure that the effective execution of the warrant is not frustrated.

Clause 163

This clause details the circumstances in which compensation is payable by the Regulator to the owner of a thing.

Division 8—Power to search goods, baggage etc.

Clause 164

This clause empowers an inspector to examine goods, open and search baggage or a container, if he or she believes on reasonable grounds that the goods are goods to which this clause applies, and the goods may be, or contain, evidential material. The inspector is also authorised to question a person who appears to be associated with the goods, any question regarding the goods. Failure or refusal to answer a question relating to such goods is punishable by a maximum fine of $3 300.

Clause 165

This clause provides that an inspector may seize any goods if he or she has reasonable grounds to suspect the goods are evidential material.

Division 9—General provisions relating to search and seizure

Clause 166

This clause provides that if an inspector seizes, under a warrant, a thing or information that can be readily copied the inspector must, on request of the occupier or their representative who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.

Subclause (2) provides that this clause does not apply where the thing seized was seized under clauses 156(2)*(b)* or *(c)*, or where possession by the occupier of the thing or information could constitute an offence.

Clause 167

This clause provides that if a warrant is being executed, occupiers

or their representatives may observe the search of the premises providing they do not impede the search. This clause provides that it does not preclude the searching of two or more areas of the premises at the same time.

Clause 168

This clause requires inspectors to provide receipts for things seized under this Part and provides that if two or more things are seized, they may be covered in the one receipt.

Clause 169

This clause provides requirements for the return of things seized.

Clause 170

This clause describes the circumstances in which an inspector may apply to the Magistrates Court to retain a thing and in which the Court may make such an order.

Clause 171

This clause allows the Regulator to dispose of a thing seized under this Part, when there is no owner or the owner cannot be located.

Division 10—Warrants

Clause 172

This clause provides that an inspector may apply to a magistrate for a warrant to enter premises and to exercise the monitoring powers set out in clause 153. The clause sets out what the magistrate must be satisfied of before issuing the warrant and details the requirements for the warrant itself.

Clause 173

This clause provides that an inspector may apply to a magistrate for a warrant to enter premises and to exercise the powers set out in clauses 154(3) and 155 and seize the evidential material. This clause sets out what the magistrate must be satisfied of before issuing the warrant and details the requirements for the warrant itself.

Clause 174

This clause allows an inspector in an urgent case to apply for a warrant by telephone or other electronic means. The clause details the steps the inspector and magistrate must take in relation to the warrant.

Clause 175

This clause sets out offences in relation to an application for a warrant.

Division 11—Other matters

Clause 176

This clause provides that nothing in this Part affects the privilege against self-incrimination.

Clause 177

This clause provides that this Part is not to be taken to limit the Regulator's power to impose licence conditions.

PART 12—MISCELLANEOUS

Division 1—Simplified outline

Clause 178

This clause provides a simplified outline of the Part.

Division 2—Review of decisions

Clause 179

This clause provides a table that specifies the decisions that are reviewable and the eligible person in relation to a reviewable decision.

Clause 180

This clause provides the notice requirements that the Regulator must follow after making a reviewable decision.

Clause 181

This clause provides that an eligible person may apply to the Regulator for an internal review of a reviewable decision (other than a decision made personally by the Regulator) and sets out the timeframe for applications to be made. The Regulator is required to review the decision personally. The Regulator may affirm, vary or revoke the original reviewable decision. If the Regulator revokes the decision, the Regulator may make such other decision as the Regulator considers appropriate.

Clause 182

This clause provides that the Regulator is taken to have rejected an application for a reviewable decision, if the Regulator has not notified the applicant of his or her decision during the specified period.

Clause 183

This clause provides that an application may be made by an eligible person in relation to a reviewable decision made by the Regulator personally or a decision made by the Regulator under clause 181. The application is made to the District Court in its Administrative and Disciplinary Division.

Clause 183A

This clause comprises a note that states that section 183A of the Commonwealth Act requires that a State be taken to be a person aggrieved for the purpose of the application of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth in relation to certain decisions, failures or conduct under the Commonwealth Act or regulations.

Clause 183B

This scheme does not affect any other right of appeal under Commonwealth law or the Constitution.

Division 3—Confidential commercial information

Clause 184

This clause provides that a person may apply to the Regulator for a declaration that specified information is confidential commercial information. The application must be in writing and in the form approved by the Regulator.

Clause 185

This clause provides that if the Regulator is satisfied that information is of a kind specified under subclause (1)*(a)* to *(c)* then he or she must declare that information to be confidential commercial information.

Subclause (2) provides that the Regulator may refuse to make a declaration if satisfied that the public interest in disclosure outweighs the prejudice that the disclosure would cause to any person.

Subclause (2A) provides that the Regulator must refuse to declare information as confidential commercial information if the information relates to locations at which field trials involving GMOs are occurring, or are proposed to occur, unless the Regulator is satisfied that significant damage to public health and safety, the environment or property would be likely to occur if the locations were disclosed.

Subclause (3) provides that the Regulator must give the applicant written notice of his or her decision about the application.

Subclause (3A) provides that if the Regulator declares information to be confidential commercial information and the information relates to a location where field trials involving GMOs are occurring, or proposed to occur, the Regulator is required to make publicly available reasons for the declaration, including the matters listed under clause 185(3A)*(c)* to *(e)*. If the Regulator refuses to make a declaration under clause 184(1) the information is to be treated as confidential commercial information until any review rights under clause 181 or 183 are exhausted.

Clause 186

This clause enables the Regulator to revoke a declaration made under clause 185 if the Regulator is satisfied that the information no longer meets the criteria set out in clause 185(1)*(a)*, *(b)* or *(c)*, or that the public interest in disclosure of the information outweighs the prejudice that disclosure would cause to any person. The revocation of a declaration does not take effect until any review rights under clause 181 or 183 have been exhausted.

Clause 187

This clause prohibits the disclosure of confidential commercial information except in the specified circumstances.

Division 4—Conduct by directors, employees and agents

Clause 188

This clause provides for the determination of the elements of offences when a body corporate is involved and when employees or agents of other persons are involved.

Clause 189

This clause defines terms used in clause 188 of the Bill.

Division 5—Transitional provisions

Clause 190

This clause provides for transitional arrangements in relation to dealings with GMOs approved prior to the commencement of the Bill. The clause only covers matters previously approved by the Genetic Manipulation Advisory Committee.

The effect of clause 190(1) and (2) is that if an advice to proceed from the Genetic Manipulation Advisory Committee was in force in relation to a dealing with a GMO before the commencement of the licensing provisions of this Bill, then that dealing is deemed to be licensed under this Act. The licence is taken to be subject to any conditions imposed by the Genetic Manipulation Advisory Committee's advice to proceed.

Clause 191

This clause provides that regulations may be made in relation to transitional matters arising from the enactment of this Bill.

Division 6—Other

Clause 192

This clause provides a prohibition against knowingly giving false or misleading information or producing a document that is false or

misleading in a material particular, in relation to an application or in compliance or purported compliance, with the Bill or regulations. The maximum penalty is 1 year imprisonment or $6 600.

Clause 192A

Clause 192A provides the penalty and the elements of an offence involving damaging, destroying or interfering with premises at which GMO dealings are being undertaken, or damaging, destroying, interfering with a thing, or removing a thing from, such premises.

Clause 192E

Clause 192E provides that an attempt to commit an offence against the Bill constitutes the offence of attempting to commit that offence and the penalty for the attempt is the same as for committing the offence.

Clause 193

This clause provides a regulation making power with respect to matters required or permitted to be prescribed by the Bill, or necessary or convenient to be prescribed for carrying out or giving effect to the Bill. The regulations may require a person to comply with codes of practice or guidelines issued under the Bill.

Clause 194

This clause provides for an independent review of the Bill as soon as possible after four years after its commencement.

Schedule

The schedule sets out a related amendment.

The Hon. CAROLYN PICKLES secured the adjournment of the debate.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (MISCELLANEOUS) AMENDMENT BILL (No. 2)

In committee.

Clause 1.

The Hon. K.T. GRIFFIN: Before I move the amendment, I want to make several observations about the process—and I am sure that other members, particularly members of the select committee, will wish to make a contribution on this clause. The bill was originally part of the Classification (Publications, Films and Computer Games) (Miscellaneous) Amendment Bill 2001 dealing with online content. The bill was split in committee, this part of the original bill becoming the No. 2 bill and being referred to the select committee, while the balance of that bill became the No. 1 bill and has since passed through the parliament and received royal assent. It comes into operation next week, I think.

The select committee considered the present bill. We advertised nationally for submissions. The bill generated some interest. Some 16 written submissions were received, and evidence was taken from witnesses representing four organisations. One of those organisations was a peak body representing a number of member organisations. A diverse range of views was presented in the submissions. They came from within the internet industry, from private individuals and from organisations concerned, for various reasons, with internet content. It was interesting that four of the 16 submissions came from persons or organisations outside South Australia.

The submissions ranged from being highly critical of the bill to being highly supportive of it. There was an emphasis in several submissions on issues of practicality rather than principle. Many issues were raised—for example, whether the internet content should be regulated by law or whether the problem could be addressed by filtering, parental supervision or otherwise; how the model provisions devised through a standing committee of Attorneys-General and embodied in the bill compared with the online content laws enforced in Victoria, Western Australia and the Northern Territory; whether existing Summary Offences Act provisions may already be adequate to deal with online content; whether the present film guidelines and the national classification process can be appropriately applied to internet content; and what might be the effect of the bill on the development of the internet industry in South Australia.

All these issues have been considered by the committee and an effort has been made to understand and carefully evaluate the concerns expressed. The majority of the committee has reached the conclusion that the bill should pass. Some of the concerns expressed proved on examination to be based on misunderstandings of the bill, and particularly in relation to what is involved in criminal liability. Concerns relating to the application of the present film guidelines may well be addressed as a result of the pending national review of those guidelines, of which members will be aware.

Comparison of the bill with online content legislation in other Australian jurisdictions suggested to the committee that the bill was not draconian and, indeed, in some respects is more moderate than other Australian laws. However, the committee has proposed some amendments which may improve the bill. I think those amendments will address several of the misunderstandings which arose by those who had a particular concern about the scope of the bill. In particular, a proposed amendment will address the concerns expressed about the failure of a restricted access system for reasons beyond the content creators' control. We will deal with the detail of that issue when we get into the amendments.

The committee has been useful. I think it was constructive, particularly in examining issues raised by the bill and weighing the various concerns expressed. I thank the committee members for the way in which they addressed their responsibilities and for their consideration of the issues raised in relation to the bill. It is my, and the government's, strong view that the bill should pass but with the amendments which the committee proposes, because they may help to alleviate some issues of concern. They will not alleviate them all but, hopefully, as the legislation is implemented, those particularly involved in the online industry will come to recognise that the legislation is not, as they fear, draconian but sensible and rational and does not have the impact which some of them fear it will have.

I do not believe that properly explained this legislation will adversely affect the interests of South Australia, particularly if people realise that there is legislation in place in other jurisdictions which is much harsher than the legislation we seek to apply in this state, and also that this legislation is consistent with the federal legislation. It has always been my view that we should have legislation consistent with the commonwealth legislation; that we should wait until there was both commonwealth legislation and a model provision; and that we should move to enact the model provision. I think this consideration by the select committee reflects the implementation of that view which I have just expressed. I will not move the amendment immediately but after members have had a chance to speak to the report.

The Hon. CARMEL ZOLLO: I take the opportunity as a member of the committee to endorse the majority view as presented in the committee's report. My colleague the Hon. Paul Holloway will be making a contribution at a later stage as well. I believe it appropriate that material is treated in the same manner online as it is treated offline. As to be expected, there was strong support for the legislation from the Aus-

tralian Family Association, the Festival of Light, and, in particular, from Young Media Australia. I, too, was mindful of the industry concerns.

A great deal of time and attention was obviously spent by members of the SA Internet Association, in particular, on both their oral and written evidence. They were firmly of the view that their concerns should be heard. Their view was that the legislation would cause businesses, which otherwise might be established in South Australia, to prefer to set up in other Australian jurisdictions or offshore. On balance, the majority of the committee, as has already been stated, believed that this view was more of perception rather than fact. The report states:

> The bill does not seek to regulate internet service providers, which are regulated by the commonwealth law. Rather, it applies to content providers, that is, individuals or businesses which upload material onto the internet in such a way that it is stored and accessible to others. Further, it makes no difference under the bill whether offending content is hosted locally or interstate or overseas. If the content is uploaded in South Australia, an offence is committed regardless of the location of the server where it is stored.

Several other states, as the Attorney-General has mentioned, have also legislated—although not under the model presented to us, because I believe we are the first state to legislate under model legislation and they did not have any of the problems perceived by the IT industry that would occur.

The majority of the committee was also of the view that legislation was necessary for the reason that the bill is not limited to pornography, as some people thought. The report also states:

> . . . material which would be caught by the bill is not limited to pornography, as some submissions tended to assume. It can include material which incites or instructs in crime, such as instructions on how to build explosive devices, hijack aircraft or manufacture drugs of addiction or biological weapons. It can include racial or religious vilification material, such as anti-Semetic, anti-Asian or white supremist propaganda. It can include material which encourages suicide, or violence against others, such as school shootings. It can include paedophile material, whether of sexually explicit nature or not.

Given the highly accessible nature of this online medium, I believe it appropriate to be consistent in the manner in which that content is classified. I also agree with the Attorney-General that this legislation will not alleviate the concerns of some people but at least will probably go some of the way. Perhaps at a later stage we will need to revisit the legislation, but at this time it has my support and it is appropriate we pass the legislation. I take the opportunity to thank Katherine O'Neill for her valuable assistance in preparing the report.

The Hon. IAN GILFILLAN: In speaking to the report from the select committee, I indicate that I opposed the majority report and, with the consent of the committee, attached a dissenting statement. The Democrats do not advocate that offensive and unsuitable material should be made available to minors. We oppose the restriction on adult access to material that would generally be acceptable to reasonable adults. We oppose the restriction on adult access to internet content where that same content is available in other media. We believe this bill is unworkable and undesirable. The bill uses the commonwealth legislation as its basis and compounds faults held within that legislation.

Looking at the commonwealth legislation, namely, the Broadcasting Services Act 1992 as amended by the Broadcasting Services (Online Services) Amendment Bill 1999 (and which came into effect in 1999), it deals with internet service providers and internet content hosts. It leaves the regulation of producers of content and persons who upload or access content to state legislation. The commonwealth Classification (Publications, Films and Computer Games) Act 1995 also forms part of the basis of the state bill. This act sets out the regulatory regime for the classification of publications, films and computer games.

For the purposes of classification, internet content is deemed to be 'computer generated image', and under the act it is classified with film classification guidelines. We believe that it is inappropriate for internet content that consists of text to be classified according to the same guidelines as exist for film. The Office for Film and Literature Classification is currently conducting a review of the guidelines for the classifications for films and computer games.

I move now to the proposed state legislation. The Classification (Publications, Film and Computer Games) (Miscellaneous) Amendment Bill No. 2 creates two offences in regard to the supply of material through online means: first, the bill creates an offence of supplying objectionable material by means of online services. 'Objectionable material' is defined as internet content consisting of the following:

(a) a film that is classified X or that would, if classified, be classified X;
(b) a film or computer game that is classified RC or that would, if classified, be classified RC;
(c) an advertisement for a film a computer game referred to in paragraph (a) or (b); or
(d) an advertisement that has been or would be refused approval under section 29(4) of the commonwealth act.

Secondly, the bill creates an offence of supplying matter unsuitable for minors without the use of an approved restricted access system. 'Matter unsuitable for minors' is defined as follows:

> Internet content consisting of a film that is classified R or that would, if classified, be classified R; or an advertisement for any such film consisting of or containing an extract or sample from the film comprising moving images.

Approved restricted access systems are those that are approved by the ABA or by the state minister. I remind members that internet content is deemed to be a film. The submissions to the select committee outline three concerns about the bill as stated in the report: first, the bill is unnecessary because adequate alternative solutions to the problem of offensive internet content already exist; secondly, the bill is impractical in that it imposes an unreasonable burden on content providers, including business, and will not work; and, thirdly, the bill is unjust because it will criminalise behaviour that should not be criminal or imposes unacceptable restraints on free speech.

Make no mistake, this bill will be ineffective in controlling offensive internet content, and the amount of objectionable and unsuitable material generated in South Australia is insignificant in relation to content available from other sources. It is for this reason that this bill will not protect children from viewing offensive material online. The Democrats believe that the only effective method of protecting children from offensive material on the internet is parental or guardian monitoring of the activities of children online in combination with client-based filtering software.

We recognise that, in many cases, children have a greater knowledge about and familiarity with computers than do their parents. For this reason, we believe that the education of parents and guardians is essential. In fact, it is irresponsible to do otherwise. It was claimed that the bill would discourage the development of the local internet industry. While I recognise that the bill targets content providers and not

internet service providers, or internet content hosts, it is simply that ISPs and ICHs rely on content providers for their business.

It is argued that, because of the uncertainty surrounding the classification of material, the content provider would choose the safest environment to host their material, and that would not be South Australia. This would reduce the business available to local ISPs and ICHs. The bill would also unacceptably increase costs to business. The cost of classifying web sites would be borne by the internet content providers. Given that web pages are classified as films and that they are dynamic in nature, there would be a substantial cost to businesses seeking certainty.

I now return to a previous point. The internet is a different medium to the conventional mediums of publication. This is largely due to its interactive nature. We do not believe that it is practicable to apply the existing classification system to the internet content. I now come to what I believe is a very important point. This bill applies not only to pornography. I do not believe that the implications of using the current inappropriate classification regime to the internet can be underestimated. It will throw into question much legitimate discussion that occurs online—discussion of serious social and political issues that may be classed as restricted.

This arises from the broad definition of 'objectionable and unsuitable material', as well as the inappropriate guidelines for classification of internet content. Finally, the bill does not allow the content provider to be first notified when the offensive material is detected and given an opportunity to remove it before prosecution can proceed. While an ISP or ICH may be served with a 'take down' notice, there is no alternative procedure other than prosecution regarding the content provider.

We support an internet content regulatory regime that is based on adult responsibility. This would involve empowerment of responsible adults and would need to include education of adults and the availability of client-side filtering technologies. It is interesting to reflect on an article that appeared on page 50 of the *Australian Personal Computer* in May this year, by Kimberley Heitman, a Perth lawyer and chairperson of Electronic Frontiers Australia. Amongst other criticisms, Mr Heitman points out that, under the classification, this means that a page of text would be rated as if it were a 90 minute movie. It is a short article. It adds more substance to the Democrats' objections and concerns about the bill. In his article, Mr Heitman states:

> If passed, the SA bill will be the fiercest internet censorship law in the country.

I do not believe that South Australia has a tradition of that sort of reputation. I think that it is a very unfortunate piece of legislation that was supported by the majority in the select committee. I indicate that the Democrats will be opposing the bill.

The Hon. K.T. GRIFFIN: A number of issues are raised by the Hon. Mr Gilfillan that are wrong. A number of those issues are matters of judgment, which were explored by the committee with witnesses who were promoting those views. Some of them, I think, reflect a misunderstanding of what both the federal and state legislation seeks to do. In the end, this is not about letting content providers have their head but an endeavour to build into the legislative framework a sensible regime by which standards may be maintained.

It is all very well for those who are in the internet industry to say, 'Look, this will have a compromising impact upon the provision of internet services and for companies setting up in South Australia', but, if they look constructively and critically at the legislation, this legislation will not be a basis for them to take that decision. One of the witnesses said, 'Well, it is about perception.' Of course, if messages are being sent such as those sent by the Hon. Mr Gilfillan it will create the perception that there is something fundamentally wrong in South Australia when, in fact, that is not the case.

The fact is that, whilst there may be some issues relating to the application of this law in relation to material that is sourced from overseas, ultimately, if it is downloaded or uploaded in South Australia—wherever the server is located—it is going to be caught. It is as simple as that. I could go on for quite some time in relation to the Hon. Mr Gilfillan's submission. It was a dissenting statement. The majority of the committee agreed with the legislation with some amendments, which we will move later.

Progress reported; committee to sit again.

[Sitting suspended from 1 to 2.15 p.m.]

QUESTION TIME

TALKING COUNTRY

The Hon. CAROLYN PICKLES (Leader of the Opposition): I seek leave to make a brief statement before asking the Minister for the Arts a question about *Talking Country*.

Leave granted.

The Hon. CAROLYN PICKLES: Recently in the *Advertiser* there was an article which referred to the Adelaide Festival of Arts decision to axe one of the festival highlights, *Talking Country*, which, as I understand it, was to be a local community event based in Burra with a budget of $140 000. I quote the Events Director, Malcolm McKinnon, who said:

> It is one thing to be mouthing rhetoric about engaging the communities, and another not to go ahead with the project.

Obviously the community feels very badly let down. My questions are: why was this event cancelled only days before the program launch when only months ago it was promoted as a highlight? Does the minister agree that the financial investment in the project, if it has already been paid for, followed suddenly by its axing, is financially irresponsible in the current climate?

The Hon. DIANA LAIDLAW (Minister for the Arts): I will have to refer the honourable member's question to the board and management of the Adelaide Festival. As the honourable member would appreciate, the artistic programming decisions are not made by the minister but by the festival organisation and board and by the artistic director. My understanding is that Peter Sellars' ambit list of events—and he is no different in this than any former artistic director—could not be fully realised.

Yesterday at the launch of the 2002 program, I deliberately made the point that Robyn Archer, as the artistic director for the years 1999 and 2000, had wanted a film component of the festival. She was not able to realise her wish because there was not sufficient means to deliver everything that she wanted as artistic director. An artistic director has to understand that, and Robyn did. Peter Sellars has not been able to realise everything he wanted: he understands that too and has accepted the decisions. It is in that context that some parts of

the wider program in its development stages have had to be abandoned.

I suspect I will hear some positive statement at some stage from the Labor Party about support for the festival. The Attorney has suggested that perhaps I live in hope and that that is wishful thinking. I sincerely hope that that is not the case. In terms of film alone, to see the addition of the film component dealt with, not as a separate film festival but integrated as an art form into this festival, is a very exciting new addition to the 2002 festival.

In Mr Rann's statements on Radio 5AA again today he indicated that he is very committed to the film industry in South Australia and therefore I suspect that, at least in terms of the Adelaide Festival, he will come out strongly at some point—as the film industry would wish to see—supporting the local production that has been undertaken in South Australia over the past year to develop the film component of the Adelaide Festival 2002. He said that he is committed to the film industry in South Australia and to trying to get it revived. It has never been healthier. That is my contention and it is backed up by the facts of the state government funds that have been invested into local production and jobs.

Our government does not support a separate film festival, which is part of the Labor Party's plank for its arts policy. One has only to look at the history of film festivals, particularly the claim that it will be international and the biggest in the southern hemisphere, to see regular flops around this country, the latest being in Noosa. It was certainly considered when developing the film strategy in South Australia. The film industry here, and with advice from interstate, indicated that any money the government could invest to attract additional private sector funds should be put into local production, and that has been the government's priority, with the endorsement of the film sector. That is where we get results and jobs, without the high risk, low return investment seen to be associated with yet another international film festival, especially if it is claimed to be (as Mr Rann has claimed it should be) on the scale of Cannes or Berlin. A reality check is needed by Mr—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: Cannes, although Cairns is now bidding, as is the Gold Coast and as is Mr Rann, for the biggest film festival in the southern hemisphere, but to suggest that it would be on the scale of Cannes or Berlin needs a reality check by the opposition and a check to see whether that would be the best investment and return from arts dollars for jobs, and from our film industry at large, without risking a great deal of money for what Noosa and others have seen as an event of little return.

I am glad to see that the Hon. Mike Rann today has come out saying that he is committed to the film industry. It would be great to see him commit himself to the film component of the Festival, at least, and perhaps, in terms of his statement today that he wants to see the film industry revived, he may like to have a briefing from the Film Corporation. He may also like to have a briefing from the Festival organisation.

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: If he had had a briefing, he would not be making the claim that he would like to get the film industry revived. For instance, just in terms of *McLeod's Daughters*, it is fantastic to see that finally, after years and years of work, South Australia has a television series (and now a second series) in this state. There is so much work going on in the film industry in this state today that it is actually quite hard to find some of the crews we need to mount some of the productions.

That was not the situation when I became Minister for the Arts. There was the fear that we did not have enough continuous work and we were losing superb crews. We have a different problem today: we have so much work going on in South Australia with people coming to invest here and South Australians themselves producing work here that we have trouble finding enough crew to meet the demand.

RIVERLINK

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Treasurer a question about Riverlink.

Leave granted.

The Hon. P. HOLLOWAY: The government, and the Treasurer in particular, have been big supporters of the MurrayLink interconnector compared with the regulated interconnector, and members of this Council will recall the numerous occasions on which the Treasurer has poured scorn on the Riverlink project. Today, NEMMCO has announced that the South Australia to New South Wales interconnector (the SNI project), as well as the SNOVIC project, have both been approved as regulated interconnectors servicing the NEM.

The press release issued by NEMMCO points out that Transgrid and VENCorp—which, I remind the Council and the Hon. Legh Davis in particular, are agencies of the New South Wales and Victorian governments—have worked on details of their projects which have:

> . . . resulted in the power flow capability of the combined projects rising from 430Mw to 600Mw. This has also resulted in a slight cost reduction.

My questions are:

1. Does the Treasurer finally accept that the regulated SNI interconnector is in the best interests of this state?

2. Are the Treasurer and his government concerned that the builders of the MurrayLink unregulated interconnector may take legal action to delay or prevent the construction of Riverlink, which would deliver cheaper power to our state and, if so, what action will he take to prevent that course?

The Hon. R.I. LUCAS (Treasurer): On the second question, I am not aware of MurrayLink or anyone taking legal action or, indeed, what sort of legal action the Hon. Mr Holloway is suggesting they might take. In particular, I am not sure whether the honourable member is suggesting that we somehow enact national law to ban people taking legal action. I would turn the question back on the Hon. Mr Holloway and ask: should this set of circumstances occur, what policy is he suggesting the government consider? If the deputy leader of the opposition suggests a particular policy, then the government will obviously address that suggestion.

I issued a statement this morning in relation to SNI and SNOVIC. We must remember that this is the most recent of the draft reports in relation to SNI; the last one said that it failed the test. There have now been some significant changes, we are told, in relation to control mechanisms and systems back in the grid which they—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No, it failed the test. The Hon. Mr Holloway does not understand the process. This is NEMMCO, not the Hon. Mr Holloway, indicating what has occurred. On the last occasion it failed the test, as it did back in 1998. With some significant changes to, evidently, control

mechanisms and processes back in the grid, principally in New South Wales as I understand it, NEMMCO now believes, in its latest draft report, that it passes the regulatory test. It is now out for—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, the Hon. Mr Holloway expresses surprise that it is 200 megawatts extra. Others have expressed surprise as well but, nevertheless, that is what the NEMMCO draft report suggests. It is now out for consultation for a number of weeks, with the end of that consultation period, I believe, being somewhere near the end of November. We would hope to have a decision very soon after that, both for SNOVIC and for SNI.

From the national market's viewpoint and South Australia's and Victoria's viewpoint, South Australia welcomes any further interconnection. The reason the South Australian government was attracted to Murraylink was that it believed, rightly, as has been proved, that the only way to get a quick interconnector connecting the eastern states to South Australia was through an unregulated interconnector—underground and unregulated as it turned out—because it solved many of the environmental and landowner problems of above-ground models. The government has indicated that it also supports further interconnection. And the SNOVIC proposal, or some similar proposal, connecting New South Wales with Victoria is an enormously significant benefit for both Victoria and South Australia. SNI, albeit that it is smaller (it is not 410 megawatts which the SNOVIC capacity is) at 258 megawatts, does have the capacity to provide additional power to South Australia, hopefully at times when South Australia requires it, which is at the peak periods.

I think that the Democrats and others have raised issues in the last few hours about changing peak periods. I think that the Hon. Sandra Kanck referred to Victoria. I suspect she probably meant New South Wales; there is some evidence that the New South Wales peak will move from a winter peak to a summer peak over the next few years. That will be an issue for those who operate in the national market.

The further point to make in relation to this is that, in terms of timing, for the immediate future the greatest impact on both our supply and pricing will clearly be extra generation before this Christmas, and that is from AGL's new power plant at Hallett, Origin's power plant at Torrens Island and the extra 50 megawatts of capacity from TXU at Torrens Island. The next increment for us will be Murraylink in April next year. The next increment after that looks like being, if Candy Broad, the Minister for Energy from Victoria, is correct, SNOVIC, which is an extra 410 megawatts. She believes this will be operational by the end of next year. NEMMCO is actually recommending, in this report, as I understand it, that SNI not be commissioned or available—receiving regulated asset status is the technical way of putting it—until four summers from now, that is, the summer of 2004-05. So we have three extra interconnectors over the next four years: one in April next year, one potentially at the end of next year and then in the summer of 2004-05 there will be SNI.

So clearly, while SNI—if it is finally approved—is to be welcomed as a further interconnection option, it is not something that is going to impact on the immediate short-term future of both supply and capacity. I remind members that, in his report on SNI a few months ago, the Independent Regulator in South Australia said that, when he was told back in 1999 that SNI could be up and running very quickly, he did not believe that it could be commissioned until three years later, that is, the end of 2002. He did not accept the arguments of some—he did not name them but let me name them—members of the Labor Party and others, that SNI could have been operational within the 12 month time frames that many people were claiming. Indeed, members today have been claiming that if approval had been given it would have been operational and solved all the power problems we have experienced over the last 12 months or so.

GREEN PHONE

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer a question about Green Phone.

Leave granted.

The Hon. T.G. ROBERTS: It is my sad duty to report to the Council that Green Phone, an IT servicing company set up under the Networking the Nation program, and in cooperation with the state and commonwealth governments, has collapsed and is in the hands of the liquidators.

The Hon. A.J. Redford: Victorian.

The Hon. T.G. ROBERTS: The Victorian government—the state government: I did not say which one. I would hope that the—

An honourable member interjecting:

The Hon. T.G. ROBERTS: An administrator. I would hope the state government would now involve itself formally with the Victorian state government and the commonwealth to try to turn around the fortunes of Green Phone so that the intentions were realised—and I do not think anyone on either side of the Council would argue about the intentions of Networking the Nation in relation to promoting seed funding for regional development of IT. In the case of Green Phone, it appears there has been a failure in the first attempt to set up a successful management structure for the company, even though it has been successful in the very competitive industry in the South-East.

The Local Government Association and the South-East Local Government Association were keenly involved in the setting up of the program in conjunction with the state government of Victoria and the commonwealth. They are having some regrets about their involvement with the funding that they provided, and there are certainly concerns expressed by ratepayers and by those people who are now facing debt problems associated with the formation of Green Phone as an entity. My questions to the Treasurer are:

1. Will the state government, through the Treasurer and the Premier in his role and responsibility as Minister for Primary Industries and Resources and Minister for Regional Development, work with the federal government in its caretaker mode (as it is of some urgency) to address the immediate and future problems associated with the apparent collapse of the IT servicing company Green Phone?

2. Does the Treasurer believe that an appropriate inquiry should be set up to make sure that the collapse of such a valuable asset in a regional area does not occur again in the same manner as Green Phone has collapsed?

3. Could such an inquiry also look at the protection of the assets that Green Phone has with a view to continuing the services of an IT company in a regional area and protecting the intentions for which it was set up, that is, to serve the requirements of a regional area in relation to its role in developing job opportunities in the IT industry, and assisting the state to integrate its roll-out in the commonwealth

government's program associated with Networking the Nation?

The Hon. R.I. LUCAS (Treasurer): I will need to refer the honourable member's question to the Premier, as Minister for Regional Development, and have discussions with him. Wearing my hat as Minister for Industry and Trade, certainly we are prepared to have discussions to see what are the various options. Clearly, the major investor in terms of funding has been the federal government. I am not sure what the final sum was, but I suspect that it was probably $1.5 million plus. The South Australian and Victorian governments were, compared to that, very modest contributors in terms of the total funding package.

Clearly, what has occurred is of concern to many in the South-East so, from the state government's viewpoint, we would be happy, I am sure, to indicate that we are prepared to continue to have discussions as to what the options might be. As I understand, it is largely hamstrung by the federal government being in caretaker mode at this stage. We are not sure what any new federal government might be prepared to do in terms of its very significant investment in this venture and, until there is a new government with a mandate to make some decisions, I suspect that we will be in a difficult, grey period whilst we await the outcome of that set of circumstances. However, I am happy to refer the matter to the Premier and see what might be able to be done.

TAXATION MEASURES

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Treasurer a question about the economy and the effect of proposed taxation measures.

Leave granted.

The Hon. A.J. REDFORD: Taxation is an issue in the federal campaign, and we all know that, during the last federal campaign, GST was a prominent issue—and, indeed, that particular taxation measure is designed to provide a consistent and growing revenue stream to state governments. After the last election, the GST process was undermined by the Australian Democrats and, as a consequence, Senator Meg Lees lost her job as leader, and Senator Natasha Stott Despoja took over on the strength of her—

The Hon. K.T. Griffin interjecting:

The Hon. A.J. REDFORD: She had it stolen from her, as some people say, as a consequence of her position in relation to taxation. With all this debate going on with respect to taxation involving the Australian Democrats—

An honourable member interjecting:

The Hon. A.J. REDFORD: —this is a good question. You spoke about it in question time yesterday, so I decided that I would check on the internet to see whether I could find the Australian Democrats' taxation policy. Indeed, I discovered their taxation policy (which is described as Policy Code P1B-Official Australian Democrat Policy). The document then stated that it had been balloted not once, but twice: first, in December 1998 and, secondly, in March 1999. It contains some interesting material. The first item that drew my attention was item 7, which states:

> Assets shall be liable to taxation and shall include:
> · capital transfer taxes including inheritance/accessions tax, and gift duties;

The Hon. Diana Laidlaw: Death duties.

The Hon. A.J. REDFORD: It is not just death duties, because I looked up this word 'accessions'—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: —because it is a new term. The dictionary describes 'accession' (and if one puts this in the context of tax) as 'addition to property by growth or improvement'—in other words, a property growth tax. The document continues:

> · wealth tax imputed on the basis of asset value, and deemed potential income stream;
> · capital gains tax, and,
> · land tax.

And one wonders whether that is on the principal place of residence. They also go on and talk about a higher tax on—

Members interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: —imported goods. One might guess as to whether that higher tax on imported goods would also include a higher tax on imported food. Obviously, the people in suburbs such as Brighton, Somerton Park, Mitcham, North Brighton, Torrens Park, Marion, Seaview Downs, Colonel Light Gardens and the like, which are all contained within the seat of Boothby (into which I understand the Democrats are making a big foray), would be extremely interested in the sorts of measures that the Australian Democrats might support. In particular, do they support—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: —this accessions or property growth tax—indeed, a tax on those people who might be retired or on a fixed income living in a house that has grown significantly in value over the past couple of years as a consequence of this state government's and federal government's economic policies leading to increasing wealth. My questions are:

Members interjecting:

The PRESIDENT: Order! I want to hear the questions.

The Hon. A.J. REDFORD: My questions are:

1. What effect would these measures have on the South Australian economy?

2. Will the Treasurer also indicate what effect it might have on asset rich/income poor people of Australia, such as the residents—

The Hon. Diana Laidlaw: Farmers.

The Hon. A.J. REDFORD: —in those areas and, indeed, as the minister interjects, farmers and others—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: —who might reside in the seat of Mayo.

Members interjecting:

The PRESIDENT: Order!

The Hon. A.J. Redford: It was a good question.

The Hon. R.I. LUCAS (Treasurer): I thank the honourable member for his question. I must admit—

The Hon. T.G. Cameron: For his good question

The Hon. R.I. LUCAS: —for his good question—that I, too, was shocked when I saw a copy of the Democrats' official taxation policy, some of which the Hon. Mr Redford has outlined. Those of us who have—

The Hon. Diana Laidlaw: Can you still have access to it on the web site?

The Hon. R.I. LUCAS: That is the interesting point. I understand that it has now been taken off the official Democrat web site. It was certainly there during September and the early part of October but, for some reason, going into the election it has been taken off the Democrat policy web

site. I am sure that all members, like me, as they were having their pie and coke for lunch, were tuned to Senator Natasha Stott Despoja's presentation at the National Press Club today. Of the many quotes that the good senator outlined in terms of Democrat policy, the key for her was that much poverty—or words to this effect—had been caused by unemployment and that there had not been enough discussion about unemployment during this campaign between the two parties.

When one looks at the taxation policy of the Australian Democrats, all one can say is that it is guaranteed to drive the Australian economy into a brick wall. Not only does it talk about death duties, gift duties, accessions taxes (as the Hon. Mr Redford talked about) but also a wealth tax imputed on the basis of asset value and deemed potential income stream. How would members like to have a wealth tax on a deemed potential income stream from their particular asset? There is capital gains tax and a commonwealth land We already have state-based land taxes, but the one item that we have excluded in the state is, of course, land tax on the principal place of residence.tax.

The Hon. T.G. Cameron: Not all principal places of residence.

The Hon. R.I. LUCAS: Most, except for certain people, the Hon. Mr Cameron; and I do not know who that might be. Clearly, it is a federal Democrat proposal for land tax. In addition, under '.5 Taxation Policy', the Democrats have indicated that the income tax system—and listen to this one—shall be progressive (fair enough) and indexed to inflation. We are going to have a new inflation indexed income tax system. One can only hope that there is never a federal Labor government with the rates of inflation we saw back through the period of the 1980s. But if, for example, inflation were at 10 per cent, the indexation to inflation would mean that income tax would be indexed to that 10 per cent inflation rate within the national economy.

An honourable member interjecting:

The Hon. R.I. LUCAS: I would be very surprised if anyone on Kangaroo Island, or any farmer in the rural community of South Australia, with the history of fighting as they did against death duties in the late 1970s, which led to the Tonkin Liberal Government getting rid of death duties and gift duties, would want to support a Democrat proposal for death duties. Would any landowner in the Adelaide Hills, or in the older suburbs of Adelaide, with significant assets but perhaps being income poor and cash poor in relation to owning their own home, want to see these policies being implemented, in particular, death duties and land taxes and, as I said, a wealth tax?

South Australia in particular, with its much higher percentage of older Australians—we have a much older profile in South Australia—will of course be more significantly disadvantaged than any other state by the reintroduction of death duties should the Democrats have influence on federal policy. There are many other aspects of this, but I will not waste question time by going through all the detail of the Democrats' policy on taxation. However, some of us who have seen the deals being done in the federal arena have noted that a deal has been done between the Labor Party and the Democrats on preferences. The Democrats have done a deal with the Labor Party.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: All I know is that, when a deal is done to get preferences, the Democrats must be expecting something in return. I can only hope that the deal that has not been done is that there will be Labor Party support for some of these taxation policies of the Australian Democrats at the next federal election.

COUNTRY FIRE SERVICE

The Hon. IAN GILFILLAN: I seek leave to make an explanation—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Gilfillan has the call.

The Hon. IAN GILFILLAN: I do not think that the government is in the mood to listen to the actual detail of the policy, so I certainly do not intend—

The PRESIDENT: Order! The Hon. Mr Gilfillan will ask his question.

The Hon. IAN GILFILLAN: I am asking the Attorney-General, in his role representing the Minister for Police, Correctional Services and Emergency Services, a question regarding communication systems for the CFS.

The PRESIDENT: Are you seeking leave to make an explanation?

The Hon. IAN GILFILLAN: I did say that.

Leave granted.

The Hon. IAN GILFILLAN: It has come to my attention from several sources that we are now about two weeks away from the beginning of the fire season, and the communication system for the Country Fire Service has not yet been resolved. As we have seen, there have been some serious fires already in New South Wales. It is only a matter of time before we encounter a similar situation in South Australia, especially after such an abundant season.

On Tuesday night, the minister was supposed to make an announcement on what would happen in regions where the GRN pagers are not working. He did not. For more than 18 months now, Country Fire Service units have been told not to worry about upgrading, repairing or replacing their VHF radios as GRN was on their doorstep. Here we are two weeks out from a fire season and it is not clear what properly functioning form of communication the CFS will use.

The 460 CFS appliances across South Australia are manned by volunteers who give their time to assist in times of fire, car accident or emergency. They are saying that the minister is not listening to them. Ongoing concern seems to be falling on deaf ears. I am told—and I notice that the member for Gordon also has been told in his area—that the morale amongst CFS volunteers is low. Let us hope that we do not see any threats of community volunteers walking out at a time when the crisis and the risk is highest. But they are at a loss as to what to do to make the minister listen to their concerns.

Within the department we have just seen the recent resignation of the CEO. There have been new appointments of Corporate Manager of Executive Services and Deputy Chief Officer of the CFS. However, the volunteers are not confident that these people have any operational experience of actually managing units and fighting fires. They are fed up and sick and tired of the bureaucracy that they must battle to obtain the basic provision of equipment services. They volunteer their time to assist their community, and all they ask in return is basic training and the provision of well maintained appropriate equipment, clothing and communications and an occasional 'thank you'.

If anyone is going to put their life on the line and have 40 metre flames close to them, they need confidence that they

can contact someone via radio for help. I am also advised that there is an indication that there could be 40 to 100 CFS brigades cut across the state, and clearly the CFS volunteers, without having accurate and reliable information, are concerned about that. My questions are:

1. Generally on behalf of the CFS volunteers in South Australia, what the hell is going on?

2. If they are not going to be able to use the GRN pagers due to malfunction or being in areas where they do not work, will they have to use the run-down VHF radios?

3. When will the GRN and the pager tower installation be completed?

4. If there is an intention to cut CFS brigades, how many, why and when?

5. What does the minister intend to do to restore the confidence of CFS volunteers in himself and his department?

The Hon. K.T. GRIFFIN (Attorney-General): It is unfortunate that the honourable member used rather extravagant exclamations about the issue in his first—

The Hon. Ian Gilfillan: That is what I am hearing—I am not making it up.

The Hon. K.T. GRIFFIN: Well, you did make it up in the first question. There will be a sensible, rational and reasonable response, which I will obtain from the minister and bring back in due course. The Hon. Mr Gilfillan is, with his explanation and questions, trying to create not only discomfort but also some uncertainty, which I do not think helps the volunteers. From the government's viewpoint, the volunteers are well supported by government and will continue to be well supported because we all rely very much on them for the assistance they provide to the community. So, the government is committed to supporting the volunteers. It does not wish to do anything that will put anyone at risk and does not believe that it has done so or will do so in the future.

HALLETT PEAKING PLANT

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Minister for Workplace Relations a question about health and safety at the Hallett proposed peaking plant.

Leave granted.

The Hon. R.R. ROBERTS: Some time ago now we were given information that, because of the lack of interconnectors interstate—and there has been some discussion about them today (probably too much)—a peaking power station is proposed to be established at Hallett in the Mid North. I am advised that this will be with second-hand generators, coming from Chile and Finland, and associated infrastructure. I understand that they were replaced because they did not meet the environmental standards of those countries. I am also advised that they do not meet the environmental standards required for new installations in South Australia. However, a licence has been granted and regulations have been passed to allow these two units to be installed at Hallett, despite the fact that, even with the best technology to try to redress the problems associated with it, it is accepted that they will not be able to meet those standards within five years.

That is the background to the installation. That is probably more a question for the Minister for Environment and Heritage, and I would ask the minister to take that up with him, but the most important issue I am interested in today is this. I am told that there are disputes in place at Hallett amongst the work force because all the equipment that has been brought in is full of asbestos. Much of this infrastructure has been brought in and is an obvious health hazard. My questions to the minister are:

1. How did this asbestos equipment get into Australia without some sort of inspection?

2. Who will be doing the inspections?

3. Who will be responsible for the removal of the asbestos and who will meet the cost of the removal and disposal?

4. What procedures has the minister put in place to protect the health and welfare of those workers employed on this installation at Hallett?

The Hon. R.D. LAWSON (Minister for Workplace Relations): I thank the honourable member for his question but I certainly do not accept many of the assumptions and extravagant claims made in the purported explanation given to the Council. The honourable member talks about equipment which is intended to be installed and which, according to him, is 'full of asbestos'. I can assure the honourable member that the regulations relating to occupational health, safety and welfare at this plant will be applied, as they are to all other plants and places of employment in South Australia.

So far as I am aware, no exemptions have been made for this equipment, and it will meet the necessary standards and requirements of South Australian law and regulations. I will seek further information from a reliable source and bring back to answers to the specific questions asked by the honourable member.

AUSTRALIAN WORKERS UNION

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Treasurer (Hon. Robert Lucas) a question about the Australian Workers Union.

Leave granted.

The Hon. L.H. DAVIS: I have previously asked questions about the AWU and its elections, which were held in South Australia earlier this year, and also about the AWU's relationship to the Labor Party. As at 30 June 2000, the AWU branch in this state had 10 208 members. Candidates for the election were supplied with the names of these members by the Australian Electoral Commission, which conducted the election. The Australian Electoral Commission, obviously, would only provide the names that had been given to it by the AWU.

I understand that, of those 10 208 members who were sent ballot papers for this election a few months ago, around 960, or nearly 10 per cent, were subsequently ruled by the AEC to be ineligible to vote because they were either dead or unfinancial—an extraordinary figure. Curiously, only 20, or just over 2 per cent of those 960 unfinancial or dead members, apparently voted in the election, although of course their votes were ruled ineligible. This compares with a turnout of around 40 per cent for the other 9 000 or so financial members.

What is significant about this new information is that, while the AWU has just over 9 000 financial members in this state, it was in fact affiliated with the ALP for 14 010 members as at 31 March 2000. I have previously advised—

The Hon. T.G. Cameron: That is fraud!

The Hon. L.H. DAVIS: The Hon. Terry Cameron calls that fraud: at the very best it is deception. I have previously advised the Council that the 1999-2000 annual accounts of the AWU, signed on 22 September 2000 by no less a person than the Hon. Bob Sneath (who was at the time the AWU secretary), revealed that as at 30 June 2000 there were, as I previously indicated to the Council, 10 208 members of the

AWU in South Australia. Even if the Whyalla-Woomera branch and glass workers are included—and there is some debate about whether they should be—there is still a dramatic overstatement of AWU membership in this state by at least 4 000 people. As a result of this deception, the AWU—

Members interjecting:

The PRESIDENT: Order! I've heard it five times.

The Hon. L.H. DAVIS: —had more delegates to the preselection for Labor candidates for the Senate and Legislative Council. As a direct result of this deception, Senator Chris Schacht was dumped from No. 2 to the No. 3 spot on the Senate ticket for next week's federal election, and Bill Hender, President of Country Labor, was frozen out of the Legislative Council ticket from a winning position and subsequently resigned from the Labor Party.

My question is: will the Treasurer, in the light of this serious and new information, immediately write to the Leader of the Labor Party, Mr Mike Rann, and ask him to explain within seven days why he has done nothing to rid the Labor Party of this electoral rorting and deceit, particularly given that in recent weeks he has led a crusade by the Labor Party demanding transparency and accountability in the parliamentary process?

The Hon. R.I. LUCAS (Treasurer): The Leader of the Australian Labor Party has been making statements in the past two or three days about the importance of honesty, integrity, transparency and accountability in politics. I think that the Hon. Mr Davis's question to Mr Rann is: is he prepared to do something about it within his own party? Is he prepared to stamp out the rorters within the Labor Party, or will he continue to turn a blind eye to these issues? It is a test of his leadership capacity whether he is prepared to stand up to the bovver boys and girls within the factions and within the unions that make up the Labor Party. When he talks about honesty, transparency and accountability, here is the test for him: is he prepared to clean up his own backyard? Is he prepared to root out the rorters within the Labor Party—

The Hon. T.G. Cameron: He should look at four other unions.

The Hon. R.I. LUCAS: The Hon. Mr Cameron says that there are four other unions. It would not surprise me that the rorting is not only associated with the AWU—

Members interjecting:

The PRESIDENT: Order, the Hon. Mr Cameron!

The Hon. R.I. LUCAS: The Hon. Mr Cameron suggests that it is fraudulent activity. If that is the case, the Hon. Mr Cameron knows intimately the details of the Labor Party machine men and women, and here is the test for the Leader of the Opposition—will he root out the rorters within the Labor Party? Let us talk about transparency and accountability after he has passed his own test.

GAMING MACHINES

The Hon. NICK XENOPHON: My question is directed to the Treasurer: when will he be in a position to answer the questions I put to him on 25 July 2001 in relation to the IGT Game King machines, involving the shutting down of those machines, the Independent Gaming Corporation's monitoring system, the investigation and any subsequent report of the Liquor and Gaming Commissioner's office; and, finally, does the Treasurer have full confidence in the IGC monitoring system?

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS (Treasurer): In response to the question on when I am going to supply the answers, can I say: today and now.

GAMING MACHINES

In reply to **Hon. NICK XENOPHON** (25 July).

The Hon. R.I. LUCAS: Based on advice from the Liquor and Gaming Commissioner, I provide the following in response to the honourable member's questions concerning IGT Game King gaming machines:

1. The investigation and subsequent actions taken with regard to the IGT Game King machines were initiated by a report from a venue that a significant amount of money had gone missing from one machine.

Initial investigations into the incident, combined with early advice received from the manufacturer IGT, indicated that there was likelihood that the loss was the result of some kind of external interference with the machine.

Based on this early assessment, the Liquor and Gaming Commissioner directed the Independent Gaming Corporation (IGC) to disable all Game King machines on Friday 13 July in order to remove the possibility of such external interference being repeated elsewhere.

2. Initially, the information received from the venue and IGT indicated that the incident could be the result of external interference. After further investigation, it was established that the cause of the problem was in fact a combination of two mechanical defects inside the machine.

Firstly, the machine was supplied with a component outside of the manufacturer's specification and not in accordance with that tested and approved by the Commissioner.

Secondly, the assembly containing this component was not fitted correctly.

In combination, these two defects caused the machine to pay too many coins to the player and this overpayment to occur without triggering an error condition

3. The mechanical defects in this machine were such that the overpayment of coins to the player proceeded without detection by the machine. Therefore, the machine did not generate any error events which may have indicated that there was a problem.

The IGC's monitoring system records events generated by gaming machines. As this machine had not generated any error events relating to the overpayment, the IGC system showed no record of such errors occurring.

Analysis of the information provided by the IGC's system was, however, invaluable in providing the proper direction for the investigation into this incident. In fact, the absence of certain events and information was a key to the eventual identification of the root of the problem.

While the monitoring system records, processes and stores large amounts of information on the daily operation of every gaming machine in the State, there are limitations to what, realistically, can be expected to be reported by the machines to the IGC's system.

4. The direction to disable all Game King machines was given, via facsimile, to the IGC by the Liquor and Gaming Commissioner on Thursday 12 July pursuant to condition (g) of the conditions applicable to the gaming machine monitor licence.

Information regarding the disabling of the Game King machines was later disseminated to licensees by the AHA and LCA.

5. Approximately $7 800 was reported as missing from the machine.

The matter was referred to and is the subject of an investigation by the police and at this stage I am unable to comment further on any action which may be brought against the player involved.

6. A report is being prepared by the commissioner. Until such time as the report is completed, the Commissioner will not make a decision as to whether the information can be released. He will have regard to Section 9 of the Gaming Machines Act 1992 which provides:

Power to disclose information to certain authorities

9. The Commissioner may disclose information gained in the course of the administration of this Act to—

(a) authorities vested with the administration of gaming machine laws in any other State or a Territory of the Commonwealth; and

(b) any other authorities that may require the information for the purpose of discharging duties of a public nature.

In addition, I am advised that, pursuant to section 13(1)(a) of its enabling legislation, the Gaming Supervisory Authority has resolved to conduct an inquiry into this matter.

While on the advice currently available to me, there would seem to be no cause to review the gaming machine betting and monitoring systems, the government will obviously be guided by any recommendations arising from the report of the Liquor and Gaming Commissioner and inquiry by the Gaming Supervisory Authority.

BRANCHED BROOMRAPE

The Hon. J.S.L. DAWKINS: I seek leave to make an explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question in relation to branched broomrape.

Leave granted.

The Hon. J.S.L. DAWKINS: Recently, a media release from the member for Hammond criticising the state government's efforts in relation to the weed branched broomrape came across my desk. It is acknowledged that the outbreak of this weed has been within the Mallee areas of Hammond, although I understand that it has recently been identified on farms west of the Murray River in the electorate of Schubert.

I was interested to read subsequently an article in relation to branched broomrape in the October issue of *Soil to Silo*, a special publication of the *Stock Journal*. The article was written by Denys Slee, and it says:

> Efforts to find, contain and eradicate the parasitic weed, branched broomrape, in the south western Murray Mallee have been described by a visiting Israeli scientist as 'exceptional'. 'I have not seen such a program on this scale anywhere in the world,' Israel's Minister of Agriculture and Rural Development's Dr Danny Joel said after inspecting the infested area. His inspection followed discussions with researchers and extension personnel from various agencies and Animal & Plant Control Commission staff.
>
> Dr Joel is recognised as a world authority on parasitic weeds and came to Australia with support from growers and the federal government through the Grains Research and Development Corporation. 'Broomrape is not only the worst weed species in Israel and other parts of the Mediterranean, but the worst pest of some of our major vegetable and food crops,' he said. Branched broomrape was first identified in South Australia in 1992 and since then extensive surveys have been conducted to locate paddocks where it is growing. There are 30 people working in 15 teams doing the monitoring work and pinpointing where outbreaks of the weed have occurred. Branched broomrape has been found in South Australia on canola, medics and field peas and on some weeds, including capeweed, skeleton weed and long fruited turnip. . . Dr Joel said branched broomrape seed remained viable for many years and:
>
> · There were selective herbicides available to control it.
>
> · The weed did not seem to be confined to a certain soil type of pH range. The intensification of agriculture and the use of irrigation had contributed to its spread over a range of agro-ecological zones.

The article also stated:

> Dr Joel said a collaborative research program between Israel and Australian agencies had been established as a result of his visit. Part of his contribution would be to compare DNA taken from branched broomrape in South Australia with DNA from branched broomrape in his collection to try and identify the source of the South Australian outbreak.

I understand that agencies involved in research and monitoring include the Animal and Plant Control Commission, the CRC for Australian Weed Management, the State Herbarium and the South Australia Research and Development Institute, while funding support has come from the Grains Research and Development Corporation and Horticulture Australia.

I also note remarks made by Mr Dale Perkins, President of the South Australian Farmers Federation, in relation to this issue in an associated article in *Soil to Silo*. Mr Perkins reportedly said that the focus in affected areas is on eradication of this weed. He is also quoted as saying that industry leaders across Australia must remain vigilant to ensure the problem does not spread. My questions are:

1. Is the minister aware of the articles?

2. Will he indicate whether they are an accurate reflection of the situation in relation to branched broomrape in South Australia?

3.What steps has the state government taken to ensure that more of a national focus is taken on this issue, particularly with GRDC, Horticulture Australia and other relevant industry groups?

The Hon. K.T. GRIFFIN (Attorney-General): I will refer the question to my colleague in another place and bring back a reply.

WORKPLACE RELATIONS

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Workplace Relations a question about workplace bullying and harassment.

Leave granted.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.K. SNEATH: There has been a substantial increase in the incidence of workplace bullying over the past two years. In fact, the Employee Ombudsman, Mr Collis, reported that for the year 1998-99 there were 544 public service complaints alone. This was a 71 per cent leap from the previous year's figures of 318. An article in this week's *City Messenger* entitled 'Sticks and stones may break my business' reported that people are often afraid to report bullying even though bullies rely on the silence of their victims. This article encouraged people who are being bullied in the workplace to report the matter to various organisations.

In a recent case before the Industrial Relations Commission involving a factory worker, the boss giving evidence showed that he believed he was doing nothing wrong in bullying the applicant to tears, putting her to work at a work station by herself, facing a blank wall with her back to fellow employees and deciding whether to obey or disobey the employee's return to work rehabilitation program to suit himself.

The boss in his evidence admitted that he singled the applicant out for special treatment to toughen her up. This is just one of many cases Australia-wide that relate to bullying and harassment and one of the few that are reported. It seems that a lot of new CEOs, when starting with a company for the first time, sometimes try to make an impression by belting long-serving and trustworthy staff over the head. This brings to mind the new CEO of the SAJC who, in one of his first decisions, cut out the staff's spring water and biscuits, followed by a memo to staff that stated:

> A number of recent events has prompted me to remind all permanent and casual staff that all work-related communication should be with their direct manager and not with committee members. Any issues not resolved by the staff member's immediate manager can then be discussed with myself. Any variance to this directive may result in a written warning.

I understand there have been a number of recent cases in the Industrial Commission concerning SAJC workers since this CEO has taken over and morale amongst the staff at the SAJC is very low. My questions to the minister are:

1. Has the government realised the seriousness of and increase in workplace bullying? If so, what is being done about it?

2. Are there any educational programs or training available for workers and management that will assist in wiping out workplace bullying and harassment?

The Hon. R.D. LAWSON (Minister for Workplace Relations): I thank the honourable member for his questions. The government does take seriously allegations of workplace bullying. I thought that he might be asking the question on behalf of the former workers of the member for Florey, Frances Bedford, who complained about workplace bullying.

I deplore the fact that the honourable member has chosen to make an attack on the new CEO of the South Australian Jockey Club under parliamentary privilege, alleging workplace bullying and citing circumstances which I would not have thought amounted to workplace bullying by any standard at all. The fact is that workplace bullying is a phenomenon to which increasing attention is being paid. Within workplace services a number of programs are being developed: first, to highlight the occurrence of workplace bullying; and to discourage employers, managers and supervisors from engaging in conduct which might be described as bullying or harassment of workers. A number of publications have been put out, and Workplace Services representatives have spoken at a number of seminars and conferences on this important and emerging issue.

I agree with the honourable member, as does the government, that this is a serious matter. It is an issue not only in South Australia but also across the commonwealth and it is being addressed at a national level. There are a number of programs which I can identify and about which I will provide the honourable member with particulars to show that we are addressing the issue.

AUDITOR-GENERAL'S REPORT

In reply to **Hon. P. HOLLOWAY** (29 November 2000).

The Hon. R.I. LUCAS: The Minister for Government Enterprises has provided the following information:

All the consultants remain fully exposed at law to the State for the consequences of any breach by them of their contractual or other duties to the state. The effect of a claim by the state against the consultants for recovery of loss suffered by the state is to require the consultant to indemnify the state against its loss.

ELECTRICITY SUPPLY

In reply to **Hon. SANDRA KANCK** (27 March).

The Hon. R.I. LUCAS: I have received advice from the Electricity Supply Industry Planning Council and the National Electricity Market Management Company (NEMMCO) on the matter of electricity supply.

1. The following information is taken from the Statement of Opportunities (SOO) Addendum 2, released 28 September 2001, and shows the various projects that are expected to be operational for the forthcoming peak summer period:

Proponent	Expected commissioning date	Capacity
South Australia		
AGL (Hallett)	1 January 2002	96MW
	1 February 2002	84MW
Origin	15 January 2002	95MW
Total SA		275MW
Victoria		
AGL (Somerton)	22 December 2001	150MW
Duke	1 February 2002	31MW
Valley Power	22 January 2002	300MW
Total VIC		481MW
Total	*756MW*	

2. The peak demand in South Australia for electricity in the summer of 1999-2000 was 2646MW on 2 February 2000, and the peak for the summer of 2000-001 was 2833MW on 7 February 2001.

3. Growth in South Australian peak demand over the last five years has averaged 4.3 per cent. However, the growth from 1999-2000 to 2000-01 was 7.1 per cent, reflecting the increasing 'peakiness' of the South Australian market.

4. The 2001 SOO Addendum 2, released 28 September 2001, provided an update of the expected supply and demand situation for the coming 2001-02 summer. It states that 'NEMMCO has formed the view that the combined minimum reserves in Victoria and South Australia will exceed the minimum level of 760MW by a further margin of 80 MW in mid January 2002, with this margin rising to more than 300 MW as further generators are commissioned during late January and February 2002.' Accordingly, in response to the question raised, it is expected that the additional capacity, as outlined above, will exceed the growth in peak demand.

ELECTRICITY, PRIVATISATION

In reply to **Hon. SANDRA KANCK** (16 May).

The Hon. R.I. LUCAS: I have received advice from my department on the issue of the revenue forgone from ETSA as a result of the privatisation of the corporation.

The number of $272 million has been quoted as the total of contributions by ETSA Corporation to the state in 1995-96. This includes a dividend of $174 million, statutory sales levy of $43 million and income tax equivalents of $55 million.

However, of the dividend total of $174 million, $18 million related to the sale of ETSA's light motor vehicle fleet and a further $ 5 million related to the elimination of the future plant replacement reserve. Therefore, removing abnormals the dividend that was paid to the government in 1995-96 was $101 million or $199 million including the statutory sales levy and income tax equivalents.

The risks associated with operating in the national market were highlighted by Mr Mike Janes, chairman of ETSA Corporation in 1997-98 when he noted in his annual statement that 'ETSA risks becoming marginalised when the national electricity market begins full operation. In these circumstances it would be difficult for ETSA to maintain shareholder value.'

With the commencement of the national market, government owned retailers and generators lost their monopoly position and as noted by Mr Janes, in that environment any dividend payable to the Government would be diminished.

When South Australia entered the national market, it gave up direct power to control prices. The electricity pricing order is an interim measure to protect consumers and help with the transition to the national market. The ACCC now regulates transmission pricing and the independent regulator now regulates distribution pricing. In short, the government no longer has the power to set prices, unlike in 1995-96.

For the purposes of estimating the future dividend that may have been payable to the state, the most appropriate indicator is the dividend that was paid for the last full financial year before any entities were leased. Budget Paper number 2 shows that for 1998-99 the dividend to the government was $103.3 million and the estimated income tax equivalent was $69 million. In total in 1998-99, the last full year of operation before privatisation, the government received $172.3 million from ETSA Corporation and the associated Generation Corporation.

Therefore, the number quoted by the Auditor-General as an estimate of the revenue forgone for 2000-01 of $150 million, is appropriate and consistent with previous dividends paid by the electricity entities, taking into account the increased level of competition and other risks, associated with the operation of the national electricity market.

In relation to the supplementary question regarding rates of interest, the South Australian government raises funds at different times with varying maturities which results in different interest rates. Therefore, the interest rate that the South Australian government pays over a period relates to the average rate on the outstanding borrowings for that period.

During this period, SAFA managed its debt to an average maturity term (modified duration) of 2.8 years. The hypothetical SAFA 2.8 year modified duration rate was:

30 June 1994	9.03 per cent
30 June 1995	8.03 per cent
30 June 1996	8.50 per cent
30 June 1997	6.15 per cent
30 June 1998	5.60 per cent
30 June 1999	6.05 per cent
30 June 2000	6.40 per cent

However, it should be noted that the 2.8-year modified duration SAFA rate is a hypothetical rate as it has been derived through interpolating existing SAFA bonds in the fixed interest market at each specified date.

REGIONAL BUDGET EXPENDITURE

In reply to **Hon. IAN GILFILLAN** (5 July).

The Hon. R.I. LUCAS: The Minister for Primary Industries and Resources, and Minister for Regional Development has provided the following information:

The amount allocated for livestock, pasture and sustainable resources research was spent during the year 2000-01 and no amount is carried over for 2001-02. This was spent on research and development programs across the state with the objective to enhance productivity and sustainment of South Australia's livestock industries.

STATE DEVELOPMENT

In reply to **Hon. T CROTHERS** (26 July).

The Hon. R.I. LUCAS:

1. Adelaide Airport Terminal Development

Adelaide Airport estimate that during the construction period approximately 800—1 000 jobs will be created over the 20 months of construction and that by year 25 following construction, approximately 5 000 additional direct and indirect jobs will have been created by the terminal project.

Australian Submarine Corporation

The refit program for the six Collins-Class submarines has only just commenced. Hence, the exact dollar amount as well as the proportion spent within South Australia and the number of jobs to be employed on this program, are at this stage unable to be accurately quantified.

That being said, the awarding of the refit program to ASC is an essential element of current activities focused on securing the long term future of ASC within South Australia and the maintenance of the existing workforce. Other elements of this include securing new build work from the Royal Australian Navy for surface ships at ASC as part of the commonwealth's desire to see the sale of ASC trigger the rationalisation of ship building in Australia.

Adelaide Darwin Railway

Employment

The Adelaide Darwin Rail Project is a Build, Own, Operate and Transfer Back (BOOT) project which will occur entirely in the Northern Territory, with the exception of some up-grade of the track between Tarcoola and Alice Springs. As such, employment on the project will occur in the Northern Territory. It is expected that for the duration of the construction period up to 7 000 workers will be required to supply materials and services for the rail project. Many of these workers will be directly employed on the 1 300 jobs on site, drawn principally from the Northern Territory and supplemented by South Australians where required.

An employment database established by Partners in Rail currently holds information on over 4 050 individuals, of which 3 220 are South Australian. These details are available to ADrail's human resource manager and labour hire companies registered with the Adelaide Darwin Rail Project as a basis for potential recruitment on this and other remote area projects.

Information has already been sought from South Australia in relation to indigenous people who might be interested in working on the rail project. ADrail has signified its intention to train up to 500 indigenous people for the 100 indigenous positions provided under the terms of the Local Industry and Aboriginal Participation Plan (LIAPP) established under the Concession Deed.

2. Adelaide Airport Terminal Development

Adelaide Airport has a firm policy of maximising the spend on the project in South Australia, which includes a preference for spend within South Australia so long as it meets the specifications and appropriate price parameters. In this respect, Adelaide Airport expects that 75 per cent of the $226 million to be spent on the project will be sourced from within South Australia.

Australian Submarine Corporation

Again due to the uncertain nature of refit work, it is impossible to accurately quantify the amount of work that will flow to the South Australian economy from this, as it is expected that the refits will vary from ship to ship according to the respective needs. However, it could be reasonably assumed that the proportion of work to be sourced from South Australia under this program would be similar to that evidenced through the construction phase for the vessels. Accordingly, it could be expected that approximately 60 per cent of the value of the refits awarded to Australian companies would be sourced within South Australia.

Adelaide Darwin Railway Project

Construction Phase

The LIAPP commits the Asia Pacific Transport Consortium to spending 75 per cent of the $1.3 billion design and construct and port works construction expenditure in the Northern Territory and South Australia.

To date, approximately $250 million worth of goods and services has been contracted from South Australian based industry. These include:

Major Contracts

- One Steel, Whyalla to supply 150 000 tonnes of steel rail for the project;
- Intercast & Forge, Adelaide has won a substantial subcontract to supply cast iron shoulders for the rail fastening system embedded in the concrete sleepers;
- Viscount Plastics, Adelaide, has won a substantial subcontract to supply pads for the rail fastening system;
- Adelaide Brighton, Adelaide has been sub-contracted by Australk to supply 65 000 tonnes of cement;
- EDI Rail, Port Augusta, has been sub-contracted by Australian Southern Railroad to overhaul, upgrade and repaint eight mainline locomotives and for the refurbishment and modification of 26 permanently coupled pairs of rail wagons;
- Western Portables, Adelaide in association with Territory Portables (NT) will build and install a range of transportable buildings for mobile campsites along the Railway;
- SWF Hoists & Industrial Equipment, Gillman will supply and install rail loading and unloading gantries and concrete sleeper gantries;
- Ausco Building Systems will supply a permanent accommodation camp to be established in Tennant Creek;
- Western Portables, in association with Territory Portables (NT) will build and install a range of transportable buildings for mobile camp sites along the Railway;
- Fugro Survey and Civil Survey & Design will conduct bridge site surveys;
- Krueger Engineering, Mount Gambier will manufacture and supply equipment for the Concrete Sleeper Manufacturing Plants located at Katherine and Tennant Creek, NT;
- Associated Engineering Industries, Upper Spencer Gulf, a Consortium comprising Action Engineering Industries, Marand Precision and Northern Scaffolding, with assistance from Whyalla Fabrications, to manufacture and supply the diamond saw machines for the Concrete Sleeper Manufacturing Plants located at Katherine and Tennant Creek, NT.

Evaluation

An 'economic evaluation of the impacts of the Alice Springs to Darwin railway,' study was conducted by Barry Burgan, a Director of Economic Research Consultants Pty. Ltd. in 1999.

The assumptions used within the study suggests that in the construction phase (around 4 years) the Railway Project will:

- Result in supply contracts and increased turnover for South Australian industry/entities between $300 million and $630 million (medium scenario—$470 million);
- Directly create returns in terms of wages and returns on capital within these supplying industries of between $140 million and $275 million (medium scenario—$210 million);
- Indirectly generate wages and profits for South Australian entities of between $200 million and $370 million (medium scenario—$280 million);
- Therefore provide a stimulus to GSP of between $340 million and $640 million (medium scenario—$470 million) over a 4 year period. This will in turn result in employment of an average of 1 400 and 2 500 full time equivalent jobs per year for the 4 years of construction (medium scenario—2000 jobs); and
- Associated with this activity will be returns to the State government through taxes and charges, estimated conservatively as of the order of $25 to $45 million (medium scenario $35 million).

It is indicatively estimated that some 70 per cent of this activity will be supplied by businesses located in the metro-

politan area, 25 per cent in the Upper Spencer Gulf area, and the balance elsewhere in the State.

Operational Phase

The operations of the rail link also brings the potential of significant economic benefit through the resource savings and development implications of improved competitiveness. The benefit from a South Australian perspective is indicatively estimated as:

- Increasing the present value over a 50 year period of the underlying level of GSP in the State by between $500 million (or $10 million per year in discounted value) and $2.5 billion (or $50 million per year);
- Creating between 1000 and 3000 jobs annually within the State; and
- Associated with this activity will be returns to the State government through taxes etc, estimated conservatively as having a present value of the order of $30 million to $170 million (medium scenario $80 million).

3. Challenger and Gold Prospectivity in the Gawler Craton

The State government's exploration initiatives produced a dramatic increase in exploration and the discovery of several new prospects including Challenger, Campfire Bore, Tunkillia and Nuckulla Hill gold prospects.

The Challenger prospect, managed by Dominion Mining, has now been upgraded to an ore body and is in the bankable feasibility stage of development. Indicated and Inferred Resources for the main Challenger ore body total 1.85 million tonnes grading 8.45 g/t gold, containing 503 362 ounces of gold. Dominion is waiting on final approval from the Federal Government, for the development of permanent structures within the Woomera Prohibited Area.

Smaller deposits, within the general vicinity of the Challenger ore body, such as Campfire Bore, are more likely to be exploited once the mine has been developed.

Exploration at the Tunkillia Prospect, currently being managed by Helix Resources, has been put on hold while they develop their Munni Munni, Platinum Group Element deposit in Western Australia.

South Australian Magnesium Project

The SAMAG project, with investment of around $700 million, comprises a magnesite mine at Mount Hutton, near Leigh Creek and a magnesium smelter, near Port Pirie.

For the project to proceed it needs a new power station near Port Pirie, gas pipeline into South Australia, and a gas lateral off the existing Moomba-Adelaide pipeline into the Upper Spencer Gulf.

The SAMAG project has now achieved all the State and Federal environmental and development approvals necessary. In addition it has native title agreements in place. SAMAG is expected to seek financial close in late 2001.

The project will be important to Port Pirie because it will relieve the current high unemployment (13.4 per cent compared to the State average 7.4 per cent (March 2001, ABS data)) and will also be an attraction for support and complementary industries, such as mineral processing, to establish in the area.

There is also the potential for Pasminco to benefit as the establishment of a new power station could lead to improved energy outcomes for its lead and zinc smelters.

Mineral Exploration In Yumburra Conservation Park

There have been 3 phases of on-ground low impact exploration in the park to date.

The preliminary results of the latest phase of activity, which began in March 2001, returned significantly higher copper, nickel and cobalt than the previous samples. The results are being used to assist in the determination of appropriate areas to conduct a first phase drilling program.

The Joint Venturer has recently had a proposal approved to carry out additional drilling to further investigate the source of Yumbarra's magnetic anomaly. The drilling is due to commence in mid August 2001 and continue for a period of 2 weeks.

Both the Department for Environment and Heritage and the Department for Primary Industries and Resources will continue to ensure that exploration activity is carried out in accordance with the strict exploration licence conditions and the additional proclamation conditions. This will involve joint inspections during each stage of the activity with representatives from the licensee, and both departments. In addition the annual Environmental Monitoring Assessment Report 2001 was made available for public viewing on 5 May, 2001 as required by the conditions. The report discusses the results of the monitoring program and how it compares with the Environment Condition Report 2000.

Flinders Island Diamond Exploration

Orogenic Resources and Tawana Resources NL, who listed on the ASX earlier this year, have carried out exploration on Flinders Island off the coast of Elliston over the last 12 to 18 months.

Exploration was initially for gold but soil samples were also tested for diamond indicator minerals. An unexpectedly high number of these diamond indicator minerals were found in quantities usually only derived from directly over a kimberlite pipe (a host rock for diamonds) in the northwest part of the island.

Tawana at that stage were confident that a diamond bearing kimberlite could be found on the island and subsequent sampling specifically for indicators has uncovered three microdiamonds reported to the media and ASX on 24 July.

De Beers were sufficiently interested in the indicators and chemistry results to joint venture with Tawana in early July and will finance future sampling processing and exploration drilling to search for the kimberlite.

This discovery of good indicator minerals and microdiamonds is a significant find on the Gawler Craton for Tawana and South Australia and will encourage further diamond exploration.

EDUCATION, EARLY CHILDHOOD

In reply to **Hon. M.J. ELLIOTT** (3 July).

The Hon. R.I. LUCAS: The Minister for Education and Children's Services has provided the following information:

1. Based on available information the South Australian government's (including the commonwealth) expenditure on pre-primary education as a percentage of GSP in 2000-01 was 0.30 per cent.

2. In South Australia, the State Government is the main provider and funder of preschool education services. The salary and conditions of employment for preschool teaching staff are the same as for other teaching staff employed by the Department of Education, Training and Employment and the average teacher salary is $46 633 per annum. The department does not believe that the salary and conditions of employment to preschool teachers are a disincentive for people to be employed as preschool teachers.

In the preschool sector, the department also employs early childhood workers and the average salary for these employees is $25 813 per annum. This salary compares favourably with the wages paid in the child care sector.

The majority of childcare services in South Australia are provided by community-managed groups and private providers. Funding for child care is a Commonwealth Government responsibility, which has taken the form of childcare benefits paid directly to parents in recent years. Average salaries in the childcare sector range from $24 076 per annum for a level 3 (unqualified worker) to $29 536 per annum for a level 5 (qualified worker). A Childcare Director (level 2) earns $39 572 per annum.

The State Government is not a party to the Child Care Workers Award, which sets the wages and conditions of employment for child care workers, and has little influence in the determination of these matters. A major review of wages for the child care sector was undertaken by the South Australian Industrial Relations Commission and resulted in a significant wage adjustment for the child care sector.

3. The OECD report outlined that early childhood education and care employment is highly gender segregated in all surveyed countries, irrespective of pay and conditions. Even in Denmark and Norway, where this issue has been systemically addressed by a combination of public policy and affirmative action strategies, the number of men employed in the early childhood field has grown very slowly.

In South Australia the universities are responsible for the training of teachers at all levels. Meetings are held regularly between senior staff of the Department of Education, Training and Employment and the deans of education at the universities. The department has discussed teacher intakes into their various courses. It has also raised the matter of the gender imbalance in the early years and primary years. This is also a priority that is being pursued at national level.

Selection of teachers to vacancies is made on the basis of best match to the vacancy descriptors provided by school or preschools. Factors such as gender and age cannot be used a determinants as this would leave the department vulnerable to complaints of discrimination as defined by the Equal Opportunity Act.

Recent studies conducted in South Australia clearly show that the critical factors which determine quality learning outcomes are not the gender of the teacher but the individual's teacher's ability to:

- establish effective relationships with students
- demonstrate a caring and fair approach to classroom management
- effectively model gender relationships
- provide a challenging and relevant curriculum.

RETAIL AND COMMERCIAL LEASES (CASUAL MALL LICENCES) AMENDMENT BILL

Read a first time.

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this bill be now read a second time.

This Bill amends the Retail and Commercial Leases Act 1995 to provide that a lessor of shops in a retail shopping centre must comply with the provisions of the Casual Mall Licensing Code as set out in a new schedule to the act. The code will provide a legislated framework in which casual mall licensing can operate. It will clarify the entitlements and expectations of affected parties, ensure that lessees have access to greater information about casual mall licensing in retail shopping centres and significantly reduce the tensions which have occurred from time to time between shopping centre owners/managers and retail lessees over this issue.

The use of common areas of shopping centres by retailers selling goods or services pursuant to licences granted by shopping centre owners (or casual mall licensing, as it is called) is widespread. A number of issues have arisen in relation to the practice. Some tenants are concerned that casual mall licensing can result in the unreasonable introduction of competition. There is also concern that, in some cases, the holders of casual mall licences are subsidised by lessees payments for outgoings.

In December 2000, the Hon N. Xenophon MLC introduced the Retail and Commercial Leases (Casual Leases) Amendment Bill as a private member's bill in the Legislative Council. The issue of casual mall licensing has also been raised in debate on other government amendments to the principal act.

Following on from the earlier bill and, as a result of ongoing concerns in the industry, the issue of casual mall licensing was referred to the Retail Shop Leases Advisory Committee (which I will refer to as the committee) for consideration. The committee is set up under the Retail and Commercial Leases Act 1995 to keep the administration of the act under review and to make reports to the minister on subjects that, in the committee's opinion, justify a report, or on which the minister requests a report. The committee has broad representation from retailers, property owners and shopping centre managers. I chair the committee as Minister for Consumer Affairs.

Members of the committee agreed that the amendments contained in the private member's bill needed to be the subject of further discussion and refinement. As a result, the government has worked extensively with members of the committee to develop a code to regulate casual mall licensing. There have been 10 meetings of the full committee where this issue has been considered and 11 meetings of a small working group from the membership of the committee. In developing a code, a number of issues needed to be addressed including the fundamental issue of whether or not the code should be voluntary or mandatory. Considerable time and effort has been put in by members of the committee culminating in the bill before the Council.

The committee has a good record of achieving consensus on difficult issues requiring compromise by the various stakeholders. This issue has been no exception. As a result, the proposed amendments to the act are supported by industry representatives on the committee listed on the copy letter which I now seek leave to table.

Leave granted.

The Hon. K.T. GRIFFIN: The State Retailers Association, although a participant in the committee, has indicated it neither supports nor opposes the bill. All the others support the bill without amendment. The code addresses casual mall licensing according to a set of agreed principles. It recognises that some circumstances, such as activities in a shopping centre's centre court, designated sale periods and special events, warrant special consideration. Clause 2 of the schedule provides that a lessor must not grant a casual mall licence in a retail shopping centre unless the lessor has prepared a document that sets out the lessor's policy in relation to the granting of casual mall licences.

The policy must include a floor plan showing the mall areas where casual mall licences may be granted. The floor plan must also show if any part of the mall area is designated as a centre court. The policy must also provide information about the number of sale periods designated for the shopping centre and whether the lessor reserves the right to grant a casual mall licence otherwise than in accordance with clauses 4, 5 and 6 in respect of special events. A lessor must not grant a casual mall licence unless the lessor has given each lessee in the shopping centre a copy of the casual mall policy, a copy of the schedule to the act and the name of a contact officer to deal with complaints about casual mall licences.

Clause 4 of the schedule provides that a lessor must not grant a casual mall licence except in accordance with the casual mall policy in force at the time the licence is granted. The code will provide additional protection for lessees. Clause 5 of the schedule provides that a lessor must ensure that the business conducted by a holder of a casual mall licence does not unreasonably interfere with the sightlines to a lessee's shopfront in the shopping centre. Clause 6(1) provides that a lessor must not grant a casual mall licence that results in the unreasonable introduction of an external competitor of an adjacent lessee.

In addition, clause 6(2) provides that a lessor must not grant a casual mall licence that results in the unreasonable introduction of an internal competitor of an adjacent lessee unless:

- the internal competitor is a lessee of a retail shop situated in the same retail precinct as the casual mall licence area or if the shopping centre is not divided into precincts in the vicinity of the casual mall licence; or
- the casual mall licence area is the area closest to the internal competitor's retail shop that is available for the casual mall licensing at the time the casual mall licence is granted; or
- the term for which the casual mall licence is granted falls within a designated sale period provided there have been no more than five previous sales periods in the preceding twelve months; or
- the casual mall licence is within the centre court of the shopping centre.

The operation of clauses 5(1) and 6(2) is qualified. Clause 5(1) does not apply if, before the grant of the casual mall licence, the lessor informs the lessee of the proposal to grant

a licence that might result in interference of a kind referred to in subclause (1) and obtains the written consent of the lessee to the grant of the licence. Likewise, clause 6(2) does not apply in relation to an adjacent lessee if, before the grant of the casual mall licence, the lessor informs the lessee of the proposal to grant a licence that might result in the introduction of an internal competitor and obtains the written consent of the lessee to the grant of the licence.

The code also provides for an adjustment of non-specific outgoings to take into account casual mall licences granted during the accounting period. This will ensure that existing lessees do not subsidise the holders of casual mall licences. Clause 9 of the schedule acknowledges that the intention of the code is to encourage industry to work through issues relating to casual mall licensing at the local level. It provides that no proceedings are to be taken or continued against a lessor in respect of a breach of clauses 5, 6 or 8 unless the lessor fails to rectify the breach as soon as reasonably practicable after being requested in writing to do so by a lessee who is directly affected by the breach.

Introduction of the code will require an education and publicity campaign to advise shopping centre owners, managers and retailers of the new requirements associated with casual mall licensing. This work will be undertaken in conjunction with the industry. This is a landmark agreement on a particularly difficult issue.

This bill represents the best proposal that can be achieved. Compromises have had to be made. Obviously how the code works will require monitoring, and that will be done by the advisory committee. I thank all the participants in the work of the committee. They have given considerable time and energy to the task. Reaching a consensus is important for the industry. As I have said on many occasions, shopping centre operators need tenants and tenants need the operators and, if one takes unfair advantage of the other, that will ultimately advantage no-one. I commend this bill to honourable members and express the hope that it will pass through both houses before the end of the session. I seek leave to have—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: It has the agreement of all the players, so it should not be too much of a problem. I seek leave to have the detailed explanation of clauses incorporated in *Hansard* without my reading it.

Leave granted.

Explanation of clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Insertion of s. 62A

This clause provides that a lessor of a retail shopping centre must comply with the Casual Mall Licensing Code.

Clause 4: Insertion of Schedule

This clause inserts a Schedule to the Act, which incorporates the Casual Mall Licensing Code.

SCHEDULE

Casual Mall Licensing Code

1. Interpretation

This clause of the Schedule sets out the definitions of the terms used. Some important terms include: "casual mall licence"—this is a licence which gives a person the right to occupy part of the mall area of the shopping centre for the purpose of selling goods and services; "casual mall licence area"—this is the part of the mall area to which the licence applies. Another important concept is that of competitors, which distinguishes between competitors who are lessees of shops within the shopping centre ("internal competitors") and those derived from outside the shopping centre ("external competitors"). In relation to the sale of goods, a person is a competitor of another person if 50 per cent of goods displayed for sale by the person (on an area occupied by display basis) are of the same general kind as 20 per cent of the goods displayed for sale (on an area occupied by display basis) by the other person.

2. Casual mall licence policy

This clause of the Schedule provides that a lessor must not grant a casual mall licence unless he or she has prepared a casual mall licence policy for the shopping centre. The policy must include a floor plan that shows where in the shopping centre the licences may be granted and the area designated as a centre court of the shopping centre (which relates to clause 6 of the Schedule). The policy must also set out the number of sales periods that will be held in the shopping centre (this relates to clause 6 of the Schedule), and whether the lessor reserves the right to grant casual mall licences in relation to special events that do not comply with certain provisions of the Schedule. The lessor must give 30 days written notice to the lessees of the shopping centre if the lessor amends the policy.

3. Provision of information

The lessor must provide to all lessees of the shopping centre, a copy of the casual mall licence policy, a copy of the Schedule and the contact details of the person nominated to deal with complaints about casual mall licences.

4. Obligations of lessor relating to casual mall licence policy

This clause of the Schedule provides that a lessor must not grant a casual mall licence that does not comply with the casual mall licence policy or with respect to an area that is not included on the plan.

5. Sightlines to shopfront

This provision of the Schedule requires that the lessor must ensure that a casual mall licence does not substantially interfere with the sightlines of a lessee's shopfront, unless the lessor has obtained the lessee's written consent.

6. Competitors

This clause of the Schedule covers the grant of casual mall licences to competitors of adjacent lessees. An "adjacent lessee" is defined to mean a lessee of a shop that is situated in front of or immediately adjacent to the casual mall licence area.

A licence cannot be granted so that it results in the unreasonable introduction of an external competitor of an adjacent lessee. (A person is an external competitor if 20 per cent of the goods displayed for sale by the person granted the casual mall licence are of the same general kind as 50 per cent of the goods displayed for sale by the adjacent lessee, and that person is not a lessee of another shop in the retail shopping centre).

Unless the lessor obtains the written consent of an adjacent lessee, a licence must not be granted that results in the unreasonable introduction of an internal competitor of an adjacent lessee (i.e., another lessee of the shopping centre who is granted a licence, the business of which will compete with the adjacent lessee). However, a casual mall licence may be granted to an internal competitor of an adjacent lessee if—

- the competitor has a shop in the same precinct as the adjacent lessee; or
- the relevant casual mall licence area is the closest available to the internal competitor's shop; or
- the term of the casual mall licence falls within a sale period of the shopping centre (there being no more than a total of six sale periods in any twelve month period); or
- the casual mall licence is granted in relation to the centre court of the shopping centre (as set out on the casual mall licence plan).

An introduction of a competitor of an adjacent lessee will be "unreasonable" if it has a significant adverse effect on the trading of the adjacent lessee.

7. Special events

This clause of the Schedule provides that clauses 4, 5, and 6 (i.e., obligations of lessor relating to casual mall licence policy, sightlines to shopfront and competitors) do not apply to casual mall licences that are granted in respect of a special event in the shopping centre. A "special event" means a special community, cultural, arts, entertainment, recreational, sporting or promotional event held in the shopping centre. For this clause to apply, the lessor must give 24 hours written notice of the details of the special event to the lessees of the shopping centre and must have reserved the right to grant licences in these circumstances in the casual mall licence policy.

8. Adjustment of outgoings

This clause sets out a formula to adjust the calculation of the amount a lessee of the shopping centre is required to contribute to the outgoings of the centre to take account of the grant of casual mall licences. The effect of the formula is to work out the ratio of the total lettable area of the shopping centre to the total amount of the shopping centre's outgoings in an accounting period. This ratio is then applied to the number of days each licence holder was permitted to trade under the licence and the area occupied by the particular licence during an accounting period. The total amount of the outgoings of the shopping centre to which lessees must contribute in an accounting period is then reduced by this amount.

9. Rectification of certain breaches

This clause of the Schedule provides that no proceedings can be taken against a lessor for breach of clauses 5, 6 or 8 of the Schedule (i.e., sightlines to shopfront, competitors and adjustment of outgoings) unless the lessor fails to rectify the breach as soon as reasonably practicable after being requested in writing to do so by a lessee affected by the breach.

The Hon. CAROLYN PICKLES secured the adjournment of the debate.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (MISCELLANEOUS) AMENDMENT BILL (No. 2)

In committee.

Clause 1.

The Hon. P. HOLLOWAY: I will use this opportunity to make some comments on the select committee report. I was one of the signatories of the committee's majority report. I point out at the start that the provisions contained in the bill before us, as were the matters before the select committee, are conscience issues for members of the Labor Party because they relate to censorship.

My personal views on the rights of adults to read and see what they like have, I guess, changed down the years. I can well recall in the 1960s when books such as *Lady Chatterley's Lover* which had been banned were finally made available to read when they were removed from the banned list. When people look back, they think how absurd it was that we had censorship to that level of the printed word.

What we have seen since then is a much more general liberalisation of laws in relation to censorship. Many in the community would argue that perhaps it went too far, and I certainly would be one of those, because we did see some excesses. I guess child pornography would be the classic case of that, where it was deemed necessary for parliament to reimpose some restrictions on what material people could read or see.

What we have seen in that time is the development of classification systems that regulate the films that people can see, the programs they can watch on television, the books that they can read, and so forth. The issue before us, through the select committee, is: how does that relate to the new medium of the internet? I guess the threshold question that was before members of the committee was: should the internet be treated any differently in terms of classification and censorship issues than films, television, live theatre and other media? Certainly there are different considerations in relation to the internet because of its technical peculiarities.

Clearly the internet is available in one's own home, whereas with films and live theatre there is some control over who can access those media. There are some different considerations, but there is a philosophical threshold there. Should the internet be treated any differently in terms of classification? In my view the answer to that question is no. Whilst I think that censorship in relation to films and television probably has gone further than it needs to in relation to adult or erotic material, it is my personal view that in relation to gratuitous violence perhaps our censorship does not go far enough. All of us have views on where the line should be drawn with regard to what people can view and providing the right balance between allowing adults to see what they wish while at the same time protecting society generally.

I note that classification guidelines are now under review by the Office of Film and Literature Classification and those matters can be looked at there. I would not be upset if the balance were shifted in the direction to which I just referred. It would not worry me if they were more strict in relation to the gratuitous violence that we see in some films, whereas at the margins in relation to some of the adult material it would not worry me if they were a little less restrictive. All of us have our views on these matters. However, I accept that, whatever guidelines we have, there should at least be some consistency across the different forms of media to the extent that that is technically feasible. In principle I support the aims of the bill, even though the impact on some areas of content may be greater than I would wish in particular cases.

When the committee was established it heard evidence from a number of groups, in particular industry groups, which had concerns about the impact of the bill on their industry. The major concern by those industry groups was that they felt they had not been consulted properly in relation to the bill and, if it achieved nothing else, the whole process of the select committee provided the industry associations affected by this legislation with the opportunity to present their views.

It has been mentioned by other speakers in this debate that the industry expressed the view that there could be some loss of business to this state as a result of the changes because it was felt that if these laws were perceived to be more severe than in other jurisdictions then business would move to the jurisdictions that were perceived to have a less severe regulation. Even if there was no real risk, the argument was put that they would go there anyway because the risk would be less. That raises the point of whether South Australia should be the first state to introduce this legislation—I remind the committee that this legislation is part of a commonwealth-state scheme and our legislation is essentially complementary to the commonwealth legislation passed several years ago—or whether we should wait for other states to legislate.

The committee pointed out the fact that some other states—Western Australia, the Northern Territory and Victoria—have legislated in relation to these matters, that is, the control of internet content. However, the legislation in those states was drawn up prior to the commonwealth legislation being introduced and therefore there may be a question mark over the constitutional validity of that legislation. In particular, if it was inconsistent with commonwealth legislation then the commonwealth legislation would prevail.

However, given that South Australia is the first state to introduce this complementary legislation, it raises the question of what would happen if other states did not follow this measure. Unfortunately, the answer would be that the measure would have little value. Mention was made in the select committee report of the arguments of why we should do anything in this matter as there is very little that one state in a global system can do to address the global problem. Page 10 of the select committee report points out that, although we are only a minor contributor to the global problem, that is not

an argument against action. This would be similar to arguing that, because Australia is but a minor contributor to global environmental pollution, it should do nothing to address its contribution. The committee did not find this argument convincing: the global problem can be addressed only if each jurisdiction is willing to do its part. One would hope that, if the legislation is to be effective, other states would enact similar legislation so that at least within this country there would be similar measures.

Given that the Western Australian, Northern Territory and Victorian governments have similar legislation, even if not of the format agreed to by the commonwealth and the states, at least there is some regulation in those states, but obviously it would be preferable if all other states were involved. We have seen what has happened in relation to internet gambling where the commonwealth was unfortunately a reluctant party in trying to develop a commonwealth-state scheme. We found that the states went out, did their own thing and when the commonwealth government finally decided that it should do something about it the cat was out of the bag and we now have a real mess in relation to that matter. On a philosophical level, it has always been my preference that we should have commonwealth-state agreements in relation to these matters. Even if as a result of those agreements there are things we might disagree with, it is still better to have a scheme covering all states rather than having a situation where there are a whole lot of ad hoc state arrangements. It is better to have a lesser commonwealth-state system than to have no national system at all.

The Hon. Ian Gilfillan in his speech today pointed out that there were faults in the commonwealth legislation. I suspect he is correct. When the committee tried to look at ways of improving the bill and looked at trying to clarify the definition of uploading to the internet, it came across the problem that, if it changed that definition, it would be incompatible with the commonwealth act, which is referred to in the conclusions to the report, on page 25, paragraph 8(a), where it states:

> The committee sought advice as to whether an alternative expression, such as 'upload to the internet' may exist in making this clearer to readers. However, Parliamentary Counsel advised that this is not feasible because the model provisions depend substantially on definitions found in the commonwealth law, which the bill must reflect.

I do not disagree with the Hon. Ian Gilfillan when he says that the commonwealth legislation is not perfect. However, I make the point that I support this regime because it is better to have a system with faults than to have no system at all. For this legislation to be effective it is important that other states follow because if we, as one state—the smallest mainland state in the commonwealth in terms of population—are the only ones doing something, we will have little impact on this subject. However, if all other states of the commonwealth enact similar legislation it will have an impact at least in relation to what is loaded onto the internet within this country.

The other comment I make in this regard is that we are now entering a climate where there will be a need for greater control over internet content. It has of course been something of a celebrated fact that the internet was developed quite deliberately as a form of anarchy: the design was that no one would have control over the system and it would therefore be impossible to control what matter was going on to the internet.

That was a guiding philosophy for many of those people involved in the early development of the internet, but what we have seen in recent days is a move away from that. In particular, when one considers the events of 11 September we can see how the question of information now available on the internet has to be looked at with a greater degree of concern by governments. Related to that question are matters such as encryption and access to information on the internet (and email, for that matter) by law enforcement authorities. I am sure that we will hear more about that subject in the future.

I think that in future we will find that the internet will be a lot less free than it was in the past. However one might have liked the idea of an internet free from any control, sadly the events of 11 September and the increasing use of viruses, and so on, over the internet inevitably mean that there will need to be greater intrusion by government into what is available on the internet. And it will go beyond the measures we are discussing here today.

I refer to some comments that were made by the committee in relation to material covered by this bill. Conclusion 3 of the report states:

> It is appropriate that the South Australian law penalise the content provider who uploads to the internet material of an offensive character. Material of concern is not limited to sexually explicit material but may include a range of material. For example, this could include criminal and terrorist material, racial or religious vilification material, incitement to suicide, violence or to the use of illegal drugs, pro-paedophile material and other. There may also be internet content which although less objectionable should be legally restricted to adults.

That makes the point that this bill does provide a framework within which it is not just a question of adult material, which may have been the driving force for the original commonwealth bill several years ago. Again I make the point that we are now in a global situation where governments around the world will pay much greater attention to some of these other matters that are available on the internet. I will refer to a couple of other matters in the report that were raised by a number of people who approached members of this parliament both before the committee was established and after.

One of those questions relates to the role of the police in these matters, which is covered at section 5.4.3 of the report (page 18). This section notes that some submissions had argued that the bill allows police to determine the classification of the material rather than it being classified by a national board. It was argued that the determination should be reserved to the Classification Board, given that police have no expertise in classification and, in any event, are not an appropriate authority to classify content. The committee found as follows:

> The committee noted that the bill does not give police any power to determine the classification of an item. This misconception may have arisen from the new section 83B which was added by the Classification (Publication Films and Computer Games) (Miscellaneous) Amendment Bill (No.1) which has passed the parliament. Under that provision, police can serve a defendant with a notice inviting him or her to admit (relevantly):
>
> · that an item which was unclassified would have been classified X or RC—

RC, of course, is 'refused classification'—

> , or
>
> · that an item was classified R, X or RC.
>
> It is up to the defendant whether he or she wishes to admit this. If so, then he or she signs the notice and this is tendered in court as evidence of the defendant's admission. In that case, it is not the assertion by the police, but the admission by the defendant, which proves the classification.

If the defendant does not agree with police about the classification of the item, the case proceeds in the ordinary way. That is, police must have the material classified by the board, or if it is already classified, obtain the board's certificate, so as to be able to tender evidence of the classification at trial. The notice served by police does not determine the classification of the item, and indeed has no further relevance, except as to costs if the prosecution is successful. Contrary to what some submissions suggested, the police allegation cannot function as proof of any relevant fact in the case.

I think that that addresses one of the common criticisms that was made of the bill in the early days. The other matter that I wish to refer to is the question of costs, covered on page 13 of the report. The report states:

The majority of the committee considered that, in most cases, the content creator should be able to judge by reference to the guidelines and general experience in their application offline, what is acceptable online. Experience with focus groups in the context of the Community Assessment Panels suggests that members of the public with minimal training can readily understand and correctly apply the film guidelines.

The committee agreed that if a business does require the certainty of classification, this would come at a cost. The cost is fixed by commonwealth regulation and is beyond the control of the states. Film classification can be expensive, depending on the extent of the material to be classified. In some cases, it will be more cost effective to submit the material in text form as classification of publications is generally cheaper. It is therefore true that if the business frequently changes the content of its web site, and wishes to have it classified each time, this would prove expensive. However, it is somewhat unlikely that changes of a merely updating nature, which do not substantially change the nature of the content, would result in a change of classification. The business may prefer to use its own judgment in applying the guidelines, rather than seeking classification.

The committee also considered it most important to understand, as many submissions failed to grasp, that criminal liability does not arise under the bill just because the content provider makes a mistake about the likely classification of the material. This mistaken view was propounded in several submissions. The mental element of the offence, a matter required to be proven by the prosecution beyond reasonable doubt, is crucial. That is, for example, merely putting unprotected R material on the internet will not be an offence under the bill. An offence occurs either:

(a) when one uploads the material knowing it is or would be classified R, X or RC, or

(b) when one uploads the material recklessly as to its classification, that is, one unjustifiably takes a substantial risk, that the material is or would be classified R, X or RC.

Hence, where the material is unclassified, and one genuinely reaches the conclusion based on the guidelines that it would not fall within the offending categories, no offence is committed.

I think that those parts that I have read address some of the more strident criticisms of the bill. In conclusion, I think that the formation of the select committee was a useful exercise. It not only provided the industry sectors of the community with an opportunity to put their views to members of parliament but it also drew out a number of the issues involved.

Some changes that will be made to this bill will clarify aspects of it. We will deal with one of those when we move amendments later that clarify the position that a content provider should not be liable for the failure of a restricted access system where that failure is beyond the content provider's control. I acknowledge the work of the research officer of the committee, Catherine O' Neill, for the comprehensive job she performed in fairly quick time. This report should form a very useful document to anyone who wishes to look at these or similar matters in the future.

I would also make the observation that the whole area of internet technology is an area where, I think, the parliament is generally a long way behind what is happening. It is one of those areas that perhaps some of the standing committees could do well to have a closer look at and try to keep up with the trends because this technology is changing very rapidly. It is having very profound effects on our lives in ways that many people are just not aware of. and one thing that these committees bring out is that we in the parliament need, through our systems, to do a lot more to keep up with these changes that are taking place. So I just leave that as a general comment. I conclude by saying that I support the bill.

The Hon. NICK XENOPHON: I indicate my support for this bill. I congratulate the Attorney for the bill and the process. I was a supporter of the process of having a select committee to look into this issue. I believe that that process has been useful and fruitful and I also believe that it has debunked the views of the IT industry which considers that the issues of content and of having a legislative and regulatory framework in place cannot be tackled. The IT industry needs to realise that it is not above and beyond the law, and that what some in the IT industry propose in terms of a hands-off approach is what some others would consider to be akin to anarchy. The process that has been adopted by the Attorney, and the result in terms of the bill that is before this chamber, is most satisfactory, and for those reasons I support the bill.

I think that the horrific and tragic events of 11 September have brought into sharp focus that we are not simply talking about material that is X-rated: we are also talking about material that is offensive in many other ways, such as that which can be used by terrorists, and material that can be used to endanger the lives of others. This bill has a particular resonance given the events of 11 September.

At a federal level, the commonwealth government's on-line gambling legislation, the interactive gambling act, shows that you can deal with issues of internet content and that you can grapple with these issues. We need to bear in mind what the Hon. Paul Holloway said about the advances and changes in technology—that there are changes every day with respect to mechanisms to ensure that you can track down the sources of offensive content on the internet and advances in filtering mechanisms and in a whole range of technological expertise that will allow legislation such as this to be truly effective.

I believe that this legislation will go a long way, that it will be effective, and I believe it will be even more effective with technological advances. With those remarks, I commend the government for introducing this bill and I hope that it will be a model for other bills in the commonwealth.

The Hon. K.T. GRIFFIN: I thank honourable members for their contributions. As I, and others, have already indicated, the select committee process did work well. It was facilitated by the work of the research officer to the committee, Ms Catherine O'Neill, who has an excellent grasp of the issues as well as the law and practice relating to the whole area of classification of publications. I join with other members in putting on the record my appreciation for the contribution which she has made. It is not an easy area to work through. It is complex. I think that, when the report is read by those who are particularly concerned about the bill, they will find that it is an easy read and competently answers the issues which have been raised. I will now move to my amendments. I move:

Page 3, line 3—Leave out '(Miscellaneous) Amendment Act (No. 2)' and insert:
(On-Line Services) Amendment Act

This will alter the short title of the bill to reflect the fact that, since the bill now deals only with on-line content and no other classification matters, it is no longer appropriate to refer

to it as 'Miscellaneous'. Instead it should be referred to in its title by a specific reference to on-line services.

Amendment carried; clause as amended passed.

Clause 2 passed.

Clause 3

The Hon. K.T. GRIFFIN: I move:

Page 4—

Line 1—After 'offence to' insert:

make available or

Lines 22 to 24—Leave out subclause (2) and insert:

(2) It is a defence to a prosecution for an offence against this section to prove that—

(a) an approved restricted access system operated, at the time of the offence, in relation to access by means of the on-line service to the matter unsuitable for minors; or

(b) the defendant intended, and had taken reasonable steps to ensure, that such a system would so operate and any failure of the system to so operate did not result from any act or omission of the defendant.

The first amendment is intended to correct what appears to be a minor anomaly in proposed new section 75B(2). That section is concerned with exempting certain persons from the ambit of the bill. There is a specific exemption provided in new subsection (2) in the case of supplying relevant matter to a person or class of persons prescribed by regulation. However, that exemption speaks only of the offence of supply and does not include the reference to making available which appears in the offence provisions of the bill. It is therefore proposed to include the words 'make available or' so that the scope of the exemption matches the scope of the offence.

The second amendment to clause 3 addresses the concern raised in some submissions that a person might do the right thing by protecting R level material by means of a restricted access system, only to find that, in fact, the material was at some point in time not protected because the system had failed for reasons beyond the content provider's control. Obviously, it is not intended that the content provider be criminally liable in those circumstances. The amendment therefore provides that no offence is committed if the defendant had intended, and had taken reasonable steps, to ensure that the restricted access system would operate to protect the material and that the failure of the system was not due to any act or omission of the defendant.

Amendments carried: clause as amended passed.

Title passed.

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this bill be now read a third time.

The Council divided on the third reading:

AYES (15)

Crothers, T.	Davis, L. H.
Dawkins, J. S. L.	Griffin, K. T.(teller)
Holloway, P.	Laidlaw, D. V.
Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Roberts, R. R.
Schaefer, C. V.	Sneath, R. K.
Stefani, J. F.	Xenophon, N.
Zollo, C.	

NOES (5)

Cameron, T. G.	Elliott, M. J.
Gilfillan, I. (teller)	Kanck, S. M.
Roberts, T. G.	

Majority of 10 for the ayes.

Third reading thus carried.

Bill passed.

WATERWORKS (COMMERCIAL LAND RATING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 September. Page 2281.)

The Hon. T.G. CAMERON: I support this bill. Currently, households pay a supply charge and a usage rate but commercial landholders pay a value-based rate on the capital value of the land, credited against the water rate, for free water allowance. The national competition policy requires a review of this. The bill ensures that full volumetric pricing for water is applied to commercial lands, and this will be done on a revenue neutral basis. It gradually moves customers to the new pricing system over a five-year period by applying a decreasing discount to an increasing volume of water each year.

The Hon. K.T. GRIFFIN (Attorney-General): I thank honourable members for their indications of support for the bill. It is an important piece of legislation, an important reform, in relation to water rating.

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

STATUTES AMENDMENT (MOBIL OIL REFINERIES) BILL

Adjourned debate on second reading.

(Continued from 24 October. Page 2446.)

The Hon. T.G. CAMERON: It is my understanding that the bill is supported by the Labor Party so, quite clearly, the government has the numbers. The general manager of the oil refinery contacted my office and came to see me. He set out a case as to why he believed that the oil refinery would close unless something was done in relation to the Onkaparinga council.

Members will recall that, when the oil refinery was built, the world was a little different from the way it is today. Oil companies were trying to find places to build refineries rather than state governments being desperately keen to have oil refineries either set up in their state or maintained, as was the case here in South Australia regarding the Port Stanvac oil refinery.

I am particularly pleased that this bill will go through, because the case that the manager made out was quite compelling. I understand that there could be anywhere between 300 and 500 jobs at risk were the refinery to close. It is quite clear that the economic operating regime under which the refinery is required to operate places it at a severe disadvantage compared with refineries elsewhere in Australia.

For a whole host of reasons, I believe it is vital that we retain our refinery at Port Stanvac. It is vital to employment and it is important to the south. I also believe that there is a whole host of other reasons, without going into detail on them, as to why it is important that here in South Australia, if it is at all possible, we retain our own refinery. This bill amends the Oil Refinery (Hundred of Noarlunga) Indenture Act 1958 and the Mobil Lubricating Oil Refinery (Indenture) Act 1976. It does not seem like the refinery has been there for some 25 years, but I can recall going down and having a look at it when it was built.

In 1994, a three year $50 million investment plan was implemented in exchange for the abolition of inward loading charges for crude oil and condensate. However, the outward rates were kept. Finished petroleum products are also charged for import. This bill amends the indentures to abolish the import charges, and this will allow Mobil to achieve a suitable and profitable product mix. It also abolishes what amounts to a state tax on importation.

The bill also ends the state government's requirement to provide certain services such as housing, rail, road, water and electricity. I guess the most significant part of this bill, the one that does guarantee the ongoing future of the refinery, is that inherent in that is the ongoing guarantee for employment down south. This bill revises the figures from amounts payable to the Onkaparinga council in lieu of property rates. I understand that that is valued at about $600 000 over three years.

It does represent a compromise between Mobil and the council, and it is particularly pleasing to see that the compromise agreement that has been negotiated is being accepted by all of the parties. It is quite clearly not a compromise that Mobil is 100 per cent happy with, and it is not a compromise that the Onkaparinga council is 100 per cent happy with. However, I suggest that any compromise which kept both of those parties completely happy would not be a compromise that any government would have agreed to.

I commend the government and the Treasurer for their patience during what has been approximately 18 months of negotiations over this issue. It was not an easy one to sort out. On the one hand, the Onkaparinga council, naturally enough, wanted to maintain the current taxing regime while, on the other hand, Mobil was keen to keep the refinery going here in South Australia, and so it sought some tax relief. I understand that this bill clearly has the numbers. It represents a sensible compromise between Mobil and the council. SA First supports the bill.

The Hon. T. CROTHERS: Independent Labour is very supportive of the measure. I notice with some disappointing chagrin that a large transport officer has been somewhat critical in the past week or so of this measure. Whilst it is true that the bulk of his trucks are semitrailers and therefore can carry 150 to 200 gallons or whatever the litre equivalent is for that amount, and can probably fuel up at Geelong where there is a refinery, so it does not make much difference to him, in respect of small transport businesses, having a refinery located in this state does make a significant difference in respect of refining costs.

The alternative to having no refinery in this state is for us to import the petrol and the diesel fuel from interstate, and that is an additional cost. Of course, people may well argue that it costs us to bring in the light crude that we need in Australia—because all our crude oil is heavy crude, which is not really suitable for the distillation of petrol and light spirits. People may well argue that the costs of bringing it here from the Persian Gulf are expensive but I point out that, no matter what refinery there is in Australia, because of the heavy nature of our indigenous crude, they all have to import a certain quantum of light crude so that it is available to process petrol through the refinery.

I think it is a credit to this government—and to the Treasurer, in particular—that it has been able to successfully negotiate the particular position. I have no doubt that some of the rates that the council was charging were very high, given the unique nature and location of Port Stanvac. I believe that it is absolutely imperative for this state to maintain the refinery because of the interests of our smaller transport operators. And bear in mind that very shortly, no doubt, with the completion of the Adelaide to Darwin rail link, Adelaide will become a transport hub in Australia, and whether they bring the containers for export from Western Australia or Victoria by rail or by road transport is of little or no consequence. One of the large areas of road transport, of course, is in respect of our recently found and expanding mining industry at Roxby Downs. As I understand it, when they do their blister copper and the other ore resources that are in that area, they require upwards of, I think, 30 double booth, double axle front and back semi-trailers; in other words, about 30 tonners.

There are a number of reasons why more and more of our industries will depend on having a refinery. As small as Port Stanvac is, it suffices for the needs of South Australia. It is most important that we continue to operate it here, in spite of the comments from large interstate transport operators, who can buy their fuel from sources other than South Australia.

The Hon. T.G. Roberts: Name the sources.

The Hon. T. CROTHERS: You are from the South-East, are you not? I never speak to biased people. Do you read the *Border Watch*? I will leave it at that. I congratulate the government for having a victory which I think, whether it is in power or the opposition is in power, will bode well for employment in this state, both now and in the future. I am pleased to support the proposition.

The Hon. SANDRA KANCK secured the adjournment of the debate.

LAW REFORM (DELAY IN RESOLUTION OF PERSONAL INJURY CLAIMS) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 2584.)

The Hon. T.G. CAMERON: I rise to support the bill, which was introduced to allow survival of wrongs claims in law for the deceased plaintiff after their death. It allows the court to award damages on behalf of a deceased person, in certain cases, involving unreasonable delay in the resolution of a personal injury case. Most members of parliament at some stage or another have had to deal with a constituent who is having problems with what they consider to be unreasonable delays in their case, and it is reasonably common knowledge that, with respect to some of these matters, the object of the lawyers is to delay the matter for as long as possible—and, of course, there is the old saying that justice delayed is justice denied.

An unreasonable delay exists if a person attempts to delay, or delays, a case because they believe that the plaintiff will die before the resolution of the case. I can think of just such a case, where I have no doubt that the defendant will attempt to delay the case for as long as possible in the hope that the applicant is not around when it gets to court. In the case about which I am thinking, people I know well have been predicting this person's demise now for about 15 or 20 years, but the old bugger is still with us. The court will take into account the extent of the unreasonable delay and issue exemplary damages as punishment for the action. SA First supports this bill. It provides for exemplary awards in compensatory damages against a person who tries to avoid civil liberty by delaying an action in tort—and well it should.

The Hon. T. CROTHERS: I do not want to really speak on this from any specific position. Later on up the track it might be used against me as abusing my position.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

WORKERS REHABILITATION AND COMPENSATION (DIRECTIONS OFFICERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 July. Page 1999.)

The Hon. T.G. CAMERON: My understanding is that this bill was introduced following recommendations made by the President of the Workers Compensation Tribunal, and that the nub of his recommendation was to create a position that enabled the expeditious treatment of pre-trial matters and monitoring compliance with the orders given—no mean task, I might add, considering the number of workers' compensation matters that the court has to deal with at any one time. This role has been carried out by an acting deputy president, and the recommendation from the President proposes to create a position to be named Directions Officer. As I understand it, the Directions Officer will be carrying out functions that previously have been carried out by an acting deputy president, which seems to me to be a bit of a waste of the time of an acting deputy president, and I would be interested to know from the minister what sort of remuneration the Directions Officer will be paid in comparison with the salary of an acting deputy president.

As I understand it, the bill sets out that the Directions Officer must be a legal practitioner of five years' standing or more, and will be appointed for a fixed term—five years at a time. However, they can be reappointed, and I think that that is a sensible option to retain.

Any decisions that a directions officer may make or orders that they may give in relation to a workers' compensation matter can be appealed to the full bench of the tribunal but, as I understand it, leave will be required for an appeal on facts. Perhaps I could ask the minister to respond to my query in relation to that matter at a later date. As I understand it, a question of law can be reserved for a decision by a single member of the tribunal. An industrial magistrate can perform the duties of the directions officer at the direction of the President. Pre-trial hearings may be conducted by the directions officer in connection or conjunction with proceedings before the tribunal, and they will be able to issue orders and give directions in accordance with the rules of the tribunal.

Some of the current duties of the President or the conciliation arbitration officer—to ensure that the parties have identified the real issues, agreed on matters that can be agreed on, attempted to limit the duration of the hearing and making sure that it proceeds on time—will all now be handled by a directions officer. The directions officer will be able to exercise the jurisdiction of the tribunal in expediting proceedings. It is my understanding that the directions officer will carry out work in exactly the same manner with respect to pre-trial matters, monitoring compliance, and so on, as was delegated by the President to an acting deputy president.

If the objective here is to expedite workers' compensation claims, that objective should be supported. However, I cannot ascertain from the bill or the contributions to date whether or not in fact that is the objective and whether that will be achieved. At this stage, SA First supports the second reading and I will listen to debate during committee.

The Hon. J.F. STEFANI secured the adjournment of the debate.

SITTINGS AND BUSINESS

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That the Council at its rising adjourn until Tuesday 13 November.

Motion carried.

VOLUNTEERS PROTECTION BILL

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

The Hon. K.T. GRIFFIN (Attorney-General): 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 1999, the State Government sponsored a Volunteer Summit and Forum in Adelaide to identify the needs of the volunteer community. Over 350 volunteers participated in this process and the results from that meeting have since shaped the Government's volunteer policies and programs.

Of particular concern to volunteers is a very real and increasing fear that volunteers face potential liability in carrying out their community work. The volunteer community believes that the willingness of volunteers to offer their services to organisations is deterred by the perception they may be held to be personally liable for actions arising out of their services rendered to a voluntary or community organisation; that is, because of concerns about personal liability, volunteers are withdrawing from services in all capacities.

The *Volunteers Protection Bill 2001* represents the culmination of 16 months of investigating a solution that provides protection to individual volunteers from possible liability.

Globally, the threat of legal liability discourages people from offering their services in a voluntary capacity. As a result, voluntary organisations struggle to recruit and retain sufficient human resources; existing volunteers carry the burden of fulfilling increasing demands. National leaders around the world have been discussing this issue for some time. In fact, parliamentarians from the Council of Europe's 41 member states recently adopted a recommendation urging governments to remove those legal obstacles that hinder people from engaging in voluntary roles.

To direct the Government's response to this issue, a thorough global investigation of current mechanisms that provide this type of protection to volunteers was driven by a whole of Government working party.

This investigation showed that there are, currently, no such mechanisms in Australia from which to draw. Consequently, the investigation turned to international sources and, in particular, to the U.S.A. During June 2001, 2 representatives travelled to the U.S. to research further the American Federal and State legislation that protects volunteers against personal liability. Meetings were held with key legislators, lawyers, peak community and voluntary organisations, and representatives from Federal and State Government departments–key people who had worked on the development and implementation of the American Federal volunteer protection legislation.

In March 2001, a discussion paper detailing the proposed legislation was released for public comment. Over 6 000 papers were distributed for comment and over 20 public forums were held in 14 regional centres across the State.

As a result of the community consultation, 84% of formal respondents agreed with the proposed model for protection. No opposition to the principal of protection was voiced. In response to the community's feedback, and from observations of the American experience, this Bill will immune individual volunteers from personal liability; that is, individuals involved as a volunteer for an incorporated body that directs or co-ordinates the carrying out of community work will not be held personally liable for an act or omission done or made in good faith while carrying out the

community work. Liability will, instead, rest with the incorporated body.

The Government recognises that over 400 000 South Australians provide essential and necessary voluntary services to all communities. It is intended by this Bill to reduce the liability exposure and potential costs of litigation to volunteers in order to encourage and support voluntary services in our communities.

The purposes of the Bill are set out in the preamble to the Bill. The preamble is couched in the following terms:

1. The Parliament recognises that volunteers make a major contribution to the South Australian community and seeks to foster and encourage volunteering in the community by all possible means.
2. The Parliament recognises, however, that a major disincentive to volunteering is the prospect of incurring—
   (a) serious personal liability for damages; and
   (b) legal costs in proceedings for negligence.
3. The Parliament seeks to achieve a reasonable and expedient balance between the need to protect volunteers against personal liability and the interests of those who suffer injury, loss or damage in the following ways:
   (a) by limiting the personal liability for negligence of a volunteer who works for a community organisation and transferring the liability that would apart from this Act attach to the volunteer to the community organisation;
   (b) by limiting the right to bring proceedings against the volunteer personally and hence reducing the risk to a volunteer of incurring legal costs as a result of the voluntary work.

To further support the volunteer community in understanding this Bill, a comprehensive, free, risk management campaign for the volunteer community will be an integral part of the implementation of this Bill.

I commend the bill to the House.

Explanation of clauses

Preamble

The purposes of the Bill are set out in the preamble to the Bill as follows:

1. The Parliament recognises that volunteers make a major contribution to the South Australian community and seeks to foster and encourage volunteering in the community by all possible means.
2. The Parliament recognises, however, that a major disincentive to volunteering is the prospect of incurring—
   (a) serious personal liability for damages; and
   (b) legal costs in proceedings for negligence.
3. The Parliament seeks to achieve a reasonable and expedient balance between the need to protect volunteers against personal liability and the interests of those who suffer injury, loss or damage in the following ways:
   (a) by limiting the personal liability for negligence of a volunteer who works for a community organisation and transferring the liability that would apart from this Act attach to the volunteer to the community organisation;
   (b) by limiting the right to bring proceedings against the volunteer personally and hence reducing the risk to a volunteer of incurring legal costs as a result of the voluntary work.

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause contains definitions of terms used for the purposes of this measure. In particular, a community organisation is defined as a body corporate that directs or co-ordinates the carrying out of community work by volunteers. This definition specifically includes the Crown as a community organisation.

Community work means work for any one or more of the following purposes:

- for a religious, educational, charitable or benevolent purpose;
- for promoting or encouraging literature, science or the arts;
- for looking after, or providing medical treatment or attention for, people who need care because of a physical or mental disability or condition;
- for sport, recreation or amusement;
- for conserving resources or protecting the natural environment from harm;
- for preserving historical or cultural heritage;
- for a political purpose;
- for protecting or promoting the common interests of the community generally or a particular section of the community.

Other work may, by regulation, be classified as community work, or excluded from community work, for the purposes of this measure.

A volunteer is a person who carries out community work on a voluntary basis and a person works on a voluntary basis if the person—

- receives no remuneration for the work; or
- is remunerated for the work (but within limits fixed by regulation for the purposes of this particular definition).

A person who carries out community work under the order of a court or a condition of a bond is not to be regarded as working on a voluntary basis.

Clause 4: Protection from liability

Subject to the following exceptions, a volunteer incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in the course of carrying out community work for a community organisation.

The exceptions are as follows:

1. The immunity does not extend to a liability that falls within the ambit of a scheme of compulsory third-party motor vehicle insurance or a liability for defamation.
2. The immunity does not operate if the volunteer's ability to carry out the work properly was, at the relevant time, significantly impaired by a recreational drug (as defined in clause 3).
3. The immunity does not operate, in the case of a volunteer who works for a community organisation, if—
   (a) the volunteer was acting, and knew or ought to have known that he or she was acting, outside the scope of the activities authorised by the community organisation; or
   (b) the volunteer was acting, and knew or ought to have known that he or she was acting, contrary to instructions given by the community organisation.

Clause 5: Application of doctrine of 'respondeat superior' to volunteers

If a volunteer works for a community organisation, a liability that would, but for this Act, attach to the volunteer attaches instead to the community organisation.

A person (the injured person) who suffers injury, loss or damage as a result of the act or omission of a volunteer may not sue the volunteer personally unless—

- it is clear from the circumstances of the case that the immunity conferred by this measure does not extend to the case; or
- the injured person brings an action in the first instance against the community organisation but the community organisation then disputes, in a defence filed to the action, that it is liable for the act or omission of the volunteer.

Clause 6: Regulations

The Governor may make regulations for the purposes of this measure.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

VICTIMS OF CRIME BILL

The House of Assembly did not insist on its amendment No.1 to which the Legislative Council had disagreed, and agreed to the alternative amendment made by the Legislative Council.

ADJOURNMENT

At 4.35 p.m. the Council adjourned until Tuesday 13 November at 2.15 p.m.