LEGISLATIVE COUNCIL

Wednesday 16 October 2002

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.15 p.m. and read prayers.

STATE DISASTER LEGISLATION

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I table a copy of a ministerial statement on a review of state disaster legislation and associated arrangements made in another place by the Premier.

FIRE SEASON

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I table a copy of a ministerial statement in relation to early commencement of the fire season 2002 made in another place by the Minister for Emergency Services.

TOBIN, Dr M.J.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I table a copy of a ministerial statement in relation to the investigation of the murder of Dr Margaret Tobin made in another place by the Minister for Police.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Aboriginal Affairs and Reconciliation (Hon. T. G. Roberts)—

Reports, 2001-2002—
Bio Innovation SA
Commissioners of Charitable Funds
Construction Industry Training Board
Nurses Board—South Australia
Playford Centre.

LEGISLATIVE REVIEW COMMITTEE

The Hon. CARMEL ZOLLO: I bring up the 11th report of the committee, being the report for 2002-03.

SELECT COMMITTEE ON SHOP TRADING HOURS (MISCELLANEOUS) AMENDMENT BILL

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I bring up the interim report of the committee.

Report received and ordered to be printed.

COURT OF DISPUTED RETURNS

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to the Court of Disputed Returns made in another place by the Hon. Michael Atkinson, the Attorney-General and Minister for Justice.

CONSTITUTIONAL CONVENTION

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I lay on the table a copy of a ministerial statement relating to the Constitutional Convention made in another place by the Hon. Michael Atkinson, the Attorney-General and Minister for Justice.

MOUNT GAMBIER PRISON

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I seek leave to make a personal explanation.

Leave granted.

The Hon. T.G. ROBERTS: Yesterday, I may have inadvertently caused the council to understand that the former Liberal government's Mount Gambier prison contract was, in the view of this government, in some way a form of PPP, as contemplated within the guidelines released on 1 September this year. This is not the case, and it was not my intention. The government has made it clear that government services, such as correctional services, will not be outsourced in any PPP arrangements made by this government.

QUESTION TIME

PUBLIC-PRIVATE PARTNERSHIPS

The Hon. R.I. LUCAS (Leader of the Opposition): My question is directed to the Minister for Correctional Services. Given the government's guidelines that argue that public-private partnerships are not privatisations, will the minister confirm whether he believes the prisoner movement and in-court management contract is a public-private partnership or a privatisation?

The Hon. T.G. ROBERTS (Minister for Correctional Services): I understand the line of questioning that has been taken by the shadow. It is one of the contracts of the previous government.

Members interjecting:

The PRESIDENT: Order! Interjections are out of order.

The Hon. T.G. ROBERTS: I refer the honourable member to my earlier explanation in relation to our understanding of PPPs as set in the guidelines released on 1 September this year, as opposed to their understanding of PPPs and privatisation contracts as set by the previous government during its time.

The Hon. R.I. LUCAS: As a supplementary question, given the release of the guidelines from this government—that is, the new government—from 1 September is the prisoner management, movement and in-court management contract an example of a public-private partnership or not?

The PRESIDENT: That is the same question.

The Hon. T.G. ROBERTS: I will answer the question, Mr President.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. ROBERTS: I will refer that question to the Minister for Government Enterprises and bring back a reply.

The Hon. R.I. LUCAS: As a further supplementary question, will the minister indicate what this has to do with the Minister for Government Enterprises?

The Hon. T.G. ROBERTS: The Minister for Government Enterprises is responsible for the letting of contracts.

WORKERS REHABILITATION AND COMPENSATION ACT

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Industrial Relations, a question about the Workers Rehabilitation and Compensation Act.

Leave granted.

The Hon. R.D. LAWSON: In 1978 the Supreme Court of South Australia handed down a decision in the case of the WorkCover Corporation against Smith. In the course of his concluding remarks, Justice Lander in that case said:

> Unless section 3 of the Workers Rehabilitation and Compensation Act is amended, any worker who lives outside South Australia but who is employed in South Australia and whose duties of employment require that worker to perform more than 10 per cent of his or her employment outside of the state is not entitled to any benefits under the act in the event that the worker suffers a disability, even if that disability arises out of an injury suffered in South Australia.

The judge also concluded that in his view that result was anomalous, unfair and unjust. The Hon. Bob Sneath, in a number of questions asked in this place last year and before, sought details of progress being made to reach a national solution to the problems raised by that decision. My questions to the Minister for Industrial Relations are:

1. What steps has the government taken to address this situation?

2. Can he provide a report on whether a national solution has been found?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those questions to the Minister for Industrial Relations in another place and bring back a reply.

FARMBIS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question on FarmBis.

Leave granted.

The Hon. CAROLINE SCHAEFER: Yesterday the minister claimed, as he has on numerous occasions, that the Liberal Party in government had left no funding for FarmBis. I have been back and looked at the regional statement put out with last year's budget, the 2001-02 budget—a statement that was sadly lacking this year. The top listed key budget initiative was:

> The commitment to a $8 million per annum FarmBis program for three years in partnership with the federal government.

That is $4 million per year from the state government and $4 million per year from the federal government for three years. I have also received today an email from a couple who I know quite well who live right in the heart of the drought affected Murray Mallee area. It says:

> We were interested in attending an SRS wool course at Roseworthy on 26 and 27 October. We have just received a letter to say this course has been cancelled.

That was yesterday. The letter from the provider states:

> Yesterday we were notified by SA FarmBis that they will not provide financial support for that program. This is due to their new conditions for funding training in South Australia and as our course is at the national level 4, and they now only fund level 5 programs, this course does not qualify.
>
> This means to attend the program the cost would be $400 per person, plus GST.

Naturally that course has had to be cancelled. The writer of the email goes on to say:

> Honestly, how can we afford $400 each to attend a workshop to help us improve our sheep/wool and make our farm more viable, especially here in the mallee?

I have also been provided with information that FarmBis courses, flock care and cattle care, which are specifically pitched at preparing cattle and sheep for export, have been cancelled out of Light Plains Stock Exchange, from where they have been run for a number of years. My questions are:

1. What farm courses will be continued? Yesterday, the minister said:

> The measures we have announced are to continue to support those particular programs that will encourage better farming practices and sustainable farming, so it will continue in the future.

I therefore ask: what courses will be continued to support and encourage better farming practices and sustainable farming?

2. Where will they take place?

3. How will South Australia's farmers and trainers find out about them?

4. How will they apply at such short notice?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): The first point the shadow minister for agriculture made was that apparently one of the budget papers under the previous Liberal government implied that that government was to continue funding the FarmBis program. If the previous government intended to fund the FarmBis program into the future, why did it not provide for it in the forward estimates of the budget?

I am certainly well aware that some statements were made within the budget papers of the previous government that implied that the government intended to continue FarmBis, but there was no money. It did not put its money where its mouth was. That is the reality and I checked that. I was aware of certain statements made in the budget papers so I had my department double check the matter, and no provision was made for forward spending of the FarmBis program beyond the—

The Hon. Caroline Schaefer interjecting:

The Hon. P. HOLLOWAY: Sorry—year 2003-04. In other words, $4 million was provided by the state in the previous year and in the year 2002-03, but nothing was provided in the third year of that program. As I have explained on a number of occasions in this place, yes, the government did reduce the allocation this year so that there would be some provision into the future. Also, I explained to the council that the actual spending on FarmBis in this year would match the $8 million, or thereabouts, as a result of the large carryover in funding from previous years. In fact, last year's FarmBis program—and I do not have the exact figure—was of the order of $4 million, about half of what had been provided.

There was a large carryover into this year, which would mean that the full allocation would be spent; and, of course, what this government was doing in the budget situation (which we inherited) was ensuring that there would be some funding. And that carried over into the future because that was not provided for in the future budget of the previous government. The fact that there may have been some statements in the budgets of the previous government to the effect that there was to be forward funding of FarmBis makes that dishonesty all the more repugnant.

Typical of the Liberal government was to imply to the people of this state that it was going to do things when in fact it did not put its money where its mouth was. The fact that the

previous government's budget papers may have carried incorrect information is not the problem of this government. The shadow minister then asked some detailed questions about new conditions in relation to FarmBis. The funding for the FarmBis scheme includes a state planning group. It is an independent group because, of course, half of the money for FarmBis comes from the federal government.

An independent group meets and, of course, it must ensure that the spending on the FarmBis program complies with the appropriate guidelines required by the commonwealth. Obviously, with the allocation of additional money that has been announced by the government, the state planning group will need to assess the areas where that additional funding will be spent. Clearly, I will not prejudge. The state planning group is aware of the current drought conditions. Of course, the original decision in relation to this budget was made back in May and, of course, we did not have any idea at that time that this state would be facing such a horrific drought which, unfortunately, we now have.

The state planning group will no doubt be meeting shortly to consider the appropriate way in which to allocate this money over the next 18 months to two years to ensure that it goes into areas where it is most needed. In relation to the specific case raised by the honourable member, and I cannot recall which one it was but I will check the *Hansard*, I will obtain some information in relation to that particular course. People have sought assistance under this program in a number of areas and, clearly, the guidelines for that are set by the state planning group. They must operate within the budget parameters that are set for them.

Obviously, not every course that people might wish to undertake can be approved. I have had correspondence from a number of people in relation to particular courses that they believe should be funded under the FarmBis program. I will look at the information provided in *Hansard* about that case and get back to the honourable member on that matter.

ABALONE FISHERY

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the illegal trade in abalone.

Leave granted.

The Hon. J. GAZZOLA: I am aware that, while the production of abalone has declined over the past 25 years, world demand for abalone has never been higher. Following the decline and in some cases disappearance of wild stocks in Japan, Mexico, South Africa and the United States, Australia's share of the global market in abalone has increased markedly. With an increase in price, however, has come an increase in the occurrence and sophistication of poaching operations. Can the minister provide the council with an update on the issue of illegal trade in abalone and its effect on this state?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I thank the honourable member for his question, because actually the question of illegal fishing, not just of abalone but in all areas of the fishery, is a continuing problem in our community. Before I answer the specifics on the question of abalone, I was pleased to see that last week compliance officers within the primary industries department successfully carried out an exercise along the Murray River to remove illegal nets that have been used in that area. I was pleased to see that the number of those illegal nets has reduced over the years.

There certainly is a growing illegal trade in abalone. Despite the best efforts to ensure a proper legislative and administrative framework that surrounds our abalone fishery, illegal abalone harvesting and poaching do occur in this country and this state. As a result of the need to protect stocks in the wild and ensure that proper procedures are followed with regard to aquaculture ventures, the availability of abalone dive licences is limited, and the cost of purchasing a licence and the associated set-up fees to enter that industry are very high.

When one considers this and compares the potential profits to be made through illegally harvesting and trading in abalone, it is easy to see why some are motivated to enter the illegal trade. Fish Watch and fisheries compliance officers are doing an excellent job in often difficult and dangerous situations to try to catch and prosecute offenders. We must ensure, however, that when these offenders are caught the law is adequate to make sure that not only are they punished but also others are deterred from following in their steps.

When our current Fisheries Act was introduced back in 1982 it led Australia, and it is still regarded as an effective piece of legislation, particularly in the area of resource management. However, recent cases of those charged with possession of illegal abalone escaping conviction on technicalities—and I am sure members would have read about that case in the *Advertiser* some time back—have exposed the fact that our laws are often outdated and inadequate for dealing with the modern, sophisticated criminal operations that we see in this area. So, I am hopeful that, following the review of the Fisheries Act which is now under way, we will be able to develop laws that will adequately protect not only abalone but also all of our state's fishing stocks from illegal activity.

If our state's fishing and aquaculture industries are to continue to provide employment for so many in this state, particularly in regional areas, it is important that all of us involved in the process of managing the resources of this state do our best to ensure that those resources are protected from illegal activity.

The Hon. CAROLINE SCHAEFER: As a supplementary question: what is the current fine for someone found guilty of poaching abalone, and how many arrests have been made in the past 12 months?

The Hon. P. HOLLOWAY: As I mentioned in my answer, there was a celebrated case not long ago involving people allegedly tracking abalone from Victoria. However, despite a very extensive investigation by the primary industries department, those people were not successfully prosecuted because of a technicality.

Members interjecting:

The Hon. P. HOLLOWAY: That's right. The department did but, nevertheless, given the large investment that had been undertaken by officers in that department, and although clearly these people had possession of over 1 000 kilograms of abalone, as a result of a technicality in the act that prosecution was not successful. The question of penalties needs revision, as do questions relating to evidence. That is one of the matters that I would wish the Fisheries Act review to take on at the moment, because clearly we need to look not only at the penalties but also at the particular offences. It is not so much what the penalty is for a particular breach of the Fisheries Act but the range of offences that we have in place to ensure that they cover situations such as the one that was before the courts earlier this year.

HOSPITALS, ACCIDENT AND EMERGENCY DEPARTMENTS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs, representing the Minister for Health, a question regarding stresses on staff in the accident and emergency departments of our major hospitals.

Leave granted.

The Hon. SANDRA KANCK: At a social function I attended recently, I spoke with parents who recounted to me their harrowing experiences in the emergency department of the Flinders Medical Centre on a Saturday night. They had no option but to wait with their child in a cubicle for six or seven hours before she was seen by a doctor. The father began the conversation with me by urging me as an MP to visit our major hospitals on a Saturday night to see just what the staff go through. He told me of two cases that he had witnessed where other people were in a worse position than his child.

One of them involved an elderly woman who had clearly had a stroke and was unable to speak. She was wriggling in a very agitated state on a barouche and it looked like she was going to fall off. Security guards came along and pulled her back up on to the barouche and pulled up the sides so she would not fall. Quite a number of hours later, on the next occasion when a nurse checked on her, the nurse found that the woman had been incontinent. That nurse was quite distressed, and expressed dismay and sympathy to the old woman that they had misinterpreted her actions. Clearly, with no-one to help her out, she had been trying to get herself off the barouche so she could get to the toilet.

The other patient I was told about was a man who suffered a stroke while he was in the emergency department with his family. A family member rang to tell a nurse, and the nurse in turn ran into the cubicle in a very harassed state to inform the family that the nursing staff could do nothing to stop the stroke from happening, and that when he stabilised someone would eventually get around to checking his condition. The man who told me about these things felt very deeply for the nursing staff that they should be placed in such extreme pressure situations. I know that the nursing shortages we face are a result of poor planning over a decade and that the pressures in accident and emergency departments are increasing rather than decreasing, but I ask the minister:

1. What is being done to support such dedicated nursing staff to ensure that they do not burn out?

2. Would the Minister for Health be willing to accompany me on a visit to accident and emergency departments in our major hospitals on a Saturday night so that we can see the situation for ourselves at first hand?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those important questions to the Minister for Health in another place and bring back a reply.

UNEMPLOYMENT

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Social Justice, a question concerning South Australia's unemployment rate.

Leave granted.

The Hon. A.L. EVANS: South Australia's unemployment rate is at its lowest level in 13 years, thanks to 10 000 jobs gained last month. According to the Australian Bureau of Statistics, the unemployment rate in South Australia improved in September, falling from 6.7 percent to 6.4 percent. Our youth do not appear to be faring quite as well. Our state has a very high unemployment rate amongst youth. The rate in September has risen to 24 percent, up from 21.8 percent in August, and our figure is the highest in the nation. My questions to the minister are:

1. What projects and programs are in hand that the minister is confident will reduce the rate of youth unemployment before the end of this year?

2. In light of these statistics, is the government reconsidering its decision in the budget to reduce funding for youth initiatives?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I thank the honourable member for his important questions and note his concern since he has been in here for the prospects of young people facing unemployment. I think we all share that concern on both sides of the council. I suspect the good news in relation to the improved figures needs to be taken in context with some of the difficulties the economy might face in the near future in relation to the problems associated with drought and the uncertain international circumstances that may impact back on our national and state economy, but, certainly take into account the inherent concern in that, as the employment figures get better, in some cases some people are left behind, and the government is aware of that. But I will be passing on those important questions to the minister in another place and bring back a reply.

PEDESTRIAN CROSSING, GRAND JUNCTION ROAD

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Transport, a question about the proposed pedestrian crossing on Grand Junction Road at Hope Valley.

Leave granted.

The Hon. J.S.L. DAWKINS: The stretch of Grand Junction Road immediately to the west of Valley Road at Hope Valley has a reputation of being particularly dangerous for pedestrians. This is accentuated by the fact that on the northern side of the road is the Lutheran Homes Retirement Village and, on the southern side, are the local shops and hotel. Several years ago a resident of the village was seriously injured while attempting to cross the road to go to the shops. In light of that incident and several others, local residents have called for the installation of a pedestrian crossing to allow safe passage across the road.

Following the completion of proposed development plans by the shopping centre in January of this year, the previous Liberal government announced that funding had been allocated for a pedestrian-activated crossing to be built by May of this year. However, despite the fact that the current Premier and the member for Florey in another place visited the retirement village prior to the election to demonstrate their apparent commitment to the proposed crossing, it has still not been constructed.

The Hon. Diana Laidlaw: Has work started?

The Hon. J.S.L. DAWKINS: Not to my understanding. I have also been informed by the Federal member for Makin,

Mrs Trish Draper, that another accident has recently occurred and the victim will possibly require admittance to a permanent care facility as a result. Mrs Draper has written to the Minister for Transport but is yet to receive any indication of when or even if the crossing will be installed, or whether it has been lost as part of a $4.8 million budget cut this financial year. My questions are:

1. Does the minister recognise the dangers posed to pedestrians by the absence of a crossing in the vicinity of the Lutheran Homes Retirement Village?

2. Considering that funding was allocated by the previous government for the installation of the crossing in the 2001-02 budget, does the government intend to honour the commitment to construct the crossing and, if so, when?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will take those questions of concern into account and refer them to the minister in another place and bring back a reply.

HINDMARSH SOCCER STADIUM

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Recreation, Sport and Racing, a question about the Hindmarsh stadium.

Leave granted.

The Hon. J.F. STEFANI: The Auditor-General's Report for the year ending 30 June 2002 provides details of user charges and fees collected for the Hindmarsh stadium. On page 756 of Volume 2 of the Auditor-General's Report, under the heading 'Statement of Financial Performance', an amount of $254 000 is shown as revenue collected as user charges and fees.

I am aware that the Adelaide City Force Soccer Club was charged $8 000 plus GST each time it used the Hindmarsh stadium during the 2001-02 season. I am also aware that, under a memorandum of agreement, the Adelaide Galaxy premier league team was charged $3 300 plus GST for the evening use of the stadium and $2 400 plus GST for the daytime use of the stadium to play its soccer matches during the 2001-02 premier league competition.

From information previously published in the South Australian Soccer Federation annual reports, I am aware that substantial sums of money were received by the South Australian Soccer Federation for the use of the Hindmarsh stadium during training camps by J League teams from Japan. My questions are:

1. Will the minister advise the individual amounts of revenue received by the venue management during the financial year ended 30 June 2002 for the use of the Hindmarsh stadium by the various organisations hiring the facility?

2. Was any money received from any organisation utilising the facility for training camps and, if so, what was the amount received?

3. Will the minister confirm the amount of principal and interest paid during the past financial year to the National Bank by the South Australian government as the guarantor for the $6 million loan previously incurred by the South Australian Soccer Federation?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those questions to the minister in another place and bring back a reply.

COMMUNITY FOUNDATIONS

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Regional Affairs a question about regional support for community foundations.

Leave granted.

The Hon. R.K. SNEATH: Community foundations can be established by communities to manage and distribute funds donated by local people, businesses and organisations. I understand that the government has made a commitment to support the establishment of such funds and foundations. My question is: how is the government assisting regional communities to get community foundations up and running?

The Hon. T.G. ROBERTS (Minister for Regional Affairs): I thank the honourable member for his question and his ongoing interest in regional affairs. Community foundations are independent charitable organisations that are formed to seek, manage and distribute gifts from philanthropic donors to address local needs. Foundations provide a vehicle for individuals, families and businesses to invest in the future of their communities. By building a substantial base of funds, a community foundation is able to respond to emerging community needs through grant making and other programs.

The previous government, to its credit, began the process of supporting the establishment of community foundations, through the Office of Regional Development. The state government, through the Office of Regional Affairs, has financially supported several studies that have assessed the feasibility of establishing community foundations in regional South Australia. Information about community foundations has been distributed widely to members of regional/rural groups and organisations.

Several people from rural communities were financially assisted to attend a national forum on community foundations held in Katoomba during March 2002. Opportunities to participate in training and development in relation to fund establishment and development have been made available to members of rural communities. In May 2002, the Office of Regional Development sponsored several regional workshops and awareness raising sessions conducted by Barbara Oates, Program Director of the Vancouver Foundation.

The Minister for Regional Affairs will present a $10 000 cheque to assist in the establishment of a corpus for the first rural community foundation in South Australia—the Barossa Community Foundation—later this month. From the information I have received from a briefing from those people who have been involved in the foundations in Canada, they can build up not just community foundation funds but also confidence within communities to be able to fund programs that they are able to identify and prioritise locally.

The Hon. J.S.L. DAWKINS: As a supplementary question, will the minister indicate what level of experience and expertise of existing community foundations in places like Keith has been taken into account and included in the information distributed to other rural communities?

The Hon. T.G. ROBERTS: I am unaware of any of the discussions, negotiations or cross-fertilisation that may have come from the Keith body. I will take that question on notice and bring back a reply for the member.

GENETICALLY MODIFIED FOOD

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food

and Fisheries a question about GM-free zones in South Australia.

Leave granted.

The Hon. IAN GILFILLAN: In the last weeks of the election campaign the Labor Party forwarded a press release and associated background papers to Ms Sandra Russo of the organisation known as GE Free Australia Inc. A number of parliamentarians, including me, have recently received a copy of a letter from Ms Russo to the Premier on this matter, as well as copies of the background documents. Among the statements made by the Labor Party in these documents, was the following:

> Labor will ban the growing of genetically engineered food crops in three of the state's prime agricultural belts and launch a full-scale public inquiry into the safety of GE foods.

The document goes on to identify the likely areas, as follows:

> [Labor will] move immediately to introduce legislation allowing a ban to be placed on growing GE crops in areas such as—

and I emphasise 'such as'—

> the Eyre Peninsula, Kangaroo Island and the Adelaide Hills.

Labor's position gets even stronger:

> . . . without specific action to ban trial plantings and commercial release, a Federal-appointed bureaucrat can determine the future of South Australian agriculture. Labor finds this position unacceptable.

A document purportedly signed by Mike Rann, John Hill, Annette Hurley and Lea Stevens states:

> . . . the simple truth is that no-one knows at this stage what the final outcomes will be—because genetic engineering is a science which is in its developmental infancy.
>
> Releasing the results of the third annual grain elevator survey in December, 2001, the American Corn Growers Association revealed more than half the grain storage facilities surveyed now require segregation of GM crops and that almost one-fifth of the elevators are now offering farmers price premiums for non-GM foods.
>
> Even without taking into consideration the potential future impact on people's health and South Australia's precious environment, those figures indicate an uncontrolled rush into GM food production could have serious economic consequences for the State's food producers and processors.

This valuable document goes on:

> With so much at stake, Labor believes GE foods should be compelled to meet the same sort of exacting standards which are applied before new drugs and medicines can be introduced for widespread use.
>
> Labor recognises the potential long-term benefits and believes genetic research should continue across a whole range of areas—in rigidly controlled laboratory conditions—

I repeat: in rigidly controlled laboratory conditions—

> and NOT on supermarket shelves, family dinner tables and open farmland.
>
> Labor will establish an Office of Gene Technology to closely monitor the operations of the national framework.

Labor was elected in February and, after eight months, there is still no legislation from the government allowing the creation of GE-free zones, nor is there any sign of a government bill even in the offing for that, nor have there been moves to set up the expert office as promised. My questions to the minister are:

1. Do these documents reflect the attitude of the ALP approaching the state election?
2. What, if anything, has changed since the election?
3. When can we expect to see legislation as promised?
4. When will the expert office as promised be established?

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I was not one of those shadow ministers responsible for this policy at the time it was released before the election, so I cannot answer the part of the question the honourable member asked in relation to whether those statements by that group were an accurate reflection of the policy at the time. More important is the government's policy now. Clearly a number of changes have been made since the time of the last election.

The first thing I point out—and it is important that the council recognises it—is that a select committee of the House of Assembly has been established. One of the promises made in relation to GMOs at the last election was the establishment of an inquiry, and the government has done that. We have established a select committee of the House of Assembly, that committee being chaired by the independent member for Mount Gambier (Rory McEwen) and comprising the Deputy Leader of the Opposition, the member for MacKillop and my colleagues the members for Whyalla and Enfield. It is important that the council understands that the select committee has been established. I have indicated on previous occasions the terms of reference of that committee.

In relation to the establishment of GM free zones, as I pointed out in answers to questions and in relation to debate on the Hon. Ian Gilfillan's bill, one of the prerequisites for the establishment of any GM free zones in this state would be the establishment of policy principles by the Gene Technology Ministers Council. That is the only way, under the arrangements set out in the relevant commonwealth act, that there can be any constitutional establishment by the states of GM free zones. Those policy principles were due to be developed by the relevant ministerial council by the end of this year. They were also supposed to be considered by the Primary Industries Ministerial Council prior to any decisions being made. That matter was discussed last week at the Primary Industries Ministerial Council, and I will read the relevant part of the communique in relation to that:

> At its previous meeting in May 2002, council [the Primary Industries Ministerial Council] agreed to ask that its members be consulted by the Gene Technology Ministerial Council prior to any decisions in relation to policy principles on the establishment of GM free zones. This process has been put in place. Council noted that it would have an opportunity to comment on the draft policy prior to its consideration by the GTMC [Gene Technology Ministerial Council]. Council also agreed that work should be undertaken to advise on industry's preparedness for self regulation of the introduction of GM crops and guidelines that might underpin government monitoring of industry performance.

The development of the policy principles is a prerequisite before any GM free zones can be established. As I pointed out in my response to the Hon. Ian Gilfillan's bill, it is our advice from Crown Law that that would have to be in place before any state action would be legal. One of the disturbing things I heard at the Primary Industries Ministerial Council is that work is being undertaken on segregation issues, that is, how one would have a parallel stream of GM modified crops on the one hand and non-GM crops on the other. Work on that is likely to take at least 12 months to develop.

I think that does raise the issue that if the Office of the Gene Technology Regulator in Canberra were to approve the full commercial use of GM canola prior to the growing season next year in 2003, of course, that could well mean that approval would be given prior to those principles being established and, certainly, I believe that would be an unsatisfactory situation. It is my view and, I believe, the view of the government that the select committee that has been established by the House of Assembly should be given the opportunity to work through these many issues before we see the possibility of any commercial application of crops in this

state, and that is something the government will be addressing in the near future.

At this stage it appears that the policy principles developed by the Gene Technology Ministerial Council may not be available until the end of this year or for comment to the Primary Industries Council which, I guess, it could do out of session, which could be later this year or early next year. In some ways there is a collision of time frames here in relation to that matter; and, certainly, I expressed my view on that subject at the ministerial council. The government will have to consider these issues. Returning to the broad policy in relation to the application of GMO crops in this state, I would like to remind the council that health and environmental issues associated with the use of GM crops will be addressed by the Office of Gene Technology Regulator.

They are not issues on which the states can constitutionally have much say, although there is the question about how the states may have an input into how the Office of the Gene Technology Regulator makes its decisions on these particular matters. That, of course, is a matter the select committee needs to address, and I think it is one of its terms of reference. It is an important issue and that question is to be looked at. Certainly, before there is to be any application of GMOs, a lot of work needs to be done. This government is certainly concerned that that work should be completed prior to the application of any GM crops within the state if, in fact, that is to happen. A lot of water is to flow under the bridge at this stage and I will be happy to keep the honourable member advised.

The Hon. IAN GILFILLAN: As a supplementary question, do I take it that the government is reneging on its pre-election promise to push for GM-free zones in South Australia?

The Hon. P. HOLLOWAY: The point I am making—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: —is that, under the constitutional arrangement, advice to this government is that it would be against the law, it would be ultra vires, for a state to implement any GM-free zones prior to the implementation of policy principles. That is the advice to government. We are still awaiting those policy principles and we would obviously need to see exactly what form they are in before the government could look at that. But, clearly, that is one of the terms of reference. The practicalities of implementing it are, obviously, one of those issues that could and should be addressed by the select committee.

The Hon. Ian Gilfillan: So you are not reneging on a promise?

The Hon. P. HOLLOWAY: The select committee will look at these issues. We are certainly not shying away from that promise. It is up to the select committee to look at the practicalities and to advise us all. Ultimately, if there is a decision, if there is to be legislation, it will have to be debated in this council and we will all need to be advised of the situation in relation to those issues. However, before we can do that the policy principles must be developed through the Gene Technology Ministerial Council.

The Hon. J.F. STEFANI: As a supplementary question, as he is nominated as one of the three ministers responsible for making available a report to parliament on the current status and safety of genetic engineering, will the minister advise the council what action he has taken to prepare such a report, which was to be published on the South Australian government's internet site to ensure that it was readily accessible to schools, interested groups and other South Australians?

The Hon. P. HOLLOWAY: I am not sure exactly which document the honourable member is referring to, but I will look at his question and come back with an answer.

The Hon. J.F. STEFANI: To clarify my question, I identify the document: it was the ALP policy document.

The Hon. P. HOLLOWAY: I think the honourable member said in his question that I was one of the ministers responsible for that. I was not the shadow minister for this area at the time, but I will look at that, because of that commitment. As I have just said in a rather lengthy answer, the important point is that the development of policy in this area is subject to the constitutional constraints of the Gene Technology Act at the commonwealth level. I have just been explaining to the council—at some considerable length, I would have thought—how these policy principles are an essential step in relation to the implementation of these policies. So, we are still in a process of evolving policy in relation to constitutional developments. Until the Gene Technology Ministerial Council resolves the policy principles and they are developed by the state officials—

The Hon. Caroline Schaefer: What's that got to do with ALP policy?

The Hon. P. HOLLOWAY: Until the Gene Technology Ministerial Council develops its policy principles, the advice the government has from Crown Law is that we will be unable to implement GM free zones. Like it or not, that is the legal advice that the government has on that matter.

MEDIA COVERAGE

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Premier, a question about media coverage.

Leave granted.

The Hon. A.J. REDFORD: The role of the media in a free and democratic society is vital and ensures as best it can that governments are accountable to the public. As such, from time to time they can say and report things that cause annoyance to those of us who hold public office. Most of us have a philosophical attitude towards the media and take the good with the bad. Indeed, there might be occasions where the media get it wrong. Generally, however, to my knowledge there are only rare media outlets that serially get it wrong. Most of us with any experience are aware of that and put it down to one of the hazards of the job.

I know that the relationship between politicians and the media has been described as being similar to an old girlfriend—a love-hate relationship. I know the Premier, whose only other job has been in the media, would be aware of this. Consequently, given the Premier's broad and close experience, bordering on addiction—he is known as a media junkie—I am surprised that of late he has taken to ringing some media outlets, haranguing and complaining about media coverage.

I am told that he personally and/or senior staff and/or members of the media unit have developed a habit of ringing media outlets and aggressively complaining about their articles and/or their coverage.

The Hon. Diana Laidlaw: Intimidating the media?

The Hon. A.J. REDFORD: That might be one interpretation. If they did it once or twice then obviously they could

identify to me who has complained, but in this case it has happened so often that I suspect this will not be possible. Indeed, one journalist has described the media unit as the South Australian equivalent of an unpublished *Media Watch*. Maybe that is a little unfair, given that, based on the evidence I have seen, the media unit is the only source of policy development that this government has, and on that basis should not have time to make complaints. Given the Premier's high media profile, I am not sure how he has time to focus on policy issues. In light of that, my questions are:

1. How many calls has he personally made, and to whom, complaining of media coverage in the past two weeks?

2. How many calls, by whom and to whom have any of his staff or members of the media unit made to the media complaining of coverage?

3. Will the Premier list what articles and/or programs he or his office has complained about?

The PRESIDENT: Order! Before the minister answers, I note that the member's contribution was full of opinion and was very flippant. The minister can answer it if he wants to.

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): Certainly, in relation to my office, I have not made any complaints to any media outlets, although, having seen the treatment that I sometimes get on the ABC's *Country Hour*, perhaps I should about that program. I am disappointed that a body such as the ABC, set up on public charter, does not always appear to abide by that charter and provide me with the opportunity to speak on that program. Nevertheless, that is just my view on some of the comments that are made on that particular program on the ABC, and I guess that all of us do, from time to time, believe that we could have been better represented in the media. I will pass the honourable member's question on to the Premier and see whether he wishes to provide any comment.

ROAD SAFETY LEGISLATION

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation prior to asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Transport, a question on road safety legislation.

Leave granted.

The Hon. DIANA LAIDLAW: On 15 May, five months ago, I introduced a private member's bill in this place, the Statutes Amendment (Road Safety Initiatives) Bill. Because it was so long ago, members may not recall that the bill actually reflects in full a bill which I introduced as a minister and which the Labor Party in opposition supported in full last year. It also includes two further matters, one which the Labor Party had supported, arising from a young person being killed following a truck collision at a school crossing. Again, all members asked me as minister, in government, to move on that fact. I did, the Labor Party supported it, and the bill went to the House of Assembly. However, it was not advanced because the parliament was prorogued for the election.

All the matters that were in the bill, which I introduced in government and which was supported by the Labor Party in opposition last year, are featured in the Statutes Amendment (Road Safety Initiatives) Bill that I introduced five months ago. There is only one new matter, and that is to ensure that everybody who gains a learner's licence is required to hold that licence for six months before advancing to a provisional licence. Each week for the past two months and more I have been asking about the bill's status through my whip, and John Dawkins has been told repeatedly by Carmel Zollo, the government whip, that hopefully the minister will be prepared to provide a government member in this place with some notes to respond to my bill.

Having asked since last week, I was told again today that the government is still not ready to respond and cannot say either yes or no to the provisions of the bill, all but one of which it supported in opposition. In the meantime, the minister keeps on saying that South Australia is lagging behind other states in road safety; yet for five months he cannot even get the notes together for the government to respond to this bill. My questions are:

1. Why is the minister not prepared to respond to this bill, which the Labor Party in opposition supported in this place last year when the Hon. Carolyn Pickles was shadow minister for transport?

2. Will the minister give this chamber an undertaking that, next week, some 5½ months after the bill was introduced, and because he regards road safety as an important issue in this state, he will provide a response, which a government member can use to address this important measure?

Members interjecting:

The PRESIDENT: Order! It is the general practice that bills before the council are not generally the subject of questions, although you are talking in generalities. I ask the minister to take that into consideration when he delivers his answer.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): Thank you, Mr President. I will take those important questions to the minister in another place and bring back a reply. But I say that road safety initiatives do not stop just because there are bills being debated in the council. There are a number of initiatives that do take place in between the introduction of legislation and the passage of bills. The road toll, on my understanding, is lower than last year at this particular point in time, but that does not mean to say that we stop making sure, in a bipartisan way, that we have road safety laws that meet national standards and assist in keeping the road toll down as low as possible.

REPLY TO QUESTION

FIREARMS THEFT

In reply to **Hon. Ian GILFILLAN** (20 August).

The Hon. P. HOLLOWAY: The Minister for Police has provided the following information:

1. Any level of firearm theft in Australia is unacceptable.

The level of firearm theft in South Australia can be attributed to a number of factors. Most states of Australia did not keep firearm registration records prior to 1996. For example, at that time in Queensland and Tasmania there were no requirements to register a firearm. In most other states records were poorly maintained. South Australia had the most accurate records and was the only state that linked the crime reporting system to registration and class of firearm in the records system. This ensured that all firearm owners were held accountable for the firearms in their possession. In other states, anecdotal evidence was that many owners of firearms did not report the theft of their firearms unless they wanted to as there was no follow-up checks conducted by the registration and licensing authority.

For similar reasons, along with two high volume thefts from dealers, in South Australia the reported theft rate from firearms dealers appears high. The SAPOL firearms branch requires accurate monthly returns of all transactions conducted within the dealership along with regular audits. These returns are then entered on the SAPOL firearms control system, ensuring that all firearms are accountable and that any firearm of interest could be easily traced. The security standards pursuant to the regulations of the Firearms Act in South Australia are more detailed and exceed those of most

other jurisdictions. Accurate record keeping in South Australia has contributed to a higher level of records of reported theft.

Additionally, early in the reporting period, South Australia's figures were initially larger in proportion. During the 1996 buy-back of semi-auto firearms there was a sudden need by South Australian firearm owners to either produce or account for all the firearms on record. This resulted in a large increase in the number of firearms reported stolen.

2. There are no specific statistics available on the level of compliance. Checks on the storage and security of firearms are, conducted whenever police have reason to do so.

3. The firearms branch has been active in providing printed information on firearms laws to all licence holders and has had active liaison with firearms associations, peak bodies and clubs. In all instances security requirements regarding firearms are stressed.

It is a precondition to the issue and also renewal of a firearms licence that the owner of firearms state the current security arrangements in accordance with the Firearms Act and regulations. Where an unsatisfactory reason is given, it is sent for investigation with the licence holder.

4. Investigation and enforcement of general firearms related matters is a priority. Currently in South Australia about 300 people per month do not renew their firearms licences and are still in possession of firearms. Active policing of this situation has been occurring over the last three years with a reduction of about 10 000 licences with firearms still registered to them. This has caused the firearms to either be surrendered, or sold to legally licensed people or dealers. In the last year, 1 553 firearms were seized through these types of follow-up investigations. In each case, where there is a physical visit by police in relation to these inquiries, voluntary checks on security are conducted.

In the last 18 months there has been a closer audit and inspection of firearms dealers premises. An increase in scheduled routine and random audits is now a matter of practice for the firearms branch.

As of 30 June 2002, there were 65 715 firearms licences issued in South Australia, compared to 113 614 in 1995. This considerable reduction has eventuated partly because firearms owners must justify both ownership and a purpose of use for a firearm, and partly because of the banning of semi-automatic firearms. These factors have brought about more responsible possession and ownership of firearms.

MATTERS OF INTEREST

FINE FOOD AUSTRALIA 2002

The Hon. CARMEL ZOLLO: During the parliamentary break, it was my pleasure to officiate at the South Australian breakfast event at the Fine Food Australia 2002 Exhibition in Melbourne. The breakfast was a wonderful way for everyone, exhibitors and buyers, to meet, network and open the door to new opportunities within their respective markets and businesses. It also provided extra opportunities for buyers to meet with, first hand, the producers of our quality South Australian produce.

On behalf of the government, and I am certain all members, I would like to acknowledge the wonderful efforts of the Fine Food team for organising South Australia's participation at Fine Food Australia 2002, particularly Flavour SA for taking the lead role in coordinating exhibitor participation, and the Office of Economic Development for organising our wonderful South Australian stand and their contribution to the Fine Food team.

As part of the team, Food South Australia sponsored and coordinated the breakfast event, which also provided an opportunity to celebrate the exhibitors and their wonderful examples of South Australian premium innovative products that were on show. It was exciting to see such a wide cross-section of South Australia's food industry in one place and literally at everyone's fingertips. I admit that I sampled a few delightful products made from chocolate, nougat, kangaroo meat, extra virgin olive oil, grape nectar and grape syrup.

What buyers were able to see, smell and have the privilege of being able to taste were some of the world's best fresh and manufactured products, produced in our own backyard by people with great passion and creativity. Our exhibitors were Agostino Olives, Aunty Joan's Gourmet Toffee, Barker Boy Processing, Barossa Grape Products, Barossa Fine Foods, Bird In Hand, Cocolat & Wicked Desserts, Copperpot Dips and Pate, Dolciaria Rinaldi, Food Service Solutions, King of Croissant, L'Abruzzese, Macro Meat, Mitani Products, Sharzules Quality Foods, St Andrews Estate and Mexican Express.

The South Australian food industry employs one in every five people and has, this year, contributed $9.8 billion to our state's economy. During 2001-02 South Australia's food industry grew in most of the key performance indicators. A surge in exports supported by above average growth in the value of domestic consumption lifted gross state food revenue by 18 per cent to reach that $9.8 billion mark.

Food South Australia has a unique way of measuring food revenue with the Food South Australia ScoreCard, which measures and evaluates the contribution to the South Australian economy of food and beverages at each stage of production, processing, trade and consumption. In this way the ScoreCard measures the value of the industry as food goes from the paddock or ocean to the plate. Whilst there needs to be some caution with these latest figures, they are nonetheless excellent news.

We currently export in excess of $3 billion worth of food and beverage products to more than 100 countries and, with food safety becoming one of the most important considerations for consumers around the world, demand is growing all the time for our clean and green products.

Awards were presented at the end of the first day of the exhibition. South Australia was successful in several categories. The South Australian exhibition stand won the Best Group Stand award, and Food Service Solutions won the Best New Retail Products award. Congratulations to Sam Tucker from Food Service Solutions.

Our State Food Plan will see an innovative and internationally competitive food industry which will be worth $15 billion by 2010. What this growth essentially means is that the South Australian food industry is currently more than a year ahead of the required schedule to meet the 2010 target. On a recent overseas trip at a meeting with Trade Partners UK—the equivalent of our Austrade—proud mention was made of their participation at this biggest industry event in Australia.

Over 600 organisations and businesses from nearly 20 countries gathered to showcase the latest food, drink and technological ideas from around the world. Our businesses that exhibited in Melbourne are part of our success story, and I congratulate everyone who took part.

HUMAN NATURE

The Hon. R.K. SNEATH: I take this opportunity to speak on some of the things we tend to say and do, and later regret, and the things that some people hold as more important than life itself. We are all aware of the drought conditions that are affecting parts of South Australia and affecting farmers and their families. I congratulate the Premier and the

Minister for Primary Industries on their recent tour, and the package that has been put together to help those in need.

However, we should be reminding ourselves that we live in a sunburnt country, and some of the country we farm is very marginal country. Besides that, how much more serious is farmers' suffering because of drought conditions than the suffering of businesses from other circumstances that are out of their control? I would not have thought that there would be any difference, in fact.

Therefore, I was very surprised to read an article in the *Advertiser* which quoted a farmer, whose name I will not mention because I hope that the paper has misquoted him, who said, 'There is nothing more distressing than watching a crop fail in front of you. A drought is like losing a member of your family.' Well, I would think 'hardly', and I am sure that anybody who has lost members of their family would certainly think the same. It is pretty hard to find a seed that you can put in the ground that would replace your child the following year. A silly statement.

An article in the *Advertiser* recently quoted the mother of Jason Cloke, the Collingwood footballer who was suspended and missed the grand final, referring to that suspension as a 'family's heartbreak'. She spoke of the devastation of the tight-knit family of seven—'to see your son's heart broken and know that there is nothing you can do to fix it tears you apart'. Yes, disappointment, but hardly heart-breaking stuff.

These statements slide into insignificance and certainly sound more ridiculous when we look at the unfortunate loss of life in accidents, murders and terrorist acts that the world has come to know. We all say and do things in the heat of the moment that we do not mean, like some of the comments we heard yesterday from the Hon. Robert Lucas in his contribution on the hotel industry. The Hon. Robert Lucas referred to some of the members of the government going into front bars.

I, for one, would be happy to go into the front bar of any hotel in South Australia with the Hon. Robert Lucas under the umbrella of being part of a government that put a higher tax on poker machines, while the Hon. Robert Lucas would go in on behalf of a government that sold the TAB—gave the TAB away—privatised ETSA and had the Hindmarsh stadium fiasco. I am sure I would enjoy my beer much more than the Hon. Robert Lucas. But perhaps the Hon. Robert Lucas could join his leader in the next campaign, as we know that his leader has got the habit of campaigning in front bars around the state. Perhaps the Hon. Robert Lucas would care to join him. Also, Mr President, I made a mistake this week in regards to—

Members interjecting:

The Hon. R.K. SNEATH: Yes, I did. I made a mistake in regards to the lift in the basement car park. Whilst ready to press the button to go up in the lift, I heard the pitter-patter of feet coming down the corridor and, as I was getting into the lift with great difficulty, I stood there and held open the door—which was determined at the time to close. But I held it open, waiting for what I thought, by the sound of the feet, to be one of the friendly ladies who work in Parliament House, only to see the Hon. Terry Cameron bowl around the corner. The Hon. Terry Cameron said, 'Thanks for that, Bob. You're a jolly good chap to hold the lift for all that time.'

We all say and do things in the heat of the moment and make mistakes, but I am disappointed that some of us do not place the same value on life that we did years ago. Sometimes it takes a tragedy, such as the one which occurred in Adelaide the other day, to bring us back to reality and to value life above all else.

RIVER RED GUMS

The Hon. D.W. RIDGWAY: I rise today to speak about the Lake Albacutya red gums of the north-west of Victoria. I have noted in a number of articles recently—and I am sure that some members may also be aware—that the River Red Gum is one of Australia's most widespread and least endangered eucalypts.

In the 1960s, it was recognised as one of the most important eucalypts for plantations in the world. It has been described by geneticists from the CSIRO's tree centre in Canberra as priceless for its potential value to conservation and forestry. In 1964, Australian and Tunisian foresters collected seeds from 40 different regions around Australia. Between 1966 and 1972 field trials were conducted in 14 different Mediterranean and tropical countries comparing seedling growth rates, wood quality, tolerance to drought, salinity and frost. Together with trees from a tropical region in Queensland, the Lake Albacutya red gums stood out.

The results from the Lake Albacutya region were completely out of the blue. The parents are undistinguished and rather scruffy trees, but take them out of their natural habitat and they grow like wildfire. Its root system reaches the bottom of seedling tubes faster than those in any other region, and it produces a massive root system indicative of its exceptional drought tolerance. Yet, when water is freely available, it responds and grows more rapidly than in any other region, producing tall, straight trunks ideal for timber production.

In the early 1990s, the CSIRO's tree seed centre collected another 5 kilograms of seed from trees around the lake, and they have been exported to 23 countries. While the Albacutya red gum is secure in cultivation, it may well be doomed in the wild. Many of the trees are suffering dieback from severe water stress. The Albacutya red gums depend on periodic flooding from the Wimmera River, Victoria's largest inland flowing river. Since the 1850s, Lake Albacutya has flooded at an average interval of 25 years when squatters began to divert the Wimmera River's flows.

The river now waters some 75 000 people and feeds some 16 000 kilometres of open earth channels in the Wimmera Mallee stock and domestic system, the largest in the world. I might add that, in a response I received yesterday to a question I asked previously, I was informed that the Murray-Darling system still has some 13 000 kilometres of open irrigation channels. While I welcome Allan Jones and his friends with their Farmhand support and their potential program for watering Australia, it has been my experience that we must fix up our existing assets and business before trying to develop new ones. It is my wish that those people direct their energies to putting all our irrigation and water delivery systems in pipes rather than in open channels.

Climatic records reveal that Lake Albacutya fills only when the nearby city of Horsham receives 1 160 millimetres of rain over a two year period. But with the climate having become significantly drier since the late 1970s and the increased demands on the river, it is predicted that it will now take a two year rainfall of 1 260 millimetres for the lake to fill—a once per century event. It now appears that the original flow of the river may no longer be enough to save the Albacutya red gum.

Dryland salinity has already rendered 2.5 million hectares of Australian farmland unusable and costs Australia $130 million annually in lost agricultural production, $100 million in damage to infrastructure and at least

$40 million in lost environmental assets. Very few native trees tolerate salinity and waterlogging or can adapt to soil and climatic variations across southern Australia like the Albacutya red gum. The prospect of such a valuable tree becoming extinct in its natural habitat is alarming.

When the question 'Why bother saving these trees?' arises, it comes back to the original genetic material—that original source will continue to evolve in a way that plantation trees will not. The Albacutya red gum demonstrates how locally adapted populations of a single plant species can develop major genetic differences. The Albacutya red gum's plight is a potential test case for how much Australians value their biodiversity.

NUCLEAR INDUSTRY

The Hon. SANDRA KANCK: With the current world situation, the role of South Australia in the nuclear fuel cycle is cause for concern. There is no doubt that our continued involvement in that cycle is a gamble. When times are good and people are rational, it might be difficult for many to understand how vulnerable this involvement could make us.

With the benefit of hindsight, we can always see how fickle international politics is—the only certainty is that there are no long-term guarantees. Countries which were our allies become our foes. Countries which have hitherto sworn not to involve themselves in the production of nuclear weapons may, at any time, change their mind and begin producing them. The Nuclear Non-Proliferation Treaty does not prevent a country from changing its mind. Where, morally, does this leave South Australia?

South Australia has permitted the extraction and processing of uranium in this state. The producers tell us that it is used to fuel nuclear power stations in other parts of the world. It is also argued that we need nuclear reactors to produce radioactive isotopes for medical diagnostic and treatment purposes. Often, the continued involvement of Australia in the nuclear fuel cycle is justified because of this medical demand for radioactive material. However, for the foreseeable future, the amounts of radioactive isotopes necessary for the health of Australians are very small. Almost the entire demand could be satisfied by manufacturing these products in purpose-built cyclotrons.

The arguments in favour of the nuclear industry may not stand up to examination. The Australian Democrats believe that, with a world which has become less innocent and more politically fragile, a reassessment of our part in the nuclear fuel cycle is called for. We must always remain alert to the fact that uranium, when enriched to weapons grade, is capable of making weapons of a magnitude which would make the 12 October car bomb in Bali look like a Sunday school picnic. South Australians must be informed about the role we play, and the unwitting role we might play, by continuing our involvement.

Because radioactivity is not something that can be seen, touched, smelt or heard, uranium is a problematic substance to mine, process, transport and work with. And we cannot turn our backs on the fact that the radioactivity associated with the nuclear industry persists in the environment.

Twenty years ago, when times were optimistic, South Australia's Olympic Dam project was seen by the captains of industry in this state as a tremendous—almost fabulous—vehicle for economic development. Roxby Downs was built as a model mining town, with the government putting in the necessary infrastructure in terms of water, power, sewerage, schools and so on, so that the company would have a ready-to-hand work force.

However, internationally, the shine has gone off the nuclear apple, with the reality of aging nuclear power plants and, in some countries, industrial standards which do not value worker safety. The horror of Chernobyl struck very deep. But now it all seems so far away, with the ongoing suffering of the people who have survived rarely rating a mention.

In a 'trust us' arrangement, we are told that our uranium is not used to make weapons-grade uranium. Yet the ability of international terrorists to get their hands on plutonium to make 'dirty bombs' is a current truth. It has been part of the argument used by the United States to justify its challenging of Saddam Hussein.

In allowing the exploitation of South Australia's uranium resources, we are gambling that our supply chain leads directly to responsible end users of enriched uranium. We are gambling that there are no breaks in that chain that could see our uranium end up in the wrong hands. We are gambling that no worker in another country, Homer Simpson-like, paid a pittance to supervise the workings of complex plant and machinery, would take a payment to breach security and smuggle South Australian nuclear material onto the black market.

South Australia is playing a gamble with our involvement in the nuclear industry. Hiroshima, Nagasaki and Chernobyl stand as sentinels in hindsight. We know better now. It has been said that those who do not learn from the mistakes of history are condemned to repeat them. Are we in South Australia, therefore, willing to learn?

FESTIVAL CENTRE

The Hon. DIANA LAIDLAW: I wish to record my congratulations and thanks to all associated with the redevelopment of the Adelaide Festival Centre. This complex, multimillion dollar, staged project has seen the installation of the LARIS sound system which has vastly enhanced the acoustic qualities of the Festival Theatre, the upgrade of stage lighting and related technologies, the removal of asbestos plus new seating, carpets, toilets and disabled access facilities. Most recently the plaza, pedestrian and vehicle access areas have been reworked, as have the front of house and administration areas throughout the theatre complex. One third of the concrete plaza encircling the theatres has now been removed, so that the entrances to all theatres are easy to locate and welcoming. No longer is the festival drive a dark, drab, featureless tunnel. It is pedestrian friendly, with vehicle movements reduced to a minimum following a new eastern entrance to the Festival Centre car park.

I acknowledge that it would have been much easier for everyone on site if the site itself had not been in use day and night by Festival Centre staff, performers, patrons, delivery vans and car park users. This possibility was never seriously considered for all the audience, cost and logistic issues that are now a feature of the plans to close the Opera House in Sydney for upgrade works from 2004. At the Festival Centre, I applaud the understandings reached, which saw construction works staged so they did not clash with rehearsal periods in the theatres.

Equally, Ms Kate Brennan and her team at the centre have excelled amid the dust and noise by staging major events like the Cabaret Festival, *Parsifal*, the Adelaide Festival 2002 and even the state dinner for the Queen, on top of their regular

programming of arts activities. These mighty efforts, together with plenty of public goodwill, have seen over 600 000 people attend the centre over the past year. A further 23 000 people attended the open day last Sunday—and I remain in awe of staff who hosted this event within minutes of applying finishing touches to the redeveloped public spaces.

In addition, I acknowledge the masterful efforts of the Adelaide Festival Centre Trust Project Manager, Mr Steve Woodrow, who was also responsible for negotiating all the complicated jigsaw of office relocations, involving both the centre and the adjacent Adelaide Railway Station—a further example of the interactions across my former portfolios of Transport, Urban Planning and the Arts. In order to extend the public, front of house areas of the Festival Theatre facing Festival Drive, the administration section of the trust had to be relocated to the wardrobe, office and workshop spaces occupied for nearly 30 years by the State Theatre Company in the basement of the Playhouse. In turn, this move involved relocating both the Transit Police and TransAdelaide administration from the northern end of the Railway Station to the concourse opposite the ticket barriers (a project funded jointly by the Passenger Transport Board and TransAdelaide), so that State Theatre could be accommodated in the vacated areas together with 'Windmill' and the Australian Dance Theatre. These moves were designed to create a new performing arts precinct for Adelaide—while the demolition of the concrete wall and workshops between the Playhouse and the Railway Station (funded through Planning SA) has created a new open space, lawned 'Arts Court' linked to the River Torrens and the Riverbank initiative.

Additional features of the redevelopment include opening up the Festival Theatre to King William Street, a new cafe, new merchandising and BASS ticketing facilities, a new parenting area, new signage, long awaited presentation of the Performing Arts Collection, extensive plantings of native vegetation and new artworks celebrating our Kaurna culture thanks to the support of the Graham F. Smith Peace Trust Fund. At the opening of the rejuvenated Festival Centre last Sunday, the Premier announced funding to progress earlier plans to build a walkway to improve access from North Terrace. This is great news. Meanwhile, many who attended the opening could not resist speculating whether the Rann government's current agenda would have ever accommodated the major redevelopment works in the first place. Certainly, I acknowledge my former Liberal cabinet colleagues who found both the will and the resources to undertake this important $15.5 million project.

Last, but not least, I acknowledge the vision and efforts of the architects, Woods Bagot, led by Tony Materne and David Spencer, the principal contractors Hansen Yuncken—in particular Fred Arias—Mr Martin Ross from the Department of Administrative and Information Services, and everyone associated with the 84 contracted 'trade packages'. Their collective efforts have ensured that the Adelaide Festival Centre complex continues to thrive as a focal point for Adelaide and for the arts across Australia.

CRIMINAL REHABILITATION

The Hon. A.L. EVANS: I want to speak to you today about crime and criminals in the hope of true rehabilitation. Each year we fill our prisons over and again with thousands of hopeless people. On many occasions they are released back into the community as bitter, hopeless people. There is a high rate of repeated offending. The return to prison rate is estimated to be around 75 per cent in South Australian prisons. Crime is on the increase, the community is tired and scared, and it is time we tried something we know will really work and is addressing the very core of the matter—the behaviour of the human heart. It is from the heart that come all the real issues and decisions of life. The most important thing we can do when a criminal is put in prison for punishment is to use every endeavour to deal with their problems so that, when they are ultimately released, they will no longer be a threat to the community and they will not return to prison.

Some people shy away from rehabilitation, thinking it is simply impossible or that it means restoring a person to their previous condition. However, the word 'rehabilitation' means restored dignity. This involves self-esteem and becoming an integrated responsible personality able to cope with the trials of life. It also involves moral re-education. Is there any hope of doing this and, if so, how should we proceed? I believe there is hope. The largest agency of prisoner rehabilitation in the world is Prison Fellowship International, which operates in 120 nations. One of its affiliates—Prison Fellowship of Australia—is here in South Australia.

Prison Fellowship International has been operating for more than 20 years and now has some seasoned programs which have been trialled overseas, especially in the USA. These programs have proved to be successful in turning lives around over the past three years in particular. For many years, Prison Fellowship International has had consultant status with the United Nations. It has been at the forefront of the development of principles relating to restorative justice. Under a Prison Fellowship International program, restorative justice is more than giving the criminal the opportunity to build pathways through national parks, build fences and paint houses. It involves a personal confrontation with their offender and the assumption of responsibility for their offence.

Prison Fellowship International focuses on the spiritual side of a person, not just their body and their mind. One thing is now clear: prisoners participating in prison fellowship programs experience very significant reductions in their re-offending rate. In prisons and prison units which embody Christian principles, such as those in Texas and other American states, the statistics uniformly show a reduction of the rate in those who return to prison. The rate is less than 10 per cent, and in one case is as low as 4 per cent.

The prototype for this program began in Brazil. The return to prisons rate fell to 5 per cent in comparison to other prisons in Brazil where the rate is 75 to 80 per cent. There is now hard evidence that these programs are successful. There is hope for offenders and victims. It is addressing the spiritual aspect of the human heart and giving the person hope that they can change. It is this hope for change that makes all the difference.

In concluding, I ask all members who must be concerned about our crime rate, the growing prison costs, the ever-increasing insurance premiums and the need for additional police to consider faith based initiatives for reducing the return to prison rates and crime rates. I urge the government and the community to support something that has been proven to work. Based on the evidence of success, I believe that a Christian unit in a prison would be of great benefit to some. It would be left up to the prisoner to volunteer, to live and comply with the Christian program. Let us watch for the

results in the lives of those who choose to study and live by Christian principles.

This transformational change will take between 12 to 24 months to be effective for life, and with God's help they will never return to a life of crime. I have a video which explains clearly the program, its methods and results. I am happy to share the video around to any honourable members. It is testimony of the great impact this program is having.

FRIENDS OF PARKS GROUPS

The Hon. J.S.L. DAWKINS: Early in September I attended the Eighteenth Forum of Friends of Parks Groups hosted by the Friends of Para Wirra Recreation Park and the Friends of Sandy Creek Conservation Park. The theme of the forum, which was conducted at Sandy Creek and Gawler, was Birds of the Barossa. Friends of Parks Incorporated is a statewide volunteer network consisting of 108 groups comprising a total of more than 7 000 members. Friends groups provide the opportunity for public participation in the management of national parks and wildlife reserves and substantially contribute to natural and cultural conservation within South Australia.

A Friends of Parks forum is held annually in different locations across the state and regularly draws more than 300 delegates. These three day events include field excursions, discussion on park management issues, awards, guest speakers and a dinner. The forum commenced at Curdnatta Park, Sandy Creek, on the Friday evening with the presentation of minor awards. This was followed by a presentation about the South Para biodiversity project by Andrew Philpott of the Northern Adelaide and Barossa Catchment Water Management Board.

Dr Colin Winsor then made a presentation about the geology of Para Wirra Recreation Park. This session concluded with an address from Yorke district ranger Tim Collins about his year on exchange as a park ranger near Wexford in Ireland. The forum continued on Saturday morning at Starplex, which is part of the Trinity College Gawler community. This session included discussion on a range of topics and presentations by guest speakers. During this period I had the challenging task of judging the displays that had been set up by individual friends groups. Eventually I chose the Friends of Kimba District Parks as the winning group, while the Friends of Riverland Parks and the Friends of Althorpe Island received commendations.

The merit and extent of these groups' wide ranging efforts was quickly emphasised as I absorbed the content of their well-prepared displays. The afternoon was taken up with a variety of tours to the Para Wirra, Sandy Creek and Kaiser Stuhl parks as well as other local sites of interest. The forum dinner was held at Starplex and featured the presentation of major awards by the Minister for Environment and Conservation (Hon. John Hill). The Friends Group of the Year was awarded to the Friends of Para Wirra Recreation Park. Life membership of Friends of Parks Incorporated was awarded to the Hon. David Wotton, the former minister for the environment, who established Friends of Parks in 1982, and to Dene Cordes, the long serving manager of the Community Liaison Unit of National Parks and Wildlife South Australia.

The Sunday session commenced with an early morning walk to observe the birds in Sandy Creek Conservation Park. The forum then reconvened at Curdnatta Park where presentations on birds of prey and bird diversity featured in addition to general topics in an open forum. Delegates received an invitation to attend the 2003 friends forum, which will be hosted by the Friends of Riverland Parks and conducted on the banks of the River Murray at Berri.

Ted Hughes, President of the Para Wirra Friends, and Annie Bond, President of the Sandy Creek Friends, and all their members are to be congratulated for staging a very successful forum. They received considerable support from staff of the Lofty/Barossa District and the Community Liaison Unit within National Parks and Wildlife South Australia. In closing, a feature of the forum was the considerable opportunities provided to school and community groups to cater for parts of the event and to provide entertainment for delegates.

MEMBER'S LEAVE

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I move:

That two months leave of absence be granted to the Hon. N. Xenophon on account of illness.

I express the wish that the Hon. Nick Xenophon makes a full and speedy recovery from his illness.

Motion carried.

INTERSTATE AGREEMENTS BILL

The Hon. A.J. REDFORD obtained leave and introduced a bill for an act to provide members of parliament to be informed of, and consulted in relation to, proposed interstate agreements; and for other purposes. Read a first time.

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

That this bill be now read a second time.

This bill is about open government. It champions the key ideals of representative and responsible government, which are the hallmarks of our Westminster system. The bill is just one response by the opposition to advance the many debates on our form of government arising from the forthcoming Constitutional Convention and demonstrates the opposition's constructive approach to this process. Basically the bill imposes upon ministers a duty to consult with the parliament in relation to interstate agreements, ensuring that parliament is informed before the agreement is entered into rather than after the fact.

The bill mirrors the Administration (Interstate Agreements) Act 1997 from the Australian Capital Territory. In his second reading speech to the ACT Legislative Assembly in 1997, Mr Michael Moore MLA, stated:

. . . this legislation is about cooperative government. It is about reforming the way we operate. It is yet another concrete move in the approach that this assembly has taken over some years to become more open and to ensure that what we do is an appropriate balance between the power of the parliament and the power of executive.

It goes without saying that these worthy aims are applicable to this parliament and we should always be willing to embrace new ideas to improve this magnificent institution. The bill imposes four requirements for the relevant minister to meet: first, to write to all members; secondly, to consult with the appropriate committee of the parliament; thirdly, to take into account any committee recommendations; and, fourthly, to report back in writing to all members following any ministerial council meeting. Any recommendation made by a parliamentary committee must be taken into account by the minister in the process of negotiation which precedes entering into an interstate agreement.

Obviously there are exemptions in the act such as urgency, public interest and various other specific cases. These include the National Crime Authority and the Australian Loans Council of the Premiers' Conference. The obligations which this bill places upon ministers are not onerous, yet the benefit of this to the parliament and to South Australia are great. The bill enables the relevant committee to make recommendations, which the minister must take into account, ensuring that they make more informed decisions. It facilitates the broader public debate on what has hitherto been an exclusive and a powerful decision making body. Therefore, other suggestions and viewpoints, which may or may not influence the minister's decision, are at least noted.

The Hon. T.G. Roberts: Have you run this past John Howard?

The Hon. A.J. REDFORD: I take it from the honourable member's interjection that the ALP is indicating preliminary support for this measure, and I welcome that. It also enables the media and non-ministers in this parliament to better monitor the activities of ministers and legislation that might make its way forward to this place. The bill removes a lot of the exclusiveness and secrecy of executive decision making in this area, which is an affront to this parliament, to the people of South Australia and to the sovereignty of this state. This bill will remove what has become a barrier to representative and responsible government as it operates within the Westminster system.

The bill fosters a more consultative and cooperative approach to governing, while at the same time it does not place too great a burden on the executive in its task of administering the state. As Mr Michael Moore MLA stated to the ACT Legislative Assembly, it simply strikes an appropriate balance between the legislature and the executive. The scheme is no different than the one adopted by the Howard government shortly after its election in dealing with Australian and national treaties. In addition, the Howard government established a Parliamentary Treaties Committee—and we know that since then all treaties are now referred to the Legislative Review Committee for its consideration prior to the execution of such treaties by a minister of the federal government.

The Hon. T.G. Roberts: How do you mean 'execution'? In what sense do you mean it?

The Hon. A.J. REDFORD: Do I detect a shifting of ground very quickly by that last interjection? There might be some level of hostility coming from this alleged open government.

Members interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: In any event, I draw the honourable member's attention—and it is timely that I do so at this juncture—to the ALP's web site in which the Premier states:

> I am committed to ensuring more open, honest and accountable government for South Australia. An important step in building better government is to report back to the community on the actions their government is taking.

I commend the Premier on these lofty and worthwhile ambitions. This bill is a step towards achieving them. Finally, I must add that, if we are to reform this parliament and set new standards of honesty and accountability in government, we must, at the very least, match the standards set in the Australian Capital Territory. By way of explanation, clauses 1, 2 and 3 of the bill set out the short title, the objects of the act and the interpretation. Clause 4 sets out those negotiations that are exempt from the act and include negotiations relating to the National Crime Authority and the Premiers' Conference. Clause 5 obliges a minister to disclose the negotiations and relevant material in relation to those negotiations.

Clause 6 obliges a minister to consult with parliamentary standing committees in relation to negotiations. Clause 7 prevents a minister from entering into a proposed interstate agreement unless he or she has consulted with the relevant parliamentary committee. Clause 8 requires a minister to inform all members of the outcome of any agreement upon entering into the same. Clause 9 provides certain exceptions in relation to urgent or other circumstances in relation to this bill, and clause 10 provides that where two ministers are involved in the same negotiations only one needs to consult and provide information to the parliament. I commend the bill.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

FISHING ACTIVITIES

Order of the Day, Private Business, No. 1: Hon. C. Zollo to move:

That the regulations under the Fisheries Act 1982 concerning fishing activities, made on 20 June 2002 and laid on the table of this council on 9 July 2002, be disallowed.

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

That this order of the day be discharged.

Motion carried.

ONKAPARINGA FORESHORE

Order of the Day, Private Business, No. 2: Hon. C. Zollo to move:

That City of Onkaparinga by-law No. 6 concerning Foreshore, made on 3 June 2002 and laid on the table of this council on 10 July 2002, be disallowed.

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

That this order of the day be discharged.

Motion carried.

SELECT COMMITTEE ON PITJANTJATJARA LAND RIGHTS

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That the time for bringing up the report of the committee be extended until Wednesday 20 November 2002.

Motion carried.

SELECT COMMITTEE ON SHOP TRADING HOURS (MISCELLANEOUS) AMENDMENT BILL

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I bring up the interim report of the committee and move:

That the report be noted.

The Hon. R.D. LAWSON: In speaking briefly in support of the motion, I indicate that the select committee has been quite active, as indicated by the interim report tabled this day. The committee received written representations from some 38 persons, and many of those submissions are quite extensive. In addition, the committee sat for two long sitting

days to hear some 27 witnesses give oral evidence on various aspects of the committee's terms of reference. Obviously, it is inappropriate at this interim stage to go into that evidence in any detail, but it is fair to say that the individuals and organisations represented in the hearings of the committee to date have very extensive knowledge and interests in the retail industry in this state, and many diverse views have been expressed.

At the stage when I moved for the establishment of this committee, it was envisaged that the committee would be able to conclude its deliberations and finally report by today. However, because of a number of other items of business during the period of the adjournment, the committee was unable to meet and finalise its deliberations. As I say, the committee has been very diligent in its consideration of the quite extensive evidence presented.

As appears from the interim report, the committee intends to deliver a final report on the next Wednesday of sitting. The committee has not yet finalised its deliberations, but I believe it is near to finalisation, and I am sure that members of the council will be pleased to receive a very worthwhile report on this important issue.

Motion carried.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That the time for bringing up the report of the Select Committee on Shop Trading Hours (Miscellaneous) Amendment Bill be extended until Wednesday 23 October 2002.

Motion carried.

NATIVE VEGETATION (MISCELLANEOUS) AMENDMENT BILL

Second reading.

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That this bill be now read a second time.

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

Leave granted.

On 28 November 2001, the *Native Vegetation (Miscellaneous) Amendment Bill 2001* was passed by the House of Assembly. The state election was called before the bill could complete the parliamentary process and, in accordance with the Constitution, the bill lapsed. This bill largely follows the 2001 bill, but includes changes that are consistent with this government's commitment to further improve protection for the state's native vegetation.

The bill has been developed over a period of more than three years and has involved detailed reviews of the Act and Regulations; a public consultation period; and follow-up consultation with key interest groups (South Australian Farmers Federation, Conservation Council of South Australia, and the Local Government Association), the Native Vegetation Council, and Members of Parliament.

Prior to and during Committee debate on the 2001 bill, the previous government incorporated many of the changes sought by the Labor Party. This is a positive reflection of the bi-partisan political support in South Australia for protection of the state's remnant native vegetation. In fact, successive state Labor and Liberal governments have, over the last 21 years, progressively improved the state's off-park conservation program, earning the state an international reputation for providing leadership in this area.

That reputation will be further enhanced by the package of changes to the legislation that are introduced through this bill and the supporting changes envisaged for the regulations.

The bill will formally end broadacre clearance in the state; provide that any clearance approval is conditional on a net environmental gain; significantly encourage revegetation; ensure that people proposing to clear land, finance the collection of data on which the Native Vegetation Council needs to determine an application; include provisions to allow the public an opportunity to comment on clearance applications; provide a greater deterrent for unauthorised clearance; and improve the enforcement capability. In addition, provision will be made for a judicial appeals process to replace the existing process for landholders to seek conciliation in relation to a Native Vegetation Council decision.

The proposed changes also facilitate implementation of the integrated development approval process (incorporating the assessment of native vegetation clearance proposals where applicable), subject to amendments to the *Development Act 1993* previously approved by Parliament.

The following provisions are unchanged from the 2001 bill:

Clarification that the Act limits broadacre clearance

Since the introduction of the *Native Vegetation Act 1991*, and consistent with the objectives of the Act and Principles of Clearance (Schedule 1), the Native Vegetation Council has not approved the clearance of intact areas of native vegetation. The bill proposes an amendment to the Act to provide greater certainty that intact areas of native vegetation will not be approved for clearance.

Introduction of a user-pays system to cover the cost of data collection

Applicants will be required to contribute to the cost of data collection and the preparation of a data report. Data reports will be collected by people accredited by the Native Vegetation Council. Those to be accredited will comprise both public servants and non-public servants who will need specialist training. To avoid any conflict of interest and to avoid the need for an expensive audit process, a specialist section of the Department of Water, Land and Biodiversity Conservation will manage the data collection and reporting process for the Council.

The fee structure, which will be prescribed by regulation, will be based on the reasonable cost of preparing the report. The Native Vegetation Council may resolve to vary or remit this fee, and may resolve to do this for applicants in financial difficulty.

The introduction of a user pays system for data collection will speed up the assessment of native vegetation clearance proposals. Furthermore, the provision of a data report (with a development application) is also necessary to enable the Native Vegetation Council to make directions on development applications referred to it within the two month time period required by the *Development Act 1993*.

This bill incorporates some changes to the 2001 bill in relation to providing a significant biodiversity gain in return for a clearance approval; encouragement for revegetation; provisions to facilitate public consultation; and improvement of the enforcement capability and provision for a greater deterrent for unauthorised clearance.

Provide for a significant biodiversity gain in return for clearance approval

The Native Vegetation Council may approve clearance of native vegetation if the clearance is not significantly at variance with the Principles of Clearance (Schedule 1). However, in such circumstances, the Council has used its discretion under the Act to secure a 'net biodiversity gain' by requiring, as a condition of consent, that the landholder must set-aside an area for biodiversity conservation purposes. This may result from placing an area of intact native vegetation under a heritage agreement, de-stocking an area of degraded vegetation and encouraging its regeneration, or revegetating a cleared area. The bill proposes an amendment to the Act to provide that all clearance approvals will be accompanied by a condition that will result in a significant environmental benefit, after taking into account the loss of the vegetation to be cleared. However, the bill includes a new provision that allows the clearance applicant to seek to pay money into the Native Vegetation Fund to compensate for the fact that there will not be a significant environmental benefit on the property where the clearance is proposed to take place.

Accordingly, when giving consent to such clearance, the Native Vegetation Council may attach a condition requiring the applicant to make a payment into the Fund of an amount that the Council considers to be sufficient to achieve an environmental benefit by establishing and maintaining native vegetation on other land in the region.

Money paid into the fund for this purpose must be used by the Native Vegetation Council to establish or regenerate native vegetation within the region of the cleared land. In planning where to apply the funds, the Native Vegetation Council must have regard to the Regional Biodiversity Plan or Plans approved by the Minister.

Encouragement for revegetation

There has been overwhelming support through the review process for the Native Vegetation Act to provide more support for the

reestablishment of native vegetation in over-cleared areas. This is partly achieved through the establishment of 'set-asides' attached to clearance approvals, either on the property where the clearance has occurred, or within the same region and funded by money paid into the Fund.

The bill does not include the environmental credit system proposed in the 2001 bill. This innovative concept has not been tried elsewhere and the government has been of the view that such a scheme requires more work.

In other circumstances, some landholders have revegetated land, sometimes with assistance from government funding and/or from voluntary landcare support, only to find the land has been cleared following change of ownership. The existing Act does not provide a mechanism for controlling such clearance. The bill proposes that landholders may voluntarily apply for the Act to apply to revegetated areas, which if approved by the Native Vegetation Council, will be noted against the title to the land to ensure that future owners are aware of the provision.

In addition, money paid into the Native Vegetation Fund resulting from a penalty or exemplary damages in relation to offences against this Act must, as far as practicable, be used to establish native vegetation on land in the vicinity of the cleared land. In determining a suitable area for revegetation, the Council must again have regard to the Regional Biodiversity Plan or Plans and associated pre-European mapping (if any) that apply in the vicinity of the relevant land.

Public consultation

A number of provisions are made to improve public access to information on clearance applications and to provide the public with the opportunity to make representations to the Native Vegetation Council on a particular application.

The Council is required to maintain a public register of applications to clear native vegetation. The register must include details of the name of the applicant, the date of application, a description of the proposed clearance, the location of the land, and the decision made by the Council. The register must be made available at the principal office of the Council as well as through the internet. Copies of the application, including the data report, and any assessment made by the Department of Water, Lands and Biodiversity Conservation, will also be made available to the public.

Any person will be given a specific statutory entitlement to make a written representation to the Council in respect of an application within a prescribed period. At the discretion of the Council, a person, or a representative of a group of people, may be heard by the Council in respect of an application.

Improved enforcement capability

Over the past nine years, there have been concerns about the level of unauthorised clearance and the ineffective enforcement powers, which in turn has encouraged others to clear without appropriate approval.

A number of measures are proposed to remove existing impediments to the enforcement process and to provide a greater deterrent for unauthorised clearance:

- Criminal proceedings will still be instigated for significant breaches of the Act. The maximum penalty is increased from the $50,000 proposed in the 2001 bill to $100,000.
- Provision is included for expiation fines to apply to minor breaches of the Act. Such breaches are currently generally dealt with by the issue of a warning letter. An authorised officer will not be allowed to issue an expiation notice without the specific authorisation of the Council in order to ensure that expiation fines are not used for significant breaches of the Act.
- As provided in the 2001 bill, civil proceedings will be heard in the Environment, Resources and Development Court (ERD), the specialist court established under the *Environment, Resources and Development Court Act 1993* to deal with environmental and natural resource management matters. The ERD Court has flexibility in the way it deals with matters before it, such as the referral of a dispute to a conference of parties.
- Applications to the Court for enforcement may be made by the Native Vegetation Council, or a person who has legal or equitable interest in the land. Provision is also made in the bill for limited third party civil enforcement rights where the Native Vegetation Council has indicated that it will not take action in relation to a breach of the Act. *Ex parte* application to the ERD Court to join enforcement proceedings is already provided for.
- A 'make good' order will be imposed as part of proceedings and in addition to any penalty imposed. Provision is made for the penalty to at least equate to the benefits that a landholder has gained through not complying with the legislation. These provisions will discourage a person from clearing without approval on the anticipation that a possible penalty will be outweighed by greater financial returns from the cleared land. The bill maintains the provision included in the 2001 bill that the Court may refuse to issue a 'make good' order if it is satisfied that compliance with the order would not be reasonably practical. However, this bill provides that the Court may not take into account financial grounds in this regard, unless it considers a 'make good' order would be unduly harsh.
- Given the significance of Heritage Agreement areas, the bill maintains the provision in the 2001 bill to make a breach of a Heritage Agreement a breach of the Act and subject to civil enforcement proceedings.
- The bill proposes to improve the powers of authorised officers to collect evidence in relation to a suspected breach of the Act, in line with powers under more recent legislation such as the *Development Act 1993* and the *Environment Protection Act 1993*. These provisions remain largely unchanged from the 2001 bill and include, for example, the ability to enter land (other than residential premises) without a warrant and to take a sample of cleared vegetation for formal identification purposes, or to take photographs or other recordings necessary for enforcement purposes. Also without a warrant, an Authorised Officer would be able to stop a vehicle suspected to be involved in the unauthorised clearance of native vegetation. With a warrant, an authorised officer would also be able to require the production of documents held by a person in relation to the suspected unauthorised clearance.
- The bill follows the 2001 bill by providing that specific authorised officers may direct a person who has breached the Act, or is likely to breach the Act, to refrain from that activity. To enable the Minister to respond rapidly in a particular case, the Minister may appoint a person as an authorised officer and subsequently issue the appropriate identity card. Authorised officers must be officers or employees of the Crown, or of a local council.
- Provisions included in the 2001 bill relating to offences by authorised officers are considered unreasonable and have not been included in this bill.

This bill, as was the case with the 2001 bill, continues to provide that landholders will be able to seek a judicial review of the administrative process in relation to a decision on a clearance application by the Native Vegetation Council. The appeal may not relate to the merit of the Native Vegetation Council decision, and this aspect of the scheme has been tightened-up even further. However, the bill differs from the 2001 bill by providing that the appeals will be made to the ERD Court rather than the District Court. This focuses all non-criminal matters in the one specialist environmental court. The existing conciliation process will not be retained. To ensure that there is a review of the appeal mechanism by Parliament, the provision is sunsetted to January 2007.

The appeals mechanism may only be initiated by the landholder aggrieved of a Native Vegetation Council decision. In view of the limited nature of these appeals, no provision is made for a third party to initiate an appeal, although under the rules of the ERD Court, a third party may apply to join an appeal. The bill provides a time limit within which appeals must be made. Decisions made before the commencement of this provision are not subjected to an appeal. Landholders aggrieved by old decisions have the opportunity to lodge a fresh application.

No right of appeal will be allowed in relation to applications that vary or terminate a Heritage Agreement given that Heritage Agreements should only be varied by agreement of both parties to the agreement.

In addition to the key features of the bill, the proposed regulation change will feature:

- tightening of the exemptions to avoid misuse
- provision for the Crown to be also bound for new works—bringing the Crown into line with the rest of the community
- provision for greater flexibility for reasonable clearance—largely through the establishment of approved guidelines, and
- increasing protection to include large dead trees that are habitat for threatened species.

Conclusion

The *Native Vegetation (Miscellaneous) Amendment Bill 2002*, combined with proposed changes to the *Native Vegetation Regulations*, will significantly improve the legislative protection for the state's biodiversity. The bill largely follows the *Native Vegetation (Miscellaneous) Amendment Bill 2001* that was passed by the House

of Assembly in November 2001. Changes have been included to further strengthen the legislation to protect the state's significant native vegetation resource. At the same time, landholders will have access through the ERD Court to a judicial appeal process in relation decisions of the Native Vegetation Council.

I commend this bill to the house.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be brought into operation by proclamation.

Clause 3: Amendment of s. 3—Interpretation

This clause relates to the definitions that are relevant to the operation of the Act. "Land" is to include land submerged by water. Various consequential changes are also made to the section.

Clause 4: Insertion of s. 3A

For the purposes of the Act, a stratum of native vegetation is to be taken to be substantially intact if, in the opinion of the Council, the stratum has not been seriously degraded by human activity during the preceding 20 years, disregarding human activity that has resulted in a fire.

Clause 5: Amendment of s. 4—Application of Act

It is necessary to revise the provisions relating to the area of the application of the Act, particularly in view of changes to councils, and changes to terminology under the *Development Act 1993*.

Clause 6: Amendment of s. 6—Objects

The objects are to be revised to an extent. Reference is to be made to the commonly held desire of landowners to preserve, enhance and manage native vegetation on their land, and to the need to prevent additional loss of the quality and quantity of native vegetation in the state.

Clause 7: Amendment of s. 8—Membership of the Council

The Council includes a person nominated by the LGA, who will be selected by the Minister from a panel of three persons who have been so nominated.

Clause 8: Amendment of s. 14—Functions of the Council

This clause makes an amendment to include reference to degraded vegetation. Express provision is to be included with respect to the council taking into account, and seeking to further, the objects of the Act and the principles of clearance of native vegetation when acting on a referral. The Council will be required to investigate any complaint as expeditiously as possible.

Clause 9: Amendment of s. 15—Delegation of powers and functions

These amendments relate to delegations to a local council or council officers.

Clause 10: Repeal of Division 2 of Part 3

The provisions relating to conciliations under the Act are to be repealed.

Clause 11: Amendment of s. 21—The Fund

Amounts payable under section 29(10)*(d)* of the Act, as are exemplary damages awarded under other provisions of the Act, are to be paid into the Fund. This money is to be used (as far as practicable) to establish native vegetation on land, and to maintain that vegetation once it is established.

Clause 12: Substitution of heading

This amendment is consequential.

Clause 13: Amendment of s. 23—Heritage agreements

This amendment makes express provision as to the purposes for which a heritage agreement will be entered into.

Clause 14: Amendment of s. 23B—Registration of heritage agreements

This amendment will expressly provide that a note against an instrument of title or against land must not be removed by the Registrar-General except on due application under the Act.

Clause 15: Repeal of s. 23C

This is a consequential amendment.

Clause 16: Insertion of Division 2 of Part 4

Certain revegetation arrangements are to be recognised.

Clause 17: Insertion of heading

This amendment is consequential.

Clause 18: Amendment of s. 24—Assistance to landowners

An owner of land who proposes to undertake revegetation in accordance with an arrangement approved under new Division 2 of Part 4 will be able to apply to the Council for financial assistance.

Clause 19: Amendment of s. 25—Guidelines for the application of assistance and the management of native vegetation

Draft guidelines that relate to land within the catchment area of a catchment management board will be submitted to that board for comment. Specific power to vary or replace guidelines is to be vested in the Council.

Clause 20: Amendment of s. 26—Offence of clearing native vegetation contrary to this Part

Penalty provisions under section 26 are to be revised so that the specific monetary penalty is $100 000. An expiation fee is also to be introduced. Civil proceedings will also follow if a conviction for an offence occurs (unless such proceedings have already been commenced).

Clause 21: Amendment of s. 27—Clearance of native vegetation

It will now be generally the case that the Council may not consent to the clearance of vegetation that comprises or forms part of a stratum of native vegetation that is substantially intact.

Clause 22: Amendment of s. 28—Application for consent

An application for consent under the Act will now need to include information that establishes that proposed planting will result in a significant environmental benefit, or information that establishes that it is not possible to achieve such a benefit (which may then be accompanied by a proposal to make a payment of money into the Fund for the establishment or revegetation of native vegetation within the same region). It will also be necessary to provide a report relating to the proposed clearance that has been prepared by a recognised body. The report will be made available to the public, together with any departmental assessment report.

Clause 23: Amendment of s. 29—Provisions relating to consent

The scheme under section 29 must be revised. A specific entitlement to make written representations to the Council on an application for consent is to be included. The Council will also be entitled to allow persons to appear before it in order to make submissions in relation to an application.

Clause 24: Substitution of s. 30

Separate provision is to be made for conditions of consent. Various kinds of conditions may be considered.

Clause 25: Substitution of s. 31

The civil enforcement proceedings are to be revised. An application will now be made to the Environment, Resources and Development Court. Specific provision is made for certain orders and notices to be made or issued by the Court. Specific provision will be introduced to make a failure to comply with an order of the Court a contempt of the Court.

Clause 26: Amendment of s. 32—Appeals

These are consequential amendments.

Clause 27: Amendment of s. 33—Commencement of proceedings

The period for commencing enforcement proceedings is to be changed from 3 years to 4 years.

Clause 28: Insertion of Division 3 of Part 5

This clause makes specific provision for the appointment and powers of authorised officers. An authorised officer must be an officer or employee of the Crown or a local council.

Clause 29: Insertion of Parts 5A and 5B

Certain matters will be the subject of appeal rights to the ERD Court. The appeal will be in the nature of a judicial review of an administrative decision, and it is made clear that it is not intended to allow a "merits review" of any decision. Part 5A (*Administration Appeals*) is to expire on 1 January 2007.

Clause 30: Insertion of s. 33J

This provision is associated with the vesting of jurisdiction in the ERD Court.

Clause 31: Amendment of s. 34—Evidentiary provisions etc.

Certain facts determined by the use of devices are to be accepted as proved in the absence of proof to the contrary.

Clause 32: Amendment of s. 35—Proceedings for an offence

An authorised officer will not be able to issue an expiation notice for an alleged offence against the Act except with the specific authorisation of the Council.

Clause 33: Substitution of s. 36

The repeal of section 36 is consequential. Costs and expenses incurred by the Council in taking action under the Act are to be assessed by reference to the reasonable costs and expenses of an independent contractor.

Clause 34: Repeal of s. 37

This is a consequential amendment.

Clause 35: Insertion of ss. 40A and 40B

The register of applications for clearance under the Act is to be given statutory status. The register is to be available on the internet. It is also intended to include a provision allowing the Minister to delegate a function or power under the Act.

Clause 36: Amendment of s. 41—Regulations

Certain fees may need to be prescribed by reference to the Minister's estimate of the cost of the service that is provided.

Clause 37: Amendment of Development (System Improvement Program) Amendment Act 2000

The *Development (System Improvement Program) Amendment Act 2000* contains provisions relating to the areas of the state to which the *Native Vegetation Act 1991* applies. These provisions have now been superseded by amendments made by this Act.

Schedule

These are technical amendments.

The Hon. R.D. LAWSON secured the adjournment of the debate.

STATUTES AMENDMENT (BUSHFIRES) BILL

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

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): 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.

Currently, a person who sets a bushfire in South Australia would be charged with arson. The offence of arson is contained in the *Criminal Law Consolidation Act 1935.* The offence is contained within the more general offence of damaging property by fire or explosives (section 85). It is a form of criminal damage; that is, arson is criminal damage caused by fire. The maximum penalty for arson is life imprisonment where the value of the damage caused exceeds $30 000. Where the damage exceeds $2 500 but does not exceed $30 000, the maximum penalty is imprisonment for five years, and where the damage does not exceed $2 500, the maximum penalty is imprisonment for two years.

There are significant problems with a system of criminal damage offences where seriousness is determined by the value of property. These include—

- the monetary value and, hence, the significance of the amounts, changes over time unless the amounts are amended on a regular basis—and these have not been;
- the value of the property may not be a fair indication of the harm done, especially where there is danger to life and other property;
- the value of the property damaged may not be a fair indication of the loss actually resulting from the damage; and
- where the charge is attempt, assessing the value of the damage that might have been done to the property is a most speculative and difficult exercise.

In the case of the lighting of a bushfire, these arguments apply with even more force. First, in the case of lighting what turns out to be a bushfire, the damage involved (for example, burning of hectares of bushland or loss of endangered species) may be impossible to ascertain or quantify; and second, the monetary value of the property may not be a fair indication of the public and private non-valued costs of the damage (including the role of volunteers in controlling and extinguishing the bushfire).

Bushfires in the Australian environment require special treatment because of the peculiarly strong possibility of indiscriminate harm being done to people, property and the environment. A recent example of such an eventuality is the extensive damage wrought by the bushfires in New South Wales between late October and Christmas 2001, in which 100 homes, 15 factories and 14 commercial premises were destroyed. According to reports, the insurance industry suggests an approximate financial loss of $70 million and the estimated cost to the rural fire service also of $70 million.

There are offences under the *Country Fires Act 1989* designed to prevent the occurrence of bushfires. These include, restrictions on the lighting of fires during fire danger season, as well as the offence of endangering life or property by lighting a fire during the bushfire season in circumstances where the fire endangers, or is likely to endanger, the life or property of another. However, this offence has limited application and carries a minor maximum penalty — two years imprisonment or $8 000.

Since it was established in 1991, the Model Criminal Code Officers Committee (MCCOC) has undertaken work on a large number of chapters of the Model Criminal Code with a view to developing uniform criminal laws in Australia. In January 2001, MCCOC released its report, *Damage and Computer Offences*, which proposed a separate bushfire offence. The Commonwealth Attorney-General has written to State and Territory Attorneys-General urging the adoption of the Model Criminal Code bushfire offence. This Bill proposes a redrafted version of the MCCOC proposal.

Part 2 of the Bill proposes to amend the *Criminal Law Consolidation Act 1935* by the enactment of a very serious offence of doing any act which causes a bushfire intending to cause, or being recklessly indifferent as to whether or not that act causes, a bushfire. A bushfire is a fire that burns, or threatens to burn, out of control. When the Bill was introduced in another place, the provision was expressed as follows:

> "A person who, intentionally or recklessly, causes a bushfire is guilty of an offence."

Whilst there was bipartisan agreement that the term "recklessly" meant exactly the same as the term "recklessly indifferent", it was agreed that, for the sake of internal consistency within Part 4 of the *Criminal Law Consolidation Act*, the offence should be expressed as it now appears in the Bill. In the context of the offence, recklessness is intended to bear its common-law meaning; that is, advertence to the possibility that a bushfire may result and taking an unjustifiable risk by acting with that foresight. It would be recklessly indifferent, under proposed section 85B, for a person to light a fire when he or she knew, or should have known, that it might burn or threaten to burn out of control causing damage to vegetation, even though he or she did not intend that to happen. It is proposed that the maximum penalty for such an offence be 20 years imprisonment.

It should be noted that this offence does not apply to fires (whether they threaten to burn out of control or not) which only damage the property or vegetation on the land of the person who caused the fire or the land of a person who authorised or consented to the causing of the fire. The reason for this is that the proposed offence concentrates on fires that spread to vegetation or property on land that is not owned or occupied by the person who caused the fire.

This offence is aimed at widespread conflagration. There is a general defence aimed at protecting those who fight fires by, for example, controlled burns or backburning aimed at controlling a bushfire.

Part 3 of the Bill proposes to amend the *Criminal Law (Sentencing) Act 1988* to provide that a sentencing court, when determining the sentence for an offender guilty of arson or causing a bushfire, should have regard to the need to give proper effect to bringing home to offenders the extreme gravity of their offence and to exacting reparation from the offender for harm done to the community.

I commend the Bill to the House.

Explanation of clauses

PART 1—PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

These clauses are formal.

PART 2—AMENDMENT OF THE CRIMINAL LAW CONSOLIDATION ACT 1935

Clause 4: Insertion of s. 85B

New section 85B (Special provision for causing a bushfire) is to be inserted in Part 4 of the principal Act which deals with "property" offences. The new section provides that a person who causes a bushfire intentionally or with reckless indifference is guilty of an offence and liable to be imprisoned for 20 years.

A bushfire is defined as a fire that burns or threatens to burn out of control causing damage to vegetation, whether or not other property is also damaged or threatened.

The "bushfire" offence is not committed if the bushfire only damages property on the land of the person who caused the fire or of a person who authorised or consented to the act that caused the burning. Nor is it an offence if a bushfire is the result of operations genuinely directed at preventing, extinguishing or controlling a fire.

PART 3—AMENDMENT OF THE CRIMINAL LAW (SENTENCING) ACT 1988

Clause 5: Amendment of s. 10—Matters to which a sentencing court should have regard

Section 10 of the principal Act sets out the matters to which a sentencing court should have regard when determining the sentence for an offender. This clause proposes to add a further matter to be taken into consideration in the case of arson or causing a bushfire. In those cases, a sentencing court should have regard to the need to give proper effect to a primary policy of the criminal law. That

policy is to bring home to such an offender the extreme gravity of the offence and to exact reparation from the offender, to the maximum extent possible under the criminal justice system, for harm done to the community. Examples are given of ways in which this objective may be achieved.

The Hon. R.D. LAWSON secured the adjournment of the debate.

LEGISLATION REVISION AND PUBLICATION BILL

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

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): 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.

South Australia can be proud of its program for the consolidation of public general Acts and regulations. Since early 1992 all public general Acts, and since 1995 all public general regulations, have been continuously kept up-to-date in consolidated form. All Acts and certain often used regulations are reprinted in hard copy on a regular basis as amendments come into operation and all are available in electronic form.

This Bill replaces the *Acts Republication Act* and those parts of the *Subordinate Legislation Act* relating to the consolidation of regulations—the Acts under which the program is conducted. The measure will provide further support for the ongoing legislation consolidation program and facilitate improvements in consistency in presentation of the legislative data.

The Bill continues to provide for the appointment of a Commissioner to oversee the program. The name of the office is altered from Commissioner of Statute Revision to Commissioner for Legislation Revision and Publication to emphasise the role of publishing legislation in printed or electronic form as well as revising legislation.

The Bill provides more extensive revision powers to ensure that South Australian legislation can be maintained appropriately, while ensuring that nothing done in the exercise of those powers can alter the effect of legislation.

In addition, the Bill provides the ground work for giving electronic versions of legislation, when accessed at a prescribed website or kept in a prescribed format, the same legal status as printed versions of legislation. This reflects the approach taken in authorising electronic versions of legislation in Tasmania and the Australian Capital Territory. The necessary regulations will not be prescribed until completion of a project for the conversion of legislative data to extensible Markup Language (XML) designed to protect the longevity of the data, capture all graphics in legislation, and establish appropriate infrastructure for the ongoing support of the website. This project is complex and should be completed before the end of 2003.

I commend the bill to honourable members.

Explanation of clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement of the measure by proclamation.

Clause 3: Interpretation

This clause defines terms for the purposes of the measure.

Clause 4: Commissioner for Legislation Revision and Publication

This clause provides for the Governor to appoint the Parliamentary Counsel or a legal practitioner employed in the Office of Parliamentary Counsel as Commissioner for Legislation Revision and Publication and for the Attorney-General to appoint a legal practitioner employed in the Office of Parliamentary Counsel to act in the position if there is no Commissioner or if the Commissioner is not able to act.

The transitional provisions provide for the existing Commissioner of Statute Revision to continue as Commissioner for Legislation Revision and Publication.

Under the *Acts Republication Act*, the Governor appoints a person to hold or act in the office of Commissioner of Statute Revision and the Attorney-General may authorise a legal practitioner to supervise the reprint program if there is no person holding or acting in the office of Commissioner. Under the *Subordinate Legislation Act*, the Attorney-General authorises a legal practitioner to consolidate regulations. In practice, the same person performs both functions.

Clause 5: Program for revision and publication of legislation

The *Subordinate Legislation Act* takes a slightly different approach in relation to the preparation of reprints to the *Acts Republication Act*. It is proposed that a standard approach should apply to the revision and publication of Acts and Regulations and that both reprints and electronic versions should be contemplated as a means of making up-to-date legislation accessible on an ongoing basis.

This clause requires there to be a program for the revision and publication of legislation focussing on making up-to-date public general Acts and regulations accessible in printed and electronic form.

The *Acts Republication Act* contains separate provisions authorising the 1975 consolidation of Acts and the ongoing reprinting program for Acts. The *Subordinate Legislation Act* covers the consolidation of regulations. Currently, under both the *Acts Republication Act* and the *Subordinate Legislation Act* the Attorney-General is responsible for the preparation of the reprints, reflecting the expense involved in setting up the initial consolidation program. The ongoing consolidation program is now fully established in this State. All public general Acts are reprinted and kept up-to-date on a fortnightly basis. All public general regulations are consolidated. Some of the consolidated regulations are reprinted and some made available only as electronic versions. It is a matter of continuing that program. In jurisdictions where the reprinting powers have been revisited in recent years (notably Queensland, Tasmania and the ACT) the reprinting role is conferred on an office holder.

Scope of consolidation program

Legislation is proposed to be defined as

- an Act
- a regulation made under an Act
- an instrument of a prescribed kind.

This reflects the current program. It is intended that policies under the *Environment Protection Act* would be prescribed.

Subclause (3) excludes certain types of legislation from the scope of the consolidation program. These are the same types of legislation as were excluded from the 1975 consolidation of Acts–see section 4(1) *Acts Republication Act*.

Clause 6: Supervision by Commissioner

This clause requires the Commissioner to supervise the revision and publication of legislation and is similar to section 6 of the *Acts Republication Act*.

Clause 7: Alterations that may be made in revising legislation

Subclause (1) provides the following powers that may be exercised in the course of revising legislation:

(a) The following types of provisions may be omitted:

- arrangement provisions (The summary of provisions now performs the purpose of old arrangement provisions.)
- amending provisions
- repealing provisions
- saving, transitional or validation provisions
- other provisions that are spent or have expired or otherwise ceased to have effect.

The idea is that the republication should reflect the legislation as it is in force and not include material that has served its purpose. In each case, the omission will be noted in the legislative history (see clause 5(5)*(d)*).

Section 4(5) of the *Acts Republication Act* allows amending provisions to be left out of the 1975 consolidation. This does not (but should) carry through to the ongoing reprinting program.

Currently, these types of provisions are removed by Statute Law Revision amendments and the Act then reprinted. The proposal avoids using drafter's time and Parliamentary time on the very substantial Statute Law Revision exercises that would be involved in removing these provisions by legislative means.

(b) The long title and any relevant headings may be altered so as to take account of the omission of provisions.

This power is consequential to that in paragraph *(a)*. References to repeals and amendments will need to be removed from the long title. Schedule headings will require adjustment where, for example, the heading refers to amendments and transitional provisions and the amending provisions are removed pursuant to the powers in *(a)*.

(c) Obsolete headings may be omitted.

There are some cases where a heading remains in legislation but the substantive provisions under that heading have been repealed or revoked. It is proposed that the removal of the obsolete heading be authorised.

(d) If the legislation contains a minor error or would contain a minor error if consolidated in a particular way, the legislation may be expressed in a different way so as to correct or avoid the error.

A minor error is defined to mean a typographical or clerical error, a grammatical error, spelling error or error of punctuation, an error in numbering or designation, cross-referencing or alphabetical ordering.

Currently section 7(1)*(f)* of the *Acts Republication Act* enables errors of a grammatical or clerical nature to be corrected and *(h)* errors in numbering or designation. Section 14(3)*(d)* of the *Subordinate Legislation Act* allows printing errors and errors in spelling and numbering to be corrected. The proposed definition has been formulated following examination of what is allowed to be corrected as an error in the legislation of other Australian jurisdictions.

(e) A reference to legislation or a legislative provision for which some other legislation or provision has been substituted may be altered to a reference to the substituted legislation or provision.

This power is currently provided in section 7(1)*(b)* of the *Acts Republication Act* and section 14(3)*(a)* of the *Subordinate Legislation Act*. The power is rarely exercised because of the potential to change the substantive effect of the law but is retained for cases where there is no doubt about the substituted law.

(f) A reference to a name, title or citation of any place, person, authority or legislation that has been changed by or under an Act or law may be altered to the name, title or citation as so changed.

This power is currently provided in section 7(1)*(c)* of the *Acts Republication Act* and section 14(3)*(b)* of the *Subordinate Legislation Act*. Again, the power is rarely exercised because of the potential to change the substantive effect of the law but is retained for cases where there is no doubt about the substitution.

(g) Figures that indicate a year of the 20th century may be replaced with figures that indicate a year of the 21st century if the figures relate to an act to be performed in future.

This is similar to a provision included in the WA legislation and will apply mainly to forms in regulations.

(h) This paragraph sets our various alterations that may be undertaken to achieve consistency with current practice or uniformity in style.

Currently section 7(2) of the *Acts Republication Act* allows the Attorney-General to issue directions for the purpose of 'achieving uniformity of style in respect of the numbering and designation of, and the use of capital letters and italics in, any of the provisions or the formal parts of Acts and in respect of the setting out of the provisions of Acts generally; and generally improving, and bringing into conformity with modern standards of draftsmanship, the form or manner in which the law contained in Acts is expressed'. The sorts of changes that might be undertaken for these purposes are encapsulated in the proposed new paragraph, negating the need for such directions. The matters listed are designed to ensure that the changes are changes in form only and not substance.

(h)(i) The enacting words in an Act may be altered and, where the enacting words are included in a preamble, they may be separated from the preamble.

Various styles of enacting words have been used over time and in older Acts a preamble included and combined with the enacting words. It is proposed to introduce consistency with the enacting words being 'The Parliament of South Australia enacts as follows:'

(h)(ii) A heading may be inserted above a preamble to indicate that it is a preamble.

This is for consistency in structure.

(h)(iii) The style of references to legislation or to non-legislative works may be altered.

Various styles have been used over time and this will allow for consistency. Non-legislative works would include Australian Standards.

(h)(iv) Spelling may be altered.

This supports the current practice of updating spelling practices for example by altering 'iz' to 'is' in authorise.

(h)(v) Numbering may be altered, deleted or added.

This allows for consistency in numbering to be introduced where appropriate (for example in older legislation roman numerals may be used for a second set of paragraphs in a subsection) and for dashes or dots to be converted to numbering in appropriate cases (where numbers would be included as a matter of current drafting practice).

Currently, section 14(3)*(f)* of the *Subordinate Legislation Act* authorises renumbering of all regulations.

The power in this paragraph would be used with great care because of the potential for confusion and the need to ensure cross references are corrected.

(h)(vi) Expressions of a number, year, date or time or of a quantity or measurement may be expressed differently.

Section 7(1)*(d)* of the *Acts Republication Act* enables a reference in an Act or enactment to a year of Our Lord, expressed in words, to be altered to a reference to that year expressed in Arabic numerals.

Again, this power is included to promote consistency. Older drafting practice was to refer to years in words rather than figures. The statute book is inconsistent in the way in which dates and times are presented and in the way in which measurements are presented.

(h)(vii) An amount of money that is not expressed as an amount in decimal currency may be expressed as an amount in decimal currency if, according to the provisions of the *Decimal Currency Act 1965*, it is to be read as such.

Currently, section 8 of the *Acts Republication Act* and section 14(3)*(c)* of the *Subordinate Legislation Act* enable alterations to give effect to the *Decimal Currency Act*.

(h)(viii) A penalty at the foot of a provision may be stated to be a maximum penalty if it is so by virtue of the *Acts Interpretation Act 1915*.

This power would enable the references to penalty to be altered to maximum penalty in appropriate cases. Of course, this power will not be relevant to the few cases where minimum penalties apply.

(h)(ix) Formatting or any other matter related to presentation may be altered (including, for example, the setting out of provisions, the type, the use of symbols in place of words having the same meaning, the placement of conjunctives and disjunctives and the use of capital letters, punctuation, hyphens, italics, bolding and quotation marks).

Again this promotes consistency and enables full advantage to be taken of the proposed new system where printing styles can easily be updated for particular elements across the entire database.

(i) The regulations may authorise alterations of other kinds.

Equivalents of the following existing provisions are not included:

- *Acts Republication Act* section 7(1)*(a)*–allows alteration of short title by inclusion of end year. This does not accord with current practice. Section 7(6) is consequential.
- *Subordinate Legislation Act* section 14(4)-If the principal legislation does not have a short title or citation, a short title or citation may be assigned. This related to older regulations and there are now no regulations without a citation.
- *Subordinate Legislation Act* section 15–This enables the Attorney-General to print the consolidated text in the prescribed form and manner. There are no regulations supporting this section.
- *Acts Republication Act 1967* section 12–This relates to references to line numbers and pages in Acts and has no current application.

Constraint

Subclause (2) provides that the section does not permit alterations to legislation that would change the effect of the legislation. This is a new provision and is a very important constraint promoting a conservative approach to the exercise of revision powers by the Commissioner.

Changes to section headings etc and legislative history

Subclause (3) contemplates that material that does not form part of legislation for interpretation purposes may be included, altered or removed.

Section 7(1)*(e)* of the *Acts Republication Act* currently allows marginal notes to sections or parts of sections to be altered.

Subclause (4) requires a legislative history to be prepared setting out

- the instruments by which the legislation has been amended;
- a description of how the provisions of the legislation have been affected by those instruments;
- relevant assent and commencement dates for those instruments;
- a note of provisions omitted using the revision powers.

Section 5(2) of the *Acts Republication Act* and section 14(5)*(a)* of the *Subordinate Legislation Act* require the list of amending

legislation to be presented. Section 5(2) of the *Acts Republication Act* and section 14(5)*(b)* of the *Subordinate Legislation Act* require marginal notes indicating the reference to the amending legislation to be presented. The proposal expands on these requirements and reflects current practice.

Clause 8: Publication of legislation

This clause contemplates publication under the Act of revised legislation in either hard copy or electronic copy and of legislation that has not been revised in electronic copy. (Acts as enacted will continue to be published by authority of the Government Printer and subordinate legislation will continue to be published in the Gazette.)

The authorised electronic copies will be provided in accordance with the regulations. Provision is made for electronic copies downloaded from a website in accordance with conditions prescribed by regulation, or prints produced from such a copy in accordance with conditions prescribed by regulation, to have the same status as authorised copies.

These regulations will not be made until the electronic versions include and properly display all maps, diagrams, equations and other graphics.

The authorisation of the electronic versions will accommodate those regulations that are not currently reprinted and also the revisions that will be made across the database as it is converted to eXtensible Markup Language.

Reprinting in Parts

Subclause (2) expressly supports the practice of reprinting long, often amended, legislation in Parts, ie, substituting just the front pages, the Parts affected by the relevant amendments and the updated legislative history.

Effect of alterations

Under subclause (3) legislation revised and republished under the measure has effect as if the alterations made in revising the legislation had been made by amending legislation. This equates to sections 7(5) and 8(4) of the *Acts Republication Act*.

Clause 9: Evidence

This clause provides a presumption that legislation published under the measure correctly sets out the contents of the legislation. It is similar to section 9(1)*(d)* of the *Acts Republication Act* and section 16 of the *Subordinate Legislation Act*.

Clause 10: Regulations

This clause provides a general regulation making power.

SCHEDULE

Repeals, Amendments and Transitional Provisions

Clause 1: Repeal of Acts Republication Act

Clause 1 repeals the Acts Republication Act.

Clause 2: Amendment of Evidence Act

This Act extends the provision providing for judicial notice of legislative instruments to legislation published under the new measure or corresponding measures in other jurisdictions. In due course, this will include the electronic versions of legislation as well as the printed versions.

Clause 3: Amendment of Subordinate Legislation Act

Clause 3 amends the *Subordinate Legislation Act* to remove references to the authorised legal practitioner and consolidation of regulations.

Clause 4: Transitional provision

Clause 4 continues the current Commissioner of Statute Revision in office as the Commissioner for Legislation Revision and Publication.

The Hon. R.D. LAWSON secured the adjournment of the debate.

STATUTES AMENDMENT (STAMP DUTIES AND OTHER MEASURES) BILL

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

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries): I move:

That this bill be now read a second time.

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

Leave granted.

The *Statutes Amendment (Stamp Duties and Other Measures) Bill 2002* contains a range of measures to implement grants, clarify existing exemptions or concessions, confirm the operation of existing provisions and make other minor administrative changes to update the State's taxation laws. The bill contains amendments to the *First Home Owner Grant Act 2000; Pay-roll Tax Act 1971; Petroleum Products Regulation Act 1995; Stamp Duties Act 1923; Financial Sector (Transfers of Business) Act 1999* and *Taxation Administration Act 1996*.

I will deal with the amendments to each act in turn.

First Home Owner Grant Act 2000

On 9 March 2001, the Prime Minister announced an increase in the First Home Owner Grant ('FHOG') from $7 000 to $14 000 (fully funded by the commonwealth), for those first home buyers who signed a contract to build a new home or buy a previously unoccupied new home on or after 9 March 2001.

This additional measure was announced as a short-term stimulus to the building industry with the intention that the FHOG would revert back to $7 000 for new home contracts entered into after 31 December 2001.

The Prime Minister further announced on 9 October 2001, as part of the Federal Election campaign that the additional grant would be extended until 30 June 2002, but that as from 1 January 2002, the amount of the additional grant would be $3 000 so that the grant for the construction of new homes in that six month period was $10 000 as compared to the grant for established homes of $7 000.

A relaxation of the eligibility criteria in two areas was also announced. The building commencement and completion requirements applying to the additional FHOG were to be varied so that persons must commence construction within twenty six weeks of entering into a contract (instead of the existing sixteen week criterion) and secondly, the contract must specify a completion date within eighteen months of the date of commencement (instead of existing twelve month period). It was subsequently agreed between the commonwealth and the states and territories that these changes would apply from 9 October 2001. All other eligibility criteria remain unchanged.

More than $228.5 million has been paid to FHOG recipients in this State since its inception and this has provided a major stimulus to the state's building industry. The amendments formally implement the commonwealth/state agreement on FHOG.

Pay-roll Tax Act 1971

Firstly, the bill amends the *Pay-roll Tax Act* to maintain the *status quo* by ensuring that all superannuation benefits are considered 'wages', and therefore liable to pay-roll tax, irrespective of how those amounts are attributed to employees/members.

The need for this amendment arises from the recent Supreme Court decision in *Hills Industries Ltd & Anor v Commissioner of State Taxation & Anor* (Judgment No. [2002] SASC 67), the effect of which was that the particular treatment of superannuation contributions did not constitute wages liable to pay-roll tax.

This decision was contrary to the previously widely held view as to the ambit of the superannuation benefit provisions.

Secondly, in relation to employment agents, certain anti-avoidance provisions were enacted by the *Pay-roll Tax (Miscellaneous) Amendment Act 1991*. These measures were aimed at schemes designed to avoid liability for pay-roll tax by severing the employer-employee relationship and clarifying liability to pay-roll tax where a person's services were obtained through an employment agent.

Since their enactment in 1992, RevenueSA has interpreted these provisions, as they apply to employment agents, to include any situation where the services of a natural person (the contract worker) are provided by a sub-contracting partnership, trust or company engaged by the employment agent.

Doubts have recently been raised concerning the interpretation of these provisions where an employment agent procures the services of a natural person for their client, but engage a sub-contracting entity, such as a company, rather than a natural person.

This bill puts beyond doubt that the employment agent provisions include payments made in situations where the services of a natural person (the contract worker) are provided by a sub-contracting partnership, trust or company engaged by the employment agent.

The proposed amendments to the definition of superannuation benefit and the Employment Agent provisions of the *Pay-roll Tax Act* apply retrospectively to confirm the widely held and accepted view of their application since their enactment.

This approach to retrospectivity is consistent with that taken in the *Stamp Duties (Land Rich Entities and Redemption) Amendment Act 2000* dealing with an amendment which operated to restore the stamp duty base to that existing prior to the High Court decision in the case of *MSP Nominees Pty Ltd vs Commissioner of Stamps.*

Petroleum Products Regulation Act 1995

The *Petroleum Products Regulation Act 1995* contains confidentiality provisions which provide a prohibition on divulgence of '*any information relating to information obtained in the administration of the Act'*. Whilst this prohibition protects individual's rights to privacy it also hinders proper administration of the *Petroleum Products Regulation Act* in terms of accountability and law enforcement.

The *Petroleum Products Regulation Act* provisions are more restrictive than those contained in the *Taxation Administration Act* which contains the confidentially provisions for all of the major taxation Acts administered by RevenueSA. The state's taxation legislation relating to pay-roll tax, stamp duty, land tax and debits tax are all subject to the *Taxation Administration Act*.

The *Taxation Administration Act* allows the disclosure of information that '*does not directly or indirectly identify a particular taxpayer'*.

The Bill proposes that the current confidentiality provisions contained in the *Petroleum Products Regulation Act* be repealed and that confidentiality provisions similar to those contained in the *Taxation Administration Act* be inserted so that information that does not identify a particular taxpayer can be released for proper reporting purposes.

Stamp Duties Act 1923

The Bill deals with a number of stamp duty issues.

Firstly, the Bill amends the *Stamp Duties Act* to extend, from one to five years, the time in which an application can be made for a refund of duty paid on an instrument that can be registered under the *Real Property Act 1886*, due to the instrument being rescinded or annulled. This change will align the provision with the general refund provisions in Part 4 of the *Taxation Administration Act* and provide greater equity for taxpayers.

Secondly, an amendment to section 71(2) of the *Stamp Duties Act* is proposed, which will remove a legislative impediment to the modernisation of stamp duty collection regimes so as to enable taxpayers to transact their business with RevenueSA over the Internet.

This sub-section was enacted before the concept of electronic forms of stamp duty determination and payment were envisaged and now acts as an archaic impediment to the introduction of modern taxation assessment and payment practices for the benefit of both the government and taxpayers.

Thirdly, the bill amends Section 71C of the *Stamp Duties Act*, which provides a stamp duty concession to first home buyers.

The government has recently become aware of a number of first home buyers who have been denied a refund of stamp duty (first home concession) on the transfer of land upon which they build their first home, because, through no fault of their own, delays in the building process have prevented them from completing construction and occupying the dwelling house within twelve months of the date of the land transfer, as required by the *Stamp Duties Act*.

The bill proposes to amend the *Stamp Duties Act* to increase the time period prescribed in the act from twelve months to two years to ensure that first home buyers are not disadvantaged through delays over which they have no control.

Fourthly, an amendment to the first home concession provisions is proposed to ensure that the concession is available to rural first home buyers. RevenueSA has been providing a first home concession on an administrative basis where the first home is purchased as part of an operating primary production property, provided that the value of the house and curtilage (ie. the immediate land around the house) is less than $130 000 and the property purchased is a viable farming unit. The purpose of implementing such an approach was to ensure rural first home purchasers can also receive the same concession as their urban-based counterparts.

The amendments provide the legislative backing to the previous interpretation and long standing practice of RevenueSA.

Fifthly, the bill clarifies the operation of an existing exemption from duty for transfers of a family farm (including goods used for the business of primary production), by ensuring that regardless of the form which the transaction takes, the transfer will not attract stamp duty. Without this amendment, some family groups are missing out on the exemption purely because of the manner in which their advisers have documented the transactions.

Sixthly, the bill seeks to amend the *Stamp Duties Act* to ensure that transactions that are effected under the commonwealth and State *Financial Sector (Transfer of Business)* legislation are chargeable with stamp duty. Such transactions were considered liable to duty under the *Stamp Duties Act*, however based on legal advice, there is now some doubt that the existing provisions operate adequately in all situations and therefore this issues requires clarification.

Commonwealth and state governments have established complimentary legislative frameworks to facilitate the transfer of businesses between authorised deposit taking institutions. In South Australia such transfers were previously regulated under a variety of state acts.

The amendments seek to ensure that the state receives stamp duty from any statutory transfers pursuant to the respective Commonwealth and State *Financial Sector (Transfer of Business)* Acts. It is proposed however to exempt credit unions from duty in recognition of their limited capacity to raise permanent share capital. This approach will re-instate the previous stamp duty exemption provided to credit unions prior to the introduction of the new transfer of business regime.

The South Australian *Financial Sector (Transfer of Business) Act 1999* is also amended by this bill to enable the Treasurer to determine an agreed sum to be paid in *lieu* of any state taxes or charges that would otherwise be payable. This provision is considered necessary in recognition of the very large and complex nature of these transactions.

Seventhly, the bill inserts a new provision into the *Stamp Duties Act* to clarify that where the Commissioner of State Taxation is satisfied that a transfer of property has occurred solely to correct an error in an earlier instrument upon which full duty has been paid, that the transfer instrument is only charged with nominal stamp duty and not *ad valorem* conveyance rates, effectively removing the potential for double duty.

Eighthly, and lastly, the opportunity has also been taken to make some minor amendments to the *Stamp Duties Act* in order to substitute any reference to a 'prescribed form' with a reference to 'a form approved by the Commissioner'.

A reference to a prescribed form is a reference to particular documentation required by RevenueSA. The change from a prescribed form to an approved form allows greater flexibility where changed circumstances require a different form.

Taxation Administration Act 1996

The *Taxation Administration Act 1996* is being amended to correct a technical anomaly by clarifying the operation of the extension of time provisions in the Act, and thereby prevent the possibility of unlimited refund claims being made in the case of objection and appeals against a liability to pay tax.

A review of the provisions of the Act was conducted following recent amendments made by the Victorian Parliament to the *Taxation Administration Act 1997* (Vic) to clarify the entitlement of taxpayers to receive a refund of excess taxation payments. These amendments were enacted following the decision of the Victorian Supreme Court in *Drake Personnel Ltd v Commissioner of State Revenue* (1998) 98 ATC 4915.

Advice from the Crown Solicitor has identified that in the South Australian *Taxation Administration Act 1996*, the general discretion of the Minister and the Supreme Court to grant an extension of time within which to lodge an objection or appeal, respectively, may be interpreted in a way that results in the possibility that an order could be made requiring tax to be refunded in relation to tax paid a substantial time ago. This result would not be in keeping with the general scheme of the *Taxation Administration Act 1996*, which imposes time limits on the ability to apply for a tax refund and to request an assessment of liability, which may result in a tax refund. Section 18 of the Act restricts the time in which a taxpayer may apply for a refund of tax that has been overpaid to five years from the time the tax was paid. While section 9 of the Act restricts the time in which a taxpayer may request the Commissioner to make an assessment of tax liability to six months from the date of payment of tax.

This amendment limits the discretion of the Minister to extend the time in which an objection must be lodged to no later than 12 months after the date of service of an assessment on the taxpayer or notification of a decision by the Commissioner of State Taxation. The amendment also provides that the Supreme Court can allow an appeal to be lodged no later than 12 months after the date of service on the person of the minister's determination of the person's objection.

The amendment applies to any objection or appeal lodged after its commencement, but does not affect the rights of those taxpayers who, at the time of its commencement, have made an application to the Minister or the Supreme Court requesting that they exercise their discretion to permit an objection or appeal to be made out of time, and a decision has not yet been made.

Finally, I would like to thank the various Industry Bodies and taxation practitioners who have made their time available to consult on the development of a number of the proposals contained in this bill. The government is very appreciative of their contribution.

I commend this bill to the house.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the measure to come into operation on assent. It also provides for one clause to have retrospective operation. Clause 12 (which amends the provisions of the *Pay-roll Tax Act 1971* dealing with employment agency contracts) is to be taken to have come into operation on 1 April 1992 (which is the day on which those provisions first came into operation).

It should be noted that clause 11 (which amends the definition of "superannuation benefit" for the purposes of the *Pay-roll Tax Act 1971*) will also have retrospective effect: see clause 13.

Clause 3: Interpretation

This clause is formal.

PART 2

AMENDMENT OF FINANCIAL SECTOR (TRANSFER OF BUSINESS) ACT 1999

Clause 4: Substitution of s. 8

Section 8 of this Act currently provides an exemption from stamp duty and other duty or tax in respect of anything effected by or done under the Act. However, subsection (3) provides that a receiving body in a *voluntary* transfer of business must pay to the Treasurer an amount determined by the Treasurer on the basis of an estimate of the duties and taxes that would, but for the operation of the section, be payable in respect of the relevant transfer of assets. ("Receiving body" is defined in the *Financial Sector (Transfer of Business) Act 1999* of the Commonwealth to mean a body to which another body is to transfer, or has transferred, business under that Act. The State Act adopts this definition.)

This clause repeals section 8 and substitutes a new section that maintains the existing exemption from state taxes in respect of compulsory transfers facilitated under the Act but removes the "automatic" exemption in relation to voluntary transfers. While voluntary transactions are no longer automatically exempt from State taxes, subsection (2) enables the Treasurer to enter into an agreement with a receiving body in a voluntary transfer under which the receiving body is granted an exemption from a State tax or State taxes in relation to a particular transaction facilitated under the Act. "State tax" is defined in subsection (4) to mean stamp duty or any other tax, duty or impost that would, but for the granting of an exemption, be payable in respect of the transaction.

An agreement under this section may be conditional on payment by the receiving body of an amount determined by the Treasurer.

PART 3

AMENDMENT OF FIRST HOME OWNER GRANT ACT 2000

Clause 5: Amendment of s. 3—Definitions

The definition of "new home" is only used in section 13A of the Act and so is to be dealt with under that section.

Clause 6: Substitution of s. 13A

This clause recasts section 13A of the Act so as to revise the categories of transactions that will be taken to be special eligible transactions for the purposes of the Act. Provision is also made for the Governor, by regulation, to alter any date or period specified by the section in order to extend an entitlement under the act, or to determine other transactions to be special eligible transactions, if the regulation is consistent with the commonwealth/state scheme for the payment of grants.

Clause 7: Amendment of s. 18—Amount of grant

This is a consequential amendment.

Clause 8: Insertion of s. 18A

This amendment relates to the grants that are now payable with respect to special eligible transactions. The Governor will be able, by regulation, to alter a date or amount payable under this section, or to prescribe additional amounts, if this is consistent with the extension of the scheme under new section 13A(10).

Clause 9: Amendment of s. 46—Regulations

A regulation made under new section 13A or 18A may have retrospective effect but not so as to prejudice any person.

Clause 10: Validation for payment of increased grants

It is necessary to validate payments that are already being made under commonwealth/state arrangements.

PART 4

AMENDMENT OF PAY-ROLL TAX ACT 1971

Clause 11: Amendment of s. 3—Interpretation

This clause clarifies which superannuation benefits can be regarded as wages for the purposes of pay-roll tax liability under the principal act.

The principal act provides that "superannuation benefits" are wages for the purposes of the act and are therefore liable to pay-roll tax. The current definition of what constitutes superannuation benefits for that purpose includes a payment of money by an employer on behalf of an employee to, or the setting apart of money by an employer on behalf of an employee as, any form of superannuation, provident or retirement fund or scheme.

This amendment alters that definition to expressly include the crediting of an account of an employee or any other allocation to the benefit of an employee (other than the actual payment of a benefit) so as to increase the entitlement or contingent entitlement of the employee under any form of superannuation, provident or retirement fund or scheme. It will now also expressly include the crediting or debiting of any other account, or any other allocation or deduction, so as to increase the entitlement or contingent entitlement of an employee under any form of superannuation, provident or retirement fund or scheme. These alterations to the definition, together with new subsection (2a), make it clear that (subject to certain qualifications) increases in the entitlements or contingent entitlements of employees drawn from increases in the capital of the relevant fund or scheme or the payment of interest will constitute wages for the purposes of the Act and so be liable to pay-roll tax (i.e. not just money paid or set apart by the employer).

Clause 12: Amendment of s. 4A—Employment agents

This clause amends section 4A of the principal act, which sets out special rules for determining the payments or benefits that are to constitute wages (and so be liable to pay-roll tax) where the payments or benefits are made or provided in connection with an employment agency contract.

An employment agency contract is a contract (other than a contract of employment) under which an employment agent by arrangement procures the services of a contract worker for a client of the employment agent and as a result receives payment (whether a lump sum or ongoing fee) during or in respect of the period when the services are provided by the contract worker to the client. Under section 4A the employment agent is taken to be the employer, the contract worker is taken to be the employee and any amount paid or payable to the contract worker is (with certain qualifications) taken to be wages paid or payable by the employment agent (and so liable to pay-roll tax).

This amendment makes it clear that where the employment agent engages a third party to procure the services of the contract worker for the employment agent's client (whether or not further parties are in turn engaged through that third party to procure those services), the employment agent is still to be regarded as the employer and the contract worker as the employee, but any amount received by the third party as a result of being so engaged is to be regarded as wages paid to the contract worker by the employment agent in respect of the provision of those services. Where pay-roll tax is paid on any amount that is taken to constitute wages paid or payable by the employment agent in respect of the provision of the services of the contract worker to the client, neither the third party nor any subsequent person is liable to pay tax on any wages paid by him or her in respect of the procurement or performance of those services of the contract worker (thus avoiding the possibility of double taxation).

Clause 13: Amendments not to affect certain assessments

This clause provides that section 3 of the principal act, as amended by clause 11 of the bill, will be taken to have applied with respect to superannuation benefits (subject to certain necessary qualifications) from 1 December 1994 (which is the day on which the definition of "superannuation benefit" was first inserted into the principal act). The amendments resulting from clause 11 are therefore retrospective in their application to superannuation benefits.

Clause 13 also provides that the amendments made by clause 11 do not validate the assessments of pay-roll tax that were the subject of the Supreme Court's judgement in *Hills Industries & Anor v Commissioner of State Taxation & Anor* (Judgement No. [2002] SASC 67) or authorise a reassessment of pay-roll tax in that case. This is to protect the decision in that case from the retrospective operation of clause 11.

PART 5
AMENDMENT OF PETROLEUM PRODUCTS REGULATION ACT 1995

Clause 14: Substitution of s. 56

This clause repeals section 56 of the principal act and inserts a confidentiality provision that is similar to the repealed provision but widens the circumstances in which disclosure of information obtained in the course of administration of the act is permissible.

The new section prohibits a person involved in the administration of the Act from divulging information obtained under or in relation to the Act except in certain circumstances. The circumstances in which disclosure of information is permitted are specified in subsection (2). For example, a person to whom the section applies is permitted to disclose information with the consent of the person from whom the information was obtained. A person is also entitled to disclose information to the holder of a prescribed office or prescribed body.

A separate exception applies to the minister and the Commissioner of State Taxation, who are permitted to disclose information that does not directly or indirectly identify a particular licensee or a person to whom a regulatory or subsidy scheme applies.

The prohibition against disclosure also applies to a person who has acquired relevant information from a person involved in the administration of the act. Unless the disclosure is of a kind that a person engaged in the administration of the Act would be allowed to make, disclosure is permitted only if it is made with the consent of the Minister or Commissioner or if the person is a prescribed office holder.

PART 6
AMENDMENT OF STAMP DUTIES ACT 1923

Clause 15: Amendment of s. 2—Interpretation

This clause amends section 2 of the Act by inserting a definition of "approved form", which is a form approved by the Commissioner. It is proposed that any reference in the Act to "prescribed form" be replaced with the words "approved form". These amendments have the effect of removing the requirement that forms be prescribed by regulation. Instead, forms required under the Act are to be approved by the Commissioner.

Clause 16: Amendment of s. 31E—Registration

Clause 17: Amendment of s. 31F—Statement to be lodged by person registered or required to be registered

Clause 18: Amendment of s. 42AA—Duty in respect of policies effected outside Australia

The amendments made by each of these clauses are associated with the insertion in section 2 of the definition of "approved form". In each of the amended sections, the words "prescribed form" are replaced with "approved form".

Clause 19: Amendment of s. 60B—Refund of duty where transaction is rescinded or annulled

Under section 60B, a person who has paid duty on an instrument of a kind registrable under the *Real Property Act 1886* in respect of a transaction that has subsequently been frustrated or avoided or has miscarried, may be deemed by the Commissioner to be possessed of stamped material rendered useless by being inadvertently spoiled within the meaning of section 106. If the person is deemed by the Commissioner to be in possession of such material, the provisions of section 106 apply. (Section 106 provides that the Commissioner may provide a person in possession of such material with a refund of stamps or money of the same value.)

Section 60B presently provides that an application under the section must be made not later than one year following execution of the relevant instrument. The proposed amendment increases this period to five years.

Clause 20: Amendment of s. 71—Instruments chargeable as conveyances operating as voluntary dispositions inter vivos

This clause amends section 71 of the act by striking out subsection (2), which provides that a conveyance operating as a voluntary disposition *inter vivos* cannot be taken to be duly stamped unless the Commissioner has assessed the duty payable, the amount assessed has been paid and the instrument has been stamped. Section 71(2) acts as an impediment to self-assessment and electronic stamping of instruments. The proposed amendment has the effect of removing this impediment.

Clause 21: Amendment of s. 71C—Concessional rates of duty in respect of purchase of first home, etc.

The amendments to section 71C have the effect of extending the circumstances in which a person is entitled to the concession available to purchasers of a first home.

Currently, a purchaser of land who, subsequent to conveyance of the land, either constructs a home as owner builder or enters into a contract for the construction of a home, is entitled to a refund of stamp duty based on the concession he or she would have received if all necessary conditions had been satisfied at the time of the conveyance. However, this refund is available only if the home is occupied by the person within one year of the date of the conveyance. Subsection (2a) has been amended so that a purchaser of land who did not receive a concession solely because at the time of the conveyance a contract for the construction of a dwelling house had not been entered into, is entitled to a concession if the Commissioner is satisfied that the person occupied a dwelling house on the land as his or her principal place of residence within two years of the conveyance.

The proposed amendments to section 71C also extend the concession to certain transfers of farm land. These amendments are relevant in relation to the assessment of duty where the overall value of a farm is in excess of the prescribed maximum ($130 000) but the component of the farm comprising the house and curtilage is valued at less than that amount. Two new definitions are inserted into subsection (3). A "genuine farm" is land that the Commissioner is satisfied is to be used for primary production and is capable of supporting economically viable primary production operations. The "relevant component" of a genuine farm is the part of the farm constituted by the dwelling house and its curtilage (or the part of the land that is to constitute the site and curtilage of a dwelling house that is to be constructed).

Subsection (1b) provides that section 71C applies to a notional conveyance of the relevant component of a genuine farm if the Commissioner is satisfied that the conveyance relates to a genuine farm and would be a conveyance in respect of which a concession would be available if the conveyance related only to the relevant component. Subsection (2b) provides that if the amount by reference to which duty would be calculated on a conveyance of a genuine farm exceeds the prescribed maximum, the duty payable on the conveyance is determined by subtracting the amount payable on a notional conveyance of the relevant component of the farm from the duty payable on transfer of the whole farm and adding to this amount the duty calculated on the notional conveyance after the concession provided by section 71C has been taken into account.

Clause 22: Amendment of s. 71CC—Interfamilial transfer of farming property

This clause amends section 71CC of the act. This section exempts from duty instruments of which the *sole effect* is to transfer an interest in land, or land and goods, from a natural person to a relative of that person. (This exemption is subject to the Commissioner being satisfied as to various criteria.) The proposed amendment removes the words "An instrument of which the sole effect is to transfer" from subsection (1) and substitutes "A transfer" so that it is the transfer, rather than the instrument, that is exempt from duty.

Subsection (1b) describes how duty on an instrument that gives effect to an interfamilial transfer of farming property where there is an entitlement to the exemption under section 71CC is to be assessed by the Commissioner. If the instrument gives effect solely to an exempt transaction or part of an exempt transaction, no duty is payable. However, where an instrument gives effect to a transaction (or part of a transaction) of which some of the elements are exempt and others not, duty is payable on the instrument as though it gave effect only to those elements that are not exempt under section 71CC.

Clause 23: Insertion of s. 71F

This clause inserts section 71F, which concerns duty payable in respect of statutory transfers. Subsection (1) establishes that a statutory transfer is a transfer of assets or liabilities that takes effect by or under the provisions of a special act. In subsection (6), "special act" is defined to mean the *Financial Sector (Transfer of Business) Act 1999* and the *Financial Sector (Transfer of Business) Act 1999* of the commonwealth, as well as any other act of the commonwealth or a state prescribed by regulation for the purposes of the section.

Subsection (2) requires the parties to a statutory transfer to lodge a statement with the commissioner within two months of the transfer taking effect. The statement must include a description of the property, the value of the property and any other information required by the commissioner. Duty is then payable on the statement as if the statement were a conveyance operating as a voluntary disposition *inter vivos*.

Under subsection (4), each party to the transfer is guilty of an offence and liable to a penalty if the statement is not lodged as required. The parties to the transfer are also jointly and severally

liable to pay duty to the commissioner as if the statement has been lodged immediately before the end of the two month period.

Under subsection (5), a statutory transfer arising from a merger of credit unions, or transferring assets from one credit union to another, is exempt from section 71F.

Clause 24: Amendment of s. 90D—Returns to be lodged and duty paid

Clause 25: Amendment of s. 106A—Transfers of marketable securities not to be registered unless duly stamped

In both of the sections amended by these clauses, the words "prescribed form" are replaced with "approved form". These amendments are associated with the insertion of a definition of "approved form" in section 2. These amendments allow the commissioner to approve forms required under the Act and removes the requirement that such forms be prescribed by regulation.

Clause 26: Insertion of s. 106AA

Section 106AA allows the commissioner to charge nominal duty of ten dollars in circumstances where an instrument submitted for stamping has been executed solely to reverse or correct a disposition of property resulting from an error in an earlier instrument on which duty has already been paid.

Under subsection (3), if the commissioner grants relief from duty on an instrument executed in the circumstances described in subsection (1), the duty chargeable on the instrument is ten dollars plus the amount (if any) by which the duty that should have been paid on the earlier instrument exceeds the amount of duty actually paid.

Clause 27: Transitional provision

The amendment to section 71C(2a) made by paragraph *(b)* of clause 21 has the effect of widening the circumstances in which a refund is available to persons who have purchased land and paid full stamp duty because they were not entitled to a first home owner concession at the time of the conveyance of the land but have subsequently constructed a home that is their principal place of residence.

The effect of this clause is to limit the application of this amendment, so that the amendment does not apply in relation to stamp duty paid before the commencement of the act.

PART 7

AMENDMENT OF TAXATION ADMINISTRATION ACT 1996

Clause 28: Amendment of s. 87—Objections lodged out of time

Under section 86 of the *Taxation Administration Act 1996*, a dissatisfied person may lodge an objection to an assessment or other reviewable decision of the commissioner with the minister. This must be done within 60 days of service of the assessment on the person or notification of the decision. This clause amends section 87 of act by providing that the minister has a discretion to allow a person to lodge such an objection after the 60 day period has ended, but not later than 12 months after service or notification of the assessment or the Commissioner's decision.

Clause 29: Amendment of s. 95—Appeals made out of time

This clause makes a similar amendment in relation to appeals from a decision of the minister to the Supreme Court. Under the act a person has 60 days from the date of service on the person of the minister's decision in which to appeal to the court. This clause amends section 95 to provide that the court has a discretion to allow a person to appeal after the 60 day period, but not later than 12 months after service of the minister's decision on the person.

Clause 30: Transitional provisions

This clause makes it clear that the amendments to the *Taxation Administration Act 1996* in this part apply to objections and appeals lodged after the commencement of the amendments whether or not the assessment or decision or ministerial determination to which the objection or appeal relates was made before or after the commencement of the amendments.

The Hon. T.J. STEPHENS secured the adjournment of the debate.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

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

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill will make a number of minor, uncontroversial amendments to legislation within the Attorney-General's portfolio. The Bill includes a number of amendments that were included in the *Statutes Amendment (Attorney General's Portfolio) Bill 2001* that lapsed before completion of debate.

Acts Interpretation Act 1915

This amendment is new to the Portfolio Bill. Many legislative provisions refer to an Act or Part of an Act and it is intended that that reference will be take to include a reference to particular statutory instruments. This cross-referencing technique relies on section 14BA of the *Acts Interpretation Act* that, essentially, provides that the reference to an Act or Part will be taken to also refer to statutory instruments made under the Act, part of Act or provision, unless the contrary intention appears. In the case of *Police v Siviour* a problem with the wording of section 14BA was identified.

The issue in *Siviour* was whether Police had power to request that a motorist submit to an alcotest following commission of a speeding offence under the Australian Road Rules. The Australian Road Rules are purportedly made under Part 3 of the *Road Traffic Act*. Section 47E of the *Road Traffic Act* requires a person to have committed an offence of contravening, or failing to comply with, a provision of this Part [Part 3] of which the driving of a motor vehicle is an element before a police officer is authorised to request that a person submit to an alcotest.

Whether the speeding offence was an 'offence … of this Part' in section 47E of the *Road Traffic Act* required consideration of section 14BA of the *Acts Interpretation Act*. All three judges of the Supreme Court in *Siviour* interpreted section 14BA of the *Acts Interpretation Act*, and its operation in the present case, differently. This amendment will clarify section 14BA of the *Acts Interpretation Act* to overcome the present ambiguities that caused interpretation difficulties in *Siviour*.

Administration and Probate Act

Section 121A of the *Administration and Probate Act* currently requires an applicant for administration or probate or an applicant for the sealing of a foreign grant of probate or administration to provide the Court with a statement of all the deceased person's assets and liabilities known at the time of the application. The section further provides that, once the administration or probate is granted or sealed, the administrator or executor of the estate is under an obligation to inform the court of any other assets or liabilities that come to his or her attention during the execution or administration of the estate.

The statement of assets and liabilities proves useful by providing essential information to a person with an interest in the administration of an estate and who is considering whether or not to bring a family provision application. It also ensures that there is a comprehensive list of the estate's assets and liabilities, which can be referred to if there are concerns about the administration of the deceased's estate at a later date.

While, in general, there are substantial merits in requiring an applicant to provide the court with a list of all the deceased's assets and liabilities, the benefits that such a comprehensive statement bring are likely to be outweighed by the cost of compiling such a statement in circumstances where the deceased's connection to Australia is tenuous. As such, the Government is satisfied that only Australian assets should be disclosed in accordance with the requirements of section 121A of the Act where the deceased's last domicile was not Australia, and where the deceased was not a resident of Australia at the time of death. This Bill ensures that section 121A of the Act is amended accordingly.

Criminal Law (Sentencing) Act

Section 71(8) of the *Criminal Law (Sentencing) Act* enables the Court to deal with the situation where a person who has been given a community service order obtains remunerated employment which makes it difficult for the person to comply with the order. The section currently gives the Court two options:

- revoke the community service order; or
- impose a fine not exceeding the maximum fine that may be imposed for the offence in respect of which the community service order was made (or, if the order was made in respect of more than one offence, for the offence that attracts the highest fine).

It is the latter of these options that creates the problem. An anomaly arises because of the operation of section 70I of the Act, which provides for the court to revoke a fine which has been

imposed where the defendant is unable to pay the fine and instead require the defendant to perform community service.

A practical example will probably serve to best illustrate the problem. Last year the Magistrates Court had to deal with two files where the defendants had not complied with a community service order as a consequence of obtaining full time work. Both persons were before the Court on alleged breaches of community service orders arising from the provisions of section 70I.

The first defendant (A) had an alternative sentence of 212 hours in lieu of $2 667 of unpaid penalties. The second defendant (B) had a sentence of 104 hours in lieu of $1 383. Neither of them had done any of the hours due. A's most serious offence was 'break and enter' and so theoretically A could have been fined up to $8 000—he could, therefore, have been reinstated to the full extent of the monetary penalties he owed prior to his alternative sentencing. B's most serious offence, on the other hand, was driving an uninsured vehicle which carries a maximum fine of $750, which is much less than the $1 383 owed by him prior to the alternative sentence and therefore the maximum he would be required to pay in the changed circumstances would be $750.

It is not difficult to envisage a situation arising where two people owe the same amount of money but are subject to considerable difference in their fines because of the different nature of the matters on which they were first penalised.

The Bill will therefore amend the *Criminal Law (Sentencing) Act* so that the Court can impose an appropriate maximum fine, taking into account all the offences for which the original penalty was imposed (ie so that the fine cannot exceed the total of the maximum penalties that could be imposed in respect of each of the offences to which the sentence relates).

Domestic Violence Act 1994

This amendment was not included in the *Statutes Amendment (Attorney General's Portfolio) Bill 2001*. The *Domestic Violence Act* sets up a regime in which a 'member of the defendant's family' may obtain a domestic violence restraining order. The definition of 'member of the defendant's family' in section 3 of the Act does not include a child of whom the defendant has custody as a parent or guardian or a child who normally or regularly resides with the defendant. A child only becomes a 'family member' by his or her connection with the defendant's spouse or former spouse.

This situation is anomalous. The situation is shown to be particularly curious when compared to the aggravated offence of common assault against a family member in section 39 of the *Criminal Law Consolidation Act 1935* (the CLCA). For the purpose of that provision, a family member will include a child in the custody of, or living with, the defendant as well as a child in the custody of, or living with the defendant's spouse or former spouse.

The amendment will rectify this anomaly so that the definition of 'member of the defendant's family' will include,

1. a child of whom the defendant has custody as a parent or guardian
2. a child who normally or regularly resides with the defendant

Evidence Act

Section 6(4) of the *Evidence Act* requires a witness who wishes to affirm to recite the entire affirmation. Where a witness is swearing, however, section 6(1) provides a formula for swearing an oath which simply requires the witness to state 'I swear' after the oath has been tendered to him or her.

There is no need for different practices to apply to oaths and affirmations, given that they now have equal status. Further, problems can arise where the witness is illiterate or has forgotten his or her glasses and is therefore unable to read the form of affirmation.

In the Northern Territory, the form of affirmation used in the Courts is for an officer of the Court to ask the witness 'Do you, X, solemnly, sincerely and truly affirm and declare etc', to which the witness replies 'I do'. In Victoria, individual witnesses are required to recite the whole oath or affirmation, but where more than one person swears or affirms at the same time, then those persons may be administered an oral oath or affirmation, to which the response is 'I swear by Almighty God to do so' or 'I do so declare and affirm' as appropriate.

It would seem appropriate that the same procedure apply to oaths and affirmations. The Bill will therefore amend the *Evidence Act* to provide that those who wish to affirm can do so by having the affirmation read out to them and saying 'I do solemnly and truly affirm'.

Further amendments are required to the *Evidence Act* to address an anomaly regarding the form and admissibility of proof of convictions in the District Court. Sections 34A and 42(1) of the *Evidence Act* predate the creation of the District Court and deal only with convictions on indictment in the Supreme Court. These sections are to be amended to deal with admissibility and proof of convictions in the District Court in the same way as they deal with admissibility and proof of convictions in the Supreme Court.

Section 34A provides that, where a person has been convicted of an offence, and the commission of that offence is in issue or relevant to any issue in a subsequent civil proceeding, the conviction shall be evidence of the commission of that offence admissible against the person convicted or those who claim through or under him. The provision was inserted into the *Evidence Act* to abrogate the common law rule in *Hollington v Hewthorn & Co Ltd* that evidence of a conviction cannot be used to prove the facts on which the conviction was based. The benefits of the provision include ensuring that highly probative evidence is not excluded, as well as saving time and expense involved in re-litigating issues which have already been resolved, to a higher standard of proof, in prior criminal proceedings.

Currently section 34A provides that convictions other than upon information in the Supreme Court shall not be admissible unless it appears to the court that the admission is in the interests of justice. There is no justification for distinguishing between the admission of Supreme Court and District Court convictions. The amendment also removes the distinction between types of offences completely, so that convictions for summary offences are admissible in the same way as convictions for indictable offences. The current distinction confuses questions of admissibility with questions of weight. This conforms with the approach in the Commonwealth and New South Wales Evidence Acts to the admission of prior convictions in subsequent civil proceedings.

The amendment also allows a finding by a court exercising criminal jurisdiction of the commission of an offence to be admissible if relevant to a civil proceeding.

Expiation of Offences Act 1996

This is another amendment that is new to this Bill. The amendment will rectify a potential problem of interpretation and application of section 14 of the *Expiation of Offences Act* that was identified by Justice Perry in *Lim—v– City of Port Adelaide Enfield Council*.

Section 13 of the Act authorises the Registrar to issue an enforcement order for an offence that remains unexpiated. Section 14 of the Act allows the person liable under an enforcement order to seek review of that order. Section 14(6) of the Act provides that;

> 'a decision of the Court made on a review of an enforcement order is not subject to appeal by the person liable under the order (but nothing in this section affects the person's right of appeal against the conviction of the offence or offences to which the order relates).'

In the Lim Case, the appellant had sought review of the enforcement order. On failing to succeed in the application for review, the appellant then instituted an appeal against the conviction for the offence for which the expiation notice was issued. The effect of an enforcement order is that the person liable under that order is taken to have been convicted for the offence or offences for which the expiation notice was issued.

The situation shows an anomaly in the present legislation. Although the appellant was unable to appeal the results of the review of the enforcement order, the appellant was able to appeal the conviction. Therefore, the appellant had two chances to challenge his guilt for the offence when the statutory policy expressed in the Act is centred on a person liable under an enforcement order having one such opportunity.

The Bill will amend section 14 to make it clear that a person liable under an enforcement order may, either, seek a review of the enforcement order or appeal the conviction. A person will not be able to institute both a review and an appeal against conviction.

Partnership Act 1891

Section 10 of the *Partnership Act* provides that partners will be liable for any loss, injury or penalty incurred as a result of any wrongful act or omission of another partner acting in the course of partnership business or with the authority of the other partners.

The Law Society has expressed concern that there is the potential for partners in law firms to incur liability under this section based on the activities of their partners where those partners act as directors of outside companies. While there are times when this activity has a substantial connection with the partnership, there are other times when such a connection may be exceedingly tenuous.

In particular, if the only connection between the partnership and the directorship is that the partners have consented to the partner acting as a director of a company, or that more than one partner is a director of the company, then it is very difficult to establish the

requisite connection. To hold the (non-director) partners liable for the acts or omissions of the director partner in these circumstances does not accord with the principle underlying section 10, which is to prevent partners from using the partnership structure to escape liability in circumstances where the partners derived a benefit from the acts of their partner. Therefore, the Bill amends section 10 to provide that a partner who commits a wrongful act or omission as a director of a body corporate is not to be taken to be acting in the course of partnership business or with the authority of the partners' co-partners only because

- the partner obtained the agreement or authority of the partners' co-partners, or some of them, to be appointed or to act as a director of the body corporate, or
- the remuneration that the partner receives for acting as a member of the body corporate forms part of the income of the firm, or
- any co-partner is also a director of that or any other body corporate.

This is a slightly modified version of the amendment contained in the 2001 version of this Portfolio Bill. The amendment now includes the provision that a partnership will not be jointly liable for the wrong of a partner acting as a director of a body corporate only by reason of the partnership sharing the income the partner receives for acting as a member of a body corporate. This provision has been included in light of comments received from the Law Society.

Real Property Act

The only Act within the Attorney-General's Portfolio which refers to the Chief Secretary is the *Real Property Act.* Section 210 of that Act provides for the Chief Secretary to countersign a warrant under the hand of the Governor in relation to acceptance by the Registrar-General of liability in claims for compensation from the Assurance Fund under the *Real Property Act.* This role would be more appropriately exercised by the Attorney-General and this Bill amends the *Real Property Act* to replace the reference to the Chief Secretary with a reference to the Attorney-General.

The Bill further amends the definition of 'Court' under the *Real Property Act* to clarify the District Court's jurisdiction with respect to a number of statutory matters under the Act. Several recent cases have questioned the District Court's jurisdiction in relation to the removal of a caveat under section 191 and ejectment under Part 17. These are areas in which the District Court (or its predecessors) has traditionally had jurisdiction and there is no justification for changing this position. Therefore, the definition of 'Court' will be amended to make it clear that the District Court has jurisdiction with respect to the removal of caveats and matters of ejectment.

This is a new amendment to this Bill and will result in amendment to the definition of 'Electricity Entity'. Section 223LG of the RPA provides that a streamlined process for registration of easements in favour of SA Water, a council or *electricity entity*. Under that section all that has to be done to register an easement is to lodge a plan of division of the subject land with the easement delineated on it. The easement is then automatically created over that marked piece of land on the terms and conditions contained in section 223LG. The formality of preparing a formal document containing the terms and conditions of the easement and of registering that document is dispensed with.

A problem arises because 'electricity entity is defined in section 223LA as a person 'who holds a licence under the *Electricity Act 1996* authorising the operation of a transmission or distribution network or a person exempted from the requirement to hold such a licence'. Both the lessor and the lessee have an interest in the relevant system of easements and the rights that attach to them but only the lessee is licensed under the *Electricity Act* and, hence, can avail itself of the streamlined process in section 223LG to create an easement. Therefore, if the lessor and lessee are to create an easement in common to protect both bodies' interests, the easement will have to be created by formal grant rather than by use of the streamlined system. The problem will be overcome by including the Distribution Lessor Corporation and the Transmission Lessor Corporation in the definition of 'Electricity Entity'.

Summary Offences Act

The *Summary Offences (Searches) Amendment Act* amends the *Summary Offences Act* to regulate the procedures for intimate and intrusive searches of detainees by police, including the videotaping of such procedures. While the amending Act imposes a heavy penalty for unauthorised playing of a videotape recording of an intimate search, it is desirable that there also be the ability to prescribe a penalty for breaching certain provisions in the Regulations, including the prohibition against copying a videotape and failing to return it for destruction. The Bill amends the *Summary Offences Act* to include a power to make regulations prescribing penalties not exceeding $2,500 for breach of a regulation.

Trustee Act

The *Trustee Act* (s 69B) provides that applications for the variation of a charitable trust may be considered either by the Supreme Court or, if the value of the trust property does not exceed $250 000, by the Attorney-General. This amount was fixed in 1996. To maintain the status quo, the amount should now be adjusted for inflation. The amendment increases the amount to $300 000. This increase exceeds the effects of inflation and ensures that the amount will remain relevant for some time into the future. This is important given that the requirement to apply to the Supreme Court would involve a large amount of cost to a small trust.

Trustee Companies Act

The *Trustee Companies Act* regulates the powers and activities of certain bodies prescribed to be trustee companies under Schedule 1 of the Act. An amendment is required to Schedule 1 of the Act to replace the reference to 'National Mutual Trustees Limited' with a reference to 'Perpetual Trustees Consolidated Limited' to reflect the change of name of that body (from National Mutual Trustees Limited to AXA Trustees Limited to Perpetual Trustees Consolidated Limited).

Workers Liens Act

The Bill makes various amendments to the *Workers Liens Act* to clarify the jurisdiction of the courts under the Act and make other changes consequent on the replacement of the former local courts with the new Magistrates and District Courts. It is not clear pursuant to the transitional provisions of the legislation relating to the transition to the new Courts that the District Court has jurisdiction under the Act. In particular, the amendments make it clear that the District Court may exercise jurisdiction under section 17 of the Act in relation to applications to direct the Registrar-General to make a memorandum that a lien has ceased.

I commend this Bill to the House.

Explanation of clauses

PART 1
PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the Act to come into operation by proclamation, except for sections 15 and 16 (dealing with electricity entities) which will be back-dated to 28 January 2000.

Clause 3: Interpretation

This clause provides that a reference in the Bill to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

PART 2
AMENDMENT OF ACTS INTERPRETATION ACT 1915

Clause 4: Amendment of s. 14BA—References to other statutory provisions include references to relevant statutory instruments

This clause provides clarification of current section 14BA(2) which was considered necessary after the Supreme Court case of *Police v Siviour*. Subsection (2) is now split into two paragraphs with the effect that the subsection can be applied to a reference in an Act to a Part or provision of that or another Act and that reference will be read as extending to—

- statutory instruments (eg. regulations and rules) made under the Part referred to; or
- statutory instruments made under some other Part or provision of that Act or other Act as long as there is a connection between the statutory instrument and the Part or provision (ie. they deal with the same or related subject matter).

PART 3
AMENDMENT OF ADMINISTRATION AND PROBATE ACT 1919

Clause 5: Amendment of s. 121A—Statement of assets and liabilities to be provided with application for probate or administration

This clause sets out the disclosure requirements where a deceased person was not domiciled in Australia at the time of death. Disclosure need only by in respect of the assets situated, and liabilities arising, in Australia. The insertion of new subsection (7a) clarifies where assets and liabilities will be deemed to be situated where that is unclear or where they are situated partly in Australia and partly elsewhere.

PART 4
AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988

Clause 6: Amendment of s. 71—Community Service orders may be enforced by imprisonment

This clause amends section 71 of the principal Act to address an anomaly that arises where the court has revoked a fine imposed on a defendant and substituted a community service order under section 70I of the Act. If the defendant is subsequently unable to perform the community service because they have obtained employment, the court under section 71(8) of the Act may impose a fine in relation to the offence or offences to which the community service order relates. Currently, where there is more than one offence involved, the maximum fine that can be imposed in this situation can not exceed the maximum for the offence that attracts the highest fine. The amendment allows for the imposition of a maximum fine that cannot exceed the total of the maximum penalties that could be imposed in relation to each of the offences to which the sentence relates. This allows the court to impose a penalty on the same basis as the original penalty (in accordance with section 18A of the Act).

PART 5
AMENDMENT OF DOMESTIC VIOLENCE ACT 1994

Clause 7: Amendment of s. 3—Interpretation

This clause brings the definition of "member of the defendant's family" into line with the definition of "family member of the offender" in the *Criminal Law Consolidation Act 1935*, by including a child of whom the defendant has custody or a child who lives with the defendant.

PART 6
AMENDMENT OF EVIDENCE ACT 1929

Clause 8: Amendment of s. 6—Oaths, affirmations, etc.

This clause amends section 6 of the principal Act so that the procedure for making an affirmation is similar to the procedure for taking an oath.

Clause 9: Substitution of s. 34A

This clause is similar to the existing provision relating to proof of commission of an offence but differs in that it now includes previous findings by a court exercising criminal jurisdiction of the commission of an offence (that is, where no conviction is recorded) and it removes the proviso that restricts the admissibility of previous offences in lower courts to where such admissibility is in the interests of justice.

Clause 10: Amendment of s. 42—Proof of conviction or acquittal of an indictable offence

This clause updates the existing reference in the Act to the "Chief Clerk", to the "Registrar".

PART 7
AMENDMENT OF EXPIATION OF OFFENCES ACT 1996

Clause 11: Amendment of s. 14—Review of enforcement of orders and effect on right of appeal against conviction

This clause amends section 14 of the principal Act in order to clarify the intent of that section, namely the consequences of pursuing a review of an enforcement order or an appeal against a conviction of an offence to which an enforcement order relates. The amendment provides that—

- an enforcement order may be reviewed by the Court;
- the outcome of that review is not appealable by the person liable under the order;
- if a review of an enforcement order is determined or pending, the person liable under the order may not appeal against the conviction of the offence to which the order relates;
- if an appeal against the conviction of the offence to which the order relates is determined or pending, the person liable under the order may not apply for a review of the order under this section.

A person liable under an enforcement order has two options, either to appeal against the conviction of the offence to which the order relates (the conviction being a consequence of the making of the enforcement order (by virtue of section 13(6)) or to seek a review of the order (on grounds listed at section 14(3)). The amendment clarifies that once a person chooses one option, the other option is closed.

PART 8
AMENDMENT OF PARTNERSHIP ACT 1891

Clause 12: Amendment of s. 10—Liability of firm for wrongs

This clause amends section 10 of the Partnership Act, which deals with the liability of a partnership for the wrongful acts or omissions of partners. The amendment makes it clear that a partner who commits a wrongful act or omission as a member of the governing body of a body corporate is not to be taken to be acting in the ordinary course of business of the partnership, or with the authority of the other partners, by reason of any one or more of the following:

- the partner obtained the agreement or authority of the co-partners (or some of them) to be appointed or to act as such a member;
- the firm gets income from the partner acting as such a member;
- any co-partner is also a member of that, or any other, governing body.

The clause further clarifies that a "member" can include a director.

PART 9
AMENDMENT OF REAL PROPERTY ACT 1886

Clause 13: Amendment of s. 3—Interpretation

This clause removes outdated references to "Chief Secretary" and makes express the District Court's jurisdiction in section 191, Part 17 and Schedule 21.

Clause 14: Amendment of s. 210—Persons claiming may, before taking proceedings, apply to the Registrar-General for compensation

Clause 17 updates the obsolete reference to "Chief Secretary" in section 210 of the Act to "Attorney-General".

Clause 15: Amendment of s. 223LA—Interpretation

This clause substitutes a new definition of "electricity entity", namely to include as such entities "Distribution Lessor Corporation" and "Transmission Lessor Corporation".

Clause 16: Amendment of s. 223LG—Service easements

This clause inserts in s. 223LG which recognises, in the context of service easements, the leasing arrangements of electricity entities.

Clause 17: Amendment of Sched. 21—Rules and regulations for procedure in the matter of caveats

This clause strikes out from Schedule 1 "Supreme", with the effect that, on commencement of the provision, the District Court as well as the Supreme Court will have jurisdiction in respect of caveats.

PART 10
AMENDMENT OF SUMMARY OFFENCES ACT 1953

Clause 18: Amendment of s. 85—Regulations

This clause inserts a power to make regulations imposing a penalty not exceeding $2 500 for a breach of the regulations.

PART 11
AMENDMENT OF TRUSTEE ACT 1936

Clause 19: Amendment of s. 69B—Alteration of charitable trust

This clause sets an increased ceiling limit of $300 000 on the value of trust property in respect of which a trust variation scheme may be approved by the Attorney-General.

PART 12
AMENDMENT OF TRUSTEE COMPANIES ACT 1988

Clause 20: Amendment of Sched. 1

This clause updates the name of the trustee company formerly called "National Mutual Trustees", to "Perpetual Trustees Consolidated Limited".

PART 13
AMENDMENT OF WORKER'S LIENS ACT 1893

Clause 21: Amendment of s. 2—Interpretation

This clause updates the definition of "Court" to reflect the jurisdiction of the District Court.

Clause 22: Amendment of s. 17—Proceedings to compel Registrar-General to record lien in event of refusal

This clause gives express power to the District Court to direct the Registrar-General to make a memorandum of cessation of lien.

Clause 23: Amendment of s. 18—Judge or magistrate may make order

This clause removes the term "special" before magistrate, reflecting current usage.

Clause 24: Repeal of s. 35

This clause repeals section 35 of the Act.

Clause 25: Amendment of s. 36—Jurisdiction etc. of courts preserved

This clause makes a consequential amendment to section 36 with the effect of preserving the jurisdiction of any court, not just the Supreme Court or local courts.

Clause 26: Amendment of s. 42—Application of proceeds of sale

This clause provides that if the sale of goods held on lien yields a surplus (after payment has been taken by the person entitled to the lien), the surplus is to be paid to the Magistrates Court and held for the benefit of the person entitled to it.

The Hon. T.J. STEPHENS secured the adjournment of the debate.

STATUTES AMENDMENT (TRANSPORT PORTFOLIO) BILL

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

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I move:

That this bill be now read a second time.

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

Leave granted.

The *Statutes Amendment (Transport Portfolio) Bill 2002* makes a number of amendments to the *Civil Aviation (Carriers' Liability) Act 1962*, the *Harbors and Navigation Act 1993*, the *Motor Vehicles Act 1959* and the *Road Traffic Act 1961*.

This bill was originally introduced by the previous Government in the Spring 2001 session of Parliament. The bill lapsed when Parliament was prorogued. The Government has since reviewed this bill which provides for amendments of a technical nature to remove a number of anomalies and enhance the effectiveness of various aspects of transport legislation.

The only addition that has been made to the bill is the inclusion of a proposed amendment to section 47E of the Road Traffic Act. Its inclusion in this bill has been necessitated by comments made in the judgment of Chief Justice Doyle in *Police v. Siviour* and the consequential need to amend the Road Traffic Act to assert the intent of this section.

Amendments to the Civil Aviation (Carriers' Liability) Act 1962

The amendments to the *Civil Aviation (Carriers' Liability) Act 1962* ("the State Act") will enable a monetary penalty to be imposed by the courts where a corporate air carrier fails to have acceptable passenger insurance in place.

The State Act is part of a long-standing Commonwealth-State legislative scheme which works by applying the Commonwealth *Civil Aviation (Carriers' Liability) Act 1959* as part of the law of South Australia. The Commonwealth Act deals with the legal liability of commercial air carriers for various kinds of losses, such as loss of property or physical injury, suffered by their customers. In particular, the Commonwealth Act prohibits carriers from carrying passengers by air unless an acceptable contract of insurance is in force in relation to the carrier. If a carrier intentionally contravenes this prohibition, the carrier is guilty of an offence punishable by a maximum term of two years' imprisonment.

However, section 4B(2) of the Commonwealth *Crimes Act 1914* allows a court convicting a natural person of an offence against a law of the Commonwealth to impose in respect of the offence an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of an offence, section 4B(3) allows a court to impose a fine of an amount not greater than 5 times the maximum fine that could be imposed by the court on a natural person convicted of the same offence. As many air carriers are bodies corporate, it is desirable that these provisions of the Crimes Act be available to the courts when carriers are convicted of offences against the provisions of the Commonwealth Act that apply in South Australia by virtue of the State Act ("the applied provisions"). To maximise the enforcement powers available and ensure that, as far as possible, the same obligations and processes apply at State and Commonwealth levels, the bill provides that the Commonwealth Crimes Act and a number of other specified Acts of the Commonwealth apply to offences against the applied provisions.

Another feature of the scheme is that the Civil Aviation Safety Authority (CASA) can apply to a court for an injunction to restrain a carrier from engaging in carriage, if it has reason to believe that the carrier has engaged, or will engage, in carriage without proper insurance. This is a powerful mechanism for ensuring that carriers comply with the law. At present, the State law does not confer this power on any other authority.

In 2000 the High Court handed down its decision in *R v Hughes*. This is one of a series of decisions handed down by the Court in recent years in relation to the *Corporations Law*, another Commonwealth-State legislative scheme. That decision highlights the need to distinguish between State and Commonwealth authorities and the powers that these authorities exercise under the laws of another jurisdiction. As the Act presently stands, the State has no power to apply for an injunction—only CASA can do so. It is necessary to provide an avenue by which the State can seek an injunction if it becomes aware that an air carrier proposes to trade without proper insurance under the applied provisions. The amendments address this by giving the Minister power to apply for an injunction.

The amendments contained in the bill have been designed to enhance the effectiveness of the existing scheme and to overcome any constitutional difficulties with its enforcement. The amendments are technical and do not alter the objects or the substance of the existing scheme. The core obligation to carry the required insurance, and the mechanisms available to ensure that carriers do so, remain in place.

Amendments to the Harbors and Navigation Act 1993

Amendment to section 72(2) to correct a drafting error

Section 72 deals with the duty of the police to facilitate a blood test at the request of an incapacitated person. The amendment to subsection (2) corrects a drafting error by amending "authorised officer" to read "authorised person".

Authorised persons to issue expiation notices

The *Harbors and Navigation Act 1993* does not empower persons appointed under the Act as authorised persons to issue expiations notices. As a consequence I, as Minister responsible for the Act, have to use the provisions of the *Expiation of Offences Act 1986* to authorise each government-employed authorised person to issue expiations notices for alleged offences against the Harbors and Navigation Act. This means that two separate administrative processes must take place, rather than a single process of appointment.

Section 5(3)*(c)* of the Expiation of Offences Act allows a statute to confer directly the power to issue expiation notices. The bill therefore makes specific provision in section 14 of the Harbors and Navigation Act to allow an authorised person to issue expiation notices.

Creation of an offence of allowing an unlicensed person to operate a vessel

Section 47(3) of the Harbors and Navigation Act makes it an offence for a person to operate a recreational vessel unless he or she holds an appropriate certificate of competency or has been exempted from the need to hold such a certificate.

While the unlicensed operator of the vessel may be either prosecuted or the offence expiated, there is no provision in the Act to hold the owner of the vessel accountable for allowing use of the vessel by an unlicensed person. This has become a frequent offence, particularly with the increasing popularity of personal watercraft (jet skis). This practice could have lethal consequences.

To overcome this problem, the bill amends the Act to create an offence of causing, suffering or permitting an unlicensed person to operate a recreational vessel.

Time within which a prosecution may commence

Section 88 of the Harbors and Navigation Act requires a prosecution for an offence to be commenced within 12 months of the offence allegedly occurring. This is inconsistent with the provisions of the *Summary Procedure Act 1921* which imposes a time limit of six months for expiable offences and two years for non-expiable offences.

The bill repeals section 88 of the Harbors and Navigation Act. As a consequence the time within which an offence against the Act is to be prosecuted will be prescribed by section 52 of the Summary Procedure Act.

Amendments to the Motor Vehicles 1959

Excluding probationary licence holders from acting as qualified passengers

The bill amends section 75A of the *Motor Vehicles Act 1959* to prohibit probationary licence holders, who may be persons resuming driving after a period of disqualification for offences, from acting as qualified passengers for learner drivers. (A qualified passenger is the holder of a licence accompanying a person who is driving subject to learner's permit conditions.)

The need for this amendment has arisen because of the introduction of the new "probationary licence" category by the *Motor Vehicles (Miscellaneous) Amendment Act 1999*, as part of nationally consistent road reforms.

Section 75A of the Motor Vehicles Act deals with learner's permits for motor vehicles. In particular, section 75A(3)*(d)* requires that a person who is subject to learner's permit conditions must, when driving a vehicle on a road, be accompanied by a holder of a licence authorised to drive that vehicle sitting beside the learner driver (a qualified passenger). In the case of a motor bike, it is not compulsory to be accompanied by a licensed driver. However, if a person does accompany the learner by sitting on the bike or in a

sidecar attached to the bike, the person acts as a qualified passenger and must hold a licence authorising him or her to drive that motor bike. Provisional licence holders, however, are specifically excluded from this role. Prior to the recent changes, provisional licence holders included both inexperienced drivers who had not yet qualified for an unconditional driver's licence and persons returning to driving after a period of licence disqualification.

A holder of the new probationary licence may be a person resuming driving after a period of disqualification for offences such as drink driving, or failing to stop and give assistance after an accident in which a person is injured or killed. It is clearly not appropriate for a learner driver to be accompanied by the holder of a probationary licence. The amendment prohibits a probationary licence holder from acting as a qualified passenger.

Refund of fees for issue of motor driving instructors' licences

Some doubt exists as to the ability of the Registrar of Motor Vehicles to refund a proportion of a motor driving instructor's licence fee where the licence is surrendered before the full licence term has expired. The bill amends section 98A to entitle a person to a proportional refund of a motor driving instructor's licence fee when the licence is surrendered.

Ability of the nominal defendant to recover from the driver or owner of an uninsured vehicle

Currently the Motor Accident Commission only has limited powers to recover money from drivers of motor vehicles where bodily injury or death has occurred, and the driver has behaved recklessly or was under the influence of a drug or intoxicating liquor. Section 124A(1) of the *Motor Vehicles Act 1959* provides that where a driver of a vehicle insured under the compulsory third party (CTP) scheme drives irresponsibly or under the influence of a drug or alcohol, and causes or is involved in an accident, the insurer can recover from the driver "any money paid or costs incurred by the insurer".

Section 116 deals with injuries caused by an incident involving a vehicle not insured under the CTP scheme. Section 116(7) empowers the nominal defendant to recover money expended in meeting a claim for death or injury from the driver or a person liable for the acts or omissions of the driver. However, that section gives the driver a defence to an action for recovery where the vehicle was being used at the relevant time by or with the consent of the owner, and the driver did not know, and had no reason to believe, that the vehicle was an uninsured motor vehicle.

It is anomalous that a driver of an uninsured vehicle is provided with a more generous defence than an insured driver, by which he or she may escape civil liability for what could be quite reckless driving behaviour.

This inconsistency needs to be remedied. If a person has driven with reckless indifference as to the safety of others and has caused injury or death, the insurance status of the vehicle is of little consequence in determining the person's liability.

The bill proposes to remedy this situation by extending the same exposure to personal liability to drivers of vehicles that are uninsured as applies to drivers of vehicles that are insured.

Retention of images of licensed drivers

The bill addresses issues related to the storage of photographic images of driver's licence holders.

A photographic image of the licence holder was introduced in South Australia in 1989. At the time, Parliament expressed concerns about privacy issues relating to the capture of images—and later, when digital imaging technology was introduced Government policy required that the images not be retained. Currently the terms of the contract between Transport SA and the licence manufacturer require that all photographic images must be destroyed after 60 days.

Recently, this approach has been questioned following the findings of the New South Wales Independent Commission Against Corruption (which commenced in 1999) into the 'rebirthing' of stolen motor vehicles and the conduct of staff of the New South Wales Road Traffic Authority. The Commission found that the proof of identity documents used to obtain fraudulent registration of stolen vehicles, which included drivers' licences, were also fraudulently obtained.

In addition to finding that fraudulently obtained licences were a significant factor in the laundering of stolen motor vehicles, ICAC determined that fraudulent driver's licences were also a factor in commercial fraud, the avoidance of licence sanctions, access by under-aged persons to licensed premises and the purchase by under aged-persons of alcohol or tobacco products.

Subsequently, the Registrar of Motor Vehicles in South Australia has identified that current practices relating to the destruction of photographic images, presents a similar weakness in the process in South Australia—especially when a duplicate driver's licence is issued. It is considered that if the image of the original holder of the driver's licence is available to the issuing officer, then a visual check can be made that the applicant for a duplicate licence is in fact the original licence holder.

Since 2000 New South Wales, Western Australia and the Northern Territory have moved to provide for the permanently storage of digital images of driver's licence holders on their databases. Concurrently, to address concerns relating to privacy, New South Wales and Western Australia both introduced legislation to strictly control the circumstances under which staff and other agencies may access stored images. Meanwhile, the experience in New South Wales has confirmed that these measures relating to the retained image have been successful in realising their objective—the prevention of frequent attempts to obtain fraudulent licences.

Accordingly, in the light of the changed circumstances since 1989, the bill prepares for the permanent retention of images of driver's licence holders by incorporating specific provisions to ensure that the confidentiality of the images and to narrowly prescribe the circumstances under which they may be accessed.

Specifically, the stored images will only be available to the Registrar of Motor Vehicles for the following purposes:

- for inclusion on licences, learner's permits and proof of age cards; and
- to assist in identifying a person applying for a licence, learner's permit, proof of age card or registration of a motor vehicle; and
- in connection with the investigation of a suspected offence against the *Motor Vehicles Act 1959;* and
- for the purposes of any legal proceedings arising out of the administration of the *Motor Vehicles Act 1959* or the *Road Traffic Act 1961*; and
- for a purpose prescribed by the regulations.

Police will not have access to the retained images.

Amendments to the Road Traffic Act 1961

Amendment to Section 47E of the Road Traffic Act

Section 47E(1)*(a)* of the Road Traffic Act empowers a member of the police force who believes on reasonable grounds that "a person, while driving a motor vehicle or attempting to put a motor vehicle in motion, has committed an offence of contravening or failing to comply with, a provision of this Part [Part 3] of which the driving of a motor vehicle is an element (excluding an offence of a prescribed class)" to require that person to submit to an alcotest or breath analysis, or both.

In *Police v. Siviour* a magistrate held that the police could not require the defendant to submit to an alcotest because the offence against rule 20 of the Australian Road Rules of driving at a speed over the applicable speed limit was not an offence of contravening a provision of Part 3 of the Road Traffic Act.

The magistrate overlooked section 14AB(2) of the *Acts Interpretation Act 1915* which provides that "a reference in an Act to a Part or provision of that Act or some other Act (whether an Act of this State or of the Commonwealth or a place outside this State) includes, unless the contrary intention appears, reference to statutory instruments made or in force under that Act or other Act insofar as they are relevant to that Part or provision".

On appeal, two members of the Supreme Court concluded that the offences referred to in section 47E(1)*(a)* of the Road Traffic Act included offences against the Australian Road Rules. However, Doyle CJ described section 14BA(2) of the Acts Interpretation Act as "a rather obscure provision" and Perry J dissented from the majority decision. To assist users of the legislation and avoid the need to rely on section 14AB, it has been decided to amend section 47E(1)*(a)* so that it applies to offences of a class prescribed by the regulations.

Regulations will be made in due course to maintain the class of offences to which section 47E(1)*(a)* currently applies.

Defect notices

Section 160 of the *Road Traffic Act 1961* currently allows a defect notice to be issued only where the vehicle does not comply with vehicle standards and would constitute a safety risk if driven on the road. The use of the word 'and' means that a notice cannot be issued where a deficiency in the vehicle would constitute a safety risk but is not covered by the vehicle standards. This would be the case, for example, for general rust on the vehicle body. This also creates the situation where a motorist may be prosecuted under section 112(1)*(b)* for driving a vehicle that "has not been maintained in a condition that enables it to be driven or towed safely", but a defect notice cannot be issued in relation to the vehicle.

Clearly, to ensure the safety of the community and all road users, the legislation needs to enable a defect notice to be issued wherever a vehicle has not been maintained to a safe driving standard. Accordingly, the bill amends section 160(4a) and 160(5) to replace references to the vehicle standards with references reference to "deficiencies". A definition of "deficiencies" is inserted which states that for the purposes of section 160 a vehicle has deficiencies if the vehicle does not comply with the vehicle standards, if the vehicle has not been maintained in a condition that enables it to be driven or towed safely, if the vehicle does not have an emission control system fitted to it of each kind that was fitted to it when it was built, or if an emission control system fitted to the vehicle has not been maintained in a condition that ensures that the system continues operating essentially in accordance with the system's original design.

The amendment will enable enforcement officers to issue a defect notice where a vehicle fails to comply with the vehicle standards or otherwise if the vehicle has not been maintained to a safe standard for use on roads. The categories of major defect and minor defect will continue to apply.

The bill also addresses an anomaly in the current Act that renders a police officer or Transport SA inspector unable to affix a defective vehicle label to a vehicle with a minor defect. To correct the oversight the bill amends section 160(5a)*(b)* to enable enforcement officers to affix defective vehicle labels for both major and minor defects.

These amendments are in line with the *National Road Transport Reform (Heavy Vehicles Registration) Regulations* and the *Administrative Guidelines: Assessment of Defective Vehicles* approved by Transport Ministers. These documents create uniform national procedures for dealing with vehicle defects and allow for jurisdictions to attach labels for minor defects and to create an offence of unauthorised removal of a defect label under local law.

Finally, the bill also empowers police officers or Transport SA inspectors to vary a defect notice where appropriate. Currently police officers and inspectors extend the 'grace period' to allow drivers to continue use their vehicles on roads. This is particularly aimed at assisting rural and regional road users, particularly farmers, where an extended period off the road due to a defect notice would cause significant disadvantage. It is felt that this power should be explicitly provided for in the Act and consequently the bill empowers a police officer or Transport SA inspector to vary a defect notice.

I commend the bill to honourable members.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement of the measure by proclamation.

Clause 3: Interpretation

This clause is the standard interpretation provision included in statutes amendment measures.

PART 2

AMENDMENT OF CIVIL AVIATION (CARRIERS' LIABILITY) ACT 1962

Clause 4: Amendment of s. 3—Interpretation

This clause inserts a definition of "state authority" for the purposes of proposed new section 7A(5).

Clause 5: Amendment of s. 7A—Administration of Commonwealth/State scheme as Commonwealth Act

Paragraph *(a)* amends section 7A(2)*(b)* so that, in the application of Commonwealth laws to offences against the Act, it is clear that those Commonwealth laws apply as State laws.

Paragraph *(b)* amends section 7A(2)*(b)* by specifying that, for the purposes of the application of Commonwealth laws to offences against the Act, the offences are to be considered as being offences against Commonwealth law, not State law.

Paragraph *(c)* inserts four proposed new subsections into section 7A.

Proposed new subsection (3) ensures that where there is a reference in a Commonwealth law to other provisions of that law, or provisions of other Commonwealth laws, those other provisions apply as laws of South Australia.

Proposed new subsection (4) sets out the most important Commonwealth laws that apply as State laws to offences against the Act.

Proposed new subsection (5) ensures that State authorities have the power to enforce the Act, as well as Commonwealth authorities.

Proposed new subsection (6) enables the Minister to seek an injunction restraining a carrier from engaging in carriage when the carrier does not have an acceptable contract of insurance, and provides that a reference in section 41J of the Commonwealth Act to a Commonwealth authority will be taken to include a reference to the Minister, so that the provisions in relation to the application for an injunction by CASA under that section will also apply to the Minister when the Minister seeks an injunction.

PART 3

AMENDMENT OF HARBORS AND NAVIGATION ACT 1993

Clause 6: Amendment of s. 14—Powers of an authorised person

This clause amends the principal Act to empower authorised persons to give expiation notices for alleged offences against the Act.

Clause 7: Amendment of s. 47—Requirement for certificate of competency

This clause creates a new offence of causing, suffering or permitting an unqualified person to operate a recreational vessel and fixes a maximum penalty of $2 500 and an expiation fee of $105.

Clause 8: Amendment of s. 72—Police to facilitate blood test at request of incapacitated person, etc.

This clause corrects a reference. It changes "authorised officer" to "authorised person".

Clause 9: Repeal of s. 88

This clause repeals section 88 of the principal Act which requires a prosecution for an offence against the Act to be commenced within 12 months after the date of the alleged offence. The repeal will result in the time limits within which offences against the Act must be prosecuted being those prescribed by section 52 of the *Summary Procedure Act 1921*.

PART 4

AMENDMENT OF MOTOR VEHICLES ACT 1959

Clause 10: Interpretation

This clause inserts a definition of "photograph" for the purposes of the Act.

Clause 11: Amendment of s. 75A—Learner's permit

This clause amends the principal Act to prevent holders of probationary licences from acting as qualified passengers for holders of learner's permits.

Clause 12: Insertion of s. 77BA

This clause inserts in the principal Act new section 77BA to limit the purposes for which the Registrar may use photographs of persons taken or supplied for inclusion on driver's licences or learner's permits to the following:

- for inclusion on licences, learner's permits and proof of age cards;
- to assist in determining the identity of persons applying for a licence, learner's permit, proof of age card, duplicate licence or permit or registration of a motor vehicle;
- in connection with the investigation of a suspected offence against the Act;
- for the purposes of any legal proceedings arising out of the administration of the Act or the *Road Traffic Act 1961*;
- for a purpose prescribed by the regulations.

The new section also imposes a duty on the Registrar to ensure that photographs are not released except in accordance with a request of a person or body responsible under the law of another State or a Territory of the Commonwealth for the registration or licensing of motor vehicles or the licensing of drivers, where the photograph is required for the proper administration of that law.

Clause 13: Amendment of s. 81B—Consequences of contravening prescribed conditions, etc. while holding learner's permit, provisional licence or probationary licence

This clause makes a minor amendment to the definition of "relevant prescribed conditions" in section 81B of the principal Act which was inserted by the *Road Traffic (Alcohol Interlock Scheme) Amendment Act 2000*. The amendment is consequential on amendments made to that section by the *Statutes Amendment (Transport Portfolio) Act 2001* (No. 17 of 2001).

Clause 14: Amendment of s. 98A—Instructors' licences

This clause amends the principal Act to provide for a proportion of licence fees paid for the issue of a driving instructor's licence to be refunded on surrender of the licence.

Clause 15: Amendment of s. 116—Claim against nominal defendant where vehicle uninsured

Section 116 of the principal Act gives the nominal defendant a right of recovery against the driver of an uninsured motor vehicle or a person liable for the acts or omissions of the driver where the

nominal defendant has paid a sum to satisfy a claim or judgment in respect of death or bodily injury caused by or arising out of the use of the vehicle and the driver was wholly or partly liable for the death or bodily injury. The amount recoverable is at the discretion of the court and the defendant has a defence if able to prove that the vehicle was being used by or with the consent of the owner and the defendant did not know and had no reason to believe that the vehicle was uninsured.

This clause amends the section to make the right of recovery absolute where the driver—

- drove the vehicle, or did or omitted to do anything in relation to the vehicle, with the intention of causing the death of, or bodily injury to, a person or damage to another's property, or with reckless indifference as to whether such death, bodily injury or damage results; or
- drove the vehicle while so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle; or
- drove the vehicle while there was present in his or her blood a concentration of .15 grams or more of alcohol in 100 millilitres of blood.

In cases not involving such behaviour on the part of the driver the discretion of the court to award such sum as the court thinks just and reasonable in the circumstances is to be preserved, as is the defence, but the defence is not to be available if the driver—

- drove the vehicle while not duly licensed or otherwise permitted by law to drive the vehicle; or
- drove the vehicle while the vehicle was overloaded, or in an unsafe, unroadworthy or damaged condition.

PART 5
AMENDMENT OF ROAD TRAFFIC ACT 1961

Clause 16: Amendment of s. 47E—Police may require alcotest or breath analysis

This clause replaces paragraph *(a)* of subsection (1) which empowers a member of the police force to require a person to have an alcotest or breath analysis (or both) if the member believes on reasonable grounds that the person, while driving a motor vehicle or attempting to put a motor vehicle in motion, has committed an offence of contravening, or failing to comply with, a provision of Part 3 of the Act of which the driving of a motor vehicle is an element (excluding an offence of a prescribed class). The new paragraph provides for the relevant offences to be prescribed by the regulations.

Clause 17: Amendment of s. 160—Defect notices

This clause amends section 160 of the principal Act to make the powers given to members of the police force and inspectors under that section to a stop and examine a vehicle and issue formal written warnings and defect notices exercisable when a vehicle has deficiencies or there is reason to suspect that a vehicle has deficiencies.

For the purposes of the section, a vehicle has deficiencies if—

- it does not comply with the vehicle standards; or
- it has not been maintained in a condition that enables it to be driven or towed safely; or
- it does not have an emission control system fitted to it of each kind that was fitted to it when it was built; or
- an emission control system fitted to it has not been maintained in a condition that ensures that the system continues operating essentially in accordance with the system's original design.

For the purposes of the section, a vehicle is not maintained in a condition that enables it to be driven or towed safely if driving or towing the vehicle would endanger the person driving or towing the vehicle, anyone else in or on the vehicle or a vehicle attached to it or other road users.

The clause also amends the section to require defective vehicle labels to be affixed to all vehicles in relation to which defect notices are given, to empower members of the police force and inspectors to vary defect notices, and to make it an offence for a person to obscure a defective vehicle label without lawful authority.

The Hon. T.J. STEPHENS secured the adjournment of the debate.

GAS PIPELINES ACCESS (SOUTH AUSTRALIA) (REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 August. Page 695.)

The Hon. R.I. LUCAS (Leader of the Opposition): On behalf of the opposition, I rise to support this bill. As the former minister for energy and the shadow minister for energy in another place indicated when the matter was debated in the House of Assembly, this legislation was initiated, drafted and processed through all stages but introduction to parliament by the former Liberal government. As the name suggests, it is part of a national access code agreement for gas pipelines. It has been agreed between all states and the commonwealth. It is part of national competition policy and, as I said, for the reasons that have been indicated by the shadow minister in another place, this is legislation from the former Liberal government, and the opposition indicates its support for the second reading.

The Hon. G.E. GAGO secured the adjournment of the debate.

PUBLIC FINANCE AND AUDIT (HONESTY AND ACCOUNTABILITY IN GOVERNMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 August. Page 831.)

The Hon. M.J. ELLIOTT: I support the second reading. This is one of three bills that are part of the government's package in relation to honesty and accountability in government. I have already spoken in support of one and I will support this one, as well. However, we are spending some time looking at the third bill, which is slightly more complex and might have some unintended consequences. This bill, though, requiring the government to produce a charter, giving direction to the contents of the charter, and giving direction to the preparation and release of a pre-election report, seems worthwhile, and the Democrats will support it.

The Hon. G.E. GAGO secured the adjournment of the debate.

LEGAL SERVICES COMMISSION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 October. Page 1036.)

The Hon. G.E. GAGO: I rise to support this important bill. I understand that the bill was introduced in another place by the previous government and lapsed at the time of the election. This bill seeks to amend the Legal Services Commission Act 1977, which established the Legal Services Commission as a statutory authority. The Legal Services Commission is jointly funded by both the South Australian and commonwealth governments and was established to increase access to legal services for those people who cannot afford to pay for private legal representation. This act gives the commission powers and responsibilities to provide wherever possible equity before the law for all South Australians.

Given that every person is required to live by and obey the law, they are therefore at liberty to use the law to protect their rights and interests. As a result, we have a responsibility to ensure that, essential to the notion of justice and fairness, access to the law is not restricted to only those who can afford it. The commission therefore plays an extremely

important role in our community through the provision of a particularly valuable service.

Just briefly by way of background, I point out that currently in South Australia the commission operates six offices, with the head office in metropolitan Adelaide and other offices located at Elizabeth, Noarlunga, Modbury, Port Adelaide and Whyalla. The commission is responsible for providing a wide range of services. These include a legal advisory service including a telephone advisory hotline, community education service (which produces some fabulous publications), and country outreach services at Victor Harbor, Port Augusta, Coober Pedy and Port Lincoln. It also operates a domestic violence unit.

The Legal Services Commission Act 1977 is now 25 years old. It is not surprising that many significant changes have occurred during this time and the act needs to be updated and modernised. This bill seeks to make legislative changes to enable the commission to operate more efficiently, make administrative practices more relevant and remove unnecessary obstructions. Some of the changes that have transpired since 1977 include the push towards national uniformity, which commenced in about the mid-1990s.

Given that the Legal Services Commission provides services in all states, it has also been efficient and effective practice to implement where possible nationally uniform practices. Some of these include the introduction of a national means test using the same eligibility criteria across all states. Another involves the establishment of a national application form. These changes are not reflected in the current act. For instance, the act requires that all applicants for legal assistance include a statutory declaration that the information provided is true and correct. That was not a uniform practice amongst all other states and, since the introduction of a national application form, the practice has been abandoned altogether. The new form agreed to does not require a statutory declaration. Clearly the act needs to be amended to reflect contemporary national practices.

The standard conditions of all grants preserves that it is an offence to give incorrect information, and the director can terminate or change the conditions of the grant at any time—so, as I said, those powers remain preserved. Other changes which have impacted on the commission since its inception include the change in the funding relationship which was initially established as a partnership between the state and commonwealth and was replaced in 1997-98 with a purchaser-provider model of funding. This provides a four-year funding agreement between the commonwealth and the states and contracts for agreed number of service outputs for agreed prices. This only pertains to commonwealth related legal matters, while the state provides funding for state related legal matters. This new funding arrangement has resulted in more flexible service provision arrangements.

That act, however, does not reflect these changes, and inconsistencies have developed over the years. For instance, the act provides for commonwealth government nominees to be members of the commission's board. Given that the changed funding agreement now has the commission as a provider 'negotiating the supply of services to the commonwealth', it is therefore not appropriate for the commonwealth nominees to remain on the board of the commission. In fact, this has been the current practice for some time—the commonwealth has not been nominating representatives for the commission since around 1999. This anomaly has not escaped the attention of the Auditor-General who has raised this issue in one of his reports. Clearly, membership of the board should be changed to reflect current administrative arrangements.

The Legal Services Commission (Miscellaneous) Amendment Bill 2002 seeks to expand the powers of delegation to improve the administrative functions of the commission. This bill allows for the commission to delegate some of its specified functions and powers to a person or a committee. Given the breadth of the functions that the commission is responsible for, such as matters like conducting research and carrying out educational programs (to mention only two), it is sensible to update the act to enable delegation where it is deemed appropriate. However, the powers which are protected by being excluded from delegation include: the power to determine the criteria under which legal assistance is granted; and the power to hear and determine appeals. So, important functions are clearly outside the realms of delegation. The powers of delegation of the director are also expanded in this bill to reflect contemporary business practice. Currently, the act confines the capacity of the commission to delegate functions relating to financial management, such as the director's ability to delegate authority to grant and refuse aid.

To get around this impediment, I understand the commission has been annually delegating fixed provisions to senior management to enable an appropriate officer other than the director to have this authority—a rather arduous annual task. Again, this practice has come to the attention of the Auditor-General who has raised concerns about this anomaly. The bill addresses this concern by issuing appropriate powers of delegation.

The bill also attempts to bring the act into line with contemporary practices by removing the requirement for the commission to establish an office named 'Legal Services Office'. I have been informed that, apparently as far as can be determined, offices in South Australia have never used this name. As I previously mentioned, currently the commission consists of six offices, one of which is a head office in metropolitan Adelaide. All of these offices are named the 'Legal Services Commission'.

The amendment removed the requirement to use the name 'Legal Services Office'. Amendments also include the removal of the word 'local' from the commission's requirement to:

> establish such local offices and other facilities as the commission considers necessary or desirable.

I have been informed that this will not affect current office locations, staffing or service provision. It simply allows for greater flexibility of service provision and reflects current practices given. As I have previously described, some services are provided on an outreach basis, so that matter would in fact accommodate technological advances such as teleconferencing and videoconferencing.

This bill proposes a number of technical amendments, such as repealing section 29 and replacing it with a more relevant provision which removes ambiguity and provides that the commission will be understood to be the legal practitioner retained by the person being assisted, which allows for cases to be moved amongst staff members of the commission more easily.

There are a number of these type of changes which I will not go into detail about, but which are, quite clearly, long overdue. I am also extremely pleased to note that this bill updates the act to include gender neutral language and removes provisions which are superseded. The Legal Services

Commission has worked extremely well in the past to provide a wide range of impressive and valuable services.

I would like to acknowledge the wonderful contribution of the staff employed there, and their unfailing service. They are often financially disadvantaged, compared with what they might earn in the private sector. It is most important that we continue to support the commission, and one way of doing so is to ensure that the commission is underpinned by up-to-date and relevant legislation. I commend the bill to the council.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (OFFENCES OF DISHONESTY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 October. Page 1040.)

The Hon. A.J. REDFORD: I support the legislation and, in light of the extensive contribution made by my colleague the Hon. Robert Lawson yesterday, I do not propose to go through the legislation in any detail given that comprehensive discourse. I will say, though, that the brevity of my comments in relation to this should not be interpreted to mean that this is not one of the most important pieces of criminal legislation that this parliament has dealt with in many years. Indeed, it deals with the extraordinarily complicated issue of property crime, and the range of human experience and ingenuity that can be applied in attempting to secure a benefit to the detriment of another in a way which our society, as evidenced by laws passed by this parliament, would deprecate.

The intent of this bill is to simplify the law. Certainly, those who have been charged with the responsibility have endeavoured to secure that aim through the process of this bill. Whether or not they are successful in that respect remains to be seen. Indeed, it seems to me that it is almost impossible to provide a set of simple rules in areas such as this, given the extraordinary ingenuity shown by some members of the community in securing financial benefit in one way, shape or form, and the capacity of law makers to make laws which provide a degree of certainty and understanding to ordinary members of the community.

I will make a couple of general comments, though, in very brief terms. First, this is a codification, in my view, of the criminal law in a way that I would understand it to be the case, and I am extraordinarily pleased to see that parliaments throughout this country are headed in that direction. When I first embarked upon my law degree and, subsequently, the practice of the law, the term 'common law' was spoken of in hushed terms with a degree of great reverence. And, indeed, it took me some time, being one of the slower learners in my law school, to understand what precisely was meant by this term 'common law'.

Initially, it was described to me as some sort of natural law that fell from the sky, as interpreted by judges from time to time, and those of us who did not know beforehand certainly knew afterwards what the law was to be. Indeed, if one wanted to know what the law was in any given circumstance, particularly in this area of property crime, all one needed to do was to point one's finger in the general direction of a law library and say, 'It is buried in there somewhere'. Indeed, for many years legal training spent most of its time training law students and subsequent legal practitioners where some obscure—or perhaps not obscure—piece of law might be found in an extensive law library.

This process of codification and setting out the law in terms of principle and thereafter the way it is applied is something I have strongly advocated over many years. Indeed, it seems to me that there is a strong responsibility on governments and parliaments to ensure that ordinary citizens can place their hands on a set of laws quickly, simply and easily and understand what may or may not be appropriate. That is not to say that there might be those who put their hands on a set of simple principles and then seek, through some devious means, to get around that.

But I do have confidence in the commonsense of juries to be able to distinguish between those who are genuine and those who are not. In that respect, I am pleased to see that the bill does not seek, unlike other jurisdictions, to define the term 'dishonesty'. Clause 131(1) provides:

> A person's conduct is dishonest if the person acts dishonestly according to the standards of ordinary people and knows that he or she is so acting.

Indeed, I think that is the way to go. I know that, when one is involved in a criminal trial of this sort, one might occasionally get a question from a jury as to what is meant by the term 'dishonesty'. I know that some jurors are somewhat bemused or even annoyed when the judge responds, 'That is a question for you as a jury to determine—whether this conduct is or is not dishonest. As an ordinary member of the community, the law assumes and expects that you will have some understanding of what might constitute a dishonest act and what might not constitute a dishonest act without the intrusion of lawyers going through in small detail attempting to define it and, indeed, consequently making the whole issue more complex. In that respect, I warmly welcome that approach.

Some 15 or 16 years ago, I had the opportunity to visit Singapore. I spent some time with the senior prosecutor of the Singaporean DPP, working with him and assisting and watching him in relation to the prosecution of quite a wide ranging series of offences in the criminal law—from illegal immigration (the more things change the more they do not) to a range of property offences, particularly in relation to banks and the banking system.

One thing struck me about that system (and I admit I went there with articles and newspapers and comments from my legal colleagues that the Singaporean legal system was not as good as our system—that it was inferior to our system; that we had a true common law system, as inherited from the United Kingdom) was that there are a set of laws in Singapore that I could pick up and read and basically understand what they were on about as a foreigner—or, indeed, if I happened to be Singaporean the same would be the case—and that, with goodwill and a fair mind, I would know what the law says is wrong and what the law says is right.

It struck me at that time (and perhaps that was my moment of conversion from the common law to proper and appropriate codification of the law) that that aspect of their legal system was better than our system. In that respect, we have finally caught up with Singapore and numerous other countries which have gone to great lengths to properly define criminal conduct.

Perhaps I am a bit of a traditionalist, but I will miss the old terminology. Terms such as 'forgery', 'fraud', 'larceny' and 'false pretences' will now no longer form part of our legal language in this area. They will be replaced by terms such as 'dishonest exploitation', 'unlawful bias' or 'dishonest dealings'. The novelist in me would say that, in writing a

description of the offences, the older language was far more descriptive and brings to mind a clearer understanding of what we are all talking about.

However, I do hope that these terms, not because of the frequency in which they are committed, become part of our language and the old terms of 'forgery', 'fraud' and 'false pretences' might move on as a past chapter in the language we use when we talk about these areas.

The Hon. T.G. Roberts: You'll have to throw your old dragnets out.

The Hon. A.J. REDFORD: I did not catch the word the honourable member used, but there might be some school of thought that this will make half my criminal law library redundant, but I suspect not, because I think the principles would be the same and some of the ideas will be consistent and there will be a theme in so far as the application of these provisions.

I am also pleased to see that secret commissions, a topic that is not without some contemporary aspect to it, is also the subject of this bill and, in my view, it is welcome. The term 'secret commissions' is used and understood widely in the community and in the media. I am sure that some people would be surprised to know that, although we have had a Secret Commissions Act in this state since the 1920s, I do not believe there has ever been a successful prosecution under that act. Indeed, I do not recall any time in the past 20 years where a prosecution has been initiated for a secret commission. Yet secret commissions, in terms of all sorts of industries, have become part of the commercial landscape.

One only has to look at the *Four Corners* report the other night in relation to funeral homes and, indeed, a whole range of other things that happen. For example, what the member for Enfield is on about, in a discrete way, with land agents are but two examples of where secret commissions are endemic right through our commercial activity, yet there has been very little attention given to it by our authorities.

Indeed, over the past 10 or 15 years, through an extraordinary change in the way in which public officers, particularly members of parliament and senior public servants, are scrutinised—the way in which we have to disclose our interests and the like and the way in which we are roundly condemned, at the very least, if we engage in that sort of conduct—those areas outside the area of public life have not been equally examined.

Indeed, if one looks at what has gone on with HIH, Enron and the series of substantial collapses, one sees a tighter application of the principles involving secret commissions and the like at a much earlier stage in the careers of these people; and, indeed, a high profile prosecution for secret commissions would send a very strong and salutary message to many people in the community and not just company directors.

I make that observation because it concerns me that we have had this legislation on our books for decades. It is clearly conduct the community deprecates. It is clearly conduct where the community has called for criminal sanctions, yet the legislation and its consequences have proved largely illusory. I note that the Law Society in its usual performance has failed to consult with its range of members of Parliament, although I see that the Hon. Ian Gilfillan was deigned with the honour of receiving a letter complaining about some aspect of the bill. I am grateful to the Hon. Ian Gilfillan for drawing our attention to it, and I look forward to seeing the Attorney's response to his concerns. Is it any wonder that some of us are no longer members of the Law Society when this is the way it consults?

In closing, I congratulate all those who were involved in the construction of the bill, particularly the officers associated with the model criminal code committee, and also the officers within the Attorney-General's office who had to translate their recommendations into this bill. I commend the bill and look forward to its ultimate passage.

The Hon. J. GAZZOLA secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (TERRITORIAL APPLICATION OF THE CRIMINAL LAW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 August. Page 964.)

The Hon. R.D. LAWSON: I rise to indicate the support of the Liberal opposition for the second reading of this bill. However, before proceeding I should mention that, in relation to consultation, the Law Society did make available to the opposition its comments on the offences of dishonestly bill which the Hon. Angus Redford spoke on a moment ago. In fact, I read into the transcript some of the Law Society's comments in relation to that bill. Speaking from my own perspective, I am indebted to the Law Society for sending the opposition copies of comments which it makes from time to time on legislation of this kind. However, that said, I must say that I have not received from the Law Society any particular comment in relation to the territorial application of the criminal law amendment bill. I am sure the Hon. Angus Redford would not want it to be suggested that he was unfairly criticising the Law Society.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. R.D. LAWSON: This bill was introduced by the Liberal government on 21 November 2001, but on that occasion it was not debated. The effect of the minister's second reading explanation in this chamber in support of the bill is described as follows:

> The Bill seeks to clarify the application of the criminal jurisdiction of South Australian courts. This area of the law is complex, and recent statutory attempts to clarify it have been only partially successful.

In my view it is an understatement to say that previous attempts to clarify this area of the law have been partially successful. It might be suggested that they have been not at all successful. In simple terms, the issue is as follows: where a crime is committed in one state by a person who is physically present in that state but his or her actions are intended to affect someone in another state, the question arises whether that person can be charged before a court in the latter state. Most jurisdictions seek to charge only those whose offences have a physical connection with their territory. These issues are governed by a number of common law rules, some of which are contradictory; and resolving the question of whether a particular state has jurisdiction has become very confused over the years.

In 1992, the Model Criminal Code Officers Committee drafted a law which was designed to clarify the position. This new provision, which found its way into section 5C of South Australia's Criminal Law Consolidation Act, co-exists with common law rules. However, section 5C has been largely

ignored by the courts, which have continued to apply the common law rules. This is very clearly illustrated in the case which went to the High Court of the Queen against Lipohar and Winfield.

This decision in December 1999 is an appeal from a decision of the South Australian Court of Criminal Appeal. In the case in question, the appellants were convicted of conspiracy to defraud. The essence of the charge was that they had conspired to obtain $6.5 million from a South Australian company called Collins Street Properties Pty Ltd, which was a wholly owned subsidiary of SGIC Pty Ltd, which was, in turn, wholly owned by a South Australian corporation, the State Government Insurance Corporation (SGIC).

Collins Street Properties, the company in question, owned the fabled 333 Collins Street, Melbourne. The conspirators had falsely pretended that they had a client who was interested in leasing space in 333 Collins Street. It was an elaborate scheme. It was agreed that the conspiracy was formed either in Queensland or Victoria. The company to be defrauded—namely, Collins Street Properties Pty Ltd—carried on business in Victoria, but its registered office was in South Australia. The only overt act pursuant to the conspiracy which took place in South Australia was a fax sent from Victoria to South Australia in which the appellants sent a forged letter promising a promissory note in security on behalf of a fictitious client.

The conspirators were convicted after a trial by judge alone. At their appeal they argued that the trial court lacked criminal jurisdiction. As I have mentioned, the appeal from that decision was dismissed by the South Australian Court of Criminal Appeal. The appellants appealed to the High Court which, in turn, dismissed the appeal. The High Court decision is difficult to interpret, because of the differing views expressed by differing judgments.

It is suggested in an article by a distinguished South Australian commentator, Mr Matthew Goode, published in the *Criminal Law Journal* of December 2000, that the decision of the High Court discloses, 'no coherent majority opinion'. Mr Goode, in the article to which I have referred, comments further on section 5C of the South Australian Act and states:

> Regrettably, however, the legislation appears to have made little, if any, difference at all. Certainly in Lipohar the entire court was agreed that the legislation. . . did not in any way extend the operation of the relevant common law rules (whatever they may be).

From Lipohar and other decisions to which Mr Goode refers, he says that the legislation has failed in its intentions. The Model Criminal Code Officers Committee published a discussion paper on this matter in 2000 and recommended an entire replacement of section 5C in light of the history of the past five years. Certainly the decision in Lipohar, in which the court virtually ignored section 5C of the South Australian legislation, was not promising.

Mr Goode, a member of the Model Criminal Code Officers Committee, concludes his article with the following remarks:

> In the opinion of the committee, 'the fundamental problem with such an approach is that it would leave open a large area for interpretation of the very courts which it appears are unwilling to move away from traditional considerations', however illogical they may be.

He continues:

> It is clear, however, that the High Court and the common law have not and cannot provide a solution compatible with common sense and reason. Whatever the merits of any of the statutory solutions proposed, something must be done.

The section that is currently embodied in the bill is designed to overcome the deficiencies of the old section 5C. It is worth noting that to date only New South Wales has adopted this solution. The solution is certainly better than the one it replaces, although this matter will remain an area which is both complex and obscure. From my own viewpoint, one of the reasons for that is the fact that the section subsists with the common law rules and, if this particular section does not solve the problems, we should examine doing away with the common law rules and codifying them in a statute. However, that is not yet necessary. I commend the second reading.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (ON-LINE SERVICES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 October. Page 1046.)

The Hon. CARMEL ZOLLO: As a member of the committee that looked at this bill in the previous parliament, I am pleased to see the bill before us. This amendment bill, which needed to be reintroduced, deals specifically with online content and is based on the online provisions devised at a national level for the 1999 amendments to the commonwealth Broadcasting Services Act 1992. Similar provisions have been passed by the New South Wales and Victorian governments. The Northern Territory and Western Australia previously passed provisions of their own in relation to online content. The amendments will deter or punish those people or organisations that make available internet material that is objectionable and also material not suitable for minors.

The national classification code and classification of films and computer games is used to determine what material is objectionable or unsuitable. Therefore, under these guidelines internet content that is or would be classified X or RC is refused classification. Sexually explicit material, child pornography or material instructing or encouraging crime are examples of material that could be refused classification under the amended act. The material that falls under this category cannot be made available or supplied at all. Matters unsuitable for minors is material classified R, and thus restricted to adults. This material is or would be classified R and can be made available or supplied only if protected by an approved access system, which restricts access by means of a password or PIN.

These provisions are intended to apprehend the provider of the objectionable or unsuitable content, but not the internet service provider as it only provides the services from which the material was accessed, or the hosts who merely provide the means for availability of the material. ISPs and content hosts are restricted or regulated by the commonwealth broadcasting act. Under this act the Australian Broadcasting Authority has the ability to arrange for a site to be classified. If the material is illegal and the site is hosted in Australia, the ABA can force the provider to remove access to the site. These provisions do not apply to email that is only made available to particular recipients or real time internet chat that is restricted to a group at that time. In spite of this, if the content of an email or chat were stored and later uploaded so

it could be generally available, then it would come under the regulations of the act.

As I mentioned, in 2001 I was a member of the Legislative Council select committee that recommended that the bill pass with the present amendments. There was strong support for the legislation from groups such as the Australian Family Association, the Festival of Light and Young Media Australia. On the other hand, industry groups such as the SA Internet Association believed the legislation would cause businesses to establish themselves interstate or even overseas. On balance, the majority of committee members believed that the industry view was one more of perception rather than fact as the bill applies to people or businesses that upload material in such a way that it is accessible to others.

The majority of the committee believed that the bill is needed as it includes restrictions not only on pornography but on material that incites or instructs crime, racial or religious vilification or encourages suicide and violence. Due to the easy access of the internet, the majority of the committee also believed that it was appropriate to be consistent in the manner in which content is classified. The select committee report recommended by majority that the bill pass with the amendments which I incorporated in the present bill before us and which I am again pleased to support.

The Hon. R.K. SNEATH secured the adjournment of the debate.

STAMP DUTIES (GAMING MACHINE SURCHARGE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 August. Page 966.)

The Hon. R.I. LUCAS (Leader of the Opposition): I speak to the second reading on behalf of all Liberal Party members. As I indicated yesterday evening, the opposition, the Liberal Party, sees the debate on this bill as significantly overlapping with the debate on the Gaming Machines (Gaming Tax) Amendment Bill. A number of the issues I raised in yesterday's debate therefore also have currency to the opposition's view in relation to this surcharge bill. I therefore want to address only three or four other specific issues as they relate to this bill. In the first instance, I again refer to some claims that have been made by the Treasurer in relation to this bill. The Treasurer has been quoted as follows:

> From my reading of the files, the former treasurer was particularly keen—and he admitted as much on radio—to explore ways in which he could capture scarcity value.

I again place on the record that I made no statements in relation to capturing scarcity value. That may well be a phrase used by the current Treasurer. Any statements that I made, as I indicated yesterday, related to work that had been done and ultimately rejected by the former government in relation to increased levels of taxation on the industry. As I said at that time, they were rejected by the former government and I have certainly not admitted on radio that I was looking to continue to explore ways in which the government could capture scarcity value of the gaming machine industry.

At about that same time, the Treasurer made some statements on ABC radio which impact on one significant area in respect of which I seek answers from the government, that is, in relation to the estimates of revenue from the industry generally and what might be gathered from the total package of changes but, in particular, this surcharge. On 31 July a debate occurred on ABC radio with the Treasurer, David Bevan and Matthew Abraham on the issue of gaming machine legislation, and I was involved at the latter end of that discussion. I made the point in the debate that, contrary to the claims that were being made by the Treasurer, it was not going to be possible to pinpoint specifically a gaming machine surcharge regime that would definitely produce $5 million a year from the operation of the surcharge.

I think that anyone who understands the way in which stamp duty operates will know that it is impossible to construct a stamp duty regime that can definitively pinpoint a number such as $5 million a year and $20 million over four years coming from a stamp duty surcharge. I made that point in the debate on ABC radio, but the Treasurer obviously believed that he knew better than the former treasurer and all of the Treasury advisers. In the interview, David Bevan asked the Treasurer:

> Can you explain to us how you can confidently say this new tax on the hotels, that is on the transfer of hotels, will bring in $5 million?

The Treasurer replied:

> We have put modelling in place. It can be done. The arguments of Rob Lucas are nonsense.

Just to refresh the memory of members of the arguments I was putting, I said earlier in the interview:

> What Kevin's saying is they're trying to work out exactly how much you're going to collect in a particular year and he says he wants to collect exactly $5 million. You've used the example of stamp duty on a house. Have a look at the stamp duties collected in any year. You can never tell because of the growth in the economy. That is, if you have a good year in terms of housing, stamp duty collections go up enormously; if you have a bad year they go down, and this budget highlights that in particular. I think a very significant downturn in stamp duty on house transactions. Now, what Kevin's saying is that he can magically pinpoint a number of $5 million a year, and the reason he can't answer your questions is that that's almost impossible to do.

That was the background to this debate. As I said, the current Treasurer believed that he knew better. He said:

> We have put modelling in place. It can be done. The arguments of Rob Lucas are nonsense.

I seek from the government—because it will make the passage of the bill through the committee stage much easier and much quicker—simple answers to my questions about revenue. The operation of the surcharge is predicted by Treasury to produce how much income in each of the next four financial years? So far the Treasurer has steadfastly refused to answer that question by using an aggregated figure over four years. Instead of $20 million he has been using a figure of $18.5 million. Clearly, Treasury must have done some estimates for the Treasurer.

The Treasurer has indicated that he had already done the modelling. He may well have done it himself, knowing the Treasurer's belief in his own capacities. He may well have been able to predict with absolute accuracy revenue of $5 million from this particular surcharge each and every year. I have taken some advice from those within the industry and, when one looks at the variation in the number of venues that are transferred in just a small number of years on which I have information, one can see that there is a variation of almost 25 to 30 per cent in just the number of venues that are transferred.

There may well be some evening up depending on the net gaming revenue per venue of the venues that do transfer, but I think that it does indicate, as I tried to indicate during that ABC radio debate, how difficult it is to predict (particularly

with something like this) what the impact might be in relation to both the number of venues that transfer and the revenue that might be predicted. Nevertheless, it is important for members to know, with respect to any tax measure, what the impact will be on the budget. As I said, I seek that specific information from the government as to what will be the Treasury estimate of the surcharge revenue for this year and for each of the following three years.

Allied with that is the information in relation to what the Treasurer has referred to as 'growth in the industry'. Members will recall that, after the debacle of the first round of the gaming machine tax increase announcements in the state budget, much concern was raised by the industry and a number of others about that broken promise. When the revised package came back, including the surcharge, one response from the Treasurer was that he had made some of the changes but that revenue in some part had been protected by a revision in the growth estimates of the gaming machine receipts that were to flow to Treasury.

In that interview on 31 July the Treasurer threw some light on that by saying:

> We are certainly of the view that the gambling tax take will increase, but it will decline. Now, if that makes sense, what it will be doing. . . we are forecasting growth, but at a reducing rate.

I might say that I think the transcript I have is the Department of the Premier and Cabinet transcript, and not every word is picked up in those transcripts, as you know, so you might bear in mind that if words are missing it is not because I have left them out but because that is the transcript that has been provided to the opposition. I might also say that, other than under freedom of information legislation, with some time lag we are actually getting the full transcripts of all the media monitoring that is being done by the government. They have been seeking to hide that from us. This quote continues:

> Let's bear in mind that. . . poker machine growth (and this is an extraordinary figure) has grown on average in South Australia for the past four years about 11 per cent. . . The industry had put advice to me that that will decline but will remain flat for some years. We're not predicting that: we're predicting that the parliament over time and other measures is going to see a significant reduction. So, I'm still forecasting a quite steep decline from the averages of 11 per cent down to close to 5 per cent in four years time. . . The budget still forecasts a significant reduction in gambling growth. . . but I acknowledge that there is an appetite in the community for poker machines.

I seek information from the government as to what the growth figures have been in gaming machine revenues for the past four years. The Treasurer has indicated average growth of 11 per cent for the past four years. I seek advice from the Treasurer: at the time of the state budget, what were the Treasury estimates of growth in gaming machine taxation for the forward estimates period? Just to assist, advice that has been provided to me from ever-willing sources within senior levels of the government has suggested—and I would like clarification—that the state budget growth assumptions were for 7 per cent for calendar year 2003, 6 per cent for calendar year 2004, 4 per cent for calendar year 2005 and 4 per cent for calendar year 2006.

I would be interested to know whether or not that information was accurate. If that is the case, that would be saying, based on what the Treasurer said and the advice provided to me, that for the past four years the average growth has been 11 per cent. I need clarification whether that is on calendar year growth or whether it is financial year growth. Further, at the time of the state budget, the government was estimating that instead of 11 per cent growth there would be 7 per cent, 6 per cent, 4 per cent and 4 per cent for each of the forward estimates years.

As a result of the debate at the time, the Treasurer indicated during a number of debates that the Australian Hotels Association had come to the Treasurer and said that those budget estimates of growth in gaming tax were too conservative, and that they had come up with much higher figures in relation to estimated growth in the gaming machine industry. The Treasurer went on to say that he or Treasury (he always uses the singular pronoun; it is either I or he, rather than we) had not accepted those higher figures and that, nevertheless, he had agreed on a number between the state budget estimates and the higher estimates of growth from the hotels industry. So, we had the budget estimates, which may well have been 7, 6, 4 and 4 per cent, but the Hotels Association said that was too low and that they would be higher than that—I understand they might have been talking about estimates of the order of 7 per cent a year—and the Treasurer has indicated that he settled on something between the state budget estimates and the Hotels Association estimates.

My further question is, therefore: what are the revised state budget estimates that the Treasurer has now accepted? He has indicated that in four years the number will be 5 per cent, so, if my state budget figures for calendar year 2006 are correct, the estimate was 4 per cent, and it would seem to indicate that the Treasurer has taken a number of about 5 per cent for 2006. I am interested to know what his estimates for calendar years 2003, 2004 and 2005 now are as a result of the further advice he has taken.

I also ask: upon what basis did he change the estimates that were included in the state budget? In particular, is the Treasurer claiming that the forward estimates of revenue growth and gaming machine taxation included in the July budget were based on information made available to him only up to about February 2002? Certainly, some media interviews with the Treasurer would seem to indicate that that is indeed what he has been claiming. If that is correct, again, that is contrary to advice that has been provided to me by senior sources within government departments and agencies in relation to what information had been provided to the Treasurer.

We are not having much luck with FOI requests with the Treasurer, who is easily the most secretive Treasurer we have seen in this state since the rise of Christendom. However, I might say that, with the exception of the Treasurer, every minister has provided information on the transition to government folders that had been requested under FOI. He is the only minister who has refused to provide any information some four or five months—

The Hon. P. Holloway: As you'd know, nowadays under the new act he has no say in it; he doesn't determine it. It's not up to the minister any more.

The Hon. R.I. LUCAS: The new act does not operate? The new act is not operating?

The Hon. P. Holloway: Yes, it is.

The Hon. R.I. LUCAS: So, the minister is saying the Treasurer has had no involvement in this at all? That is not what I am told. The Leader of the Government said that the Treasurer has not been involved in these FOI requests. That is certainly not my information, but we will wait and see. I will not be diverted by the Leader of the Government seeking to defend a very secretive Treasurer in relation to this sort of information. We have been pursuing and will continue to pursue what advice was provided to the Treasurer in relation

to the estimates of gaming tax increases and when they were provided to the Treasurer.

If a budget is brought down in July, there is no earthly reason why the information should be based only on collections up to February 2002. So, I seek specifically from the government advice as to what information was provided to the government in relation to gaming machine taxation receipts for 2002 for the original state budget estimates and what further information was available to the Treasurer and Treasury officers that validated the revision upwards in growth estimates for gaming machine receipts. In particular, I also seek advice from the government as to whether the current Treasurer was advised that Treasury had revised downwards gaming machine collections from this year onwards because of its view of the impact of current legislation in the parliament and the climate within which this state parliament would be operating in future years in relation to gaming machines and that it was appropriate to reduce the growth estimates in gaming machine taxation receipts because of the anti-gambling fervour of some members of parliament and some sections of the community.

Confirmation of that advice was provided to the Treasurer. By accepting the new state budget forecast, what was the basis of the Treasurer's rejecting, in essence, that initial conservative advice from Treasury? We will be looking for some quite detailed information in relation to the gaming machine receipts. It is an important part of this debate, and the committee stages will certainly be shortened and expedited if the government is able to provide that information.

Further work is being done on some potential amendments that the Liberal Party may move, as my colleague highlighted yesterday. However, because I was under some pressure to finish my speech in 30 minutes yesterday, I did not mention that the Liberal Party will be moving amendments in relation to the disbursement of some of the receipts of the gaming machine levy in relation to sport and recreation, community development and charities.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: As my colleague indicates, live music as well will be incorporated in the amendments. We are also looking at amendments in relation to some further matters that have been the subject of ongoing discussion with the Australian Hotels Association and its legal counsel. In particular, I understand that there has been correspondence and that discussions were held as recently as late last week, on 11 October, and it may well be that the government representatives went away from the meeting with a different view. The hotels association felt that perhaps there was still some consideration being given by the government and the Treasurer in particular to moving further amendments to take into account what the AHA has argued are unintended consequences of the current drafting of the legislation.

It may well be that the Treasurer and his advisers never intended to further clarify the legislation to remove the unintended consequences, I do not know, but I am advised that it was not until Monday of this week that the AHA was advised that the Treasurer had rejected the proposition that these were unintended consequences, that these consequences were intended by the Treasurer and the government, and that he would not be moving amendments. I was advised of that on Monday so, in the last 24 hours, I have been having further discussions with the AHA and parliamentary counsel in drafting what we hope will be some appropriate amendments.

I will refer briefly to some of the advice that I have received to flag the general area that is of concern to the AHA in what it argued might be accepted by the government as unintended consequences. The basic operation of the Stamp Duties Act in relation to discretionary trusts is said to revolve around a concept that certain alterations to the trust arrangements will be a transfer of an interest in a gaming machine business, and I refer to proposed paragraph 71EF(1)(a). It is contemplated by the Stamp Duties Act that the transfer of potential beneficial interest in property subject to a discretionary trust is a transfer of an interest in the trust. Subsection 71(8) causes the transfer of such potential beneficial interest to be treated as a transfer of the gross value of the trust.

The introduction of two or more beneficiaries to a discretionary trust would be treated as a transfer of the entire interest of the trust giving rise to two lots of stamp duty on the entire gross value of the trust. The surcharge will operate in the same way. This was confirmed by the Treasurer in response to a question posed by the member for Davenport in the House of Assembly. In its practical manifestation, if a discretionary trust deed were amended to introduce, say, stepchildren of a principal beneficiary, then double or more surcharge would be applicable in addition to multiple stamp duty.

It was suggested that the example of stepchildren could be readily dealt with by amendment to the definition of 'family group' contained in subsection 71(15) of the act. Whilst it was accepted that this could deal with a particular example, it was argued there were many other instances where double surcharge would arise. For example, if a family takes control of a discretionary trust previously controlled by another family, in multiple surcharge events technically thousands would arise. This is because the entire objects of the discretionary trust would have been effectively replaced.

It is broadly in the area of beneficiaries under a discretionary trust that the AHA has raised questions and significant concerns. In general, it has been accepted by the AHA that this surcharge will operate and if the ownership of a hotel and an attached gaming licence is transferred, the surcharge will apply. However, the legal advice indicates that in some cases where the hotel and the gaming licence is not actually sold, but just where the ownership structure is changed as a result of changed family circumstances of the hotelier, in some way this surcharge might be triggered. That is where the hotels association and some of us working with it believe that this surely could not have been an intended consequence of the legislation. However, from no higher source than the Treasurer, I am advised that it was an intended consequence of the legislation and the government will not be moving amendments.

The opposition has asked parliamentary counsel to try to draft amendments to the legislation to cater for this set of circumstances without opening up any problems in Revenue SA's administration of the legislation. The opposition will table its amendment as soon as it is available and we look forward to advice from Revenue SA officers as to whether or not there are concerns with the drafting by parliamentary counsel of the proposed amendment. As I said, the preferred course of action would have been for Revenue SA officers and parliamentary counsel, working with the government, to have catered for this but, in the circumstances, this is the only course of action that is now available.

With that, as I said yesterday, I indicate that the opposition will not be voting against the bill because it is a budget measure, but we register again our strongest possible

objection to a further significant broken promise by this government.

The Hon. R.K. SNEATH secured the adjournment of the debate.

STATUTES AMENDMENT (EQUAL SUPERANNUATION ENTITLEMENTS FOR SAME SEX COUPLES) BILL

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

ADJOURNMENT

At 4.46 p.m. the council adjourned until Thursday 17 October at 2.15 p.m.