LEGISLATIVE COUNCIL

Tuesday 12 April 2005

The PRESIDENT (Hon. R.R. Roberts) took the chair at 2.18 p.m. and read prayers.

OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION COMMITTEE

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

That, pursuant to section 21(3) of the Parliamentary Committees Act 1991, the Hon. N. Xenophon be appointed to the committee in place of the Hon. I. Gilfillan, resigned.

Motion carried.

PAPERS TABLED

The following papers were laid on the table:

By the President—

Reports, 2003-04—
Barossa Council Area

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

Regulations under the following Acts—
Water Resources Act 1997—
Licence and Permit Fees
Marne River and Sanders Creek

By the Minister for Emergency Services (Hon. C. Zollo)—

Sabor Ltd.—Report, 2003-04
Citrus Board of South Australia—Report for year ended 30 April 2004
Reports, 2004—
Department of Further Education, Employment, Science and Technology
Training and Skills Commission
Rule under Act—
Local Government—Local Government Superannuation Scheme—Marketlink Basic Insurance Benefit.

MURRAY RIVER

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I lay on the table a copy of a ministerial statement relating to the Murray River made by the Premier.

QUESTION TIME

CROWN SOLICITOR'S TRUST ACCOUNT

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the minister representing the Attorney-General a question about delegated authorities.

Leave granted.

The Hon. R.I. LUCAS: In October last year I asked a question in relation to delegated authorities. As background information, I advise that ministers annually sign a set of financial delegations for expenditure controls within their department which delegates authority to various officers to operate various accounts to various expenditure limits. The question I asked in October last year was whether or not the Attorney-General had signed any delegated authority to any officer within his department to operate the Crown Solicitor's Trust Account. Yesterday, I received a reply from the Attorney-General as follows:

Since March 2002, I have not signed any document that gave delegated authority or approval to any officers to operate the account known as the Crown Solicitor's Trust Account. Each year I sign a set of financial delegations for expenditure controls within the Attorney-General's department budget.

My questions are:

1. Does the Attorney-General's answer now mean that he and he alone was the only person with authority to operate the account known as the Crown Solicitor's Trust Account? If not, who does the Attorney-General now claim had authority to operate the account known as the Crown Solicitor's Trust Account, given that the Attorney-General has now confessed that he did not sign any document that gave delegated authority or approval to any officers to operate the account?

2. Is the fact that the Attorney-General has not signed any document that gave delegated authority or approval to any officers to operate the account known as the Crown Solicitor's Trust Account a breach of Treasurer's Instructions or any provision of the Public Finance and Audit Act in and of itself?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): Obviously, in relation to the latter matters, the leader would well know that they are subject to a police investigation at present; certainly, issues in relation to the Crown Solicitor's Trust Account are being investigated currently by the police.

The Hon. T.G. Cameron: When did that come out? It is the first I have known that the police are investigating it.

The Hon. P. HOLLOWAY: You were at the select committee, so you would know about it. It has been public knowledge. Following comments from the Auditor-General's appearance before the Economic and Finance Committee, the Treasurer referred evidence to the Police Commissioner.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: Yes; they investigate a lot because of allegations made by members opposite and others that, unfortunately, have the habit of being found to have no grounds. In relation to this matter, I am sure every member of this council is well aware of the background to the Crown Solicitor's Trust Account. In his question, the Leader of the Opposition talks about the Auditor-General's confessing to not having signed—

The Hon. T.G. Cameron: The Attorney-General.

The Hon. P. HOLLOWAY: Sorry; I meant the Attorney-General. He said that the Attorney-General had confessed to not signing a declaration. What nonsense! What the Attorney-General has consistently said in relation to the Crown Solicitor's Trust Account is that he was not aware of that account. How would you sign a delegation to an account that you did not know was there? Those matters are the subject of an investigation by the Economic and Finance Committee and also a select committee of this council; and also, as a consequence of evidence, a preliminary assessment—I think that is the correct word—is being undertaken at present by the Commissioner of Police.

The Hon. T.G. Cameron: Last week you called it an investigation.

The Hon. P. HOLLOWAY: Well, a preliminary assessment or investigation.

The Hon. R.I. Lucas: They are different.

The Hon. P. HOLLOWAY: Not in generic terms, and not in common usage. The police are making a preliminary assessment, which is another way of saying that they are

making initial investigations into the matter. What is the difference? What is in a word?

The Hon. R.I. Lucas: Is it an assessment or an investigation?

The Hon. P. HOLLOWAY: I will use the words of the Police Commissioner. I believe that he used the words 'a preliminary assessment'. I do not know what will be served by continuing to answer these pointless interjections. But, in relation to the question, the matters are currently before those three levels of assessment or investigation—whatever term one prefers. I would think that is probably sufficient information but, if the Attorney-General wishes to provide any further information in relation to this matter, I will provide him with the opportunity to do so.

SUPREME COURT

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Leader of the Government, representing the Attorney-General, a question about Supreme Court accommodation.

Leave granted.

The Hon. R.D. LAWSON: In the recently tabled report of the judges of the Supreme Court of South Australia, under the heading 'Supreme Court buildings', the Chief Justice wrote:

> For the fourth year I refer to the unsatisfactory standard of the facilities at the Supreme Court for the public, our staff, the court itself and the legal profession. Another year has passed, and the government has not indicated whether it will support a substantial redevelopment of the site. In the meantime, users of the court building suffer from their inadequacy. Our staff continue to work in premises that, in many respects, are well below an appropriate standard. This has an impact on the efficiency of the court.

He goes onto mention the fact that the Supreme Court is a significant public institution and that the building in which it is housed should reflect this. He says:

> The contrast between the standard of the Supreme Court buildings and the commonwealth court building, in the process of being erected nearby, is a striking one.

In the State Infrastructure Plan, launched with great fanfare only last week, there is a section dealing with justice and emergency services. On the subject of the courts, it mentions computer applications and the need to update them. On physical infrastructure, it speaks of a number of courthouses in regional areas which require redevelopment. There is no mention, on page 89 of the infrastructure plan in the general commentary, of the Supreme Court building. However, on page 92, under the list of projects, there appears a project as follows: 'Review the operations of the Supreme Court building.' This project is given a level two priority, according to which nothing is to happen until the period 2010-11 to 2014-15. My questions are:

1. What is encompassed by the project 'Review the operations of the Supreme Court building'? Does it include a replacement of that building or a substantial redevelopment of it?

2. Has the Attorney-General notified the Chief Justice and the Courts Administration Authority of the fact that this government does not propose to do anything in relation to the matters raised by the Chief Justice until at least the year 2010-11?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I think there is little doubt that court buildings in this state are in need of renewal but, indeed, a lot of infrastructure in this state needs renewal because there has been a lot of neglect for a long time. One only needs to look at such places as the ports. We really need some significant investment into our ports system, and I am sure everyone in this council would be aware of the importance of that, particularly those from rural electorates. We also, of course, have a road infrastructure system in this state which is a consequence of receiving only 3 per cent of commonwealth funds for roads over many years—over decades, in fact. The state of our roads is less than it ought to be, in my opinion, and that is a result of longstanding inadequate funding, particularly from the commonwealth, over two or three decades. I think recently we got 3 per cent of the commonwealth funding for roads, which has been an average figure, even though we have about 14 per cent of the country's road kilometres and about 7 or 8 per cent of the population.

We could talk about the railway lines on Eyre Peninsula, and we could talk about a series of infrastructure and other accommodation (prisons and the like) that all need upgrading. But we have at the same time a commonwealth government that is currently talking about cutting its projected revenue to the states by several hundred million dollars—and that is to be spent in a manner that the federal Treasurer, Mr Costello, believes it should be spent rather than addressing many of the needs of the state. We also have the same federal government telling us how we should spend money on education, health and a whole lot of other areas, and functions are being transferred to the states.

So, of course there is a need for improved facilities in relation to our courts, as there is in a whole lot of other areas, but we have to operate within the budget constraints that are available to us, and that is what we will do. We will seek to work out the priorities that best serve the people of this state. If there are any other specifics to the question that the Attorney-General wishes to answer, I will provide him with the opportunity to do so.

SMALL BUSINESS ADVOCATE

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question about the former small business advocate.

Leave granted.

The Hon. CAROLINE SCHAEFER: The former government set up the Office of the Small Business Advocate to provide advice for small business operators and others who were unable to seek suitable advice on business matters elsewhere. Certainly, I referred a number of constituents to that office; and, I think without exception, they were grateful for the advice and assistance they received. This government closed the Office of Small Business on 30 June last year, thereby redeploying the then small business advocate, Mr Malcolm Post. My questions to the minister are:

1. How much has it cost to keep Mr Post unemployed, as such?

2. Is he still in the transit lounge?

3. Which department pays for Mr Post to stay in the transit lounge, is it the minister's own department and how many other senior public servants are currently enjoying redeployment?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I answered a number of questions in relation to the small business advocate last year. I pointed out that, when I was the Minister for Small Business at the time, the function of the small business advocate would be taken over by the

Director of the Office of Small Business. Those matters are now the responsibility of my colleague the Minister for Small Business (Hon. Karlene Maywald) in another place. In relation to the question relating to the officer who formerly held that position, I will take it on notice and bring back a reply.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I assume that the Department of Trade and Economic Development would be responsible for his salary unless, of course, he had gained employment with another agency. As I said, the question with respect to the Office of Small Business is under the responsibility of my colleague the Minister for Small Business. I will get that information and bring back a reply.

SOMERTON SURF LIFE SAVING CLUB

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about the redevelopment of the Somerton Surf Life Saving Club.

Leave granted.

The Hon. J. GAZZOLA: The Somerton Surf Life Saving Club and its members play a vital public safety role for our beach-side communities and other beach goers during the summer months. Will the minister advise what government support is being provided to the Somerton Surf Life Saving Club?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I was delighted to visit the Somerton Surf Life Saving Club last Friday morning to be a part of the announcement of the $1.8 million redevelopment of the club. I understand that this redevelopment is the second project recommended by Surf Life Saving South Australia's Facilities Management Group. It follows the completion last October of a brand new surf life saving club at Christies Beach. The Rann government is proud to support surf life saving in this state. Since coming to office, the government has allocated more than $2 million for Surf Life Saving South Australia's major capital works program.

This program will eventually see the rebuilding or refurbishment of the 18 surf life saving clubs across the state. In this case, the Somerton Surf Life Saving Club is a beneficiary of funding from the government's Community Emergency Services Fund. We have allocated almost $1 million ($999 201 exclusive of GST, to be precise) from the fund to enhance the Somerton club's ability to keep the local beaches safe. The City of Holdfast Bay is contributing $610 000 towards the project, while the club itself will contribute around $240 000. The council's contribution is greatly appreciated.

I am pleased that Deputy Mayor Ron Edwards and Chief Executive Rob Donaldson were at the club on Friday morning for the redevelopment announcement. The Somerton Surf Life Saving Club patrols the beach between King Street at Brighton in the south to The Broadway at Glenelg every Saturday, Sunday and public holiday between November and March. In 2003-04, the club reported a membership of more than 360, and it provided a total of 2 439 hours of volunteer patrols. I know that all members in the chamber would agree with me that the volunteers are the heart and soul of our community. They are highly trained, skilled and dedicated people.

The redeveloped club has been designed by the Adelaide offices of GHD. The work, which will be undertaken by a South Australian company, Cox Constructions, was scheduled to begin yesterday. I think they were moving in straight away. The design of the building includes passive design principles that reduce building energy consumption and achieve a low maintenance outcome. The scope of the work undertaken will see the construction of a second storey and a complete refurbishment of the ground floor. When completed, the building will accommodate emergency service equipment such as rescue boards and inflatable rubber boats as well as a gymnasium, meeting room, administrative office, patrol room and a first aid room.

I understand that the work will be completed by the end of November and that the club will commence its 45th year of patrols from temporary facilities at the site. I take the opportunity to congratulate the club on its efforts so far to bring the project to this point and, in particular, the building coordinator, Mr Stephen Cornish, and the President, Mr David Kinnear. I look forward to hearing of the progress of the works and returning late in the year to see the completed project.

YOUTH ACTION PLAN

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the Minister for Emergency Services, representing the Minister for Youth, a question about the missing youth action plan.

Leave granted.

The Hon. KATE REYNOLDS: As I am sure all honourable members are acutely aware, this is National Youth Week. Not all honourable members might remember that in October 2002, following a pre-election promise by the then Labor opposition leader and now Premier, the Minister for Youth approved the development of a state youth action plan. The Office for Youth called for submissions for such a plan, which was supposed to operate from 2004 (that is, last year) to 2006. By February 2004, the submissions had been consolidated into a working document and a youth action plan task force was set up.

Included in that task force were representatives of the Attorney-General's Department, the minister's Youth Council, the Housing Trust, the Youth Arts Board, Transport SA, the Department of Environment and Heritage, the Department of Education and Children's Services, the Department of Human Services, the Department of the Premier and Cabinet, and so on. The first meeting of the task force was held 15 months ago. A working draft of the youth action plan was distributed 13 months ago. A workshop on that task force was held 12 months ago, but still no youth action plan has been released. My question to the minister in National Youth Week is: will the South Australian youth action plan be released before today's young people are old aged pensioners, or will the Labor government simply recycle its 2001 election promise in 2006?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I will ignore the comments of the honourable member and refer her questions to the minister in another place and bring back a reply.

EGG INDUSTRY

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the minister representing the Minister for Agriculture Food and Fisheries questions regarding support for South Australian egg farmers.

Leave granted.

The Hon. T.G. CAMERON: A recent article in *The Advertiser* reported consumers may face paying up to $5 for South Australian eggs because the South Australian industry is on the brink of collapse. According to *The Advertiser* report, all of the state's traditional egg farmers are planning to leave the sector because of new commonwealth animal welfare requirements for modified cages. Under the commonwealth plan, cages have to increase from 450 square centimetres to 550 square centimetres. To justify the expense, farmers are claiming they would have to modernise and significantly expand their farms to remain viable. Council legislation, however, prevents the rebuilding of existing farms at Two Wells, Angle Vale and Hahndorf, where some of the state's main egg producers are located.

Farmers say the problem is compounded by the state government's reluctance to disclose details of its new legislation. The Australian Egg Industry Association claims that the demise of the local industry and the need to import most of the state's eggs will push up the price of a dozen eggs by $1.90 to almost $5. The move is expected to reduce South Australia's self-sufficiency in eggs from 79 per cent to just 15 per cent within three years. The state's 32 traditional growers claim that, if they are forced to close, the state will lose an industry worth nearly $20 million a year, as well as, potentially, 250 jobs. This would leave only free range and barn operators to supply our eggs, or I suppose people could erect a chicken coop in their own backyard, if that is still permitted.

The state's largest producers, Mark and Paul Bressington, from Golden Eggs, already have placed their four egg farms, with up to 160 000 chickens, on the market. Other states are coping with the new regulations because they have received deregulation packages of up to $15 a bird since 1992, while South Australian farmers have received nothing. The South Australian Farmers Federation has asked the state government for a $4.77 million adjustment package to partially offset the cost of implementing these changes. The Labor government has so far indicated that it is unwilling to do so. My questions are:

1. Has the minister met with either the Australian Egg Industry Association or the South Australian Farmers Federation to discuss the future of the local egg industry?

2. Considering the economic impact of the collapse of a $20 million local industry, the loss of up to 250 jobs, the potentially large increase in the price of eggs and the fact that all other state governments have supplied deregulation packages to their egg farmers, will the government now reconsider the call by the South Australian Farmers Federation to grant a $4.77 million adjustment package to assist our egg farmers. If not, would the minister please explain why?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for his question, which I will refer to the Minister for Agriculture, Food and Fisheries in another place and bring back a response.

PORT LINCOLN, SHARK RESPONSE PLAN

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Emergency Services, representing the Minister for Agriculture, Food and Fisheries, a question regarding a shark response plan for Port Lincoln.

Leave granted.

The Hon. T.J. STEPHENS: I have recently been advised that there is no shark response plan for the Port Lincoln foreshore area. There is concern in the community that, with the increased fishing activities in Boston Bay, there is an increased risk of shark attacks in waters that are being used for recreation. In the past, police have driven along the foreshore warning people of sharks. My questions are:

1. Does the minister agree that the current arrangements for shark sighting are inadequate?

2. Will the government consider a response including the use of police-activated sirens for the Port Lincoln foreshore?

3. Will the minister undertake to address this issue before next summer?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I understand that you have asked this question through me to the Minister for Agriculture, Food and Fisheries. Is that what you said?

The Hon. T.J. Stephens: Representing the Minister for Agriculture, Food and Fisheries.

The Hon. CARMEL ZOLLO: I will refer the question to the minister in the other place. Was it Port Lincoln that you referred to in particular?

The Hon. T.J. Stephens: Yes.

The Hon. CARMEL ZOLLO: I probably should point out that it may well be part of my own portfolio.

The Hon. A.J. Redford: A power grab!

The Hon. CARMEL ZOLLO: I will ignore that. It may well be that aerial shark surveillance patrols fall under my jurisdiction. I will liaise with the minister in the other place and also seek some other advice and bring back a response for the honourable member.

SPEED CAMERAS

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 Police, a question about speed camera fines.

Leave granted.

The Hon. J.F. STEFANI: As honourable members would be aware, dangerous driving and excessive speeds continue to cause fatalities and injuries to many people. The use of speed cameras is often said to change driver attitude and save lives. There are many instances, however, where speed cameras are used in a manner which is often described as a revenue-raising exercise. A typical example of the use of speed cameras to raise revenue is when they are used to monitor road traffic in 50 km/h zones, booking motorists who travel over the speed limit. Areas where the surveillance of speed cameras have often been used include North Terrace and Jeffcott Street, North Adelaide. My questions are:

1. Will the minister provide details of the number of speed camera fines issued in Jeffcott Street and North Terrace during the period 1 July 2003 to 30 June 2004 and 1 July 2004 to 30 March 2005?

2. Will the minister provide a breakdown of the fines issued for the above locations and nominated periods, as follows:

- number of speeding fines up to and including 60 km/h;
- number of speeding fines, 61 to 65 km/h;
- number of speeding fines, 66 to 70 km/h; and
- number of speeding fines, 71 km/h and over?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will seek that information from the Minister for Police. However, I disagree with the comment made by the

honourable member in his preamble, when he said that it was evidence that speed cameras were used for revenue raising because they were used in 50 km/h zones. If one looks at the accident rate in the past, certainly the number of fatalities and serious accidents that have occurred on roads with a speed limit of 60 km/h in the metropolitan area was significant. If anyone thinks that it is safe to drive at more than 50 km/h through many of the streets within our city area, I am sure many people would disagree with that proposition. Indeed, certainly initially, the early introduction of the 50 km/h speed limit had a significant impact upon the accident rate. My colleague the Minister for Transport would have that information, but it is certainly my understanding that was the case when those 50 km/h speed limits were introduced.

Clearly, as we have seen in recent days, the road toll has shown an unfortunate increase and, as a result, the police have been reinforcing the message that one needs to be very vigilant in relation to safety on our roads. It was certainly of some concern to all members of the government, and, I think, all members of the community, that some of the recent accidents involved young people who, apparently, were not wearing seatbelts, and that would be of great concern to all South Australians. We need to reinforce the message that not only do we need to drive at a safe speed but that we also need to observe other road safety measures, such as ensuring that seatbelts are securely fastened and that people do not drive under the influence of alcohol. I will seek the specific information in relation to speed cameras for the honourable member and bring back a reply.

The Hon. J.M.A. LENSINK: I have a supplementary question. Does the minister see Festival Drive, which has been monitored for speeding, as a major threat to road users?

The Hon. P. HOLLOWAY: I am not sure whether it has been used, and it is not really for me to say. I was disagreeing with the comment made by the honourable member that the use of speed cameras in 50 km/h zones represented revenue raising. I strongly disputed that, and I think that the overwhelming evidence is that that is not the case. However, I will obtain the information requested in the question asked by my colleague and bring back a reply.

However, in relation to Festival Drive, or anywhere else, it is my understanding that when the police employ cameras they do so as a result of complaints from the public, or from their own assessment that there is some danger to the public in relation to the operation of vehicles. I am sure that matter can be easily reinforced by the police, and I am happy to provide that information again relating to the guidelines on which the police operate speed cameras. It has certainly been provided plenty of times in the past, but I am happy to do so again.

The Hon. J.F. STEFANI: I have a supplementary question. Does the minister agree with the practice of camouflaging speed cameras with a little green coat or hiding the speed camera in bushes, as I have often observed on Port Road at the old police barracks and other places?

The Hon. P. HOLLOWAY: I am sure all members are aware of the announcement made by the police that they would be putting speed cameras in various receptacles, which will mean that speed cameras can be used in areas where it might otherwise be unsafe to do so. As I understand it, most speed cameras are operated from motor vehicles but it may be that in some locations it is unsafe to do so. It is my understanding that these speed cameras have been introduced to be used in locations where there may be a danger, such as an area which may have a higher than normal accident rate. However, in order to ensure that the use of cameras is safe for the operator, so that no vehicle would need to be blocking the road, these other devices will be used. As I have said, it is not my area of responsibility. So, if any further information is required to answer the question, I will seek that information from my colleague and bring back a reply.

The Hon. J.F. STEFANI: I have a further supplementary question. Will the minister provide details of serious vehicular accidents that have occurred over the past 12 months on the up-track leading into the city, directly opposite the old police barracks?

The Hon. P. HOLLOWAY: I will seek that information from my colleague and bring back a reply.

OIL AND GAS EXPLORATION

The Hon. G.E. GAGO: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about the lease of land for oil and gas exploration.

Leave granted.

The Hon. G.E. GAGO: As members would know, the price of crude oil has recently reached new heights. One of the ways in which the price of oil will be reduced in the longer term is for there to be significant discovery of new reserves. My question is: have there been any new developments in oil and gas exploration in South Australia?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I am very pleased to advise the council that last Monday I invited applications for four offshore petroleum exploration permits, all of which are in the Otway Basin in the state's South-East. Two of the areas are in South Australia's coastal waters, which are administered by the state, and two areas are in federal waters, which are administered jointly by the Australian federal government and the South Australian state government.

The announcement of the two federal areas was made jointly with the federal industry, tourism and resources minister, the Hon. Ian Macfarlane, with details of the prospectivity of these areas presented at the Australian Petroleum Production and Exploration Association's annual conference in Perth. This release of two offshore and two coastal waters petroleum exploration areas is part of the state and federal governments' strategy to encourage more intensive exploration of Australia's vast continental shelf. The areas being made available for open bidding by the national and international petroleum exploration industry include:

- SO5-1, which includes an area of approximately 1 915 square kilometres shallow commonwealth waters, which is close by to Robe;
- SO5-2, this covers an area of approximately 4 270 square kilometres deep commonwealth waters, which is approximately 50 kilometres offshore to the south of Beachport; and
- SA-OT2005A and SA-OT2005B, which cover an area of approximately 833 square kilometres of state waters from Cape Jaffa to the Victorian border.

These areas will be subject to the work program bidding system, and any subsequent exploration permits will be awarded for an initial term of six years.

The release of four new blocks announced on Monday will refocus national and international interest on South Australia's petroleum opportunities and could potentially result in multimillion dollar exploration expenditure.

Area S05-2 is a designated frontier area, which is subject to the frontier tax concession incentive announced by the commonwealth government in May 2004. This incentive is designed to shift the reward to risk balance in the investor's favour in remote unexplored areas—areas where a major new petroleum province could be found.

The frontier tax concession recognises the risk that companies take in exploring Australia's remote offshore areas. It does this by immediately increasing the value of exploration deductions for petroleum resource rent tax (PRRT) determination from 100 to 150 per cent, provided they are incurred in Designated Frontier Areas. Bids for the four new South Australian areas offered will close at 4 p.m. on Thursday 20 October (SO5-1 and SA-OT 2005A and B) and on Thursday 20 April 2006 (SO5-2).

SOUTHERN BLUE FIN TUNA

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Environment and Conservation, a question about southern blue fin tuna.

Leave granted.

The Hon. SANDRA KANCK: The International Union for the Conservation of Nature (IUCN) has classified the southern blue fin tuna as critically endangered, and the Australian Bureau of Rural Sciences has placed it on a list of species which are overfished in the local area. The classification for species that are threatened starts at rare, goes up a worsening hierarchy to vulnerable, then endangered, then critically endangered—so it does not get much worse than critically endangered. My questions are:

1. What studies has the minister's department undertaken on the abundance or otherwise of the southern blue fin tuna?

2. Does the minister agree with the ICUN classification of critically endangered for southern blue fin tuna?

3. Does the minister agree with the Australian Bureau of Rural Sciences that this species is locally overfished?

4. If the answer to either of those two questions is no, what is the scientific analysis on which the minister bases his belief?

5. Why does the South Australian government fail to give any threatened species status to the southern blue fin tuna?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): The southern blue fin tuna, being an offshore fishery, is managed by the commonwealth government, and indeed tuna fishery licences are offered by the commonwealth government. As a former minister for fisheries, my understanding is that it is in the hands of the commonwealth government, and those questions should be directed accordingly to the commonwealth.

The Hon. SANDRA KANCK: I have a supplementary question. If those tuna move further northwards out of commonwealth waters in whose control are they?

The Hon. P. HOLLOWAY: Those tuna that are caught under the commonwealth licensing system are farmed within this state, so the regulation of those tuna in fish farms is under the Aquaculture Act and other state fisheries' legislation, but it is all with agreement from the commonwealth. It is my understanding that those fish largely operate within the deeper waters. That is where they are caught. My understanding of the tuna breeding cycle is that they return to breed in the waters of the Timor Sea, then swim around the southern coast of Australia towards New Zealand. Most of the fish farmed within this state are caught within the bight area, usually off Western Australia, and taken in cages to Port Lincoln. That is another reason why there must be a national system, because they do operate in international waters.

Indeed, my understanding of the agreement relating to southern blue fin tuna is that there are arrangements with a number of other countries that are party to international agreement. For any effective regulation of fish, such as southern blue fin tuna, it has to be at a national level because their life cycle takes them not only past a number of Australian states but also into other international waters, which requires international treaties to govern the long-term survival of those fish. Those matters are best directed to the commonwealth government which regulates this fishery.

The Hon. SANDRA KANCK: I have a further supplementary question. Is the minister therefore refusing to refer my questions to the Minister for Environment and Conservation?

The Hon. P. HOLLOWAY: I just do not think there is any need to do so because the issue is a commonwealth matter, but I am happy to see whether the Minister for Environment and Conservation wishes to add any further information and I will give him the opportunity to do so. Again, I repeat that the regulation of the southern blue fin tuna is a matter for the commonwealth government—and appropriately and properly so.

GAMBLERS' REHABILITATION SERVICES

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Families and Communities, questions in relation to gamblers' rehabilitation services in South Australia.

Leave granted.

The Hon. NICK XENOPHON: The Independent Gambling Authority is today holding public hearings inquiring into the effectiveness of gambling rehabilitation services in South Australia. It is required to do so by an amendment to section 91 of the Gaming Machines Act moved by the Hon. Mr Redford last November—and I note that the government opposed the amendment in this place, but nonetheless it found its way into the legislation. Seventeen written submissions were received, which amounted to several hundred pages (and I should disclose that I provided a submission), from various perspectives, including the welfare sector, problem gamblers, the industry and the department. The authority has until 9 June 2005 to provide a report to the parliament.

The inquiry is particularly timely given the recent virtual doubling of the Gamblers' Rehabilitation Fund to $3.8 million following a compromise and an amendment moved to the Gaming Machines Act last year, which the government also opposed. The composition of the Gamblers' Rehabilitation Fund Committee, which makes recommendations to the minister, has been raised in submissions, including the level of industry representation, and I note the contrast with a much more transparent and independent model that has been in place in New Zealand in the past.

Shortly before 1 p.m. today, the Minister for Families and Communities appeared before the inquiry and made a number of announcements about gamblers' rehabilitation funding. He handed up a statement of joint responsibilities to IGA board members in relation to the Department of Families and Communities and the Minister for Gambling working together; a coordination of services between the two departments and interventions; and, most importantly from the minister's perspective, that his department will accept greater responsibility for gamblers' rehabilitation—and I note, as did others at the hearing, the minister's statement that 'The GRF committee does not exist now'. Given these sweeping changes, my questions are:

1. When will the minister provide the statement of joint responsibilities to this council?

2. Given the minister's statement that the GRF committee does not exist now, can he explain why only last night a GRF committee member received an email advising of the next meeting and an agenda for that meeting?

3. Given the minister's sweeping announcements today, will he confirm that he will, in effect, be ignoring the IGA's findings for the inquiry established as a result of an amendment to the Gaming Machines Act, and that all those who have made a submission have in effect wasted their time? Alternatively, what weight, if any, will the minister give to the inquiry into the submissions made?

4. When will the draft report of the department on gamblers' rehabilitation services, prepared in September 2004, be released in its final form?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I will refer those questions to the Minister for Gambling and bring back a reply.

The Hon. A.J. REDFORD: I have a supplementary question. Did the minister's announcement today have cabinet approval, or was it a decision made on his own behalf?

The Hon. P. HOLLOWAY: I will seek an answer from the minister in respect of the authority for today's announcement.

The Hon. J.F. STEFANI: I have a further supplementary question. Can the minister advise which organisations have been consulted in relation to the decision that he is making?

The Hon. P. HOLLOWAY: Again, I will refer that question to the minister and bring back a reply.

WORKCOVER

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Industry and Trade, representing the Minister for Industrial Relations, a question about WorkCover.

Leave granted.

The Hon. A.J. REDFORD: Last year's annual report of the Department of Administrative and Information Services, a document not read by the Minister for Industrial Relations, shows that the outstanding liability for WorkCover grew by 25 per cent in the two financial years from 2002 to a whopping $304.3 million in June 2004. The annual report says that the increase was caused by (a) worsening trends in income projections for longer term claims, and (b) a deterioration in the performance of long-term claims.

The determination of the total outstanding liability, according to Mr Elbert Brooks (Executive Director, Public Work Force Relations, DAIS), which is the figure of $304 million, is actuarially assessed. In that respect, he told a parliamentary committee:

> It is assessed on an annual basis by the actuary that is retained by my directorate.

Again, he emphasised that this was a figure assessed annually. The $304 million is a composite figure, which covers 131 Crown exempt entities with just over 72 000 full-time equivalents. Obviously, the assessment of outstanding liability involves considerable collection of data, a sampling of that data and an assessment by an actuary of that data—a significant amount of work.

Yesterday in another place, in response to a series of questions, the minister said that he would check the figures, indicating that he had not read his own annual report. Late yesterday the minister issued a press release in which he asserted, first, that the cost of public sector compensation claims has dropped in the nine months since June 2004; and, secondly, that 'when we came to government the figures were headed in the wrong direction'. He then goes on and boldly claims a 7.8 per cent reduction in public sector claim costs and a 4.7 per cent cut in the number of new claims. In his press release he also states:

> If we were to believe their approach—

and he is referring to the opposition—

> they would be pre-paying for the bills they expect to get in 10, 20 or 30 years' time. Like anyone who manages their household budget knows, you pay a bill when it falls due.

We all know that the assessment of an unfunded liability is something that must be conducted by banks, insurance companies and superannuation funds, and they are required to do that so that a proper assessment about the solvency of such organisations can be carried out—obviously something that escapes the understanding of this minister. The minister's press release further states:

> The opposition has no idea how government workers' compensation works.

In that respect, I must say that, unlike the minister, I read annual reports, I do read reports which are sent to me and which relate to my portfolio responsibilities, and I do keep and ensure that meeting briefing notes are not shredded after they have been taken. In the context of that, my questions are:

1. How can the minister assert that 'the cost of public sector compensation claims has dropped' in the absence of any actuarial assessment or in the space of 3½ hours between the asking of the question and the issuing of the press release?

2. Is it not the case that in the 2002-03 year there was a drop of 4.5 per cent in new claims and an increase in outstanding liability of nearly $17 million? Is it not the case that, on that basis, we can assume that the outstanding liability for the last nine months has increased because of 'higher liabilities caused by deterioration in the performance of long-term claims'?

3. Why does the minister's press release dishonestly confuse the number of new claims and the cash payment figures with the issue of total outstanding liability?

4. Will the minister apologise for issuing such a misleading and deceptive press release?

5. Does the minister understand that the assessment of total outstanding liability is an important figure in assessing the performance of both WorkCover and claims management of public sector workplace injuries?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): A number of those questions were nothing more than

pure allegations on behalf of the honourable member, and I do not think that they deserve an answer from the minister. However, in relation to those questions that did actually seek information, I will refer them to the minister in another place and bring back a reply.

The Hon. A.J. REDFORD: As a supplementary question: what questions is the minister asserting do not deserve a response?

The Hon. P. HOLLOWAY: For example, those that allege dishonesty on behalf of the minister. Those questions.

The PRESIDENT: I did not actually hear a question alleging dishonesty—

The Hon. A.J. Redford: It was in the press release.

The PRESIDENT: As to the member's opinion that it is from a press release, those sort of injurious and objectionable comments are out of order. If I had been convinced that that was the honourable member's intention, he would have had to withdraw immediately.

ADOPTION

The Hon. KATE REYNOLDS: I seek leave to make a brief explanation before asking the minister representing the Minister for Families and Communities a question about a ministerial meeting.

Leave granted.

The Hon. KATE REYNOLDS: Earlier this year I asked a number of questions of the Minister for Families and Communities about the closing of the adoption agency AACAA, and in particular I asked questions about what evidence the government or minister had for the decision he made to close the agency and insource the services that it provided. On 3 March, the week after the rally out the front of Parliament House, the minister agreed to have a confidential meeting with me and the member for Heysen so that he could show us the evidence that he claimed he had.

At that meeting we repeatedly asked for access to the Crown Solicitor's report that the minister said his decision was based upon. He said that he would consider it. He said that he was not willing to provide us with a copy of the report, but our specific request was to be able to sit in a room with one of his staff members and read the report so that we could understand the basis for his decision. He said that he would get back to us as soon as possible with a response about whether or not he would agree to that request. It is now the middle of April and we still have not heard back. My question is: when is the minister going to provide me with an answer about whether or not I can sit in a room with a member of his staff and read the Crown Solicitor's report, which apparently provides the evidence for his decision?

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I would have thought that it would be more productive if the honourable member spoke directly to the minister's office. He is a busy and effective minister and I am sure he would be only too happy to accommodate the honourable member, but since she wishes to put it through the formal system I will take the question on notice and forward it to the minister and bring back a reply.

HOSPITALS, ARDROSSAN

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the minister representing the Minister for Health a question about the Ardrossan hospital.

Leave granted.

The Hon. A.L. EVANS: A community meeting attended by about 300 people was held in Ardrossan on Thursday 31 March 2005. The meeting was convened to discuss the future of the Ardrossan hospital. It is my understanding that the hospital is seeking $200 000 from the state government to ensure the continuation of its accident and emergency service. In addition, the community is seeking funds from the commonwealth for aged care beds.

On 6 April 2005 in another place the member for Goyder, during a grievance debate, raised the matter of the Ardrossan hospital. He referred to a letter he had written to the Minister for Health concerning the hospital's current funding crisis. The member for Goyder stated that the Minister for Health had decided that Ardrossan hospital will not receive any funding towards its accident and emergency service. The member for Goyder raised in his grievance a number of persuasive reasons why the state government should support the hospital's endeavour to secure funding for its accident and emergency service.

When the Liberal Party was in government the then minister for health (Hon. Dean Brown) gave a one-off $50 000 emergency fund grant to the Ardrossan hospital, clearly demonstrating that state governments can provide funding to private hospitals. If the Ardrossan hospital is forced to close, emergency services would have to be provided by another health service, not just down the road but much further away.

Yorke Peninsula is a major tourist destination. Through the gateway city of Ardrossan it is reported that in a year 430 000 trips are made to Innes National Park. In the event of an emergency, Ardrossan hospital provides peace of mind to both visitors and locals. In its council profile, the District Council of Yorke Peninsula stated that Yorke Peninsula has the oldest age profile of any region within Australia. The secretary of the Ardrossan RSL, Mr Ray Behrendt, referred to the men's health peer education facilities of the Department of Veteran Affairs, in conjunction with the Vietnam Veterans Counselling Service. He holds great concern for the wellbeing of senior South Australians living in and near the township of Ardrossan.

In a recent letter to the editor, published in *The Yorke Peninsula Country Times*, he said that, if the Ardrossan hospital is closed, the town may well lose one if not both of the doctors and residents may be forced to travel 50 kilometres to visit a doctor. He said local residents already wait up to 30 minutes for an ambulance. If the hospital is forced to close, as pointed out by the member for Goyder last week, the government would be left to provide the same accident and emergency services. However, the cost would be substantially greater than $200 000. My questions are:

1. Will the minister confirm whether the government will be directing any funding to ensure the ongoing provision of the accident and emergency services at the Ardrossan hospital? If yes, how much?

2. If no, will the minister advise whether the government's decision included consideration of forward projections, such as the region's ageing population or overall population growth?

3. Will the minister explain how emergency and accident services to the people of Ardrossan and surrounding districts will be improved if, in fact, the Ardrossan hospital is forced to close because of the state government's decision not to provide funding to ensure ongoing services to Ardrossan?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for his questions in relation to the Ardrossan hospital. I will refer them to the Minister for Health in another place and bring back a response.

HOCKING COURT

The Hon. J.M.A. LENSINK: I seek leave to make an explanation before asking the Minister for Industry and Trade, representing the Minister for Housing, a question in relation to Hocking Court.

Leave granted.

The Hon. J.M.A. LENSINK: There was an article published in *The Advertiser* about six weeks ago which stated:

> The two-year delay to a housing complex for low income earners in the city's southwest corner has been criticised by Adelaide City Council. Lord Mayor Michael Harbison has attacked two housing agencies over the delay in construction of the $2 million shelter on Hocking Court, near Whitmore Square. The South Australian Community Housing Authority and the Multi Agency Community Housing Association are involved in the project, with the council as a third partner. The proposal, passed by the council in December 2002, is to build a three-level complex with five units on each floor. The council is contributing about $400 000 for land purchase and $100 000 in cash grants. The rest of the money will come from SACHA.

Further down in the article, it states:

> The agencies said the checks and balances of public organisations meant certain processes must be met. MACHAS' executive officer, Matthew Woodward, said the agency was frustrated, but was following correct procedure and there had been no real delays.

It continues:

> 'I have no doubt the commercial sector would have done it much faster, but they are not accountable to the taxpayer or the government.' SACHA general manager, Brendan Moran, said design changes had been made. 'Major building projects can sometimes involve lengthy processes, and the proposal is now going through (its) final approvals' he said.

My questions are:

1. How much funding has the state government committed?

2. How much funding has been spent as of close of business yesterday?

3. Precisely what checks and balances was Mr Woodward referring to?

4. What were the design changes that led to this delay?

5. What interim arrangements have been made for prospective residents?

6. In what way are such delays being addressed by the state housing plan?

7. In the light of MACHA's comments, is the government considering more PPPs with SACHA or some other form of privatisation?

The PRESIDENT: That was quite a range of questions.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): Yes; it was a significant range of questions, Mr President. I will refer them to the Minister for Housing, and he can—

The Hon. A.J. Redford: He can choose which ones to answer.

The Hon. P. HOLLOWAY: I am sure that my colleague endeavours to answer all questions. It is a little rich when members opposite complain about the delay in answering questions when, in the course of the hour of question time, they ask literally dozens of questions in brackets such as that.

The Hon. A.J. REDFORD: I rise on a point of order, Mr President. Gratuitous comments about the nature of questions are not in order. The minister either answers the questions or he refers them on.

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The Hon. A.J. REDFORD: I have a further point of order.

The PRESIDENT: There is no point of order, so there is no further point of order if there was no point of order to start with.

The Hon. P. HOLLOWAY: I was simply using the opportunity provided by the honourable member to make a comment. Given the interjections of members opposite at times, I think it appropriate I make the comment that, when such a significant number of questions are asked within a bracket, and it adds up to a very large number of questions during question time, we will try to answer them. I am sure that my colleague the Minister for Housing will endeavour to answer the questions, but members opposite should not complain about the delay when they ask so many.

REPLIES TO QUESTIONS

BAIL BREACHES

In reply to **Hon. A.L. EVANS** (14 September 2004).

The Hon. P. HOLLOWAY: The Attorney-General has received this advice:

1. The conditions on which a person is released on bail are recorded in the bail agreement entered into by that person. Each successful applicant for bail must enter into a bail agreement. As Honourable Members would be aware, many thousands of people are granted bail each year by police and the courts. The Office of Crime Statistics and Research (O.C.S.A.R.) advises that there is no central electronic database from which the conditions set under all the bail agreements can be extracted for analysis electronically.

This means that O.C.S.A.R. cannot answer the Honourable A.L. Evans' question from current, electronically held data collections.

The Minister for Police has provided the following information:

2. The Commissioner of Police has advised that bail authorities (including the judiciary and police) are required to consider many factors when contemplating eligibility for bail. The discretion exercisable by a bail authority is prescribed within section 10 of the *Bail Act 1985* ("the Act") and considers issues such as:

- The gravity of the offence
- The likelihood of re-offending or absconding
- The likelihood of interference with evidence or intimidating witnesses
- The need to protect the offender
- Medical attention or other care (for the offender)
- Previous breaches of bail
- Any other relevant matter

These issues are to be considered prior to granting bail. If bail is granted then conditions are imposed in order to both monitor the behaviour of the offender, protect the victim (if there is one), the community and the offender if required. Statistics are not kept in relation to which proportions of bail conditions are set for the well being of offenders and which protect the victim and/or the community. In many instances bail conditions serve both purposes.

With regard to priorities afforded to the bail conditions, they are not weighted or given any specific order of priority as they are all prescribed within the Act (section 11). Each case will also be

assessed individually based on the circumstances and needs of all parties. Different bail conditions will serve different purposes and all are important.

DRUGS

In reply to **Hon. A.L. EVANS** (21 July 2004).

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

While the government is not considering the allocation of specific funds to improve the capacity of the community to assist police in identifying suspected drug production this strategy is built into a number of initiatives and I am able to provide the following information from a policing perspective.

The Government recognises that while reducing the supply of illicit drugs such as ecstasy, cocaine, amphetamines, ketamine, crystal methamphetamine and Gamma-Hydroxy Butyrate (GHB) is mainly the role of law enforcement agencies, if intervention in the manufacture and distribution of drugs is to be effective it requires partnerships across government and with the broader community.

The South Australia Police (SAPOL) have established a Chemical Diversion Desk (CDD) that plays a pivotal role in gathering intelligence on the movement of equipment, chemicals and diverted prescription drugs used in illicit drug manufacture.

The CDD works closely with chemical and scientific supply companies, pharmaceutical companies and pharmacies to collect the necessary information.

In a related recent initiative, SAPOL developed and disseminated a newsletter to all public schools, through the Department of Education and Children's Services (DECS), on the illicit diversion of laboratory equipment and chemicals that are stored and used in public school laboratories. Previously, similar information has been distributed to commercial laboratories.

As part of the Government's initial response to the South Australian Drugs Summit 2002 additional funding was allocated to the Chemical Diversion Desk. As a result there has been an increase in staff numbers to ensure that they maximise opportunities to gain intelligence on and take action against drug manufacturers.

It is worth noting that in the 2003 calendar year SAPOL discovered 47 clandestine drug laboratories. To date, in 2004, a total of 25 clandestine laboratories have been discovered and it is anticipated that this upward trend will be maintained for the rest of the calendar year.

These laboratories pose a number of risks to the community. They produce drugs for distribution within the community, they are a health hazard to people who work in them, they are a risk to people who live near them and they are a risk to the police and other government services who have to respond to them.

To alert the community about the dangers of these laboratories and to enhance intelligence holdings, police have used BankSA Crime Stoppers to conduct 'phone in days' using several forms of media to raise community awareness.

Police have also conducted two similar BankSA Crime Stoppers phone ins regarding cannabis and on the first of those made a considerable effort towards informing the community about the law relating to cannabis possession.

Police constantly encourage members of the community to report any suspicious activity that may involve the manufacture of illicit drugs through BankSA Crime Stoppers.

The Government also funds Drug Action Teams in each SAPOL Local Service Area. These teams, led by police, identify and deal with local licit and illicit drug issues.

Membership of these teams includes government and non-government agencies, drug user groups, family members of drug users and representatives from within the community.

The teams develop and participate in a range of local interventions regarding illicit drugs including community education programs, and through that community interaction, encourage local communities to identify and report on suspected drug activity.

SAPOL also capitalises on the media's ongoing interest in drug seizures by providing factual information about drugs to the community.

When there is a significant drug seizure, relevant information is provided to the media to increase community understanding of the unlawful and hazardous nature of illicit drugs. The process is used to seek community assistance to identify people and sites that are involved in the manufacture of illicit drugs.

HOME OWNERSHIP

In reply to **Hon. A.J. REDFORD** (27 November 2003).

The Hon. P. HOLLOWAY: The Premier has been advised of the following:

1. In light of the question asked by the Hon A J Redford, the following comments are provided regarding the Hickinbotham submission.

One of the issues raised in the submission is land supply. Hickinbotham argue that within the Urban Growth Boundary the land that is currently held by developers is rapidly diminishing under the buoyant housing market. They also argue that the Government fails to address issues such as the supply of new land which will be used up within 10-15 years, and that land should be made available from regenerating existing residential areas.

In the State Government's submission to the inquiry, the Government pointed out there is an adequate short to medium term supply of land for building in Adelaide. The Government is working with the industry to identify development opportunities within the existing footprint of the metropolitan area, whether that be through surplus State and local government assets, demolition and subdivisions, higher residential densities, or providing housing products that better suit the changing demographic profile of the community. The Government believes that there is time for these opportunities to be investigated and for industry to adapt to the new policy environment.

Further, the argument for land release is rarely coupled with a discussion as to the appropriate sharing of infrastructure costs associated with new development. The main reasons for the Government's Urban Growth Boundary is to improve the efficiency and utilisation of previous investment in existing infrastructure and to promote the redevelopment and regeneration of existing areas of disadvantage and need by upgrading unsuitable or old housing stock. Developers are generally critical of the charges for connections to infrastructure, but as shown in the Government's submission, developer charges in South Australia are limited to roads, drainage, water supply, power and sewerage, and in urban areas the full cost of supply is generally not charged. Thus, State and local government continue to subsidise fringe development. This compares with New South Wales where developer charges fund the provision of a wide range of physical and human services.

Also consistent with many others in the building industry, Hickinbotham's submission is critical of State Government charges such as stamp duties and its effect on housing affordability.

The Productivity Commission in its Discussion Draft has stated that "while the impacts of taxes such as the GST and stamp duties are not able to be determined precisely, rising taxation has not been a significant contributor to the recent escalation in house prices.

Although the intent of stamp duty relief may be to reduce housing costs, a more likely outcome is that the reduction in stamp duty will be offset, at least to some extent, by an increase in property values as potential buyers use the saving in stamp duty to bid up house prices – particularly in overheated property markets.

Finally, Hickinbotham's submission criticises the planning and approval processes in South Australia. The Government submission listed a range of measures we have undertaken to increase the efficiency of the planning process. These include the central electronic lodgement of land division applications, regular land monitoring reports published by Planning SA, and initiatives like the Good Residential Design Program for South Australia (GRDSA)—a State Government program to encourage councils to review residential zoning and provide wider scope for different dwelling types and densities in appropriate locations.

2. South Australia invests considerable effort into the provision and maintenance of social housing in order to provide affordable and appropriate housing opportunities for low income earners, low income families and other disadvantaged people including people with disabilities, mental health problems, the aged, women escaping domestic violence, Indigenous people, people from culturally and linguistically diverse backgrounds, young people and others unable to access, or facing discrimination in, private rental housing markets.

Housing programs are delivered in SA through four housing agencies, with policy, financial and administrative functions undertaken through the Housing Management Council and various parts of the Department of Human Services. Housing services are provided by four separate authorities:

- Aboriginal Housing Authority
- HomeStart Finance
- South Australian Community Housing Authority
- South Australian Housing Trust

Social housing stock at 30 June 2003 was 54 146 (not including 942 houses owned by Indigenous Community Housing Organisations) representing approximately 8.5 per cent of total residential dwellings in South Australia.

The rent paid for social housing properties is determined such that tenants pay no more than 25 per cent of their income as rent and tenancies are in many instances linked to the provision of support services appropriate to the needs of the tenant.

However, emerging pressures in the housing market, particularly declining housing affordability, have underlined the need to develop new approaches to the State Government's role in housing.

A major factor contributing to these pressures is the ongoing reduction in grant funding available under the Commonwealth State Housing Agreement (CSHA). Funding under this agreement has declined in real terms by approximately 31 per cent over the past decade. Under the new CSHA for the period 2003-08 the Commonwealth government has again reduced funding through the withdrawal of GST compensation for housing authorities, which was valued at $9.5 million to South Australia in 2002-03.

In addition to increasing pressures being experienced by social housing providers in South Australia, there is a severe national shortage of affordable rental accommodation with about one in every three people in the private rental market receiving Commonwealth Rent Assistance paying more than 30 per cent of their income in rent.

With respect to young people specifically, social housing agencies continue managing programs to address the housing needs of young people as well as the housing and support needs of vulnerable young people. Many young people are assisted by SAHT through the Student Housing Program. The Student Housing Program was set up to meet housing needs of tertiary students who are enrolled at a recognised tertiary institution. During 2003, 257 properties were allocated to the Student Housing Program, including 99 units, which were let to South Australian Universities under special Head Lease Agreements. During 2003, there were 84 new Student Allocations to the Program.

The needs of vulnerable young people are addressed through the Direct Lease Youth Priority Scheme which provides medium term housing for young people aged 16 to 25 years who are experiencing severe difficulties in securing or maintaining suitable accommodation. During the 2003 calendar year, 224 young people were housed under this program with over 80 per cent of new applicants housed within 6 months of being approved for Direct Lease housing. The average age of those allocated to this Program within 2003 was 19.

Efforts to address the needs of young people continue to be made in community housing also. The South Australian Community Housing Authority (SACHA) provides recurrent annual funding to Developing Alternative Solutions to Housing (DASH) Inc under SACHA's Large Community Housing Organisation program to support community housing for young people. DASH's target group is people aged under 25, and currently the organisation has 91 properties. Funding to DASH totalled $123 000 for the financial year 2002-03.

SACHA also initiates joint venture projects with local governments, churches and other Non-Government Organisations with shared policy interests.

In respect to homelessness and the dispossessed, the State's social housing agencies prioritise housing allocations to those in greatest need, namely Category 1 applicants, many of which are people experiencing homelessness. In 2002-03, Category 1 applicants received 2 928 of 5 531 (53 per cent) of all social housing allocations.

Reducing homelessness is a key priority of the government's social inclusion initiative and this issue was referred to the Social Inclusion Board on its establishment in March 2002. The Social Inclusion Board has provided a report and action plan on how to reduce homelessness in South Australia by 50 per cent during the life of the government and $20 million was provided in the State Budget, over four years, to fund initiatives to address homelessness in South Australia from 2003-04 to 2007-08. Key areas for these initiatives include:

- The creation of new boarding house style accommodation;
- The provision of long-term supported accommodation;
- Improved management and coordination of the care of homeless people with complex and multiple needs;
- Transitional accommodation for vulnerable people; and
- The establishment of an outreach support program.

In addition, a major reform package for Supported Residential Facilities (SRFs) has been announced. $11.4 million has been approved to fund a comprehensive strategy to support the needs of 1200 vulnerable people in SRFs.

Finally, the State Government made an election commitment to the development of a State Housing Plan to identify solutions to market failure and to articulate clearly the purpose and focus of government intervention in the housing market. The plan, which is being developed through a process of extensive consultation, will outline a direction for housing in South Australia over the next 10 years and strategies required to ensure that all South Australians have access to safe, secure, appropriate and affordable housing. It will include strategies to increase the supply of quality low cost housing stock, seek to improve service delivery methods and encourage industry development.

3. The Government's role in maximising affordable housing opportunities is through various specific programs to target affordable housing.

Since the late 1970's, the State Government, through the Land Management Corporation (LMC) and its predecessor agencies, has undertaken land banking (and the subsequent staged release) with the aim of providing a continual supply of serviced and affordable land, mainly in the Northern and Southern sectors of Adelaide. This process has ensured an efficient release of land to assist in keeping land in Adelaide affordable and has allowed for staged development of infrastructure and coordination of service provision. Although the LMC operates on a commercial basis and provides a return to the State Government, public land banking limits the intensification and increase in value of land adjacent to urban areas because the pressure to subdivide it for rural living and intensive agriculture can be resisted. This enables large land holdings to be made available for urban development at a low cost per hectare, and development staged in an efficient fashion. This is one of the main roles of the LMC.

4. As outlined in the Government submission, ACIL Consulting have prepared a study for the Urban Development Institute of Australia which, based on certain case studies, compares the components of house and land package prices between Sydney, Brisbane, Perth and Adelaide. In 2002, government taxes and charges ranged from $31 750 per block in Sydney (20 per cent of the cost of developed land) to $3 000 in Adelaide (17 per cent of the cost of developed land). The main contributor to the higher costs in Sydney was developer contributions for local infrastructure ("Section 94") and higher stamp duty and land tax because of the higher land value. Section 94 includes all costs the local authority determines in the contributions plan for the area – for example open space acquisition and embellishment, community facilities, environmental and conservation provision.

5. The Intergovernmental Agreement on the Reform of Commonwealth-State Relations (IGA) provided State Governments with all revenue generated from the GST in place of the Financial Assistance Grants and Revenue Replacement Payments provided by the Commonwealth to the States. In return, the States agreed to the abolition or reduction of a number of State taxes, and to take on some additional expenditure responsibilities.

In accordance with the IGA, SA (along with all States and Territories) has already abolished financial institutions duty and stamp duty on quoted marketable securities (1 July 2001), and is committed to the abolition of debits tax on 1 July 2005. Further, a review is currently underway into the need to retain a range of stamp duties including those levied on non-residential conveyancers, leases, mortgages, rental agreements, cheques and unquoted marketable securities. This review will report to the Ministerial Council on Commonwealth State Financial Relations in March 2005. It is not contemplated under the IGA that stamp duties on residential conveyancers will be eliminated.

A stamp duty concession already applies to first homebuyers in South Australia (depending on house value) and almost three fifths of first homebuyers qualified for a stamp duty concession in the three years from 2000-01 to 2002-03.

Any further stamp duty relief may actually generate further upward pressure on house prices rather than improving affordability. In an environment of strong growth in property values driven by demand pressures, the most likely impact of further stamp duty relief is that it will generate further upward pressure on prices as stamp duty savings are used to bid up house prices. The amount that potential home buyers can afford to pay 'all up' (ie, inclusive of taxes, bank fees and agents' fees) in order to acquire a home is a major driver of house price. The provision of stamp duty relief of itself does not alter this 'all up' cost although it may enable higher prices to be offered and/or more valuable properties to be purchased.

Providing tax relief or increasing grants to first home buyers may be counter productive if the end result is to keep upward pressure on prices. The beneficiaries of tax relief may be the sellers not the

buyers of property. This will be the outcome if assistance to home buyers is capitalised into the prices they are prepared to pay.

As a final point, arguments that States are receiving 'stamp duty windfalls' are misleading. Cyclical gains by their nature are transitory; they follow extended periods of stable or declining prices and will inevitably be followed by a period of subdued price movement if not price falls.

NATIONAL ELECTRICITY (SOUTH AUSTRALIA) (NEW ELECTRICITY LAW) AMENDMENT BILL

In committee.

(Continued from 11 April. Page 1566.)

Clause 12.

The Hon. P. HOLLOWAY: During yesterday's debate, the Leader of the Opposition asked for some information in relation to transitional arrangements, that is, jurisdictional derogations, and also information about the regulation of the national electricity act. I have copies of that document, one of which I will table and the other I will provide to the Leader of the Opposition.

The Hon. R.I. LUCAS: I thank the minister and his officers. At 2 o'clock, just before question time, I was emailed a series of documents. I scanned through those documents during question time to the extent I could. I want to clarify the cover note I received from the Treasury officer, which indicated that what had been emailed to me was the current SA National Electricity Code derogations, chapter 9, part D, SA Derogations, and then the proposed SA National Electricity Code derogations. That particular document is a bit clearer, because there is a covering letter from minister Conlon to John Easton, who is the Director of NECA, and there is a letter from John Easton to the ACCC. So, I am clear on that.

However, in relation to the second document, which is the current National Electricity Code derogations, I am not sure whether or not I have downloaded the document correctly. It is a document headed 'Part D—Transitional arrangements for South Australia', which runs from page 108 to page 123A, or something like that. I want to clarify with the minister and his advisers whether, in fact, that which I have downloaded from the computer is actually the current SA derogations under the National Electricity Code.

The Hon. P. HOLLOWAY: What we have just tabled and a copy of which I have provided to the leader is the current derogations, which, as we indicated yesterday, are proposed to remain in effect under the new National Electricity Law. Also, the one on top of that is the one that is currently proposed and which is now before the ACCC.

The Hon. R.I. LUCAS: To clarify that point, the proposed derogations which have gone to the ACCC, do they include those aspects of the current derogations that the government wants to continue, together with any new derogations?

The Hon. R.I. LUCAS: While the minister is taking advice, I want to clarify something. What the parliament has had tabled is Part D, 'Transitional arrangements for South Australia', which I understand to be the current derogations, as they apply. A number of those derogations in that document have expired, as I understand it; that is, they were derogations that went through until the end of 2002. They might have gone through to a different date as they related to transmission pricing issues, because transmission pricing issues were handed over to the ACCC from the end of December 2000. In the current derogations that have been tabled, I am assuming a number of those, whilst they might formally exist, have no practical usage because, in essence, the derogations themselves expired on various dates, being either the end of 2000 or the end of 2002.

The Hon. P. HOLLOWAY: I am advised that the Leader of the Opposition is correct. Indeed, some have expired. They are regarded as spent derogations, and they will be removed when the new rules are made.

The Hon. R.I. LUCAS: Given that some of the current derogations are what are called in the jargon 'spent derogations', do the proposed derogations that have been sent to the ACCC include those current derogations that the government wants to continue; and do the proposed derogations include new derogations which are not part of the current derogations?

The Hon. P. HOLLOWAY: My advice is that all existing derogations, other than those that are spent, will be transferred or transitioned over, whatever word one likes, into the new national electricity rules. In relation to the application for derogation, one that is sought is an amendment to chapter 7 of the code. I am advised that it relates to extending the time limit for an existing derogation by one year until 30 June 2006.

The Hon. R.I. Lucas: Extending which derogation?

The Hon. P. HOLLOWAY: It is an amendment to chapter 7 of the code.

The Hon. R.I. Lucas: What page is that?

The Hon. P. HOLLOWAY: The honourable member will note the application to the Australian Competition and Consumer Commission, 'Proposed derogations'. At page 2, the derogation sought is an amendment to chapter 7 of the code.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: It is added to Part D, 'Transitional arrangements for South Australia'. The heading is 'South Australian full retail competition transitional metering arrangements'. I am advised that the derogation being sought is to extend the time limit by 12 months to 30 June 2006.

The Hon. R.I. LUCAS: In relation to that derogation, will the minister outline, if the current date for that was 30 June 2005, what will happen on 30 June? If this is agreed to, what will now happen on 30 June 2006 that was going to happen on 30 June 2005?

The Hon. P. HOLLOWAY: I am advised that all of the proposed derogations relate to metering that has been subject to a review by the various jurisdictions, and I believe the results of that review were given to NEMMCO in October last year. The results of that review, I am advised, are expected to lead to a rule change—it will go to the AMEC for consideration as a rule change—and it is expected that that would be completed before 30 June 2006. So, I guess, essentially, the derogation is sought to allow that process to be completed.

The Hon. R.I. LUCAS: If this derogation was not granted, what would have to happen on 30 June? I understand that there has been a review of the meeting arrangements and that there will possibly be a proposed rule change, but what actually happens on 30 June 2005 if this derogation is not agreed to?

The Hon. P. HOLLOWAY: I can advise the honourable member that apparently New South Wales and Victoria have had similar reviews and have put up similar derogations to the ACCC and they have already been accepted, so it is expected that this derogation would also be accepted for South Australia, as it has for the other jurisdictions.

The Hon. R.I. LUCAS: I am trying to ascertain from the committee's viewpoint, in the absence of this derogation, what in relation to metering under the current rules and law would we be required to do. I assume the derogation tries to exempt us from some provision of the existing law and/or rules and to give us an extra 12 months to do something different. What I want to know is: what, in relation to the metering arrangements, would we be required to do by 30 June if we did not get this derogation, and other states did not get the derogation as well?

The Hon. P. HOLLOWAY: My advice is that at the moment one company undertakes all meter readings in the state, and the derogation allows this to occur. So, presumably, if the derogation was to finish, one company would not be able to undertake all meter readings.

The Hon. R.I. LUCAS: I think that clarifies it. I understand that the minister is saying that this, in essence, would protect the current monopoly arrangement provision in terms of metering for another 12 months. In the absence of that, it would have to be opened up to competition to other competitors by 30 June 2005 and, as I understand it, the state government wants an extra 12 months to work out something, and therefore the current service provider would continue to provide that for a 12 month period until 30 June 2006.

The Hon. P. HOLLOWAY: I am further advised that not one state has yet introduced that competition into meter reading. There are obviously some practical issues which need to be worked out, and the derogation is sought to enable that to occur.

The Hon. R.I. LUCAS: Is the minister's position, then, that that is the only additional derogation that the government seeks at this stage over and above those derogations that exist at the moment?

The Hon. P. HOLLOWAY: Yes, I can confirm what I said yesterday in relation to that.

The Hon. R.I. LUCAS: I want to ask some questions about the definitions and operations of the Ministerial Council on Energy statement of policy principles which appear at the bottom of page 10. We have been advised that the ministerial statement of policy principles means a statement of policy principles issued by the MCE under section 8. I want to have the minister confirm on the record my understanding that the ministerial council statement of policy principles—or any such statement of policy principles—must be determined by a unanimous vote of all the jurisdictions.

The Hon. P. HOLLOWAY: That matter is not covered within the bill that we are debating before us, but it is covered under some agreement. We will attempt to find the answer for the honourable member.

The Hon. R.I. LUCAS: In addition to that last question, what is the status of the MCE statement of policy principles? Perhaps the government could indicate exactly what force of law or status the MCE statement of policy principles has from the viewpoint of the AEMC.

The Hon. P. HOLLOWAY: Advice from my officers is that unanimity is required in voting on the AEMC. Unanimity of the states is required in relation to the successful carriage of AEMC statements of policy principles. In relation to the status of the MCE statement of policy principles, I am advised that the answer lies in clause 33 of the national electricity rules, on page 26 of the bill before us, under the heading 'AEMC must have regard to MCE statements of policy principles in relation to rule making and reviews'. I am also advised that there was a High Court case in relation to that matter, Hoare v the Queen, 1989, 167 CLR, 348 at 365. The expression 'have regard to' must in context mean 'take into account'. It does not require the recipient of the information to accept that it is true, to act upon it or even ultimately to be influenced by it. That was from the case I referred to. It does, however, require the recipient of the information to consider it properly in the context of performing the statutory duty imposed upon him and to which the information to be considered is directed.

The Hon. R.I. LUCAS: On the first issue, I think the minister indicated that there was another document. The voting procedures of the MCE are not outlined in this legislation, is what the minister was saying. Does another document exist that indicates which votes require unanimous votes of the MCE and which votes only require a simple majority and, if there is a document (I might have seen it at some stage and do not think it is confidential, or maybe I saw it when in government), is the minister prepared to table it for the benefit of committee members?

The Hon. P. HOLLOWAY: My advice is that there is a document, but it is not a public document, so perhaps the leader did see it when in government. If there is anything different from that I will come back to the chamber, but it is my advice that it was a confidential document.

The Hon. R.I. LUCAS: It is important in one respect, namely, that one of the remaining protections that small states like South Australia have is in essence the veto power of not agreeing to changes, and various provisions of this bill before us refer, for example page 7, to 'regulations under this part may be made only on the unanimous recommendations of the ministers'. The minister is indicating, in relation to the statement of policy principles, that that has to be a unanimous decision of all jurisdictions. Smaller states like South Australia have some defence in terms of protecting their position that the big ugly sisters from the eastern states do not do over the interests of small states like South Australia.

If the MCE's paper that I asked about is simply a paper decided by simple majority of members, it is possible for a simple majority of members to amend the current Ministerial Council on Energy voting procedures. There may well be an existing MCE policy that says that the MCE statement of policy principles are to be determined by unanimous vote, but if that policy of the MCE can be changed by itself just by simple majority, it is simple enough for a simple majority on the MCE to change that particular policy, which would then change the import of things likes the MCE statement of policy principles and other provisions in this legislation. The government may well tell me the current policy of the MCE is to require unanimous vote.

I am not sure what the current arrangements for the MCE are, particularly as we now have the commonwealth involved, but by and large most MCEs tend to operate with the agreement of all jurisdictions, although in the past there have been some occasions, I understand, where that has not always been the case. So, can the minister outline whether or not any change to the current arrangements, in terms of what is unanimous and what is not, would, in and of itself, require a unanimous vote of all ministers on the MCE, particularly now

that we have the commonwealth on that proposed MCE as well?

The Hon. P. HOLLOWAY: My advice is that there is an agreement standing, but the jurisdictions have not agreed to release it. So this state cannot do it unilaterally.

The Hon. R.I. Lucas: Release what?

The Hon. P. HOLLOWAY: The agreement that is in existence that does require unanimous agreement in relation to any change to the statement of policy principles. As I said, the only advice I can give the honourable member is that it is my understanding that unanimity is required. I think what the leader is asking is, 'Can you change that agreement in there?' Our advice is that, if the states have agreed to this course of action, that is the situation. Without getting further advice, I am not sure that I can further illuminate the committee. All I can say is that my advice is that an agreement is in existence that these statement of policy principles cannot be changed without unanimous agreement.

The Hon. R.I. LUCAS: I will not delay the committee any further. I suspect that we will not complete the whole debate today, so I will leave the request with the minister: that, if the government is in a position to give comfort to the South Australian parliament, that particular policy could not just be changed by a simple majority of the jurisdictions. In the end, if this legislation is passed, without getting that assurance, we can only record the concerns that South Australia's position is protected in that way.

Whilst there is evidently a current policy—and we accept the minister's word for this—which indicates that this would be a unanimous decision, what we need to know, or need as an assurance, from South Australia's viewpoint, is that we are protected in that at some stage in the future the eastern states could not gang up on South Australia, through a simple majority, or a two-thirds majority, on the MCE, and change that policy so that, in future, votes on the statements of policy principles might not be required to be unanimous but only by a simple majority, or a two-thirds majority. I am happy to leave it at that and leave it with the minister.

The Hon. P. HOLLOWAY: We have been advised that there is an agreement that that document can be changed only by unanimous agreement. So, whereas there is unanimous agreement at the MCE that the statement of policy principles can be changed only if there is unanimous agreement, similarly, the agreement itself can be changed only if there is unanimous agreement.

The Hon. R.I. LUCAS: Thank you. That resolves that matter. In relation to the issue of the statement of policy principles and 'must have regard to', I am indebted to the minister, and the minister's advisers, for reading out the legal basis on which we must interpret 'must have regard to'. However, put simply, having listened to that explanation, it would appear that it means, in essence, what the layperson would understand it to mean—that is, the AEMC will not be required to necessarily agree to a statement of policy principles by the MCE. It will be required to have regard to it and must consider it in a proper fashion, and all the appropriate legal phrases the minister quoted, but the bottom line is that the AEMC will not be required to necessarily agree with a statement of policy principles from the ministerial council. I think that is important, because this is the government's legislation, and we are the lead legislator. I think that the impression in the community, and on talkback radio in particular, is that this would be some radical rewrite of the national electricity market and National Electricity Law and that the statement of policy principles would be an appropriate avenue whereby politicians or ministers would dictate what changes needed to occur.

Our Minister for Energy has been fond of appearing to rail against the decisions of independent bodies at the national level and to bemoan the shape and structure of the national electricity market. I remember attending a number of national conferences when the minister put the position that there needed to be a much greater role for the jurisdictions and that politicians needed to have a much greater say. In particular, he was talking about wanting to build the now ill-fated SNI interconnector between the eastern states and South Australia. When one looks now at the legislation the minister has introduced, the minister is consciously and deliberately introducing legislation which makes it clear that the independent body can continue to disagree with the position of the politicians and the jurisdictions. The AEMC will have to have regard to a statement of policy principles but does not have to agree to the statement of policy principles that might have been brought down by the ministerial council. We are looking now at the definitional provision of the MCE but, when we debate those provisions, we may well pursue that issue in slightly greater detail.

The Hon. P. HOLLOWAY: It is correct that the AEMC may disagree with the opinion of the MCE. It certainly has to have regard to it, and I have cited the court case in relation to that. However, I point out that, if the AEMC disagrees, it must publish the reasons for its decision. The relevant rule is on page 55, clause 102(2)(a)(ii), which provides:

> (2) A final Rule determination must contain—
>
> (a) the reasons of the AEMC as to whether or not it should make a Rule, including—. . .
>
> (ii) the reasons of the AEMC having regard to any relevant MCE statement of policy principles. . .

The Hon. NICK XENOPHON: In relation to the status of the MCE statement of policy principles, what does the minister say about those cases in which there has been a breach of principles, or not sufficient regard was taken of them? I know the High Court decision to which the minister referred. What impact do these principles have in the context of any applications for judicial review on the issue of standing? If there is a statement and a perception that that statement of principles has not been given regard to, what impact would that have in the context of any party seeking standing or making an application for judicial review based on, in some part, the statement of principles?

The Hon. P. HOLLOWAY: Ultimately, it would be up to the court. However, my understanding is that judicial review applies to the process, and due regard would have to be given to that process, otherwise the judicial review would, presumably, find that it had not been conducted appropriately. I am not sure that I can advise the honourable member any more than that—ultimately, it is a question of law. That is the best advice we can give the honourable member.

The Hon. R.I. LUCAS: Is there any restriction on the length and breadth of what the MCE could come out with in a statement of policy principles? I do not think that there is, but I ask the question nevertheless. I understand that it has to be consistent with the national electricity market objective stated on page 15. So, the statement of policy principles it issues will have to be, in its view, consistent with that. I do not see that as unduly limiting. However, given that requirement, is there anything else that restricts the MCE statement of policy principles? For example, if the MCE had particularly strong views on the bidding and rebidding behaviour of generators, and it concluded that, in its view (whatever that

was), it was consistent with the national electricity market objective outlined on page 15, is there anything that would prevent the MCE issuing a statement of policy principles on what it believes ought to happen in relation to that behaviour?

The Hon. P. HOLLOWAY: My advice is that there are no constraints on the action of the MCE, other than that in relation to meeting any objectives.

The Hon. R.I. LUCAS: To further clarify that point, as I understand the page 15 MCE statements of policy principles section, it provides:

> Subject to this section, the MCE may issue a statement of policy principles in relation to any matters that are relevant to the exercise and performance by the AEMC of its functions and powers.

That provides that it may issue a statement in relation to the exercise and performance by the AEMC of its functions and powers. Is there anything that prevents the MCE issuing statements of policy principles that impact on other regulatory agencies within the national electricity market, that is, not the AEMC but, say, the AER or, for that matter, NEMMC0, or any other organisation that operates within the national electricity market?

The Hon. P. HOLLOWAY: My advice is that the only body that is subject to these statements of policy principles is the AEMC. Therefore, it is not relevant to the other bodies.

The Hon. R.I. LUCAS: So, I take it that the MCE could issue a statement of policy principles, as it relates to someone else, but they would not have to take any notice of it, whereas the AEMC at least has to have regard to it before it agrees or disagrees with the statement of policy principles?

The Hon. P. HOLLOWAY: Why would the MCE make a statement to a body such as the AER, which would have no effect on the whole structure of the energy systems in the new entities that have been created? The AEMC is the appropriate body to which these statements of policy principles should apply. So, the whole legislation is being geared up specifically with that mind: that the statement of policy principles should bind the AEMC. There is no point in binding other bodies, because it is not really relevant to their functions.

The Hon. R.I. LUCAS: The issue of whether or not the states might be divided up into nodes or further zones within the states, for example, the state of Queensland, rather than being treated as one state or area, might be divided up into three or four and, similarly, the issue of whether or not South Australia should be treated as a state, or be divided up into two or three regions or nodes, has been a vexed issue for some four or five years. Will the minister advise whether, under the government's bill, the ministerial council would be able to issue a statement of policy principles in relation to that issue?

The Hon. P. HOLLOWAY: I am advised that that would be within the scope, because those matters relate to potential code rule changes.

The Hon. R.I. LUCAS: Can the minister outline an example of a participant derogation that applies in South Australia?

The Hon. P. HOLLOWAY: We are not aware whether there are any at the moment, so we will take that question on notice and bring back an answer this evening, if we can.

The Hon. R.I. LUCAS: In relation to the issue of regulatory obligation—and this crosses over some other provisions through the bill—with respect to the transmission service standard, will the minister clarify what is the government's intention, as outlined in this bill? That is, when we start talking about service standards—and there is a transmission service standard in the bill—I assume that, when distribution pricing, for example, is handed over, there will be a distribution service standard issue. However, in relation to the transmission service standard firstly and then, secondly, the distribution service standard, is the shape of the proposed National Electricity Law we are being asked to support one that allows different standards in different jurisdictions, that is, will it be possible, through some process in the future, to have different distribution service standards, for example, or transmission service standards in each or any jurisdiction?

The Hon. P. HOLLOWAY: On page 14, the definition of 'transmission service standard', provides:

> . . . a transmission system imposed—
> (a) by or under jurisdictional electricity legislation;

That appears to suggest that it will allow jurisdictional diversity, if I can use that word. That is our belief.

The Hon. R.I. LUCAS: Whilst I accept that at this stage, I wonder whether the minister will also take that on notice and have confirmed that, under the law for which the minister is seeking support, there is the capacity for different service standards and, as my colleague the Hon. Mr Xenophon has asked, reliability standards as well, in the various states.

The Hon. P. HOLLOWAY: My advice is that, legally, there is the capacity to do it; that is clear from the definition. However, whether that is the actual policy intention is another matter, and I will clarify that point.

The Hon. NICK XENOPHON: Further to that, does the legislation allow variations in reliability in service standards even within a jurisdiction, or will there be uniformity? In other words, will there be a different standard for a regional part of a jurisdiction and a metropolitan part of a jurisdiction? I am not saying that there should be, but I wonder whether the rules would allow for that.

The Hon. P. HOLLOWAY: I guess it is allowed under jurisdictional electricity legislation. Perhaps it depends on what the jurisdictional electricity legislation itself allows. Perhaps we can take that question on notice as well.

The Hon. R.I. LUCAS: Whilst the minister is taking questions on notice, in relation to the issue of distribution obligations, ultimately I accept that there may well be further legislation in relation to that. Some of the arrangements we have in South Australia in relation to bonus performance schemes and bonus penalty schemes did not exist in many other jurisdictions, and three or four years ago South Australia was a trailblazer in many respects in relation to the scheme that was introduced. Of course, that has changed in recent years. Again, I wonder whether the policy intention, as well as the legal capacity, is that in the future, with distribution regulation, individual states will be able to again have differences in terms of their regulatory arrangements, where a state such as South Australia, which is used to such a scheme, can continue with it, but a state which does not have such a scheme is not required to introduce it.

The Hon. P. HOLLOWAY: My advice is that, currently, there are different rules for distribution for different jurisdictions. As far as the future is concerned, those discussions are currently under way. No decisions have yet been made in relation to whether there should be uniformity.

The Hon. R.I. LUCAS: In noting the minister's reply, I indicate that it would be in South Australia's best interests if there was the capacity for differences in relation to the operation of bonus and penalty schemes. They are an accepted part of the regulatory environment in South Australia: they are not in other states. If it comes down to the

lowest common denominator and there must be uniformity, we may lose something which is an important part of the regulatory environment. I note the minister's comments that it is still an issue to be resolved, but, nevertheless, I place my personal views on the issue on the record.

The Hon. P. HOLLOWAY: Of course, it could be that uniformity includes such matters, so I suppose that is why it is still under discussion at present.

The Hon. R.I. LUCAS: In relation to section 5(5), 'Participating jurisdictions', it provides that, if the legislature of a participating jurisdiction enacts a law that in the unanimous opinion of the ministers of the other participating jurisdictions is inconsistent with this law, those other participating jurisdictions can give six months notice to the minister, and, in the end, boot the jurisdiction out of the national electricity market. In essence, it is a provision which allows all other jurisdictions, bar one, to hold the threat of removal from the national electricity market if they do not happen to like a particular law; and it has to be inconsistent with the national electricity law, as well.

Given that we now have an arrangement where the government has agreed to the commonwealth being a part of the MCE, is it possible under this provision that under the current arrangements five or six Labor state premiers and chief ministers could believe that a law of the commonwealth, whether that be industrial relations law, or whatever it might happen to be, was inconsistent with the national electricity law? As long as they complied with this provision, is this drafted so that the states and territories can remove the commonwealth from the national electricity market and from being a part of the MCE? I am not saying that they will specifically do that, but is that one of the options available to the states and territories?

The Hon. P. HOLLOWAY: The first point I make is that this provision is in the current legislative arrangements for the national electricity market, so there is no change in that sense. The second point I make is that section 5(5) provides:

> If the legislature of a participating jurisdiction enacts a law that, in the unanimous opinion of the ministers of the other participating jurisdictions, is inconsistent with this law—

and I think the key words are 'is inconsistent with this law', meaning the National Electricity Law—

> those other participating jurisdictions may give notice to the minister of the first-mentioned participating jurisdiction to the effect that. . . the other participating jurisdictions may declare that the jurisdiction has ceased to be a participating jurisdiction.

I suppose the question is: to what extent is any law of the nature mentioned by the Leader of the Opposition inconsistent with the National Electricity Law?

The Hon. R.I. LUCAS: There are many areas which immediately come to mind where state governments have differed with the commonwealth. In relation to the national electricity market objective, which is to promote efficient investment in the national electricity system, tax law is a perfect example where many state administrations have railed against the various depreciation and other provisions of national tax law. There certainly has been a huge debate about greenhouse emissions policies and various environmental policies of the commonwealth government as they relate to efficient investment in the national electricity market.

There is a raging debate at present in relation to wind energy, of which, I am sure, the minister will be aware, where from the local viewpoint ESCOSA and the planning council have expressed strong views in relation to wind energy. The commonwealth laws in relation to the renewal energy policy and others are examples that, certainly, as a result of discussions I have had with people interested in this issue, might be seen by some jurisdictions as being inconsistent with the national electricity market objective, in terms of the efficient investment in and efficient use of electricity services for the long-term interests of consumers.

I am not asking the minister to waste time today and argue about renewal energy or tax law; I am just giving examples. I want to confirm that this provision is able to be used by the states and territories to remove the commonwealth if they believe one of the commonwealth laws is inconsistent with the National Electricity Law.

The Hon. P. HOLLOWAY: I suppose in theory that is the case, but whether that would be a sensible, desirable or likely in the real political world in which we live is another matter. The law stands. It has existed since 1996. Perhaps we do live in new times now with the federal government's control of the Senate, but I have been around politics long enough to know that there will be a lot more posturing about these things before there is ever likely to be any real action in relation to the matter. It would be highly undesirable if the commonwealth were to be removed.

There is talk at the moment in relation to inter-corporations power but, whether that actually comes about is another matter. I guess it is one of the tensions in federalism to have these theoretical things, and perhaps it is how results are worked out within a federal system. But, apart from those general comments, I am not sure I can enlighten the committee much further.

The Hon. R.I. LUCAS: I acknowledge what the minister has just said, but he has hit the nail on the head, I think, in regard to disputes between the states and the commonwealth. For example, the Queensland and New South Wales premiers are making calls at the moment that perhaps people will see as theoretically the threat to withdraw the delegation of corporations-making powers from the commonwealth as a response to what they see as the federal government's response in the area of the GST. So, it is being used by some state leaders as a bargaining chip in another discussion. I just point out that, potentially in regard to this provision, the states and the commonwealth agree that there is another bargaining chip and the states will be in a position to make threats, as they have, in relation to the corporations-making power provisions of the commonwealth in an endeavour to seek agreement on not only this issue but perhaps others as well. I understand that the minister wants to report progress, and I am happy to agree to that.

Progress reported; committee to sit again.

STATUTES AMENDMENT (LIQUOR, GAMBLING AND SECURITY INDUSTRIES) BILL

Adjourned debate on second reading.

(Continued from 4 April. Page 1421.)

The Hon. CARMEL ZOLLO: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

The Hon. IAN GILFILLAN: I indicate, with some degree of futility, that the Democrats oppose the second reading of this bill. The futility stems from the knowledge that my learned colleagues on the opposition benches support this bill, despite some trepidation evidenced by the Hon. Robert Lawson, as indicated by his depiction of the reality of

the security industry in South Australia in comparison with the huff and puff of Labor's tough-on-everything stance. The reality is that the crowd controller's job is difficult, carried out in difficult conditions with little or no support from the Labor government or the media. As rightly pointed out by the opposition, there is no hue and cry raised every time a security guard or crowd controller is injured in an affray, no banner headlines calling for the registration and control of nightclub patrons, or efforts to list all alcohol consumers and record their access to anywhere in the state.

We share the surprise of the opposition that the trade union representatives, who are strongly represented on the government benches in this chamber, are not leaping to their feet in defence of the men and women working in this dangerous industry. It is important for us to recognise that this industry is dangerous—a heady mix of alcohol, passion and hormones means those who work in it do so with a real appreciation of the risks involved in their profession. It should therefore be no surprise to us that some of those people who are comfortable with that level of risk are also comfortable with riding motorbikes for pleasure and as a means of transport and, naturally, like to associate with other people who do the same—and this is the area of the bill that causes us the most concern.

The purpose of the bill is to prevent people who associate with motorcycle clubs from being employed in the security industry if identified as such during a police background check. Is this anything other than guilt by association? We are dismayed at how low, in our opinion, this government will go to continue to take cheap shots at easy targets. Surely this should have Labor members squirming in their seats. A quick stroke of the pen discards the concept of innocent until proven guilty and replaces it with guilty by virtue of the company that you keep. How wide will the application of this law go? I am not seeking work in the security industry, I assure you, Mr Acting President, but I have had a conversation with the president of the Gipsy Jokers, a motorcycle club. Does this mean that I cannot consider crowd control as an option if at any stage I am looking for another career? I am forced to wonder whether my staff are now in secret police files and marked as known associates.

What is the potential for the system to be abused by a person's rivals? Those providing criminal intelligence are understood to be criminals themselves or, at the very least, known associates, yet this government believes it is appropriate that these people are in a position to prevent a rival from securing work. The secrecy provisions of the bill mean that a person can never confront their accuser, nor the nature of the complaint. The appeal mechanism falls far short of the concepts of natural justice that the Democrats hold true.

When we read sections of the Attorney-General's speech describing as 'clean skins' people who do not have a criminal record, we suddenly discover the level of farce that this Labor government has descended to. How can the government be running the idea that a person with no criminal record should be held up as someone who is sinister? Perhaps a person has no criminal record because they do not participate in criminal activity. As I have said, the Democrats do not support this bill. We do not approve of laws based on the concept of guilt by association, and I hope that other members of the chamber will share with us our distinct disquiet that legislation of this type is even considered, let alone passed by the parliament.

I quote, as additional material, from the bill itself which causes us extreme concern. This provision relates to the situation where the Commissioner refuses an application for a person to take up this occupation. New section 12(2)(b) provides:

> the Commissioner is not required to provide any grounds or reasons for the decision other than to grant the application would be contrary to the public interests, or that it would be contrary to the public interest if the licensee were to continue to be licensed, or that it would be contrary to the public interest if the approval were to continue in force.

If this is not controlled by secrecy, it is very hard to interpret this legislation. Far be it from me to say that these are exhaustive quotes from the bill (which I find quite reprehensible), but clause 46 seeks to insert new section 9A, 'Factors to be taken into account in deciding whether to grant application for security agents licence'. New section 9A(1)(b), which is to be taken into consideration, provides:

> the reputation, honesty and integrity of people with whom the person associates.

This is bizarre legislation. The extent of the impact of this could virtually cover every member in this chamber. There is no doubt that, from time to time, either advertently or inadvertently we do meet and associate with people who would fit those categories, and therefore, under the terms of this legislation, that would disqualify us from being accepted (without ever knowing about it) as crowd controllers. It is quite clear that we find this legislation totally abhorrent. We will not be supporting it in any of its stages. We oppose the second reading and, if need be (and I hope that it does not get that far), we will do so again at the third reading stage.

The Hon. NICK XENOPHON: I support the second reading, because I see this bill as an opportunity to reform the security industry. I acknowledge at the outset that I have taken much stock of what operators in the industry have told me. I have spoken to a number of them in the past 15 months and, in particular, Laurie Bias, who runs a security company. He has been very forthright in his views in the media. He has been outspoken and courageous in seeking reform of the industry to get rid of rogue operators and to wipe out the use of drugs and substance abuse amongst those who are involved in crowd control, because he sees it as a fundamental issue of public safety and good practice.

I am very grateful to Mr Bias for his advice and input in relation to reform of this area. Also, I am grateful for the extensive advice I have obtained from someone who works within the security industry. In a sense this person is a whistleblower and their identity cannot be disclosed. This person has provided me with a number of considered comments about the legislation and has spent some time with me discussing his concerns about the industry. This person's concerns are broader in that they see this bill (as do I) as an opportunity for some real reform of the security industry.

We know that the catalyst for this bill was the very tragic death last year of Mr David Hookes in Victoria. As I understand it, the matters arising out of the incident that led to the death of Mr Hookes are still before the Victorian courts, and it is not appropriate to comment any further on that. Also, I note that the government is concerned about the involvement of organised crime in the industry, and I share that concern. I draw no parallels, of course, with the tragic incident involving David Hookes; but, in a sense, the catalyst was the tragic death of Mr Hookes, and the government's bill is attempting to tighten up licensing procedures.

I note the concerns of the Hon. Mr Gilfillan with respect to the associates' test and the issues of natural justice. My understanding is that, in some cases, there are difficulties in

the sense that a charge has not been proven against an individual, but concerns have been expressed by the police in terms of their investigations. There is a real concern about whether such a person should have a licence in the security industry, and that is a difficult area. However, from discussions I have had with those responsible for enforcement, I understand that it is an area of continuing frustration to weed out undesirable influences in the industry, and I see this bill as going some way towards dealing with that.

Of course, the issues raised by the Hon. Mr Gilfillan with respect to natural justice are relevant, but there is also the key issue of what the police do when they have good intelligence that a person has certain links and associations, and they have evidence of that. It is not enough for conviction in respect of any particular offence, but it raises serious concerns about those individuals. I think that is something that needs to be aired and discussed further in committee. The bill sets out various obligations and powers with respect to crowd controllers and gives power to the Commissioner to suspend a security agent's licence.

There is also an overarching intent in the legislation to deal with the issue of organised crime in the industry and weeding out these undesirable operators. One comment made by Mr Laurie Bias, a longstanding operator in the industry who has a passion, as I have said, to clean up this industry, is that one way of approaching this issue is to ensure that the operators in the industry are doing the right thing in terms of keeping proper books and accounts, paying through the books and, presumably, paying the award. I know that is something about which the Hon. Mr Gazzola (who is listening intently) is very keen, and also issues such as appropriate training, as the Hon. Mr Gazzola has very helpfully pointed out to me. These are key issues.

Sometimes there may be an effective way to deal with the problem by requiring monitoring and regular inspections of the books of these operators to ensure that they are above board in the sense that they are paying the award, or paying via a contract or an enterprise agreement; and also to ensure that these operators are keeping proper records. Information I have received from others who have worked in this industry is that some operators do not bother to do that. They undercut others, and it raises potential issues of money laundering and related issues in terms of the way in which some firms have operated.

I think that more than 160 security firms are operating in the state. A person best described as a whistleblower in the industry in terms of his observations and expertise has given a very considered approach, after I spent several hours with him. He believes that there ought to be a gradation of responsibilities for positions with different regulatory and legislative requirements that apply; that there ought to be, for instance, a customer service officer, an entry level position requiring a person with less than two years experience undertaking the functions of a door person, that the role should be limited to facilitating access and egress, directing pedestrian movement, policing adherence to a dress code, liquor licensing and related matters, and that this person would be fitted with a portable two-way radio and a mobile phone and that that would be the extent of their arsenal.

A second category this person put to me is that there could be a safety officer class 1 that would apply to licensed venues, entertainment venues, concerts, gambling premises and sporting events, and that the suitability for this position would rely on the completion of relevant minimum standards of training, and that the duties should be to police a venue and crowd in relation to alcohol and gambling issues in terms of complying with codes and issues of staff and patron safety (including escorting a person to a safe locale, if necessary), preventing criminal activity, providing first-aid, emergency aid, monitoring surveillance and other equipment and to remove, when required, intoxicated persons from a venue. That would be on a higher level than the first level I described.

He also suggests that there ought to be a class 2 security officer that would apply to persons in shopping centres, retail outlets, building sites, commercial complexes, offices and private buildings, and that there be a minimum level of training beyond that of the first class of safety officer, and that the duties of this person would be to police an area for criminal activity, emergency response, hazard reduction, surveillance equipment and security. Again that would be similar to someone at a shopping centre, and they would have a minimum level of training.

He also raised the issue of having mobile patrol officers, including a trainee position. These are people who would be required to go from premises to premises to check to see that they have not been broken into or that there has been no criminal activity, and they would have certain training in terms of how to respond appropriately in the case of an emergency. He also suggests that there should be a valuables movement officer—someone who handles large amounts of cash for payroll and other purposes, including armoured cars.

One of the concerns this person has raised with me is in relation to dog handlers in the security industry. The concern expressed to me (if the minister could respond) is that several years ago rules were supposed to be proclaimed or enforced for minimum levels of training and that has not come into force, which raises questions about the whole issue of enforcement and ensuring minimum standards for the industry. If we did not get it right previously, as this person suggested, it raises questions about ensuring that we get it right this time with respect to appropriate levels of enforcement.

This person suggested that with respect to a canine unit or dog handlers there must be minimum training, such as a dog handling course. I understand that the minimum requirements with respect to dog handling that were anticipated in regulations and legislation have not yet been dealt with, and I will follow that up in committee. There should be approved breeds and rigour in the legislation with respect to that.

He also raised the issue of having a supervisor, someone with at least five years continuous industry experience, someone who can supervise staff, has relevant qualifications in terms of having experience to liaise with clients, to monitor staff performance and to deal with occupational health and safety issues and incidents that arise. He also raised the issue of having an operations manager as well as a business owner in terms of the minimum and relevant standards that must be complied with. The point he made is that there should be not only new applications to undergo the scrutiny contemplated in this legislation but that it should also apply to all renewals. A lot can happen in 12 months and, unless there is adequate security of licence holders, it will not improve the security as required. In terms of division 10A of the bill—

The Hon. J. Gazzola interjecting:

The Hon. NICK XENOPHON: The Hon. Mr Gazzola asks what sort of transition period I am talking about. It is important that there be adequate transition provisions that are fair to the industry, but public safety ought to be of paramount consideration. However, unless there is an attempt to

require the on-going scrutiny of licences, it will be a recipe for complacency and any reforms would prove to be superficial and will not have the desired effect in terms of improving the industry and enhancing public safety.

I turn now to the issue of the approval of crowd controllers, with respect to the system contemplated. I suggest that it ought to be tightened up and that approval not be given for these various classes of those who work in the industry unless relevant training has been undertaken. The person providing the information has written to me saying:

> A clear example is the endorsement for dog handler. When the original act was written we were granted the right to undertake the duties of dog handler as endorsed on our licence on condition that we undertake the appropriate training. As yet this appropriate training has not been available, yet we are still licensed to be a dog handler.

That is the point I raised earlier. The issue of self-defence to be used by those who work in the industry ought to be considered in the context of the type of licence given. If someone is working at the lower levels with respect to patrolling or simply ensuring access and egress into a particular venue, the issue of force being used is one that needs to be questioned seriously. In terms of the use of force by some who work in the industry, it appears to be manifestly excessive on a large number of occasions. My office has been contacted with stories of crowd controllers who do not particularly like the look of someone, or a person may have said something considered a bit cheeky or impertinent by the crown controller, and they find themselves getting walloped or king hit.

That is something that those in the industry, whom I have spoken to, Laurie Bias and others, regard as not acceptable behaviour. If you do your job properly as a crowd controller, if you are trained properly, if you follow the relevant protocols, there should be no use for force; the only force that should be exercised is that of genuine self-defence by crowd controllers. Even in those cases, an experienced and well-trained crowd controller should be able to avoid, on all but the rarest of occasions, having to use force, in that they should be able to deal with someone who is either drunk or under the influence of a substance, so that the situation does not get ugly and force or self-defence are used.

The suggestion made to me is that the level of force, or the use of force, should only be as set out in the Summary Offences Act as a defence to any action or assault. It is something that should be used rarely, and this legislation should get the message across, with relevant amendments, to ensure that there is a zero tolerance policy, to ensure that violence by crowd controllers is stamped out. A number of crowd controllers have had woeful record in this regard. That is why I have been grateful for the advice of Laurie Bias, for instance, who tells me that, in terms of the training of his staff, and his zero tolerance policy to drug use by his staff, is an integral part of his business, but when I have spoken to other operators in the industry, or those who have been involved in training in the industry, I am disturbed that there is still what appears to be an unacceptably high level of substance misuse, particularly with respect to steroids in some cases, or amphetamines.

We are talking about some people who may be taking amphetamines to stay awake for a 16-hour shift, or who have just been burning the candle at both ends, and are taking amphetamines to keep going. That can lead to behaviour that is aggressive and inappropriate, particularly inappropriate for someone who is supposed to be controlling the behaviour of others at a venue. So the whole issue of drug testing and the way it is undertaken is absolutely pivotal to ensure that this legislation is effective. That also relates to the issue of alcohol abuse, that if someone is intoxicated, or well on the way, and working as a crowd controller, that is a recipe, a cocktail, for potential disaster, when they are trying to deal with a highly charged situation on occasions.

They are the sorts of matters that need to be addressed, and that is why, in the committee stage, I will be asking a number of questions, and I will move amendments to ensure that any system of drug and alcohol testing is comprehensive, not only on a random basis, but particularly where any incident has been involved. I think it acts to protect all those involved, that there be the appropriate testing for anyone involved in an incident, both members of the crowd who are directly involved, if there is a violent altercation, and crowd controllers.

The suggestion has also been put to me by this person who has worked in the industry that there ought to be an approved psychological assessment for applicants, in terms of whether they are appropriate individuals to work in the industry—

The Hon. J. Gazzola interjecting:

The Hon. NICK XENOPHON: Yes, the Hon. Mr Gazzola says anger management. I think it involves seeing more than the video of the movie. It would relate to a very basic assessment as to whether they are suitable persons to deal with an industry that can lead, on occasions, to situations that can pose significant danger to themselves and to members of the public. As I understand it—and I will be corrected if I am wrong on this—there is some basic psychological assessment for those seeking to join the police force, and there ought to be some modified system there to ensure that there is some filtering mechanism with respect to that.

The point has been made to me, and I have not double-checked this through research, that in New South Wales and the Northern Territory, there are fingerprints of applicants, and this is something that we should also be looking at in the South Australian context. In terms of an annual return for employees, there ought to be proof of activity in the preceding 12 months, including full-time or part-time or casual employment, and who, with, proof of psychological assessment, a credit reference report, a proof of no civil or criminal matters pending, and a current national police clearance.

I understand that relates to the issue of ensuring that we are not getting someone in South Australia who has had a chequered or colourful career, for want of a better word, in another state or territory. Other matters, in terms of an annual return, should be that if a firearms licence is held, an applicant should provide proof of requirement to hold, and there should be fingerprinting details or qualifications. Also for employers, there should be a proof of activity within the previous 12 months of the sort of work that has been carried out, the employees and the licence held by them, the psychological assessment proof, proof that all taxes, superannuation and WorkCover payments are made and that they are up to date, and they should be furnished by the relevant authorities, or proof of that should be furnished by the relevant authorities.

That goes back to the point made by Laurie Bias, who says that, if you ensure that those sorts of things are dealt with, you go a long way in getting rid of the rogue operators and those operators who use their business, in some sense, as a method of a conduit for illegal funds or where they are being paid from an illicit source. The additional matters with

respect to an annual return for employers should include proof of no civil or criminal matters pending, a credit reference report, a list of all persons with an interest in the business and the relevant licences and qualifications held by them, proof of any other qualifications and experience, and reference made to any firearms licence.

The suggestion that has been made to me by this person who has worked in the industry is that there ought to be a class of licence for a weapons licence, that it should only be issued to a licensed holder on an application to the commissioner and should only be issued to a person holding a position of a mobile patrol officer, or a supervisory role, and that a person have at least two years' continuous industry experience. The weapons licence should be restricted to matters such as handcuffs, so as to restrain a person reasonably suspected of committing an offence. The point has been raised that, in relation to one very unfortunate incident that I believe is still the subject of investigation, had handcuffs been used, rather than other methods of restraint, the outcome might have been different. So, using handcuffs appropriately, rather than putting someone in a headlock or a chokehold, could save injury or prevent an incident from escalating.

The point has been raised that the use of batons should be strictly regulated to enable mobile patrol officers to be on an equal footing with the persons they encounter while executing their duties. The point has also been made to me that a high number of patrol officers are carrying something to protect themselves; whether that is a baseball bat, or some other weapon (and that is not desirable), there ought to be some uniformity. They should use something appropriate, and they should receive training.

The Hon. R.D. Lawson: Will you move amendments to include those powers?

The Hon. NICK XENOPHON: I intend to move a raft of amendments, and I am doing my best to have a draft ready in the near future. The comment of the Hon. Mr Lawson was very useful.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Even if it was out of order.

The Hon. NICK XENOPHON: We ought to debate how far we go with this, and it ought not simply be a case of window-dressing—and not looking at the relevant minutiae, if you like—to ensure that this works. The act already contains provisions relating to the carriage of firearms by mobile patrol officers and cash-in-transit officers. There is a real question mark over whether patrol officers need to carry firearms if they are not carrying large amounts of cash.

A number of other points have been raised, and I will touch on them briefly. There are issues with respect to the need to regulate mobile patrol vehicles and uniforms. There is nothing to stop some mobile patrol officers using the uniform of SAPOL so that they look like police officers, and I think that could be misleading in some situations. There is a need to have appropriate regulations with respect to drug and alcohol testing. Alarm response is a huge industry in this state, and it has been suggested to me that some practices amongst some operators indicate that alarm responses are not made in a timely fashion. Some contracts work on the basis that, unless you are there within 30 minutes, you cannot charge. My advice from an individual who has worked in the industry is that there is some rejigging of the records in that regard, which, on his account and on mine, and that of others, could be a fraud.

In relation to mobile patrols, I have heard from this person, and from others, that some businesses, for example, are being charged for three patrols although only one or two per night are provided. As to static guards at large events, it seems that people do not get what they pay for in terms of the number of staff and the hours they attend. They are just some of the remarks made by this person in the industry, who indicates that some rorting is going on. It is an important industry, and dealing simply with crowd controllers does not deal with some broader issues for which this legislation ought also to be a vehicle. If we are to have testing of crowd controllers, let us make sure that we have a truly effective testing regime that will ensure that the decent operators, such as Laurie Bias, can go about their business and that the reputation of the industry will be enhanced. I support the second reading of the bill and I look forward to the committee's debating some of my amendments.

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

PARLIAMENTARY SUPERANNUATION (SCHEME FOR NEW MEMBERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 April. Page 1540.)

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank members for their contribution to the debate on the second reading of this bill. It has certainly been of some interest to listen to the different views expressed, both in the council and in another place, in relation to the proposals contained in this bill. The bill seeks to amend the Parliamentary Superannuation Act 1974 and make a related amendment to the Parliamentary Remuneration Act 1990. It will close the existing Parliamentary Superannuation Scheme, which pays indexed pensions to retired members, and create a new scheme for those persons who become members of parliament at the next general election.

The level of government support in the scheme will be nine per cent of salary, or 10 per cent of salary when a person contributes at least 4.5 per cent of salary into the scheme. The new scheme has the level of government support equivalent to that under the government's Triple S scheme established for government employees. The slightly higher subsidy for those who contribute at least 4.5 per cent of their own income into the scheme will encourage members to invest some of their own money into their future retirement. The scheme includes automatic death and disability insurance cover for all members of the scheme. For members who enter the scheme under the age of 66 years, the maximum death and disability insurance on the first day is five times salary. The insurance cover tapers off as a member builds up a benefit in the scheme.

As a total superannuation package for those persons who enter parliament at the next general election, it is an excellent package—but without the high costs associated with the existing pension style scheme that is being closed by this legislation. We all know how the move around the nation to close the existing open and expensive pension schemes for politicians started, and this was often referred to during the debate. The fact is that all other states have now closed their pension schemes or are in the process of doing so. In order to be consistent with the other states and the commonwealth, the government has made the decision to close the pension scheme that remains open to new entrants and set up an accumulation based scheme with a cost that is more in line

with schemes in the community. In fact, the cost of the new parliamentary scheme will be equivalent to that available to public servants, teachers and police officers in this state.

The bill will not require existing members of parliament to switch over to the new scheme. The approach being taken by the government in relation to this issue is consistent with the government's approach in dealing with the closure of the pension scheme for public servants in 1986. To require members to move over to the new scheme and retrospectively suffer a reduction in accrued superannuation benefits, amounting to a retrospective reduction in remuneration, would simply be unfair—unfair to members and their families who, in many instances, would have based their decision on standing for parliament on the total remuneration package, including superannuation, available to a member of parliament. I am pleased to see that the Leader of the Opposition supports the government in relation to this approach.

The government also believes that it would be totally inappropriate for there to be an option built into the legislation for a member to voluntarily forgo his or her accrued superannuation benefit and move over to the new scheme. This would simply result in undue pressure being placed on members by the community and the electorate to move over to the new scheme. In an environment where we are approaching an election, this would be inappropriate, as it would result in members being forced to make decisions that were unfair and which would have the potential to have a huge impact on the lives of the member's partner and family.

I note that the Leader of the Opposition has spoken of his intention to move some amendments during the committee stage that would provide members who enter the parliament after the next election with an ability to elect to have a superannuation guarantee benefit paid to a fund of their choice. The government does not support such a suggestion. The government's concern with such a proposed amendment is that there is no requirement on the member who would have his or her SG contribution paid to an external fund to have death and disability insurance. Furthermore, there would be no requirement on the member to have death and disability insurance at a level appropriate for an elected representative in our parliament. This is a major problem with the choice of fund arrangement, and it is a bigger problem in dealing with the secure and financial wellbeing of members of parliament. Until such time as this issue and some of the other issues in relation to the commonwealth's choice of fund regime are addressed, it is the government's view that a choice of fund option should simply be put on hold. I commend the bill to the council.

Bill read a second time.

ANZAC DAY COMMEMORATION BILL

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

CHIROPRACTIC AND OSTEOPATHY PRACTICE BILL

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

PODIATRY PRACTICE BILL

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

STATUTES AMENDMENT (ENVIRONMENT AND CONSERVATION PORTFOLIO) BILL

Second reading.

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I move:

That this bill be now read a second time.

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

Leave granted.

Introduction

The *Statutes Amendment (Environment and Conservation Portfolio) Bill 2005* seeks to make minor and administrative amendments to a number of Acts within the Environment and Conservation Portfolio. The Bill seeks to clarify certain matters and to reduce current ambiguities associated with administration of, and compliance with, those Acts. The Bill amends eight Acts: the *Historic Shipwrecks Act 1981,* the *National Parks and Wildlife Act 1972,* the *Native Vegetation Act 1991,* the *Natural Resources Management Act 2004,* the *Pastoral Land Management and Conservation Act 1989,* the *Radiation Protection and Control Act 1982,* the *Water Resources Act 1997* and the *Wilderness Protection Act 1992.*

Historic Shipwrecks Act 1981

As a result of proposed amendments to the *Historic Shipwrecks Act 1981,* shipwrecks will become historic shipwrecks for the purposes of the Act after they have been situated in the territorial waters of the State for 75 years. Currently, shipwrecks and associated articles located in the territorial waters of the State are assessed on a case by case basis to determine whether they are of historic significance. The amendments made by this Bill will bring the *Historic Shipwrecks Act 1981* into line with the *Historic Shipwrecks Act 1976* of the Commonwealth. All wrecks and associated articles will, by virtue of proposed new section 4A, become 'historic' when they are 75 years old. This means that wrecks in State and Commonwealth waters will be treated in the same way. The amendments will provide certainty for the community, provide clarity for developers and create greater uniformity across Australia. (All states have a 75 year rule except New South Wales, which has a 50 year rule.)

National Parks and Wildlife Act 1972

Currently, the *National Parks and Wildlife Act 1972* requires the Minister to lay annual reports received from the National Parks and Wildlife Council and advisory committees before Parliament within six sitting days of receipt. Amendments to the Act will provide consistency with the requirements of the *Public Sector Management Act 1995* by extending this period from six to twelve days.

In addition, changes to provisions relating to the powers of the Director of National Parks and Wildlife will have the effect of allowing the Director to delegate any of the Director's powers under the Act and will allow for more effective and responsible administration of the Act.

An amendment to the regulation making power of the Act is also proposed. This amendment will have the effect of allowing the making of regulations to regulate the taking, keeping or selling of protected animals or other animals indigenous to Australia, or the eggs or carcasses of protected animals or other animals indigenous to Australia (including pursuant to permits).

A further amendment to this Act removes uncertainty in relation to penalties for contravention of permits under the Act. The Act currently prescribes two penalties for failing to comply with a permit. The amendments proposed to sections 70A and 73 will remedy this situation so that only one penalty will apply.

Native Vegetation Act 1991

Currently under the *Native Vegetation Act 1991*, the Native Vegetation Council *must*, if consenting to an application for permission to remove native vegetation, attach to the consent a condition that will achieve an environmental benefit. This requirement has the potential to be seen as overly obstructive at times. The amendments proposed by this Bill to the *Native Vegetation Act 1991* will provide the Native Vegetation Council with the capacity to consent to the clearance of native vegetation without attaching a condition to the consent if in the opinion of the Council the proposed clearance will not result in a loss in biodiversity. The Council must also be satisfied that the attachment of a condition would place an undue burden on the landowner. These changes will provide for a more efficient use of the Act whilst still ensuring the conservation, protection and enhancement of native vegetation of the state.

To provide consistency in this process, guidelines will be developed for use by the Native Vegetation Council to assist in the determination of whether, in a particular instance, an unconditional consent may be given to a proposed clearance of native vegetation.

A further amendment to the *Native Vegetation Act 1991* substitutes a new definition of ***biological diversity***. This definition is the same as the definition of that term that is used in the *Natural Resources Management Act 2004*. The new definition also makes it clear that the terms ***biological diversity*** and ***biodiversity***, both of which are currently used in the Act, have the same meaning.

Natural Resources Management Act 2004

The proposed amendments to the *Natural Resources Management Act 2004* will ensure that if a penalty for unauthorised use of water in a particular period is not gazetted in the stipulated time, the applicable penalty for that period will be taken to be the last penalty declared by the Minister. This will ensure that a financial deterrent for the overuse of water is always in place, regardless of whether or not a notice is gazetted within the first six months of a consumption period, therefore providing added protection for the State's water resources.

Related amendments to the *Water Resources Act 1997* have also been included within this Bill. The *Water Resources Act 1997* will be repealed when the *Natural Resources Management Act 2004* becomes fully operational on 1 July 2005.

An amendment to the definition of ***biological diversity*** is also included. This amendment makes it clear that the terms ***biological diversity*** and ***biodiversity***, both of which are used in the Act, have the same meaning.

Pastoral Land Management and Conservation Act 1989

The Bill proposes minor changes to the constitution of the Pastoral Land Management Fund to reflect the reality that rent paid for pastoral leases minus associated administrative costs usually results in a deficit, therefore rarely contributing to the fund.

The Bill also proposes an amendment relating to the functions of the Board. This amendment will enable the Board to perform functions assigned to the Board under Acts in addition to the *Pastoral Land Management and Conservation Act 1989*, for example, assessment of clearance by grazing applications under the *Native Vegetation Act 1991*.

The changes provide greater clarity within the *Pastoral Land Management and Conservation Act 1989* and will help to aid in the more effective administration of the Act.

Radiation Protection and Control Act 1982

The transfer of responsibility for the administration of the *Radiation Protection and Control Act 1982* from the Health portfolio to the Environment Protection Authority has resulted in a number of consequential amendments to that Act. Additionally, an amendment to the long title of the Act is proposed to reflect the fact that the protection of the environment and the health and safety of people against the harmful effects of radiation is an objective of the Act.

Water Resources Act 1997

As noted above, the proposed amendments to the *Water Resources Act 1997* are similar to those proposed in relation to the *Natural Resources Management Act 2004*. These amendments will ensure that if a penalty for unauthorised use of water in a particular period is not gazetted in the stipulated time, the applicable penalty for that period will be taken to be the last penalty declared by the Minister. This will ensure that a financial deterrent for the overuse of water is always in place, regardless of whether or not a notice is gazetted within the first six months of a consumption period, therefore providing added protection for the State's water resources.

Wilderness Protection Act 1992

The criteria currently used to determine membership of the Wilderness Advisory Committee do not accurately reflect the skills and knowledge required in relation to conservation and interconnectedness of ecosystems. A proposed amendment to the *Wilderness Protection Act 1992* will enable a suitable field of applicants to be considered for membership of the Committee with qualifications or experience in a field of science that is relevant to the conservation of ecosystems and to the relationship of wildlife with its environment. A further amendment will provide for consistency between this Act and the *National Parks and Wildlife Act 1972* in relation to membership of the South Australian National Parks and Wildlife Council.

Additionally, providing the Director of National Parks and Wildlife with a power to delegate any of the Director's powers under the Act will allow for more effective and responsible administration of the Act.

Removal of obsolete references and update redundant terminology

Finally, the Bill proposes a variety of statute law revision amendments to each of the Acts. These amendments remove obsolete references and update terminology, to aid in understanding and interpretation.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

This clause provides that the measure will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Historic Shipwrecks Act 1981*

4—Amendment of section 3—Interpretation

This amendment to section 3 of the *Historic Shipwrecks Act 1981* is consequential on the insertion by clause 5 of new section 4A. As a consequence of this amendment, an article or the remains of a ship that are historic relics or historic shipwrecks by virtue of new section 4A fall within the definition of ***historic relic*** and ***historic shipwreck*** respectively.

5—Insertion of section 4A

This clause inserts a new section.

4A—All shipwrecks and relics of a certain age historic

Section 4A provides that the remains of all ships that have been situated in South Australian waters for 75 years or more are historic shipwrecks for the purposes of the Act. All articles that have been situated in South Australian waters for 75 years or more and that were associated with ships are historic relics.

If the remains of a ship, or any articles, have been removed from South Australian waters at any time, those remains or articles are historic shipwrecks or historic relics for the purposes of the Act after the 75th anniversary of the date that the remains or articles first came to rest on the seabed.

The Governor may declare by proclamation that the section does not apply to the remains, or part of the remains, of a particular ship or class of ships. The Governor may also declare by proclamation that the section does not apply to an article or class of articles.

6—Amendment of section 12—Register of Historic Shipwrecks

This clause amends section 12 so that the Minister is required to enter into the Register of Historic Shipwrecks particulars of all known remains and articles that are historic shipwrecks or historic relics by virtue of new section 4A.

7—Amendment of section 14—Regulations may prohibit certain activities in a protected zone

Subsection (1)(b) of section 14 currently provides that regulations under the Act may prescribe penalties, not exceeding a fine of $1 000 or imprisonment for one year, or both, for a contravention of a provision of the regulations made for the purposes of paragraph (a). This clause recasts subsection (1) so that paragraph (b) is removed. New subsection (3a) prescribes a penalty of $1 250 or imprisonment for one year, or both, for contravention or failure to comply with a regulation under subsection (1). The penalty for breach of a regulation under the section is thereby prescribed in the Act rather than by regulation.

8—Repeal of section 25

Section 25 is repealed. This section provides that—

- proceedings for an offence against the Act will be disposed of summarily; but
- an offence against the Act that is punishable by imprisonment is a minor indictable offence and will be disposed of accordingly.

As a consequence of the repeal of this section, offences under the Act will be classified in accordance with section 5 of the *Summary Procedure Act 1921*. This means that offences under this Act for which a maximum penalty of two years or less is prescribed will be summary, rather than minor indictable, offences. As a result of this amendment, classification of offences under the *Historic Shipwrecks Act 1981* will be consistent with most other Acts. The *Summary*

Procedure Act prescribes the manner in which proceedings for these offences will be disposed of.

Part 3—Amendment of *National Parks and Wildlife Act 1972*

9—Amendment of section 12—Delegation

Section 12(3) of the *National Parks and Wildlife Act 1972* currently provides that the Director of National Parks and Wildlife may delegate powers that have been delegated to him or her to the South Australian National Parks and Wildlife Council (the *Council*), or to an advisory committee or another person. The provision does not allow the Director to delegate powers that have not been delegated to him or her. This clause recasts subsection (3) so that the Director can delegate any of his or her powers under the Act.

10—Amendment of section 19D—Annual report

As a consequence of this amendment, the period within which the Minister is required to lay before both Houses of Parliament the mandatory report received from the Council on its operations is extended from six days to twelve days.

11—Amendment of section 19L—Annual report

As a consequence of this amendment, the period within which the Minister is required to lay before both Houses of Parliament an annual report received from an advisory committee on its operations is extended from six days to twelve days.

12—Amendment of section 27—Constitution of national parks by statute

This amendment does not alter the meaning or effect of the provision. Rather, the meaning of the provision is clarified so that there is no doubt that "or to be included in" means "or *ceases* to be included in".

13—Amendment of section 28—Constitution of national parks by proclamation

This amendment does not alter the meaning or effect of the provision. Rather, the meaning of the provision is clarified so that there is no doubt that "or to be included in" means "or *ceases* to be included in".

14—Amendment of section 29—Constitution of conservation parks by statute

This amendment does not alter the meaning or effect of the provision. Rather, the meaning of the provision is clarified so that there is no doubt that "or to be included in" means "or *ceases* to be included in".

15—Amendment of section 30—Constitution of conservation parks by proclamation

This amendment does not alter the meaning or effect of the provision. Rather, the meaning of the provision is clarified so that there is no doubt that "or to be included in" means "or *ceases* to be included in".

16—Amendment of section 31—Constitution of game reserves by statute

This amendment does not alter the meaning or effect of the provision. Rather, the meaning of the provision is clarified so that there is no doubt that "or to be included in" means "or *ceases* to be included in".

17—Amendment of section 33—Constitution of recreation parks by statute

This amendment does not alter the meaning or effect of the provision. Rather, the meaning of the provision is clarified so that there is no doubt that "or to be included in" means "or *ceases* to be included in".

18—Amendment of section 34A—Constitution of regional reserves by proclamation

This amendment does not alter the meaning or effect of the provision. Rather, the meaning of the provision is clarified so that there is no doubt that "or to be included in" means "or *ceases* to be included in".

19—Amendment of section 45A—Interpretation

This clause amends section 45A to remove redundant references to *Bookmark Biosphere Trust* and *Man and the Biosphere Program*.

20—Amendment of section 45F—Functions of a Trust

This amendment is connected to the amendments made by clause 19. Section 45F(1a) relates solely to the Bookmark Biosphere Trust, which no longer exists.

21—Amendment of section 60I—Plan of management

Section 60I of the *National Parks and Wildlife Act 1972* requires the Minister to prepare a draft plan of management in relation to the harvesting of each species of protected animal to which the relevant Division of the Act applies. Under subsection (7), a plan of management must be published in the Gazette. There is also a requirement that a notice stating the place or places at which copies of the plan may be inspected or purchased must be published in a newspaper circulating throughout the State.

As a consequence of the amendment made by this clause, notice that a plan of management has been adopted by the Minister must be published in the Gazette and a newspaper circulating generally throughout the State. The notice must state the place or places at which copies of the plan may be inspected or purchased. There will no longer be a requirement that the plan of management be published in the Gazette.

22—Amendment of section 70A—Failure to comply with authority

Section 70A and section 73 both currently prescribe penalties for contravention of a permit under the Act. Section 73(2) goes further than section 70A in that it refers also to "a person acting in the employment or the authority of the holder of a permit". This clause recasts section 70A(1) so that it incorporates the reference to persons acting in the employment, or with the authority, of the holder of a permit. Section 73(2) is deleted by clause 23.

23—Amendment of section 73—Offences against provisions of proclamations and notices

This clause amends section 73 by deleting subsection (2). This provision is redundant because of the amendment made by clause 22 to section 70A.

24—Amendment of section 80—Regulations

Section 80(2)(a) provides for the making of regulations that confer powers, authorities, duties and obligations necessary or expedient for the enforcement of the Act. That provision is amended by this clause to allow such regulations to also be made if necessary or expedient for the administration of the Act.

This clause also inserts a new paragraph. As a consequence of the insertion into section 80(2) of paragraph (wa), regulations under the Act may regulate the taking, keeping or selling of protected animals or other animals indigenous to Australia, or the eggs of protected animals or other animals indigenous to Australia. The regulations may regulate taking or killing of such animals or eggs pursuant to permits granted by the Minister.

Part 4—Amendment of *Native Vegetation Act 1991*

25—Amendment of section 3—Interpretation

This clause amends the *Native Vegetation Act 1991* by substituting a new definition of ***biological diversity***. That term and ***biodiversity*** will have the same meaning.

26—Amendment of section 29—Provisions relating to consent

Under section 29(11) of the *Native Vegetation Act 1991*, the Native Vegetation Council may consent to clearance of native vegetation under the section if a condition is attached to the clearance and the Council is satisfied that fulfilment of the condition will result in a significant environmental benefit.

As a consequence of the amendment made to section 29 by this clause, subsection (11) will be subject to new subsection (12). This new subsection provides that a consent to clearance of native vegetation may be unconditional if the Council is satisfied that the clearance would not result in a loss of biodiversity and the attachment of a condition under subsection (11) would place an unreasonable burden on the person applying for the consent.

Part 5—Amendment of *Natural Resources Management Act 2004*

27—Amendment of section 3—Interpretation

The amendment made by this clause to the definition of ***biological diversity*** that appears in section 3 of the *Natural Resources Management Act 2004* makes it clear that the terms ***biological diversity*** and ***biodiversity*** have the same meaning.

28—Amendment of section 115—Declaration of penalty in relation to the unauthorised or unlawful taking or use of water

Section 115 of the *Natural Resources Management Act 2004* provides that the Minister may declare a penalty payable by a licensee who takes water in excess of the water allocation of a water licence. Under subsection (2), the notice must be published in the first half of the accounting period in relation to which the penalty is to apply. Proposed new subsection (3)

provides that if the Minister has not declared a penalty or penalties by the end of the first half of a particular accounting period, it will be taken that the last penalty or penalties declared by the Minister also apply to the taking of water in the consumption period that corresponds to that accounting period.

Part 6—Amendment of *Pastoral Land Management and Conservation Act 1989*

29—Amendment of section 9—Pastoral Land Management Fund

Under section 9 of the *Pastoral Land Management Act 1989*, the Pastoral Land Management Fund currently consists of, among other money, a prescribed percentage (which must be between 5 and 15 per cent) of the amount received each year by way of rent paid under pastoral leases reduced by the administrative costs attributable to administering those leases. As amended by this clause, this provision applies only if the amount received in a particular year by way of rent paid under pastoral leases exceeds the administrative costs attributable to administering those leases for that year. In those circumstances, a prescribed percentage (being not less than 5 per cent or more than 15 per cent) of the excess is payable into the Fund.

30—Amendment of section 17—Functions of Board

The Pastoral Board will, as a consequence of this amendment, be required to perform functions assigned to the Board by or under the Act *or another Act*.

Part 7—Amendment of *Radiation Protection and Control Act 1982*

31—Amendment of long title

This clause amends the long title of the *Radiation Protection and Control Act 1982* to insert a reference to protection of the environment and the health and safety of people against the harmful effects of radiation.

32—Amendment of section 5—Interpretation

This clause amends the interpretation section of the Act to remove redundant references and revise the definition of ***Department***.

33—Amendment of section 9—Radiation Protection Committee

Reference to the South Australian Health Commission is removed from section 9. As a consequence of this amendment, the presiding member of the Radiation Protection Committee must be an officer or employee of the administrative unit of the Public Service charged with the administration of the Act.

34—Amendment of section 12—Functions of Radiation Protection Committee

Reference to the South Australian Health Commission is removed from section 12.

35—Amendment of section 16—Authorised officers

This clause amends section 16 by deleting subsection (2). This subsection provides that a mines inspector is an authorised officer for the purposes of the Act.

36—Amendment of section 17—Powers of authorised officers

This clause amends section 17 by deleting subsection (4). This subsection limits the powers of mines inspectors under the Act.

37—Amendment of section 22—Annual report

Under section 22, the South Australian Health Commission is required to prepare an annual report on the administration of the Act and the Minister is required to cause a copy of the report to be laid before each House of Parliament as soon as practicable following receipt of the report.

This clause amends section 22 so that it is the administrative unit of the Public Service charged with the administration of the Act, rather than the South Australian Health Commission, that is required to prepare the report. The Minister will also be required to cause a copy of the report to be laid before each House of Parliament within twelve sitting days of receipt of the report.

38—Substitution of section 35

This clause recasts section 35 for the purpose of removing references to the South Australian Health Commission.

39—Amendment of Schedule—Application of this Act to the Roxby Downs Joint Venturers

This clause removes references in the Schedule to the South Australian Health Commission. As a consequence of the amendment to clause 4, the Minister, rather than the Commission, is required to refer an application to the Radiation Protection Committee and consider the Committee's response.

Part 8—Amendment of *Water Resources Act 1997*

40—Amendment of section 132—Declaration of penalty in relation to the unauthorised or unlawful taking or use of water

Section 132 of the *Water Resources Act 1997* provides that the Minister may declare a penalty payable by a licensee who takes water in excess of the water allocation of a water licence. Under subsection (2a), the notice must be published in the first half of the accounting period in relation to which the penalty is to apply. Proposed new subsection (2ab) provides that if the Minister has not declared a penalty or penalties by the end of the first half of a particular accounting period, it will be taken that the last penalty or penalties declared by the Minister also apply to the taking of water in the consumption period that corresponds to that accounting period.

Part 9—Amendment of *Wilderness Protection Act 1992*

41—Amendment of section 3—Interpretation

This clause amends the interpretation section of the Act to remove a redundant reference to the ***Natural Resources Management Standing Committee*** and revise the definition of ***Department***.

42—Amendment of section 6—Delegation

Section 6(3) of the *Wilderness Protection Act* currently provides that the Director of National Parks and Wildlife may delegate powers that have been delegated to him or her to any person. The provision does not allow the Director to delegate powers that have not been delegated to him or her. This clause recasts subsection (3) so that the Director can delegate any of his or her powers under the Act.

43—Amendment of section 7—Annual report

This clause amends section 7 by replacing references to "the Department of Mines and Energy" and "the Minister of Mines and Energy" with "an administrative unit of the Public Service" and "the Minister responsible for the administration of the *Mining Act 1971*" respectively.

44—Amendment of section 8—Wilderness Advisory Committee

As a consequence of this amendment, membership of the Wilderness Advisory Committee will include a person who has qualifications or experience in a field of science that is relevant to the conservation of ecosystems and to the relationship of wildlife with its environment.

45—Amendment of section 12—Wilderness code of management

The amendments made by this clause remove redundant references to the Natural Resources Management Standing Committee.

46—Amendment of section 22—Constitution of wilderness protection areas and wilderness protection zones

This amendment removes a redundant reference to the Natural Resources Management Standing Committee.

47—Amendment of section 24—Alteration of boundaries of wilderness protection areas and zones

This amendment removes a requirement that a copy of a notice under section 24 be provided to the Natural Resources Management Standing Committee.

48—Amendment of section 25—Prohibition of mining operations in wilderness protection areas and zones

A reference to "the Minister of Mines and Energy" is replaced with "the Minister responsible for the administration of the *Mining Act 1971*".

49—Amendment of section 31—Plans of management

The amendments made by this clause remove redundant requirements in relation to the Natural Resources Management Standing Committee.

50—Amendment of section 33—Prohibited areas

A reference to "the Minister of Mines and Energy" is replaced with "the Minister responsible for the administration of the *Mining Act 1971*".

Schedule 1—Transitional provision

1—Transitional provision relating to *Natural Resources Management Act 2004* and *Water Resources Act 1997*

This transitional provision relates to the amendments to the *Natural Resources Management Act 2004* and the *Water*

Resources Act 1997. The penalties declared by the relevant Minister under section 132(1)(a) of the *Water Resources Act 1997* with respect to the taking of water in the consumption period that corresponds to the 2003/2004 financial year accounting period will continue to apply for the purposes of the *Water Resources Act 1997* or the *Natural Resources Management Act 2004* (as the case requires) in respect of succeeding consumption periods until a new penalty is declared by the relevant Minister (either under section 132(1)(a) of the *Water Resources Act 1997* or section 115(1)(a) of the *Natural Resources Management Act 2004*).

Schedule 2—Statute law revision amendment of *Historic Shipwrecks Act 1981*

This Schedule makes various statute law revision amendments to the *Historic Shipwrecks Act 1981*.

Schedule 3—Statute law revision amendment of *National Parks and Wildlife Act 1972*

This Schedule makes various statute law revision amendments to the *National Parks and Wildlife Act 1972*.

Schedule 4—Statute law revision amendment of *Native Vegetation Act 1991*

This Schedule makes a statute law revision amendment to the *Native Vegetation Act 1991*.

Schedule 5—Statute law revision amendment of *Pastoral Land Management and Conservation Act 1989*

This Schedule makes various statute law revision amendments to the *Pastoral Land Management and Conservation Act 1989*.

Schedule 6—Statute law revision amendment of *Radiation Protection and Control Act 1982*

This Schedule makes various statute law revision amendments to the *Radiation Protection and Control Act 1982*.

The Schedule deletes section 46 of the Act. Section 46 provides that contravention of, or failure to comply with, a provision of the Act is an offence. The section also provides that proceedings for offences against the Act are, unless minor indictable, to be disposed of summarily and prescribes a maximum penalty of $50 000 or imprisonment for five years for minor indictable offences and $10 000 for summary offences.

This section is deleted so that offences under the Act are classified in accordance with section 5 of the *Summary Procedure Act 1921*. The Schedule also inserts a penalty provision at the foot of each section or subsection that creates an offence. Offences that are not punishable by imprisonment, or for which a maximum penalty of two years or less is prescribed, will be summary offences. Others will be indictable. As a result of this amendment, classification of offences under the *Radiation Protection and Control Act 1982* will be consistent with most other Acts. The *Summary Procedure Act* prescribes the manner in which proceedings for these offences will be disposed of.

Schedule 7—Statute law revision amendment of *Wilderness Protection Act 1992*

This Schedule makes various statute law revision amendments to the *Wilderness Protection Act 1992*.

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

NATIONAL ELECTRICITY (SOUTH AUSTRALIA) (NEW ELECTRICITY LAW) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 1586.)

The Hon. P. HOLLOWAY: The Leader of the Opposition, when we last debated this bill, asked a question about participant derogations. I am advised that there is only one such derogation, which expired on 31 December 2004.

The Hon. R.I. LUCAS: There was another issue which I was going to pursue in relation to section 5(5), but it completely escapes me. I am sure there will be an opportunity to return to it at some other stage. Section 5(6) provides:

A jurisdiction ceases to be a participating jurisdiction on publication in the South Australian *Government Gazette* of a declaration made by the ministers of other participating jurisdictions in accordance with subsection (5) .

If all the other jurisdictions ganged up on South Australian law, deemed it to be inconsistent and decided that they wanted to boot out South Australia for some reason, I am assuming the South Australian minister is responsible for the government gazettal. In essence, South Australia has an added protection in that it could refuse to gazette the declaration because, while the other ministers might take a decision, it takes legal effect only on gazettal in the South Australian *Government Gazette*. I am assuming that no other ministers, through this legislation or anything else, have access to gazettal requirements in the South Australian *Government Gazette* and, in essence, South Australia would have an additional protection, if it so chose, to refuse to be expelled from the ministerial council.

The Hon. P. HOLLOWAY: It would appear that is theoretically correct but, again, I think we need to get back to the spirit of the new national electricity law. While sections 5 and 6 do allow for jurisdictions to be removed if the other six states agree, the whole point is to provide some ultimate extreme protection within the law. These are measures which one would not expect ever to be used. They are simply there to allow for some extreme circumstance.

The Hon. R.I. LUCAS: I have a question which does not relate to the Hon. Nick Xenophon's amendment to section 7. The government in this bill actually excludes the operations of the Acts Interpretation Act on page 6 of the bill; that is, the Acts Interpretation Act does not apply to the National Electricity Law. In relation to this issue of the national electricity market objective, in some of the discussion I have seen there has been some reference to clarification of the objective through the second reading explanation. What are the government's reasons for ensuring that the Acts Interpretation Act does not apply to the National Electricity Law or the national electricity regulations? My colleague the Hon. Mr Lawson is not here, but I seem to recall argument about the Acts Interpretation Act and whether or not second reading contributions were to be taken into account by the courts. Is the government's thinking that the Acts Interpretation Act not applying relates to this issue; or is there some other reason why the Acts Interpretation Act has been excluded?

The Hon. P. HOLLOWAY: I am advised that under the current situation the South Australian Acts Interpretation Act does not apply to the NEL or the regulations. That will continue, of course, with this new act. The reason that is done is that the National Electricity Law and the regulations are applied by each jurisdiction. Therefore, there are special agreed provisions which apply in each jurisdiction to the application of the NEL or the regulations. They are contained at page 69 of the bill, schedule 2, part 1, clause 2.

The Hon. R.I. LUCAS: I do not want to prolong this debate—and I am not well suited to prolonging it anyway, not being a lawyer—but, as a matter of principle, something that I have read has indicated that the governments are wanting to have some statement of clarification in the second reading to give great impact or to assist in interpretation of the objective. Perhaps when the Hon. Mr Xenophon moves his amendment we might be able to refer to that but, as I have said, I have read somewhere—and maybe it was in the second reading explanation—that there was to be some clarification of this objective and how it was to be interpreted in an economic sense in the second reading.

As a matter of principle, I do not support the notion, and it may be that some courts have headed in different directions, that the second reading explanations given by ministers

can be taken as being the intention or the will of the majority of the parliament. There are many occasions when the majority in a parliament support a piece of legislation but certainly do not support every paragraph in the second reading explanation of the minister's bill. In some cases, members may violently object to particular interpretations in the second reading.

Again, we are about to come to the dinner break and I might be able to find this reference before the Hon. Mr Xenophon moves his amendment after the dinner break, and it may well be that the passage of legal interpretation has gone beyond my position. I will talk to the Hon. Mr Lawson about it. However, as an individual legislator, I have always argued, and will continue to argue, that when courts are interpreting what was meant they cannot necessarily take it that every paragraph that was uttered by the minister in a second reading was the intention of the parliament. It ain't necessarily so. Sometimes the flavour of what is in a second reading and maybe the whole debate might give some indication, but then you get into a pretty grey area. I know that has certainly been argued before.

In a 100 page bill, definitions and objectives will be clarified by the second reading and then members will move amendments, anyway. But the fact that a number of members in the chamber (Liberal Party members) do not oppose the legislation does not necessarily mean that we support either the totality or, indeed, individual parts of the legislation. So, I do not know whether it impacts on judicial interpretation further down the track because we are making these comments in committee rather than during the second reading, but it may be an issue that can be explored when the Hon. Mr Xenophon moves his amendment. I have no further issues to raise on this provision, so I guess we are now waiting on Mr Xenophon.

The Hon. P. HOLLOWAY: To enlighten the honourable member, I am advised that in relation to the Bankstown Football Club a decision was made in the High Court which clearly means that courts can take into account the second reading explanation when interpreting acts. In other words, when the courts come to determine the intention of parliament in moving legislation it is quite clear, after that decision, that courts can and do take the second reading explanation into account. That is exactly why the second reading explanation contains the statement that it does—to ensure that, if this matter should ever need to be interpreted by the courts, that will be taken into account as a clear statement of the intent of the bill. I presume the second reading explanation is taken into account because, if the will of the government ultimately prevails, that is taken to be the best statement of purpose of the bill. On page 71, clause 8(1) of schedule 2 states:

(d) the speech made to the Legislative Council or House of Assembly of South Australia by the member in moving a motion that the bill be read a second time; and

That is part of the definition of 'extrinsic material', which means 'relevant material not forming part of this law'. So it is quite explicitly placed into the rules.

The Hon. R.I. LUCAS: So, when that provision refers to a relevant report of the committee of the Legislative Council, does that refer to the debate during the committee stage of this council?

The Hon. P. HOLLOWAY: I am talking about paragraph (d).

The Hon. R.I. LUCAS: I accept that, but (b) says 'a relevant report of a committee of the Legislative Council. . . was made. . . before the provision was enacted'. The chairman might be part of this debate. Does that refer to the debate that occurs in the committee, or is it just that we adopt the amendments or the legislation as it was moved? There is actually a specific reference to a relevant report of the committee. Paragraph (e) also says 'material in the votes and proceedings of the Legislative Council. . . or in any official record of debates in the Legislative Council'. So, any action makes it clear that every bit of *Hansard* is entitled to be used by the courts in interpretation.

The Hon. P. HOLLOWAY: I think that is probably not unreasonable. After all, amendments in the committee stage are made. I can well remember when I was working for Ralph Jacobi when he was a federal member of parliament that he was responsible in some way for changes to the commonwealth Acts Interpretation Act, and I know it was always his strong view (and I am talking about 20 years or more ago) that it should be explicitly put into the commonwealth act that the courts should take into account the intention of parliament. I suppose we have had some decisions that have from time to time angered members of parliament where the courts appear to have gone quite contrary to what was the clear intention of the parliament. Presumably that is what has motivated the changes to the Acts Interpretation Act. I am certainly aware of part of the history in relation to the commonwealth parliament, but I speak with much less authority in relation to the history behind this.

In relation to paragraph (b), my understanding is that that is meant to be a contingency provision if legislation was referred to a committee for a report—which of course sometimes happens—and that would be taken into account. I assume that paragraphs (a) to (f) are fairly standard to cover all possible contingencies in the passage of a piece of legislation. We will check to see whether they apply under the current legislation. I am advised that they are there under the National Electricity (South Australia) Act. Obviously, they have been adopted across. As I say, each of those provisions applies for every contingency to ensure that the courts have the full array of parliamentary debate at their disposal so that they can properly determine the view of the parliament as a whole.

Progress reported; committee to sit again.

OATHS (ABOLITION OF PROCLAIMED MANAGERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 April. Page 1568.)

The Hon. P. HOLLOWAY (Minister for Industry and Trade): This bill was introduced into the other place last November at the same time as the Justices of the Peace Bill 2004. The proposal for the bill arose out of the review of justices of the peace legislation and administration and the functions of JPs. This bill, which is quite simple, has reached the council first. The Hon. Mr Gilfillan has asked me to respond in my reply to some points that he made. For that reason I will reply at greater length than I would normally for a bill that has the support of the opposition and the Democrats.

Proclaimed managers (formerly known as proclaimed bank managers) have some authority and functions in common with JPs in that both are authorised to take declarations and attest documents; and, under the Evidence Affidavits Act of 1928, they may take affidavits for use in evidence

in South Australian courts. The decision to authorise men who were in charge of bank branches to exercise these functions was put into legislation in 1913 in the Declarations and Attestations Act of 1913. This now forms part of our Oaths Act of 1936. The 1913 act was particularly for the convenience of people who lived in the country.

Although there were justices of the peace, they exercised a lot of other functions in those days. According to the report in *Hansard* of the second reading of the then attorney-general, people in the country often travelled long distances to a JP only to find that he was not at home. Often they would not have been at home because they were performing other JP duties. They constituted courts of summary jurisdiction, acted as coroners, constituted local courts to hear civil actions, received information and complaints for offences, dealt with bail applications, conducted preliminary hearings into charges of indictable offences, committed people to lunatic asylums and dealt with disputes between masters and servants, as well as performing the important but more routine task of attesting documents and taking declarations and affidavits.

Of course, every town of any size had a branch of at least one bank in those days, and the local bank manager was a person who knew and was known to and respected by most people in the area (haven't things changed!). Time has moved on, with many country bank branches being closed. Also, the way in which banks now carry on their business is different, and some branches do not have a manager who qualifies for proclamation under the Oaths Act. Banks no longer serve country areas in the way they used to. When I was attorney-general, I sent a letter and questionnaire to every authorised deposit-taking institution in South Australia that employed managers who had been proclaimed under the Oaths Act.

There were nine of them; only four replied. Two of those—the Adelaide Bank and the ANZ Bank—expressed some concern about a reduction in customer service, but did not mention country areas at all. They did not argue strongly for the retention of proclaimed managers. Bank SA said:

> We do not believe our customers or members of the public would be affected if proclaimed managers were abolished.

The Commonwealth Bank replied:

> If the category of proclaimed managers were withdrawn there would be a need for some proclaimed managers to become justices of the peace to witness documents such as statutory declarations in the ordinary course of the bank's business.

I believe that the bill was also sent to the nine ADIs and none of them replied. This indicates that the proposed abolition of proclaimed managers was a matter of no importance to the five who did not reply. Presumably, it is of little importance to those who replied to the initial letter but not to the bill. Any bank managers or other bank employers who wish to be able to assist members of the public by attesting documents and taking declarations and affidavits can apply to be appointed a justice of the peace. The shadow attorney-general seems to suggest that, if some proclaimed managers do not recognise conflicts of interest, how will the situation be improved by appointing them as a JP?

At present, proclaimed managers are appointed on the mere request of their employing banks. When this bill comes into operation bank employees will have to make an application in the same way as any other person. Their applications will be subject to the same checks as other applicants. If it is thought that they would be suitable and that their appointment is justified they would, like other applicants, be interviewed by a panel of people appointed through the Attorney-General's office as a final check on their suitability.

Questions could be asked and advice given about conflicts of interest with a view to finding out whether applicants recognised the potential for conflicts, and whether they still wished to be appointed if they are not to attest documents or take declarations when their employing bank is a party to the transaction or proceedings. If the Justices of the Peace Bill is passed, there will be additional scope for maintaining proper standards of conduct. They could be appointed subject to conditions specifying or limiting their authority, including that they are not to attest any document or take a declaration or affidavit when their employer is a party to the transaction or matter to which it relates.

There will be a code of conduct for JPs. Every new JP will receive a handbook that will cover this topic. Training courses through TAFE SA will be available. If it comes to the attention of the Attorney-General that a JP has acted in breach of conditions of appointment or their code of conduct or otherwise improperly, the JP may be reprimanded, have additional or different conditions of appointment, or be suspended or removed from office. By these means it is expected that JPs, including those who are bank employees, will acquire a greater awareness of how they should act when performing their official duties.

The quota policy applied by the Attorney-General's office in deciding whether to appoint new justices of the peace is: four JPs per 1 000 people in the metropolitan area; and, eight JPs per 1 000 in a rural area. For this purpose an area is a postcode area. Population statistics by postcode are obtained from the Australian Bureau of Statistics every four years to keep this reasonably up to date. However, additional justices of the peace are appointed to an area if there is a specific need. Examples of specific need are:

- a widely-dispersed community;
- a need for a justice of the peace who speaks a language other than English;
- a need for a justice of the peace of a particular cultural or religious background in the area;
- a high demand for the services of a justice of the peace in particular types of office, such as local council or electorate offices.

This has resulted in more justices of the peace being appointed in some rural areas. If a bank shows that there is a high demand for the services of one of its employees to the public in a particular area, this would be taken into account in deciding an application by its employee for appointment as a justice of the peace. In answer to the concern expressed by the Hon. Ian Gilfillan, I can say that the abolition of proclaimed managers should not affect the level of service to people in rural and regional communities; and, particularly if the Justices of the Peace Bill is passed, it should improve the quality of the service presently available. I commend the bill.

Bill read a second time.

[Sitting suspended from 6.01 to 7.45 p.m.]

In committee.

Clause 1 passed.

Clause 2.

The Hon. R.D. LAWSON: Will the minister indicate when it is proposed that parts 1 and 2 of the act will come into operation? In relation to the amendments to the Justices of the Peace Act (obviously that bill is presently before

another place), is it intended that all parts of these two acts will come into operation at the same time?

The Hon. P. HOLLOWAY: I can advise that, although they were introduced as partner bills, there is no reason why one cannot come into effect without the other. In relation to part 2 of the bill, titled 'Amendments of Oath Act 1936 to take effect immediately', it is proposed that that part will come into effect on assent. Part 3, as suggested, takes effect on 1 January 2007. Part 2 of the bill, which would prevent the appointment of any new proclaimed managers and terminate the appointment of existing managers on 31 December 2006, will come into effect as soon as the bill receives royal assent.

The Hon. R.D. LAWSON: I understand that the effect of part 2 is that no further proclaimed managers will be appointed, and all who hold appointment will cease as of 31 December 2006. My question was specifically directed at part 3, which is intended to take effect as it states on 1 January 2007. Is it intended that the amendments to the Justices of the Peace Act (or the new scheme, as I might describe it, under that act) will come into operation on 1 January 2007 or some other time and, if so, what date?

The Hon. P. HOLLOWAY: To the best of our knowledge, it is understood that that act would come into effect when the regulations under that act are prepared, which may precede 1 January 2007.

Clause passed.

Remaining clauses (3 to 9), schedule and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

MOTOR VEHICLES (LICENCES AND LEARNER'S PERMITS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 April. Page 1566.)

The Hon. SANDRA KANCK: I rise to indicate that the South Australian Democrats support the general thrust of this legislation, and we will be voting in support of it, but that is not to say that it is perfect. In particular, I am concerned that the bill is a lost opportunity in respect of driver training. An information sheet that has been provided to me from the government indicates that, should the bill pass, the Enhanced Graduate Licensing Scheme (GLS) will require a minimum of 50 hours' supervised driving during the learner's phase, and at least 10 hours of night driving must be included in the 50 hours of supervised driving. This requirement is a considerable improvement in learner-driver training, but that is where the progress stops.

The information sheet indicates that night driving, peak-hour driving, freeway driving, unsealed-road driving, and wet-weather driving could also be included in the GLS, and the magic word is 'could'. I understand further requirements could be included in the GLS via regulation, but will not be at this stage. Yet in the minister's second reading explanation, we were told:

> Research, in particular the 2003 report by the Monash University Accident Research Centre, indicates that the most effective and enduring forms of driver training involve gaining substantial and varied on-road driving experience, with an appropriate supervising driver.

Further, we are informed that reportable crashes, where fatalities or serious injuries occur, are more likely to happen at night on rural roads. Indeed, half of the fatalities on South Australian roads occur in the country, yet this bill does not require holders of a learner's permit to drive under supervision on country roads. It should. It probably should also require learner drivers to get experienced driving in the wet, on an unsealed road, with a trailer on the back and through peak-hour traffic.

The government has been very quick to blame the behaviour of motorists for the recent increase in the road toll, but poor driver training also must bear some responsibility. So, while we welcome the improvements that this bill brings, we indicate that we think that there is an opportunity missed.

The Hon. NICK XENOPHON: I, too, support the second reading of this bill and the general thrust of the legislation. Like the Hon. Sandra Kanck, I believe that this bill is an opportunity missed, in that issues of driver training could have been dealt with much more extensively. I know the Hon. Sandra Kanck has campaigned in the past for mandatory and extensive driver training, and I believe that would make a real difference in our road toll.

I also note the shocking statistics that indicate that our young drivers are disproportionately represented in terms of accident statistics, and that it is something that I believe we need to go much further in dealing with. I also note that there are other jurisdictions, in particular in the United States, and I think that New Zealand is going partly down this path, where there are requirements that, particularly young drivers, cannot have with them as passengers other drivers of a similar age. That removes the peer pressure, particularly of young male drivers, where they are egging each other on into more and more reckless behaviour which can have tragic consequences, and there appears to be enough evidence in terms of what occurs on our roads and that sort of behaviour to indicate that this is an area for reform.

I believe that it is inevitable that we will be looking at those sorts of restrictions in the not-too-distant future, unless there is a substantial reduction in the road toll, particularly with respect to our younger drivers. It is a step in the right direction. I believe it should go further, and I agree with the Hon. Sandra Kanck that this is a missed opportunity. The question I would like to ask the government on notice—and I am not sure whether we are dealing with this in committee tonight, and I do not have any desire to hold up the committee stage—which the government can undertake to answer either in the committee stage or in due course, is this: what level of monitoring will there be and what provision of ongoing statistics will there be with respect to crashes resulting in fatalities and serious injuries involving young drivers as a proportion of total injuries and fatalities?

I understand also that, in terms of statistics being meaningful, so that there can be some adequate comparison with previous statistics and to get an idea of trends with respect to injuries, because some people are not killed in an accident but suffer a catastrophic injury, what measures are there to have like-for-like statistics in terms of injuries and serious injuries? I think one of the benchmarks, in a sense, was whether somebody required an admission to hospital, an overnight hospital stay for an injury, and whether there are other more refined benchmarks to determine the severity of an injury or, for instance, instances of paraplegia, quadriplegia, a broken limb, head trauma and brain injury. A whole range of statistics ought to be provided so that we can get some measure as to whether these steps are going to make a difference, or are making a difference, in the medium to longer term. Clearly, the shocking figures of the number of

people, particularly young people, who have died on our roads in recent weeks, is something that requires our urgent attention.

The Hon. P. HOLLOWAY (Minister for Industry and Trade): I thank all members for their comments in support of the bill, which is unequivocally about the lives of novice drivers, who are sadly and grossly overrepresented in fatalities, as well as serious injuries, on our roads. The bill is a finely balanced package, focused on putting more supervision and training into the learner and provisional phases of a novice driver's early experience on the road. It is also a package of measures aimed at promoting and encouraging appropriate and safe behaviour on the road, at the same time as reducing the tolerance of inappropriate and unsafe driving behaviours. The message the bill sends to novice drivers is quite clear: if you do the right thing, you will progress through the system and be rewarded for your behaviour; and, if you do the wrong thing and drive in an inappropriate and unsafe manner, there will be consequences for your actions and you will regress through the system, with the possibility of additional licence restrictions, such as a night-time curfew.

In indicating the opposition's support for the bill, the Hon. Terry Stephens stated that he had been advised that the 50 hours of supervised driving had to be done by an accredited instructor and that there would be considerable financial imposts on parents or the people looking to gain their licence. I am advised that the supervising driver does not need to be an accredited instructor. However, the supervising driver must have held a full licence for a minimum of two years and not have been disqualified in the previous two years. It is proposed to introduce this requirement in order to ensure that the novice driver is supervised by a person who can model appropriate driving behaviours and attitudes and who provides accurate guidance and pertinent advice. Again, I thank all members for their contribution to the bill. It is an important one, and I hope that it will pass promptly through its final stages.

Bill read a second time.

NATIONAL ELECTRICITY (SOUTH AUSTRALIA) (NEW ELECTRICITY LAW) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 1596.)

The Hon. NICK XENOPHON: I move:

Schedule, clause 7, page 15—Delete clause 7 and substitute:

7—National electricity market objective

The national electricity market objective is to promote the economically efficient operation of the national electricity market for the long term interests of end-users of electricity with respect to price, quality, reliability, safety and security.

This amendment arose out of the discussion paper of the Energy Users Association. Whilst the association represents many large users of electricity, I think that there is a confluence of its interests and that of smaller consumers in relation to some of the issues raised. It is important to make the point that this parliament should not be a rubber stamp for what has been worked out previously, including the advice from a number of those involved in the administration or regulation of the industry. It is important that we have some impact on this.

The gist of this amendment, rather than the amendment in its current form, is that it makes it clearer that it is about the end users of electricity and to ensure that there is an economically efficient operation of the market for the long-term interests of end users. It makes it clear that there is a focus that I think is appropriate in the context of this legislative scheme proposed by the government as lead legislation.

The CHAIRMAN: I do not think that the amendment is exactly the same as the one before the minister.

The Hon. P. HOLLOWAY: In any event, the government opposes the amendment, in whatever form, for reasons that I will explain. The national electricity market objective was developed by an expert group of economists, industry experts and lawyers commissioned by the Ministerial Council on Energy to provide—

The Hon. Sandra Kanck interjecting:

The Hon. P. HOLLOWAY: Yes; I understand that concern—specialist advice in relation to the most appropriate objective for the national electricity market. The objective deals specifically with both supply and demand side operations and refers to efficient investment and efficient use of electricity services, which are both of considerable importance to the national electricity market as a whole. The use of the term 'long-term interests of consumers of electricity' was deliberately inserted after thought and consideration. It is intended to embrace all consumers, both large and small. Also, it is unnecessary to add the word 'economically' to the NEM objective, given that the second reading explanation to the bill clearly states that the NEM objective is to be given an economic interpretation.

The other point that needs to be made in relation to any amendments to these sorts of bills is that, if some amendment were to be passed, it means that the whole lot would have to be negotiated all over again with all the other jurisdictions. The bill is a result of considerable lengthy discussion. I think it would be fair to say that its gestation has been longer than we would like, and I think the worst thing we could do now is to derail the whole process and add some months, because that is what it would mean—it would be literally months. Even a small amendment would require a significant process to go through this all over again.

For the reasons I have indicated, we oppose the amendment on merit. We also oppose any amendments to the National Electricity Law because of the impact it would have on the negotiations with other states and the commonwealth.

The Hon. SANDRA KANCK: I indicate Democrat support for the amendment. When we dealt with the Australian Energy Market Corporation Bill, I moved an amendment that dealt with environmental and ecological aspects. In fact, it was fairly gentle and simply said, 'The AEMC must, in performing its functions, consider the following.' It seemed that I did not have any chance of getting that up, and I know that there is about as much chance now of getting this clause up, which is fairly innocuous compared with what I wanted to do in the AEMC bill.

I support the amendment as a matter of principle, because I find the whole process of giving away our rights in this way to be very objectionable. I contemplated asking parliamentary counsel to prepare a whole series of amendments that would have been suitable for the environment movement. However, I had some sympathy for parliamentary counsel, knowing that there was no chance. I will be voting for this amendment, and I will watch it go down as proof of the fact that we have no control of this situation.

The Hon. R.I. LUCAS: Will the mover of the motion advise whether the amendment is being moved in the same format as has been circulated, or is there a second version of

the amendment? I do not know whether I misunderstood the chair of the committee when he made a reference—

The CHAIRMAN: As the chair, I was merely commenting that I could not see too much difference between the two amendments. Therefore I ruled the amendment as being slightly different. In my view, it says the same thing, but it is slightly different.

The Hon. R.I. LUCAS: Mr Chairman, for your edification and that of the committee, as I understand it there has been some debate about the term 'end users' as opposed to the word 'consumers'. I wonder whether the mover of the motion can outline why he has come down on the side of business interests which have been pushing the view that it should be 'end users', rather than 'consumers', in the drafting of the objective of the national electricity market. Given his traditional background to these things, I would have thought that the consumer-friendly word 'consumers' was something to which he would normally have been more attuned. It therefore must be an important matter of principle that he has come down on the side of big business in referring to it as 'end users'.

The Hon. NICK XENOPHON: I am grateful for the Leader of the Opposition's question. I have not resiled from standing up for the interests of consumers. However, I remember a number of years ago when there was a debate about the consumer test in terms of whether an interconnector could get up and the interpretation of that. So, the word 'consumers' in the context of this bill is not necessarily clear. I say that, having regard to what transpired a number of years ago. I want to make it clear that my intention is always to advocate for the consumers—the mums and dads. However, by putting the term 'end users' here, the EUAA makes the point that it would remove any doubt as to whether the consumers in question must have a direct contractual relationship with a registered participant, as well as ensuring that the interests of the larger purchasers of electricity are taken into account. It makes the point that 'and, in turn, the consumers of their goods or services'.

So, I see this as not being against the interests of ordinary consumers. I think it makes the point in that it removes any doubt as to the whole issue of the contractual relationship with the registered participant, and that is the motivation for moving this amendment. If I am convinced otherwise, I will be happy to withdraw the amendment. However, my clear understanding is that this would be about ensuring an economically efficient outcome, and that would be a good thing for all consumers of electricity, including the retailer users.

The Hon. SANDRA KANCK: When I gave my second reading speech, I also referred to the Energy Users Association, which does tend to be the big end of town—they are the businesses which consume a lot of electricity which are represented on this. It is important to recognise that any increased costs they pay for electricity will be passed on to the consumer of their products, and therefore it is important that they be properly recognised in this bill. I think the idea of a consumer could allow a little bit of twisting of interpretations. Because a generator makes electricity on site, it can use some of the electricity it is making. Therefore, arguably it is a consumer of the electricity, but not the end user of it. The purpose of the market is that the end users—the companies—are the ones who will get to use it; that is why they are called end users. So, a definition that includes the term 'end user', rather than the word 'consumer', is less open to manipulation.

The Hon. R.I. LUCAS: The Hon. Sandra Kanck has obviously read her briefing notes, because that seems to be the argument that has been put. I am therefore interested in the government's position as to why, together with other jurisdictions, it has obviously rejected that view, namely, that the term 'end user' is a better descriptor (as the name suggests) of the end user of the product, whereas the word 'consumer' may well connote businesses or organisations somewhere in the middle of the chain, as the Hon. Sandra Kanck has mentioned, such as other electricity companies, which might be deemed to be consumers. Does the government have legal advice that that is not a correct interpretation of the word 'consumer' in the objective?

The Hon. P. HOLLOWAY: My advice is that the term 'consumers of electricity' was used because it includes both big and small users of electricity, whereas in some connotations, the term 'end user', which has some common use, could be taken to refer to just the larger consumers—the big end of town, if you want to put it in those terms. I am advised that that was the reason why the word 'consumers' was used. However, we could—

The Hon. Sandra Kanck: And if you are wrong?

The Hon. P. HOLLOWAY: If we are wrong—these words have meanings in the dictionary. I suppose we could go to the dictionary. However, that seems logical to me, that is, that the word 'consumers' is a very broad definition.

The Hon. R.I. LUCAS: I will not pursue it at any great length, but, with the greatest respect to the minister, I do not think that, in any understanding of the term 'end user', have I ever heard it referred to as just referring to the big end of town. I think the debate about 'end user' and 'consumer' is much closer to the argument put by the Hon. Sandra Kanck, as opposed to the issue of 'end user' being the big end of town in terms of the normal understanding. As I understand it, it is an issue that was debated at some length, as a result of the representations that had been made.

The only other question I have in relation to the objective, in relation to the government's response to the Hon. Mr Xenophon's amendment, is that there was an indication in the second reading that brings in the notion of economic efficiency. Will the minister explain why, if the government was obviously able to get approval from all jurisdictions to put in the second reading explanation the fact that the efficiency was interpreted in an economic way, and then to get the legal advice and precedents based on the High Court case to which he has referred, why did the government not go the alternative course of amending the objective, rather than having to rely on the second reading clarification course, which the government has obviously adopted?

The Hon. P. HOLLOWAY: I am advised that it is easier to encapsulate something in the meaning of a second reading explanation, which can be quite expansive, compared with trying to put legal terminology into the act. We all can understand why that would be the case. Obviously, one can use as many words as one likes in the second reading explanation, but that is not necessarily good drafting. I am advised that it was obviously an agreement at the ministerial council to go down this path. The High Court has clearly set the precedent that second reading explanations are appropriately used by the courts in determining their interpretation of the law, or at least in determining the intention of parliament. Indeed, under the Acts Interpretation Act, I think the commonwealth is required to do so.

The matters we discussed before tea tonight—the Hon. Sandra Kanck was not here—in relation to schedule 2

explicitly set out the matters that are to be considered by the court should any matter come before it in relation to the interpretation of this bill. It is the debate on the relevant clauses within both houses of this parliament that the court could and should take into consideration in relation to interpreting these laws.

The Hon. R.I. LUCAS: As I indicated earlier in the debate, I have some personal sympathy for the view that governments ought to be amending legislation, rather than relying on clarifications in the second reading expalanation, but I acknowledge the position the minister has put this afternoon in relation to that. The Liberal Party's position on this amendment is that we are not convinced that any quantitative improvement the member has outlined would assist us in going to the position of saying, 'This is so much better than the existing objective in the legislation that we would support derailing the process and sending it back to all jurisdictions for a number of months.' The opposition will not support this amendment.

The Hon. P. HOLLOWAY: Can I add that there would be little point in our having a debate on this, or any other bill, if there was no status to the debate in this parliament, other than the final words that come out of it. I think that would be a pity. The reason I am answering questions on this bill—and other bills when they are debated—is so that members can hear through our advisers and parliamentary counsel, as well, what the interpretation of the bill should be. Therefore, it is appropriate that those interpretations that come through parliamentary counsel and the advisers should be available to the courts. After all, it is the intention of the government—

The Hon. R.I. Lucas: It is your intention: you are not the parliament.

The Hon. P. HOLLOWAY: But the parliament also takes into consideration the contributions of members of the opposition. If this view is challenged, the courts, should the matter come before them, appropriately read all those comments. That is the way it should be. Otherwise, there is little point in our having this debate if it has no meaning.

The Hon. R.D. LAWSON: With the greatest respect to the minister, while it is true that the courts will take account of the contents of the second reading explanation by which a measure was introduced, I cannot actually recall a case where courts have taken any notice of utterances of ministers during the course of the committee stage of debate. Frankly, courts do not have that much confidence in the extempore remarks of ministers made in response to queries. However, they do have some confidence in the statement of position, which is laid down in the minister's explanation introducing the legislation, knowing that is a speech prepared with professional assistance and advice after deep consideration.

The Hon. P. HOLLOWAY: I certainly concede that the deputy leader is more learned in the law than I, but I point out that, in this particular case, he may not be aware that, as part of the new National Electricity Law on page 71, clause 8, the use of extrinsic material in interpretation is specifically set out in this bill. It includes not only the second reading explanation but also material in the Votes and Proceedings of the Legislative Council or House of Assembly of South Australia or in any official record of debates in the Legislative Council or House of Assembly; a document that is declared by the regulations to be a relevant document for the purposes of this clause; an explanatory note or memorandum relating to the bill that contained the provision, or any relevant document that was laid before, or given to the members of, the Legislative Council or House of Assembly by the member bringing in the bill before the provision was enacted; material that is set out in the document containing the text of this law as printed by authority of the Government Printer of South Australia; and also a relevant report of a committee of the Legislative Council or House of Assembly of South Australia that was made to the Legislative Council or House of Assembly of South Australia before the provision was enacted.

As I explained earlier, that is probably not relevant here: it was probably more a contingency measure in case the bill was referred to a committee. The point I am trying to make is that under that clause extrinsic material is quite widely defined in this bill. That is where this is probably unlike other acts of parliament, but I stand to be corrected by the deputy leader on that matter.

The Hon. R.D. LAWSON: I thank the minister for that explanation. I am deeply heartened that the comments of my leader the Hon. Mr Lucas and the Hon. Sandra Kanck will be used by the courts to interpret this legislation.

The Hon. R.I. LUCAS: I am disappointed my colleague did not include the Hon. Mr Xenophon in that contribution. As the minister has outlined, if the committee stage of the debate is to be taken into account in all these issues, let me make it quite clear that, whilst the opposition may on a number of occasions not be opposing the government's proposition, in no way does it constitute the opposition's agreeing with every proposition that the government is putting in relation to a number of these issues.

If the proceedings of the committee stage are to be used by courts of law in the future to interpret it, let it be clear on the record that we certainly do not accept the positions occasionally put by the minister as being indicative of the majority view of the parliament, even if there is no specific rebuttal from the opposition or other parties. In some cases, it might be a recognition of the futility, as the Hon. Sandra Kanck has indicated, of trying to achieve change to the legislation. The record ought to be clear to the courts in the future in relation to the interpretation of debates in the committee stage.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, we will highlight some, but I am indicating we will not delay the provisions of this chamber's committee stage by going through every subclause of every provision of the bill. I make that general statement so the courts, if they are going to be interpreting these things, can at least indicate from the party that has the majority of members in this particular chamber—therefore, not an insignificant party—our particular view on it. However, with the greatest of respect to my colleague the Hon. Mr Lawson, although he was not indicating his personal view and he was indicating the current legal position in South Australia, I personally do not accept the position that, just because public servants (admirable though they might be in their work load and output) happen to write a second reading explanation for the minister which he or she reads in the parliament, it carries any greater or lesser weight, frankly, than the position that might be outlined by ministers.

The shadow attorney-general has indicated that the courts interpret otherwise, and that is for them, I guess, whenever we get an Acts Interpretation Act again before this place. But my view is that, just because a minister reads an explanation that public servants have written for him or her and the legislation is passed, that does not mean the courts should be interpreting it as being the majority view of the parliament in relation to its intent and will. It is certainly the intent and will

of that particular minister and the executive arm of government but, in my view, it cannot necessarily be interpreted as being the will of the parliament—whether that is explicitly opposed by members in the chamber or not, frankly.

The Hon. P. HOLLOWAY: I make the point that we are really only talking here about one particular reference. It has been widely discussed in the committee stage and it has been made explicit in the second reading explanation as the intention of the government and, if the bill passes, surely the courts are quite entitled to believe that it is the will of the parliament. It would be different if we had not stated that as being the intention. The only way it would be relevant is if some case came before a court in which someone was challenging the interpretation and saying it was economically inefficient. That is what the bill is about. It is the government's intention and we have made it clear throughout.

If the bill passes, I think the court would be entitled to say that is the intention of the parliament. Where the committee debate is perhaps relevant to the courts is if amendments are made and there are long debates on particular interpretations and some clarification is given. It is sensible that the courts would pay attention to that. But here, where it has been specifically spelt out in the second reading explanation and repeated during the debate, surely the courts are entitled to see that this is the intention of the government, because it is the intention of the government.

Amendment negatived.

The Hon. NICK XENOPHON: I move:

Schedule, clause 8, page 16, lines 1 to 3—
Delete subclause (2) and substitute:

(2) A statement of policy principles issued by the MCE must be consistent with the national electricity market objective.

This amendment seeks to alter the wording of current subclause (2), which provides:

Before issuing a statement of policy principles, the MCE must be satisfied that the statement is consistent with the national electricity market objective.

This is about having some simplicity to make it clear that the objective of the national electricity market is a primary consideration in the context of a statement of policy principles. In its current form, I am concerned that there are a couple of hurdles to jump in the way it has been worded. I do not want to debate this at length, but I think it is a question of form and clarity.

The Hon. P. HOLLOWAY: The government opposes the amendment. Clause 8(2) provides that the Ministerial Council on Energy must be satisfied that a statement of policy principles is consistent with the national electricity market objective prior to issuing it. It is the intention of the national electricity law bill that an MCE statement of policy principles accord with the NEM objective, and that is achieved by the test in clause 8(2) of the bill. The only exception to this rule is where the MCE directs that the AEMC undertake a review. The terms of reference for such a review need not be limited by the NEM objective in clause 42(2)(e) because the Ministerial Council on Energy should be unconstrained in its directions as to matters that should be reviewed by the AEMC. So, for that reason and for the other more general reason I indicated in relation to the last amendment, the government opposes this proposition.

The Hon. R.I. LUCAS: The opposition also is not convinced. The difference, so far as we can see, is that the member is trying to ensure that the statement must be consistent, whereas the current subclause provides that the MCE must be satisfied that the statement is consistent. It seems to be a change at the margin in terms of the proposed amendment and, consistent with our view on the last amendment, we are not convinced that there is a quantifiable improvement in the drafting that would mean that we ought to send this bill back through the process that the minister has outlined and potentially delay the passage of the legislation.

Amendment negatived.

The Hon. R.I. LUCAS: Can the minister explain the reason for clause 10? Is that in the existing National Electricity Law or is it a new provision?

The Hon. P. HOLLOWAY: It appears that this clause was not in the current legislation. Obviously it is fairly simple in effect: it just simply applies the law and regulations to coastal waters.

The Hon. R.I. LUCAS: I am assuming that the lawyers advising the government have changed the legislation in this respect for a specific reason. I am wondering why the legal advice said that this jurisdiction had to be extended into coastal waters.

The Hon. P. HOLLOWAY: I must correct my previous answer. In fact, we have just discovered that this was in the previous legislation. It was in the last clause of the 'interpretation' schedule of the old act, which is why we did not find it in the same place. Obviously, it was in a different place, but, nonetheless, I am advised that it was there.

The Hon. R.I. LUCAS: I thank the minister for that indication. On the same page I refer to clause 11, 'Registration required to undertake certain activities in the national electricity market'. These provisions relate to people operating generating systems. Will the minister outline whether companies and individuals who have their own generation systems are covered by these provisions?

The Hon. P. HOLLOWAY: Is the leader referring to any particular size or class of consumer?

The Hon. R.I. LUCAS: I am referring to a number of classes and classifications ranging from small businesses that have their own back-up generators through to larger-sized organisations (such as hospitals and others) which operate their own back-up systems and which are connected to the system in terms of having the capacity to sell electricity back into the market if the market systems allow that to occur. I want to know whether the arrangements the government is supporting are that those people who own generators (so that, clearly, they come within the ambit of this) are to be registered participants and therefore must follow the procedures and requirements that fall on larger businesses that run bigger generating systems within the national electricity market.

The Hon. P. HOLLOWAY: The current policy is simply that, if customers are now exempt, they will remain exempt. That is probably the simplest way that I can put it. If the leader wants more detailed information, we will have to get it; but that is probably the best way we can sum it up now. If they are currently exempt they will stay exempt.

The Hon. R.I. LUCAS: I accept that we might not have the information available tonight but, certainly, I would be interested in getting the information. At least before we move on from this section, can I get an understanding that the precise words and drafting of this clause are exactly the same as the words and drafting under the National Electricity Law, that is, we have not changed these provisions in any way in terms of potentially catching a wider group of generators within the national electricity market?

The Hon. P. HOLLOWAY: My advice is that, under transitioning arrangements, all existing registrations will be

transferred over into the new law; and, likewise, all existing exemptions will be transferred over. However, we cannot say that the provisions are necessarily exactly the same because there have been some fairly slight changes to definitions and, therefore, there may be some technical changes to the provisions. The effect is the same: all existing registrations and all existing exemptions will be transitioned into the new laws.

The Hon. R.I. LUCAS: I am not sure whether we will complete the committee stage tonight, but, if we do not, I will leave that as a question on notice to the government. Whilst I accept that the government is saying that existing registrations will flow over, I am particularly interested to know whether or not the government's changes (perhaps slight changes), which the minister now concedes, might mean that a wider group of people who own generators at the moment will intentionally or unintentionally be caught up in this registered participant process.

The government may well say that this is not the intention. After the government has had a chance to consider this, I would like to have an assurance on the record from the government that that is not the case. I would like to have someone look at the drafting of this provision compared to the old drafting and, at a later stage, for the minister to give us some assurance on that.

The Hon. P. HOLLOWAY: It appears very unlikely that there would be any different impact. I will put on record the change of definition. The bill says 'a person must not engage in the activity of owning, controlling or operating a generating system connected to the interconnector transmission and distribution system unless'. The previous wording was 'generating system that supplies electricity to a transmission or distribution system'. One supplies electricity, so it is 'a generating system that supplies electricity to a transmission or distribution system'. Now it is 'a generating system connected to the interconnected transmission and distribution systems'. It is hard to see how that will have much effect. That is one obvious change of which we are aware. We can check to see whether there are others, but it appears that it is unlikely that that would have much impact to the extent that the leader was suggesting earlier.

The Hon. NICK XENOPHON: I move:

Schedule, clause 16, page 19, lines 32 to 34—Delete paragraph (a) and substitute:

(a) give effect to the national electricity market objective; and

In its current form, with respect to clause 12 and the schedule, clause 16(1) provides:

(1) The AER must, in performing or exercising an AER economic regulatory function or power—

(a) perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national electricity market objective; and

This amendment substitutes that and in its place gives effect to the national electricity market objective. As with the previous amendment, it is a simpler and clearer statement of the objective.

The Hon. P. HOLLOWAY: The government opposes the Hon. Nick Xenophon's amendment. Both the rule making test for the AEMC and the manner in which the AER must perform its economic regulatory functions were the subject of input from the export panel and consultation with a range of stakeholders. It is appropriate that both the AEMC and AER are bound to consider the same matters, and the NEL bill achieves this. The test as proposed will provide both of the new regulatory bodies with sufficient rigour and flexibility to enable the NEM to operate as efficiently as possible.

The Hon. R.I. LUCAS: The opposition does not support the amendment for reasons similar to those I gave earlier.

Amendment negatived.

The Hon. R.I. LUCAS: This is one of the important provisions of the bill, the policy decisions to back the establishment of an Australian Energy Regulator and the functions and powers of the AER. The minister earlier indicated that the government's position, as opposed to the one put by the Minister for Energy in the exclusive interview with the *Sunday Mail*, was that there had been no decision yet in relation to the transfer of the powers for retail pricing. Without wishing to inaccurately reflect the minister's opinion, I think he indicated in relation to the distribution regulation that there had been an agreement, but he can correct me if I am wrong.

In the event that this government or a future South Australian government was to make the decision to transfer the retail pricing powers to the Australian Energy Regulator, together with the oft mentioned requirement (and we will explore what that means) that there should be a local office of the Australian Energy Regulator—if that was met as well—is it the state government's intention that ESCOSA would therefore be wound up and that all legislation in relation to the Essential Services Commission of South Australia would be repealed?

The Hon. P. HOLLOWAY: It is premature to answer that question. The other day I indicated that in relation to distribution there had been an in-principle agreement, but the detail has not yet been approved. It is not at the retail stage. There would need to be a change of legislation, and it is at that time that the future role of ESCOSA would and could be clarified. Until those functions do transition, if they are to be transitioned over to the new bodies, it would be premature to talk about the future. I understand that there are some other functions for ESCOSA that do not relate to electricity and gas, although clearly they are the main areas of consideration by ESCOSA. The future of ESCOSA would be clarified at that time.

The Hon. R.I. LUCAS: I acknowledge that ESCOSA has minor or other functions in relation to ports and railways, and that there would need to be an on-going regulatory arrangement in relation to that. Certainly the minister's response will be news to some in the industry because driving the debate about the Australian Energy Regulator has been a view from some industry participants, some politicians and some commentators that the Australian energy system was dominated by too many regulators and that the Australian Energy Regulator would mean the abolition of state based regulation.

The fact that this government is hedging its bets on that and indicating that we will have an Australian Energy Regulator; we are going to have an Australian Energy Market Commission; we will still have NEMMCO; we will still have the ACCC, and we might still have a South Australian-based Essential Services Commissioner operating in the field, because the state government has reserved its position on that, I think will be news, and possibly concern, to a number of commentators. I suspect that the federal minister in this particular area, who is known for his rampant views in relation to the need for abolition of state-based regulation, and the need for a single Australian Energy Regulator will be interested to read the debate, and the state government's position in relation to that question.

In further pursuing the detail of the state government's position, we have heard much from the Minister for Energy that said he would hand over distribution regulation, for example, on the condition that there would be a local office of the Australian Energy Regulator. What specifically is the state government going to require of a local office of the Australian Energy Regulator to meet its policy position? It is possible to have an Australian Energy Regulator, even with a local manager, where all the decisions would still be taken in Melbourne by the national regulatory authorities, and that the local office was essentially one of a management function? I understand that we have been advised that, as to the monitoring role currently undertaken by NECA, those staff will continue to broadly operate, at least for the immediate future, out of the Adelaide office.

So it is possible to have a local office of the AER but, in essence, for it to mean not too much. So, what is the state government's policy in relation to what it is going to insist on, in terms of not only staffing but the functions able to be performed by a local office of the Australian Energy Regulator?

The Hon. P. HOLLOWAY: The first step is to get the framework agreed, and I referred to the framework last night. Let me firstly say, in relation to the comments made by the leader in the earlier part of his most recent contribution, that I do not think the federal minister need have any particular concerns and I think the direction in which these reforms are heading is well known. All this government has said is that we want the satisfaction in relation to the local offices as a condition. So if the federal minister can assist in achieving that, I am sure that would very much help us get the outcome that is intended—

The Hon. R.I. Lucas: You also said you might keep ESCOSA.

The Hon. P. HOLLOWAY: As I said, as to the final shape, obviously we have to finalise the framework and get all those other bits and pieces together. I just said it was premature to talk about it at this stage, until we get the framework in place, but the sooner we do, those functions would go, but I guess there are some issues as to what happens to those minor functions, who looks at those, but I guess they are really relatively minor issues, as the leader said, in the scheme of things, and they can be addressed.

Obviously, the sooner we can get satisfaction in relation to the local component, the quicker we can move towards this new regulatory framework which, as the leader said, a number of observers and electricity users—not just observers but users of the electricity system—are keen to see happen.

The Hon. R.I. LUCAS: I invite the minister to respond to the second part of the question, which is: what is to be the position the state government adopts in terms of staffing and local decision-making of the local office and the AER that the state government says will be its requirements in terms of agreeing to proceed further with the transfer of powers?

The Hon. P. HOLLOWAY: The best way I can answer, in general terms, is we would be looking within the local components for similar sort of functions that would exist locally at the moment. That is probably the best answer we can give. That is a good benchmark by which one could measure it, but obviously the framework has to be agreed, and obviously further discussions have to be held in relation to which functions will transfer and the like but, as I say, perhaps the best benchmark we can give is those functions that are currently exercised by ESCOSA.

The Hon. R.I. LUCAS: I think that, if one looks at the current functions undertaken by ESCOSA, unless the minister is going to adopt a particular position which I will outline, the response the minister has just given is almost impossible to achieve. ESCOSA currently makes final decisions on distribution pricing issues, the shape and structure of bonus penalty arrangements, retail pricing decisions, marketing codes, retail codes and codes right across the sector. If the minister is saying the government's position is that those current positions are going to continue to be undertaken by a local office of the AER, then I am surprised.

The Hon. P. HOLLOWAY: Obviously, it is difficult to say exactly what is going to happen. It really is a hypothetical question until these negotiations take place, but I can only repeat what I said that, although obviously some functions will transfer over time, I think that the government is in a position in undertaking these negotiations to know, through the efforts of ESCOSA, what sort of level of local monitoring and control is necessary to ensure that the state's needs are met, and that knowledge from our experience with ESCOSA will be brought to bear in relation to those negotiations, but because it is a hypothetical question it is fairly difficult to say more than that.

The Hon. R.I. LUCAS: This is, in essence, the state government's position. The state government has said, contrary to what the Minister for Energy said in his exclusive interview with the *Sunday Mail*, 'Look, our position is that we won't hand over these things until we get a local office of the Australian Energy Regulator.' That means nothing—and still means nothing, because the minister and the government obviously have not thought through the position, beyond an immediate five-second media grab, on what exactly it is arguing for. For example, is the government's position to argue for a commissioner, or assistant commissioner, of the Australian Energy Regulator to be stationed in South Australia, heading the office with equal powers to those of the commissioners who head up the office in Melbourne?

The Hon. P. HOLLOWAY: Those sorts of issues have not yet been contemplated. I can only repeat what I said earlier: from our experience with ESCOSA, we know what sorts of levels of technical skills are required to monitor the system effectively and respond to issues that arise. The broader questions have not yet been addressed, but we can say unequivocally that, if there is no presence in this state, it is totally—

The Hon. R.I. Lucas: It means nothing.

The Hon. P. HOLLOWAY: Well, if there are not sufficient people in the state with the requisite technical capability, that is unacceptable to the state. At this stage, we cannot define exactly what those resources will be. However, we will certainly not put up with an office that is just a shell. We need sufficient expertise; that will be determined and will be the next step. However, first of all, we have to get this legislation passed.

The Hon. R.I. LUCAS: I do not direct criticism at the minister, as the performance of the Minister for Energy in relation to this issue has been abysmal. The exclusive interview given to the *Sunday Mail* by the minister, which has now been overridden by the position of the state government, is an indication that the minister is not across these issues. The issue of the local office of the Australian Energy Regulator was really only raised publicly when, after meetings of the select committee of the Legislative Council, there was some publicity in relation to the South Australian government's selling out South Australia's interests by

having a Melbourne-based regulator, instead of one based in South Australia, making decisions. It was soon after that that the minister developed the position of 'Well, we're going to have to have a local office.' That was many months ago and, sadly, there does not appear to have been any work done by the minister or the government indicating their requirements and what they would insist on in relation to the functions to be undertaken and the decisions to be made by the supposed local office of the Australian Energy Regulator.

I will not go through the detail again, other than to say that just stating that we will have a local office means nothing. It is an issue of the power of the people within that office and what functions they will undertake. If it is no more than a postbox and the public relations face of the Australian Energy Regulator for decisions taken in Melbourne, the people of South Australia will have been sold out by this minister and this government, and the interests of South Australian consumers will have been neglected by a deal that provides that we will have a local office of the Australian Energy Regulator.

My question is: what has this minister agreed to in relation to the staffing or the shape of the Australian Energy Regulator to the very top level? In South Australia, we have ESCOSA, which was a four-headed monster, with four commissioners (one who was paid more than the others and was the sort of chairman and the public face) who made the critical decisions. What has the government agreed to in relation to the Australian Energy Regulator? Is there one commissioner or regulator? Are there to be three or four equal commissioners, similar to the model adopted in South Australia for ESCOSA?

The Hon. P. HOLLOWAY: I am advised that there will be a commission comprising three people, one of whom is the chair and the other two are part-time positions, so it is not unlike the situation as exists with ESCOSA. I reject the first comment made by the leader. The government has been quite clear, and the minister has been quite consistent, that it wants adequate resources in South Australia to ensure that there is the capacity here to respond to issues that might arise. The details have not been worked out, and that cannot happen until the distribution and retail framework is in place; it is simply premature to do so. It is unreasonable to expect that the details should be determined before the distribution and retail framework is in place. The position of the government is quite clear: we will ensure that there are adequate functions and capacity within the state to protect the state's interests.

The Hon. R.I. LUCAS: Frankly, it is a nonsense to indicate that the government will not finalise the position until the questions of the distribution and retail framework have been resolved. The issues of distribution and regulation should not be resolved by the state government until it is aware of what decisions the other jurisdictions will make. The minister is reversing the order of these decisions—that is, in my judgment, you do not make a decision in relation to distribution regulation being handed over until you have guarantees as a state that our interests in South Australia will be protected. The government seems to have it back to front: it is prepared to wait until the distribution regulation decisions have been made, and then it will finalise the judgment about the shape and structure of the Australian Energy Regulator's office in South Australia.

As I said, it is certainly our very strong view that the interests of South Australian consumers have been sold out by this government, and this minister in particular. They have taken their eye off the ball in relation to the interests of South Australian consumers, and there has not been enough attention to detail. The minister and the government have been reactive and confusing in the exclusive interview to the *Sunday Mail*, which was then counteracted by statements made by this minister in the council, which were completely contrary to the publicly stated policy position of the Minister for Energy. If we had decent media in this town, the contradictions in the position of this minister, on behalf of the government, and that of the Minister for Energy, in the interview in the *Sunday Mail*, would have been picked up. As to the minister's response that there would be three commissioners (a chair and two part-time commissioners), has a decision been taken on who will be the chair? If so, has it been announced?

The Hon. P. HOLLOWAY: I am advised that the position of chair was announced on 11 March. It will be Mr Steve Edwell, who was originally from Queensland and has recently worked in Western Australia.

The Hon. R.I. LUCAS: Have any decisions been taken in relation to the other commissioners, or assistant commissioners? I am not sure of the correct term.

The Hon. P. HOLLOWAY: No decision has yet been taken.

The Hon. R.I. LUCAS: Again, I think that will be an interesting test. As the minister has indicated, Mr Edwell is a former Queensland Treasury bureaucrat, who was transported across to Western Australia to handle the Western Australian industry. I do not know him, but I am sure he has much to commend him. Certainly, one of his greatest attributes is that he did not come from New South Wales or Victoria, because they could not agree on who ought to be the Australian Energy Regulator.

In relation to the other two commissioner positions and whether or not the South Australian government will be strongly pushing that someone with close knowledge of the South Australian industry be one of the commissioners, is that a policy position the South Australian government is supporting in terms of its negotiations with the other jurisdictions?

The Hon. P. HOLLOWAY: As far as its position is concerned, the state government will be looking for the correct mix of skills in relation to the new commissioner position.

The Hon. R.I. LUCAS: Again, it is disappointing that, having been given the invitation to come out strongly on behalf of South Australian consumers, the government was unprepared to accept that invitation. Clause 15 outlines in (a) through to (f) the various functions and powers of the AER. Paragraph (g) provides:

> . . . any other functions and powers conferred on it under this law and the rules.

One can understand changes to functions and powers of the AER under the National Electricity Laws. However, I must admit that it is not an issue I have had a chance to discuss with my colleagues, but I personally find it very hard to understand why this state government would have agreed to the functions and powers of the AER being able to be amended, changed or added to by a rule change. I do not know whether this is a new or old provision, or what it is. However, in essence, as I understand it, under the arrangements the rules will essentially be determined by the AEMC. So, what we essentially have is that we as members of parliament and as jurisdictions will agree on functions and powers. However, if I am reading this correctly, the AEMC

can come along and actually add to the functions and powers of the AER, even though it might be strongly opposed by the jurisdictions and, indeed, the parliaments in the national electricity market. Can the minister explain why the state government is supporting the position that the AEMC can add a function to the AER under paragraph (g) of this clause?

The Hon. P. HOLLOWAY: The first point I make is that ministers themselves can, of course, initiate rule changes. They would come in through the AEMC process, which we have already discussed. The second point I make is that any functions and powers must be consistent with the heads of power, which is set out in the National Electricity Law at page 65, schedule 1—'Subject matter for the National Electricity Rules'. I am advised that any powers would have to be consistent with those areas set out in schedule 1. I am also advised that it refers to any functions and powers that are already under the code or NECA. I am further advised that the main purpose of paragraph (g) is to pick up those powers.

The Hon. R.I. LUCAS: I think it is wrong, in principle, to allow the AEMC, which in certain cases can have regard to decisions of the ministerial council, to completely independently add to the functions and powers of the AER in the way in which this state government is contemplating.

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: Yes. If the government is saying that the intention was in relation to powers within the existing National Electricity Code (which have been transferred into the rules), that is one argument which says that at least this parliament has had a chance to have a look at the rules as part of this debate. However, on my reading of the drafting of this, and the minister has not disagreed with that, based on his advice, if there was a rule change decided upon by the AEMC—and the rule change can be proposed by anyone, not just ministers; the Hon. Mr Xenophon could propose a rule change, as I understand the process—which would give an additional function or power, it seems to me to be wrong in principle that this state government would contemplate an Australian Energy Regulator and a process which would allow that to occur.

As I said, this is not an issue which I have had a chance to discuss extensively with colleagues. My understanding on some of these issues, and even some of the amendments from the Hon. Mr Xenophon, is that there is nothing that prevents this minister and this government, without their indicating definitely that they support or oppose it, to say of these amendments, 'We cannot support them at this stage, but we are prepared to take them away and have discussions with other jurisdictions.' We will have at least one, and probably two or three, further tranches of legislative changes to the National Electricity Law, which I am sure will excite everyone in this chamber.

The Hon. Nick Xenophon: I'm riveted.

The Hon. R.I. LUCAS: Yes, you are riveted; it will excite everyone. There is nothing that would prevent the South Australian minister in relation to this issue, or indeed anything in the amendments raised by the Hon. Mr Xenophon, at least indicating a willingness to further consider the issues that have been raised and discussing them with colleagues. I am unconvinced by the minister's reply, on behalf of the government, to this question.

I believe it is just wrong in principle that something as important as the Australian Energy Regulator, and something as important as the functions and powers of the regulator, could be amended by the AEMC, potentially contrary to the wishes of the jurisdictions in certain circumstances, and that a function or power would be added to the Australian Energy Regulator that the jurisdictions, the parliaments and, indeed, everyone might not agree with.

I have had a quick discussion with the Hon. Mr Xenophon, but I am not prepared on the fly—and I am not in a position on the fly—to amend the bill before us. I do not want this to be the cause of delay in the implementation of this legislation but, nevertheless, I think this issue, in particular, is important enough for the minister to be willing to say, 'Okay, we are prepared to look at it and at least discuss it with other jurisdictions for possible consideration when next we have to contemplate changes to the National Electricity Law.'

The Hon. NICK XENOPHON: I share the concerns of the Hon. Mr Lucas. It seems entirely incongruous that the government is prepared to consider some of the amendments which I have moved and which are minor in nature or a question of form, rather than substance, but, in effect, in relation to this clause, effectively there can be changes in functions and powers, conferred under this law and the rules, that would go way beyond some of the changes I have contemplated. It seems to be quite incongruous, and I hope that the concerns expressed by the Hon. Mr Lucas are heeded and that there will be protocols in place as to how those concerns are dealt with.

The Hon. P. HOLLOWAY: I am informed that the purpose of section 15(g) is so that there can be the transition of those powers and functions, which exist at present under NECA, and so they could be picked up by the AEMC. The debate is theoretical as to whether that could be used for other matters, but I make the point again that any function or power would have to be consistent with the heads of power that are set out in schedule 1. This sort of contingency is being given a life in this debate which it does not deserve.

The Hon. R.I. LUCAS: Whilst I have indicated that we are not prepared to try to amend this on the fly, I am disappointed that the minister is not prepared to have the good grace to indicate a willingness, at least, to consider the issues that have been raised. Let me flag it as an issue that I will discuss with my colleagues and, should there be agreement—and there needs to be discussion—a future Liberal government would look at this issue, in terms of discussions with other jurisdictions, to bring about a more reasonable interpretation of this provision and one which would be more acceptable to the majority of members in the parliament.

Given that the debates in this chamber are to be given credence under the provisions the minister has outlined, let me indicate clearly that, in relation to this particular issue, whilst I cannot commit my party until I have had a chance to discuss it, it is an issue that I will raise. Should there be agreement, let it be clear that this is an area with which we are unhappy and, if there is agreement, a future Liberal government would look at this issue in discussions with other jurisdictions.

The Hon. P. HOLLOWAY: I do not wish to prolong the debate, but I make one final point. There is plenty of legislation that has what I might describe loosely as contingency provisions, which allow for unforeseen events. Who knows what might eventuate where there is a need for a new power? These clauses always allow for things which are not envisaged at present and which may crop up. This is one of those clauses that does allow a response should some unforeseen situation arise. Again, I make the point that, if it was required to use this particular power, it would have to be consistent with the heads of power in schedule 1, where it is

set out in some considerable detail. I suspect that is as far as we can take debate on this matter.

[Sitting suspended from 9.42 to 10.12 p.m.]

The Hon. NICK XENOPHON: I move:

Schedule, clause 16, page 20—
Line 8— Before 'efficient' insert:
economically
Line 14—Before 'efficient' insert:
economically
Line 18—Before 'efficient' insert:
economically

These are also test amendments with respect to amendments Nos 9, 10 and 11. Essentially, the amendments seek to insert the word 'efficient' before the word 'economically' to ensure that this is about getting good outcomes in terms of putting a focus on economic efficiency. The market has been sold nationally and in the various jurisdictions as being about getting cheaper power and more reliability but ensuring that there is economic efficiency as a goal or a criterion for making decisions. I think this puts a focus on what ought to be done in terms of delivering benefits to the end users and, in general terms, consumers of electricity.

The Hon. P. HOLLOWAY: We have already had significant debate on this matter. The government opposes the amendments. The clause seeks to limit the scope of the AER in making such determinations while at the same time permitting the AER sufficient flexibility to take the individual circumstances into account. Amendments Nos 4, 5 and 6 of the Hon. Nick Xenophon seek to limit this flexibility. The AER is still required to ensure that the determinations will contribute, or are likely to contribute, to the NEM objective and, as per the second reading explanation, this is to be interpreted in an economic manner. As such, the thrust of the amendment is already achieved in a manner that was discussed in relation to the second reading explanation without limiting the flexibility of the AER.

The Hon. R.I. LUCAS: The opposition does not support the amendment for the reasons outlined in an earlier debate.

Amendments negatived.

The Hon. R.I. LUCAS: Generally in relation to page 21 through to about page 25, which are the investigation powers of the AER, is the minister in a position to indicate whether these powers are the same as the powers that ESCOSA currently has in relation to any investigations that it needs to conduct?

The Hon. P. HOLLOWAY: My advice is that these are the same powers as NECA now has under the National Electricity Law so, as the AER is taking over NECA's responsibilities, it will inherit these powers.

The Hon. R.I. LUCAS: I understand that that is the case, but really my question was in relation to ESCOSA because, ultimately, the state government has already agreed in principle that it will hand over the distribution regulatory function to the AER, subject to there being a local AER office, so that some of the functions that were previously conducted by ESCOSA will now be conducted by the AER. So, just as a general principle, I want to know whether the AER investigative powers, search warrants, etc., are similar to the ESCOSA investigative powers, or whether they are more powerful in terms of their powers to search, for example, retain and seize documents.

The Hon. P. HOLLOWAY: The essential purpose of this division, as I indicated earlier, is to transfer those powers from NECA so that the powers are identical to those that NECA has. We have not done a detailed analysis, but I am advised that ESCOSA does have some coercive powers under the electricity act. I think that it would be fair to say that NECA has operated with its functions adequately under these provisions. It is difficult to see how the AER would not operate similarly with its responsibilities, but, beyond that, I cannot go further.

We have done a clause-by-clause comparison with ESCOSA's powers, but I think that it would be fair to say that the powers would be similar, and it would be unlikely that ESCOSA would have powers that were not available here; but, I guess, even if that were the case, that could be addressed separately in any event.

The Hon. R.I. LUCAS: As the minister says, these investigation powers replicate the powers that exist for NECA, but is it intended that, when the distribution regulatory function is transferred to the AER, this legislation will be structured so that the investigation powers of the AER apply to activities that it undertakes for that particular distribution regulatory function as well, or is the minister saying that when the distribution regulation function amendments are brought back to the parliament there will be a different section in relation to the investigation powers of the AER as they relate to the distribution regulation function?

The Hon. P. HOLLOWAY: As I have indicated on a number of occasions, decisions have not been made in relation to distribution. There was some in-principle agreement. Those details have not been worked out, but it is highly unlikely, I would have thought, that the sort of investigation powers that are available would need to be different in relation to those two matters. Obviously, if it was necessary, that could be addressed at the time, but investigation powers are investigation powers. These are broad general powers—search warrants, authorised persons, potential return of documents, details of warrant to be given, obstruction of persons authorised to enter, power to obtain information, etc. As I said, it is difficult to conceive of issues that are not covered in these broad sections. I suppose that, if it does turn out to be the case, those matters could be addressed then.

The CHAIRMAN: If there are no further contributions, we will turn to page 26.

The Hon. R.I. LUCAS: This is the second major section of the legislation after the AER. In relation to the proposed structure for the AEMC, have jurisdictions agreed on whatever the senior positions are to be called: chief executives, board members or commissioners—whatever the structure is going to be? Have decisions been taken by the jurisdictions in terms of the leadership of the AEMC?

The Hon. P. HOLLOWAY: My advice is that no appointments or announcements have been made in relation to the AEMC commissioners.

The Hon. R.I. LUCAS: Will the minister indicate what the structure will be? Is it a board, are there commissioners, is the senior position to be a chief executive? Whilst I understand that people might not have been appointed, surely there must be some indication as to what the decision making structure of the AEMC will look like.

The Hon. P. HOLLOWAY: It will be similar to the AER in the sense that there will be three commissioners: one will be a full-time chair and the other two will be part-time commissioners.

The Hon. R.I. LUCAS: Has the decision been taken that the AEMC will be located in Sydney? Is the minister aware whether or not a property and a location for the officers has been established in Sydney?

The Hon. P. HOLLOWAY: I believe the offices have been established. I do not have the address on hand, but it is obviously somewhere in Sydney. It has been established.

The Hon. R.I. LUCAS: I want to raise the issue of costs of the AEMC and the AER collectively. There is considerable discussion within the industry as to what the decisions will be in relation to potential levies on the industries—ultimately, one would assume to be paid by consumers—to pay for the operation of the AEMC and the AER, bearing in mind, as I said, that, at the national level, we currently have two major bodies, NEMMCO and NECA. NEMMCO continues and NECA has been replaced by two bodies, the AEMC and the AER. We now have three significant bodies at the national level. You can throw in the ACCC as well, but that is already funded. We have NEMMCO, the AER and the AEMC. Have the jurisdictions considered ballpark budgets for the AER and the AEMC? Secondly, what is the position of the South Australian government in relation to industry levies in terms of funding the annual operating costs of the AER and the AEMC?

The Hon. P. HOLLOWAY: In relation to the honourable member's question about ballpark budgets, I believe there are indicative budgets that are based on the current arrangements. In other words, the cost of the current bodies in relation to the second question which was about—

The Hon. R.I. Lucas: What are they?

The Hon. P. HOLLOWAY: I think it was approximately $10 million for the AER, which was similar to the cost of the energy division of the ACCC, and the indicative budget for the AMC is of the order of $5 million or something based on the current cost of NECA. In relation to industry levies, I understand that there has been an agreement on a national levy, and the details of implementation are still being discussed.

The Hon. R.I. Lucas: You said that there had been agreement on a national levy.

The Hon. P. HOLLOWAY: An in-principle agreement to fund this with a national levy, but the implementation of it is yet to be determined.

The Hon. R.I. LUCAS: I am aware of a discussion paper circulated by the Ministerial Council on Energy Standing Committee of Officials which, if the truth be known in relation to all these issues, is making most of the decisions anyway. My understanding was that submissions in relation to that discussion paper were required to be received by last week—Wednesday 7 April. Did the South Australian government make a submission to the Ministerial Council on Energy Standing Committee of Officials (MCESCO)? The discussion paper was entitled 'Application of the industry levy to fund the AER and AEMC discussion paper'. Submissions were required to be received by this body by 7 April. I thought it was this year, but it is 2004, so I apologise. I take it that that consultation was conducted last year and the minister is indicating that there is now a decision definitely to impose an industry levy, but in the 12 months since that consultation there has been no decision on the details of the industry levy to be imposed.

The Hon. P. HOLLOWAY: To clarify: it is a national levy rather than an industry levy, and it was part of the Australian energy market agreement, a copy of which we gave to the honourable member.

The Hon. R.I. LUCAS: What is the difference between a national levy and an industry levy?

The Hon. P. HOLLOWAY: The national levy would be levied by either the commonwealth or the states, or a combination thereof.

The Hon. R.I. Lucas: A levy on whom?

The Hon. P. HOLLOWAY: I understand there has been a discussion paper and the industry will be the main contributor, but the details are yet to be finalised.

The Hon. R.I. LUCAS: The minister made a specific point of correcting my use of the term 'industry levy', which was the original discussion paper, to 'a national levy', and he said in response to my question that the levy will be significantly on industry. He is therefore indicating that there may well be a levy on bodies or individuals other than industry. I take it that that can only mean one of two things: either governments or consumers. Will the minister indicate what bodies other than industry are being contemplated to be levied?

The Hon. P. HOLLOWAY: None of those issues have been resolved. The only reason I used the term 'national levy' is because that is what is referred to in the agreement. It is consistent with the name.

The Hon. R.I. LUCAS: What was the recommendation of the Ministerial Council on Energy's standing committees and officials in relation to the levy issue?

The Hon. P. HOLLOWAY: Nothing has been agreed at this stage, they are just putting up a number of options. It would be improper for me to go into those at this stage, because there simply is no agreement. They are just the views of officials. It is really the Ministerial Council on Energy that will make a decision on these matters.

The Hon. R.I. LUCAS: I understand that, but there is the issue of how significant a levy might be on the industry and therefore on consumers because, ultimately, if the industry pays for it, the consumers will pay for it. Whilst I understand the indicative costs might be $10 million and $5 million at the moment, many within the industry believe that there will be significant blowouts in those costs by the time the jurisdictions have finalised the arrangements for the AER and the AEMC. If there are not, many of us will be pleasantly surprised. The issue of what the costs are and who is going to pay for them and how consumers will pay for them is important.

For example, what share of the total costs of the AER and the AEMC will South Australia pick up? I think the people of South Australia, are entitled to know what position the South Australian government is arguing for in relation to the potential impacts on costs for South Australian consumers, in particular. My advice is that the cost recovery processes in the states vary considerably. South Australia—certainly in the past and I assume it is still the case—basically had full cost recovery for the operations of ESCOSA. We structured the licence fee arrangements in South Australia to fund the regulatory arrangements of ESCOSA. My understanding is that in some jurisdictions that is not the case in terms of the funding of their regulatory authorities and agencies.

In any decision that was to be picked up, if South Australian consumers were to be disadvantaged in some way compared with other states because of past practices, I am sure that South Australian consumers and their advocates would be disappointed if that was to be the result of any negotiations conducted by the government. I indicate my concern. The government is clear that no decisions have been taken—to use their words—that it is still to be sorted out. This discussion paper was concluded last March or April, so it is 12 months old now, and the minister has indicated that,

in essence, there has been very little progress in terms of coming to a resolution on these issues. I ask the minister: when is it intended that the AER and the AEMC will commence the expenditure of any moneys?

The Hon. P. HOLLOWAY: First, let me correct and clarify something I said earlier. I have just been advised that it was not called a national levy: it was called an industry levy. Paragraph 10.1 of the intergovernmental agreement, which relates to funding arrangements, states that the parties agree that the AER and the AEMC will be funded by an industry levy. In relation to the question asked by the honourable member, my advice is that, assuming that this legislation is passed this week (and we hope it will be), the AER is likely to commence operation—and, presumably, therefore spending money—in May this year. The AEMC is already operating and is being funded on an interim basis by New South Wales, with repayment from the state and territory NEM jurisdictions.

The Hon. R.I. LUCAS: I think that makes the point very succinctly—that is, the AEMC is already operating on an interim basis, although it is clearly not doing much because it is only a shell and has no power or function. I am not sure what it is actually doing. The AER starts next month, should the legislation pass, and here we are on 12 April. We are the lead legislator, and we are asking a reasonable question as to the total budget, how it will be funded and who will be whacked to pay for it. This government is saying that it does not know and that it has still not been worked out.

Frankly, it is unbelievable that we could have a minister negotiating on our behalf who has been so inept that he has agreed to a situation in which the all-powerful body of the AER will start work next month but is not in a position to tell us how much it will cost, who will pay for it and how the process will operate. That is an incredible set of circumstances to ask this legislature to accept. The minister has given an indicative budget, but he says 'Dunno' in relation to who will be levied, how it will be divvied up and who will be whacked for the ultimate costs of running the AER and the AEMC.

We are less than a month away from the operation of the Australian Energy Regulator, and this minister is not in a position to indicate to us how that levy will be structured. This is a levy of at least $15 million. As I said, many within the industry indicate that they will be very surprised if that figure of $15 million is ultimately the figure in terms of the operation of the AER and the AEMC. Anyone who has had anything to do with regulators anywhere—and, without being localised, let me refer to the national level in terms of the ACCC and others—will know that their cost, size and function tend to grow, particularly as we have just seen that the AEMC is in a position to further extend the powers and functions of not only the AER but also its own powers and functions, even if the jurisdictions oppose it. I will refer to that in a moment.

This government and this minister are asking this parliament to accept a lot and, for the reasons I have outlined, the opposition does not oppose the legislation, although it expresses some significant concerns about some aspects. Frankly, the government is just saying to this parliament that this is a $15 million plus levy, that consumers somewhere will have to pay but that it will either not tell us, or it is not in a position to do so, because it has still not worked it out. It is not a priority, but what is a priority for this minister? This government is telling us, 'We're not in a position to tell you, because we still have not worked it out.' What is a priority for this minister and this government, if it is not to try to work out—

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Redford is being mischievous, but I will not be diverted. This really ought to have been a priority for this minister in terms of—

The Hon. A.J. Redford: That is why we are going to have transparent air bridges, so we can see him when he leaves town.

The Hon. R.I. LUCAS: I will respond to that interjection just to get it on the record, but I will not be diverted. This should have been an important issue in terms of this minister's priorities and workload. It is unacceptable to be less than a month away from the operations of the AER and for the government, on behalf of the minister, to say, 'Dunno' when asked about the issue of the costs and how they will be levied on consumers, and ultimately what our consumers' share of the total costs will be.

The Hon. P. HOLLOWAY: Those comments are a bit rich coming from someone who sold the Electricity Trust of South Australia—let us not forget that. However, I will try to keep away from going back over the history of how we got into the situation in which we are now because that will not help us. This is the structure we have. I repeat what I said last night. We are one small state; we are 8 per cent of the country's population. I guess in terms of a NEM state, we are slightly more significant than that because Western Australia is not hooked up to the grid. These complex negotiations have to be negotiated with the commonwealth and all states. We are one part of it. The minister in this state has been assiduous in representing the interests of South Australia and he continues to do so. Of course, he is hamstrung by the history of this matter which was his inheritance, but he has been diligent in doing so.

It is quite incorrect for the Leader of the Opposition to suggest that these matters are not considered important. Of course, they are important; they have been under active consideration. One is reluctant to say that these matters are close to finalisation because it is necessary for every jurisdiction to agree and that makes it very difficult. We can have strong views, we can push them very forcefully, but, at the end of day, these matters have to be agreed by all the jurisdictions and, until the matter is finally resolved, we have to respect the views of those other jurisdictions. It is quite incorrect to suggest that this matter is not regarded as being important, as the Leader of the Opposition suggests. Yes, it is important and it has been given that importance by the minister. If we can get this legislation through, then instead of spending hours on these issues, perhaps we can get on with some of the issues which require a speedy resolution.

The Hon. R.I. LUCAS: The last contribution was a joke but I will not be diverted. In relation to clause 29(1)(c), this is similar to the issue which I raised earlier in relation to the AER, but potentially it is even worse because the AEMC has the following functions and powers as outlined in paragraphs (a) and (b). Then paragraph (c) states, 'any other functions and powers conferred on it under this law and the rules'. As I outlined earlier, the AEMC has the capacity to determine all rule changes and, in relation to a particular rule, it can ignore completely the views of the jurisdictions expressed either individually or as a collective body—the Ministerial Council on Energy. What we have here is the capacity for the AEMC to expand its own functions and powers completely independently of an individual jurisdiction or the Ministerial Council on Energy.

Whilst it was bad enough earlier that one independent body (the AEMC) was going to be able potentially to expand the functions and powers of a fellow regulatory body (the AER), what we have here is the AEMC potentially being able to do exactly the same thing. The minister's position before was this was a theoretical power, which is just code speak for, 'Yes, it is correct'; that is, what the opposition is saying is correct. It is not theoretically possible: it is on the basis of what the minister was conceding clearly within the provisions of the legislation, as has been specifically agreed by this minister.

What I cannot understand is how this minister has got himself and us into this position. He is the lead legislator, and I understand that he has led the charge with expensive legal counsel from Victoria. The minister was very critical of the opposition in their paying for expensive private legal consultants. However, I understand that the lead legislator has approved the use of very good (I am not being critical) and expensive legal counsel from Victoria. He is the lead legislator, and he has taken specific advice on this matter. He has deliberately and consciously agreed to an arrangement where the AEMC has, in essence, the power and capacity to provide itself with further functions and powers, and also provide further functions and powers to the AER, even when opposed by all the jurisdictions.

The only restrictions the minister can put on this is to say that there is another provision which provides that it has to be consistent with the National Electricity Law, or some similar provision. Take it from me, minister, that particular restriction is no restriction at all: the AEMC will have the capacity, should it choose, to provide itself with further functions and powers which are consistent with the National Electricity Law but which might not be agreed to by the jurisdictions.

I again express my concern. I asked a question earlier as to whether we were correctly interpreting this provision, and the minister was unable to indicate that there was any error in the interpretation put by the opposition. I again indicate that I am not in a position, on the fly, to amend this provision. I will discuss this issue with my colleagues and, should there be agreement, we would indicate that a future Liberal government would certainly take up this issue with other jurisdictions. If this minister is not prepared to stick up for South Australia's interests, I would hope that a future Liberal government would be prepared to do so to see whether we could negotiate changes with the other jurisdictions.

The Hon. P. HOLLOWAY: For the Leader of the Opposition to talk about the Liberal Party representing South Australia's interests in relation to electricity is a joke. I think the South Australian public will make up their own mind. The diatribe we have just heard is based on a completely incorrect premise. In fact, the AEMC cannot initiate its own rules. Clause 91(2) provides:

> Subject to section 35, the AEMC must not make a rule on its own initiative unless it considers the rule—
> (a) corrects a minor error in the rules; or
> (b) involves a non-material change to the rules; or
> (c) is in respect of any matter that is prescribed by the regulations. . .

So, it is incorrect to suggest that the AEMC can create its own powers.

The Hon. R.I. LUCAS: That is cute, but not accurate. It is a nice children's debating point, but it is not worthy of the parliament. That is not the point made by the opposition. It is clear that the AEMC cannot initiate its own rule change, other than for a minor or technical issue. The point the opposition is making is that the AEMC can make a decision in relation to rule change. A rule change can be suggested by anyone. Indeed, even the Hon. Mr Holloway can suggest a rule change; the Hon. Mr Xenophon or Billy the Goose can suggest a rule change. One has to go through certain processes, but anyone can suggest a rule change.

The opposition has not suggested that the AEMC has the capacity to initiate a major rule change in terms of functions and powers. What we have said is that the AEMC has the power to make a decision in relation to a rule change which might be opposed by all of the jurisdictions and which might increase its powers and functions. The minister has not been able to indicate, based on his advice, that that is incorrect. I asked him the question earlier in relation to the AER, and this is exactly the same provision, as it relates to the AEMC.

The Hon. P. HOLLOWAY: I can only repeat the qualification that I gave earlier. There are heads of power under schedule 1 which limit the powers and functions under which the AEMC has to operate.

The Hon. NICK XENOPHON: I move:

> Schedule, clause 32, page 26—
> Delete clause 32 and substitute:
> 32—AEMC must give effect to national electricity market objective
> In performing or exercising any function or power under this law, the regulations or the rules, the AEMC must give effect to the national electricity market objective.

Essentially, this amendment changes the words in the bill 'must have regard'. I know there was a discussion earlier, and the Hon. Mr Holloway pointed out the High Court decision with respect to the meaning of 'must have regard'. I would have thought that this is more direct and to the point; 'must give effect' rather than 'must have regard' is surely in line with the intent of this bill.

The Hon. P. HOLLOWAY: The government opposes the amendment for the reasons that we outlined with respect to a similar amendment that was moved earlier by the Hon. Nick Xenophon.

The Hon. R.I. LUCAS: The opposition's position on this amendment is similar to our previous position. For the same reasons, we are unable to support it. However, I indicate that, in relation to this, I find it much harder to understand the government's arguments. The current drafting, to which the minister has agreed, is that the AEMC must have regard to the national electricity market objective. The minister has already given us case law in relation to how the High Court (or one of the courts) interpreted 'must have regard to' and that was, in essence, that you have to take it into account but you do not have to abide by it. That is the minister's interpretation of 'must have regard to'.

What the minister is saying to us is that the AEMC has to take into account, or must have regard to, the national electricity market objective but, in essence, it does not have to abide by it. It just seems to be an unusual position, if I can understate my position, for the minister to adopt. I am not sure why the minister, and other ministers, have adopted this framework for this provision when they went to such lengths in relation to outlining the national electricity market objective. They wanted to protect that definition, and they have clarified it in the second reading explanation to indicate that it has an economic impact but, in essence, now they are saying to us, 'The AEMC has to take it into account but, in the end, it does not have to abide by it. It does not have to follow the national electricity market objective.'

The Hon. Mr Xenophon is putting a proposition that some others have put to him that what ought to happen is that it should be, in his words, 'must give effect to the national electricity market objective'. There might be better words than 'give effect to'; there are many others that may or may not have been considered. But I must admit that this is one where I would have hoped the minister might have been prepared to say, 'We cannot agree to a change now because it will hold everything up, but we would be prepared to have another look at it.' Nothing that the minister has indicated here explains to me why they would have wanted to structure it in the way in which they have. There might be a good reason but, if there is, it certainly has not been put to the parliament during this debate.

The Hon. P. HOLLOWAY: I can only repeat the points we made earlier that it requires the AEMC not only to seriously consider it but also, if it were to disagree, to state its reasons very clearly. We believe that it is adequately covered for the reasons I gave earlier.

The Hon. R.I. LUCAS: The minister says that the AEMC would have to give reasons. Will the minister clarify where the AEMC would have to give reasons? I thought that was another provision of the legislation.

The Hon. P. HOLLOWAY: I think we covered this yesterday. It is section 102(2)(a)(ii). I gave that example last night. We are starting to go around in circles.

The Hon. R.I. LUCAS: Section 102(2)(a) provides:

> the reasons of the AEMC as to whether or not it should make a rule, including—
>
> (i) the reasons of the AEMC as to whether it is satisfied the rule will or is likely to contribute to the achievement of the national electricity market objective;

Subparagraph (i) seems to canvass where the AEMC is satisfied it will or is likely to contribute. It does not canvass the issue of where it will not contribute to the achievement of the national electricity objective. Subparagraph (ii) provides:

> the reasons of the AEMC having regard to any relevant MCE statement of policy principles;

As I understand the position, that certainly does not have anything to do with the national electricity market objective: that is in relation to the statement of policy principles. My memory is refreshed in that, if the AEMC was not to have regard to the statement of policy principles, it had to give a reason. Section 32 provides:

> In performing or exercising any function or power under this law. . . the AEMC must have regard to the national electricity market objective.

The minister was saying that, if the AEMC did not, in essence, do something that was following the national electricity market objective, it would have to give a reason. Certainly, as a result of my reading, section 102 does not give the grounds or require the AEMC to do so. I ask the minister to clarify where he says the AEMC would be required to give reasons under section 32.

The Hon. P. HOLLOWAY: Section 102(2)(a)(i), which relates to the rule making test.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: That is the rule making test. Subparagraph (ii) specifically refers to the relevant AEMC statement of policy principles. It must give the reasons. If it were not to agree to that, it would have to give reasons.

The Hon. R.I. LUCAS: I will not delay the committee further tonight on this issue. I am not convinced by the minister's response. Section 102(2)(a)(i) talks about the reasons of the AEMC, as to whether it is satisfied that the rule will or is likely to contribute to the achievement of the national market objective.

The Hon. P. HOLLOWAY: The determination must contain the reasons of the AEMC as to whether or not it should make a ruling; then you have subparagraphs (i), (ii), (iii) and (iv). It has to give the reasons as to whether or not it should make a rule, including those subparagraphs.

The Hon. R.I. LUCAS: If I can summarise my position, the point that I am making under clause 32 that we are looking at is simply that the AEMC, in performing or exercising any function or power—and have a look at all the functions or powers that it has under the regulations and the rules—must only have regard to the national electricity market objective. The point that I am making is that, given the government's own legal interpretation it must have regard to, which it proudly proclaimed earlier in relation to another issue—in essence, that you have to consider the objective but, in the end, you do not have to abide by it—the body can decide to ignore it. That is the point that the opposition is making, and any reference to clause 102 or, indeed, other provisions, in my view, does not change that essential feature—that is, that this minister has agreed to a process or an arrangement where the AEMC can, if it chooses, ignore the national electricity market objective. It is hard to understand.

The Hon. P. HOLLOWAY: It cannot ignore the national electricity market objective.

The Hon. R.I. LUCAS: It has to take it into account but, in the end, it does not have to abide by it. That is the government's own definition of 'must have regard to'. The minister read it out to the chamber earlier this evening, based on some High Court decision in relation to the words 'must have regard to'. So, based on his own legal version of what 'must have regard to' means, the minister and the government are putting to this chamber the unusual set of circumstances where the AEMC need only have regard to the objective; it does not have to abide by it, which is the point that the Hon. Mr Xenophon has raised by way of his amendment.

As I said, it seems to me that it would have been sensible for the government to say, 'We do not want to delay this particular issue. The Hon. Mr Xenophon has made a reasonable point. We are prepared to go back and talk to the other jurisdictions about this particular issue.' Or else, give us a powerful reason why it has to be like this. There might be one; I am not ruling out the fact that the government might be able to come back and say that there is a very good reason why it cannot be absolute in the terms that the Hon. Mr Xenophon has talked about. Certainly, tonight, we have not been given that; so, on that basis, in the long term, I reserve our position in relation to this. Whilst we are not opposing this legislation going through for the reasons we have outlined, we think this merits further discussion.

Amendment negatived.

The Hon. NICK XENOPHON: I move:

> Schedule, clause 35, page 29—
>
> After line 29 insert:
>
> (aa) be consistent with the national electricity market objective; and

This amendment seeks to insert after line 29, in relation to rules regarding economic regulation transmission systems, that the rules made as required by this section must, with the proposed amendment, be consistent with the national

electricity market objective. I would have thought that this is a no-brainer. I will wait to be surprised by the minister.

The Hon. P. HOLLOWAY: The government opposes the amendment. The AEMC is required by clause 35 to make rules in relation to the economic regulation of transmission systems on or before 1 July 2006 or any later date prescribed by regulation. In making those rules, the AEMC is bound by the rule making test in clause 88 of the National Electricity Law bill, which is an appropriate test to be applied as I indicated in response to an earlier amendment.

The Hon. R.I. LUCAS: The opposition does not support the amendment for the reasons that we outlined earlier.

Amendment negatived.

The Hon. NICK XENOPHON: I move:

Schedule, clause 38, page 31—
After subclause (2) insert:
(2a) In performing or exercising any function or power under this Law or the Rules, the Reliability Panel must give effect to the national electricity market objective.

This amendment seeks to insert into clause 38 that, in performing or exercising any function or power under this law or the rules, the reliability panel must give effect to the national electricity market objective. We have had this debate in a similar sense recently in relation to the difference between 'have regard' or 'give effect', but in this case it is somewhat different in that I am seeking to insert a subclause where there must be some consideration of the national electricity market objective in the context of the panel performing or exercising any function or power under this law or the rules.

The Hon. P. HOLLOWAY: The government opposes the amendment. The reasons are very similar to those which we have indicated in regard to the earlier clause and the third amendment moved by the Hon. Nick Xenophon. I will not go through it again unless there are any specific requests.

The CHAIRMAN: Mr Lucas, you have the same position?

The Hon. R.I. LUCAS: Yes.

Amendment negatived.

The Hon. R.I. LUCAS: Page 32 raises the issue of MCE-directed reviews and, under clause 41, MCE directions. Under clause 41(1) the MCE may give a written direction to the AEMC that the AEMC conduct a review into (a), (b) and (c). Paragraphs (b) and (c) are straightforward and relate to the operation and effectiveness of the rules and any matter relating to the rules. Paragraph (a) refers to any matter relating to the national electricity market. I want to compare that to the provisions under clause 45 where the AEMC may conduct a review into (a) the operation and effectiveness of the rules, or (b) any matter relating to the rules. So, the AEMC reviews are for the operation and effectiveness of the rules and any matters relating to the rules which correspond to paragraphs (b) and (c) of clause 41(1), whereas the MCE reviews actually relate to any matter relating to the national electricity market.

I ask the minister whether he can outline the thinking of the ministers and the governments in relation to this additional option for ministers in relation to any matter relating to the national electricity market. Can the minister give some examples of the types of things which might be included there which are not already included in paragraphs (b) and (c)?

The Hon. P. HOLLOWAY: This is one of those provisions that is put in as a contingency, for want of a better word. Nothing particularly is envisaged at this stage that it might be used for, but it is there to provide that power should the need arise. It is just a broad power to provide for the MCE to give written direction, but it might well be that some issue arises within the operation of a national electricity market which is not now obvious and it would be sensible, I would think, to let the ministerial council have the capacity to ensure that the AEMC investigates that matter. They are matters which are not necessarily existing at this moment but which may occur in the future.

The Hon. R.I. LUCAS: Is it possible for ministers using this power to direct the AEMC, for example, to inquire into the performance and operations of NEMMCO? That is, any matter relating to the national electricity market which clearly covers NEMMCO. Does this give the ministers the power to direct a review of either the overall or specific operations of NEMMCO in terms of its management of the market?

The Hon. P. HOLLOWAY: The initial reaction of my advisers is that the power is probably broad enough. That could happen, but whether it would be sensible or appropriate to do that is another question. To add some further information relevant to this question, the definition of national electricity market is:

(a) the wholesale exchange operated and administered by NEMMCO under this law and the rules; and
(b) the national electricity system.

I suppose to that extent the wholesale exchange operated and administered by NEMMCO comes under that definition, so it would appear it could do so. As I said, it is a different question, if the Ministerial Council on Energy wished to review the operations of NEMMCO, whether it would choose that or another vehicle. I guess that would be for the MCE to determine.

The Hon. R.I. LUCAS: It seems an unusual provision. As I said, if one looks to clause 45 the AEMC has no similar provision in relation to being able to conduct a review on any matter relating to the national electricity market, but the MCE can give a written direction to the AEMC on this very broad issue. Certainly, the industry has generally been accepting of the principles, and the operations of NEMMCO would be unaffected by the legislation and the changes and, as I understand it, that is the government's and the jurisdiction's position as well. In discussions I have had it would appear that this particular provision has been put in there by ministers for a specific reason and, whilst the minister is indicating that no decisions have been taken, there is clearly the capacity for the MCE to give written directions to the AEMC to conduct reviews into the operations of NEMMCO as the market operator.

I acknowledge that the minister has not indicated that that is definitely going to be done—he is obviously not in a position to rule it in or out, that is a decision for ministers in the future—but I think that, in terms of this committee's debate, we ought to acknowledge, as we have, the capacity of the MCE to actually do that. As I said, ministers have clearly put this power in there for some reason; it does not exist for the AEMC in its own clause but it has been put into the MCE for some specific reason.

In the same subclauses (3) and (4) there is a requirement that the directions given under this must be published in the *Gazette* and also that the AEMC must cause the direction to be published on its web site. In most legislation, ministerial directions are required to be done and publicised in a certain time frame—within one, three or seven days. Is there some other provision which requires this to be done within a certain time line and, if there is not, will the minister indicate why

there is no requirement for the ministerial council direction either to be gazetted or published within a certain time frame rather than, perhaps, be delayed for a period of time that might suit both the MCE and the AEMC?

The Hon. P. HOLLOWAY: We will check through the interpretation provisions as to whether there is a time limit. Certainly, if I put myself in the position of the AEMC and was given a direction I think that I would want it on the web site as soon as possible, but that would be my take on things. I am advised that clause 28(5) (page 87) provides:

> If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

Effectively, that means that it must be done as soon as possible. As I indicated earlier, why would the AEMC, if it was given a direction, not want it on its site as soon as possible?

The CHAIRMAN: We turn now to page 34.

The Hon. R.I. LUCAS: Clause 47(2), 'Fees for services provided', has an unusual drafting in that it provides:

> The fee must not be such as to amount to taxation.

I note that on the following page (page 35) a similar provision provides:

> NEMMCO must perform a function referred to in section 49 efficiently and on a full cost recovery but not for profit basis.

I am wondering whether there is any reason why the government has drafted clause 47 in the way that it has, that is, 'The fee must not be such as to amount to taxation' as opposed to 'this ought to be just full cost recovery or a not for profit basis', which is the drafting used in clause 49.

The Hon. P. HOLLOWAY: In relation to clause 50, I am advised that that is the current provision, that is, on a full cost recovery but not for profit basis. In relation to clause 47, we will have to do a little more research as to why that terminology is specifically used. We will take that question on notice and bring back a reply tomorrow.

The Hon. R.I. LUCAS: Should we interpret this drafting in much the same way as we would interpret clause 50; that is, does this mean exactly the same as 'full cost recovery but not for profit basis', or does it actually mean something in legal terms that is different to the provisions but similar to the provisions of clause 50?

The Hon. P. HOLLOWAY: It says that it is not to be such as to amount to taxation. Taxation is revenue raising. So, presumably, if it is not to be such as to amount to revenue raising, it has a similar affect as that under clause 50, but we will have to check why it is different.

The Hon. R.I. LUCAS: In relation to the part 5, 'Role of NEMMCO under the National Electricity Law', are there any changes to the role of NEMMCO under these provisions?

The Hon. P. HOLLOWAY: There is one slight change. I believe I provided the answer to that in the second reading response.

The CHAIRMAN: We move now to page 37.

The Hon. R.I. LUCAS: There was an issue that I raised yesterday in relation to the issue of rebidding, and I wanted to refresh my memory in relation to that. I take it that these provisions on page 37—rebidding civil penalties of $1 million and $50 000 a day—are the issues that we discussed yesterday in relation to penalties for bidding and rebidding of generators in the national electricity market. Is that a correct interpretation of these provisions, or is it a different provision?

The Hon. P. HOLLOWAY: My remark yesterday was that issues of rebidding were included in the rules rather than as regulations. I thought that that was the issue.

The Hon. R.I. Lucas: That was my understanding, and that is why I was surprised to see it.

The Hon. P. HOLLOWAY: The civil penalty provision is a provision of the rules; that was the point we made yesterday. Was the question that you raised yesterday, 'Couldn't you do it in regulations?'

The Hon. R.I. Lucas: I cannot remember what you said.

The Hon. P. HOLLOWAY: I think we said that it was more appropriate for it to be in the rules because that is where the penalties applied, and there were no penalties under the regulations. I think that was the point that was made last night. I think that that is consistent with my comment, 'Here it is in the rules where it is more appropriate.'

The Hon. R.I. LUCAS: Is this the National Electricity Law?

The Hon. P. HOLLOWAY: Yes.

The Hon. R.I. LUCAS: I clarify that because it is late at night and I was confused for a moment. The minister said that we are doing the rules at the moment. We are actually looking at the National Electricity Law, the schedule to the legislation of the National Electricity Law. That is why I would prefer to pause at clause 37, because I do not have a clear recollection of the debate we had yesterday. There was a discussion about whether the penalties for rebidding were in the rules or the regulations. This is actually the law, and I take it that the government is saying that the rebidding penalties are actually in the rules. They are not in the regulations but they are stipulated in the law and the rules. Is that the government's position in relation to bidding and rebidding penalties?

The Hon. P. HOLLOWAY: To really confuse you, look at the definition on page 37, which states:

> *rebidding civil penalty provision* means a provision of the Rules that is prescribed by the Regulations to be a rebidding civil penalty provision;

The definition of 'civil penalty' is:

> (a) section 11(1), (2), (3) or (4); or
> (b) a rebidding civil penalty provision; or
> (c) any other provision of this Law or a provision of the Rules prescribed by the Regulations to be a civil penalty provision;

The Hon. R.I. LUCAS: The definition in the second to bottom paragraph is a provision of the rules that are prescribed by the regulations.

The Hon. P. HOLLOWAY: Yes. Mr Chairman, perhaps it is an appropriate time to report progress.

The Hon. R.I. LUCAS: I agree. I would like to go back and see what we said yesterday.

Progress reported; committee to sit again.

ADJOURNMENT

At 11.33 p.m. the council adjourned until Wednesday 13 April at 2.15 p.m.