LEGISLATIVE COUNCIL

Monday 29 March 2004

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

QUESTION ON NOTICE

The PRESIDENT: I direct that the written answer to question on notice No. 104 be distributed and printed in *Hansard*.

MURRAY RIVER

104. **The Hon. T.G. CAMERON:**

1. How much water does South Australia extract from the River Murray, on average, each year?
2. How much of this, both in percentage terms and in gigalitres, is consumed by:
   (a) South Australian households; and
   (b) South Australian industry and farms?
3. How much water is estimated to be saved this financial year from the recently introduced water restrictions?
4. How much of this saved water, both in percentage terms and in gigalitres, will be due to:
   (a) households savings; and
   (b) industry and farms savings?
5. What exactly do 'level 5 water restrictions' involve?

The Hon. T.G. ROBERTS: I refer the honourable member to the response provided to Question on Notice 278, tabled in Parliament on 24 November 2003.

PORT PIRIE REGIONAL COUNCIL

The PRESIDENT: I lay on the table the report of the Port Pirie Regional Council 2002-03, pursuant to section 131(6) of the Local Government Act 1999.

BAKEWELL BRIDGE

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I table a ministerial statement on the Bakewell Bridge made today by the Minister for Transport.

INFRASTRUCTURE ANNOUNCEMENTS

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I table a ministerial statement on infrastructure announcements made by the Premier.

ADELAIDE WOMEN'S PRISON

The Hon. T.G. ROBERTS (Minister for Correctional Services): I seek leave to make a ministerial statement.

Leave granted.

The Hon. T.G. ROBERTS: I have received advice that, at approximately 1.30 a.m. on Sunday 28 March, staff at the Adelaide Women's Prison became aware of a fire in A wing. A wing is a unit comprising 16 individual rooms with shared ablutions and a shared common area housing predominantly medium security classified prisoners. At the time of the incident, the unit was fully occupied. My advice is that, due to the vigilance of staff, prisoners were released from the unit prior to suffering any significant smoke inhalation or any other injury. They were initially secured in the common area of another unit and later allocated to vacant beds in a secure section of the prison. Staff proceeded to combat the fire until the MFS arrived. Unimpeded access to the incident area had been organised, and the MFS was able to get the fire under control within a short period of time. In total, there are four investigations: a SAPOL criminal investigation; an MFS fire safety investigation; a DCS fire safety investigation; and a DCS operational investigation.

I am advised that the fire may have been deliberately lit—the main fire in the common area and a second fire in the cell of one of the prisoners. Two prisoners were removed to G division of Yatala Labour Prison, where they remain under close surveillance. Their management status will be reviewed after the preliminary SAPOL investigation is completed. I am advised that, if the fire was deliberately lit, it is unknown what may have motivated the prisoners to light the fire. However, one of the lines of inquiry is that it could have been done in an attempt to facilitate an escape. The preliminary damage estimate is in the order of $200 000, with further damage assessment over the next week. The repairs and refurbishment of the building will then be prioritised. DCS is insured through SACORP: however, excess is payable.

The centre accommodated approximately 44 prisoners in the secure area of the prison at the time of the incident. Capacity is 60 prisoners. Operational plans will be developed in the next few days to identify strategies for the accommodation of any additional prisoners being admitted to the centre over the coming period. This incident has no bearing on the plans for a new women's prison. In the last budget the Treasurer announced the government's intention to build a new women's prison, and work continues on various options. The incident was particularly well managed by all staff involved, which is indicative of good training and emergency response standards within DCS operations.

QUESTION TIME

ANANGU PITJANTJATJARA LANDS

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about the Anangu Pitjantjatjara lands.

Leave granted.

The Hon. R.D. LAWSON: Last week, in answer to a number of questions about the alleged impediments that the government claims exist in the Pitjantjatjara Land Rights Act to the delivery of services on the lands, the minister told this council that one impediment to the delivery of state government services was the capacity of the AP executive to refuse entry onto the lands. However, section 19 of the Pitjantjatjara Land Rights Act, which restricts entry on the lands to those who are permitted to do so by the Anangu Pitjantjatjara executive, does not apply to 'police officers, any other officer appointed pursuant to statute acting in the course of carrying out his official duties, persons acting upon the written authority of the Minister for Aboriginal Affairs, members of parliament and political candidates', and also it does not apply to entry upon the lands in the case of emergency. Will the minister now acknowledge that, contrary to his earlier assertions, there are no entry or access provisions in the Pitjantjatjara Land Rights Act that would impede the delivery of state government services to the lands?

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

that, if you did not have the cooperation of the AP people, including the APY executive, they could make it difficult. With respect to the circumstances in which entry was being pursued to deliver services under the act, if one did not have a negotiated agreement it could be made very difficult for some of those service providers to be allowed entry if they did not fall into the categories that were recognised by the act.

The last thing we want is legal advice being sought and given, which the act has allowed over the years, because of its vagaries: not because of what it says, but because of what it does not say. The vagaries of the act have historically been used by various executives over the years to deny access to the lands to a number of people, even those falling within the categories of the act. We did not want any unnecessary conflict with the APY executive. We certainly wanted to build bridges with them so as to enable us to provide services as soon as possible within the lands in those areas and categories that are known by members on both sides of the house in relation to the APY lands.

The Hon. R.D. LAWSON: I have a supplementary question. Would the minister refuse to issue a written authority authorising state government services going onto the lands if he deemed it an emergency and if he deemed it appropriate notwithstanding the fact a permit was not given by the executive?

The Hon. T.G. ROBERTS: I may have the power. Members understand that I may have the power under the act to write authorities for people to enter the lands; I have no authority for them to reside on the lands. There are some questions about the strength of that authority. We certainly do not want people entering the lands and then having to issue authorities on a daily basis. They are some of the questions that need to be cleared up when we change the act. So, again, it is not a matter of using authority that may or may not be there, if people have to drive to or fly in to those remote regions and then their authority is refused. It is very difficult for us to police that. It is a circumstance where, for engagement reasons, you need the endorsement on the basis that it is freehold title to override what are regarded as invitations—and that is what we are talking about in this day and age—to participate in partnerships. We would hate to have the situation where either non-government bodies or people who were authorised by me as minister to enter those lands to be refused for any reason by APY.

We are looking at hypotheticals here. We have a situation where we have the cooperation of the executive. They had a two-day meeting in the lands on Thursday and Friday last week. We have the cooperation of the APY executive for a coordinator of government services. We do not anticipate that there will be any difficulty or trouble with access, because we have been able to negotiate those circumstances, and I must congratulate the coordinator, who did a very good job in building bridges in a very short time with very short notice with the APY executive and the communities to allow government services to start to be delivered. The question, in part, is hypothetical. We would not like to go down the path of giving overriding authority to force entry to those individuals or groups of people who may be in the business of delivering services. We want to take those questions out of the legal standing and negotiate access by having a good, cooperative relationship with the APY and all Anangu.

The Hon. R.D. LAWSON: I have a further supplementary question. Is the minister aware that section 30 of the Pitjantjatjara Land Rights Act provides that, where any part of the lands was used for the purposes connected with the health, education, welfare or advancement of the Pitjantjatjara people, the Crown has a right to occupy that part of the lands for a period of up to 50 years from the date of commencement of the act? If he is aware of that, is he aware of any particular parts of the lands to which that section applies?

The Hon. T.G. ROBERTS: Again, it is an argument that can be settled only through negotiations. I understand the honourable member's question about the application of that provision, but in this day and age you cannot force engagement on people who do not want to engage. The delivery of services is the government's responsibility in all sections of this state. In relation to the act, no other area of the state or local government has any special acts turned over to it in relation to access and permits. This government has been very sensitive, after the first few days, in how it engages with Anangu. We do not want to encourage any sort of artificial divisions within the communities. We have gone about our engagement without the enforcement of the act, and that is how we would like to continue.

The Hon. R.I. LUCAS (Leader of the Opposition): I have a supplementary question. Is the minister saying that, apart from the first few days when he says that the government was sensitive to the various issues, the Treasurer, on behalf of the government, was insensitive in relation to these issues in the first few days after cabinet's decision?

The Hon. T.G. ROBERTS: The question should be referred to the Treasurer. The situation—

The Hon. R.I. Lucas: You made the comment.

The Hon. T.G. ROBERTS: I am prepared to answer the question. The situation in which the Treasurer found himself was that there was an emergency situation that he felt needed an emergency response.

The Hon. R.I. LUCAS: I have a further supplementary question. Were the Treasurer's statements made straight after the cabinet meeting consistent with the decisions that had been taken by cabinet?

The Hon. T.G. ROBERTS: There are protocols in relation to how this parliament deals with questions that are put before cabinet.

The Hon. A.J. REDFORD: I rise on a point of order. How can the minister hide behind cabinet?

The PRESIDENT: That is not a point of order; that is a supplementary.

The Hon. J.F. STEFANI: I have a supplementary question. The Treasurer said that we have an emergency situation. Does the minister agree that the situation in the Pitjantjatjara Lands was, in fact, an emergency position where the government had to take action?

The Hon. T.G. ROBERTS: Yes.

The PRESIDENT: We have had five supplementary questions and we are getting a long way from the answers. This will be the last supplementary. The next question will be the start of another series of questions.

The Hon. NICK XENOPHON: I have a supplementary question. Does the minister consider that section 15 of the legislation needs to be reviewed, or are you satisfied with the legislation in its current form with respect to access to the lands?

The Hon. T.G. ROBERTS: I am happy to answer that question. All aspects of governance in relation to how we engage the APY in the future have been recognised as needing discussions and agreement in relation to change. I have mentioned to this council many times that we are looking at a form of governance similar to local government that applies to some of the lands in the Northern Territory, Queensland and Western Australia. We have discussed with the APY, the previously elected executive and the current executive, the urgency with which things need to change to allow human service delivery as well as land management to be managed through a form of governance that is applicable to the circumstances that APY finds itself in. The legislation that it operates under is quite unique in this state.

If members want to inform themselves about some of the opinions when the legislation was being passed as a result of earlier negotiations by the Dunstan and Tonkin governments, many of the contributors (on both sides of the house, from memory) made comment that the act itself would have difficulty managing the affairs of the Anangu people. So, the question of access and the permit system will be subject to discussion, and we certainly will not enforce any changes to anything that the Anangu people feel are part of their rights. We will negotiate with them to enable changes to take place. So, it is on the *Notice Paper*—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: Well, there are two views. One is that we have acted unilaterally—and we have not engaged Anangu in those discussions: we have asked them to consider how they would like to see the changes made in relation to a new form of governance, and the permit system is part of those discussions.

The Hon. R.I. LUCAS (Leader of the Opposition): My question is directed to the Minister for Aboriginal Affairs and Reconciliation. Does the minister believe that the Deputy Premier's statements made after that cabinet meeting, which we have been discussing, were ill-advised and have made resolution of the difficult issues much more difficult?

Members interjecting:

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): The honourable member asked me a question. I think I ought to be able to answer it in my own way. The Deputy Treasurer made some remarks in relation to how he saw the circumstances in relation to a very difficult situation. He made some statements early in the opening up of the discussions debate within the government and he has since said that, and he makes no apology for it. He has said that it is, in part, the government's fault in relation to how we engage APY. He is not totally blaming APY. He is now saying that the government services sector has failed to deliver within the time frames that are required for change.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: Within the framework of that question, that is probably a consideration that he has made. One of the reasons we have found it difficult to get those services in place in the time frames that are required in an emergency situation is that they are coming off such a low base, and honourable members on the other side of the council know that.

The Hon. R.I. Lucas: Has it made the circumstances more difficult, or not?

The Hon. T.G. ROBERTS: Not now. We are now back to a circumstance where there is general agreement on a way to proceed.

Members interjecting:

The PRESIDENT: Order! The minister has the floor.

The Hon. T.G. ROBERTS: In the early stages the statements made in *The Advertiser* on that day made it difficult for AP to understand what the government was saying. Now there have been broader discussions about the intent of the government's position in relation to how we deal with it. Land management is not the question here in relation to the difficulties that the APY face—it is Human Services, and the focus is now on that.

The Hon. R.I. LUCAS: I have a supplementary question arising out of the minister's answer. Does the minister agree that the press release made by Mr Foley on 15 March that it is the opinion of cabinet that this crisis has simply gone beyond the capacity and control of the APY council was therefore an opinion of the cabinet rather than of the Deputy Premier?

The Hon. T.G. ROBERTS: I cannot comment on matters raised before cabinet, but I can say that the issues that the APY faced were outside their control.

The Hon. R.I. LUCAS: I have a further supplementary question. Why can the Deputy Premier comment that it is the opinion of cabinet that this crisis has simply gone beyond the capacity and control of the APY council if the minister is saying he is not allowed to comment in relation to the final cabinet position?

The Hon. T.G. ROBERTS: I am not making any further comment in relation to cabinet's decision, other than to say that it agrees that the situation we faced and found in relation to the management of human services is beyond the APY's control.

BUSINESS, REGIONAL SOUTH AUSTRALIA

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development a question about business confidence in regional South Australia.

Leave granted.

The Hon. CAROLINE SCHAEFER: It is well known that in excess of 70 per cent of South Australia's export income is generated in regional South Australia. This government has announced on numerous occasions an intention to triple exports by 2015. On Thursday last, the Premier announced with great glee the business confidence survey of Bank SA. However, he made no mention of the fact that in that same survey rural consumer confidence had fallen from 60 per cent to 43 per cent since the previous survey. Can the minister say whether a fall of 17 per cent in business confidence in rural and regional South Australia concerns him; and, if so, what plans does his government have to reverse that trend?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): Obviously one would prefer business confidence to be always as high as possible and to be rising rather than falling, but there are some external factors, not the least of which is the rising Australian dollar. It is external factors such as that—and interest rates might be another—that are not the responsibility of the state government but which obviously will impact on business confidence within parts of the state from time to time. It is quite obvious that, if you have an Australian dollar that has appreciated against the US dollar by up to 50 or 60 per cent

in the past couple of years, that will have an impact on all our export industries. You would have to be very ignorant in economic terms not to understand that that will have an impact but, nevertheless, we believe there are still reasons for significant optimism within our regional areas.

I was very pleased to hear the statement made by the Premier today in relation to infrastructure announcements. I did table it in this council earlier, but the honourable member may not be aware of it. The Premier has announced a number of significant infrastructure programs. One of those at the heart of the program is a $55 million plan to further deepen the Outer Harbor channel from 12.5 metres to 14.2 metres to allow the larger ships now being used to cross the world to enter our port and dock at the new grain wharf. This is complementary to what this government has been doing in relation to the Outer Harbor grain terminal, which will be of significant benefit to our rural economies. The business case is being developed and the government will work through arrangements on public and private funding, and environmental impact assessment is also under way.

Tenders will be called next week for the $136 million stages 2 and 3 of the Port River Expressway, which will include the construction of a new road bridge and a new rail bridge over the Port River. These will be significant infrastructure projects of direct benefit to the people of this state. I can assure the honourable member that they will be of much more benefit to people in rural areas than they will be to the people living on Le Fevre Peninsula who will have additional traffic going past them, but nonetheless it is important that we have infrastructure. The honourable member might also be aware of the announcement at the weekend that this government is spending $2 million in relation to kick-starting an upgrade of Kangaroo Island's electricity supply. That is not a seat in this state that the Labor Party has held or ever will but, because this government is a government for all South Australians and because we believe in it, this government is putting up—

Members interjecting:

The Hon. P. HOLLOWAY: We did not sell the Electricity Trust of South Australia. We did not leave the people of Kangaroo Island in the lurch over electricity, and we will not leave them in the lurch now, unlike the previous government. In addition, the government is also providing additional money, another $1.5 million, for an all weather ferry terminal at Cape Jervis.

So, just with today's infrastructure announcements alone, this government is showing its faith in the regional economies of this state. We are putting significant money in to assist the people in the rural areas of our state to grow. Of course, we would prefer rising confidence, but there are factors beyond the control of any state government, such as the price of the dollar and other external factors that relate to the terms of trade. However, in spite of that, we believe that the actions taken by this government will be in the best long-term interests of the rural areas of this state.

COMMUNITY BUILDERS REGIONAL DEVELOPMENT PROGRAM

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development a question about the regional leadership development program.

Leave granted.

The Hon. R.K. SNEATH: Community builders is a six-month learning program that identifies and encourages regional residents to become involved in building their local community and economy. My question is: can the minister advise the benefits of the community builders program to regional areas and when the next round of the program will begin?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I thank the honourable member for his question. Of course, the Hon. Bob Sneath has an ongoing and sustained interest in the rural areas of the state, as indeed you do, Mr President, because, of course, you both reside in regional areas of this state, along with some of my other colleagues. I take this opportunity to remind those interested organisations that expressions of interest for the Community Builders Regional Development Program close at the end of this month.

Community builders is a grassroots, state government-funded leadership development program for South Australians living in regional areas. Advertisements calling for expressions of interest for 2004-05 from potential host organisations were placed in the regional press earlier this month, with a closing date of 31 March, and the first organisation should be ready to begin on 1 July. The host organisations are funded to employ a part-time local facilitator for six months to provide a kick start of knowledge, skills and confidence for program participants.

Community builders is a six-month learning program that identifies and encourages regional residents to become involved in building their local community and economy. The program is formed around a cluster of between six and 10 communities, each represented by a community team of up to five people recruited by a local facilitator. Community builders aims to encourage and support people in regional areas to develop strong leadership skills to benefit rural communities in the future: the future of rural and regional South Australia rests with the dedication and enthusiasm of the next generation of leaders.

The program is funded by the state government, through the Office of Regional Affairs, and its objectives are to foster community and economic leadership; provide local residents with the necessary skills, information, motivation and confidence to become more involved in their community and economy; develop people, communities and businesses that succeed in the global economy; identify and develop new local and regional economic development initiatives; stimulate collaboration between communities; and create a peer support network and friendships across the region.

Applications will be examined after the closing date and four host organisations will then be selected as soon as possible after that time. I encourage local communities to participate actively in this program. This is just another way in which the government will be contributing to building confidence in the regional areas of this state.

REGIONAL HOUSING

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Housing, a question about the shortage of housing in regional areas.

Leave granted.

The Hon. KATE REYNOLDS: Continuing the regional theme, one of the issues that was raised repeatedly with me

when I visited the South-East region recently was the shortage of housing in the area, especially in the Naracoorte-Lucindale area. The shortage of workers' accommodation in regional and rural areas is, of course, an ongoing issue, and I understand that various reports, recommendations and interim plans have bounced back and forth between the government and agencies for at least three years. The issue flared again several weeks ago when *The Border Watch* newspaper reported that there was plenty of work in the Naracoorte-Lucindale council area but nowhere to live for those willing to move to the towns. The newspaper stated:

> The desperate shortage of housing continues to plague the district, which has led the council to have another crack at gaining help from the state government, and the council resolved at the time to write to state cabinet seeking their help.

I have also spoken with employment agencies in the South-East which are averaging five inquiries a week from people finding work in the area who simply cannot access housing, which leaves employers with vacancies for tradespeople and labourers. As the Social Inclusion Unit reported last year, a large percentage of South Australia's homeless live in regional and rural areas. The problem has also been raised by Shelter SA, which has highlighted that there is an over-supply of public housing in Whyalla and Millicent but there are acute shortages in the Fleurieu Peninsula, Mount Barker, the Barossa Valley, the Murraylands and other parts of the South-East. The Department of Human Services, South Australian Housing Trust triennial review, released in October 2001, showed that there were nearly 3 000 people on the trust's waiting list at that time, that the majority of these were single people and that there were 750 single parents and their children also waiting for housing in regional areas. My questions are:

1. What steps have been taken to assist rural and regional communities to meet their regional housing objectives?

2. Have the previous studies, which made recommendations to address these issues been acted upon, and if not, why not?

3. Will the minister give an assurance that the shortage of regional housing will be addressed as a matter of urgency?

4. When will the State Housing Plan, which was due to be released in September last year, be released?

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

The Hon. J.S.L. DAWKINS: I have a supplementary question. Will the minister consider reactivating the work of the former regional development council working group aimed at encouraging the private sector to build housing in regional areas, particularly the Upper South-East?

The Hon. T.G. ROBERTS: That is a very good question, and in part that was being done during a previous report. I will take that question on notice and refer it to the minister in another place and bring back a reply.

RESIDENTIAL TENANCIES ACT

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development, representing the Attorney-General, a question concerning the Residential Tenancies Act.

Leave granted.

The Hon. A.L. EVANS: Last year Shelter SA made a submission to the government to bring to its attention an issue concerning long-term permanent residents of caravan parks. There are about 180 caravan parks in South Australia and I understand that approximately 1 000 people live in caravan parks as permanent residents. I also understand that, in its submission to the Attorney-General, Shelter SA mentioned that Queensland already has laws in place to protect people living in caravan parks as permanent residents. It was reported last month in the *Standard* Messenger that many significant community housing groups are in the situation where they are turning away young people and families. In that article, the manager of the Portways Housing Association said:

> We've had applications from people living in a car or under a bridge who obviously have very high needs but by the time we get to them they've disappeared. . . sometimes they've got children in the car too.

He went on to say that, 18 months ago, they closed off their waiting list for the six properties that become available each year when it blew out to 500 people. My questions are:

1. Will the Attorney advise whether the government is intending to proceed with changes to the Residential Tenancies Act to provide greater protection to long-term caravan park residents? If so, when?

2. Will the Attorney-General advise when a review was last undertaken of the Residential Tenancies Act in relation to long-term caravan park residents and specifically in relation to their protection under the act?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I will refer the honourable member's question to the Attorney-General and bring back a reply.

ROAD SAFETY

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development, representing the Minister for Transport, a question regarding road safety funding.

Leave granted.

The Hon. J.F. STEFANI: I recently received a reply to a question that I asked the Minister for Police regarding the amount of revenue raised from all speeding fines issued from 1 July 2003 to 30 November 2003. I was informed that the total amount collected, including the victims of crime levy, was $13 809 488. I was also advised that all funds collected from expiated speeding fines were paid into the community road safety fund. My questions are:

1. Will the minister advise what specific road safety programs have been funded with the money collected from speeding fines?

2. What amount has been allocated to each program?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I will refer that question to the Minister for Transport and bring back a reply.

REGIONAL FACILITATION GROUPS

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development a question about regional facilitation groups.

Leave granted.

The Hon. J.S.L. DAWKINS: In September last year, I asked the Premier a question about the six regional facilitation groups that were established under the coordination of the then commissioner for public employment. I particularly sought an assurance that these facilitation groups, which are currently made up of regional representatives of government departments, would also include representatives of relevant local government authorities and regional development boards.

In February this year, I received a response from the Minister for Industrial Relations. Sir, I am not sure why the response came from that minister. As well as stating that local government bodies and regional development boards would be invited to attend regional facilitation groups from time to time, the Minister for Industrial Relations in the response indicated that the coordination of these groups was now handled by the Chief Executive of the Department of Administrative and Information Services. My questions are:

1. Will the minister take action to ensure that he and the Office of Regional Affairs take the lead role in the coordination of the six regional facilitation groups?

2. Will the minister also do all he can to ensure that regional development boards and local government bodies are included as permanent members of the regional facilitation groups?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I will need to take that question on notice and give it some consideration. I am not familiar with the history of any changes that might have been made to put that under the Department of Administrative and Information Services. I will need to investigate that matter, and I will provide a response to the honourable member.

REGIONAL EXPORTERS

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development a question about regional exporters.

Leave granted.

The Hon. J. GAZZOLA: All honourable members are aware of the importance of growing exports in this state and this government's commitment to regional South Australia. Given that the minister has today given the council some indication of the government's commitment to regional South Australia, can the minister further explain how the government is ensuring that the concerns of regional exporters are being heard?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I thank the honourable member for his continuing interest in regional South Australia. I believe that, certainly, the members of the government in the Legislative Council do a great job in representing the interests of their rural constituency of this state and they certainly all regularly bring those matters to my attention, Mr President—you included, of course. The government is committed to ensuring that the views of regional exporting businesses are always considered. In July 2003, the former minister for industry, trade and regional development (Hon. Rory McEwen) launched the first round of ministerial talk and trade forums. These forums are an opportunity for exporters to talk and for the Minister for Industry, Trade and Regional Development to listen.

The first forum was held in the state's South-East in July 2003. The second forum, which was hosted by the Premier, was held in Adelaide on 27 August 2003 to allow South Australians to put their views directly to the commonwealth government on the Australia-US free trade agreement. Due to the success of the first two forums, the government has launched a second round of forums. My predecessor (Hon. Rory McEwen) met with exporters in Port Lincoln on 2 March 2004, and I will be pleased to host the next two forums in Berri in the Riverland in May and in Adelaide in June 2004. I will take this excellent initiative to other regions in the state in the second half of this year.

Successful exporting requires a truly national and coordinated effort. For this reason, I will be joined at the Talking Trade forums by representatives from Austrade, the Department of Foreign Affairs and Trade, and the Export Council as well as the local regional development boards. Unlike other such events held in the past, these trade forums are not about the government speaking to business, but rather business talking to government directly. The forums are about discovering regional exporters' concerns, answering their questions and providing advice and assistance to help regional exporters win export sales. They are also about ensuring that regional South Australian exporters are not forgotten in the development of the state's export strategy and the federal government's trade policy agenda. Again, I thank the honourable member for his interest.

The Hon. D.W. RIDGWAY: I have a supplementary question. Given that the minister has said that the regional exporters need a national and coordinated approach, can he explain why the former department has been gutted and a number of the overseas offices closed?

The Hon. P. HOLLOWAY: In relation to overseas offices, they have been reviewed by this parliament. I think that the Economic and Finance Committee did a review of those offices during the period of the previous government. There have, of course, been reviews following the election. What this government is all about is getting better service in our overseas markets as a result of whatever changes we bring about, and that is a matter that is currently being considered carefully by the government and the Export Council.

The Export Council was established under this government. It is a council with some very competent, significant people with a deep interest and experience in exporting goods; it has considered what we should be doing in relation to overseas markets, and the government will be doing that accordingly. It is not about whether we necessarily have expensive offices overseas, but it is about what efforts we put in to ensure that our goods are sold overseas that is important. This government is all about the bottom line as far as getting our exports into markets are concerned. Whatever resources we have available to spend on assisting exporters, we will make sure it is spent in the best possible way to get the best possible return for exporters.

The Hon. J.S.L. DAWKINS: I have a supplementary question. Are these trade talk functions conducted in consultation with regional trade start officers of Austrade?

The Hon. P. HOLLOWAY: I think that I indicated in my answer that the trade forums are joined by representatives from Austrade, the Department of Foreign Affairs and Trade, and the Export Council as well as the local regional development boards. I have not had the pleasure of attending one yet, but I look forward to attending the next one in the Riverland in May.

The Hon. D.W. RIDGWAY: I attended the trades meeting in Mount Gambier last July. Can the minister please indicate how many new exporters from the South-East region have started exporting since July last year?

The Hon. P. HOLLOWAY: I am not sure that that information could be readily gained by any part of state government, but I will see what information we have. If it is possible to give the honourable member an answer, I will do so, but the trade statistics, if kept by anyone, are kept by the federal government.

ENERGY, RENEWABLE

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Industry, Trade and Regional Development, representing the Premier, questions about renewable energy.

Leave granted.

The Hon. SANDRA KANCK: On 26 February, the Premier wrote to me and, I assume to other MPs, stating:

> I want South Australia to lead the nation in environmental reforms and sustainable energy.

Later in the same letter, under a specific heading entitled 'Sustainable Energy', the Premier stated:

> I want South Australia to lead the nation in wind and solar power.

The Premier, in my particular letter, in his own handwriting, underlined the words 'lead the nation'. He also said:

> The government is committed to supporting and adhering to the Kyoto Protocol designed to reduce greenhouse gas emissions.

Today the media has informed us that the government is providing $2 million of state funds for the provision of additional diesel powered generation on Kangaroo Island. Kangaroo Island has considerable wind resources available which my colleague the Hon. Ian Gilfillan can attest to, because back in the 1980s he allowed ETSA to check out wind speeds and so on on his property. My questions to the Premier are:

1. Is it is still the government's intention that South Australia lead the nation in the use of sustainable energy?

2. Other than sustainably dirty, does the Premier consider that diesel power can be categorised as sustainable energy?

3. Will the government ensure that some of the $2 million is spent on renewable energy; if so, in what proportions and on what types of energy, and if not, why not?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): What I can say on behalf of the Premier is that, yes, this government does intend to lead in those areas. In fact, if one looks at the amount of wind power being installed in this state, one sees that it has been incredibly significant over the last couple of years. I was the shadow minister prior to the last election, and I remember going to the South-East and saying that I thought that region of the state could well become the wind power capital of this country because it had three significant advantages going for it: first, it is close to a major interconnect; secondly, and perhaps most importantly, it has significant wind energy available (perhaps some of the best sites in Australia); and, thirdly, and importantly, it has community support for the development of that industry. This government has been working to take advantage of those benefits to ensure that we do have that sustainable energy.

However, the situation in relation to Kangaroo Island is quite different. The problem we have had on Kangaroo Island is that we have had a significant number of power breakdowns, the unreliability of which, of course, is affecting the viability of businesses on the island. The proposal to put in diesel power is to ensure that if there is a breakdown there is some backup power immediately available. It is one thing to install wind farms down there, but if you have a breakdown at the time when the wind is not blowing you really have not solved the problem that Kangaroo Island faces.

As far as Kangaroo Island is concerned, the solution that the government has put is a very reasonable one in the circumstances. The diesel generator, as I understand it, is a backup for the power breakdowns experienced there. Kangaroo Island's power is generated on the mainland; it comes by cable. There have been some problems with the infrastructure that have caused those breakdowns. Any diesel generators that are used to generate power will be used only on those occasions when there is a breakdown and when it is important to ensure the reliability of the island's supply. I think the government's decision needs to be considered in that context. I will refer that question to the Premier and, if there is any additional information he believes needs to be provided over that which I have already given, I will give him the opportunity to do so.

The Hon. IAN GILFILLAN: I have supplementary question. Did the minister, when he was assessing the wind potential of the South-East (and apparently with such glowing results), consider the fact that Kangaroo Island enjoys an equal wind regime to, if not better than, the area he is talking about? Did he consider that the advantage to the island, not depending substantially on fossil fuel, would be that it is not only able to enjoy environmentally friendly fuel but also that it may well be able to export power back onto the mainland from an overabundance of wind power?

The PRESIDENT: You are very close to debating the question, Mr Gilfillan.

The Hon. P. HOLLOWAY: I am not sure that I should get into a debate that is really a matter for my colleague the Minister for Energy. I will repeat the points that I made: there are three things that you need for successful wind power. One is proximity to a major interconnector. I think that probably one of the problems that Kangaroo Island has is that it does not have such a link with the mainland. As I understand it, the reliability of that has been one of the problems.

ROADS, PEAK HOUR

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Transport, questions regarding peak hour traffic speeds on arterial roads.

Leave granted.

The Hon. T.G. CAMERON: Recent RAA surveys of traffic speeds on major arterial roads leading into the city have shown them to have slowed to an all-time record low. The survey showed that the morning peak hour average speed has dropped to just 20 km/h, 10 km/h below the national standard. The RAA claims the figures show that South Australia's metropolitan road system has well and truly exceeded its use-by date. RAA Traffic and Safety Engineer, Mrs Rita Excell, was quoted recently in *The Advertiser* as saying:

RAA travel time surveys conducted over 18 years have demonstrated the ongoing deterioration of travel speeds and average speeds on the major links into Adelaide including Goodwood Road, South Road, Brighton Road and Fullarton Road.

Increases in delays, and thus travel times, have a significant cost to the community in additional fuel consumption, productivity losses and—

The PRESIDENT: Order! There are audible conversations on my left. I cannot hear the speaker.

The Hon. T.G. CAMERON: —loss of quality of life of those using the roads.

The Draft Transport Plan released (by the government) mid-2003 fails to adequately address increasing congestion levels on arterial roads.

The plan refers to a proposed Road System Management Strategy but nearly a year later and there is no word of this being prepared.

The RAA considers this strategy an urgent requirement and it must contain details of the funding required to upgrade and maintain satisfactory traffic flow on our network.

Mrs Excell went so far as to describe the condition of South Road at Croydon as 'third world'. My questions are:

1. Considering the continuing deterioration in average speeds on our major arterial roads and the impact this has on productivity and quality of life, why is there still no sign of the proposed road system management strategy? When will it be released, and will it contain funding details?

2. Now that we have a new Minister for Transport, who can give the matter a fresh approach, what actions will the government be taking to:

(a) reduce congestion levels on our state's main arterial roads;

(b) increase traffic efficiency; and

(c) increase traffic speeds to the national average?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I thank the honourable member for his question. I remind him again that today's announcement on infrastructure by the Premier included mention of work on a number of projects which will significantly assist in some of these areas. One of them is the $43 million upgrade to the South Road north-south corridor to eliminate the bottleneck between Port Road and Torrens Road, with construction due to begin in the second half of next year.

There is also, of course, the work on the Port River Expressway that will reduce the heavy traffic going through the port. There was an announcement about the $30 million plan to rebuild the Bakewell Bridge. There was also an announcement that the state government is working with the commonwealth to build a 22 kilometre freeway between the Sturt Highway at Gawler and the Port River Expressway which will include the widening of Port Wakefield Road, again to divert traffic through the area. So, a number of works were announced by the government just today which will help take pressure off our road network, but I will refer the specifics of the honourable member's question to the Minister for Transport for her response.

GREEN PHONE

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Leader of the Government in this place, representing the Attorney-General, a question about Green Phone Inc.

Leave granted.

The Hon. A.J. REDFORD: Members may recall that I, together with the Minister for Aboriginal Affairs (albeit as shadow minister then), raised a number of questions about Green Phone Inc. Indeed, I began asking questions about Green Phone Inc. back in September 2000, approximately a month after it commenced trading. Green Phone Inc. was set up to reduce telecommunication costs and improve services across the South-East and Western Victoria. It was started in August 2000 and was effectively owned or controlled by the South-East Local Government Association and/or the South-East Economic Development Board, with the former being its sole unit holder. It was supported by seven South-East councils, with grants of $2.3 million from the federal government, $100 000 from the Victorian government and $110 000 from the South Australian government—an amount of more than $2.5 million of taxpayers' money.

The Hon. T.G. Roberts: The Victorians are not very happy.

The Hon. A.J. REDFORD: I take that on board. I am not doing this for them, though. Unfortunately, despite this taxpayer support, Green Phone went into voluntary administration on 25 October 2001, just over 12 months after its commencement, and into liquidation on April Fool's Day in 2002.

On November 2002, more than 16 months ago, a parliamentary committee, the Economic and Finance Committee, noted that the liquidator was preparing a report and that 'the liquidator is still waiting on legal advice 12 months after requesting it'. In a letter dated 4 March 2004 to the member for Barker, Mr Patrick Secker MP, the Minister for Communications, Information Technology and the Arts (Hon. Daryl Williams AM QC MP) said:

Green Phone was an incorporated association under the Associations Incorporation Act 1985 (SA). Under this state legislation the liquidator is required to prepare a full report on the activities of Green Phone to the South Australian Office of Consumer and Business Affairs. Unfortunately, the South Australian legislation does not compel a liquidator to finalise its report within a specified period. The Australian government, like other creditors and the South Australian Office of Consumer and Business Affairs, is still waiting the liquidator's report.

Separately, the Department of Communications, Information Technology and the Arts, in close cooperation with the SA Office of Consumer and Business Affairs, employed auditors to conduct a forensic audit in respect of the Australian government's interest in the Green Phone organisation. The findings from the auditor were assessed by the department and the Australian Government Solicitor. As a result, the matter was referred to the Australian Federal Police. The department is waiting the AFP's report on its investigation.

In the light of this, my questions are:

1. Is the Attorney-General aware that there is now a police investigation into Green Phone Incorporated and matters surrounding Green Phone Incorporated?

2. Does the Attorney-General agree that the lengthy delay in providing a liquidator's report is unusual; and will the Attorney-General look into the time delays?

3. Will the Attorney-General make inquiries of the liquidator as to why it has taken more than two years to provide a report on an entity that only traded for a period of one year?

4. Will the Attorney-General make inquires as to when the liquidator will release the report?

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I will refer that question to the Attorney-General for his response. I am not quite sure, but I would have thought that the liquidator and the Bankruptcy Act are more the responsibility of the federal minister rather than the Attorney-General, but we will see that—

The Hon. A.J. Redford: It is your responsibility; don't duck this.

The Hon. P. HOLLOWAY: I will acknowledge the honourable member's keen interest in this matter, and I am sure that he understands more about the background to it than I, but I will pass the questions on to the Attorney-General and bring back a response.

The Hon. J.F. STEFANI: I have a supplementary question. Will the minister seek assurances from the Attorney-General that the Associations Incorporation Act will be amended to ensure that appointed administrators and liquidators provide reports in a timely manner?

The Hon. P. HOLLOWAY: I will also refer that question to the Attorney and bring back a response.

AUTISM

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Disability, a question about autism.

Leave granted.

The Hon. KATE REYNOLDS: Late last year the federal government stated in the senate that the provision of health and disability services for people with autism, Asperger's syndrome and pervasive developmental disorders lies with the state and territory jurisdictions. The federal government also drew attention to the fact that state and territory governments did not keep registers on autism, Asperger's syndrome or pervasive developmental disorders, although I suspect some members here would suggest that we have a very good record on some of these disorders. Data from the Australian Bureau of Statistics showed that autism affected approximately 11 400 children aged zero to 14 years in 1998 and that there are around 3.9 million children in this age range, highlighting that 29 children per 10 000 have autism.

An editorial in relation to autism spectrum disorder in the *Medical Journal of Australia* last year stated:

> The early intervention that has been subjected to the most rigorous assessment is behavioural intervention. There is now definite evidence that behavioural intervention improves cognitive communication, adaptive and social skills in young children with autism. Most young children with autism in Australia do not receive intensive behavioural intervention programs—partly because such programs are not recommended by many health professionals and partly because of their prohibitive cost for families.

My questions are:

1. Does the South Australian government plan to establish registers for (a) autism, (b) Asperger's syndrome, and (c) pervasive development disorders, as have the Western Australian and ACT governments? If so, when and, if not, why not?

2. What disability support services are available in South Australia for people with autism spectrum disorder?

3. Does the minister agree with the editorial I quoted earlier?

4. What is being done to provide behavioural intervention for young children with autism spectrum disorder in South Australia?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will take those important questions on notice and bring back a reply.

ADELAIDE CASINO

The Hon. NICK XENOPHON: My questions to the Minister for Aboriginal Affairs and Reconciliation, representing the Minister for Gambling, are:

1. Does the minister consider that SkyCity Adelaide Casino's promotion offering a $10 000 Westfield shopping voucher to be in breach of the Adelaide casino's advertising code of practice, in particular clause 4(f), which, in part, purports to prevent promotions relating to paying for household staples?

2. If the minister does not consider that it is in breach of the current code or the proposed code of conduct (which will be in operation next month), does he consider such promotion to be irresponsible in the context of tackling problem gambling?

The Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation): I will refer those important questions to the minister in another place and bring back a reply. I also agree with the honourable member in relation to his position that the slogan 'Win the lottery before someone else does' being used by the Lotteries Commission is one that we should not be encouraging.

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

In committee.

(Continued from 24 February. Page 1081.)

Clause 6.

The Hon. P. HOLLOWAY: This bill has been before this chamber for a significant amount of time, most of the debate being over the issue of the Under Treasurer's pre-election budget update report and what access should be provided to the Treasurer. On behalf of the government, I have made it clear on previous occasions that, whereas we were certainly prepared to advance the legislation ahead of that in other states to a significant extent, with the amendments we have moved, we were not prepared to allow a situation where the Under Treasurer would be involved in a political circus just prior to an election.

As the bill last stood, a number of the Independents indicated that they would support the opposition amendments in an interim capacity so that the debate on this issue could be advanced. As far as the government is concerned, after considering the issues, we will be happy to have the vote on that. We will be opposing the changes from the opposition because we believe it would lead to a completely unacceptable situation but, assuming that they are carried, we will allow the bill to go down to another place where further consideration can be given to the matter to see whether we can come up with an acceptable compromise to parliament that would allow this important initiative of the Under Treasurer's pre-election budget update to proceed, but without turning it into a political circus.

The Hon. R.I. LUCAS: It is many weeks ago, but that is a reasonable summary of the circumstances when last we debated the bill. A majority of members indicated that they were prepared to support the proposition. On behalf of the

Liberal Party, I advise that we look forward to the opportunity to further discuss the matter properly at conference or in debate in another chamber. Certainly from the viewpoint of the opposition, we have indicated that we are not opposed to the passage of the legislation. We have seen some improvement to the bill by way of amendments in committee and we are prepared to listen to alternative means of ensuring that, in some way, with respect to important documents that are released at a critical time during an election period, at the very least the alternative government is in a position to be able to clarify critical issues in those documents.

I will not repeat all the arguments from the committee stage some weeks ago. We look forward to the opportunity to further consider those issues within the context that we understand most of the Independents have adopted as well, and that is either support for the legislation or no opposition to its passage through parliament if it can be improved in some way.

The Hon. P. HOLLOWAY: I would like to clarify the statement I made earlier. In relation to the amendments that have been moved by the Leader of the Opposition in relation to the assumptions concerning public sector wage settlements, the government was prepared to reach some compromise. However, in relation to the proposal by the opposition that the Under Treasurer should have two-hour meetings with the Treasurer and a person nominated by the Leader of the Opposition, the government is not prepared to compromise.

The Hon. IAN GILFILLAN: I do not profess to be totally up to speed with where we left this matter because it seems to have been on the shelf for a while. My recollection is that we opposed the last paragraph of the block of amendments that was moved by the Hon. Rob Lucas, and that concerned making the Under Treasurer available for two hours 'to the person who is or immediately before the issue of the writs was a member of parliament nominated by the Leader of the Opposition'. From listening to the conversation, it appears that there is an expectation that the numbers in the council will support the amendments of the Hon. Mr Lucas. I am not sure whether the government intends to divide, but I want to make it plain, whether there is division or not, that the Democrats oppose that part of the Hon. Mr Lucas's amendments.

The committee divided on the amendment:

AYES (12)

Cameron, T. G.	Dawkins, J. S. L.
Evans, A. L.	Lawson, R. D.
Lensink, J. M. A.	Lucas, R. I. (teller)
Redford, A. J.	Ridgway, D. W.
Schaefer, C. V.	Stefani, J. F.
Stephens, T. J.	Xenophon, N.

NOES (9)

Gago, G. E.	Gazzola, J.
Gilfillan, I.	Holloway, P. (teller)
Kanck, S. M.	Reynolds, K.
Roberts, T. G.	Sneath, R. K.
Zollo, C.	

Majority of 3 for the ayes.

Amendment thus carried; clause as amended passed.

Clause 7 and title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

MOTOR VEHICLES (SUSPENSION OF LICENCES OF MEDICALLY UNFIT DRIVERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 March. Page 1194.)

The Hon. J.M.A. LENSINK: I wish to place a couple of comments on the record in relation to this bill, which, as I understand it from the minister's second reading explanation, is to restore the power of the Registrar of Motor Vehicles to immediately suspend the driver's licence of a person on receiving information from a legally qualified medical practitioner, registered optometrist or registered physiotherapist or from another source where the person is suffering from a physical or mental illness, disability or deficiency such that they are likely to endanger the public if they continue to drive.

The party's position was outlined by the Hon. Robert Lawson on 23 March, when he placed on the record some of the reservations of our members in relation to this bill, as did the opposition transport spokesperson and member for Light, Malcolm Buckby, on 19 February. I will not repeat those concerns, but they broadly relate to the manner in which the licence can be revoked and which way the ledger should fall, the importance of elderly people maintaining their independence through having the right to drive and the pressure that professionals will be placed under from certain individuals regarding the decision that they make.

The concerns that I would like to place on the record relate to something a little different, and that is the potential omission of the professional group the occupational therapists. I would like to read from their web site, as follows:

> What is occupational therapy? What do occupational therapists do? Occupational therapists are health professionals who are trained to assist people to overcome limitations caused by injury or illness, psychological or emotional difficulties, developmental delay or the effects of ageing. Their goal is to assist each individual to move from dependence to independence, maximising personal productivity, wellbeing and quality of life.

In relation to adults and the elderly there appears the following statement:

> When an adult or elderly person is affected by an illness, accident or workplace injury, an occupational therapist can help on the road to recovery. They may assist with return to home and work life through the development of new skills for normal daily living such as household tasks and personal care, return to work or leisure programs. They may also make changes to the work or home environment to make life easier and safer.

They are particularly trained in the disciplines of human biology, social and behavioural science, occupational science, occupational therapy, theory and practice and communication and management.

I have contacted a person from a service that has ceased to exist (the driver assessment rehabilitation service) to gauge her opinion. I am yet to receive that opinion, but when I do I would be happy to provide it to the government. This woman's discipline is occupational therapy, and I understand that the other professionals who worked in that service were also occupational therapists. I think that this is a potential omission. In my previous life I worked within a multidisciplinary team, and occupational therapists were certainly very important in assessing people's function in terms of matching their physical and mental limitations or abilities to tasks and, therefore, I ask the government whether it would

consider an amendment at some point. However, broadly speaking, I support the bill.

The Hon. NICK XENOPHON: I indicate my support for this bill. As I understand it, an anomaly was created when South Australia switched to the national road rules in 1999, and the power to remove driver's licences from drivers who have become medically unfit was inadvertently lost, in the sense of a direct suspension of the licence. I support this bill. It is a measure that I believe will enhance road safety for those who will not take the advice of their medical practitioners, and I note the comments of the Hon. Michelle Lensink in this regard in terms of a multi-disciplinary approach.

I have in the past been approached by a constituent who is a senior citizen who has to submit himself to a regular medical test. The issue that he had (and I just want to put the government on notice in relation to this) was that there was a request of his medical practitioner for his entire medical records. Whilst my constituent did not have a problem with anything that was relevant to his driving ability, there clearly may be matters in someone's medical reports that are of no relevance whatsoever in relation to the person's fitness or otherwise to drive a motor vehicle. I think that is a privacy issue that needs to be taken into account.

I would be grateful if the government could respond in respect of that matter, because it may well be overkill to obtain someone's entire medical file when significant portions of it have absolutely no relevance to the issue of a person's fitness to drive. I look forward to the passing of this bill and to those matters—and, indeed, the matters raised by the Hon. Michelle Lensink—being answered during the committee stage.

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I thank members for their contributions and support of the bill. Without going into the detail of what was contained in the second reading explanation, the bill simply seeks to redress legislation which was passed in 1999 which inadvertently removed powers that previously existed. The Hon. Robert Lawson asked whether any cases or applications similar to that of Cummins v the Registrar of Motor Vehicles, which brought about the need for this amendment, are currently before the courts. The honourable member was concerned that no-one who has an action currently before the courts should have their rights frustrated by the passage of the bill.

I am informed as follows. Before a person who is dissatisfied with a decision of the registrar can appeal to the District Court they must seek an internal review pursuant to section 98Z of the Motor Vehicles Act 1959. The registrar has indicated that no such requests are before him. The Registrar of Motor Vehicles and the Crown Solicitor's office have indicated that they are unaware of any applications or cases currently before the courts.

The Hon. Ms Lensink asked about the involvement of occupational therapists. I am told that the department has advised the association that it is reviewing the notification section to consider extending notification, and that the government would come forward with that as a separate bill if that course of action was supported. The amendment before us, although related, is not the substance of this bill. If the honourable member has any further questions, perhaps we can deal with them during the committee stage. I thank the Australian Democrats, the Liberal opposition and the Hon. Mr Xenophon for their support of this bill.

Bill read a second time.

In committee.

Clause 1.

The Hon. NICK XENOPHON: In my second reading contribution I raised the issue of a constituent, a senior citizen, who was concerned about the provisions regarding the issue of medical fitness and the power to look at people's medical records at large, and in particular the authority of the Registrar of Motor Vehicles. His concern was one of privacy in the sense that, if there are significant portions of medical records that have nothing to do with a person's fitness to drive and may be of a sensitive nature, then his query was, 'Is that too intrusive?' I know that in a sense it is related to the issue of medical fitness and, although I do not expect the minister to respond to that now, could the minister give an undertaking that, in due course, I could have some correspondence from the Minister for Transport indicating what the position is so that I can deal with that query which I thought was quite legitimate. I am not seeking to hold up the bill; I am just asking the Minister for Transport to respond in due course in relation to the concerns raised with me by that senior citizen who approached me about the sledgehammer approach with respect to medical records.

The Hon. P. HOLLOWAY: I can give the honourable member some information. My advice is that there is no power to look at records at large. It is only material relating to the fitness to drive that is relevant. We would be looking at a doctor's report in relation to that, not a record as such. Does that clarify it?

The Hon. Nick Xenophon: Would they have the power to look at records?

The Hon. P. HOLLOWAY: My advice is that we have no power to look at records at large. All we are seeking is basically a letter from a doctor that relates to the fitness to drive. That is the limit of the interest of the department.

The Hon. R.D. LAWSON: This is a general question. I do not know whether the minister provided this information earlier. Unfortunately, I was not present. My question relates to the number of licences or permits that have been suspended in the purported exercise by the registrar of his powers which will be validated by the bill.

The Hon. P. HOLLOWAY: Unfortunately, I do not have advice as to the actual number; so, if the honourable member is happy for me to take that question on notice, I will get a written response for him. It is probably the best that we can do other than holding up the bill.

The Hon. R.D. LAWSON: I thank the minister for that intimation.

Clause passed.

Remaining clauses (2 to 5) and schedule passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE (PRESCRIBED FORMS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 March. Page 1185.)

The Hon. D.W. RIDGWAY: I intend to make a brief contribution to this bill. This is a very simple bill that does two things: it updates the definition of a dentist to that specified in the Dental Practice Act 2001; and it also allows

two consent forms to be prescribed by regulation rather than by schedule to the act as they are at present. Currently, the consent form must be signed by up to three medical agents collectively and can be witnessed by only one person, making it necessary to bring the three medical agents together physically. This can be difficult as the medical agents could be living in different states. The only amendment to the form allows each medical agent's signature to be independently witnessed.

I refer also to the contribution made by the Hon. Terry Roberts when the bill was introduced for further explanation that the bill would allow for easy alteration of the forms, whilst not altering the intent; to make it easier for individuals to appoint medical agents; and to give directions about medical treatment. It will also enable the forms to be more comprehensively and efficiently packaged by being attached to explanatory notes, thus maximising their consumer useability. I indicate the Liberal Party's support for the bill.

The Hon. R.K. SNEATH secured the adjournment of the debate.

AUSTRALIAN CRIME COMMISSION (SOUTH AUSTRALIA) BILL

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

The Hon. P. HOLLOWAY (Minister for Industry, Trade and Regional Development): I move:

That this bill be now read a second time.

The National Crime Authority was created by the Commonwealth National Crime Authority Act 1984 and came into existence on 1 July 1984. It was created as a result of inquiries into organised crime in Australia in the 1980s and was a national recognition of the need to create a specialist national law enforcement agency to combat organised crime. For obvious constitutional reasons, it was necessary for that body to have underpinning and coordinated state legislation. In South Australia, that was the National Crime Authority (State Provisions) Act 1984.

At the Summit on Terrorism and Multi-Jurisdictional Crime on 5 April 2002, Australian government leaders agreed to replace the National Crime Authority (NCA) with an Australian Crime Commission (ACC). Commonwealth legislation to establish the ACC, the Australian Crime Commission Act 2002, the commonwealth act, commenced operation on 1 January 2003. The ACC builds on the strengths of the NCA while removing barriers to its effectiveness. The ACC is a crucial element in the investigation and prosecution of complicated and organised criminal activity of a sophisticated kind. It is important to note that the ACC has a new criminal intelligence role that includes criminal intelligence collection and analysis and dissemination on a national basis. This function accords with the growing policing emphasis at all levels for intelligence led investigations of serious and organised criminal activity.

Complimentary state and territory legislation is necessary to provide for the operation of the ACC under state and territory law so as to ensure that the ACC can operate effectively to combat organised crime across jurisdictional boundaries. The state bill will enable the ACC to conduct its operations into activity that breaches state law, whether or not those offences have a federal aspect. At its meeting on 5 November 2002, the Intergovernmental Committee on the NCA (the IGC-NCA, now the IGC-ACC) agreed to arrangements for the preparation of a model states and territories bill to complement the commonwealth act. Specifically, the IGC-NCA endorsed the preparation of a model bill by the Parliamentary Counsel's Committee (PCC). A model bill was finalised by the PCC in consultation with officers in each state and territory and the commonwealth.

Broadly, the model bill provides for the functions of the ACC under South Australian law, including the functions of conducting investigations and intelligence operations into relevant criminal activity. It establishes and provides for the new functions of the board and CEO under South Australian law. The functions complement the provisions of the commonwealth act that establish the ACC's governance. It provides for the authorisation of special intelligence operations and special investigations by the board (special ACC operations/investigations).

The board's authorisation of special ACC operations/investigations will be subject to a number of safeguards in the form of special requirements for the composition of the board, special voting requirements and a power for the IGC-ACC to revoke the authorisation. It provides for the investigatory power of the ACC under South Australian law, including search powers under warrant and coercive examination powers. These powers will be available to the ACC only in special ACC operations/investigations. The ACC's examination powers under South Australian law will be exercised by examiners, who will be independent statutory officers appointed under the commonwealth act.

It creates offences for failure to comply with the provisions of the act smoothing the effective performance of the ACC's functions under South Australian law. These offences will include failing to attend an examination or failing to answer questions, and failing to produce documents or things when required to do so by a summons. The offences in the bill will reflect the offences contained in the commonwealth act and existing South Australian NCA legislation, and repeals the existing South Australian NCA legislation and contains necessary transitional provisions to smooth the transition from the NCA to the ACC under state law and consequential amendments to other acts that are necessary because of the NCA's replacement by the ACC.

In general terms, the bill is part of complementary legislation enacted in other states and territories and at the commonwealth level to ensure that Australia has an enhanced and effective national framework to allow the new ACC to fight serious organised crime. I commend the bill to members. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines the words and expressions for the purposes of the Bill. Clause 3(1) includes the following key words and expressions:

ACC operation/investigation means an ACC State intelligence operation or an ACC State investigation. This covers both the ACC's function in relation to intelligence operations and its function in relation to investigating relevant criminal activity. Relevant criminal activity is defined in the Commonwealth Act to mean any circumstances implying, or any allegations, that a serious and organised crime may have been, may be being, or may in future be, committed against a Commonwealth, State or Territory law. This Commonwealth definition is applied to the Bill under the operation of clause 3(2).

ACC State intelligence operation means an intelligence operation that the ACC is undertaking under clause 5(b). This covers the ACC's function in undertaking intelligence operations in relation to relevant criminal activity relating to State offences.
ACC State investigation means an investigation that the ACC is conducting under clause 5(a). This covers the ACC's function in conducting investigations in relation to relevant criminal activity relating to State offences.
intelligence operation means the collection, correlation, analysis or dissemination of criminal information and intelligence relating to a relevant criminal activity. Intelligence operation has a broad meaning to ensure that the ACC is able to undertake fully its criminal intelligence role under State law.
serious and organised crime is defined to cover a wide range of serious offences that are the same as those contained in the equivalent definition in the Commonwealth Act, except for certain offences under the Commonwealth *Proceeds of Crime Act 2002* that are not relevant in a State context. The offences listed in the definition of "serious and organised crime" in the Bill mirror the offences that the former NCA could investigate, with the addition of offences that involve firearms and cybercrime. Cybercrime has been added to enable the ACC to respond to this emerging issue. Firearms offences have been added to the list to ensure that the ACC has a clear power to investigate the illegal trafficking of firearms.
The definition of serious and organised crime covers a listed offence that is punishable by 3 years' imprisonment or more and that is not committed in the course of a genuine industrial dispute of a specified kind. It does not include an offence in relation to which the time for commencement of prosecution has expired.
The wide range of serious offences included within the definition of "serious and organised crime" will ensure that the ACC has a broad basis on which to undertake its investigatory and criminal intelligence functions.
The definition of serious and organised crime covers a listed serious offence where there are also specified organised crime elements involved in the offence in question. In particular, the offence must also—

- involve 2 or more offenders and substantial planning and organisation; and
- involve, or be an offence of a kind that ordinarily involves, the use of sophisticated methods and techniques; and
- be an offence that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind.

special ACC operation/investigation means an ACC State intelligence operation or an ACC State investigation that the Board has determined to be a special operation or investigation. This is an important definition as the ACC can only access its special powers, such as search warrants and examinations, as part of a special ACC operation/investigation. It cannot access these powers for other ACC investigations or operations authorised by the Board.
Clause 3(2) applies definitions of terms contained in the Commonwealth Act to the Bill unless the Bill indicates a contrary intention.
Clause 3(3) extends the meaning of the term "serious and organised crime" under the Bill to include incidental offences that are connected with a course of activity involving the commission of a serious and organised crime.
Clause 3(4) makes it clear that references in the Act to a function include a reference to a power or duty, other than in Part 2 (which deals with the functions and governance of the ACC).

4—Act to bind Crown

Clause 4 provides that the Bill binds the Crown in right of the State and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

Part 2—The Australian Crime Commission, the Board and the Inter-Governmental Committee

Division 1—The Australian Crime Commission

5—Functions of ACC

Clause 5 sets out the functions of the ACC. This clause complements section 7A of the Commonwealth Act, which provides for the functions of the ACC under that Act.
Clause 5(a) provides for the investigatory function of the ACC, which is similar to the investigatory function previously undertaken by the NCA. This provision will enable the ACC to investigate relevant criminal activity where the Board has consented to the ACC doing so under the Commonwealth Act. The ACC will only be empowered to investigate relevant criminal activity to the extent that it is, or includes, a State offence or offences.
Clause 5(b) provides for the ACC to undertake intelligence operations. This function reflects the new role that the ACC has in relation to criminal intelligence, in addition to the investigatory function previously undertaken by the NCA. This provision will enable the ACC to undertake intelligence operations where the Board has consented to the ACC doing so under the Commonwealth Act. As with its investigatory function, the ACC will only be empowered to undertake intelligence operations in connection with State offences.
Clause 5(c) provides that the ACC must provide reports to the Board on the outcomes of its investigations and intelligence operations.
Clause 5(d) provides that the ACC has such other functions as are conferred on it by other provisions of the Bill or any other Act. For example, functions could be conferred on the ACC by other State laws creating investigative powers, subject to the necessary legislative consent under the Commonwealth Act.

6—CEO to manage ACC operations/investigations

Clause 6 provides that the CEO's functions are to manage, coordinate and control ACC operations and investigations, determine the head of an ACC operation or investigation and arrange for an examiner who is to be able to exercise his or her powers under the Bill in relation to a special ACC operation/investigation. This provision complements a similar provision contained in section 46A of the Commonwealth Act. It should be noted that under section 46A of the Commonwealth Act, the CEO is also responsible for the day to day administration of the ACC.

7—Counsel assisting ACC

Clause 7 enables the CEO to appoint a legal practitioner to assist the ACC. This complements an equivalent provision in section 50 of the Commonwealth Act.

Division 2—The Board of the ACC

8—Functions of Board

Clause 8 sets out the functions of the Board. This clause complements section 7A of the Commonwealth Act, which provides for the functions of the ACC under that Act. This clause should be read together with section 55A(3) of the Commonwealth Act, which requires Board consent under that Act for the ACC to undertake an ACC State intelligence operation or ACC State investigation.
Clause 8(1)(a) provides that the Board has the function of determining whether an ACC operation or investigation is a special operation or investigation, which then allows for the exercise of coercive powers under the Bill.
Clause 8(1)(b) provides that it is a Board function to determine the classes of persons to participate in an ACC State intelligence operation/investigation. For example, the Board may determine that members of a Police Force of a State that are seconded to the ACC are to participate in a particular ACC State intelligence operation/investigation.
Clause 8(1)(c) provides that it is a function of the Board to establish task forces. A task force is one means by which the ACC could conduct an ACC State intelligence operation/investigation.
Clause 8(1)(d) provides that the Board has such other functions as are conferred on it by other provisions of the Bill.
Clauses 8(2) and 8(3) set out threshold tests for the authorisation by the Board of the use of special powers under the Bill.
Before determining that an operation is a special operation, the Board must first consider whether methods of collecting the criminal information and intelligence that do not involve the use of those powers have been effective.
Before determining that an investigation is a special investigation, the Board must first consider whether ordinary police methods of investigation into the matters are likely to be effective.
These provisions provide an important safeguard on the authorisation by the Board of the use of special powers under the Bill.
Clause 8(4) sets out the details that must be contained in a written determination of the Board authorising the use of special powers. The determination must—

- describe the general nature of the circumstances or allegations constituting the relevant criminal activity; and

- state that the serious and organised crime is, or the serious and organised crimes are or include, an offence or offences against a State law; and
- set out the purpose of the operation or investigation.

These details set the parameters for the operation or investigation and represent another safeguard on the exercise of special powers under the Bill.

Clause 8(5) requires the Chair of the Board to provide to the IGC a copy of a determination authorising the use of special powers within 3 days of the determination being made. This is necessary to facilitate the IGC's oversight function under clause 16 in relation to the authorisation of special powers.

Clause 8(7) makes it clear that the provisions in clauses 9 to 15 relating to Board meetings have effect in relation to the Board's functions under the Bill. The provisions in clause 9 to 15 complement equivalent provisions in sections 7D to 7K of the Commonwealth Act.

9—Board meetings

Clause 9 provides for the manner in which Board meetings are to be held. The Chair must ensure that Board meetings are convened in accordance with the complementary provisions governing Board meetings in section 7D of the Commonwealth Act.

10—Presiding at Board meetings

Clause 10 provides that the Chair of the Board or another eligible Commonwealth Board member nominated by the Chair must preside at a Board meeting. An eligible Commonwealth Board member is defined in the Commonwealth Act to mean, in effect, another Commonwealth member of the Board, other than the CEO.

11—Quorum at Board meetings

Clause 11 provides that a quorum of the Board is 7 members, excluding the CEO.

12—Voting at Board meetings

Clause 12 sets out the voting procedures that apply at Board meetings. The CEO is a non-voting member of the Board.

Generally a simple majority vote will determine decisions of the Board. However, special voting requirements apply to Board determinations authorising the use of special powers, as an additional safeguard on the exercise of these powers. The Board can only determine that an ACC operation or investigation is a special operation or investigation if at least 9 Board members agree, including at least 2 eligible Commonwealth Board members.

13—Conduct of Board meetings

Clause 13 provides that the Board may regulate proceedings at its meetings as it considers appropriate and requires minutes of Board meetings to be kept.

14—Resolutions outside of Board meetings

Clause 14 allows decisions of the Board to be taken by resolution out of session to enable the Board to make decisions without a formal meeting being held. The special voting requirements that apply to a determination of the Board authorising the use of special powers will continue to apply to any such determination that is made out of session.

15—Board committees

Clause 15 enables the Board to establish committees to assist in carrying out its functions. This provision recognises the need for the Board to operate by committees where appropriate. However, there are a number of limitations imposed on the establishment and functions of committees to ensure sufficient accountability in relation to the exercise of Board functions by committees. These limitations include the following—

- a committee can only be established with the agreement of all members of the Board (other than the CEO, who is a non-voting member); and
- a committee must comply with any directions given to it by the Board; and
- the Board can dissolve a committee at any time.

Importantly, the Board's function of determining whether an ACC operation or investigation is a special operation or investigation cannot be exercised by a committee. This function can only be exercised by the full Board.

A committee may regulate proceedings at its meetings as it considers appropriate and must ensure that minutes of its meetings are kept.

Division 3—The Inter-Governmental Committee

16—Functions of Committee

Clause 16 provides for the functions of the IGC in relation to the revocation of special determinations made by the Board, and complementary powers for the IGC to obtain further information about a special determination from the Chair of the Board. These provisions complement equivalent provisions in section 9 of the Commonwealth Act. Section 9 of the Commonwealth Act also provides more generally for the oversight and monitoring role of the IGC in relation to the ACC and the Board.

Clauses 16(1) to 16(5) set out procedures for the IGC to obtain further information from the Chair of the Board in relation to a Board determination authorising the use of special powers. The Chair of the Board must not provide information requested by the IGC if the public disclosure of the information could prejudice a person's safety or reputation or the operations of law enforcement agencies. If the Chair of the Board decides, on this ground, not to provide the information sought, the IGC can refer the request to the State Minister, who must determine whether disclosure of the information could prejudice a person's safety or reputation or the operations of law enforcement agencies. This mechanism for referral of the matter to the State Minister provides an additional check on the provision to the IGC of information that it may require in determining whether to revoke a special determination under clause 16(6).

Clause 16(6) provides for the IGC by resolution to revoke a special determination made by the Board. Such a resolution can be made with the agreement of the member of the IGC representing the Commonwealth and at least 5 other members of the IGC. The IGC's power to revoke a special determination is a further safeguard on the exercise of the special powers under the Bill.

Clause 16(7) requires the IGC to notify the Chair of the Board and the CEO if it revokes a special determination. The revocation takes effect when the CEO is so notified.

Part 3—Examinations

17—Examinations

Clause 17 provides that an examiner may conduct an examination for the purposes of a special ACC operation/investigation. This clause complements an equivalent provision in section 24A of the Commonwealth Act.

The power to conduct examinations, which includes coercive powers to produce documents and answer questions, is a powerful investigative tool that is central to the role and functions of the ACC.

Examiners are independent statutory officers appointed by the Governor-General under the Commonwealth Act. Under the Commonwealth Act, an examiner must have been enrolled as a legal practitioner for at least 5 years.

The independence of examiners is an important safeguard on the exercise of the special powers under the Bill. While clause 6(4) enables the CEO to allocate an examiner to a particular special ACC operation/investigation, this does not interfere with the statutory discretion of the examiner in exercising his or her powers.

18—Conduct of examination

Clause 18 regulates the conduct of examinations. This clause complements an equivalent provision in section 25A of the Commonwealth Act.

Clause 18(1) provides that an examiner may regulate the conduct of proceedings as he or she thinks fit.

Clause 18(2) provides for legal representation of witnesses and, in some circumstances, non-witnesses.

Clause 18(3) requires than an examination must be held in private and empowers the examiner to give directions regarding the presence of persons during an examination.

Clause 18(4) makes it clear that such a direction does not prevent the presence of the legal representative of a witness, or the legal representative of a non-witness if the examiner has consented to his or her presence.

Clause 18(5) precludes the presence of a person (other than approved ACC staff members) at an examination unless the examiner has given a direction under clause 18(3) permitting the person to be present or clause 18(4) applies.

Clause 18(6) provides for the examination and cross-examination of witnesses.

Clause 18(7) requires an examiner to inform a witness of the presence of a non-witness at an examination and allow the witness to comment on that person's presence.

Clause 18(8) makes it clear that a non-witness does not cease to be entitled to be present at an examination if the examiner fails to comply with clause 18(7) or a witness comments adversely on

the presence of a non-witness. For example, if the ACC is coordinating its activities, in accordance with clause 37(2), with the functions of an overseas authority that performs similar functions to the ACC and a representative of that authority is present at an examination, the examiner must inform a witness of that person's presence.

Clause 18(9) enables an examiner to make a non-publication direction prohibiting the publication of—

- evidence given at an examination or documents or things produced to the examiner; or
- information that might enable a witness to be identified; or
- the fact that a person has or may give evidence at an examination.

This provision would enable an examiner to make a non-publication direction if, for example, the publication of matters relating to the conduct of an examination might compromise the effectiveness of an ACC operation or investigation. An examiner must make a non-publication direction if the failure to do so might prejudice the safety or reputation of a person or the fair trial of a person who has been or may be charged with an offence.

Clauses 18(10) and 18(11) provide for the CEO to revoke a non-publication direction made by an examiner under clause 18(9). This power is consistent with the CEO's functions of managing, regulating and controlling ACC operations and investigations under clause 6(1).

Clause 18(12) sets out a procedure under which a court can require evidence given before an examiner that is subject to a non-publication direction under clause 18(9) to be made available to the court. A court can require evidence to be made available if a person has been charged with an offence and the court considers that it may be desirable in the interests of justice that evidence given before an examiner be made available to that person or his or her legal practitioner. Once the evidence has been made available to the court, clause 18(13) enables the court to make that evidence available to the charged person or his or her legal practitioner.

Clause 18(14) makes it an offence to be present at an examination contrary to clause 18(5) or to contravene a non-publication direction given by an examiner under clause 18(9). The maximum penalty is a fine of $2200 or imprisonment for one year.

Clause 18(15) requires an examiner to give the head of the special ACC operation/investigation at the conclusion of an examination a record of proceedings of the examination and any documents or things given to the examiner.

19—Power to summon witnesses and take evidence

Clause 19 provides for an examiner's powers to summon witnesses and take evidence. This clause complements an equivalent provision in section 28 of the Commonwealth Act.

Clause 19(1) enables an examiner to summon a person to appear before him or her to give evidence and to produce documents or things. The examiner must be satisfied it is reasonable to do so and must record his or her reasons for issuing the summons.

Clause 19(3) requires a summons to be accompanied by a copy of the determination of the Board that the State ACC intelligence operation or investigation is a special operation/investigation.

Clause 19(4) requires a summons to set out the general nature of the matters in relation to which the examiner intends to question the person, unless this would prejudice the effectiveness of the special ACC operation/investigation.

Clauses 19(5) and 19(6) empower an examiner to require a person appearing at an examination to produce a document or thing and take evidence on oath or affirmation.

Clause 19(8) makes it clear that the powers to summon witnesses and take evidence under clause 19 can only be exercised in relation to a special ACC operation or investigation. This means that these powers will be subject to the safeguards that apply under the Bill to the authorisation of the use of special powers.

20—Power to obtain documents

Clause 20 provides for an examiner's power to obtain documents. This clause complements an equivalent provision in section 29 of the Commonwealth Act.

Clause 20(1) enables an examiner, by written notice, to require a person to attend before the examiner or a member of staff of the ACC to produce specified documents or things relevant to a special ACC operation/investigation. The examiner must be satisfied it is reasonable to do so and must record his or her reasons for issuing the notice.

Clause 20(3) makes it clear that a notice may be issued in relation to a special ACC operation/investigation regardless of whether an examination before an examiner is being held.

Clause 20(4) provides that a person must not fail or refuse to comply with a notice to produce documents or things and clause 20(5) makes a contravention of that provision an offence. The maximum penalty is a fine of $22 000 or 5 years' imprisonment.

Clause 20(6) applies the provisions of clause 23(3) to (5) and (7) in relation to a person required to produce certain things under clause 20.

The offence provision at clause 23(6) is applied by clause 20(7) in respect of a contravention of clause 20.

21—Disclosure of summons or notice may be prohibited

Clause 21 provides for the inclusion of a non-disclosure notation in a summons or notice issued under clause 19 or 20 to prohibit the disclosure of information about the summons or notice or any official matter connected with it. This clause complements an equivalent provision in section 29A of the Commonwealth Act.

Clause 21(2) sets out the circumstances in which an examiner may, or must, include a non-disclosure notation in a summons or notice issued under clause 19 or 20. A notation—

- must be included if the examiner is satisfied that failing to do so would reasonably be expected to prejudice a person's safety or reputation, the fair trial of a person or the effectiveness of an ACC operation or investigation; and
- may be included if the examiner is satisfied that failing to do so might prejudice a person's safety or reputation, the fair trial of a person or the effectiveness of an ACC operation or investigation. An examiner may also include a notation if he or she is satisfied that the failure to do so might otherwise be contrary to the public interest.

Clause 21(3) requires that a written statement setting out a person's rights and obligations under clause 22, which creates offences for the contravention of a notation, must accompany the notation.

Clause 21(4) provides for the automatic cancellation of a notation in certain circumstances where it is no longer necessary to prevent disclosure of information about a summons or notice.

Clause 21(5) requires the CEO to serve written notice of the cancellation of a notation to each person who received the summons or notice containing the notation.

22—Offences of disclosure

Clause 22 creates offences for disclosing certain information about a summons or notice that contains a non-disclosure notation under clause 21. These offences reflect equivalent offences in section 29B of the Commonwealth Act.

Clause 22(1) makes it an offence for a person who receives a summons or notice containing such a non-disclosure notation to disclose information about the summons or notice or official matters connected with the summons or notice. The maximum penalty is a fine of $2200 or one year's imprisonment.

Clause 22(2) sets out exceptions to clause 22(1) in which disclosure is permitted. This recognises that there will be circumstances in which it is necessary and appropriate to disclose information about a summons or notice. A person who receives a summons or notice containing a non-disclosure notation can disclose information about the summons or notice or an official matter connected with it—

- in accordance with any circumstances specified in the notation; or
- to a legal practitioner for the purposes of obtaining legal advice or representation; or
- if the person is a body corporate—to an officer or agent of the body corporate to ensure compliance with the summons or notice; or
- if the person is a legal practitioner—for the purposes of obtaining the consent of another person under clause 23(3) to the legal practitioner answering a question or producing a document before an examiner.

Clause 23(3) will apply where a legal practitioner is required to answer a question or produce a document that would disclose communications protected by legal professional privilege, and he or she seeks the agreement of the person to whom the privilege applies to answer the question or produce the document.

Where a person receives information about a summons or notice in accordance with clause 22(2) or (4), clause 22(4) sets out the circumstances in which that person can disclose the information. These are—

· if the person is an officer or agent of the body corporate that received the summons or notice, he or she may disclose the information to another officer or agent to ensure compliance with the summons or notice or to a legal practitioner for the purposes of obtaining legal advice or representation; or

· if the person is a legal practitioner, he or she may disclose the information for the purposes of providing advice or representation.

Clause 22(3) makes it an offence for a person who receives information about a summons or notice in the circumstances set out in clause 22(2) or (4) to disclose information about the summons or notice or official matters connected with the summons or notice in certain circumstances. These are—

· While the person who has received the information remains a person of a kind to whom a disclosure is permitted to be made, he or she cannot disclose information about the summons or notice except in accordance with clause 22(4). For example, a legal practitioner who receives information about a summons or notice for the purposes of providing legal advice or representation can only make a disclosure for that purpose.

· While the person who has received the information ceases to be a person of a kind to whom a disclosure is permitted to be made, he or she cannot disclose information about the summons or notice in any circumstances. For example, a legal practitioner who receives information about a summons or notice for the purposes of providing legal advice or representation cannot disclose that information for any purpose if he or she ceases to be a legal practitioner.

The maximum penalty for contravention of clause 22(3) is a fine of $2200 or one year's imprisonment.

Clause 22(5) provides that the disclosure offences in clause 22 will cease to apply when the notation contained in the summons or notice is automatically cancelled under clause 21(4), or 5 years after the summons or notice has been issued, whichever is sooner. This recognises that once 5 years have elapsed after the issue of a summons or notice, the interests affected by the contravention of a non-disclosure notation in the summons or notice will no longer be such as to warrant criminal punishment for the contravention.

23—Failure of witnesses to attend and answer questions

Clause 23 provides for offences for failure to attend and answer questions at an examination and deals with self-incrimination and use immunity. This clause complements an equivalent provision in section 30 of the Commonwealth Act.

Clause 23(1) provides that a person must not fail to attend an examination in answer to a summons.

Clause 23(2) provides that a witness at an examination must not refuse or fail to take an oath or affirmation, refuse or fail to answer a question or refuse or fail to produce a document or thing in answer to a summons.

Clause 23(3) enables a legal practitioner to refuse to answer questions or produce documents at an examination on the ground of legal professional privilege, subject to a requirement that the legal practitioner provides the name and address of the person to whom the privilege applies if required to do so by the examiner.

Clauses 23(4) and 23(5) set out provisions dealing with self-incrimination and use immunity in relation to evidence given at an examination.

Clause 23(4) sets out the circumstances in which a person may claim the privilege against self-incrimination. A person can claim the privilege if—

· before answering a question that the person is required to answer at an examination; or

· before producing, in answer to a summons, a business document that sets out details of earnings received by the person in respect of his or her employment and does not set out any other information; or

· before producing a thing in answer to a summons,

the person claims that the answer, document or thing might tend to incriminate the person or make the person liable to a penalty.

Clause 23(5) limits the use that can be made of certain evidence if one the situations in clause 23(4) exists. If one of these situations exists, the answer, document or thing cannot be used as evidence against the person, except in confiscation proceedings or proceedings in relation to the falsity of evidence given by the person. However, any evidence that is derived from the answer, document or thing may be used against the person.

Clause 23(6) makes it an offence to contravene clause 23(1), (2) or (3). The maximum penalty is a fine of $22 000 or 5 years' imprisonment.

Clause 23(7) clarifies that clause 23(3) does not affect the law relating to legal professional privilege. Thus, where a legal practitioner is required to provide certain information to an examiner and to do so would disclose privileged information, the legal practitioner may refuse to produce that information, unless the person to whom the privilege applies consents to its disclosure.

24—Warrant for arrest of witness

Clause 24 empowers a Judge of the Federal Court or the Supreme Court to issue a warrant for the arrest of a person in specified circumstances upon an application made by an examiner. This is an important power to ensure that the investigatory process of the ACC is not thwarted. This clause complements an equivalent provision in section 31 of the Commonwealth Act.

Clause 24(1) sets out the grounds for issue of such a warrant. The Judge must be satisfied by evidence on oath that there are reasonable grounds to believe that—

· a person who has been ordered to surrender his or her passport under clause 28 is nevertheless likely to leave Australia to avoid giving evidence before an examiner; or

· a person is attempting or is likely to attempt to evade service of a summons to appear at an examination that has been issued under clause 19(1); or

· a person has committed an offence under clause 23(1) by failing to attend an examination in answer to a summons.

Clause 24(2) enables a warrant to be executed by any person to whom it is addressed. The person executing the warrant is empowered to break and enter premises etc to execute it.

Clause 24(3) precludes a member of the Australian Federal Police from executing a warrant unless he or she is also a member of staff of the ACC. This limitation is intended to ensure that the warrant provisions in clause 24 are within the legislative powers of the State.

Clause 24(4) enables a warrant to be executed even if the warrant is not in the possession of the person executing it.

Clause 24(5) makes it clear that reasonable force can be used in the execution of a warrant.

Clause 24(6) sets out the procedure for dealing with a person who is apprehended under a warrant. He or she must be brought as soon as practicable before a Judge of the Federal Court or the Supreme Court and the Judge or Court may admit the person to bail, order the continued detention of the person to ensure his or her appearance as a witness before an examiner or order the release of the person.

Clause 24(7) requires a person who is detained under clause 24 to be brought back before a Judge of the Federal Court or the Supreme Court within 14 days, or any other period fixed by the Judge or Court. The Judge or Court is then empowered to exercise any of the powers under clause 24(6) in relation to the person.

As the coercive examination powers under the Bill are only available in connection with a special ACC operation/investigation, the power to arrest and detain a person to ensure his or her appearance before an examiner will be subject to the safeguards that apply under the Bill in relation to the authorisation of the use of special powers.

25—False or misleading evidence

Clause 25 makes it an offence to give false or misleading evidence at an examination before an examiner. The maximum penalty is a fine of $22 000 or 5 years' imprisonment. This offence reflects an equivalent offence contained in section 33 of the Commonwealth Act.

26—Protection of witnesses from harm or intimidation

Clause 26 allows an examiner to make arrangements to protect a person who is appearing or has appeared at an examination before an examiner or proposes to give, or has given, information or other documents other than at an examination. An examiner can make arrangements to ensure that the safety of a person is not prejudiced or a person is not subject to intimidation or harassment. This clause complements an equivalent provision in section 34 of the Commonwealth Act.

27—Legal protection of examiners, counsel and witnesses

Clause 27 provides, in relation to an examination before an examiner, the same legal protection and immunity for examiners, witnesses and legal practitioners assisting the ACC or an examiner or representing a witness as would apply in proceedings

in the High Court. This ensures that the conduct of an examination is not constrained by a risk of tortious liability that may otherwise arise from things said or done in the conduct of an examination. This clause complements an equivalent provision in section 36 of the Commonwealth Act.

28—Order for delivery to examiner of passport of witness

Clause 28 enables an examiner to apply to a Judge of the Federal Court for an order that a person who has been summonsed in connection with a special ACC operation/investigation to appear before the examiner, or who has appeared before the examiner, must surrender his or her passport to the examiner. This clause complements an equivalent provision in section 24 of the Commonwealth Act.

There must be reasonable grounds for believing that the person may be able to provide evidence, documents or things, or further evidence, documents or things, that could be of particular significance to the special operation/investigation. In addition, an order may only be made where there are reasonable grounds for suspecting that the person intends to leave Australia.

An order can authorise an examiner to retain a person's passport for a specified period of up to one month. This period can be extended, upon application, for a further period of up to one month, up to a maximum total period of 3 months.

As an order for the delivery of a passport can only be made in connection with a special ACC operation/ investigation, this power will be subject to the safeguards that apply under the Bill in relation to the authorisation of the use of special powers.

Part 4—Search warrants

29—Search warrants

Clause 29 enables an eligible person to apply to an issuing officer for a search warrant. This clause complements an equivalent provision in section 22 of the Commonwealth Act.

An eligible person is defined under section 4(1) of the Commonwealth Act to mean an examiner or a member of staff of the ACC who is also a member of the Australian Federal Police or a State police force. An issuing officer is defined under clause 3(1) of the Bill to mean a Federal Court Judge, a Federal Magistrate or a Judge of a State court.

Clause 29(1) provides that an eligible person can apply for a search warrant if he or she has reasonable grounds to suspect that there may be in any premises or other specified place a thing of a particular kind connected with a special ACC operation/investigation which he or she believes on reasonable grounds might be concealed, lost, mutilated or destroyed if a summons for the production of the thing were issued.

This means that a search warrant application can only be made in circumstances where the power to issue a summons for the production of a thing would be effective to secure the production of the thing in question.

Clause 29(2) sets out the things that a search warrant may allow an authorised person to do. An authorised person can enter and search the premises or other specified place and seize any things of the relevant kind, and deliver them to any person participating in the special ACC operation/investigation. An authorised person can use force, if necessary, to execute the warrant.

Clause 29(3) precludes a member of the Australian Federal Police from being an authorised person to execute a warrant unless he or she is also a member of staff of the ACC. This limitation is intended to ensure that the search warrant provisions in the Bill are within the legislative powers of the State.

Clause 29(4) sets outs conditions for the issue of a warrant. An affidavit must have been provided setting out the grounds on which the warrant is sought, the applicant must have provided any further information required by the issuing officer as to why the warrant is sought, and the issuing officer must be satisfied that there are reasonable grounds for issuing the warrant.

Clause 29(5) requires the issuing officer to state the grounds on which a warrant has been issued.

Clause 29(6) specifies the details that must be included in a warrant. The warrant must—

- state the purpose of the warrant, including a reference to the relevant special ACC operation/investigation with which the things the subject of the warrant are connected; and
- state when entry can be made pursuant to the warrant; and
- describe the kind of things that can be seized; and
- specify when the warrant ceases to have effect. The maximum period for which a warrant can be valid is one month.

Clause 29(8) makes it clear that reasonable force can be used in the execution of a warrant.

Clause 29(9) provides for the seizure of evidence of an offence that is found in the course of searching for things of the relevant kind under a warrant. Such evidence can only be seized if the person executing the warrant reasonably believes that the seizure is necessary to prevent its concealment, loss, mutilation or destruction or to prevent the evidence being used to commit an offence.

Clauses 29(10) and 29(11) provide for the retention and delivery of things seized under warrant. Clause 29(10) enables the head of a special ACC operation/investigation to retain a thing seized under warrant for as long as is reasonably necessary for the purposes of the relevant special ACC operation/investigation. If it is not, or ceases to be, reasonably necessary to retain a thing for such a purpose, the thing must be delivered—

- if it may be admissible evidence in proceedings by the Commonwealth, a State or a Territory for a civil remedy, to the relevant person or authority responsible for taking the proceedings; or
- otherwise, to the person who appears to be entitled to the possession of the thing.

These obligations do not apply if the CEO has already given the thing to the relevant Commonwealth or State Attorney-General or to a law enforcement agency or prosecuting authority in accordance with clause 34(1)(a), (b) or (c). That clause requires the CEO to assemble evidence that would be admissible in the prosecution of an offence and give it to the relevant Commonwealth or State Attorney-General, law enforcement agency or prosecuting authority.

Rather than delivering a thing seized under warrant to the person who appears to be entitled to it in accordance with clause 29(10), clause 29(11) enables a participant in a special ACC operation/investigation to deliver the thing to the Attorney-General of the Commonwealth or a State or to a law enforcement agency if it is likely to assist in the investigation of a criminal offence.

Clause 29(12) makes it clear that clause 29 does not affect other rights to apply for a warrant or other powers to issue a warrant. For example, clause 29 would not prevent a member of staff of the ACC who is also a member of the police force of the State from applying under other South Australian laws for a warrant in connection with an offence that is the subject of ACC State investigation.

30—Application by telephone for search warrants

Clause 30 allows an application to be made by telephone where a warrant is required urgently. This clause complements an equivalent provision in section 23 of the Commonwealth Act.

Where an application is made by telephone, the eligible person must first prepare an affidavit setting out the grounds on which the warrant is sought. However, if necessary, the application may be made before the affidavit has been sworn.

Clause 30(3) requires an issuing officer who issues a search warrant by telephone to inform the applicant of the terms of the warrant and the date it was issued and record the reasons it was issued on the warrant.

Clause 30(4) provides that a member of the staff of the ACC or a member of the Police Force of the State may complete a form of warrant in the terms indicated by the issuing officer, and must record the issuing officer's name and the date and time of issuing.

Clause 30(5) requires the applicant, by no later than the day after the warrant expires, to send the issuing officer the completed form of the warrant together with the applicant's sworn affidavit.

Part 5—Performance of functions and exercise of powers

31—Consent of Board may be needed before functions can be performed

Clause 31 provides that the conferral of functions on a Commonwealth body or person is subject to the consent of the Board under the Commonwealth Act. This provision complements section 55A(5A) of the Commonwealth Act, which provides that the CEO or an examiner cannot perform a duty or function or exercise a power under State law relating to the investigation of a relevant criminal activity or the undertaking of an intelligence operation unless the Board has consented to the ACC doing so.

32—Functions not affected by State laws

Clause 32 makes it clear, for the avoidance of doubt, that a Commonwealth body or person is not precluded by any State law from performing functions under the Act.

33—Extent to which functions are conferred

Clause 33 provides that the Act does not purport to impose any duty on a Commonwealth body or person to perform a function if the imposition would be beyond State legislative power. This provision is intended to ensure that the Act does not contravene any constitutional doctrine that restricts the duties that may be imposed on Commonwealth bodies or persons.

Clause 33 does not limit clause 35, which makes it clear that a function conferred on a federal judicial officer under the Act is conferred on him or her in a personal capacity. In addition, clause 33 does not limit section 22A of the *Acts Interpretation Act 1915*. That section is a general interpretative provision, which will apply such that the Bill will be read so as not to exceed State legislative power.

34—Performance of functions

Clause 34 imposes obligations on the CEO in relation to what he or she must do with information obtained by the ACC and provides for the CEO to make law reform recommendations to Ministers. This clause complements an equivalent provision in section 12 of the Commonwealth Act.

Where admissible evidence is obtained during the course of an ACC operation/investigation, the CEO must assemble the evidence and give it to the relevant Commonwealth or State Attorney-General, law enforcement agency or prosecuting authority. This obligation applies under clause 34(1) in relation to evidence that would be admissible in the prosecution of an offence and under clause 34(2) in relation to evidence that would be admissible in confiscation proceedings.

Clause 34(3) enables the Board to make a law reform recommendation or a recommendation for administrative reform to Ministers.

Clause 34(4) provides that where the ACC obtains information or intelligence in the course of performing one of its functions, that information or intelligence may be used for the purposes of other ACC functions. For example, information obtained during an intelligence operation may be used during an investigation into relevant criminal activity. This provision recognises the integrated nature of the ACC's intelligence and investigatory functions and ensures that the use of information by the ACC is not artificially restricted.

35—Functions of federal judicial officers

Clause 35 makes it clear that a function conferred by the Act on a federal judicial officer (which is defined to mean a Judge of the Federal Court or a Federal Magistrate) is conferred on that person in a personal capacity and not as a court or member of a court, and the federal judicial officer need not accept the function conferred. This provision is intended to ensure that the Act does not breach any constitutional doctrine that restricts the duties that may be conferred on federal judicial officers.

Clause 35(4) affords a federal judicial officer performing a function under the Act the same protection as a member of the court of which he or she is a member. This ensures that the performance by federal judicial officers of functions under the Act is not constrained by a risk of tortious liability that may otherwise arise from the performance of those functions.

36—Limitation on challenge to Board determination

Clause 36 limits, in certain circumstances, the challenges that may be made in relation to activities of the ACC. This clause complements an equivalent provision in section 16 of the Commonwealth Act.

Where the Board has determined that an ACC State intelligence operation/investigation is a special operation/investigation, then an act or thing done by the ACC because of that determination cannot be challenged in any court on the ground that the determination was not lawfully made. This prevents a court from looking behind a determination to see if it was properly made. For example, it prevents a challenge being made on the basis that there was an error in the procedure that led to the determination being made.

This provision does not prevent challenges in relation to the activities of the ACC once a determination is in place. Also, this limitation does not apply to proceedings initiated by the Attorney-General of the Commonwealth or a State.

37—Cooperation with law enforcement agencies and coordination with overseas authorities

Clause 37 makes it clear that the ACC must cooperate with other law enforcement agencies, so far as practicable, in performing its functions under the Act. The ACC may also coordinate its activities with the functions of overseas authorities that perform similar functions to those of the ACC. This clause complements an equivalent provision in section 17 of the Commonwealth Act.

38—Incidental powers of ACC

Clause 38 empowers the ACC to do all things necessary in connection with, or reasonably incidental to, the performance of its functions under the Act. This clause complements an equivalent provision in section 19 of the Commonwealth Act.

Part 6—General

39—Double jeopardy

Clause 39 makes it clear that a person is not liable to be punished for an offence under the Act if he or she has already been punished for the offence under the Commonwealth Act. This clause complements an equivalent provision in section 35A of the Commonwealth Act.

40—Arrangements for Board to obtain information or intelligence

Clause 40 provides that the State Minister may make an arrangement with the Commonwealth Minister for the Board to receive information or intelligence from the State or a State authority relating to relevant criminal activities. This provision complements section 21 of the Commonwealth Act.

This provision is intended to facilitate the making of Ministerial level arrangements in relation to the provision of State information or intelligence to the Board. It is not intended to preclude or limit the provision of information or intelligence to the Board from the State or State agencies by other means, for example, the provision to the Board of information or intelligence directly by the Police Force of the State.

41—Administrative arrangements with the Commonwealth

Clause 41 enables the State Minister to make an arrangement with the Commonwealth for the provision of human resources by the State to perform services for the ACC. This provision complements section 58 of the Commonwealth Act.

42—Judges to perform functions under the ACC Act

Clause 42 makes it clear that a judge of a State court may perform functions conferred on him or her by section 22, 23 or 31 of the Commonwealth Act. Section 22 of the Commonwealth Act empowers an issuing officer, which includes a Judge of a State court, to issue a search warrant and section 23 of the Commonwealth Act enables such a warrant to be issued upon a telephone application. The powers contained in sections 22 and 23 of the Commonwealth Act are equivalent to those contained in clauses 29 and 30, respectively, of the Bill. Section 31 of the Commonwealth Act empowers a Judge of a State Supreme Court to issue a warrant for the arrest of a witness, similarly to the power contained in clause 24.

43—Furnishing of reports and information

Clause 43 deals with the dissemination of reports and information about the performance of the ACC's functions to relevant persons. This clause complements equivalent provisions in section 59 of the Commonwealth Act.

The Chair of the Board must keep the Commonwealth Minister informed of the general conduct of the ACC in the performance of its functions under the Act. This recognises the role of the Commonwealth Minister in monitoring the general conduct of the ACC, as a Commonwealth body established by Commonwealth legislation.

The Commonwealth Minister may also request from the Chair of the Board information concerning a specific matter relating to the performance by the ACC of its functions under the Act.

A State Minister who is a member of the IGC may also request from the Chair of the Board information concerning a specific matter relating to the performance by the ACC of its functions under the Act. This enables the State Minister to obtain information independently about the conduct of the ACC functions as the Minister responsible for the administration of the Act.

The Chair of the Board must comply with the request unless the Chair considers that disclosure of information to the public could prejudice the safety or reputation of a person or the operations of law enforcement agencies. The IGC may request the Chair of the Board to—

- provide information to the IGC concerning a specific matter relating to an ACC operation/investigation that the ACC has or is conducting; and
- inform the IGC about the general conduct of the ACC in the performance of its functions under the Act.

The Chair of the Board must comply with such a request from the IGC, subject to a requirement that the Chair must not furnish a matter the disclosure of which to members of the public could

prejudice the safety or reputation of a person or the operations of law enforcement agencies.

In addition to the IGC's power to request information from the Chair of the Board, the Chair of the Board—

- may inform the IGC at such times as he or she considers appropriate about the general conduct of the ACC in the performance of its functions under the Bill; and
- must provide to the IGC a report on the findings of any special ACC operation/investigation conducted by the ACC for transmission to the Governments represented on the IGC,

subject to a requirement that the Chair must not furnish a matter the disclosure of which to members of the public could prejudice the safety or reputation of a person or the operations of law enforcement agencies.

These provisions are intended to facilitate the role of the IGC in monitoring generally the work of the ACC.

Clause 43(8) enables the CEO to disseminate any relevant information that is in the ACC's possession to another law enforcement agency, foreign law enforcement agency or prescribed government authority. The CEO can only disseminate such information if it appears to him or her to be appropriate to do so, and the dissemination would not be contrary to a Commonwealth, State or Territory law that would otherwise apply.

The CEO is also empowered to provide, in specified circumstances, any information that is in the ACC's possession to—

- authorities responsible for taking civil remedies on behalf of the Commonwealth, a State or a Territory, where the information may be relevant for the purposes of taking such remedies in connection with Commonwealth, State or Territory offences; and
- a Commonwealth or State authority or a Territory Administration, where the information relates to the performance of the authority or Administration; and
- the Australian Security Intelligence Organisation, where the information is relevant to security as defined in section 4 of the Commonwealth *Australian Security Intelligence Organisation Act 1979*.

Clause 43(11) sets out a general prohibition on a report under the Act being made available to the public if it—

- contains a finding that an offence has been committed; or
- makes a recommendation for the prosecution of an offence,

unless the finding or recommendation indicates that it is based on evidence that would be admissible in the prosecution of a person for that offence. This provision is intended to ensure that the publication of a report containing these matters does not compromise the fair trial or reputation of a person.

44—Secrecy

Clause 44 imposes secrecy obligations on specified ACC officers. These officers are the CEO, a member of the Board, a member of staff of the ACC (including a person appointed as counsel assisting the ACC or a person who performs services for such a person) and an examiner. These obligations are intended to ensure that information that could jeopardise the effective conduct of the ACC's functions is not improperly disclosed, and complement similar obligations contained in section 51 of the Commonwealth Act.

Clause 44(2) makes it an offence for a specified ACC officer to record, divulge or communicate information acquired by him or her in the course of performing his or her functions under the Act, except for the purposes of, or in connection with the performance of his or her functions under, a relevant Act. This offence applies to conduct either while a person is a specified ACC officer or after he or she ceases to be such an officer. The maximum penalty for the offence is $5500 or one year's imprisonment.

Clause 44(3) ensures that a specified ACC officer cannot be required to—

- produce to a court documents that have come into the officer's possession in the course of performing his or her functions under the Bill; or
- divulge or communicate to a court matters that have come to the officer's notice in the performance of his or her functions under the Bill.

This is intended to preserve the secrecy of information relating to the ACC's functions in circumstances where a court would otherwise have power to require the production of documents or the answering of questions that would disclose that information.

Clause 44(3) provides for exceptions under which a specified officer can be required to produce the above documents or divulge or communicate the above matters. These are—

- where the ACC, the CEO, the acting CEO, a member of the Board or an examiner in his or her official capacity is a party to the relevant proceeding; or
- if it is necessary to do so to carry into effect the provisions of a relevant Act; or
- if it is necessary to do so for the purposes of a prosecution resulting from an ACC operation or investigation.

Clause 44(4) defines a relevant Act for the purposes of clause 44 to mean the Commonwealth Act, this Act or a corresponding Act of another State or Territory. This definition is necessary to ensure that the secrecy obligations in this clause do not prevent the disclosure of information where this is necessary for the purposes of another Act that forms part of the ACC cooperative scheme.

45—Delegation

Clause 45 allows the CEO to delegate in writing any of his or her powers under the ACC Act to a member of staff of the ACC who is an SES employee. Clause 3(2) applies the definition of SES employee contained in the Commonwealth Act, which in turn applies the definition of this term under the Commonwealth *Public Service Act 1999*, SES employees consist of those Australian Public Service officers who are classified as Senior Executive Employees under the relevant classification rules under that Act.

This power of delegation affords the CEO flexibility in undertaking administrative matters, while ensuring that delegated powers are only exercised by appropriately senior persons. This clause complements an equivalent provision in section 59A of the Commonwealth Act.

46—Liability for damages

Clause 46 provides that a member of the Board is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in the performance of functions conferred by this Act.

47—Obstructing, hindering or disrupting the ACC or an examiner

Clause 47 makes it an offence to obstruct or hinder the ACC or examiner in the performance of the ACC's or examiner's functions or to disrupt an examination. The maximum penalty is a fine of $22 000 or 5 years' imprisonment. This offence mirrors an equivalent offence contained in section 35 of the Commonwealth Act.

48—Public meetings and bulletins

Clause 48 provides for public meetings of the Board to inform the public about, or receive submissions in relation to, the performance of the ACC's functions. The Board can also publish bulletins to inform the public about the performance of its functions. This clause complements an equivalent provision contained in section 60 of the Commonwealth Act.

49—Annual report

Clause 49 provides for certain matters to be included in an annual report prepared by the Chair of the Board under section 61 of the Commonwealth Act.

This provision, together with comparable provisions in other States' and Territories' ACC legislation, will ensure that information included in the annual report under section 61 of the Commonwealth Act relating to the performance of the ACC's functions under that Act is supplemented with comparable information about the performance of the ACC's functions under State and Territory law.

Clause 49(2) requires an annual report under section 61 of the Commonwealth Act to include—

- descriptions of any special ACC investigations during the year; and
- descriptions of any patterns of criminal activity and the nature and scope of criminal activity that has come to the ACC's attention during the year; and
- any recommendations for legal or administrative reform the Board considers should be made; and
- the general nature and extent of information provided by the CEO to a law enforcement agency under the Act; and
- the extent to which ACC State investigations have resulted in prosecutions or confiscation proceedings during the year; and

· numbers and results of court proceedings involving the ACC in relation to its functions under the Act that were determined during the year.

Clauses 49(3) and (4) contain provisions to prevent an annual report identifying persons as having being suspected of, or as having committing offences (unless the persons have been convicted of those offences) or identifying a person where this would prejudice a person's safety or reputation or the fair trial of a person who has been or may be charged with an offence.

The State Minister is required to table an annual report within 15 sitting days of receiving the report from the IGC.

50—Things done for multiple purposes

Clause 50 provides that the validity of anything done for the purposes of this Act is not affected only because it was done also for the purposes of the ACC Act.

51—Regulations

Clause 51 provides for a regulation-making power under the Bill.

Schedule 1—Related amendments, repeal and transitional provision

Clauses 2 to 11 of Schedule 1 contain consequential amendments to a number of State Acts that are necessary because of the replacement of the NCA with the ACC and the repeal of the National Crime Authority (State Provisions) Act 1984. The consequential amendments will ensure that those other State Acts operate consistently with the provisions of the Bill.

Clause 12 of Schedule 1 repeals the National Crime Authority (State Provisions) Act 1984, which is the existing State legislation for the NCA, as a consequence of the replacement of the NCA with the ACC under the Commonwealth Act. As the ACC is a new law enforcement body with new governance arrangements and functions, it is appropriate that provision for its operation in South Australia be made under a new principal Bill.

Clauses 13 to 25 of Schedule 1 contain transitional provisions to ensure that the transition from the NCA to the ACC is as seamless as possible. These transitional provisions are necessary as a consequence of the commencement on 1 January 2003 of the Commonwealth Act and the repeal of the National Crime Authority (State Provisions) Act 1984 under clause 12 of Schedule 1.

Clause 13 of Schedule 1 sets out definitions that apply for the purposes of the transitional provisions in Part 7 of Schedule 1.

Clause 14 of Schedule 1 deems an ACC State investigation that relates to a matter that was the subject of an NCA investigation that had been commenced but not completed before 1 January 2003 to be a special ACC investigation. This means that if the Board consents to the ACC conducting an ACC State investigation into a matter that previously had been the subject of an incomplete investigation under the National Crime Authority (State Provisions) Act 1984, it will be unnecessary for the Board to make a new determination authorising the use of special powers under the Bill.

Clause 15 of Schedule 1 imposes on the ACC the obligation under section 34(1) of the Bill to assemble and give to the relevant prosecuting authority evidence that the NCA had obtained before 1 January 2003 but had not assembled and given to the relevant prosecuting authority under section 6(1) of the National Crime Authority (State Provisions) Act 1984 as if that evidence had been obtained by the ACC in carrying out an ACC operation/investigation.

Clause 16 of Schedule 1 ensures that where the State referred a matter to the NCA for investigation before 1 January 2003, the reference continues to be protected from challenges under section 8 of the National Crime Authority (State Provisions) Act 1984 after the repeal of that Act by the Bill. Section 8 protects a reference from challenge on the grounds that any necessary approval had not been obtained or was not lawfully given.

Clause 17 of Schedule 1 provides that an arrangement in force immediately before 1 January 2003 under section 11 of the National Crime Authority (State Provisions) Act 1984 between the State Minister and the Commonwealth Minister for the NCA to receive information or intelligence by the State or a State authority has effect as if it had been made under section 40 of the Bill.

Clause 18 of Schedule 1 ensures that where things seized pursuant to a warrant under section 12 of the National Crime Authority (State Provisions) Act 1984 are in the ACC's possession, the obligations under clauses 29(10) and 29(11) of the Bill regarding the retention and return of things seized under warrant apply to those things.

Clause 19 of Schedule 1 provides that where a non-publication direction was in force under section 16(9) of the National Crime Authority (State Provisions) Act 1984 immediately before 1 January 2003—

· the provisions in clauses 18(10) and (11) of the Bill regarding the revocation of directions and the offence of contravening a non-publication direction contained in clause 18(14)(b) of the Bill apply to that direction; and

· clauses 18(12) and (13) of the Bill, so far as they relate to the CEO of the ACC, apply to evidence that is the subject of such a direction.

These provisions enable a court to obtain evidence that is the subject of a non-publication direction in certain circumstances.

Clause 20 of Schedule 1 ensures that if a non-disclosure notation included in a summons or notice to produce documents was in force under section 18A of the National Crime Authority (State Provisions) Act 1984 immediately before 1 January 2003, the notation is effective and it is an offence under clause 22 of the Bill to make a disclosure in contravention of the notation. If there is an ACC operation/investigation relating to the same matter to which the NCA investigation related, the provisions in clause 21(4) and (5) of the Bill relating to the automatic cancellation of a notation apply.

Clause 21 of Schedule 1 ensures that arrangements in force immediately before 1 January 2003 under section 24 of the National Crime Authority (State Provisions) Act 1984 made by a member or hearing officer of the NCA to protect witnesses from harm or intimidation have effect as if it they been made under section 26 of the Bill.

Clause 22 of Schedule 1 enables arrangements between the State and the Commonwealth that were in force immediately before 1 January 2003 under section 28(b) of the National Crime Authority (State Provisions) Act 1984 under which the State makes persons available to hold office as members of the NCA or to perform services for the NCA to have effect as if those arrangements had been made under section 42 of the Bill.

Clause 23 of Schedule 1 ensures that former officials, being persons who were at any time subject to the secrecy obligations under section 31 of the National Crime Authority (State Provisions) Act 1984, are subject to the secrecy obligations in clause 44(2) and (3) of the Bill.

Clause 24 of Schedule 1 ensures that the *Co-operative Schemes (Administrative Actions) Act 2001* continues to apply to administrative actions taken, or purportedly taken, under the National Crime Authority (State Provisions) Act 1984 as if that Act had not been repealed and were still a relevant State Act for the purposes of the *Co-operative Schemes (Administrative Actions) Act 2001*. The *Co-operative Schemes (Administrative Actions) Act 2001* validates certain invalid administrative actions undertaken by Commonwealth officers and authorities, including actions undertaken pursuant to the National Crime Authority (State Provisions) Act 1984, by giving them the effect they would have had if they had been taken by State authorities or officers. This transitional provision ensures that such administrative actions are validated up to time when the National Crime Authority (State Provisions) Act 1984 is repealed by the enactment and commencement of clause 12 of Schedule 1.

Clause 25 of Schedule 1 enables the making of regulations prescribing matters of a transitional nature if there is no sufficient provision in Part 7 of Schedule 1 dealing with the matter. Such regulations that provide that a state of affairs is taken to have existed, or not existed, may be back dated in their operation to 1 January 2003 to ensure that necessary transitional matters for the replacement of the NCA with the ACC can be addressed without gaps. An important safeguard is that such regulations with a backdated operation do not operate so as to—

· prejudicially affect the rights of a person (other than the State or an authority of a State) that existed before the date of the making of the regulations; or

· impose liabilities on any person (other than the State or an authority of a State) in respect of things done or omitted to be done before the date of making of the regulations.

In addition, regulations that are backdated in their operation can only be made up to 12 months after the day on which the National Crime Authority (State Provisions) Act 1984 is repealed by the enactment and commencement of clause 12 of Schedule 1.

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

ADJOURNMENT

At 4 p.m. the council adjourned until Tuesday 30 March at 2.15 p.m.