LEGISLATIVE COUNCIL

Wednesday 20 September 2006

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

LEGISLATIVE REVIEW COMMITTEE

The Hon. J. GAZZOLA: I bring up the 10th report of the committee.

Report received.

EDUCATION WORKS

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I table a ministerial statement relating to education works made in another place by the Minister for Education and Children's Services.

Members interjecting:

The PRESIDENT: Order! When we all settle down, we will get on with the business of the day.

QUESTION TIME

DIRECTOR OF PUBLIC PROSECUTIONS

The Hon. R.I. LUCAS (Leader of the Opposition): I seek leave to make an explanation before asking the Leader of the Government a question about the DPP.

Leave granted.

The Hon. R.I. LUCAS: There was an announcement today in the morning newspaper of some small amount of additional funding for the Office of the Director of Public Prosecutions. I remind the Leader of the Government that, not quite to the day (one year and one week ago), on 13 September I asked a question of the Leader of the Government in relation to continuing criticism and undermining of the Office of the DPP by officers working for the Premier. Without going through all the detail, I outlined confidential information that had been leaked to morning radio programs in an endeavour to undermine the Director of Public Prosecutions. My questions were:

1. Has the DPP (Mr Pallaras) written to the Premier, or any other Rann government minister, and again expressed concerns about the actions of some Rann government advisers and, in particular, Mr Rann's senior adviser, Ms Jill Bottrill?
2. What is the nature of the concern expressed by Mr Pallaras, and what action, if any, has Mr Rann taken?
3. Why has the Premier personally approved a campaign by his government's paid political advisers to undermine the standing of the DPP and the Office of the DPP through the selective briefing of journalists, including the leaking of confidential DPP correspondence to journalists such as Mr Abraham and Mr Bevan from ABC Radio?

Mr President, it will not surprise you to know that the Leader of the Government did not answer those questions. The issue was then taken up—

The Hon. J. Gazzola interjecting:

The Hon. R.I. LUCAS: This is the Office of the DPP writing to the Premier complaining about actions of the Premier's advisers. In December—

Members interjecting:

The PRESIDENT: Order, on my right!

The Hon. R.I. LUCAS: In December 2005 *The Advertiser* followed up the non-response to these particular questions with the Premier's office. In a story written on 7 December, *The Advertiser* outlined the background to the questions about the undermining of Mr Pallaras (and I will not go through that again in detail) and they received the following reply from the Premier:

The Premier said, in a statement yesterday—

that was 7 December—

'A reply to Mr Lucas's question regarding the DPP is on its way.'

That was in December last year. In September 2006 I am not sure what particular route the Premier is using to send correspondence from the State Administration Centre to North Terrace, but I can indicate that, whilst the Premier told *The Advertiser* a reply was on the way, I still have not received a reply in September 2006. My questions to the Leader of the Government are as follows:

1. Was the Premier telling the truth when he told *The Advertiser* reporter, on 7 December, 'A reply to Mr Lucas's question regarding the DPP is on its way'?

2. If the Premier maintains that he was telling the truth, can the Leader of the Government ascertain what has happened to that particular letter in reply to the serious questions that had been raised, not by me but by the DPP?

3. What has happened to that letter, and can he undertake, as the Leader of the Government, to expedite a reply, in the interests of the DPP being satisfied that his particular concerns about the actions of the Premier's officers have been satisfactorily resolved?

The Hon. P. HOLLOWAY (Minister for Police): Is it not amazing, Mr President, that the Leader of the Opposition says that we should be acting in the interest of the DPP, and yet this whole question purportedly came out of the article this morning which indicated how the government will increase the resources available to the Office of the Director of Public Prosecutions to put criminals away? Surely, if that fact does not indicate that this government supports the Office of the Director of Public Prosecutions, then what will?

The Leader of the Opposition is the only politician I know who seems to have this total fascination with history. He has to turn the clock back for years, trying to look at some little piece of gossip from two years ago. Presently, this government is increasing the resources to the DPP to enable that office to do its job more properly. The Leader of the Opposition can ask about all sorts of gossip that he loves to be involved in, about what the Premier's staff might have said to whom and all this sort of information, but this government deals in substance. We are increasing resources to the Office of the Director of Public Prosecutions to enable—

The Hon. R.I. Lucas: That was not the question.

The Hon. P. HOLLOWAY: It may not be the question, but it is what is important to the people of South Australia. It is what is absolutely important to the people of South Australia. In relation to the letter from the Premier, I will take that question on notice and see what information is available. But, if ever the Leader of the Opposition wants to signal to the people of South Australia that the Liberal Party is totally irrelevant, out of time, totally obsessed with the past, cannot put anything positive forward, that all it can do is knock when a government is increasing resources to an important agency like the DPP, then I am pleased that the Leader of the Opposition continues to ask questions like this because it really shows just how irrelevant he is.

ENVIRONMENT PROTECTION AUTHORITY

The Hon. D.W. RIDGWAY: I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about EPA licence fee rises.

Leave granted.

The Hon. D.W. RIDGWAY: I recently noticed in a South-East newspaper that the Naracoorte Lucindale Council has been hit with an extremely massive rise in its EPA licence fees for landfills. Despite the fact that the Naracoorte Lucindale Council is introducing—and I know it is your old hometown, Mr President—a new kerbside recycling program, and will significantly reduce its landfill burden, the fee has gone up to $110 148 compared with $81 622 last year. That is a 35 percent increase on a rural council whose community will be on its knees following the drought that we are having this year.

The minister often talks about whingeing, whining and carping, but this is one of the meanest governments we have seen. This has resulted in a cost shift to local government that will undoubtedly be passed on to the ratepayers, who are having a particularly tough season. My questions to the minister are:

1. Why has the EPA licence fee been increased for landfills, despite the fact that the Naracoorte Lucindale Council can show that it has less to landfill due to its kerbside recycling program?

2. Has the licence fee been increased in a uniform fashion across all South Australian councils, and particularly rural councils?

3. Were the councils consulted on the changes to this licence fee?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for his important questions. Indeed, landfill is a very important issue for this government. We have a strategic target to decrease the amount of waste going to landfill and, indeed, that is a very important thing for us to do. Not only is landfill quite unsightly to look at, but, indeed, it is a waste of very precious resources. This government has taken very strong steps to make sure that we reduce our landfill and that we encourage recycling and reuse for the long-term viability of our planet and the survival of all the species.

This has been a particularly challenging measure to introduce into country areas, where many councils like to have their own local tip—in fact, too many of them. The waste authority has been working very hard with country communities to try to reduce the number of available landfills and introduce sharing arrangements, a greater degree of cooperation and greater efficiencies. That has been very challenging and has involved some costs, which have been shifted to the people wanting to dispose of rubbish. We do not apologise for that, but we acknowledge that there is some hardship involved, and it is something for which our communities have to take responsibility. Our waste authority has been working very hard to look at ways of keeping costs to an absolute minimum and improving cooperation and cost sharing amongst council areas. It is working very hard with country communities to produce the best outcome for those communities and, of course, for our environment.

The Hon. D.W. RIDGWAY: Sir, I have a supplementary question. What extra services is the EPA providing to the Naracoorte Lucindale Council for the $30 000 a year extra it is being charged?

The Hon. G.E. GAGO: The long-term survival of our planet.

MENTAL HEALTH, FORENSIC SERVICES

The Hon. J.M.A. LENSINK: I seek leave to make an explanation before asking the Minister for Mental Health and Substance Abuse a question about forensic mental health services.

Leave granted.

The Hon. J.M.A. LENSINK: A number of items have been reported in the newspapers following the inquests into deaths in custody and other deaths of people within our mental health and correctional systems, and I wish to quote from some of those articles. On 23 August, it was reported in *The Advertiser* that a Ms Hodder had said that a Glenside psychiatrist, Dr John Clayer, had told police investigators that he had wanted to keep a particular person at Brentwood North but was overruled by the clinical director, because he allegedly wanted to clear beds in the unit. There also have been citations from Dr Ken O'Brien, the distinguished provider of psychiatric services within the forensic system, who said:

> I think it is scandalous that there aren't an adequate number of funded mental health nursing positions in South Australian gaols, and it is scandalous that most gaols do not have a psychologist and there is nothing resembling an adequate mental health service in our prisons.

On 5 September, a report appeared in *The Advertiser* in which the senior psychiatrist at the Glenside Hospital, Harry Hustig, gave evidence and, in doing so, criticised funding for the mental health system. A former medical officer at Glenside Hospital, Marion Drennan, highlighted problems in the mental health system. She said that the hospital was understaffed and her duties were 'beyond the work of one person'. She also said that more medical practitioners were needed in the wards, and she described social workers as being very stretched at times in meeting the demand. It was stated that the court heard that a review of the Mental Health Act was under way, which I am sure will give people much comfort.

In an article on 7 September in relation to one of the deaths, Dr Goh said that, if he had been given information about a particular client which included details of his hostile behaviour, it was likely that he would have requested a review of the detention order.

In today's *Advertiser* there is a reference to that particular case, and Professor Robert Goldney, who compiled a report for the state government, was reported as saying that psychiatrists in the public health system were overworked, lacked time to assess properly patients who had committed crimes and 'as soon as a patient's case notes get to 15 centimetres in height, they should be reviewed and summarised by someone with sufficient experience'. What actions is the minister taking in relation to the disastrous system we have in this state?

The Hon. G.E. GAGO (Minister for Mental Health and Substance Abuse): Our Prison Health Service and the Forensic Mental Health Service are managed by the Central Northern Adelaide Health Service. Both these services continue to work together to develop better ways in which to manage prisoners with mental health problems. For example, the Prison Health Service and the Department for Correctional Services recently developed a joint high risk assessment team process whereby information is freely shared regarding prisoners at high risk. I understand that since the

inception of the high risk assessment team the incidence of self-harm has reduced and communication between both services has improved. I have been advised that the Prison Health Service is currently working with the Department of Health to develop an integrated electronic health record, which will have connectivity with both the Department for Correctional Services and hospital patient record systems; and, of course, we know how important it is to have better communication between the services.

Planning is also under way for a court liaison assessment process to provide early intervention for people identified with mental health problems during court processes; and also an emergency assessment and crisis intervention response for the watch-house and the Adelaide Remand Centre. An additional four forensic liaison mental health workers have been appointed recently by the Central Northern Adelaide Health Service. These workers will provide some prison inreach and outreach services. This is in addition to four forensic mental health nurses who perform community outreach work and work within the metropolitan prisons. I understand further work will be undertaken to look at the inreach needs for regional prisoners. As part of the COAG discussions on mental health initiatives, the needs of prisoners and parolees have been referred to specifically.

I also point out that there are now more psychiatrists employed in the system than ever before. There are now more employed than was the case a couple of years ago. In 2005 we were undergoing severe shortages of psychiatrists throughout the state. We have been able to successfully recruit a number, and the last report I received on the matter indicated that all positions were now filled. I also understand that we have more mental health workers employed than we had a couple of years ago. This government has put forward extra funding and employed a number of additional mental health workers, including workers to deal with co-morbidity issues; and we know how important that is.

A current analysis of our risk alerts has been completed, and we are about to introduce a new risk alert system that will go into the mental health record of all mental health patients. It will be readily available for other mental health workers to easily access in order to determine the level of risk of that person and make responses more appropriate. A great deal has been done on this issue. It is a difficult and challenging area, but this government is committed to implementing improvements in our mental health services. Of course, we are also looking at transforming the whole of our mental health services, given the recent term of reference that has been given to the Social Inclusion Board. A great deal of work has been done there and we can expect further developments as well.

The Hon. J.M.A. LENSINK: By way of a supplementary question, from the strategies the minister has referred to, can she advise the council how many psychiatrists have been recruited since that incidence referred to in the Corner's reports into Glenside and/or the forensic mental health system?

The Hon. G.E. GAGO: I am happy to bring those figures back to the council, as I do not have them in front of me at the moment.

The Hon. NICK XENOPHON: By way of a supplementary question, given that the State Coroner almost a decade ago, in the matters of Ciampi and Hogarth, made recommendations with respect to the mental health system following the deaths of three people at the hands of mental health patients with psychotic illnesses, will the government advise which of those recommendations will be or have been implemented as a result of the Coroner's findings almost a decade ago?

The Hon. G.E. GAGO: I can report on the sorts of risk assessments and mental health services that have been developed recently to address improvements throughout the system. For instance, some of the risks that have been identified and are currently being addressed include the variation in responses to mental health presentations in emergency departments across particularly the Central Northern Adelaide Health Service general hospitals.

Some of the strategies that have been put in place to address that include: the recruitment of mental health emergency care coordinators to provide 24-hour senior mental health cover across all emergency departments; the appointment of a projects officer for three months to review patient flow assessments, particularly in emergency departments; waiting times for transport; frequent presenters and transfer of care and bed blocks (and that report is due at the end of September); identification of standards to provide consistency of practice across sites; documentation guidelines, including the development of a crisis management plan and potential risk for absconding where appropriate; implementation of a regional approach to community care plans aimed at improving consumer care; reduced length of stay and decreased unplanned re-presentations within 72 hours to help reduce admission rates; and identification of inreach services to supported residential facilities.

In relation to risks identified in relation to the variation in capacity of the Assessment and Crisis Intervention Service (ACIS), some of the strategies being put in place include planning which has commenced for a centralised emergency mental health response line, whereby mental health telephone triage services are collocated within the South Australian Ambulance Service communications centre. This expands on the successful SA Ambulance and mental health emergency response project, showing significantly reduced presentations to emergency departments in appropriate cases. Each ACIS team now has a nurse practitioner providing leadership and training of staff, focusing on risk assessment and appropriate intervention.

With regard to the risks identified in relation to the need for coordinated mental health treatment pathways, some of the strategies that have been introduced include the employment of client support workers in all acute inpatient units to work alongside professional staff to support mental health clients in their journey to recovery. Three new nurse practitioner positions have been created, one having been filled on 28 August this year. A mobile assertive care team has been established to provide leadership and training to staff to coordinate service delivery with the client, significant others and other agencies, such as NGOs and shared care with GPs and supported residential facilities. These measures also include five newly created transfer of care coordinated positions, with two filled on 28 August to work with NGOs and GPs to coordinate management with clients with complex and ongoing needs. There are many others, which I am happy to discuss with the honourable member perhaps at a later date.

The Hon. NICK XENOPHON: As a supplementary question: given the evidence coming before the State Coroner, does the risk assessment include protocols to ensure that patients with psychotic illnesses take their medication as

prescribed and that there is an adequate level of that medication in their system before they are released into the community?

The Hon. G.E. GAGO: Yes. As the honourable member would know, a number of the initiatives that I have just outlined do indeed increase not only the level of support provided via pathways through the mental health services inside organisations but also the support that is provided in an outreach capacity. So, there has been a significant improvement in the level of support and monitoring of clients as they progress through recovery, including the monitoring of medication both within organisations and health facilities and also once clients re-enter the community.

THREATENED SPECIES

The Hon. I.K. HUNTER: I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about threatened species.

Leave granted.

The Hon. I.K. HUNTER: South Australia is home to some amazing flora and fauna. From the bird life of the Murray and the Coorong to the amazing insects and reptiles of our northern deserts, we are truly blessed with an outstanding natural heritage. However, threats to native habitat and remnant vegetation, predation from introduced species and even climate change are threatening these fragile communities. Events such as National Threatened Species Day on 7 September just past are reminders of our responsibility to ensure the survival of these vulnerable creatures. Will the minister inform this chamber what initiatives this government has implemented to mark National Threatened Species Day?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I know members will be very keen to listen to this response, and I thank the honourable member for his important question and his ongoing interest in these important policy matters. It is timely that he has asked this question, given that we have just observed Threatened Species Day. On that day I was lucky to be part of something very special at Cleland Wildlife Park. The staff there are just magnificent, and they gave me the pleasure of releasing a breeding pair of rare Freckled Ducks into their swamp aviary. These are two of the worlds rarest ducks. Since European settlement, Australia's swamps have been drained, and potential breeding and feeding locations have been altered or destroyed, and the ducks' reliance on these areas is a major factor in their rarity. The birds are being kept at Cleland in the hope of expanding breeding knowledge, and if that is successful we will then be able to mount a captive breeding program if wild species are further threatened.

The Cleland swamp aviary is a walk-through enclosure that replicates wildlife locations within South Australia, including the shallow backwaters of the Murray River and other shallow swamp areas. If members have not already done so, I can certainly recommend that they visit this important enclosure. If they saw the pictures in the local Hills paper they would know that the ducks certainly did not waste much time getting into their new habitat. They shot out of their cage and took straight to the water, and it was quite spectacular. They are very beautiful looking birds.

As an added bonus to this important conservation measure, Cleland Wildlife Park is now one of the very few places in the world where Freckled Ducks are on display, and in fact they can be seen at close quarters, which is a truly wonderful aspect of the conservation efforts at Cleland. The wonderful aviary there is also home to a multitude of other bird life that is normally found in natural swamp areas, including the Yellow-billed Spoonbill, both threatened species.

Earlier this year, the state government released its No Species Loss Biodiversity Strategy 2006-16 draft document. This contains specific targets for conserving the state's biodiversity. No species loss is a major target of South Australia's Strategic Plan, and we aim to strengthen these commitments in future. Since re-election, this government has continued with its strong conservation focus. We have created a raft of new conservation parks. We are working to conserve more biodiversity corridors, and a new natural resources management framework is working on biodiversity conservation projects in the eight regions, and we are working on introducing marine parks in the near future.

While just two ducks were released into Cleland on Threatened Species Day, they could be the two ducks that give us husbandry knowledge that might be necessary to save the species. So, it is very much a case of possibly laying the foundation of a very important conservation initiative.

The Hon. M. PARNELL: I have a supplementary question. When will the government commence the process of including fish and other marine animals on the list of threatened species under the National Parks and Wildlife Act?

The Hon. G.E. GAGO: I do not believe that is a supplementary question.

BHP BILLITON DESALINATION PLANT

The Hon. M. PARNELL: I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about the BHP Billiton desalination plant.

Leave granted.

The Hon. M. PARNELL: Water is undoubtedly a critical issue for the Olympic Dam expansion. I refer to Monday's *Australian* newspaper, which states that BHP Billiton has proposed that commonwealth water grants be used to fund a desalination plant for its planned $7 billion uranium mine expansion at Roxby Downs. *The Australian* went on to report that BHP Billiton wants to identify public and private sources of funding, including government grants and funds set up for the purpose of sustaining the River Murray, the Great Artesian Basin and the environment generally. My understanding is that the preferred energy source for the desalination plant is to be the existing electricity grid or a separate gas-fired power plant and also that it is BHP Billiton's preference not to own or operate the desalination plant. I remind the council that BHP Billiton recently posted Australia's largest corporate profit of $14 billion. My questions are:

1. What percentage of the water output of the proposed desalination plant will be used by BHP Billiton?

2. If the major beneficiary of the desalination plant is indeed going to be BHP Billiton, why is the Rann government seeking public funds on its behalf to fund the plant?

3. Will the world's 'most progressive climate change government' require that the energy for the desalination plant come from renewable sources rather than the coal-dominated SA power grid? If not, why not?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): The member said 'coal-dominated power grid', and I would not have thought that that was the

case. I would have thought that gas was significantly our principal source of both base-load and peak-load power, but that is another matter.

Members interjecting:

The Hon. P. HOLLOWAY: He made an assumption that I thought was wrong. That is what I am saying.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Yes, the Playford power station does use coal, but most of the 3 500 megawatts of power in this state is gas fired.

The Hon. Sandra Kanck interjecting:

The Hon. P. HOLLOWAY: Some of it is base load at Torrens Island. The largest power stations in this state are the Torrens Island A and B plants, which are gas fired. However, I am sure that was not the main point the Hon. Mark Parnell was making, so I will deal with his questions. In relation to the BHP Billiton proposal for water desalination, obviously that work is going on as part of the pre-feasibility study. The honourable member is really asking questions that are probably too early to determine until that work has been finished.

I think the first question asked was what percentage of the water would be used by BHP Billiton. Obviously BHP Billiton will have a requirement for how much water it will need for its plant, but even that may vary depending on the outcome of its feasibility study. Obviously, with the establishment of a water desalination plant in that region of South Australia, there is the capacity for that water to be used for supplying the grid. Thanks to this government, a pipeline has been built between Iron Knob and Kimba, so the whole of Eyre Peninsula is now interconnected by pipeline. We all know that the current water resources on Eyre Peninsula are particularly limited because of the overuse of the basin, so there is the capacity, with the construction of this desalination plant, to supply that also. Obviously, that would be subject to negotiations with the government as to what might be used there. They are matters that really are in the jurisdiction of my colleague the Minister for Administrative Services, who has responsibility for SA Water.

Clearly, they are all matters that will need to come out in the negotiations, depending on just what size plant is proposed, what the relative cost of water is and all those matters. That will be part of the ongoing studies. As I said, that study will not be reporting directly to me, but if I can get any more information from my colleague, the minister responsible for SA Water, or my colleague the Treasurer, who has oversighted this development, then I will provide it. But, I suspect it may well be premature at this stage to answer such specific questions.

Regarding the matter of support generally, I would have thought it was very much in the interests of this state if the commonwealth funding for water resources was to be used for this area. Not only will the Olympic Dam expansion be of massive economic importance for this state, and massive economic benefit for the people of this state, both in the jobs it will create and in terms of the royalties it will pay to the state—

The Hon. Sandra Kanck: In terms of native vegetation?

The Hon. P. HOLLOWAY: Native vegetation destroyed at Olympic Dam? I do not think there will be that much. Only Sandra Kanck would argue that the vegetation up there would be more valuable than what could be anything up to $60 or $70 thousand million that will come for the benefit of this state. Anyway, Sandra Kanck will, I am sure, go and try to sell her position to the people of this state.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Yes, the Hon. Sandra Kanck.

The PRESIDENT: The Hon. Sandra Kanck is out of order.

The Hon. P. HOLLOWAY: Yes, she is, Mr President.

The PRESIDENT: And the minister should not respond to interjections.

The Hon. P. HOLLOWAY: Yes. If she wants to sell that to the people of this state, she can do so, but the expansion of Olympic Dam will be of enormous economic benefit to the people of this state. The building of a water desalination plant in that region can also be of enormous benefit to the people of this state, not only because it will enable the expansion of Olympic Dam to take place but also because it offers the potential for other significant development in that region. It will also provide an alternative and guaranteed source of water to the people in that region, including Eyre Peninsula. They are all reasons why it is reasonable that the state government would be looking at the commonwealth as a source of funds for such a project.

The Hon. M. PARNELL: If commonwealth funds are not forthcoming, if the government and BHP are unsuccessful in attracting commonwealth funds, can the minister assure the council that state funding will not be used for any part or proportion of the desalination plant that relates to the provision of water to the mine, rather than water being provided to northern towns?

The Hon. P. HOLLOWAY: I think the Premier has made statements in relation to that matter. Obviously, it is up to BHP Billiton to provide the funding for its expansion, notwithstanding the fact that that expansion will provide significant benefit back to the state through royalties and, obviously, through other returns to the community.

It would be expected of, course, that BHP would indeed fund that project. As I have indicated earlier, with the provision of a water desalination plant in that region, there is the option to add incrementally to that plant to support other projects or developments in the region. That is really something that will need to be considered at the time. But, certainly, as I understand the position, it is not this government's intention to subsidise that part of the project which would be necessary for Olympic Dam to proceed.

POLICE, ASSAULTS

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Police questions about assaults on police officers in the Adelaide LSA.

Leave granted.

The Hon. T.J. STEPHENS: Recently released figures from SAPOL reveal that 155 police officers were assaulted last year, which is an increase of more than 40 on the previous 12 months. The main cause of the attacks is when police officers assist in drug and alcohol related incidents. The police association and police officers are said to be very concerned by this significant rise, and so they should be. It is quite a dramatic rise, which is clearly unacceptable. The role of a police officer is already difficult enough, and officers working in the Adelaide area need to be assured that they are working in an environment that is becoming safer, not more dangerous as is the case at the moment. My questions are:

1. Does the minister agree that these figures are totally unacceptable?

2. What will the minister do to ensure tougher, more appropriate penalties for assaulting a police officer; and, in fact, does he care about this situation?

The PRESIDENT: The honourable member has expressed a number of opinions in his explanation, and it is becoming a habit of honourable members.

The Hon. P. HOLLOWAY (Minister for Police): of course this government and I care about the safety of our police officers, and we have taken a number of steps to improve the situation. If the honourable member wants to get political about it, we could go back to the matter of the lack of equipment that was provided under the previous government in connection with police officers' safety.

The Hon. T.J. Stephens interjecting:

The Hon. P. HOLLOWAY: No; I am saying that, if you want to go down that track, we can find some very interesting information. Any assaults on police officers are too many. One of the reasons why the Adelaide local service area has had this big increase in police assaults is obviously the additional effort that is being put into that area. A number of questions have been asked in this parliament about Hindley Street, involving drunkenness and behaviour associated with drug taking, and so on. I think it is incumbent upon many of those people who complained about the behaviour in Hindley Street earlier this year, some of whom are actually the owners of licensed establishments in that area—

The Hon. Caroline Schaefer interjecting:

The Hon. P. HOLLOWAY: Well, in some cases those people do have a responsibility because they have been serving alcohol to people who are already intoxicated. If these assaults are caused by people who are intoxicated, and that appears to be the case, as the honourable member has indicated, I think it suggests that—

The Hon. R.I. Lucas: They don't all get drunk there.

The Hon. P. HOLLOWAY: Well, there certainly have been cases. I indicated, in answer to a question that was asked earlier this year, how one particular establishment was under surveillance by the police because it had a propensity to serve intoxicated people with alcohol. It is unfortunate that we have this prevalence of police assaults. Severe penalties apply in relation to assaulting police officers, and one would hope that our courts will continue to reflect the severity of this matter in any penalties they impose on people who assault police officers.

This government has increased the number of police officers, because we will not tolerate this sort of behaviour. The laws that we have introduced over the past four years and the fact that police numbers have already been increased by 300—soon to be increased by another 100 this year and to be followed by 100 in subsequent years—would demonstrate that this government is determined not to allow the lawless elements in our society to get out of control. We will continue to bear down heavily on this sort of antisocial behaviour. The police have the full support of this government, and also my full support, in relation to their efforts to do so. Certainly, we abhor any assaults whatsoever on police or, for that matter, on members of the public.

The Hon. T.J. STEPHENS: Sir, I have a supplementary question. Is the minister saying that, whilst he cares about these assaults on police officers, he is not prepared to increase the penalties for assaulting police? Does he believe that the penalties are adequate?

The Hon. P. HOLLOWAY: The penalties that apply are really the responsibility of my colleague. Certainly, I have not received any advice from the police that the penalties are either inadequate or have not been applied correctly. As I said, assaults on police officers should not be tolerated, and I would expect that the courts would deal with them with appropriate penalties. Certainly, no evidence has been brought to my attention that that is not the case. If it is, I would certainly have a look at it.

PROTECTIVE SECURITY OFFICERS UNIT

The Hon. B.V. FINNIGAN: I seek leave to make a brief explanation before asking the Minister for Police a question about the government's plans to establish a protective security officers unit.

Leave granted.

The Hon. B.V. FINNIGAN: Recent acts of terrorism, including the attack on the commuter rail network in the Indian city of Mumbai, have again highlighted the vulnerability of government infrastructure to such attacks. Can the minister provide details of measures that the Rann government will introduce to further protect our state assets?

The Hon. P. HOLLOWAY (Minister for Police): The Rann government intends to bolster protection of South Australia's critical infrastructure and high risk assets with the introduction of protective security officers. This follows cabinet's decision to restructure the existing Police Security Services Branch, which will see it cease commercial activities, to focus on the provision of security services to government agencies, including alarm and CCTV monitoring. The legislation needed to implement the changes will be introduced into state parliament later this year. The proposed new PSOs (protective security officers) will provide effective and efficient security services and will help to build community confidence in government capability to protect critical state assets.

As mentioned by the honourable member, the vulnerability of government infrastructure to acts of terrorism has been highlighted in recent times by the atrocities to which he referred. These attacks require governments worldwide to increase the security of identified critical infrastructure and other high risk government assets. The safety of all South Australians is one of this government's highest priorities.

The proposed new PSOs will have a high level of training skills and responsibilities. They will be required to provide a first response to incidents and, consequently, will be resourced with a range of tactical options which, in some circumstances, will include firearms, batons and defence type sprays. The Police Commissioner will appoint and manage the PSOs. Currently, Police Security Services Branch officers have authority no greater than civilian security guards. Under the proposed new arrangements, PSOs will have the authority to: give reasonable directions, refuse entry or protect a person to leave certain locations; require a person to state their reason for being at a certain location; require a person to state their name and address; require a person to provide information; conduct searches on persons, vehicles or property under certain circumstances; seize certain items and evidence; and detain a person for a protective security offence. PSOs will not be expected or required to become involved in complex police activities or investigations.

The proposed protective security offences will include: failing to obey reasonable directions; failing to state reasons for being on certain premises; failing to state correct name

and address; failing to produce identification; hindering a PSO in the execution of protective security duties; assaulting a PSO in the execution of protective security duties; resisting a PSO in the execution of protective security duties; and impersonating a protective security officer.

The restructuring of the Police Security Services Branch will also see it provide a whole of government alarm monitoring service to be coordinated from the existing security control centre. This will allow the PSSB officers to gather intelligence and analyse alarm activation patterns to identify potential threats to government infrastructure and assets.

HACKETT-JONES, Mr G.

The Hon. P. HOLLOWAY (Minister for Police): I lay on the table a copy of a ministerial statement relating to Mr Geoffrey Hackett-Jones made on 22 June 2006 in another place by my colleague the Attorney-General.

CHILD SEX OFFENDERS REGISTRATION BILL

The Hon. P. HOLLOWAY (Minister for Police): I lay on the table a copy of a ministerial statement relating to the Child Sex Offenders Registration Bill made yesterday in another place by my colleague the Attorney-General.

SHINE SA

The Hon. D.G.E. HOOD: I seek leave to make a brief explanation before asking the Minister for Police a question about SHine SA's sex worker referral service.

Leave granted.

The Hon. D.G.E. HOOD: Last Friday's *Advertiser* reported on information received and forwarded by my office whereby SHine SA has allegedly been referring some of its clients to prostitutes and, indeed, conducting training courses for those prostitutes. My questions are:

1. Will SAPOL be conducting an investigation into this matter?

2. Will the government be conducting its own investigation into SHine SA as regards the proper use of government funding?

3. Are there impediments to the law enforcing, policing and prosecuting prostitution in South Australia?

The Hon. P. HOLLOWAY (Minister for Police): The honourable member did indicate to me earlier this week that he would be raising some matters that had been in the press last week. I have been advised by SAPOL that there are a number of offences relating to prostitution and brothel management contained within statute law. These include: soliciting in public for the purposes of prostitution (section 25 of the Summary Offences Act); to procure for prostitution (section 25 of the Summary Offences Act); to keep or manage a brothel (section 28 of the Summary Offences Act); and to permit premises to be used as a brothel (section 29 of the Summary Offences Act).

My advice is that, in order to determine whether offences are being committed, further information would be required to enable a complete assessment of the circumstances surrounding the allegations that have been made by the honourable member. My advice is that the SAPOL Licensing Enforcement Branch has responsibility for the investigation of offences relating to prostitution and brothels. I have been advised that the Chief Inspector of that branch will make direct contact with the honourable member in order to elicit further information and consider all other available evidence before any determination can be made as to whether or not offences have been committed. In relation to an investigation of SHine SA, that is a matter for my colleague the Minister for Health, and I will refer that part of the question to him.

METROPOLITAN FIRE SERVICE

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about the Metropolitan Fire Service training department.

Leave granted.

The Hon. J.S.L. DAWKINS: I have raised previously in this council the matter of a number of longstanding SAMFS station officers who were seconded against their wishes to work in the training department at Angle Park in the first quarter of 2005. These officers were advised that they would be paid a travelling allowance for the extra distance they needed to travel to Angle Park compared with their normal station. My questions are:

1. Will the minister indicate why the payment of the allowance for this travel undertaken in the 2004-05 financial year was not effected by SAMFS management until the 2006-07 financial year?

2. Will she bring back the exact amount of the travel allowance paid to these officers more than 15 months late?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): My advice is that there have been meetings to try to resolve the issue. I do not have the exact amounts with me, so I will take advice and bring back a response for the honourable member. Clearly, it is an operational matter, but I will get some further advice.

The Hon. J.S.L. DAWKINS: I have a supplementary question. Given that the payments have been made following significant consultation between the officers and their union, will the minister advise why it took so long—up to 15 months—to pay these officers their travel allowance?

The Hon. CARMEL ZOLLO: As I indicated to the honourable member, I will bring back some advice.

WITNESS PROTECTION PROGRAM

The Hon. A.M. BRESSINGTON: I seek leave to make a brief explanation before asking the Minister for Police a question about the witness protection program.

Leave granted.

The Hon. A.M. BRESSINGTON: Given the issue raised yesterday on the RTS gang and the public's reluctance to come forward with information for the police, I have two questions for the minister:

1. Will the minister provide information on whether protection for members of the community, both during any investigation and during any criminal proceedings, would be available to them for that period of time and in the longer term, if necessary?

2. Will the minister provide details on how much has been spent on any witness protection programs over the past three years?

The Hon. P. HOLLOWAY (Minister for Police): I thank the honourable member for her question. I will take the latter part of her question on notice, but as to the matter of protection, although I am not particularly familiar with that

aspect of operations, I am sure that risk assessment is undertaken and that the police would assess the risk to any person and arrange for the appropriate protection of such people based on that risk assessment. That is a matter that is probably better taken up between the people concerned and the police themselves, and I would be happy to arrange that. I am certainly aware that, if there is any assessed risk to witnesses or people providing evidence, if threats have been made, the police take those matters seriously and provide appropriate protection in such cases. That is best not publicly speculated upon, but I am happy to discuss it with the honourable member.

The Hon. NICK XENOPHON: By way of a supplementary question, will the minister indicate how many people in the past three years have been placed under witness protection or protection given in relation to their involvement in criminal matters, and what types of matters were they, without in any way identifying the people involved?

The Hon. P. HOLLOWAY: Where there are matters before the court, the witness protection program services might be provided by police. I have a feeling the Attorney may have responsibility for that matter, but I will endeavour to ascertain what information is available in this general area and provide a written response to the honourable member.

FIRE SERVICES, TONGA

The Hon. R.P. WORTLEY: I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about support arrangements for the Tongan government.

Leave granted.

The Hon. R.P. WORTLEY: I understand the New South Wales Fire Service supports the Solomon Islands and the Victorian Country Fire Authority supports the Fijian Fire Service in developing fire-fighting capabilities. Will the minister advise what involvement, if any, South Australia has in supporting fire services in developing nations?

The Hon. J.S.L. Dawkins interjecting:

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I am pleased that members opposite are always interested. I thank the honourable member for his very important question. At the moment we have three Tongan fire service officers with us in Adelaide concluding a four-week stay. I understand they have had a very productive and enjoyable time. However, they are here on important business. Since 2002 the South Australian MFS has participated in a development program with the Kingdom of Tonga. This program is part of the Australasian Fire Authorities Council's commitment to support South Pacific Island nations—our near neighbours. The program builds on the close relationship the South Pacific Island nations have with Australia and New Zealand, where they have large expatriate communities.

There is a strong Tongan community in South Australia, and this state plays an important ongoing role in supporting this program. As the honourable member mentioned, New South Wales and Victoria have arrangements in place for the Solomon Islands and Fiji, and the MFS supports the Tongan Fire Service. Over the past four years the MFS and the South Australian government have donated to the Kingdom of Tonga used fire and rescue equipment, involving nine fire appliances that are surplus to our needs. A further key component of the development program is the ongoing exchange of knowledge and fire officer training programs.

The three officers currently here are the sixth group to have visited Adelaide to receive training, ranging from two weeks to two months. A total of 10 Tongan Fire Service officers have so far participated in this Adelaide-based component of the program. The officers currently here with us are Viliami Tu'ihalamaka, Mosese Faka'i and Filisonuu Fineanganofo. I think they were quickly christened Bill, Moe and Sonny, and I can see why! They have undertaken a fire officer training program, which on their return they will use to assist them in conducting a training program for 16 new Tongan Fire Service recruits. Those recruits have been hired since the commencement of the MFS/TFS Sustainable Development Program. The Tongan Fire Service officers have also received training at the CFS Brukunga training facility and have been donated surplus computers from SAFECOM to establish a computer training facility at the Tonga Police and Fire Services compound in Nuku a'lofa.

Fire service officers in dispersed communities such as Tonga often play a vital role when incidents of civil unrest occur, and I believe this was certainly the case when public demonstrations and arson attacks occurred in the Kingdom of Tonga earlier this year. I understand that the appliances and fire command training which have been delivered under this development program were of great value in managing these incidents. Unfortunately, while the Tongan fire officers have been in South Australia their beloved King has passed away, and I offer my condolences on behalf of the parliament to them and the people of Tonga on their loss. I do, however, wish them well on their return home later this week, and I look forward to our continued involvement with the Tongan Fire Service.

I understand that this has been a very successful program which is mutually beneficial and which is seeing a very strong and close relationship develop. I also thank the Tongan Fire Service officers for the plaque which they have presented to me. It is a magnificent hand crafted, carved plaque, and I believe it is a further example of the collaboration between the two services, concerning which, I point out, SAFECOM has assisted with the development of an emblem for the Tongan Fire Service.

MURRAY RIVER

The Hon. G.E. GAGO (Minister for Environment and Conservation): I lay on the table a ministerial statement relating to the launch of two new Murray River projects made earlier today by my colleague the Minister for the River Murray.

MATTERS OF INTEREST

RIVERLAND

The Hon. R.P. WORTLEY: I rise today to draw the attention of this council to the challenges faced by the Riverland region of our state, including the effects of the current skills crisis. The Riverland is known as the fruit bowl of Australia and is Australia's major horticultural producer. However, many of the Riverland's primary industries are going through difficult times. The current problem of the

oversupply of wine grapes means that many growers are facing hardship. Some have even considered mothballing their vines and ceasing production, as producing grapes and selling them at a reduced price may result in greater losses for growers. The citrus industry has also been impacted. Recent cold weather in the Riverland has damaged some crops, and this has led to reduced shipments. According to an ABC report on 13 July, estimated navel crop yields have been reduced by up to 30 000 tonnes.

The difficulties facing these key industries have the potential to impact on the Riverland as a whole. These troubles come at a time when our nation is in need of skilled labour. On 16 May 2006 an article in *The Australian* reported alarming figures regarding this issue. The article stated findings from the Grant Thornton International Business Owners Survey, which surveys over 7 000 firms. According to these findings, half the Australian businesses surveyed felt that a lack of skilled staff was constraining them. Furthermore, in a media release on 26 June, industry research and analysis provider BIS Shrapnel stated that skills shortages are set to become a major constraint on economic growth in Australia. It is essential that all stakeholders across industry, community and government work together to address these issues. The need for skilled labour is a matter of particular concern for regional areas such as the Riverland. This view was recently expressed by the Chair of the FarmBis state planning group, Ms Laura Fell.

In an article in *The River News* of 14 June, Mrs Fell stated that primary producers are facing extreme shortages of labour and skills which will 'rapidly get worse once mining and defence projects increase their recruitment of employees'. Mrs Fell urged producers to be proactive about improving their employment practices in order to help train and attract staff. I agree that regional employers should be looking at improving their employment practices in the light of specific challenges faced by these areas of South Australia.

It is also important that industry and government engage with each other to face these challenges to evaluate possible solutions. In the Riverland, the South Australian government is acting on this by facilitating a socioeconomic study of the region. This study will engage with major horticultural industries and in the regional community, as well as government agencies. A 16-person steering committee has been created, consisting of representatives from industry and community organisations. The study is expected to be completed by the end of the year, and I hope that all concerned can become better empowered to help improve the situation in the region.

The government is also acting to address skills needs in the Riverland through the South Australian works program. In the Riverland, this program is overseen by the Riverland Development Corporation, which engages both industry and training providers in the region. The corporation facilitates a number of programs targeting specific local skills needs. These include training programs in priority areas, such as trades, child care and horticulture. A fine example of this is the pre-apprenticeship program, which aims to assist work outcomes for both apprentices and employers. The program facilitates theory learning up to third-year level for apprentices, in addition to granting them work experience. The aim of the program is to make participants work ready for employers so that apprentices will already have many of the skills and knowledge required in their chosen field.

The current need for skilled labour is a great challenge to this state. Regional areas such as the Riverland face their own significant difficulties in addressing these challenges. The Riverland is a vital part of our state, and it is important that all stakeholders act to ensure this region may prosper.

LABOR PARTY, PRESIDENCY

The Hon. D.W. RIDGWAY: I rise today to speak on the matter of the Premier's bid to be the National President of the Labor Party. Yesterday, I viewed the glossy web site, www.mikerann.net, with its large picture of the tub-thumping Mike Rann in fine form. Today's glowing write-up in *The Advertiser* has done little to highlight the obvious drawbacks associated with South Australia's Premier running for the national presidency of the ALP.

Mr Rann was elected by the people of this state to be Premier. Being the Premier of South Australia is an honour, and it also features a very decent remuneration and a significant commitment to the job. It pays in excess of $240 000 per year and includes a chauffeur-driven car, police protection, unlimited travel, at least 20 staff (especially in the case of this Premier), and an attractive superannuation package. Of course, I am not deriding any of the remuneration package for the Premier. It is only fitting for somebody who is paid full-time to be Premier of this state and do the job. He has a responsibility to run the state to a certain standard and not have his attention drawn by internal party matters.

How can the South Australian public be sure that none of Mr Rann's parliamentary travel will go towards interstate trips to meet his ALP mates once he is president? How can the Premier adequately give his full-time attention to running the state if he is campaigning and lobbying his comrades in the Labor Party for the national presidency? This position requires the incumbent to devote a lot of time and energy into securing the future of the Labor Party. The electors of South Australia have just told the Premier as recently as March this year that they expect him to devote all his time and energy into securing the future of the state of South Australia.

As you look more closely at Mr Rann's web site, he seems to be attempting to use his alleged credentials as Premier to further his bid. In the 'true believers' section, he claims that 'Mike Rann stood up to the Howard government. Result: no nuclear dump in SA.' It should have read, 'Mike Rann refused to take decisive action on the issue of nuclear waste. He squandered South Australia's money on an expensive High Court challenge and, as a result (answered by minister Gago recently), South Australia still has no plan to store its radioactive waste.

The Premier has tried to portray himself as a clean and green Premier, perhaps as a sop to the green left in the ALP to obtain its vote. He expounds on the web site that his government has done the following:

> . . . watered the Chowilla wetlands of the River Murray and banned sheep grazing in the area. Mike believes that strong, committed governments can restore the health of the Murray.

Much of that is true—only strong, committed governments can restore the health of the Murray. Rann's government is neither strong nor committed when it comes to the River Murray. It has no vision for the future when it comes to ending South Australia's reliance on the River Murray, which is totally unsustainable for the future of Adelaide's water supply. Similarly, Mr Rann used his cosy 3 million trees photo opportunity, with his new wife, in extending the truth somewhat. Only 1 million trees are recorded as planted and the survival rates are questionable.

The issue of the River Murray should also sound a warning to the Premier's brothers in the ALP. The Premier does not exactly care about the Murray or his cabinet or he would have handed such an important portfolio to one of his colleagues and not to a National Party blow-in. Is this what the ALP can expect if it installs the Premier as president—promotions for people outside the party who are valuable, instead of promoting the talent from within the party's own ranks, like my comrades opposite?

The Premier has set himself lofty goals with the State Strategic Plan. He is not yet on track with the targets on population, exports or obesity—to name just a few. What the state does not need at the moment is a Premier who is preoccupied with other issues. I hope the ALP rank and file send a clear message to Mike Rann, in his bid to be president, and let a retired member with a good record look after the presidency, and leave Mr Rann to be the Premier of this state so that he can devote all his time to the future of South Australia.

BOOKS IN THE SKY SERVICE

The Hon. I.K. HUNTER: Recently I had the pleasure of attending the launch of the Royal Society for the Blind's Books in the Sky Children's Service. In collaboration with Variety, the Vodafone Foundation and the Premier's Reading Challenge, the RSB is leading the way in providing educational and recreational resources to the blind and visually impaired.

The Books in the Sky program is nothing short of revolutionary in terms of its ability to deliver information to the blind and visually impaired. It has the potential to increase the independence and educational potential of many children across the state. Those of us with reasonably good eyesight (and I still include myself in that category—just) take reading the Sunday papers or curling up with a good book for granted. We can skim many sources of information and find what we need quickly, rarely thinking about how we are doing this. Now, through the generosity of Variety, the Children's Charity of South Australia, the Vodafone Australia Foundation and a $5000 contribution from the Premier's Reading Challenge, this sort of independence is available to the blind and vision impaired. Novels, newspapers, magazines and educational materials will be only a click away.

We are all familiar with the old audio cassette system which allowed blind or vision impaired people to read books and journals. The advent of these books on tape brought a whole new world of experience to blind and vision impaired people, opening up to them the world of books and literature. But, of course, cassettes have their limitations. In short, the cassette is obsolete. Cassette players themselves are going the way of gramophones and turntables and, from the client's perspective, there are problems with portability, navigation, the range of materials, long delays after publication, and often poor sound quality.

With the advent of the Books in the Sky program, people who would have once used these cassettes can now download and read most of today's popular books with the help of a device called an Audio Navigator. Mr President, I need to seek your direction on this. As a new member I do not know whether I can reach for props and display them to members in the chamber; if not, I will just nod in the direction of this purple handpiece on the table. The Audio Navigator is similar, in many ways, to a standard MP3 player, but it is designed with newspapers, magazines and audio books in mind.

The Audio Navigator is what might be termed as leapfrog technology, in that it skips the obvious next stage—books on compact disc—and goes straight to solid state digital technology. The Audio Navigator is a portable audio playback device which has the ability to play both pre-recorded and synthesised voices and sounds and can hold a significant amount of information. I am grateful to my grandmother for lending me her device today to bring to the chamber.

The RSB first explored this technology through two pilot programs here in South Australia in 2003. Twelve readers participated in the first of these pilots, accessing a catalogue of over 300 titles, through three libraries, over a three-month period. In this pilot, reading materials were transmitted directly to the navigators via satellite. This was a small beginning but a resounding success. The second pilot was much larger, comprising 25 readers across five libraries over five months.

This time, however, the internet was used to transmit materials, and the catalogue of materials was hugely expanded. For the first time, readers could download daily newspapers on the day they were published. Finally, the national pilot grew out of these two South Australian collaborations. Over five months, 94 readers participated using 12 public libraries with a massively expanded online collection of materials. As with the smaller pilots, the results were outstanding, and we are now seeing the fruits of the project.

I am really pleased to tell the chamber that every child in South Australia who is blind or severely vision impaired now has—or shortly will have—access to their own audio navigator and the independence and opportunities that can bring. The Royal Society for the Blind hopes one day to integrate its Books in the Sky program with all public libraries to make it university accessible. The Books in the Sky program is nothing short of life changing. It has massive potential for the education of blind and vision impaired children, as well as introducing them to the wonders of reading for pleasure. I commend the Royal Society for the Blind for its ongoing work in improving the daily lives of our visually impaired.

FINE FOODS EXHIBITION

The Hon. CAROLINE SCHAEFER: On 11 September, I had the pleasure of attending the Fine Foods Exhibition in Melbourne, which has now collaborated with the Fine Wine Exhibition. This is a trade show, and the former state government initiated the South Australian manufacturers of food attendance at that trade show. Our plan at the time was to introduce small to medium-sized businesses to trading opportunities and to markets both interstate and overseas. In spite of the fact that funding for the South Australian contingent has fallen under this government from some $70 000 to just $23 000, the exhibitors themselves consider it to be important enough that they have not only continued to attend but have increased their space and the number of people displaying.

The South Australian stand this year had the largest number of exhibitors ever at 32, and the largest space at 162 square metres. All in all, there were 912 industry representatives from across Australia, and some 30 700 people attended as potential buyers of their products; at least 10 per cent of those were from overseas. The opportunity was there, as I

have said, for both small and medium-sized exhibitors. Originally, when we began taking that contingent to Melbourne, and in alternate years to Sydney, some of our larger producers were those who used the South Australian stand. But they have gone on, as one would hope, to book their own space and be part of the exhibition. Flavour SA, which is, if you like, the agent for this enterprise, has encouraged small to medium-sized businesses to gain experience before they perhaps go onto international exhibitions.

They are particularly supported by regional food officers and groups and, indeed, the seafood industry also. This time there were exhibitors from Fleurieu Peninsula, in particular, as well as Clare, in the Mid North, and many of the other regional food groups. Those food groups very often are too small to go by themselves and, indeed, often cannot attend. This time they were represented by the government funded food industry development officers. When I went there, the people who were exhibiting were at pains to express to me their great concern that it is strongly suspected and, indeed, tipped that this budget will cut out funding for the food industry development officers, who have been very valuable for regional development across South Australia. They have been a valuable educational tool for people with small to medium-sized businesses, many of whom have moved on to export both interstate and overseas.

However, they need a focal point. They need someone with some professionalism and marketing expertise before they can move into that broader arena. Therefore, it is most concerning that these people, who are so widely respected by these small businesses, will probably lose their jobs, if not as of tomorrow, certainly by the end of the year. I respect the fact that any government has the right to move its funding elsewhere, but my question is: who will take their place and what will happen to our food industry—in particular, our value adding and regional food industry—if they have no professional support and no assistance for that professional support from this government?

MULTIPLE CHEMICAL SENSITIVITY

The Hon. A.L. EVANS: I would like to speak today about the growing public health problem of multiple chemical sensitivity. The Social Development Committee's report following its inquiry into MCS was tabled on 5 July 2005. The committee concluded that MCS is very real, with many individuals experiencing considerable suffering, disability and hardship. The committee heard evidence that 15 000 South Australians have been diagnosed with MCS, that up to 6 per cent of the population may have MCS and that MCS is recognised as a legitimate disability that requires reasonable accommodations. While noting the lack of consensus with respect to its causes, the committee warned that research linking MCS to chemicals such as herbicides, pesticides, solvents and disinfectants could not be ignored. MCS is associated with complex medical and support needs, and sufferers are often isolated and housebound, with poor access to basic health care or home support services, due to common chemical barriers such as personal fragrance, cleaning products, paints and building materials.

So, over 14 months after tabling the report of the inquiry into MCS, how have the lives of people with MCS been improved by the committee's recommendations? First, it is pleasing to note that the Catholic Education Office has set up a working party to review ways of making Catholic schools chemically safer. Within the state public sector, one important step forward is that the Department of Administrative and Information Services has recently included MCS in its disability action plan for government buildings. However, further government response to the MCS inquiry has been very slow.

It is my understanding that the Department of Health will soon convene an MCS reference group aimed at guiding MCS debate, but no meeting date has been set and no budget allocation has been made. This lack of action means that the basic human needs of MCS sufferers are regularly abused. In one recent incident, a man with severe MCS collapsed and was semi-conscious when he was exposed to toxic fumes. When taken to his local public hospital, where he identified as having MCS, he was denied access to a doctor and refused basic medical care. Other people with MCS are still struggling to stop their local councils from making them sick by spraying herbicides around their home, and many MCS sufferers who, prior to their disablement were tax-paying workers, are now struggling to find chemical-free housing and nursing home placements because there are almost no facilities to support them.

In response to these problems, the government urgently needs to implement the MCS inquiry recommendations for MCS protocols in public hospitals, for no-spray registers for herbicides with local councils and for practical measures to assist people with MCS with their disability access issues. However, instead of taking decisive action on MCS, the Department of Health continues to propose the view that MCS is a psychological condition, despite clear evidence that it is a physiological illness associated with hazardous chemical exposure.

The ME/Chronic Fatigue Syndrome Society in South Australia has an excellent web site. On its front page is an MCS report clock, which has been ticking since the MCS report was tabled in 2005. It will stop ticking when the society believes that real action has been taken to implement the MCS report. Today is the 442nd day and it still ticks with no sign of action. The problem for MCS is not new. It is an issue whose time has come. Delays in responding to MCS cannot be justified, and I call on the government to provide the necessary commitment and resources to address the complex problems facing MCS sufferers and their families. I hope the Minister for Health hears this call.

STATE BUDGET

The Hon. R.I. LUCAS (Leader of the Opposition): Members will remember that after the 2002 state election the first Rann government broke a series of fundamental election promises that it made right across the board, starting in the tax area. Fundamental commitments not to introduce any new taxes or charges and not to increase any existing taxes and charges were thrown out the window in the first budget of 2002. The moral underpinning of the Rann government—then and now—was laid bare in the *Hansard* of the House of Assembly on 15 July 2002 when Treasurer Kevin Foley said:

> You do not have the moral fibre to go back on your promise. I have. . .

That moral underpinning of the Rann government from 2002, sadly, has continued not only for the Treasurer but also the Premier, ministers and all other Labor members for the past four or five years. We saw most of the significant election promises made in 2002 broken in the government's first four years, even to the extent where the government or the Labor

Party had given a written guarantee to the Hotels Association not to increase taxes on the industry for the next four years. Perhaps not surprisingly, the Labor organisation (of which the Hon. Mr Hunter would be familiar) pocketed a tidy six-figure sum from the Hotels Association on the basis of that written undertaking from the Treasurer. Within weeks of the election the Treasurer, the Premier and this government tore up that written guarantee and significantly increased the level of taxation on the industry. Sadly, this government does not seem to have learnt, and we are now seeing the careful preparation of the ground for the breaking of significant election promises in the 2006 budget—the first budget after the 2006 state election.

I turn to the government's commitments about no Public Service job or service cuts, and I refer members to an interview the Treasurer gave on ABC Radio on 16 March. Mr Foley said:

> We at this point are looking at about 800 additional vital public servants in our promises to date. That is 400 police, 100 teachers, 44 new medical specialists.

Matthew Abraham asked the question, 'And you won't fund those by getting rid of other jobs?'; and Mr Foley said no. It was clear, explicit and absolute that the Rann government was giving the commitment that, even if it was to add additional officers in terms of police and teachers, it would not reduce other Public Service jobs to help pay for those new positions. Jan McMahon from the PSA on 22 June indicated the nature of the promise that they had been given. She said:

> The government gave a commitment that it would not reduce jobs and it would not reduce services. If they break that promise then that will be very significant.

It is clear that the government is intent on breaking that particular commitment. The government evidently has constructed some new Treasury estimate of the existing number of officers within the public sector. It seems extraordinary that this Treasurer's lack of command of what is occurring in the public sector has reached the degree where finally, after five years, he has been brought to the position of trying to implement some degree of control.

The reality is that in the 2002, 2003 and 2004 state budgets there was an estimated increase of some 666 jobs in the Public Service. It blew out to approximately 6 900—a blow out of 6 243 extra public servants in just three budgets—unbudgeted increases in Public Service numbers. The tragedy is that, after five years, the Treasurer does not have the capacity to control financial management and service job numbers in the public sector and only now has been dragged kicking and screaming to a position where he might institute some degree of control.

ELDERLY CITIZENS, SERVICES

The Hon. SANDRA KANCK: I take this opportunity to speak today about support services for the elderly which, based on her personal experiences, a constituent has described as a disgrace. In mid April this year her 88-year old mother-in-law was admitted to hospital with breathing difficulties, low oxygen levels and a CO2 build up, causing mental confusion. This was on top of severe osteoporosis (several vertebra and many other bones had previously been fractured), heart problems and mobility issues. She was discharged one week later to her retirement village, which provides no personal support, and instructed to use an oxygen concentrator for between 18 and 24 hours per day. Prior to the admission, her only respiratory regime had been a Ventolin inhaler. The only supports organised by the hospital on discharge were the oxygen machine and a daily medication pack.

She was informed that a respiratory nurse would visit her the following week to see how she was coping. The woman was still suffering confusion and her body weight had dropped to 42 kilograms. She was very weak, hardly being able to walk more than a few steps. Three days post discharge the manager of the retirement village rang my constituent to see what services were being organised to support her. As an interim measure the manager advised that she had been able to get a visitor of another resident to shower the woman, but of course this person had no qualifications in care.

My constituent rang various agencies to obtain services, especially with showering, medication and the use of oxygen. The Carers Respite Centre staff, who I must say are the good guys in this story, informed her of HomeLink, which is normally arranged through a hospital prior to discharge, but as the discharge had already occurred she was informed that the patient's GP would be required to make a referral. However, as an interim measure, thank heavens, the Carers Respite Centre agreed to arrange for showering and help with medications twice per day. As is often the case these days, the patient's GP was fully booked for two days. My constituent insisted on an emergency appointment, which she managed to get 24 hours later. The HomeLink assessment was conducted within 24 hours of the GP visit, with services put in place on the day of the assessment.

The services put in place through HomeLink were assistance with showering, the provision of a personal alarm, a shower chair and bed stick, monitoring of medications and reinforcing the use and safety aspects of the oxygen concentrator. Twice per day the woman was provided with assistance, but HomeLink is a short-term service for discharged patients at risk of readmission and is offered for only two weeks post discharge. My constituent rang the respiratory nurse to find out which day she was coming, only to be informed that she usually waits until there are a few people in the same locality before visiting, so it would probably be a couple of weeks before she would be able to visit. As my constituent informed her that her mother-in-law was not coping, the nurse agreed to visit later that week.

Other problems, such as inability to swallow, which was the cause of her mother-in-law's rapid weight loss, were followed up by my constituent with a subsequent visit to the GP and referral to Domiciliary Care for ACAT assessment, physiotherapy, occupational therapy, speech pathology and podiatry, as well as assistance with personal care. A letter from Domiciliary Care was received approximately two weeks after the referral was made. The letter informed the woman that she had 'been placed on a waiting list. . . There is a high demand for our services, we might not be able to provide services immediately, and there may be a significant waiting time. . . We will contact you if there is a long delay in providing services to you'. My constituent rang Domiciliary Care to find what the letter meant and how long the waiting time was. Despite her mother-in-law having been classified priority 1, there were funding issues resulting in a 12 week wait for services.

Luckily, the Carers Respite Centre was able to provide interim care packages. Their service, which is commonwealth funded, was a great stopgap measure. However, such care lasts for two weeks, with a new provider taking over each time. As the woman had complex needs, this meant that each fortnight my constituent had to do a hand-over. In early June

her much loved mother-in-law was hospitalised again and passed away a few days later in hospital. She had felt she was a bother and had stopped eating. There are many questions arising from this case. We know and have known for a long time that we have an ageing population, yet it appears that our health services are not prepared for this emerging problem. A 12-week wait for assistance for someone who has been given a priority 1 classification is surely unacceptable. We must do better.

UNITED NATIONS POPULATION REPORT

The Hon. I.K. HUNTER: I move:

That the Legislative Council of South Australia—

1. recognises that—
   - (a) a report from the United Nations Population Fund (UNFPA) State of the World Population 2006—a Passage to Hope: Women and International Migration—was released on 6 September 2006;
   - (b) women constitute almost half of all international migrants worldwide—95 million or 49.6 per cent;
   - (c) in 2005, roughly half the world's 12.7 million refugees were women;
   - (d) for many women, migration opens doors to a new world of greater equality and relief from oppression and discrimination that limit freedom and stunt potential;
   - (e) in 2005 remittances by migrants to their country of origin were an estimated US$232 billion, larger than official development assistance (ODA) and the second largest source of funding for developing countries after foreign direct investment (FDI);
   - (f) migrant women send a higher proportion of their earnings than men to families back home;
   - (g) migrant women often contribute to their home communities on their return, for instance through improved child health and lower mortality rates, however;
   - (h) the massive outflow of nurses, midwives and doctors from poorer to wealthier countries is creating health care crises in many of the poorer countries, exacerbated by massive health care needs such as very high rates of infectious disease;
   - (i) the intention to emigrate is especially high among health workers living in regions hardest hit by HIV/AIDS;
   - (j) the rising demand for health care workers in richer countries because of their ageing populations will continue to pull such workers away from poorer countries;
   - (k) millions of female migrants face hazards ranging from the enslavement of trafficking to exploitation as domestic workers;
   - (l) the International Labour Organisation (ILO) estimates that 2.45 million trafficking victims are toiling in exploitative conditions world wide;
   - (m) policies often discriminate against women and bar them from migrating legally, forcing them to work in sectors which render them more vulnerable to exploitation and abuse;
   - (n) domestic workers, because of the private nature of their work, may be put in gross jeopardy through being assaulted; raped; overworked; denied pay, rest days, privacy and access to medical services; verbally or psychologically abused; or having their passports withheld;
   - (o) when armed conflict erupts, armed militias often target women and girls for rape, leaving many to contend with unwanted pregnancies, HIV infection and reproductive illnesses and injury;
   - (p) at any given time, 25 per cent of refugee women of child-bearing age are pregnant;
   - (q) for refugees fleeing conflict, certain groups of women such as those who head households, ex-combatants, the elderly, disabled, widows, young mothers and unaccompanied adolescent girls, are more vulnerable and require special protection and support;
   - (r) people should not be compelled to migrate because of inequality, insecurity, exclusion and limited opportunities in their home countries;
   - (s) human rights of all migrants, including women, must be respected.
2. encourages—
   - (a) governments and multilateral institutions to establish, implement and enforce policies and measures that will protect migrant women from exploitation and abuse;
   - (b) all efforts that help reduce poverty, bring about gender equality and enhance development, thereby reducing the 'push' factors that compel many migrants, particularly women, to leave their own countries, and at the same time helping achieve a more orderly migration program.

I welcome today the publication of the United Nations Population Fund report on the state of world population titled 'A Passage to Hope: Women and International Migration', which was released on 6 September 2006. I look forward to the contributions that my fellow members of the Parliamentary Group on Population and Development will be making in support of this motion. We are a non-partisan group from Australian parliaments whose primary aim is to raise awareness of population and developmental issues and, more particularly, to support and promote women's human rights and empowerment in the Asia Pacific region.

The United Nations Population Fund is an international development agency which supports countries in using population data for policies and programs to reduce poverty. The fund's latest report, 'A Passage to Hope', offers a sobering snapshot of the difficulties and opportunities facing migrant women around the globe. As the report tells us, migration opens many doors for women. It can offer greater equality and relief from oppression and the discrimination that limits freedom and stunts potential.

Migrant women not only add significantly to the economy of their new homes, often in low-paying domestic and manufacturing work, but they also contribute to the societies they were forced or chose to leave. Every year millions of women send hundreds of millions of dollars back to their countries of origin. These funds often help the families and communities they have left behind, leading to improvements in living standards in these societies. This in turn can lead to improved child health and lower mortality rates in the countries of origin. Studies have also shown that, contrary to popular belief, new migrants consume less than the average amount of the welfare and health budgets per capita.

There is, however, a significant downside to this story. I would like to say a few words today about the challenges facing migrant women in their reproductive health and exposure to serious infections. Other members will be addressing other aspects of the motion in their contributions. Many different factors affect migrant women's particular vulnerability to sexually transmitted infections, unplanned pregnancy and poor reproductive health outcomes generally. To begin with, there is the simple problem of lower levels of access to health care than in the general population. There are cost factors, language barriers, education limitations and the disconnection from services which comes from social isolation. Generally speaking, if a migrant cannot speak the language, she is more likely to encounter problems accessing health care.

There is also the very real problem in some countries of racism or discrimination, whether it is systemic and explicit

or takes less obvious forms, preventing some women accessing health care which other groups might take for granted. These problems are by no means restricted to migration between developing countries. In the area of reproductive health, the report shines some light on some alarming facts. Throughout the European Union, migrant women have been shown to receive inadequate or, in many cases, no antenatal care and exhibit higher rates of stillbirth and infant mortality than do their native counterparts. Research in the UK has revealed that babies born of Asian women had lower birth weights and that peri-natal and postnatal mortality rates were significantly higher among Caribbean and Pakistani immigrants than in the general population.

Similar patterns of migrant women's reproductive health are evident across Europe. The report notes that in one Italian region, a study found that foreign-born women were three times more likely to undergo an induced abortion than local women. In Australia, the picture is not very different. A recent Queensland government profile of women's health notes that, due to Australia's strict entry requirements in relation to health, migrant women often initially have a higher health status and lower mortality than non-migrants but, within a few years in the country, it has been shown that overall health status is generally lower. The reasons are the same as in the developing world: social isolation, unemployment, lack of employment opportunities, and generally low socioeconomic status.

The report also notes that migrant women tend to show poor awareness and less use of screening programs, including pap smears, breast examinations and mammograms. Cultural modesty may also play a part in the avoidance of this type of screening. Migrant women also have lower rates of contraception than non-migrants. The Queensland report points to several important factors that may influence migrant women's sexual health in Australia: a lack of adequate sex education at home or at school, cultural restrictions on what may be discussed, and associated stigma relating to sexual health issues, limited and inaccurate knowledge of sexually transmitted infections, including HIV/AIDS, misconceptions regarding contraception, and issues of modesty, especially around male doctors. These issues are highlighted throughout the UN report as being common to migrant women world wide.

I want to say a few words about the HIV virus and its impact on migrant women. The report highlights the alarming feminisation of the HIV pandemic around the world. A combination of factors means that women and girls face a particularly high risk of contracting HIV and other STIs throughout their migration process. Sexual violence and forced or survival prostitution also make migrant women particularly susceptible to the HIV virus. In South Africa, about 15 per cent of female migrant farm workers reported having been raped or knowing someone who had been raped or sexually harassed while working on farms. In France, 69 per cent of all heterosexual HIV diagnoses during 2003 occurred among immigrants, 65 per cent of whom were women. In Sri Lanka, for every one male migrant who tested positive in 2002, there were a corresponding seven females. It is believed that this is largely due to sexual abuse by employers.

The statistics are plentiful and grim, and I will not go through them all. In Australia, of course, the story is not so bad. However, it remains that more than half of all HIV infections attributed to heterosexual intercourse between 2002 and 2004 were diagnosed in people who were either migrants from a high prevalence country or whose partners were from a high prevalence country. I will close by quoting directly from the UN report:

> Women are migrating and will continue to do so. Their needs are urgent and deserve priority attention. Only then will the benefits of international migration be maximised and the risks minimised. Women migrants are among the most vulnerable to human rights abuses, both as migrants and as females. Their hard work deserves recognition and their human rights protection. Their voices must be heard. Vision and leadership can help steer public debates away from reactionary sensationalism and an emphasis on otherness to recognition of our common humanity which binds us together in a world increasingly without borders.

I can only hope that our federal law-makers read this report and recognise that, while we must protect our borders, migration is an issue for management and not merely restriction, and also recognise the need to put pressure on other governments around the world to adopt basic principles of human rights when formulating and implementing policies which affect migrant women.

The Hon. SANDRA KANCK: I am delighted to be co-sponsoring this motion, rather than attempt, as I did last year, to address all the issues of the 2005 State of the World Population report. This time, I am sharing it, and it is so good to know that there are now other members in this chamber who are concerned about the peoples of developing nations in our world. I will not address all the terms of the motion; in fact, I will be very specific. I intend to address those that deal with what I can only call the 'poaching' of trained health workers from these developing countries to developed nations like ours. I believe that Australia acts immorally in doing so and that South Australia is part of that immorality. You only have to look at the number of doctors and nurses we are enticing from developing nations, such as China, India and South Africa. I will read from that great author and philosopher, E.F. Schumacher, and his book *Small is Beautiful*. He states:

> I think it was the Chinese, before World War II, who calculated that it took the work of 30 peasants to keep one man or woman at a university. If that person at the university took a five-year course, by the time he had finished he would have consumed 150 peasant-work-years. How can this be justified? Who has the right to appropriate 150 years of peasant work to keep one person at university for five years. . .

That is an interesting question when you put it in the context of the poaching that is happening of people from the developing world to the developed world. I ask the same question: how can we, in the developed world, justify poaching them? I see it as being nothing more than asset stripping of countries that can ill afford to lose that financial investment they have put into the education of these people. Other articles I have read have referred to it as 'denuding' those countries of their professionals. I have seen the words 'theft', 'stealing' and 'robbery' also used. Sometimes, words are simply not enough to express the disgust I feel for the practice.

The 2006 State of the World Population report deals with this issue. I have to say its language is very temperate and could be a whole lot tougher. As to the tough language, I will leave that to others. Under the heading, 'Brain drain, brain waste and brain gain', the report states:

> The demand for skilled workers can result in the emigration of a substantial number of skilled workers from source countries. This fact is at the root of one of the major debates surrounding international migration and can represent a significant loss for developing countries. Countries spend considerable resources training highly

skilled professionals: when they leave, the sending country loses both emigrant skills as well as its initial investment. . .

As a result, researchers estimate that between a third and half of the developing world science and technology personnel now live in the developed world. Only 50 out of the 600 doctors trained since independence are still practising in Zambia. In 2000 over 70 per cent of the highly educated population of Guyana, Haiti, Jamaica and Trinidad and Tobago were living in OECD countries. Direct economic impacts are likely to be adverse. The loss of human capital and lower levels of education in the remaining population can retard economic growth and stall efforts to reduce poverty.

I downloaded an article from the allAfrica.com web site entitled 'How the Brain Drain to the West Worsens Africa's Public Health Crisis'. The author is Rotimi Sankore. It is a reasonably long article but I will read only a few paragraphs from it. It states:

In its 2006 annual report, the World Health Organisation reports that out of 57 countries, 36 countries in sub-Saharan Africa suffer from a severe shortage of health workers, such as doctors, nurses, pharmacists, lab technologists, radiographers and other frontline or support staff. The report noted that the richest countries are filling their shortages by draining away doctors, nurses and others from less developed countries. As a result, one in four doctors and one in 20 nurses trained in Africa is now working in the 30 most industrialised countries.

It goes on to state:

The main factor that contributes to the low doctor-patient ratio in Africa is the brain drain. Quoting the World health Organisation and OECD figures, amongst others, the International Development Research Centre illustrates the problem in Nigeria and South Africa.

One-third to a half of all graduating doctors in South Africa migrate to the US, UK and Canada at a huge annual cost to South Africa (lost investment in education/training). Including all health personnel, the losses for South Africa reach $US37 million annually. This exceeds the combined (multilateral and bilateral) estimated education assistance for all purposes, not just health professional training, received by South Africa in 2000.

Such behaviour, as this author suggests, calls into question G8 commitments to support developing countries in reaching the health targets of the International and Millennium Development Goals. It states:

Taking these factors into account, a coalition led by the US based Physicians for Human Rights, HIV Medicine Association and Association of Nurses in AIDS Care issued a 15 point plan at the July 2006 G8 summit, aimed at ending Africa's health care worker shortage. The statement emphasised that G8 countries, particularly the US and UK, should reduce their reliance on health workers from abroad and seek to become self-sufficient in meeting their own health worker needs. For example, they should increase the domestic training of nurses, doctors and other health workers.

So, while this article talks principally about the US and the UK, simply because it does not refer to Australia does not let us off the hook.

There are some solutions being suggested. The State of the World Population report refers to some suggestions that have come from Taiwan, Province of China to deal with this issue of the brain drain. Apparently they implemented it because they say 'where brain drain was eventually transformed into gain'. Their suggestions were for those developing countries to subsidise education only up to the level actually demanded by the national economy, to use migration as a brain reserve in terms of advice and returning skills, support diaspora networking and recruitment and build a critical mass of returnees.

The article I was reading from (allAfrica.com) makes this particular suggestion which comes from the AIDS and Public Health Program of CREDO-Africa. What they suggest is that governments of countries that have benefited most from the brain drain cease such policies and examine ways to compensate Africa's health care system for the damage that recruitment policies have done. I think that is interesting. It would be interesting to see whether South Australia was prepared to compensate African economies for the way we have been recruiting their health workers to South Australia.

Schumacher, whom I referred to earlier, in turn quotes Leo Tolstoy, who said:

I sit on a man's back, choking him and making him carry me, and yet assure myself and others that I am very sorry for him and wish to ease his lot by any means possible, except getting off his back.

I think it is appropriate that this motion is moved and supported by members of this chamber. I believe that we do have moral responsibilities to people in the developing world, and the actions that we take in South Australia should be commensurate with such moral responsibilities.

The Hon. R.P. WORTLEY: I also would like to support the motion. The State of the World Population 2006 report is divided into five sections, but I will cover only one section, which is the trapping and abuse of women migrants. As other members of this chamber have highlighted, there is a disproportionate number of women living and suffering from the cruelties of poverty. For many women, migration opens up many doors to a world of greater equality and opportunities not only for themselves but for their families and communities.

Since the dawn of humanity people have migrated. Today, there are over 1 billion people in the world, the greater of whom are women, living in unacceptable conditions of poverty. This is evidenced in the statistics reported in the United Nations State of the World Population 2006, whereby women constitute almost half of all international migrants worldwide. The majority of the 95 million women who migrated in 2006 experienced a greater equality of life; however, many will not be so lucky.

Millions of women migrants face the dangers of inadequate opportunities to migrate safely and legally. When migration goes bad, women may find themselves trapped in situations of extreme exploitation and abuse. It may sound surprising to some but, in the 21st century, acts that are thought to have been of the early 19th century era still persist in today's modern world. The modern-day enslavement and trafficking of women is sadly the third most lucrative illicit business in the world after the obvious trafficking of arms and drugs. The trafficking of women and children is a major source of organised crime revenue, generating an estimated $7 billion to $12 billion in the United States annually.

Trafficked women are particularly susceptible to major human rights violations and slave-like conditions. The anguish and daily suffering experienced by trafficked women, who are forced into prostitution, are expressed through Sylvia, a victim of a trafficking story. Sylvia relives her mistreatment through a story which is published in the United Nations State of the World Population 2006 Report. Sylvia's unfortunate experience in the dark world of trafficking began when a trusted neighbour told the then 19 year old that he could help her find a job as a sales girl in Moscow. Sylvia was unemployed, broke with a baby daughter and no husband. Therefore, Sylvia decided to take the journey to the Maldovian capital of Chisinau, where she was to meet two men who had arranged for her to travel to Moscow. What followed was a nightmare of beatings, rape and sickness. Sylvia had fallen into the unforgiving hands of traffickers and the underworld of globalised sexual servitude. Unfortunately, Sylvia's ordeal is not uncommon.

Hundreds of thousands of women and girls are exploited in the dark underworld of trafficking each year. Trafficked women and domestic workers are particularly susceptible to major human rights violations and slave-like conditions. However, Sylvia is one of the lucky ones. Her daily anguish has finally come to a close. She has been reunited with her child and is receiving counselling and health care. Although she has escaped the abusive world of trafficking, the mental and physical abuse she experienced will live with her for the rest of her life. She now suffers from the effects of post traumatic disorder, a condition that has destroyed her capacity for sleep and sends her into bouts of sudden and inexplicable tremors. As the population report states, whether she will ever be able to live a normal life is still an unanswered question that 'hovers around her like the memories of all that she has endured'.

Sylvia's experience is more than a breach of love thy neighbour. Her body and soul were abused for the gluttony of today's world. Consequently, in the search for a better life many people like Sylvia are lured into the ill-treatment of the trafficking world by false promises of a decent job. Due to the underground nature of trafficking, data is rough and hard to gauge. However, the International Labour Organisation estimates that at least 2.45 trafficking victims are currently toiling in exploitative conditions, and that another 1.2 million are trafficked annually, both across and within national borders.

According to the population report, trafficked women are usually forced into prostitution, sex tourism, commercial marriage and other 'female' occupations, such as domestic work and agricultural and sweatshop labour. Slavery is a crime against humanity and has been condemned since even before the landmark 1815 declaration relative to the universal abolition of the slave trade. It saddens me that, in the year 2006, women are being unwillingly forced into hard labour, trafficking, prostitution, sexual slavery, forced marriage, the sale of wives and child servitude.

Of the 12.3 million people forced into labour worldwide, the International Labour Organisation contends that women and girls form the majority. It is suggested in the report that 56 per cent of the 12.3 million people forced into labour worldwide are forced into economic exploitation, and 98 per cent are forced into commercial sexual exploitation. Most women are forced into prostitution in order to pay off their so-called debt.

According to the population report, traffickers will often rape, isolate and/or drug victims in order to break their spirit and ensure compliance. Women and girls are often sold and resold and then retrafficked to other destinations. South East Asia and South Asia are home to the largest number of internationally trafficked persons—an estimated 225 000 and 115 000 respectively. The trafficking of women occurs in most countries, especially the Soviet Union and other African and eastern European countries. Unfortunately, violence and sexual abuse are a reality of refugee camps, and for women migrating it is a chance to find a brighter future for them and their families.

According to the population report, 46 per cent of migrant women in Mexico have suffered from some sort of violence, with 23 per cent reporting that customs officials were the main perpetrators. Federal police followed next at 10 per cent; judiciary and municipal police at 10 per cent; and, finally, the armed forces at six per cent. How can women and children expect to feel protected and safe when employees of the state are the main perpetrators? It appears that domestic violence perpetrators have no boundaries.

In March 2006, UNHCR reported that two thirds of the Sudanese women refugees who were being treated in the Abeche Regional Hospital in Chad had been raped. What is even more disturbing is the fact that the youngest victim was only 10 years old. Domestic and sexual violence permeates every society, group and income level worldwide. Survivors of gender-based violence may face long-term injury, unwanted pregnancy, sexual dysfunction, post-traumatic stress and sexually transmitted diseases, including HIV/AIDS.

Physical, social and cultural factors mean that women and girls face a particularly high risk of contracting HIV and other sexually transmitted diseases through the migration process. There are 17.6 million women affected with HIV/AIDS worldwide, and women constitute almost half the total number of people infected with HIV. Women need adequate support and education to protect them from these alarming HIV statistics. To fight the trafficking of women and children effectively, underlying causes such as poverty and the lack of equality need to be addressed by today's policy makers.

Today all members of this chamber have a unique opportunity to help reduce the risks and challenges that women face when venturing to new lands—when they seek to benefit not for themselves but for their families—by simply acknowledging and ensuring that international human rights standards with respect to migration are implemented.

Slavery is alive and, sadly, growing in the 21st century. The battle to give women their dignity and basic rights, to which all human beings are entitled regardless of their nationality, seems more apparent now than ever. The elimination of discrimination against women is, therefore, not only a human rights issue but also a key to curbing the growing trend of trafficking. We need to establish awareness and increase education and poverty reduction initiatives for the benefit and protection of the millions of women exposed to insufferable conditions and abuse. Women migrants who are seeking to pursue their opportunities for employment should not have to fear the possibility of sexual assault, torture and inhumane treatment. They must be given the right to liberty, freedom, education and health, equal employment opportunities and to enjoy rest days. These are all human rights under international law. Every state and country should enforce their obligation to respect, protect and fulfil every individual's legal status.

Migrant women are daughters, mothers, sisters, grandmothers and aunts and should be treated as fellow human beings, whatever their status. They, like us, harbour the same aspirations and dreams of a better life for themselves, their families and their loved ones. Women migrants' rights are human rights.

The Hon. J.M.A. LENSINK secured the adjournment of the debate.

SUMMARY OFFENCES (TICKET SCALPING) AMENDMENT BILL

The Hon. NICK XENOPHON obtained leave and introduced a bill for an act to amend the Summary Offences Act 1953. Read a first time.

The Hon. NICK XENOPHON: I move:

That this bill be now read a second time.

Last year I introduced a bill in almost identical form to amend the Summary Offences Act, and this bill deals with the issue

of ticket scalping. I introduced this bill in February 2005. It did not progress at that time, but since then it is clear that there has been ongoing community concern about the issue of ticket scalping, which some would consider to be a commercial practice which is predatory, in a sense, and which, essentially, involves an abuse of market power. It involves those who have the money, or the resources, to buy tickets in bulk, depriving genuine fans of either sporting or entertainment events from obtaining tickets at a reasonable price.

It is interesting to note that a number of sporting groups have expressed their concerns. I know that the South Australian Cricket Association has expressed its concern about ticket scalping. As I understand it, with respect to the cricket association, under the terms of the ticket sale, on-selling of tickets is not permitted, but there is no sanction, as such. It is basically a contractual arrangement between those who purchase a ticket and the cricket association, with the hope that there will not be on-selling. I also note that the AFL has expressed concerns about ticket scalping and that newspapers have undertaken not to advertise those tickets for sale—and, indeed, I think eBay also has gone down that path.

It is also interesting to note that Victoria has had ticket scalping legislation for several years now with respect to major sporting events, and this bill is modelled on that legislation. It is a basic piece of consumer protection for those who engage in this practice, which prevents genuine fans from obtaining tickets at a reasonable price. This bill envisages a degree of latitude similar to that of the Victorian legislation, where there is a leeway of some 10 per cent for on-selling of tickets. If a person cannot attend an event for genuine reasons, it will cover their expenses in advertising and selling their ticket without any penalty. That seems to me to be a reasonable approach.

I was disappointed by the response of the Minister for Consumer Affairs (Hon. Jennifer Rankine) with respect to this matter. Her approach was that the easy way to get rid of ticket scalping is not to buy the tickets. With the greatest respect to the minister, that approach seems to be almost laissez faire; letting the market rule. I was surprised that it came from a Labor minister in a government that has a rich heritage, with the consumer reform work of the late Hon. Don Dunstan, who led the nation with a whole range of consumer protection reforms. If that sort of attitude existed back then—to leave it up to consumers to deal with the law of the market jungle—I do not think we would have had much by the way of consumer protection reform. With the greatest respect, I urge the Minister for Consumer Affairs to reconsider her position on this matter.

I note, in respect of the other side of politics, that the Prime Minister (Hon. John Howard) has expressed sympathy to those who are affected by ticket scalpers, and that he called for fair play in an article that appeared in *The Australian* of 3 June 2006. That was in response to Cricket Australia's calling for legislation to stop scalpers profiteering from this summer's Ashes tests. The nation's leading cricket tragic, John Howard, says he is monitoring the situation, according to the report in *The Australian*. Cricket Australia's Chief Executive, James Sutherland, said that he was disgusted by the profiteering. He said:

> Scalpers using eBay are a disgraceful insult to normal loyal cricket fans, who should have access to these tickets at face value.

That sums up the view of key sporting bodies in this country. Scalping is something that distorts the market. It is those who have the market power or the resources who can play havoc with the aspirations of ordinary fans to get tickets at a fair price. In the entertainment world, Kylie Minogue has been outspoken on the issue of ticket scalping, as has Bono from U2. Leading entertainers have expressed their concerns about ticket scalping and the profiteering that occurs from ticket scalping.

This bill is quite straightforward. It provides for a maximum penalty of $5 000 or an expiation fee. It does not apply to a ticket sold or offered for resale in prescribed circumstances; and that relates to packages. When I raised this matter in the media a couple of days ago, I got feedback that, where there is a package tour and the cost of the ticket is melded into that, there may be reasonable grounds for an exemption with respect to those accommodation, flight and ticketing packages. I urge my colleagues on the government side in this chamber to do what they can in the Labor Party caucus to prevail upon the minister and, indeed, the rest of the caucus to see sense in this sort of legislation. It is a basic piece of consumer protection legislation. The Victorian government adopted it with respect to major sporting events. Let us do it here. Let us ensure that the shameless profiteering and the robbing of consumers of the right to see major sporting and entertainment events at a fair price does not occur. This legislation will go a long way in respect of that.

I indicate that, with respect to the legislation in Victoria and last year's AFL Grand Final, the Victorian government's Minister for Sport and Recreation (Hon. Justin Madden) said that the state government would not tolerate scalping. He said that those caught breaking the law would have to face serious consequences. That law, which was introduced by the Victorian government in 2002, makes it illegal to sell AFL Grand Final or Commonwealth Games tickets for more than their face value, with the exemption to which I have referred. It is a basic piece of consumer protection legislation. It is a practice that needs to be outlawed. I urge members to support this legislation. My colleagues from the opposition should heed the concerns of the Prime Minister about ticket scalping for cricket events. Labor members of the Legislative Council ought to heed the tradition of the Dunstan decade with respect to consumer protection reforms. Indeed, their Victorian counterparts have done the right thing to protect genuine fans from ticket scalpers. I commend the bill to members.

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

GAMING MACHINES (CLUB ONE) AMENDMENT BILL

The Hon. NICK XENOPHON obtained leave and introduced a bill for an act to amend the Gaming Machines Act 1992. Read a first time.

The Hon. NICK XENOPHON: I move:

That this bill be now read a second time.

This amendment to the Gaming Machines Act relates to Club One. I will set the scene for members. The genesis of this bill relates to a decision made by the Liquor and Gambling Commissioner earlier this year. On 26 May 2006, Mr Bill Pryor, the Commissioner, with respect to a decision as to the allocation of gaming machine entitlements involving Club One, made a decision concerning an application from Club One under section 27C of the Gaming Machines Act for the allocation of gaming machine entitlements, given that Club One, the holder of a special club licence, had applied for

approval to allocate 27 gaming machine entitlements held by it to eight hotel premises—hotel premises, not club premises. Essentially, there was an agreement for some $13 500 per month by way of rental for these poker machine entitlements. They would be 'parked' (the term that Club One has used) in these particular hotels. The Commissioner was concerned about some aspects of this matter, including the issue of transparency. In his decision he said:

> I am concerned about the proposal. In my opinion, the concept of Club One is based on returns to the club industry to redress the imbalance between hotels and clubs. This proposal does not benefit specific clubs but I accept that it will generate income for Club One. If the process of selecting the host venues had been open and transparent I would have no hesitation in approving these agreements but in my opinion this has not been the case. I am concerned that members of Club Management Services Pty Ltd have been given priority over South Australian clubs and other hotels without a tender or expression of interest process. Ideally, the entitlements should, in my opinion, have been offered to the club industry and, failing any commercially viable expression of interest to host the entitlements, through open tender to the hotel industry.

As a result of those concerns, I instructed parliamentary counsel to draft this bill, which would prevent clubs allocating, renting or dealing with their entitlements to hotels. In essence, that is what it does. If there is a temporary entitlement, it can be sent to a club, and the circumstances of the club industry have been explained to me as being circumstances where a club has an allocation, premises are being built or for some reason they are not ready. That is how the concept of parking, as Club One has put it to me, has occurred.

I make clear that I do not resile from my position that there ought not be any poker machines in this state, and I will never resile from that position. However, in terms of the reasons for Club One (and I expressed during the parliamentary debate on this matter at the end of 2004 my significant reservations about the Club One concept), clubs have this Club One concept or entity so that the balance can be redressed. There was an argument that the average club turnover was about 40 per cent less than the hotel industry turnover, and that is something I will refer to when I sum up in relation to this bill. I am still awaiting further figures from the Liquor and Gambling Commissioner's office with respect to that.

It is clear that by virtue of this approach of parking the machines, of having these machines going into hotels, it goes against the spirit of the legislation that was passed in 2004. In that regard I refer to the parliamentary debate. There was a question from the Hon. Kate Reynolds, and I will refer to it and to the answer given by the late Hon. Terry Roberts on 22 November 2004 at page 568 of *Hansard* as follows:

> The Hon. Kate Reynolds asked why Club One would be permitted to place gaming machine entitlements in hotels as well as clubs. The bill provides for the greatest flexibility for Club One to be able to place machines where it can maximise the benefits for the club sector. The club sector does not envisage that this will occur as it will also wish to assist clubs to boost their other operations, including food, beverage functions, etc. In addition, entitlements in hotels will be at the hotel tax rate and therefore it will be less attractive for Club One. It does, however, provide this opportunity, if viable for Club One, and you can envisage a situation immediately following the cut in machines where there are no approved locations for club machines that Club One could then temporarily place machines in hotels and make a return rather than holding them with no financial benefit.

That is what the late Hon. Terry Roberts said at that time. Whilst it was not envisaged, it allowed for it, and that is one of the reasons I expressed my significant reservations about the Club One concept.

This amendment says that, if you are to have a transfer of machines, do not put the machines in hotels because we know the turnover in hotels is much greater. We know from the anecdotal evidence of gambling counsellors that there appears to be a proportionately lower incidence of problem gambling in clubs, given the nature and structure of clubs rather than hotels, although that seems to be changing with hotel pokies operators moving into the club industry under management agreements, which I have real concerns about.

I had a meeting recently with Club One executives and with Michael Keenan, the executive officer of Club One, along with David McLeod, the chair of Club One and on that day and subsequently with Bill Cochrane of Club Management Services. I met with Mr McLeod and Mr Keenan together on this issue, and Mr Cochrane joined that meeting subsequent to the discussion they had with me in relation to that. I make clear that I am not questioning the integrity of Club One, Mr Keenan, Mr McLeod or Mr Cochrane in any way, but as a parliament we need to make a decision as to whether we want the clubs to be able to park their machines in hotels, because for some of us that seems to go against the grain of what was intended in terms of the distinction between the two.

If it is a club entitlement, why should it go into a hotel where there appears to be a higher level of poker machine losses per machine than in a club? There appears to be a distinction, at least in many cases, between levels of problem gambling proportionately in a club rather than in a hotel. I make clear that with the people I have seen over the years a very small minority have had problems with club machines. If your life has been affected by a gambling problem on a club machine, it is just as bad as being addicted to a hotel machine, but it seems from the evidence and from gambling counsellors I have spoken to that the clubs in many cases seem to be more active in dealing with problem gambling in their approach, particularly the smaller community clubs where they know their members. I accept that that may be diminishing by virtue of hoteliers moving into the management of these clubs. That is what the bill is about and I urge members to consider it. It may be that if members do not support what I am proposing they may wish to consider an alternative, namely, to ensure that the tendering process is open and that there is a greater degree of transparency, as alluded to in the decision of the Liquor and Gambling Commissioner, who was concerned about issues of transparency.

Club One made the point in discussion with me that it had a limited amount of time, needed to move quickly and did so without a tendering process. I am not suggesting anything improper on the part of Club One, but the question of transparency and a tender process is important with respect to this, and the issue of parking it in hotels is entirely inappropriate. I urge members to consider this small but quite relevant reform with respect to clubs not being able to offload their machines, even on a temporary basis, into hotels where the level of poker machine losses per machine is, on the whole, significantly higher and where it seems, from the evidence of problem gambling counsellors who deal with this, that there is a greater degree of risk of problem gambling in a hotel rather than in a club. I urge members to consider and support this bill.

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

SELECT COMMITTEE ON COLLECTION OF PROPERTY TAXES BY STATE AND LOCAL GOVERNMENT, INCLUDING SEWERAGE CHARGES BY SA WATER

The Hon. I.K. HUNTER: I move:

That the time for bringing up the report of the committee be extended to Wednesday 6 December.

Motion carried.

SELECT COMMITTEE ON PRICING, REFINING, STORAGE AND SUPPLY OF FUEL IN SOUTH AUSTRALIA

The Hon. B.V. FINNIGAN: I move:

That the time for bringing up the report of the committee be extended to Wednesday 6 December.

Motion carried.

SELECT COMMITTEE ON ALLEGEDLY UNLAWFUL PRACTICES RAISED IN THE AUDITOR-GENERAL'S REPORT, 2003-2004

The Hon. B.V. FINNIGAN: I move:

That the time for bringing up the report of the committee be extended to Wednesday 6 December.

Motion carried.

SELECT COMMITTEE ON THE ATKINSON/ASHBOURNE/CLARKE AFFAIR

The Hon. R.P. WORTLEY: I move:

That the time for bringing up the report of the committee be extended to Wednesday 6 December.

Motion carried.

SELECT COMMITTEE ON THE SELECTION PROCESS FOR THE PRINCIPAL AT THE ELIZABETH VALE PRIMARY SCHOOL

The Hon. R.P. WORTLEY: I move:

That the time for bringing up the report of the committee be extended to Wednesday 6 December.

Motion carried.

DEVELOPMENT ACT

Order of the Day, Private Business No. 12: Hon. J. Gazzola to move:

That the regulations under the Development Act 1993, concerning Public Notice Categories, made on 16 February 2006 and laid on the table of this council on 2 May 2006, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

Order of the Day, Private Business No. 13: Hon. J. Gazzola to move:

That the regulations under the Development Act 1993, concerning Clarification of Public Notification Categories, made on 9 February 2006 and laid on the table of this council on 2 May 2006, be disallowed.

The Hon. J. GAZZOLA: I move:

That this order of the day be discharged.

Motion carried.

ELECTRICITY (COMPENSATION FOR BLACKOUTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 June. Page 437.)

The Hon. I.K. HUNTER: I rise to indicate that the government will not support this bill. Needless to say, the government was extremely disappointed with ETSA's unacceptable level of customer service during the heat wave of 19-22 January 2006. Those electricity customers who suffered long black-outs and experienced delays in receiving information from ETSA during that event have every right to be concerned. That is why the government directed the Essential Services Commission to undertake an inquiry into the performance of ETSA Utilities during the heat wave. All members would understand that it is simply not possible to guarantee supply for 100 per cent of the time. There are many different causes for power outages and fluctuations, including severe storms, technical faults in equipment and car accidents. Unfortunately, due to the nature of the system it can also take some time to identify and rectify faults in the network.

In establishing the Essential Services Commission the government wanted a strong regulator with the primary objective to protect the long-term interests of South Australian consumers with respect to price, quality and reliability of essential services. The commission has put a framework in place which, after wide consumer consultation, provides incentives for ETSA to continually improve its level of service and reliability. This service standard framework provides for a service incentive scheme, which provides ETSA with a financial incentive to improve reliability and customer service aspects over time, and a guaranteed service level scheme which requires ETSA to compensate customers who receive service that is worse than a predetermined guaranteed level. It is therefore in everyone's interest, including the company's, that ETSA continue to lift its game.

The commission's final inquiry report of September 2006 was critical of the performance of ETSA Utilities in its communication with the public and its response times to supply interruptions in January. The government agrees with the general thrust of the report, that is, that ETSA's performance must improve. The government has expressed this view both to the commission and to ETSA. Further, the government supports the commission's proposed amendments to the existing compensation scheme to provide a payment of $320 to customers who experience a supply interruption for a duration in excess of 24 hours. The government believes that this additional level of payment provides significant compensation for customers who experience the most serious supply interruptions and strengthens the current service standard framework.

The proposed bill, while well intentioned, goes too far. If this bill's compensation provisions were in place, the compensation that would have been payable by ETSA following January's heat wave would have been at least $2.9 million for affected customers. Under current arrangements, these costs would inevitably be passed on to ETSA's customers. The government was not happy with ETSA's performance in relation to the January heat waves, but the government believes that the recommendations of the commission are sufficient and adequate. We oppose this bill

and encourage honourable members to do likewise.

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

STATUTES AMENDMENT (SURROGACY) BILL

Adjourned debate on second reading.

(Continued from 21 June. Page 440.)

The Hon. NICK XENOPHON: I rise to indicate my support for this bill. At the outset, I congratulate the Hon. John Dawkins for introducing the bill and for the work he has done with the families and parents who have been concerned about this issue, particularly constituents such as Mr Clive and Mrs Kerry Faggotter from the South Australian Council on Reproductive Technology. Clearly, a lot of work has gone into formulating the bill, and the Hon. John Dawkins has made a compelling case for reform in this area.

The bill accommodates the concerns and wishes of decent people who, for altruistic reasons, have been involved in surrogacy. It contains a number of safeguards to ensure that it is indeed for altruistic purposes and that the welfare of the child is of paramount consideration. It allows for applications to be made to a judge of the Youth Court of South Australia to give effect to the terms of a recognised surrogacy agreement after the birth of a child. The bill contains provisions with respect to the register of the birth through protocols and procedures through the Office of the Registrar of Births, Deaths and Marriages.

I believe that with this bill the Hon. John Dawkins has made a compelling case for reform. I also note that the word 'altruistic' is defined as a regard for others, as a principle of action or unselfishness. It is obvious that the people who have approached the Hon. John Dawkins in relation to the bill clearly and unambiguously fit within that category. I believe that it is an injustice for those who have been involved in an altruistic surrogacy not to be recognised and that the current law is inadequate in its scope to allow for appropriate recognition and safeguards with respect to the welfare of the child.

As I understand it, the government wishes this matter to be referred to the Social Development Committee. I note that the Hon. John Dawkins is happy to agree to that. If he is happy, I am happy too, given the work he has put into this bill and the obvious amount of consultation and compassion he has shown for the families with these concerns. I think that it is a good piece of legislation and that it ought not to be delayed unduly. I hope that the Hon. Mr Hunter, through his chairmanship of the Social Development Committee, will deal with this matter with alacrity and that the bill, in essentially this form, is passed through both houses of parliament sooner rather than later. I believe that the South Australian Council on Reproductive Technology and the Clive and Kerry Faggotters of this world deserve nothing less.

The Hon. I.K. HUNTER: I should say at the outset that I intend to move an amendment to the bill, as outlined by the Hon. Mr Xenophon previously. As you are no doubt aware, Mr Acting President, the bill proposes legislative amendments aimed at addressing problems related to surrogacy in South Australia and the legal status of children born through surrogacy. I commend you, sir, for this well intentioned initiative, but I believe that it fails to fully recognise or adequately address the complex legal, ethical and social issues associated with surrogacy arrangements. In particular, the requirement that commissioning parents be married is inconsistent with the commonwealth Sex Discrimination Act 1984. As a point of information, in 1996, one woman, Gail Pearce, challenged the requirements of the Reproductive Technology (Clinical Practices) Act 1988 on this very basis. The Supreme Court held that, on the basis of the commonwealth act, the marital status requirements were invalid. Also, limiting access to surrogacy arrangements between particular close family members is arbitrary and arguably unjustified, and the potential complexities include that the ongoing relationships, disagreements, disputes or coercion are not acknowledged or adequately dealt with. The proposed processes may be unnecessarily complex and expensive. All these issues should be given further ventilation, and that is why I will move that the bill be referred to the Social Development Committee.

There are other concerns, too, that need broader and deeper consideration than this bill contemplates. I understand that some of the provisions in the bill are designed to overcome potential opposition to it, but I think that, paradoxically, they may very well be fatal to its passage. I move:

Leave out all words after 'that' and insert:

the Bill be withdrawn and referred to the Social Development Committee to inquire into and report upon the issue of gestational surrogacy and, in particular, to consider:

- the ways in which South Australian statutes might be amended to better deal with matters pertaining to surrogacy and related matters;
- what complexities might arise from the consideration of such changes;
- the efficacy of surrogacy legislation in other Australian jurisdictions and the status of children born through surrogacy interstate and now living in South Australia;
- the interplay between existing state and federal legislation as it affects all individuals involved in and affected by gestational surrogacy; and
- any related matters.

The Hon. J.M.A. LENSINK: I also commend you, Mr Acting President, on your role in drafting this bill and addressing a concern that applies to some couples in South Australia who would dearly like to have children and who are able to conceive but, for some reason or other, the female of the partnership is unable to carry the foetus to full term or without miscarriage. I appreciate that the parameters have been cast to include certain conditions—those that have been raised, no doubt, by the constituents who have met with you—and include that the person who is to carry the child as the surrogate mother must be in some way related to one or other member of the couple.

There are problems for the genetic parents of a child once the child has been born through surrogacy in this state as it applies to people who have undergone the procedure in another jurisdiction, as has been outlined in previous speeches in relation to new section 10HB (applications to the Youth Court), and I will not go through those again. But I do note that the application process states that the welfare of the child is paramount and there is also a provision that no dollars, apart from legitimate costs of the pregnancy, may change hands between couples.

I have received some correspondence from opponents of the bill which I would like to touch on, where people have stated that children will be treated as a commodity and that this is somehow exploitation of women. I think that the bill should not be cast in those terms in any way, so as to

recognise that couples might, in an altruistic way, wish to support a childless couple to have children. Clearly, the parents who want the child would dearly like to have the child. I also find the argument that is raised by some groups, that somehow there ought to be some alternative by decreasing the abortion rate, is almost a mathematical equation; that somehow the lack of fertility in Australia should be addressed through the abortion rate, which I do not think is helpful in this day and age.

I received some correspondence from the Southern Cross Bioethics Institute which raised a number of hypothetical issues. In particular, it talked about the ambiguity of particular relationships between the various couples and the child, in comparison to what we now know. It used some fairly alarmist language, I have to say. I will quote a couple of sections of it; for instance, 'Basically, this is an experiment with the lives of all involved,' and, 'Surrogacy arrangements downplay the importance of gestation to the physical and psychological bond between mother and child. Surrogacy ruptures the bond.'

I think that is not just alarmist but quite offensive. If we consider the situation in the past, when adoptions might have first taken place, I am not quite sure what that says about the adoption of children and the relationship between the birth mother and the new parents. I pose a question to the people who raised that issue: what about the gestational bond of a baby born with foetal alcohol syndrome? Is the Bioethics Institute suggesting that the maternal grandparents of a child with foetal alcohol syndrome should take on the parenting role in that situation? If they would like to get further information perhaps they should meet with a group known to many of us where grandparents are looking after their grandchildren while the parents of that child are suffering drug abuse or mental health problems.

Undoubtedly, we are going into what are uncharted waters in South Australia but I think we should not shy away from these things. These questions will arise from time to time and we ought to have the gumption to address them, rather than saying, 'We haven't done that before, therefore, we should be afraid of all the potential ethical ambiguities that might be raised.' We already have the example of the ACT moving on this issue, so we can learn a great deal from what is taking place in that jurisdiction. Indeed, parents in this state are already availing themselves of services available in the ACT.

There are difficulties which are being encountered by genetic parents of children. I would like to quote a few items. Kerry Faggotter has written to members and was on ABC Radio this week. She was asked by Matthew Abraham:

> It's actually illegal to have another woman carry your child to full term?

Kerry replies:

> It's not illegal for them to do that. It's illegal for a fertility centre to be a part of that.

She says:

> We just went through an extensive program where we put in an application fee to apply to the surrogacy board in Canberra, which is run by an ethics committee. We put forward our case as to how we are infertile, as well as my cousin's history. We all underwent counselling, psychiatric reviews.

Deb Tribe then asks her:

> So what have been the legal ramifications for you not being on the birth certificate?

Kerry says:

> There's been many. My first problem. . .

and she goes on to explain how she had enrolled Ethan, her son, in swimming classes, and all the difficulties associated with that. Further, I understand, from correspondence from another potential couple, that the genetic mother may not actually be able to adopt the child. Kerry has also raised the issue in her letter to members. She says:

> Although my husband is registered on the birth certificate of our son, if he was to die, I as Ethan's mother have no legal entitlement to him as the law stands today. These restrictions also prohibit me from enrolling him at schools, opening a bank account and obtaining a passport for him. The list is endless. My husband is the only one besides the surrogate, my cousin Yasmin, who can do all of the above as the law stands now.

These couples who are seeking access to such a service obviously really want to have a child. I would have no hesitation in appreciating that they would be good parents. However, that is not a judgment that we ought to be making in any case. But, in terms of low fertility, why would parliaments continue to resist reducing barriers to willing parents to have a child that they want?

My liberal principles tell me that it is not for parliaments to regulate people's personal arrangements, so I do hope that if this bill is referred to the Social Development Committee it will be examined in a proper and fulsome way and that any alarmist concerns that people in the community might have will be allayed.

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

CONTROLLED SUBSTANCES (SALE OF EQUIPMENT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 June. Page 336.)

The Hon. J.M.A. LENSINK: I rise to indicate that the Liberal Party will be supporting this bill, which provides that the sale of equipment—that is, bongs and pipes—for use in connection with the consumption of controlled drugs becomes a criminal offence, that regulation of the sale of hydroponic equipment be introduced, and the sale of any kind of hydroponic equipment to children be banned. There has been a lot of discussion recently about the safety, or otherwise, of smoking cannabis. In my view, there is increased evidence of the detrimental effects of cannabis on a user's health. This has been highlighted in recent months with the publication of reports from respected institutions, such as the Australian Institute of Health and Welfare and the Australian National Council on Drugs.

Dr Rod Pearce, who is a former state president of the AMA, recently stated the following in the *Police Journal* of August 2006:

> One thing is for sure: the medical opinions about cannabis safety have changed dramatically over the last 10 years. We now have more concerns about risks associated with its use.

The potential for the following effects are undisputed by the medical profession. In the short term, the consumption of cannabis may cause any of the following: slower reaction times, loss of concentration, problem-solving ability and short-term memory, changes in blood pressure and heart rate, vomiting, and/or the aggravation of pre-existing asthma, bronchitis, high blood pressure and heart disease. In the long term, users can develop respiratory problems, including

cancers normally associated with tobacco smoking, drug dependence and reduced fertility.

Of great concern is the association between cannabis use and mental health and social problems. These can include the so-called 'de-motivational syndrome', as well as reduced school and work performance, acute psychotic episodes, depression, anxiety, agitation, confusion and hallucinations. According to the Australian Institute of Health and Welfare, cannabis is the most commonly used illicit drug in South Australia, as well as Australia. Its report, 'Alcohol and other drug treatment services in Australia 2004-05: report on the national minimum data set', states:

> . . . use and dependence is second only to heroin use in terms of healthy years of life lost due to illicit drug-related conditions. . . the burden of disease caused by dependence and the extent of use in Australia is—

and I emphasise the following words—

> greater than HIV, hepatitis B and hepatitis C combined.

According to the Australian National Council on Drugs, users tend to start in their mid-teens. The average age for first-time users is falling, and one in five teenagers have smoked it in the past 12 months. Interestingly, I think that there is a bit of an urban myth that the cannabis that is consumed today is much stronger than previously. It is, however, the form of cannabis that has changed. Younger cannabis users prefer the stronger 'head' or flowers, while older users prefer the less potent leaf. Further, younger users prefer to smoke through water pipes or bongs rather than joints. That leads to the specific measures within the bill.

I think that, in relation to the concern about bongs and pipes, comments have been made that, if you have a plastic Coke bottle and two straws, you might have yourself a homemade bong. But, the issue is really in relation to the retail sale of equipment which could be used to facilitate the consumption of illicit drugs, such as pill crushers, drug taking kits, bongs and pipes. This is comparable to the issue of tobacco displays in that you could say that the display of such items normalises—to use the professionals' language—the taking of illicit drugs; that is, if children or minors see this equipment for sale in retail premises, they are likely to rationalise that it must be okay, or that there is some level of agreement with its use.

I note that he Controlled Substances (Serious Drug Offences) Amendment Act is yet to be gazetted, and I would appreciate it, if and when the government responds to this piece of legislation, if they could perhaps provide us with an explanation as to when it will be gazetted and what is causing the delay. That act prohibits the possession or sale of equipment 'for use in connection with the smoking, consumption or administration of a controlled drug, or the preparation of such a drug for smoking, consumption or administration.' However, my understanding is that, if the police were to avail themselves of those measures, they would need to prove that the equipment is expressly for illicit substances, rather than legal substances such as tobacco. This bill will make bongs and pipes specifically illegal.

In relation to hydroponic equipment, South Australia has been called the hydroponic capital of Australia, and we have the highest number of hydroponic shops per capita of any Australian state. Hydroponically cultivated cannabis accounts for 90 per cent of the cannabis seized in South Australia. There is no regulation of the purchase of hydroponic equipment. This bill proposes that hydroponic retailers will be required to keep a register, and that the sale of hydroponic equipment to children will be banned. In the Liberal Party's last election policy, the Drug Strategy, we included that we would regulate not only the purchase of hydroponic equipment but also the vendors of hydroponic equipment. I understand that the Hon. Ann Bressington is examining an amendment which will regulate the vendors of hydroponic equipment. Liberal members will consider those amendments in due course, but I indicate that we support the broad thrust of the bill.

The Hon. D.G.E. HOOD: I rise to also indicate Family First's support for this bill. I am encouraged by the comments of the Hon. Ms Lensink and, by and large, endorse them. It seems that the Liberals and Family First are on the same page on this one, as is the Hon. Ms Bressington, so, at the very least, that is encouraging in terms of the passage of this bill through this chamber. Together with my bill to remove the growing of one cannabis plant from the cannabis expiation notice system, these two bills start to wind back our status as the drug friendly state of Australia.

At one level, this bill makes it illegal to sell or possess for sale bongs or pipes for the smoking of a controlled drug. I am glad to see that selling a bong or possessing a bong for sale will not be an expiable offence and, in fact, carries a maximum fine of $2 000, or, if a child is involved, $5 000. These provisions will go hand in hand with my bill with respect to growing a cannabis plant so that this parliament, which is the voice of all South Australians, can tell our community that this is, indeed, a serious issue and not a speeding fine or expiable level offence.

The simple truth is that we all know what these things are used for. As a result of this bill's being introduced to this parliament, we have heard the cry, 'What about people using these things for legal purposes?' It would be the absolute minute minority of people who use bongs, pipes and the like for smoking tobacco, for example. The reality is that the places that sell these items know exactly what they are to be used for, and I commend the Hon. Ms Bressington for introducing this bill to the council.

At the other level, the Hon. Ann Bressington has gone beyond the government's statements about hydroponic equipment and has provided us with a bill to make it happen. The honourable member's bill is similar to what the government has promised, but the difference is that the government has not yet delivered that bill to either house of the parliament for consideration and debate. I call upon the government to consider agreeing to this bill, if it is so inclined and if it is not significantly different from its own bill or, if not, at the very least, to hasten the progress of its own bill to the parliament so that the hydroponic growing of marijuana in this state can be addressed once and for all.

The big difference is that we have this bill here on the table; it is ready to go right now. The honourable member has paid due consideration to the interests of legitimate hydroponic plant growers by leaving room for them to continue to purchase their equipment, albeit with their names kept on a register, which I think is an eminently sensible step. Surely the blight of hydroponic drug labs across South Australia does not merit playing partisan politics on this issue. In fact, it amazes me that throughout suburban Adelaide I often see hydroponic shops adjacent to gun shops or adult book shops, or whatever it may be, and the signage of these shops often has a green leafy character. Again, we all know what that is about.

The Hon. J.M.A. Lensink: Tomatoes!

The Hon. D.G.E. HOOD: Exactly—growing billions and billions of tomatoes.

The Hon. J.M.A. Lensink: They are so hard to grow!

The Hon. D.G.E. HOOD: Indeed; it is very difficult to grow tomatoes. The sooner we clean up this industry the better, from the perspective of Family First. Our police are engaged in surveillance and searches for hydroponic laboratories, which I believe would not be necessary if we had tougher regulation of the sale of hydroponic equipment, which is what this bill is all about. Family First completely endorses this bill. If the government chooses not to support the hydroponic sale aspect of this bill, we implore it to bring its bill to the parliament as quickly as possible, and I assure it of the support of Family First. As I said, Family First supports this bill and, certainly, the second reading.

The Hon. SANDRA KANCK: This bill to amend the Controlled Substances Act to make the sale and possession of equipment used to consume and manufacture cannabis illegal has been introduced by the Hon. Ms Bressington. It is difficult to know precisely where to begin in responding to the second reading speech that she made in support of the bill. Perhaps the most important thing to say is that, should this bill pass into law, it would have little or no effect on the level of consumption of cannabis in our society. That is because, unless the honourable member intends this bill to apply to every product capable of being fashioned into an implement for consuming marijuana, all that will happen is a shift in how cannabis is consumed.

People who currently consume marijuana in pipes, water pipes and bongs purchased from drug paraphernalia retailers will, when in need of a new implement, begin using cigarette papers, tobacco pipes or plastic drink bottles with garden hose attached, or cardboard drink containers with garden hose attached, or buckets with garden hose attached, or baking cannabis into cakes or sniffing hash crushed between hot knives, or any number of other ways of consuming cannabis. The alternatives are endless and readily at hand.

A few years ago, when the Hon. Robert Brokenshire proposed a bill along these lines, I was contacted by one of the places that sells this equipment. The following is what they had to say:

> We are concerned that his legislation—

but I think it applies equally to Ms Bressington's legislation—

> will prevent the wider adult population from being able to obtain legitimate, quality harm minimisation devices that are used for the consumption of a variety of legal and illegal vegetable matters. In fact, if this legislation was to become law there is no doubt that South Australia would see a steady and very significant increase in the use of unsafe implements. Water filtration is an important part of the harm minimisation methods employed by many smokers.
>
> Some of the very common, dubious methods employed in places where quality implements are hard or impossible to obtain pose significant health risks. The very common use of aluminium drink cans, were the user indents the side of a can and punctures small holes in it, then places the material on top of the holes and smokes by drawing through the drinking opening. Residuals from the can printing, the aluminium itself and the internal plastic coating, when exposed to the heat required, are toxic. Another very common method employed is the use of plastic containers with garden hose as the water pipe downtube, and aluminium foil in the top of the garden hose for burning the material in. Garden hose is not made from medical/food grade materials and as such releases toxins when utilised for this purpose, as does also the aluminium foil when subjected to this level of heat. There is no doubt that the effects of this legislation would significantly impact on the health of South Australian smokers, something we would have thought was best avoided.

Nor will the criminalisation of possession of the listed implements have any impact upon the numbers of people using the drug. As they already break the law by possessing and consuming the drug, the additional deterrent will be ineffective.

Ms Bressington's second reading speech also states that the sale of hydroponic equipment for the purpose of cultivating cannabis will be subject to a fine and/or imprisonment. What utter nonsense. The retailers who sell hydroponic equipment do so for profit. They have no control over what the purchaser intends to use the equipment for. It may be for cultivating marijuana, or it may be for growing tomatoes, as has been suggested, or it may just be left in a box in the shed. The salient point is that these decisions are made by the purchaser and not the retailer.

Putting aside Ms Bressington's attempt to semantically confuse, the attempt to restrict the sale of hydroponic equipment will be a boon for organised crime. Currently, both organised criminals and backyard cultivators use hydroponic methods of growing marijuana. Restricting the sale of hydroponic equipment will be more effective in restricting backyarders; for organised criminals it is likely to be little more than an inconvenience. Hence, a reduction in the backyard production will be swiftly countered by an increase in production by organised crime. The net effect will be more money for organised criminals to spend on corrupting law enforcement in South Australia; and for these reasons I will voting against what I consider to be a foolish bill.

But, there are other issues in Ms Bressington's second reading explanation that I feel compelled to raise. Ms Bressington seems not to have considered that, should this bill pass, it might result in people adopting more dangerous means of consuming marijuana. For example, it is quite possible that people will swap from smoking marijuana in pipes to smoking joints, and they might choose to roll tobacco into that joint to make the cannabis go further. If there are concerns about cannabis having the potential to cause psychosis, then, when it is combined with tobacco, the evidence is that it increases the possibility of psychosis. Again, it will have the exact opposite effect to what Ms Bressington wants.

Ms Bressington also makes the startling assertion that South Australia is in breach of both the Commonwealth Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act and the United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances. I note that the Minister for Mental Health and Substance Abuse is in the chamber as I speak, and I am sure she would be interested to know that she as minister is presiding over a situation where South Australia is contravening those two acts. They are astounding claims to make and I think the Hon. Ms Bressington should present some evidence to support them.

Further, the honourable member states that there is a strong connection between marijuana and violent crime. There is, but not in the way she suggests; rather, we have vastly inflated the value of cannabis because, by making the production illegal, we consequently attract more organised crime to the trade. Unfortunately, there is no recognition of this pertinent point in Ms Bressington's speech. She goes on to claim that legalisation and tolerance of tobacco and alcohol have had no effect on the use of those substances. Well, she is absolutely and totally wrong in this regard.

The Hon. A.M. Bressington interjecting:

The Hon. SANDRA KANCK: I am quoting your speech, Ms Bressington. The reality is that regulating and controlling the trade in alcohol and tobacco has enabled the reduction of the level of harm that these drugs do in our society. Some 20 years ago one in three adults smoked tobacco. It is now down to one in five, and we did not have to make the tobacco illegal or unavailable to bring this about. Further, Ms Bressington might like to consider how taxes and charges on tobacco and alcohol help ameliorate the health costs of coping with the damage they inflict on our society. I am hearing mutterings behind me from Ms Bressington, and I do remind her that when we get to the end of the second reading debate she will have all the opportunity she likes to give me the scientific evidence that proves what I am saying is wrong. I know she will not be able to find that evidence—which is why she is muttering.

The Hon. A.M. Bressington interjecting:

The Hon. SANDRA KANCK: And she continues to mutter! I also recommend that Ms Bressington look at what happened during prohibition of the production and sale of alcohol in the United States. The crime, corruption and drastic public health consequences of prohibition provide a stark lesson as to the costs of pursuing the types of policies that Ms Bressington advocates. I have downloaded from the web a paper by the Assistant Professor of Economics at Auburn University, Mark Thornton, about alcohol prohibition. There are things that we should note from this paper, if she wants to go down the 'war on drugs' path. The document states:

> . . . the resources devoted to enforcement of prohibition increased along with consumption.

This paper clearly shows that once prohibition was introduced as a legal measure in the US the consumption of alcohol increased. It continues:

> Heightened enforcement did not curtail consumption. The annual budget of the Bureau of Prohibition went from $4.4 million to $13.4 million during the 1920s. . .

This economics professor refers to what he calls the 'iron law of prohibition'. The document continues:

> That law states that the more intense the law enforcement, the more potent the prohibited substance becomes. When drugs or alcoholic beverages are prohibited, they will become more potent, will have greater variability in potency, will be adulterated with unknown or dangerous substances, and will not be produced and consumed under normal market constraints.

What they found was that prior to prohibition, more people were drinking beer than spirits but, because this went underground and the mark-up one could get from an illegal product such as spirits was going to be much better and easier to make in large quantities, then spirits were chosen. It goes on:

> Prohibition made it more difficult to supply weaker, bulkier products, such as beer, than stronger, compact products, such as whiskey, because the largest cost of selling an illegal product is avoiding detection.

I do not know what the total figure for prohibition was, but in 1925 the national death toll from drinking poisoned liquor was 4 154 compared with 1 064 in 1920. There was a quadrupling of deaths from poisoned liquor in the space of five years.

The Hon. Nick Xenophon interjecting:

The Hon. SANDRA KANCK: But, mostly, beer was not sold. As I said, it was mostly spirits because of the cost of trying to avoid detection. It is one of the problems when we go down the path of prohibition. I will not read all of the article, but the summary states:

> Prohibition did not achieve its goals. Instead it added to the problems it was intended to solve and supplanted other ways of addressing problems. The only beneficiaries of prohibition were bootleggers, crime bosses and the forces of big government.

If we go down the path of 'tough on drugs' in the war on drugs we will do the same. We should learn from history. I also take issue with the way the Hon. Ms Bressington divides the drug debate into two camps: she is in the 'tough on drugs' camp, but anyone who is not she places into the 'soft on drugs' or 'pro drug' camp. It is a very cheap debating point, but it is intellectually dishonest. Those of us who support the scientific evidence that shows that the 'tough on drugs' approach is not working are then told that we are 'diverting the focus away from illicit drugs to legal drugs such as tobacco and alcohol'. I assure Ms Bressington that there is no such diversion, and I suspect the minister would agree that there is no such diversion. It is a matter of putting in the effort where the problem exists.

The ABS figures for 1998 show that there were approximately 19 000 deaths from use of tobacco, 2 000 for alcohol and 1 000 for all other illicit drugs. Even aspirin caused more deaths in Australia than did cannabis. In fact, cannabis does not show up as producing any deaths. In the UK recent figures show that 114 000 people died from tobacco usage in one year, 22 000 from alcohol usage and 16 from cannabis usage. So, let us get this into perspective. I and my party have been pursuing legal drugs—alcohol and tobacco—for more than 25 years because 98 per cent of drug deaths in Australia are caused by these two substances. It is absolutely and totally justified. To suggest that we have been diverting the focus away from the illicit drugs to the drugs that cause 98 per cent of deaths is just—I find it almost impossible to describe the dishonesty in Ms Bressington's argument.

The Hon Ms Bressington should at least get her facts right before making such wild assertions. Having classified anyone who is not 'tough on drugs' as being 'soft on drugs' or 'pro drugs', she then takes a leap into the wild blue yonder in stating that 'anyone who is soft on drugs is in agreement with the organised crime that currently rides shotgun over this state'. Organised crime is running this state? Does Ms Bressington think that her arguments have any credibility when she makes wild statements like that? To the contrary, as I have already pointed out, we know from the US experience with alcohol prohibition that it is laws such as the one the Hon. Ms Bressington supports that play into the hands of organised crime.

Law that is not going to make any difference to a situation that the person is attempting to address, and law that in fact makes it worse, should not be supported. This is such a proposed law and I indicate that the Democrats will not be able to support it.

The Hon. NICK XENOPHON: I indicate my support for the second reading of this bill and for this bill as a whole. I note the Hon. Ann Bressington will be moving some amendments as a result of more recent information she obtained in relation to the sale of cocaine kits—

The Hon. Sandra Kanck: I hope it is more accurate than some of her other information.

The Hon. NICK XENOPHON: I note, in relation to that, that the Victorian government recently moved with respect to dealing with such kits and paraphernalia and in May, earlier this year, the Victorian parliament passed legislation

along those lines. The Victorian Labor government acted decisively in relation to that. It may assist the Hon. Sandra Kanck—and I do not want to have an argument with her; I think it is good to have a robust debate on issues—to point out that I think she was a bit unfair to say that the Hon. Ann Bressington was muttering. She was not interjecting, and it is a bit unfair to say that she was muttering at large when, in fact, she was on the phone to her office, I think to get some material.

I will outline some of the concerns I have, and I refer to the UN World Drug Report. I have taken up the invitation of the Hon. Sandra Kanck to look at facts and figures. The 2004 UN World Drug Report indicated that Australia, regarding people 15 years and over, has a 15 per cent annual prevalence rate for the use of cannabis, compared to, say, Austria at 5.6 per cent and Sweden, 1 per cent, with its mandatory rehabilitation program. The rate for the UK is 10.6 per cent and the USA, 11 per cent.

With respect to opiates, Australia has a 0.6 per cent annual prevalence rate for those aged 15 years and above, according to the 2004 UN World Drug Report, compared to Italy, which is higher at 0.7 per cent, New Zealand at 0.7 per cent, Portugal at 0.7 per cent, the UK 0.7 at per cent and the USA at 0.6 per cent. Luxembourg is actually 1 per cent, and a lot of European Union countries seem to hover around 0.4 per cent, although in Sweden the rate is 0.1 per cent—again, a country where there is mandatory rehabilitation.

In relation to amphetamines, Australia has an annual prevalence rate of 4 per cent compared to 1.6 per cent for the UK, 1.4 per cent for the US and Sweden, 0.1 per cent—40 times lower than here in Australia. With respect to cocaine use, the annual prevalence rate is 1.5 per cent in Australia, compared to Sweden's 0.06 per cent. Ireland is higher, at 2.4 per cent, while the UK has 2.1 per cent and the US has 2.5 per cent. The figures for the cumulative average of all illicit drugs used show Australia at 5.3 per cent, which is at the top of the tree compared with Sweden at 0.3 per cent and, for instance, the UK at 3.8 per cent and the USA at 3.9 per cent. I think that indicates that there is a significant degree of concern about the harm that illicit drugs can cause, and I share the concerns expressed by the Hon. Sandra Kanck with respect to the harm caused by alcohol and tobacco.

In some respects I believe that looking at the sale of equipment or drug paraphernalia is not all that inconsistent with the sorts of things the Hon. Sandra Kanck has been pushing for over many years with respect to tobacco, and I commend her for her consistent campaign with respect to the issue of tobacco control. One of the reasons why the use of tobacco has come down over the years is that we have deglamorised tobacco smoking. A considerable amount of money has been invested, and there ought to be more. I note that the Quit SA budget has remained at $3.9 million for the past eight years, and it is very disappointing that it has not gone up under successive Liberal and Labor governments.

We have seen a reduction in tobacco use, as the Hon. Sandra Kanck alluded to, and I believe that has been through a number of factors, including community education and the banning of tobacco products advertising in the electronic media, although I think we must go a lot further in respect of point of sale. I think the Hon. Sandra Kanck and I are of one mind in thinking that the government missed an opportunity and has squibbed on the issue of point of sale displays as a trigger for young people to take up smoking. We are seeing cigarette packets being made less attractive now with the display of graphic images and all those measures to make smoking less attractive. So, we are going through a process where it is not normal behaviour or acceptable in a health sense to take up the smoking of tobacco, and people understand that it causes harm and leads to a significant number of deaths.

The Hon. Ann Bressington is seeking to take away from retailers such as Off Ya Tree—and, from what I understand from briefing materials I received from the Hon. Sandra Kanck, some Smokemarts—any paraphernalia for the consumption of drugs, whether it is a cocaine kit or whether it is a bong. Effectively, apart from some exceptional circumstances that the Hon. Dennis Hood has referred to, basically, bongs are meant for the consumption of cannabis. If we go through that approach of saying that you cannot buy this stuff that essentially is there to consume these substances, it makes it less appealing and does not allow the process of normalisation, whereas I believe having those products in the market will have an impact on the consumption of these drugs.

This measure will have a positive impact in the same way as we have clamped down on tobacco over the years and reduced the rate of smoking. We can still go a lot further, and I would like to think this government would look to the leadership of people such as Mayor Bloomberg of New York, who has been a leader with respect to smoke-free places and the consumption of tobacco. There is no doubt that we know the evidence with respect to cannabis, and in the course of the second reading debate I will be happy to bring up this evidence on the effect it has on the lungs and on the rate of cancer. There is no question that smoking cannabis—

The Hon. Sandra Kanck interjecting:

The Hon. NICK XENOPHON: The Hon. Sandra Kanck makes the point that people breathe it in very deeply. I take the honourable member's point that, if these bongs are no longer sold in their glamorised packaging and people have to use a soft drink bottle, a rubber hose or a cardboard box, it makes the consumption of the product less glamorous or, in a sense, less acceptable. It does not look as good a form of consumption compared with a product designed to allow you to consume cannabis. This bill has a real role to play with respect to that.

In relation to the points that the Hon. Dennis Hood or perhaps the Hon. Michelle Lensink made about hydroponic equipment, I do not think there are too many tomatoes grown with hydroponic equipment. I am really concerned about that, and I would like to think this bill will go into the committee stage. We do know that the level of THC in cannabis is now much higher than it was in the Dylan era (although Dylan has a No. 1 album at the moment) of the 1960s and 1970s. The evidence is that the levels of THC, the active ingredient, now make hydroponic cannabis much more potent. Psychiatrists I have spoken to are concerned about hydroponic cannabis in particular and say that there is a clear link between symptoms of mental illness and adverse health outcomes as a result of the levels of THC. That is a real concern to me. So, if the hydroponics industry is restricted to genuine, non-illicit crops, we can make a difference in the stuff that is being sold or consumed by those who are committed to consuming cannabis.

The issue of the link between drug use and mental illness also needs to be reflected on. At the end of October last year, together with Paul Madden I hosted a People's Drugs Summit which I believe was very successful and at which the Hon. Ann Bressington was a speaker in her previous life as the head of DrugBeat. In the lead-up to that, following his

assessment of over 2 000 South Australians, Dr Craig Raeside, who is one of the state's leading forensic psychiatrists, revealed the disturbing and shocking link between drug use and mental illness.

Dr Raeside practises extensively in the criminal justice system and is very well respected. His review of over 2 000 people he assessed from 2001 to 2005, who were charged with criminal offences ranging from shoplifting to murder, indicated that 1 532 of the 2 010 people were cannabis users (76 per cent); 1 182 (58.84 per cent) were amphetamine users; and 28.99 per cent were heroin users. In terms of psychiatric diagnosis, he found that there was a mental illness in 60.77 per cent of cannabis users, in 71.07 per cent of amphetamine users and in 94.83 per cent of heroin users.

Dr Raeside made it very clear that, in terms of comorbid factors, people could have had a mental illness predating the drug use. However, what he also made clear was that there was a very clear correlation between the two, because the prevalence rate in that sub group was much higher than it was in the broader community. At the time, Dr Raeside said:

> What I have observed in the last two decades is that the mental health system has come under increasing pressure because of the dramatically increased levels of drug use.

He also said:

> I am convinced that if you significantly reduce the level of drug use in the community, you will see a substantial reduction in both mental illness and crime.

What I see is that this bill is part of that push. It is true to the same spirit of the reason that over many years the Hon. Sandra Kanck, quite rightly, justifiably and commendably, has pushed for tobacco control—namely, to ensure that we move away from the approach of normalising drug use, as the drug paraphernalia available in retail stores does. The bill makes the point that we need to clamp down on the hydroponics industry which, clearly and obviously, makes the vast majority of its sales and profits with respect to the growing of cannabis in this state. To me, that is a very worthwhile exercise, and I commend the Hon. Ann Bressington for introducing this bill and for what it intends to do. I urge the government to support it and to take a leaf out of the book of their Victorian counterparts with their approach in respect of drug paraphernalia and the legislation passed there earlier this year.

If we are serious about the issue of hydroponics and drug use, let us do something about it by supporting this bill. This is an approach that is long overdue. This is an approach that we, as a parliament, ought to support because I believe that the community will be much better off with its being passed and implemented. If we are concerned, as we ought to be, by the findings of Dr Craig Raeside, one of the state's leading forensic psychiatrists, about the alarming link between drug use and mental illness and between drug use and crime—and the two are often linked in terms of mental illness and crime—I believe that this bill will play a real role in breaking that nexus and that we will see a reduction in mental illness and crime through these simple practical measures with respect to hydroponics and drug paraphernalia.

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

DEVELOPMENT ACT, PUBLIC NOTICE CATEGORIES

The Hon. M. PARNELL: I move:

> That the regulations under the Development Act 1993 concerning Clarification of Public Notice Categories, made on 16 February 2006 and laid on the table of this council on 2 May 2006, be disallowed.

I will also speak to Order of the Day, Private Business No. 20 standing in my name.

Members interjecting:

The Hon. M. PARNELL: I will not go for one hour today.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! I do not think that the honourable member needs any assistance.

The Hon. M. PARNELL: However, I will say to honourable members that the theme of my comments in support of this motion to disallow these regulations is very similar to the subject matter of the bill we discussed yesterday—namely, the way in which planning is undertaken in this state and the appropriate role of planning schemes and citizens to engage in planning. I have moved that these regulations be disallowed because they undermine public rights, in particular public rights of participation in relation to important decisions that are made affecting public land. In this case, I am talking about coastal waters—the sea and the land that underlies the sea.

What we are talking about with these regulations is the planning of the commons. Shortly, I will go into some detail as to how these two sets of regulations undermine public rights over the sea but, first, I will canvass the question of the appropriateness of using terrestrial planning regimes when we are dealing with planning for the sea. We have made many mistakes in the way we have planned in the terrestrial environment. In spite of that, we are applying a similar regime to the sea, where we have a much lower basis of information. We know much less about the sea than we do about the land.

The planning regime over the land involves drawing lines and carving up the land into various zones. We have residential zones, industrial zones, commercial zones, farming zones. The methodology that has applied on the land—in many ways successfully, but often with errors—we are now applying to the sea. That is an inappropriate way to proceed, for two main reasons. Firstly, the sea is not privately owned. Most of the terrestrial environment, most of the land to which we apply our planning regime is privately owned. Certainly some of it is in indigenous title and some of it is in national parks, but the bulk of it is privately owned. The sea is not privately owned. The sea is, in fact, owned technically in a freehold title by the minister for the time being administering the Harbours and Navigation Act, but effectively that minister holds it on trust for the people of South Australia. It is the commons, it is not private land.

Secondly, the nature of the marine environment does not lend itself to the same terrestrial planning scheme, largely because—to make the obvious pun—it is a more fluid environment. The things that we do in the sea more readily move about. Certainly on the terrestrial environment we can put smoke into the air through a chimney and that can move about, but the nature of the sea is that it is a very fluid environment. You only have to look at the impacts of algal blooms and how they spread and the impacts of pollution of the sea and how that spreads. It does not respect the planner's lines drawn on maps.

One of the impacts that spreads most readily in the sea is disease. You only have to think back a few years ago when South Australia had the world's two worst single species mortality events from disease, and I am talking about the

pilchard die-offs. The heart of those die-offs was traced to the lower Eyre Peninsula of South Australia, and it spread right across to Western Australia and right up to southern Queensland. The sea is a very fluid environment and when we impact on the sea we can potentially impact on a large area. That is why drawing lines in the sea and pretending that we can zone areas of the ocean for exclusive industrial activity and not impact on areas outside that zone is a complete fallacy. That is not to say that there are not occasions when some form of zoning or delineation of areas of the sea is appropriate.

We are going to be hearing a fair bit, over the next 12 months, about marine national parks. We are going to be rolling out these marine national parks. That is an appropriate zoning, if you like, of the sea. I am not being inconsistent; the main reason I am saying that form of zoning is appropriate is that decisions to conserve can always be undone in the future. If we decide we do not want to conserve, we can always undo it; decisions to exploit, to extract and to pollute are potentially irreversible. It is in fact a conservative thing to do, to zone areas for conservation; it is not a conservative thing to zone areas for exclusive industrial use.

One problem that arises from these regulations, in the way that they allocate areas of the sea for exclusive industrial use, is that they, in fact, undermine the government's own commitment to marine protected areas. The reason for that is one of timing. The Department of Primary Industries, through the aquaculture branch, is busy identifying areas of the South Australian coastal waters that are appropriate for aquaculture and they are zoning those areas for aquaculture, and they are doing that way ahead of the environment department's zoning of areas of the sea for conservation. What that means at the end of the day is that aquaculture will have the first pick of our coastal waters for their particular activity, and conservation, through marine parks, will only have those areas that are left to choose from. That is really entirely the wrong way to go about planning for the marine environment.

I now want to just go through the two sets of regulations and explain the method by which those regulations undermine public participation. The first set of regulations was rushed through in the pre-election period on 12 January this year. They were put through before the government went into caretaker mode and, therefore, before the period when the promulgation of regulations such as this would have been inappropriate. What that meant, of course, is that those regulations came into effect in January but were not able to be discussed or debated until the parliament resumed some several months later. I know that the Legislative Review Committee looked at these regulations. They have since discharged their motion to disallow, so I have brought mine on.

The way these regulations work is that the Department of Primary Industries, through the Aquaculture Act, will identify areas of the sea that are appropriate for aquaculture and they will zone those areas. These are regulations under the Development Act. These regulations make any aquaculture zones also zones under the Development Act; in other words, they become prescribed for the purposes of the Development Act. Further, what these regulations do is say that any form of aquaculture development in one of these aquaculture zones, under the Aquaculture Act—which is now hereby prescribed as a zone under the Development Act—is to be category 1.

Category 1, as members would know, is a category of public notification that requires no notification. Category 1 means no public notification, no neighbour notification, no right of any person to make a submission on development applications in a category 1 area, and no rights to go to the umpire if you are unhappy with the decision. Effectively, what that means is that areas of the commons, areas of public land, are being zoned in a way that denies the right of the public to have input into development activities that occur on that land.

[Sitting suspended from 6 to 7.45 pm]

The Hon. M. PARNELL: I was explaining how the effect of these regulations was to make aquaculture development in zones delineated by primary industries to be category 1 and to show the effect that that had on public participation. Up until 12 January this year, most aquaculture development in South Australian coastal waters was processed as a category 3 development. That means that any neighbours were directly notified, and the general public was notified of the development application through advertisements in the newspaper inviting them to make submissions. There was a legal right for any person in the state to make submissions for or against the proposal, and any third parties who made submissions were entitled to appeal to the Environment, Resources and Development Court.

In other words, up until 12 January this year, in almost all cases, citizens had a right to know about and to comment on development applications lodged in the commons, lodged in our collectively owned state waters. I say 'almost all', because there was one example of where people did not have these third party rights in relation to the sea, and that was in relation to the areas of sea off Port Lincoln. That area was previously zoned as an aquaculture zone; in fact, it was the only zone in the ocean. I am both proud and disappointed to say that that zone was a direct result of the case that I ran in the Environment, Resources and Development Court, a case that I think is still the longest ever environment trial in this state, where we successfully challenged 42 tuna feedlots in the waters of Louth Bay.

The government's response to that was to change the law, and over time governments of both persuasions have changed the law. Eventually, a zone was created to make sure that no-one could ever again go to the environmental umpire to challenge development in that part of state waters. But, up until 12 January, that was the only exception to the general rule that members of the public had rights over the sea.

The second lot of regulations are, in fact, worse than the first in one significant respect. The January regulations at least made sure that a primary industry process had to be undertaken before an area of the sea could be zoned for aquaculture and thereby attract these protections under the Development Act. But the second lot of regulations, which were gazetted two working days before the election was called—two days before the government went into caretaker mode—were even worse, because they did not even require an area to go through any process, whether it be a primary industries process or a Development Act process. These regulations merely identified by latitude and longitude three areas of South Australia's sea and said that anyone who wants to develop in these designated areas—designated by latitude and longitude—need not go through any public consultation under the Development Act. The three areas were Anxious Bay on the West Coast, Port Neill on the eastern side of Eyre Peninsula and Rivoli Bay in the South-East.

Mr President, I visited two of those three places during the winter recess, and I can tell you that in relation to the Anxious Bay proposal—an area that was never formally zoned by anyone for aquaculture—the inclusion of that area in the regulations, in which I am urging disallowance, was purely to prevent the local residents from maintaining a legal challenge that they had instituted against an abalone development that was only a kilometre from one of the most important sea lion colonies in South Australia. That speaks volumes, I think, for the expediency behind these regulations. One kilometre from a sea lion colony is a bad place to have aquaculture. It is not enough to simplistically say that sea lions do not eat abalone, therefore, you can have the two things side by side.

I am not aware of any studies that were done by primary industries, or anyone else that go even part way to answering questions of potential ecological interaction between aquaculture and sea lions but, certainly, one kilometre is too close. As regards the Port Neill situation, there was no pending legal action. The members of the local residents group are very concerned about aquaculture being plonked into the ocean off their beaches. I met with grandparents who are very concerned about the future safety of swimming beaches if these fin fish farms were to be placed off the coast. I make the point that these three areas went through no process other than having their coordinates gazetted through these regulations. It is an appalling way to undertake planning, particularly of the commons.

I urge the council to reject these regulations. I urge members to support my motion for disallowance, because two things are at stake here: the integrity of the state planning system and the integrity of our system of public ownership of the commons. We have public space that, effectively, is being privatised; it is being handed over to industrial operators for exclusive economic use. People might say, 'That is a bit rich; it is not exclusive.' It is exclusive when the Aquaculture Act says that a leaseholder can mark off an area of the sea and prohibit, by law, other people from entering that area. We are giving away chunks of South Australia's commons to industry without going through any proper process and without any citizens having the right to comment on applications or to appeal against it.

The only rights that remain are that, under the Aquaculture Act, there will be a right to be consulted and to have input into the zones and where they go. However, once those zones are in place (and there is no appeal against aquaculture zones under the Aquaculture Act), anyone who comes along will find that their development gets a free ride, and no-one will be able to challenge it. I urge all members to support this motion for disallowance.

The Hon. I.K. HUNTER secured the adjournment of the debate.

DEVELOPMENT ACT, MISCELLANEOUS REGULATIONS

The Hon. M. PARNELL: I move:

That the miscellaneous regulations under the Development Act 1993, made on 12 January 2006 and laid on the table of this council on 2 May 2006, be disallowed.

I do not propose to speak to this motion as it is the same as the previous motion.

The Hon. I.K. HUNTER secured the adjournment of the debate.

CONTROLLED SUBSTANCES (EXPIATION OF SIMPLE CANNABIS OFFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 31 May. Page 229.)

The Hon. I.K. HUNTER: The government will not be supporting this bill. This government has made great inroads into the fight against drugs through a combination of tough attitudes towards drug producers and a progressive and enlightened harm minimisation, education and health-based approach towards victims. This government is getting the balance right. In 1999, South Australia and Western Australia investigated the impact of legal sanctions on rates of cannabis use. Neither study showed an association between severity of sanction and the rates of cannabis use. This finding has been borne out by further international comparative studies and is further supported by research conducted by Curtin University in 2005. Further, the prevalence of cannabis use in South Australia does not differ from the national level.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Hunter has the floor.

The Hon. I.K. HUNTER: The National Drug Strategy Household Survey results indicate that the prevalence of cannabis use in South Australia has significantly decreased from 17.6 per cent in 1998 to 11.7 per cent in 2004. It is generally accepted, I think, that the heavy use of cannabis can exacerbate, and perhaps even trigger, mental health disorders in a person with a pre-existing vulnerability. No-one is denying that cannabis use is a problem or that we should not be discouraging it. However, the question is: what is the most effective, long-term and sustainable approach? Simply recriminalising all cannabis offences is not the answer, nor is the laughable 'just say no' approach. As we heard earlier this evening, prohibition does not work. The expiation notice system works well, and I note that the Attorney-General intends to increase the expiation amounts for possession offences.

At its May 2006 meeting, the Ministerial Council on Drug Strategy endorsed the National Cannabis Strategy. This strategy recommends a harm minimisation approach. The Australian National Council on Drugs also supports the diversion of cannabis users into education and treatment. The police drug diversion program now links drug offenders with health services instead of simply treating them as criminals. It is worth dwelling on some of the supporting evidence for the efficacy of this approach, which was compiled by Turning Point in Victoria and listed on the drug diversion web site, as follows:

- Diversion, as opposed to punitive action, reduces the demand on an already overburdened court and prison system.
- Treatment of drug using offenders as opposed to incarceration may lead to an overall financial reduction on cost to society.
- Referral to the health and mental health systems from the criminal justice system introduces people to treatment who otherwise would not have sought an intervention.

- Clients referred to treatment via a diversion program do as well as, or better than, clients who self-refer or are referred from other sources.
- If individuals are not diverted and proceed into the criminal justice system and imprisonment, drug users may become involved in an offending subculture and are also exposed to further drug-related health risks.

Through our education programs we have seen that the message is starting to get through to our young people. We are teaching children to be resilient in the face of peer pressure and the results are starting to show that, more and more, young people are making informed and healthy decisions regarding drug misuse. The latest Australian Secondary Schools Alcohol and Drug Survey (12 to 17-year olds) points to significant falls in the number of students who are experimenting with or are regular users of alcohol, tobacco and illegal drugs since the last survey in 2002.

The survey took in almost 3 000 students across the state. The big areas of success are in regard to those substances that are perfectly legal. Smoking, for instance, has fallen by more than half over the past 10 years. This is an astonishing result, which suggests to me that education and health-based approaches are far more effective tools than making a criminal of every user of a particular substance.

We need to help people make healthy decisions. If we give people the tools to make informed choices, the vast majority of people will make the right choices. Information is always far more effective than the fear of punishment as an approach to helping people deal with drug misuse. The same survey asked students to record their drug use in the last week. Cannabis use in any given week is down to 4.7 per cent from 13.5 per cent in 1996. The use of other drugs, including alcohol, shows a similar drop. The government has a strong and coherent drug policy with a focus on prevention, harm minimisation, diversion and education. What's more: it appears to be working.

The Hon. R.P. WORTLEY secured the adjournment of the debate.

TOBACCO PRODUCTS REGULATION (CLEAN AIR ZONES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 August. Page 557.)

The Hon. J.M.A. LENSINK: I advise the council that Liberal members will be opposing this bill. I declare my vested interest as a non-smoker who finds breathing in other people's smoke incredibly annoying and offensive. Notwithstanding that, we will not be supporting this bill because the measures are pedantically prescriptive. The proposed bans include the Credit Union Christmas Pageant for the duration of the pageant and two hours before it starts, the Royal Adelaide Show, smoking within three metres of bus stops and smoking in an open public space (in the rather ambiguously used language) 'at which children are likely to be present'.

I am advised that local government is already empowered to make by-laws to ban smoking in certain places and has the power to fix a penalty for the breach of a such by-law under the provisions of the Local Government Act. In many cases, local government has the ability to implement these measures in all the locations listed in the bill. The difficulties with such a proposal also relate to monitoring and enforcement.

The opposition has received a copy of a letter to the Hon. Sandra Kanck from the Royal Agricultural & Horticultural Society. The letter states its case that it believes it has been singled out unfairly and indicates it has a smoking code in place which it believes addresses it as best it can. The letter states:

> The Royal Agricultural & Horticultural Society has a policy of no smoking in its exhibition facilities and buildings, grandstands, in its eating facilities, food preparation areas, society vehicles, within 10 metres of building entrances or as part of public performances.

A copy of that policy is attached. The letter continues:

> In paragraph three of your letter [the Hon. Sandra Kanck's letter to the Royal Agricultural & Horticultural Society] you note that your bill is designed 'to ensure that children are protected from exposure to tobacco smoke, especially at events where children are a target audience'. The Royal Adelaide Show is not an event which is targeted at children, rather it is targeted at all audiences. . . As you can see, the audience under the age of 18 years represents just 9 per cent of total attendances. The Royal Adelaide Show appeals to a very broad audience and is in no way targeted specifically at children.
>
> The Society is concerned that the bill would disadvantage the Royal Adelaide Show by singling it out as an event for which the bill would relate. This specific targeting of the Royal Adelaide Show would, we believe, risk placing the Society and the Show at a significant risk of financial hardship as a result of its implementation. To subject the Royal Adelaide Show to special legislation not applying to other events would be unfair and unwarranted.

It begs the question: why have all the fairs and events such as the Glendi Festival not been included? I would take it that their point is that they have been singled out and that it places unreasonable standards on them that are not being applied to similar functions. The letter continues:

> While the consumption of tobacco is a legal product in Australia, we believe it is not appropriate to legislate at which events individuals may consume that legal product. At present, there is no evidence to suggest that the consumption of tobacco products in the open air at public events is a hazard to the health and wellbeing of the public who share that space. . . As you can see from the above, the Society has in place a very stringent set of rules and guidelines about how its no smoking policy will be implemented. There is no evidence of any concerns expressed by the public attending the Royal Adelaide Show about potential exposure to tobacco smoke. While your proposed bill is, no doubt, well intended, it would very likely cause detriment in the way that it unfairly targets the Royal Adelaide Show, which is a very popular public event.

As we know, the Royal Adelaide Show, unfortunately, this year has had some difficulty with attendances due to both the weather and some highly publicised events with certain show rides. The letter continues:

> To our knowledge, there is no suggestion that there is a problem in relation to the consumption of tobacco products, and we would respectfully request that you reconsider your draft bill.

The smoking code which is attached outlines its particular policy. I note that it was signed on 1 July 2004 and is subject to review every four years. Clearly, the society has thought through this particular issue. It outlines where and the circumstances in which smoking is prohibited. It includes areas such as outdoor eating areas—which is something the parliament has not implemented.

It has regulations about the sales and strategy and support to staff. The Royal Adelaide Show supports staff who demonstrate a genuine desire to stop smoking and may pay 50 per cent of the fees for one of the approved quit smoking courses. I wanted to read that into the record to highlight that I believe one of the targets of the honourable member's bill has been addressed and is believed to adequately address the situation. Smoking within three metres of bus stops is incredibly pedantic and, while it may irritate those of us who use public transport to have to breathe in someone else's

smoke, it begs the question of how it is to be policed. It seems that many of these measures may have been plucked out of the air rather than addressed sensibly. As a liberal, I point out that we do not believe in filling up the statute books for the sake of it and regulating everybody to death. For that reason, we will not support the bill.

The Hon. I.K. HUNTER: The government will not support this bill. It seeks to prohibit smoking along the route of the Christmas Pageant, at the Royal Adelaide Show and within three metres of a bus stop, and may be applied by regulation to other events and outdoor public places that are likely to attract a significant proportion of children. Such measures are commendable on the surface, but much consideration of the need, the benefit, the practicalities and costs of implementing and enforcing these bans is required before we should proceed. There is a considerable body of evidence that shows that breathing air polluted by tobacco smoke can lead to serious harm, and there is no doubt that tobacco smoking is the biggest preventable cause of premature death and illnesses. However, currently evidence that exposure to environmental tobacco smoke in outdoor areas poses any great risk is much weaker than for enclosed areas.

The issue with passive smoking in confined places is that the smoke cannot escape and the toxins remain in buildings and furnishings and continue to present a risk. This is not the case in outdoor places. Now that most indoor places, public transport and major sports stadia are smoke-free, the public is more acutely aware of the smell of tobacco smoke, but the risk from passive smoking in outdoor places is considerably less. In more confined locations, which may not be completely open, such as alfresco dining areas, the risk would be greater. Enforcement of outdoor smoking bans in places like bus stops and playgrounds will be difficult and costly to achieve and impractical in some situations.

The government is currently well on its way to achieving totally smoke-free indoor workplaces and public places. From November 2007 all hotels, licensed clubs and the casino will be smoke-free in their enclosed areas. This will almost completely eliminate workers' exposure to passive smoking. Following the total implementation of indoor smoking bans in November 2007, there will be a greater need to consider the extension of smoking bans to outdoor areas as smokers are forced outside to smoke.

A well researched approach to outdoor smoking bans will be considered then and would need to be broader than currently suggested by this bill before this council. Places for consideration would include entrances to buildings and air-conditioning inlets in all buildings to which the public has access, outdoor or alfresco eating areas, crowded outdoor events, local outdoor sporting facilities and events, cultural and arts events, playgrounds and public transport stops. This bill is well intended, but the government will not support it at this time.

The Hon. NICK XENOPHON: I indicate my support for the second reading of this bill. The Hon. Ian Hunter is right: it is a well intentioned bill and it deserves support. Whilst the bill is, as the Hon. Michelle Lensink says, overly proscriptive, there is nothing wrong with that. This bill makes the point that where kids are in significant numbers at events, such as the Royal Show and the Christmas Pageant, and in the relatively confined space of a bus stop or shelter, we ought to look at having those areas smoke-free. I agree with the Hon. Sandra Kanck in terms of her approach that children learn through imitation from adults being role models. She also made the telling point, from an article in the magazine *New Internationalist*, that nearly a quarter of the world's smokers had their first cigarette before 10 years of age, so the removal of the adult role model is a very important action. My challenge to the government and the opposition is to come up with a better proposal.

The Hon. J.M.A. Lensink: Councils can ban smoking.

The Hon. NICK XENOPHON: Yes, and I would encourage councils to do so. This is a simpler approach that would apply to the entire state. This bill has merit, and I commend the Hon. Sandra Kanck for introducing it. Where there are a significant numbers of young children at events, for a number of reasons related to both health and in terms of the role model approach, this bill ought to be supported as another step in the direction of reducing the level of smoking in the community, in particular in reducing the number of young children taking up smoking.

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

DEVELOPMENT (DEVELOPMENT PLANS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 September. Page 631.)

The Hon. NICK XENOPHON: My remarks will be brief. I indicate my support for the second reading of this bill. There are a number of proposals and initiatives in it that are welcome in terms of streamlining the policies, procedures and timeliness with respect to development in this state. In particular, it focuses on the development plan amendment process with the new term 'development plan amendments', DPAs, rather than the existing plan amendment reports, or PARs.

I note that the government's intention is to deal with the issue of both physical and social infrastructure, and it is intended to have a more rigorous process of timeliness in the processing of DPAs. A question I have for the government which it may take on notice is that the bill requires that the ERD Committee of the parliament be provided with a report showing the agreed timetable as set out in the statement of intent and the actual time taken. In due course, will the minister advise whether there are targets with respect to timeliness, given that the ERD Committee will be reporting, and are there any strategic approaches to timeliness with plans? Is it intended in the longer term that there be a tightening up of time frames with respect to development plans? I also note that, with respect to community consultation, whilst there will be a reduction in the time frames, for instance, for process C applications—a procedural path—it will give additional notification rights by direct mail of the proposed DPA to residents more so than is currently in place, so that is welcome.

I want to flag some concerns I have had. I have had a brief discussion with the minister's adviser, George Vanco, who as always has been very helpful in explaining the government's policies and position with respect to this. I want to raise a number of issues as to the definition of 'locality' in the bill and whether there ought to be a different approach so that the definition of 'locality' included a road, street or thoroughfare, especially in the concept of amenity under the act so that there is a broader approach to locality than is envisaged in the

current bill. My understanding is that the amenity of a locality or a building means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable. I query whether there ought to be a broader approach to that to consider a road, street or thoroughfare.

In relation to what needs to be considered in amending section 23(3)(a)(iv), I also raise whether it would be appropriate to consider the economic impact and the amenity of a locality as matters that ought to be considered under development plans so that it would include the protection of amenity of any locality or the desirable characteristics of an area. Existing section 23(3)(a) of the Development Act already refers to economic issues in a general sense by providing that development plans should seek to promote the provisions of the Planning Strategy in the context of socioeconomic issues. I query whether the adverse economic impact of a development decision should be taken into account, including the value of land owned by other residents within the vicinity of the development and whether that ought to be broadened. That relates to the issue of streetscapes and the impact on residents of character suburbs such as Unley.

I note and acknowledge the work I have done with the Friends of the City of Unley Society (FOCUS), who are passionate about preserving the character of streets. They are concerned about villas and other character buildings that in many cases have been painstakingly restored by residents who find that the value of the streetscape and amenity have been affected by new dwellings which seem to be or which are out of character with the rest of the dwellings in the street—the so-called Tuscan duplex villas or neo-fake Georgian buildings put up as duplexes invariably slap bang against a federation or bluestone villa that is 80, 100 or 120 years old. There is a real concern that that affects the amenity of the streetscape.

With those comments, I look forward to the second reading of this bill. I would like the opportunity to talk again with groups such as FOCUS about their concerns. I indicate to the government that by the end of this week I will be in a position to indicate whether I will move any amendments, and I will undertake to give notice and circulate them by the end of this week to the government, the opposition and my crossbench colleagues.

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): I thank all members for their contribution to this important bill. I appreciate the comments of most speakers relating to the need to promote an effective planning and development system and to facilitate good development in the state for the benefit of the community. The government has a range of policies and targets to deliver ecologically sustainable development (ESD). However, it does not support the proposed ESD changes to the objects of the Development Act. The government has recently released the revised metropolitan and outer metropolitan volumes of the Planning Strategy that included detailed descriptions of ESD and associated policies and targets. ESD policies are also included in the regional volume of the Planning Strategy. It is appropriate for all ESD material to be included in the Planning Strategy rather than some aspects in the act and some in the Planning Strategy.

In addition, there is a statutory link between the planning strategy and development plans, so the current arrangements are more effective. The metropolitan and outer metropolitan volumes have recently been revised to keep policies pertinent and up to date. As part of the government's commitment to strategic planning, significant progress is being made on the industrial land strategy and the residential land and housing strategies. This will assist in the government's policy of maintaining the state's competitive cost advantage.

The bill strengthens the requirement for state and local government to undertake strategic and infrastructure planning. It also strengthens the link between infrastructure planning and policies proposed in development plan amendments. The LGA suggested that the minister should consider council infrastructure planning when preparing a DPA. This is addressed by the section 30 provisions, as well as the investigations and consultation required when preparing a DPA. It is recognised that both state and local government play a major role in the provision of infrastructure.

I acknowledge the concern raised by the Hon. Dennis Hood relating to the need to ensure that small rural councils have resources to undertake strategic and development plan policy reviews. There is a range of means by which councils can gain assistance, including:

- joint state and regional groups of council programs along the lines of the successful joint Planning SA and Yorke Peninsula council's strategic planning review;
- joint state and regional LGA policy review along the lines of the successful Eyre Peninsula coastal policy review which, if I recall correctly, included a grant of $40 000 to the regional LGA;
- the better development plan program will provide councils with best practice policies and hence reduce DPA costs, whilst enabling important local policies to be included;
- the bill makes it easier for regional groups of councils to prepare a single DPA to amend a number of development plans to save costs; and
- the schedule of development application fees has recently been revised to improve council income.

So, those are all examples of the ways in which councils can gain assistance. During the second reading contributions, a comment was made that greater encouragement should be given to public involvement in the DPA process. I point out that the bill already enables regulations to be made to expand on the public consultation requirements along the lines suggested by the Hon. Mark Parnell. In addition, the government is proposing an information and awareness program, which includes ways of increasing public involvement in policy issues. The government has doubts over the benefits of making one particular guideline document a statutory requirement.

The public consultation program for the southern metropolitan PAR, involving the Hon. David Wotton; the wineries in the Mount Lofty Watershed PAR, involving the Hon. Don Hopgood; and the Bushfires Management PAR, involving Mr Barry Grear, are examples that would be used in the voluntary DPA guide and reinforced by the regulations. There are also a number of examples where councils have employed good alternative public consultation processes over and above the statutory norm, and these have been used with great success.

While the issue of the interim operation of one PAR was raised by a member of this council, there was no reference to the provisions in the current act, the Development Act 1993. The present act clearly refers to 'in the interests of orderly and proper development of an area'. It does not refer to an old planning circular prepared prior to the operation of this act, as quoted in the second reading contribution. The interim operation was clearly within the requirements of the act, and

one legally justifiable case that the honourable member may disagree with does not warrant a negative amendment to the act. I am happy to justify my actions under the act before parliament, but the future of the state should not be constrained because a small minority has a different view.

On another matter, the Hon. Mark Parnell is incorrect in his assertion that category 2 notification is merely for carports. Carports are usually afforded category 1 status, which means that there is no requirement for public notification. This also applies to industry in industry zones; thus, the government will not be supporting amendments which, amongst other things, are based on incorrect assumptions.

All speakers agreed that it is important to improve the timeliness of amendments to development plans. It is considered that planning consultants, agencies and councils should focus their attention on setting and achieving agreed time lines. Rather than just account to the minister as to why delays have occurred, the government believes that the ERD Committee should be provided with the information to enable it, if it so wishes, to seek an explanation for such delays from the relevant parties. This has been tested in the past 12 months and, as a result, the PAR time lines have been significantly reduced.

The government has already introduced some amendments to recognise the time limits placed on the ERD Committee of parliament. All parties have indicated that they desire more timely and efficient development plan amendment procedures; thus, it is with considerable surprise that the amendments filed by the Hon. Mark Parnell take the state back to the pre-1994 days, where the DPA procedures are to be extended to include ERD Committee hearings and consideration. This will add time to the DPA process, even though the parliament has never disallowed a PAR since the act came into effect in 1994. The government will not be supporting this retrograde step.

All speakers supported the amalgamation of the DAC and major development panel roles. One made mention of a newspaper article which I consider to have some inaccuracies in relation to recent appointments to the Development Assessment Commission. Importantly, I believe that all appointees clearly meet the criteria set out in the act. I am advised that, to date, the members have performed their duties diligently and professionally, and they have my full confidence. I believe that a combination of new expertise on the DAC, and the future appointment of the seventh DAC member arising out of the Development (Panels) Amendment Bill, will set a sound foundation for the DAC as a group of specialist members.

Parliament recently amended the Council Development Assessment Panel membership provisions in the Development Act to provide greater certainty in development assessment; thus, it is surprising that an amendment has been filed to reduce the level of development assessment procedure certainty by enabling either house of parliament to require a major development declaration. Imagine the uncertainty created by the community and applicants not knowing whether parliament would make such a requirement, even though the minister had made a decision.

This means that a declaration could be made, even after a council had made a development decision, or even after an appeal had been decided. Imagine trying to raise finance on a proposal with this level of uncertainty. Most speakers on this bill spoke of the need to provide certainty, promote good development and accelerate the sustainable development of this state, and that is clearly the government's objective in reforming the state's development system.

The government will not be supporting the filed amendment to undo the benefits of section 48E, which was approved by parliament in 2001. The amendment would primarily provide lawyers with an avenue to employ delaying tactics by seeking a judicial review before the Supreme Court on each and every major development project. In South Australia there are generally about four major developments declared a year, out of some 50 000 applications. It is important that we maintain our state's competitive advantage and afford applicants of major development proposals protection from appeals which only ever make the lawyers wealthier and are, in many instances, intended to clearly frustrate the development of the state. Amending section 48E will remove that certainty and simply say to proponents of major projects, 'South Australia is closed for business. Even if you get approval, the lawyers will still have the opportunity to have a piece of you.'

This government was recently re-elected because it gets results—that is the mandate—and that is what the community wants, and that is what the government will continue to do. We will not support providing lawyers with an avenue for delaying tactics in the Supreme Court. I think I have covered most of the points that were raised but, obviously, when we come to the committee stage (either tomorrow or next week) we can discuss those points in greater detail. Again, I thank all members for their contribution to the bill.

Bill read a second time.

CHILD SEX OFFENDERS REGISTRATION BILL

Adjourned debate on second reading.

(Continued from 30 August. Page 582.)

The Hon. R.D. LAWSON: I rise to indicate that Liberal members will be supporting the second reading of this bill. This is a long overdue measure. I ought to justify that statement and go over some of the background history. On 6 December 2002, all state police ministers agreed to develop a nationally consistent approach to a sex offender register. In March 2003, the Rann government's commissioned Layton report was tabled. The Layton report recommended that we become part of a national register scheme, and the Premier made a ministerial statement in parliament referring to that recommendation.

In June 2003, the Attorney-General told parliament that we are 'acting' and will be contributing to a national register. In July of that year, police minister Foley said that we would have a national register. Later, at the end of the same month, the then community services minister, the Hon. Steph Key, was widely reported as saying that South Australia wanted the sex offenders register to include suspects—not only those convicted of sex offences but also suspects. That received great press, reinforcing the impression the government seeks to make that it is tough—extra tough—on law and order.

In April 2003, *The Australian* newspaper reported that police ministers had agreed to develop the national sex offenders register. The budget for 2005-06 included, as one of the targets for that year, the establishment of a register. In June last year the Attorney-General told the estimates committee in this parliament that the South Australian register would not be a public register and that the government was still working on it.

In July last year Treasurer Foley issued a news release saying that cabinet had approved the drafting of a bill. In December last year the Treasurer again was reported, this time in the *Sunday Mail*, as saying that the draft bill would be put out for consultation in the new year. In January this year a *Sunday Mail* item reported that South Australia was the only state not to have a register. The federal minister, Senator Chris Ellison, and Professor Freda Briggs attacked the Rann government for their dilatoriness on this subject.

The *Sunday Mail* article of 8 January this year reported that other states had registers, including New South Wales from 2000, and other states had already developed their legislation. The then acting police minister, the Hon. Paul Holloway, refused to explain to that newspaper why South Australia had not signed up for the national register and claimed that the matter would be attended to as a matter of priority.

It was interesting that, following that article, only a few days later, on radio FIVEaa, the highly regarded child protection expert, Professor Freda Briggs, appeared. Freda Briggs states:

> I think it shows that we [in this state] have given it a low priority. I mean, you may have heard the other morning Kevin Foley was saying, 'We've done this and we've done that', and, 'We've spent more money than any other government', and he probably has but, unless you do things that really need doing, you're wasting money. Look, his excuse that we need to get it right, therefore it is going to take us longer than any other state is ridiculous. Registration has been around for years. In the United States there are 491 000 sex offenders on their register and they've got names photos, addresses, etc, etc. The United Kingdom adopted a system in 1997.

So this government, despite all its hot air and rhetoric, has little to congratulate itself about in relation to the development of this register. In another place, the Attorney-General, in introducing the bill, put forward the rather lame excuse that he does not like seeing South Australia be first: why not be last, and develop your legislation so that it is better than every other jurisdiction? I do not believe that the delay has produced anything more than a model based largely on that which has been adopted in other states.

This government talks very tough on law and order and on this issue generally. You hear it spit out venom against paedophiles, for whom, of course, there is absolutely no political or community support. You see the Premier breast-beating about this, yet this legislation, whilst it is an improvement and we will support it, does not address a number of the important issues that should have been addressed in legislation of this kind.

The Layton report, which was commissioned by the government, contained a number of recommendations in relation to the establishment of a register of this kind. The register which has been adopted is a conviction-based register. Unless the person is convicted their name does not go onto the register at all. Layton addresses this important issue, because there will be cases involving people who might have been a worker in a youth group, a teacher, or a worker at a school, whose behaviour was deemed unsatisfactory, but against whom there was never any conviction, who, for good reason, has either been dismissed, removed, asked to leave, but against whom no charges are laid, no conviction recorded.

Layton states that these issues ought to be addressed. How do you deal with that case when somebody applies to join a school staff and the inquiry is made: is this a suitable person? And, if there is no register, no central information about that, the information about people is not addressed. The Hon. Steph Key sought to get some plaudits for the government by saying, 'Our register was going to cover that', but, of course, the legislation now introduced does not cover it. Layton deals with this issue as follows:

> The most controversial aspect of screening and monitoring provisions relates to screening for conduct other than convictions for child-related criminal offences. In New South Wales, in addition to the register kept by police, the outcomes of a disciplinary process are recorded on a database with either the Commissioner for Children, the Ombudsman, or an 'approved screening agency' involved.

And there is some discussion. I think it is fair to say that Layton, in the end, did not come down in favour of the adoption of the New South Wales model. But, here we get this government introducing legislation and not a word about why New South Wales has not been followed, but merely breast-beating about the fact that we have developed legislation. We have finally, after all these years, produced this legislation, which the Attorney rather lamely claims is the best in this country. Better late than never, however, and it is time that we had such a register.

In the minister's second reading contribution, there was an outline of the essential features of this bill. There is a description of how registered offenders, who are defined, must register with and provide personal details to the Commissioner for Police for a specified period; and these are quite long periods; some for up to 15 years, some for life. Registration will be required either automatically upon the conviction, which is termed 'mandatory registration', or, in cases where a court makes an order that somebody's name be entered into the register. The register will be kept by police. It will not be an open register, it will not be able to be consulted by people in the community. It will not be able to be consulted by the local school, the local scout group, or church youth group. It will be information—really, intelligence—that the police have available to them.

It seems that it ought to be acknowledged at the very outset that this register is really a tool for police to keep tags on people who have been found guilty of sex crimes and, in particular, sex crimes involving children, although not exclusively. A person who is registered must notify the Commissioner about changes in required details, namely, matters such as address, travel plans, work plans, registration number of the motor vehicle, any changes in tattoos, and the like.

It is a fairly onerous imposition on any person who is on this register because there is an obligation to report, to maintain the register, to keep it up-to-date, to give advance notice of change in address, holidays and the like. As I say, it is very useful information for the police. How effective it will be ultimately in protecting the community remains to be seen. Importantly, the scheme—which will now become a national scheme because we will be able to participate in a national scheme fully—will require those registered offenders coming from other jurisdictions into our state to report their details to the police.

Also, South Australian offenders will be required to report to interstate authorities similar information, and this is important because it will alert police to the presence of offenders. We are supporting it because we believe that it should provide a measure of protection. It should also prevent people from being convicted in one state—having a bad record of these type of offences—and then seeking to go to some other state, changing their identity and then, as has happened in a number of well-publicised cases, engaging in much the same conduct, and the police in those instances say

they had absolutely no knowledge of the past of these persons and their possible propensity to commit these offences.

As a parliament, we ought acknowledge that this is a very rough tool because, whilst it is true that some sex offenders do reoffend, it is not true of all sex offenders. It is also true of many other sorts of offenders who tend to reoffend. The rate of recidivism in many criminal classes is very high. For example, one can almost be sure that if those involved in the drug business are convicted of certain offences many of them will be back in the courts at a later date convicted of the same sort of offence. However, we are not chasing that type of offender. We are not requiring them to be registered.

Very importantly—and I believe one of the most significant elements of this bill—are the provisions which prohibit a person who is on the register from engaging in certain child-related employment. This will mean that a person on the register is unable to engage in what is defined as child-related work, namely, working in preschools or kindergartens, child-care centres, educational institutions for children, child protection services, juvenile detention centres, refuges and other residential facilities used by children, foster care for children, hospital wards or out-patient services in which children are ordinarily patients.

A person on the register is unable to participate in overnight camps (regardless of the type of accommodation or how many children are involved), clubs, associations or movements (including of a cultural, recreational or sporting nature with significant child membership or involvement), programs or events for children provided by any institution, agency or organisation, religious or spiritual organisations, counselling and other support services for children, commercial baby sitting or child-minding services, commercial tuition services for children and services for the transport of children. It is a very comprehensive catalogue of activities in which a person on the register is not entitled to participate. That is certainly something that we support.

When one looks at it as a piece of legislation, it appears to be very tight. However, we know from experience that people who prey upon children are extraordinarily devious and persistent in the way in which they manage to find themselves in the presence of children and provide opportunities for them to prey upon children. So, whilst the paperwork and the legislation look good, it is very important in this area, as in other areas, that the police and the authorities have appropriate resources to ensure that these offenders are detected.

We kid ourselves in this place when we say, 'We have passed 30 pages of legislation; we have established registers and tough provisions; we have huge penalties; we will have people on this register for the rest of their life,' and so on. Unless legislation of this kind is backed up by people on the ground who are capable and competent, and who have the necessary resources to ensure protection, we are simply kidding ourselves. However, I indicate that we support the principle of the bill, as I indicated at the outset. We look forward to the committee stage. A number of issues were raised by the shadow attorney-general (Isobel Redmond) in another place, which I will be pursuing with the minister in committee.

The Hon. A.M. BRESSINGTON: I rise to support this bill in principle. I concur with all the points that the Hon. Rob Lawson made. This is a pretty average piece of legislation for what it is trying to achieve, that is, the protection of our children. As was mentioned, there are much tougher and more detailed pieces of legislation in Queensland, New South Wales and the United States. I will not rave on about this for too long but, in the short time I have been in this place, and from what I have heard of the legislation and the efforts that this government is prepared to make to ensure that certain pieces of legislation are airtight, to me, it is quite disheartening. However, I support this measure in principle and, as the Hon. Mr Lawson said, I will wait for the committee stage and for the debate to ensue.

The Hon. I.K. HUNTER secured the adjournment of the debate.

GEOGRAPHICAL NAMES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 31 August. Page 610.)

The Hon. CAROLINE SCHAEFER: The Liberal Party will be supporting this bill. As has been suggested by the government, it provides for a simplification in the process of changing geographical names, and has been adapted from the Geographical Names Act 1991. The major proposal is to disband the Geographical Names Advisory Committee because the government believes that the process is unnecessarily bureaucratic. The second part of the bill provides for a simplification in the process for making minor changes to suburb and locality boundaries. The opposition does not disagree with those sentiments.

However, I refer to the minister's second reading explanation in another place which the Hon. Paul Holloway tabled in this place, which says:

> One of the outcomes of this amendment is to disband the Geographical Names Advisory Committee.
>
> The committee meets approximately every two months to review and comment on nomenclature proposals lodged with the Surveyor-General. In practice, the Surveyor-General's staff researches all proposals, involving significant consultation with emergency services providers, Australia Post, councils and the community. The outcome of this consultation forms the basis of the Surveyor-General's recommendations to the minister in relation to a proposal. The Surveyor-General cannot forward a recommendation without first consulting the committee.

That is, the committee which it proposes to disband with this bill. The minister continues:

> The government has a commitment to disband unnecessary boards and committees that get in the way of efficient public administration and considers the Geographical Names Advisory Committee to fall within this category.

The government certainly must consider this board to fall within that category, because the committee does not exist. There has been no gazettal of this committee since 2001.

The term of service for that committee expired in 2003, and there is no gazetted committee. The shadow minister in another place made some comment on this and asked a question of minister Wright as to who served on the committee. He named those people, but they are not named in any gazettal process. I therefore request that the minister answer for us in this place: what process has been used in the interim to honour the act as it currently stands? As it currently stands (as is quoted by the minister), it is necessary for the Surveyor-General to consult with this committee before any name changes take place. The minister named the committee, but, as I say, the committee has never been gazetted.

The last committee that served finished its term in 2003. We are simply asking what process has taken place in the

meantime; who is on this phantom committee; and has the minister and/or the Surveyor-General been in breach of the act between now and 2003? As I say, they have stated that they do not want any unnecessary committees, but it seems to me that we are dealing with a piece of retrospective legislation; and, indeed, I am concerned, as I have said, that the minister and/or the Surveyor-General have been in breach of this act from 2003 until the present. The people whom minister Wright named as serving on this committee in another place on Thursday 31 August are: Mrs Doreen Irwin, Mr Andrew Wilson, Mr Ian McQueen, Ms Danielle Taylor, Dr Susan Marsden and the Surveyor-General.

The people who are gazetted are: Mr Tony Brown, Ms Doreen Irwin, Mr Geoffrey Manning, Mr Ian McQueen and Mr Andrew Wilson. Some of those same people are on it, but obviously some have been dropped from the committee. We have made some inquiries. They were unaware that they had been dropped from the committee. Some others have been appointed and not been gazetted. In plain English, this appears to me to be a monumental stuff-up from within the minister's department, and while we support the intent of this particular piece of legislation, we want some answers from the minister as to what process has taken place between 2003 and now; who, if anyone, is in breach; and, if they are not in breach, why are they not in breach?

The Hon. R.D. LAWSON: I must say that with some hesitation I support this measure proposed by the government. I must have been the last minister who actually made appointments to the Geographical Names Board. I think the advisory board fulfils an important public function which ought to be encouraged rather than discouraged, that is, consultation. The government says that in this particular case the Surveyor-General's department conducts community consultation and does it very thoroughly. I am an admirer of the Surveyor-General and his department; his officers do great work. However, when one gets to the field of community consultation it is a very delicate process. I believe that members of the executive government as elected officials ought to be closely involved in the consultation process. When I had this particular responsibility, I made it my job to understand what local people were saying about the change of a suburb or locality name, or whether or not a new indigenous name ought to be adopted for a particular geographical feature.

It is important that government has in legislation a mechanism which requires consultation. Too often we tend to think that we send out an advertisement or a survey and we have the answer—but we have not. I believe that the Geographical Names Board over the years has performed worthy service. I think it is a pity that this government has allowed the board, apparently, to fall into disuse by not actually appointing people to it and not encouraging it to function according to its intended purpose; but that has happened. The government says that it wants to do away with the board. I think that is regrettable, but the government has to provide the resources. I think it made an error in this particular case, but that is its decision. It has a right to make it and I will be supporting it. I will be interested to hear the minister's answers to the Hon. Caroline Schaefer's questions about what did happen to this board and why appointments to it were not gazetted.

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

RESIDENTIAL PARKS BILL

Second reading.

The Hon. G.E. GAGO (Minister for Environment and Conservation): I move:

That this bill be now read a second time.

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

Leave granted.

The Residential Parks Bill 2006 is designed to protect those people who live in caravan parks as their principal place of residence. Whether they live in a dwelling rented from the park operator, such as an on-site van or cabin, or whether they install their own home, such as a caravan or transportable home in the park and simply rent the site, this Bill covers them. The ABS 2001 *Report on Selected Social and Housing Characteristics for Statistical Local Areas – South Australia* showed that as at 7 August 2001, 4 433 occupied private dwellings in South Australia comprised a caravan, a cabin or a houseboat. Some 7 602 people were living in these dwellings. The Government believes it is time that these living arrangements were regulated for the benefit of all concerned. With regulation, both residents and operators will know their rights and duties and will be able more easily to access the protection of the law.

The Bill sets out the basic rights and duties proposed by the Government for both parties. It is based on the types of rights and duties that arise under the Residential Tenancies Act 1995. That is, these living arrangements will be regulated very much as if the park owner were a landlord and the park resident a tenant.

A key feature of this Bill is a requirement that a residential park agreement must be in writing. A new resident is to be given a copy of the agreement at the time of signing it. The agreement must disclose who the park owner is and where he or she can be found for service of documents. It must also clearly identify the site that the resident is entitled to occupy. The resident must also be given other information they need. For example, they must be given the contact details of a person who will carry out emergency repairs on the property or the common areas. They must be given the instructions for operating shared appliances or common facilities, for example, the communal washing machines. They must also be given a copy of the park rules.

Under the Bill, the rules cannot cover every matter that a park owner might like to regulate. Instead, the rules can only cover specific topics listed in the Bill, such as use of the common areas, parking of vehicles, keeping of pets, refuse disposal and the like. Thus, for example, the park operator could not make a rule imposing a curfew on residents. If the residents believe that a rule is unreasonable, they can band together to apply to the Tribunal to have the rule so declared, and in that case it will be void. If the park operator wishes to change the rules, he or she must first consult the residents by giving them 14 days written notice of the proposed amendment. All of this is designed to ensure that the rules of the park are fair and reasonable requirements rather than arbitrary restrictions on the behaviour of residents.

As with residential tenancies, the Bill limits the amount of rent that can be required in advance at the start of the tenancy to two weeks, and limits bond to four weeks' rent. No other money can be demanded from the tenant as a condition of entering the agreement; neither can the agreement include monetary penalties for late rent or other breaches. As with residential tenancies, the bond will now have to be paid into the Residential Tenancies Fund. This rule will apply on the commencement of the Act to all existing bonds, so money that park operators are now holding as bonds will have to be paid into the Fund. At the end of an agreement, either party can apply to the Commissioner claiming the bond.

Similarly to residential tenancies, there will be limits on how often the rent can be increased. The park owner must notify the resident of the proposed increase unless that is provided for in the agreement. On receiving a notice, the resident may apply to the Tribunal for a declaration that the proposed amount is excessive. If the Tribunal so finds, it can fix the rent for a specified period.

The Bill makes clear that residents in these parks have a right of quiet enjoyment. Not only must the park owner refrain from interfering with this right, but he or she also has a duty to take reasonable steps to prevent any resident interfering with the peace or privacy of another. Likewise, where the dwelling belongs to the park owner rather than the resident, the owner must see that the locks

are maintained in a reasonable state so that the dwelling can be secured. Neither the owner nor the resident may change the locks without the other's consent.

As with residential tenancies, the owner's rights of entry to the rented sites are limited. Notice will usually be required, except in case of emergency or where the dwelling seems to have been abandoned. When visiting a site, the park operator must not intrude on the occupants or visit parts of the site or dwelling unnecessarily. Owners will, however, be able to inspect sites to ensure that statutory separation distances are maintained, to remove fire hazards, to mow lawns and so on.

The owner must see that the residents have 24-hour vehicular access to the rented property and 24 hour access to the common bathrooms. If there is a boom gate or other security device, the residents must be told how to operate it and given any key or code they need and the owner must keep the gate in proper working order.

The owner must keep the park and the rented dwellings in a satisfactory state including arranging for regular rubbish collections, maintaining the grounds and making reasonable repairs. The requirement is only that the operator act reasonably, however, not that every defect must be instantly repaired. If there is a defect that poses a risk or creates undue inconvenience to residents and a resident notifies the park owner, but the owner fails to take action, the resident can retain a licensed tradesperson to make the repairs and, armed with a report from that person, can recover the reasonable cost from the owner later.

Residents have a corresponding obligation not to cause any damage to the park property and to report defects when they notice them. It is an offence for a resident intentionally to damage the property of the park owner. As with residential tenancies, alterations to the rented property or structural alterations to sites require the owner's permission. Likewise, residents must not cause or permit any nuisance and must not interfere with the peace or privacy of other residents. In particular, residents must not permit their sites to be used for any illegal purpose. Residents are also vicariously responsible for the actions of their visitors. This means that if a visitor does something that, if done by the resident, would breach the agreement, then the resident is in breach of his or her agreement with the park owner.

The Bill also regulates other matters, for example, how the resident can arrange to assign the agreement or to sub-let the site or dwelling. It makes clear that a resident who wishes to sell his or her dwelling (such as a caravan or transportable home) that is installed on the site is entitled to do so without interference from the park owner.

The Bill also stipulates in detail how the agreement can be terminated. This will vary depending on whether the agreement is for use of a site only or for rental of a dwelling, whether the agreement is periodic or for a fixed term, and whether either party is in breach. In general, as with residential tenancies, termination for breach can only be achieved by serving the required notice giving the other party the chance to remedy the breach. Termination other than for breach generally requires a period of notice which, depending on the situation, can range from 28 days up to 90 days. There is provision for termination without notice however where the agreement has been frustrated because the dwelling is destroyed or rendered uninhabitable or where the property can no longer be lawfully used as a dwelling. The Bill also provides that either party to an agreement may at any time apply to the Tribunal to end the agreement on the ground of hardship.

There is also an anti-victimisation provision. Even where there has been a breach of the agreement, if the owner's real motivation for seeking to terminate the agreement is that the resident has complained to the authorities or taken action to enforce legal rights, the Tribunal may refuse the application and reinstate the agreement.

There is one provision for termination that is unique to this Bill. That is the case of a serious act of violence by a resident. If a resident has committed a serious act of violence in the park or if the safety of anyone in the park is in danger from the resident, the park owner may serve a notice requiring the resident to leave the park immediately. In that case, the resident must leave and cannot return within two business days. The owner may, in the meantime, apply to the Tribunal to terminate the agreement. In that case, the resident cannot return at all unless the Tribunal so orders. To cover the possibility that an owner might misuse this power, there is provision for the Tribunal to order compensation if the owner had no reasonable grounds for his or her action. This provision acknowledges that residents of these parks are in a somewhat different position from residents of rented houses or flats, when it comes to the risk of harm from other residents.

The Bill then contains provisions about how the owner is to deal with abandoned property of the resident, a matter that the parties seldom think to provide for at present but which can give rise to conflict. The park owner can neither destroy nor appropriate valuable property left on site by the resident. Instead they must take action to notify the resident and, if the property is not claimed, to obtain a fair price for it, which must be paid to the Fund. There is special provision, however, for personal documents, which are to be kept for the period of notice and then destroyed if unclaimed.

The Bill goes on to confer jurisdiction on the Tribunal and makes the usual provisions about the powers of the Tribunal and related matters such as conciliation, representation, rules and like matters.

An amendment was made to the Bill in another place to improve the protection of residents who have fixed-term site agreements, in the case where the park is sold. These are residents who have installed their own dwellings on sites in the park, in reliance on an agreement that they will be able to live there, perhaps for many years. At present, these residents are unprotected unless the lease is registered over the title. The Bill proposes that the new owner will be subject to the agreement unless, within 14 days of acquiring the park, he or she serves a notice of termination. If that happens, the resident will still be able to remain in the park for the balance of the term, up to a maximum of 12 months. This gives the resident time to find another site for their home. If, however, the resident wants to end the agreement sooner, he or she can do so by giving 28 days notice to the new owner.

I should also make clear what the Bill does not do. The Bill does not apply to people who stay in caravan parks as holiday-makers only. In general, the Bill will not catch those who visit a park for no more than two months and then move on. It applies only if the park is a person's principal place of residence. If the park appears as the person's address on the electoral roll, then that will generally settle the question, but of course residence can also be proved in other ways.

Further, the Bill does not regulate so-called 'lifestyle villages', that is, villages that operate similarly to retirement villages except that residents do not pay a premium or accommodation bond. The Government considers that arrangements in those villages are more like ordinary residential tenancy arrangements than they are like caravan parks. It is instead proposed to amend the Residential Tenancies Act to make clear that it applies to these villages.

This Bill is the result of a consultative process. Initially, a discussion paper was published canvassing the possibility of legislation about the rights of caravan-park residents. An exposure draft Bill was then published earlier this year. Throughout the process, the Government has been mindful of the need to strike a reasonable balance between the interests of residents and those of park owners. The park is the lawful property of the park owner but it is at the same time the permanent home of the resident. The landlord/tenant model was therefore judged to be a fair and sensible basis for regulating their respective rights. Both owners and residents have been heard in the consultation process and the Government is satisfied that this measure will have the benefit of extending proper legal rights and duties to both long-term park residents and park owners.

I commend the Bill to the House.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

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

3—Interpretation

Subclause (1) contains definitions of terms used in the Bill. The following are the more significant definitions:

· ***residential park***—an area of land used or intended to be used in either or both of the following ways:

(a) as a complex of sites of dwellings in respect of which rights of occupancy are conferred under various residential park tenancy agreements, together with common area bathroom, toilet and laundry facilities and other common areas;

(b) as a complex of sites in respect of which rights of occupancy are conferred under various residential park site agreements, together with common areas (which may,

but need not, include bathroom, toilet and laundry facilities);

· ***residential park tenancy agreement***—

(a) an agreement under which a park owner grants another person, for valuable consideration, a right (which may, but need not, be an exclusive right) to occupy a site in the residential park, and a dwelling made available on the site by the park owner, for residential purposes; or

(b) an agreement (a ***sub-tenancy agreement***) under which a resident grants another person, for valuable consideration, a right (which may, but need not, be an exclusive right) to occupy the site in respect of which the resident has a right of occupancy, and the dwelling on the site (whether a dwelling made available by the park owner or installed or located on the site by the resident), for residential purposes;

· ***residential park site agreement***—an agreement under which a park owner grants another person, for valuable consideration, a right (which may, but need not, be an exclusive right) to occupy a site in the residential park, and to install or locate a dwelling on the site, for residential purposes;

· ***residential park agreement***—

(a) a residential park tenancy agreement; or

(b) a residential park site agreement;

· ***park owner*** of a residential park—the owner or operator of the residential park, including a successor in title to the park (or rented property) whose title is subject to a resident's interest and a prospective park owner and a former park owner;

Note—

Part 8 relates to sub-tenancy agreements and contains a provision that extends the meaning of the term ***park owner*** in relation to sub-tenancy agreements.

· ***resident*** of a residential park—a person who is granted a right of occupancy under a residential park tenancy agreement or a residential park site agreement in respect of the residential park, or a person to whom the right passes by assignment or operation of law, including a prospective resident or a former resident;

· ***Tribunal***—the Residential Tenancies Tribunal continued in existence under the *Residential Tenancies Act 1995*.

Subclauses (2) to (4) are definitional clauses intended to clarify meaning.

Under subclause (2), if the Act provides for something to be done within a specified period from a particular day, the period is not taken to include the particular day.

Under subclause (3), if the Act provides that action may be taken after the expiration of a specified period of days, the period means a period of clear days.

Subclause (4) clarifies that a residential park agreement includes an agreement granting a corporation a right in respect of a dwelling that is occupied, or intended to be occupied as a place of residence by a natural person.

4—Presumption of periodicity in case of short fixed terms

This clause provides for a presumption of periodic tenancy (ie. renewable on expiry of each period) for residential park agreements entered into for a short fixed term (90 days or less) unless the park owner establishes that—

(a) the resident genuinely wanted an agreement ending at the end of the short fixed term and the term was fixed at the resident's request; or

(b) the park owner gave the resident a warning notice in a form approved by the Commissioner and the resident signed a statement in a form approved by the Commissioner to the effect that the resident did not expect to continue in occupation beyond that term.

5—Application of Act

Subclause (1) provides that the Act applies only to agreements conferring on a person a right to occupy a dwelling in a residential park if the dwelling is or is to be the person's principal place of residence. Subclause (2) provides that evidence taken from the electoral roll that a persons' principal place of residence is the residential park is proof of that fact in the absence of proof to the contrary.

Subclause (3) provides that the Act does not apply to genuine holiday occupancy agreements. Subclause (4) states what does not constitute a holiday occupancy agreement, namely an agreement for 60 days or longer or 2 or more agreements of consecutive terms adding up to 60 days or longer, while subclause (5) provides that evidence that a person has occupied a dwelling in a residential park for 60 days or longer is proof that it is not a holiday occupancy agreement in the absence of proof to the contrary. Under subclause (6), a term in an agreement stating that a right to occupy a dwelling in the park is conferred by the agreement for a holiday is not sufficient evidence of a holiday occupancy agreement.

Subclause (7) sets out the agreements that the Act does not apply to, namely, those giving a right of occupancy in—

· a hotel or motel;

· an educational institution, college, hospital or nursing home;

· club premises;

· a home for aged, disabled persons administered by an eligible organisation under the *Aged or Disabled Persons Care Act 1954* of the Commonwealth;

· a retirement village within the meaning of the *Retirement Villages Act 1987*;

· a supported residential facility within the meaning of the *Supported Residential Facilities Act 1992*;

· premises prescribed by regulation, or premises of a class prescribed by regulation.

Also not covered by the Act are agreements under which a person boards or lodges with another, an agreement for the sale of land or a dwelling, or both, that confers a right to occupy the land or dwelling, or both, on a party to the agreement, a mortgage or an agreement prescribed by the regulations.

Part 2—Park rules and residents committees

6—Park rules

Subclauses (1) and (2) set out the power of a park owner to make rules about the use, enjoyment, control and management of the park in relation to the following areas:

· the use of common areas and the operation of common area facilities;

· the making and abatement of noise;

· the carrying on of sporting and other recreational activities;

· the speed limits for motor vehicles;

· the parking of motor vehicles;

· the disposal of refuse;

· the keeping of pets;

· maintenance standards for dwellings installed or located in the residential park by residents, as they affect the general amenity of the park;

· the landscaping and maintenance of sites for dwellings;

· the terms of any sub-tenancy managing agent agreements between the park owner and residents;

· limiting who may become residents to persons who are over the age of 50 years;

· other things prescribed by regulation.

Subclause (3) provides that if park rules relate to the terms of a sub-tenancy managing agent agreement, they must include rules approved by the Commissioner as model rules.

Park rules will be void to the extent that they are inconsistent with this Act or any other Act or law, or an approved model rule.

The *Subordinate Legislation Act 1978* does not apply to park rules. This means that they are not subject to the requirement of that Act for rules to be laid before both Houses of Parliament.

7—Residents committees

This clause sets out the rights of residents in a residential park to form a residents committee. The committee must consist of residents from no fewer than 5 different occupied sites. Subclause (3) sets out the rights of residents to participate in any organisation of residents of that park (including the residents committee) or of residents of residential parks generally. Subclause (4) makes it unlawful for a park owner to interfere with residents' rights under the clause, with a maximum penalty of $1 250 for contravening that provision.

8—Amendment of park rules

This clause deals with amendments (variations, additions or revocation) of park rules. Amendments are permitted if in writing and after consultation with any residents committee.

Amendments come into force 14 days after each resident has been given notice of the amendments.

9—Application to Tribunal if park rules are considered unreasonable

This clause sets out residents' rights in relation to unreasonable park rules, namely residents from a majority of the occupied sites can make a joint application to the Tribunal which in turn may declare a rule to be reasonable or unreasonable or change the rule in order to make it reasonable. A declaration of unreasonableness renders a park rule void.

Part 3—Formation of residential park agreements

Division 1—Entering into residential park agreements

10—Residential park agreement to be in writing

This clause provides that a residential park agreement must be in writing. A residential park agreement must contain terms prescribed by the Act and any terms prescribed by the regulations as standard terms. Information required to be included by a standard term must be properly included for the term to form part of the site agreement. Subclause (4) sets out the formal requirements of a site agreement, namely it must—

- be written in a clear and precise way;
- precisely identify the site;
- state—

(i) the park owner's full name and address for service of documents; and

(ii) if the park owner is a company—the address of the registered office of the company; and

(iii) the resident's full name and place of occupation;

- be signed by the parties.

If a site agreement does not comply with these requirements, the park owner is guilty of an offence attracting a maximum penalty of $750 or an expiation fee of $105.

11—Copies of written agreements

This clause relates to the provision of copies of written residential park agreements or a document recording its terms. The park owner must ensure that a resident receives a copy of such an agreement or document when the resident signs it and if unsigned by the park owner, ensure that within 14 days after the resident gives it back to the park owner for signing, a fully executed copy is delivered to the resident. The maximum penalty for failing to do so is $750 or an expiation fee of $105.

12—Agreements incorporate park rules

This clause provides that the park rules form terms of every residential park agreement.

13—Cost of preparing written agreement

This clause requires the cost of preparing a written residential park agreement to be borne by the park owner.

14—Information to be provided by park owners to residents

Under subclause (1), a park owner must provide a resident (either before or at the time of entering into a residential park agreement) with the following:

- a copy of any park rules in force for the residential park; and
- a copy of an information notice in the form approved by the Commissioner; and
- a written notice stating—

(i) the park owner's full name and address for service of documents; and

(ii) if the park owner is a company—the address of the registered office of the company; and

(iii) contact details for a person who is to carry out emergency repairs to the rented property or common area facilities of the park.

Subclause (2) sets out a park owner's obligation to provide residents with instructions as to the use of appliances and devices in the park.

Subclause (3) sets out details that must be provided to residents by new park owners, namely:

- the full name and address for service of documents of the new park owner;
- if the new park owner is a company—the address of the registered office of the company;
- contact details for persons who are to carry out emergency repairs to the rented property or common area facilities of the park.

The park owner must also notify residents of a change of name or contact details that the owner is required to provide under the clause, within 14 days of the change.

Failure to provide a resident with any of the matters required is an offence attracting a maximum penalty of $750 or an expiation fee of $105.

15—False information from resident

This clause makes it an offence (attracting a maximum penalty of $750 or an expiation fee of $105) for a resident to give a park owner false information about the resident's identity or place of occupation.

16—Non-compliance not to affect validity or enforceability

A residential park agreement is not rendered void or unenforceable by non-compliance with a requirement of the Part.

Division 2—Discrimination against residents with children

17—Discrimination against residents with children

This clause makes it an offence (attracting a maximum penalty of $1 250) to refuse to enter into, to instruct a person to refuse to enter into, or to state or advertise an intention not to enter into, a residential park agreement on the grounds that it is intended that a child should live on the rented property. The exceptions are where:

- the park owner or park manager resides in or adjacent to the dwelling in respect of which the agreement relates; or
- the park rules state that park occupancy is restricted to residents aged 50 years or over; or
- circumstances prescribed by regulation apply.

Part 4—Mutual rights and obligations of park owners and residents

Division 1—Rents and other charges

18—Permissible consideration for residential park agreement

This clause makes it an offence (attracting a maximum penalty of $750) for a person to ask for or receive anything other than rent or a bond from a resident in respect of a residential park agreement. The exception is that a park owner may ask for statutory or other charges relating to the rented property (see Division 10).

19—Rent in advance

This clause makes it an offence (attracting a maximum penalty of $750 or an expiation fee of $105) for a person who:

- demands or requires more than 2 weeks' rent under a residential park agreement before the end of the first 2 weeks of the occupancy period;
- requires a further payment of rent before the end of the last period for which rent has been paid;
- asks for a post-dated cheque or other post-dated negotiable instrument for rental payment.

20—Method of payment of rent

Under this clause, a park owner must not require rent to be personally collected from the rented property unless an alternative arrangement for collection has been offered but declined by the resident. A contravention of this provision is an offence attracting a maximum penalty of $750 or an expiation fee of $105.

21—Variation of rent

This clause permits a park owner to increase rent by giving written notice to the resident specifying the date from which the increase takes effect. Such an increase—

- is possible subject to the terms of the residential park agreement; or
- in the case of a fixed term agreement—is prohibited unless specifically permitted under the agreement; or
- cannot occur before 12 months after the date of the agreement or last increase and unless at least 60 days' notice is given; or
- if the rent is fixed under a housing improvement notice and the notice is revoked—is possible if notice is given within 60 days after the revocation and the new rent not charged until at least 14 days after the notice is given.

Under subclauses (4) and (5), rent may be reduced by mutual agreement between the park owner and the resident or as a temporary measure in order to revert to the level that would have otherwise applied at the end of a specified period.

Subclause (6) provides that a variation of rent under the clause results in the variation of the terms of the agreement.
Subclause (7) provides that the clause does not affect the operation of a provision of an agreement with built-in rent variation provisions.
Under subclause (8), the clause applies to successive agreements between the same parties relating to the same site as if they were a single agreement unless 12 months or more have elapsed since rent for the property was fixed or last increased.

22—Excessive rent

This clause enables park residents to seek relief if they consider a proposed increase in their rent (including a statutory charge under Division 10) to be excessive. Such a resident may apply to the Tribunal for a declaration that the proposed rent is excessive. The Tribunal must have regard to the following matters in making its decision:

- the general level of rents for comparable rented properties in the same or similar localities;
- the estimated capital value of the rented property at the date of the application;
- the outgoings for which the park owner is liable under the agreement;
- the estimated cost of services provided by the park owner and the resident under the agreement;
- the nature and value of furniture, equipment and other personal property provided by the park owner for the resident's use;
- the state of repair and general condition of the rented property;
- the amenity and standard of the common areas of the residential park;
- other relevant matters.

If the Tribunal finds the increased rent to be excessive, it may, by order, fix the rent payable and also fix a period (which cannot exceed 1 year) for which the order is to remain in force. The Tribunal may also vary or revoke such orders if satisfied that it is just to do so.
If a park owner charges more rent that the amount ordered by the Tribunal, he or she is guilty of an offence attracting a maximum penalty of $1 250.

23—Park owner's duty to keep proper records of rent

This clause requires a park owner to ensure that a proper record is kept of rent paid under an agreement with failure to do so an offence attracting a maximum penalty of $750 or an expiation fee of $105. The clause also makes it an offence attracting a maximum penalty of $1 250 to falsify the record.

24—Duty to give receipt for rent

This clause provides that a receipt for rent must be provided within 48 hours of payment specifying the following details:

- the date on which the rent was received;
- the name of the person paying the rent;
- the amount paid;
- the period of occupancy to which the payment relates;
- the address of the rented property to which the payment relates.

Failure to do so is an offence attracting a maximum penalty of $750 or an expiation fee of $105.
An exception to this is if the rent is paid into the park owner's or his or her agent's ADI and the park owner or agent keeps a written record of the details listed above.

25—Accrual and apportionment of rent

This clause specifies that rent under an agreement accrues from day to day and that if rent is paid in advance, should the agreement end before the period for which rent has been paid, the park owner must refund the proportion of the amount paid or apply it towards other liabilities of the resident.

26—Abolition of distress for rent

This clause specifically removes the right of a park owner to keep goods of a resident pending payment of unpaid rent.

Division 2—Bonds

27—Bond

Under this clause, only one bond may be required for the same agreement and a bond cannot exceed 4 weeks' rent (based on the weekly rent or, if variable, the lowest weekly rent, payable during the first 6 months of occupancy under the agreement). Contravention of this provision is an offence attracting a maximum penalty of $1 250.

28—Receipt of bond and transmission to Commissioner

This clause requires a receipt containing specified details to be given for a bond within 48 hours of its payment, and the bond to be lodged, and notice (in the form approved by the Commissioner) to be given to the Commissioner within 7 days. Failure to do so is an offence attracting a maximum penalty of $1 250 or an expiation fee of $160.

29—Repayment of bond

This clause enables a bond to be repaid in full or in part to the resident or the park owner on application in a form approved by the Commissioner. If the application is undisputed, the Commissioner must repay the bond as specified in the application.
The clause further sets out how disputed applications are dealt with, namely if a respondent who has been given written notice of the application does not give the Commissioner written notice of dispute within 10 days, the Commissioner may pay the bond amount as specified in the application.
If, however, the respondent does give written notice of dispute in time, the Commissioner must refer the dispute to the Tribunal.
Subclause (7) sets out the circumstances under which an application will be considered undisputed, namely if—

- it is a joint application by the park owner and the resident;
- it is an application by the park owner for payment of the whole amount to the resident;
- it is an application by the resident for payment of the whole amount to the park owner.

The term "respondent" is clarified to mean—

- if the application was made by the park owner—the resident;
- if the application was made by the resident—the park owner.

Division 3—Resident's entitlement to possession and quiet enjoyment

30—Vacant possession etc

This clause specifies that vacant possession and absence of legal impediment to a resident's occupation are terms of a residential park agreement.

31—Quiet enjoyment

This clause specifies that the right of a resident to quiet enjoyment and the park owner's duty to prevent interference with that right is a term of a residential park agreement.
Subclause (2) makes it an offence attracting a maximum penalty of $2 500 for a park owner to contravene such a term in circumstances amounting to harassment of the resident and a park owner may be prosecuted for the offence in addition to incurring a civil liability for breach of the agreement.

Division 4—Residential park tenancy agreement—security of dwelling

32—Residential park tenancy agreement—security of dwelling

This clause provides that the park owner's and resident's duty in respect of providing, maintaining, adding, altering and removing locks is a term of a residential park tenancy agreement.
Subclause (2) makes it an offence attracting a maximum penalty of $1 250 for a park owner, park owner's agent or resident, without reasonable excuse, to contravene such a term and a park owner or resident may be prosecuted for the offence in addition to incurring a civil liability for breach of the agreement.

Division 5—Access to residential park

33—Access to residential park

This clause specifies that the provision of the following access by the park owner to a resident is a term of a residential park agreement:

- 24 hour vehicular access for the resident to the rented property;
- 24 hour access for the resident to the park and bathroom and toilet facilities of the park;
- access during all reasonable hours for the resident to any other common area facilities.

The clause further specifies that it is a term of the residential park agreement that the park owner provide access (at the commencement of the agreement or after any change to security arrangements) where locks or security devices restrict entry to areas that the resident has a right of access to,

and that the park owner maintain the locks and other security devices in working order.

Subclause (3) makes it an offence attracting a maximum penalty of $1 250 for a park owner, without reasonable excuse, to contravene such a term and a park owner may be prosecuted for the offence in addition to incurring a civil liability for breach of the agreement.

Division 6—Park owner's obligations in relation to condition of rented property and common areas

34—Cleanliness

This clause provides that it is a term of a residential park agreement for a park owner to ensure that rented properties are reasonably clean on commencement of occupation, that common areas and garden or other areas are reasonably clean, and that garbage in the park is collected regularly.

35—Park owner's obligation to repair

This clause provides that it is a term of a residential park agreement that the park owner must ensure that rented properties are in a reasonable state of repair, that he or she must comply with statutory requirements affecting rented properties and common areas of the park and that, if repairs are required to common area bathroom, toilet or laundry facilities, he or she must keep disruption to the residents to a minimum, and provide temporary substitute facilities.

The obligation to repair applies even though the resident had notice of the state of disrepair before occupation.

To be in breach of the term, the park owner must know about the defect and fail to act with reasonable diligence to have the defect repaired.

A park owner has no duty to repair a rented property in respect of which a housing improvement notice fixing the maximum rent for the property applies.

Subclause (4) sets out the circumstances in which a resident may take repairs into his or her own hands and subsequently recover the costs from the park owner. These are if—

- the property is in a state of disrepair that does not arise from a contravention of the residential park agreement by the resident; and
- the state of disrepair is, unless remedied, likely to result in personal injury or damage to property or undue inconvenience; and
- the resident notifies the park owner of the state of disrepair or makes a reasonable attempt to do so; and
- the resident incurs costs in having the state of disrepair remedied; and
- the repairs are carried out by a person who is licensed to carry out the necessary work and the person provides the park owner with a report on the work carried out and the apparent cause of the state of disrepair.

However, a resident has no right of recovery from a park owner in respect of repairs carried out to a property subject to a housing improvement notice fixing the maximum rent for the property.

Subclause (6) provides that the obligation to repair includes the obligation to maintain all trees in the park in a safe condition.

Division 7—Resident's obligations in relation to rented property and common areas

36—Resident's responsibility for cleanliness and damage

This clause makes it a term of a residential park agreement for a resident—

- to keep the rented property in a reasonable state of cleanliness; and
- to notify the park owner of damage to the rented property; and
- to notify the park owner of damage to any common area of the residential park caused by the resident or a person permitted on the rented property or the park by the resident; and
- not to intentionally or negligently cause or permit damage to the rented property or any common area of the residential park.

It is an offence attracting a maximum penalty of $2 500 for a resident to intentionally cause serious damage to the rented property or common areas of the park and a resident may be prosecuted for the offence in addition to incurring a civil liability for breach of the agreement.

It is a term of the agreement for the resident to give the rented property back to the park owner in reasonable condition and reasonable state of cleanliness taking into account its condition on commencement of occupation and reasonable wear and tear since then.

37—Residential park tenancy agreement—alteration of rented property

This clause makes it a term of a residential park tenancy agreement for—

- a resident to obtain the park owner's consent before affixing a fixture or making alterations or additions to the rented property or removing a fixture from the property; and
- a resident to notify the park owner of damage caused when removing a fixture and, if the park owner requests, to repair the damage or compensate the park owner for reasonable costs of repair; and
- the park owner not to unreasonably withhold consent or not to make a charge for giving consent or considering an application for consent exceeding the park owner's reasonable expenses; and
- the park owner, at the resident's request, to compensate the resident for the reasonable value of a fixture if the park owner originally consented in writing to the resident affixing the fixture and has subsequently withheld consent to remove it.

38—Residential park site agreement—alterations on site

This clause makes it a term of a residential park site agreement for—

- a resident to make any alterations or additions to the exterior of the dwelling or add new structures without obtaining the park owner's written consent; and
- the park owner not to unreasonably withhold consent or not to make a charge for giving consent or considering an application for consent exceeding the park owner's reasonable expenses.

Division 8—Resident's conduct on rented property

39—Resident's conduct

This clause makes it a term of a residential park agreement for the resident not to—

- use the rented property or common areas of the residential park, or cause or permit such places to be used, for an illegal purpose; and
- cause or permit a nuisance; and
- cause or permit an interference—

(i) with the reasonable peace, comfort or privacy of other residents in their use of rented property or with their reasonable use or enjoyment of common areas; or

(ii) with the reasonable peace, comfort or privacy of a person residing in the immediate vicinity of the residential park.

Division 9—Park owner's right of entry

40—Residential park tenancy agreement—right of entry

This clause makes it a term of a residential park tenancy agreement for a park owner to be permitted to enter the rented property if (and only if)—

- the entry is made in an emergency (including in order to carry out urgent repairs or avert danger to life or valuable property); or
- the entry is made at a time previously arranged with the resident (but not more frequently than once every week) for the purpose of collecting the rent); or
- in a case where the resident is required under Division 10 to pay charges based on the level of the water, electricity or gas consumption at the rented property—the entry is for the purpose of reading the relevant meter; or
- the entry is made at a time previously arranged with the resident (but not more frequently than once every 3 months) for the purpose of inspecting the rented property; or
- the entry is made for the purpose of carrying out necessary repairs or maintenance at a reasonable time of which the resident has been given at least 48 hours written notice; or
- the entry is made for the purpose of showing the rented property to prospective residents, at a reasonable time and on a reasonable number of occasions during the period of 14 days preceding the termination of the agreement, after giving reasonable notice to the resident; or

· the entry is made for the purpose of showing the rented property to prospective purchasers, at a reasonable time and on a reasonable number of occasions, after giving the resident reasonable notice; or

· the entry is made for a purpose not referred to above and the park owner gives the resident written notice stating the purpose and specifying the date and time of the proposed entry not less than 7 and not more than 14 days before entering the rented property; or

· the entry is made with the consent of the resident given at, or immediately before, the time of entry; or

· the park owner reasonably believes that the resident has abandoned the rented property.

41—Residential park site agreement—right of entry

This clause makes it a term of a residential park site agreement for the park owner to be allowed to enter the rented property if (and only if)—

· the entry is made in order to avert danger to life or valuable property; or

· in a case where the resident is required under Division 10 to pay charges based on the level of the water, electricity or gas consumption at the rented property—the entry is for the purpose of reading the relevant meter; or

· the entry is made, at a reasonable time and on a reasonable number of occasions, for the purpose of ensuring compliance by the park owner with statutory requirements relating to separation distances between structures on neighbouring sites and removal of hazardous materials; or

· the entry is made, at a reasonable time and on a reasonable number of occasions, for the purpose of lawn or grounds maintenance in a case where the resident agreed to such an arrangement when entering into the residential park site agreement; or

· the entry is made with the consent of the resident given at, or immediately before, the time of entry; or

· the entry is made in accordance with the regulations.

42—Manner of exercise of right of entry

This clause makes it a term of a residential park agreement for a park owner exercising a right of entry under the Division not to act in an unreasonably intrusive manner on the rented property and to limit entry to areas of the property to which access is reasonably required, and not to remain longer than reasonably necessary.

Division 10—Statutory and other charges in respect of rented property

43—Statutory and other charges in respect of rented property

This clause makes it a term of a residential park agreement for the park owner to bear all the statutory charges imposed on the rented property.

However, the park owner may, by a term of the agreement, require bottled gas and separately metered water, electricity and gas charges (based on consumption at the resident's property) and charges prescribed by regulation to be met by the resident.

Subclause (3) enables regulations to be made providing that a resident need not pay such charges unless, on request by the resident, the park owner provides specified information evidencing the details of the charges.

Division 11—Resident's vicarious liability

44—Vicarious liability

This clause makes a resident vicariously liable for acts or omissions by persons who are present on the rented property at the invitation or with the consent of the resident, which, if caused by the resident, would have constituted a breach of the agreement.

Division 12—Harsh or unconscionable terms

45—Harsh or unconscionable terms

This clause enables the Tribunal, on application by a resident, to make an order rescinding or varying a term of a residential park agreement if satisfied that the term is harsh or unconscionable. The Tribunal may also make consequential changes to the agreement or another related document.

Division 13—Miscellaneous

46—Accelerated rent and liquidated damages

Subclause (1) makes void a term of an agreement that purports to require the payment of a financial penalty on breach by the resident of a term about rent or any other term of the agreement.

A term of an agreement that offers a financial or other incentive for early or punctual payment of rent will operate regardless of whether early or punctual payment occurs.

Under subclause (3), a park owner is guilty of an offence attracting a maximum penalty of $1 250 if an agreement contains such terms.

47—Duty of mitigation

This clause ensures the operation of the rules of contract law relating to mitigation of loss or damage on breach where there is a breach of a term of a residential park agreement.

Part 5—Assignment of residential park agreements

48—Assignment of residential park agreement

This clause enables residents to assign their interest in a residential park agreement (whether in writing or by oral agreement) to another person.

Subclause (2) further provides that—

· the park owner must have given written consent to such an assignment; and

· the park owner must not unreasonably withhold consent and must not make a charge for such consent above and beyond the park owner's reasonable expenses.

A park owner will, under subclause (3), be taken to have consented to an assignment if he or she has not consented, or refused to consent, to an assignment within 7 days after receiving from the resident a notice of the assignment and a request to consent.

The absence of consent does not invalidate an assignment, however, under subclause (5), if consent was not obtained, the resident who assigns the interest remains jointly and severally liable with the new resident to the park owner under the agreement unless the park owner has unreasonably withheld consent.

This continuing liability on the part of the resident does not apply in relation to periodic tenancies where the liability accrues more than 21 days after the park owner became aware or ought reasonably to have become aware of the assignment (whichever is the earlier).

If the park owner's consent to an assignment is not obtained and the park owner had, before the assignment, served a notice of termination on the assignor, the park owner may enforce the notice against the assignee.

The park owner may terminate a residential park agreement where the resident assigns his or her interest without the park owner's consent, but only if the park owner has not unreasonably withheld consent and serves the notice of termination within 21 days after the time the park owner became aware or ought reasonably to have become aware of the assignment (whichever is the earlier).

An assignment has the effect of substituting the assignee for the resident under the agreement but the assignor remains responsible for liabilities accruing before the assignment.

If the assignee breaches a term of the agreement, the assignee is liable to indemnify the assignor for liabilities incurred by the assignor to the park owner as a result of the breach.

If the resident assigns his or her interest, the bond paid by the resident will (unless otherwise agreed) be held as a bond for the proper performance by the assignee of obligations under the agreement.

Part 6—Residential park site agreement—acquisition of park or site

49—Residential park site agreement—acquisition of park or site

This clause applies if a person (the ***new owner***) acquires includes land on which a person has installed a dwelling under a residential park site agreement for a term exceeding 12 months.

Under the clause, the effect of the *Real Property Act 1886* is altered so that the new owner's title to the land will always be subject to the resident's interest under the residential park site agreement.

The new owner will, however, be able to terminate the agreement by notice given to the resident within 14 days after the date of acquisition of the land. Such a notice of termination will be required to specify the day on which the agree-

ment is terminated which must not be earlier than whichever is the earlier of—

· the end of the term of the agreement as fixed by the agreement; and

· 12 months from the date of the new owner's acquisition of the land.

The resident will not necessarily be bound by the agreement until it terminates as a result of the new owner's notice, but may, in turn, terminate it by at least 28 days notice.

Part 7—Residential park site agreement—sale of dwelling on-site

50—Residential park site agreement—sale of dwelling on-site

This clause includes as terms of a residential park site agreement the right of a resident to sell the dwelling installed or located on the site to which the agreement relates while the dwelling is in place on the site, and the obligation on the resident to notify the park owner of the resident's intention to offer the dwelling for sale before displaying a "for sale" sign in or on the dwelling or site.

Under subclause (2), a park owner or his or her agent who hinders (including by stopping potential buyers from inspecting the dwelling), or attempts to hinder, the sale of a dwelling by a resident in accordance with one of those terms or prevents, or attempts to prevent, the display by a resident of a "for sale" sign in or on a dwelling or site for the purpose of selling the dwelling in accordance with those terms is guilty of an offence attracting a maximum penalty of $2 500.

A park owner does not contravene subclause (2) in relation to the proposed sale of a dwelling if the park owner has reasonably refused to consent to a proposed assignment of the resident's interest in the agreement relating to the site.

Part 8—Sub-tenancy agreements

51—Sub-tenancy agreements

This clause permits a resident to enter into a sub-tenancy agreement (whether written or oral) with another person in respect of the site and the dwelling on the site (whether a dwelling was made available by the park owner or installed or located on the site by the resident).

However, a subtenancy agreement is not permitted unless—

· the park owner has park rules in force defining the terms (as to payment or any other matter) on which the park owner will act as managing agent for residents under sub-tenancy agreements and the services to be provided by the park owner; and

· the park owner has consented to the making of the sub-tenancy agreement; and

· the resident has entered into a ***sub-tenancy managing agent agreement*** with the park owner under which the park owner will act as managing agent under the sub-tenancy agreement.

If a resident enters into a sub-tenancy agreement and a sub-tenancy managing agent agreement, a reference in the measure to a park owner, in relation to the sub-tenancy agreement includes a reference to both the park owner acting as managing agent for the resident in relation to the sub-tenancy agreement and the resident.

Part 9—Termination of residential park agreements

Division 1—Termination generally

52—Termination of residential park agreement

A residential park agreement terminates if—

· the park owner or the resident terminates the agreement by notice of termination given to the other; or

· the Tribunal terminates the agreement; or

· a person having title superior to the park owner's title becomes entitled to possession of the rented property under the order of the Tribunal or a court; or

· a mortgagee takes possession of the rented property under a mortgage; or

· the resident abandons the rented property; or

· the resident dies without leaving dependants in occupation of the rented property; or

· the resident gives up possession of the rented property with the park owner's consent; or

· the interest of the resident merges with another estate or interest in the land; or

· disclaimer occurs.

53—Agreement for fixed term continues if not terminated

If a residential park agreement for a fixed term has not terminated at or before the end of the fixed term, the agreement continues—

· as residential park agreement for a periodic tenancy with a tenancy period equivalent to the interval between rental payment times under the agreement; and

· with terms of agreement that in other respects are the same as those applying under the agreement immediately before the end of the fixed term.

54—Termination of agreement for periodic tenancy

A notice terminating a residential park agreement for a periodic tenancy under this Part is not ineffectual because—

· the period of notice is less than would have been required at law; or

· the day on which the agreement is to end is not the last day of a period of the tenancy.

55—Limitation of right to terminate

If rented property is subject to a housing improvement notice or an order is in force under clause 22 in respect of rented property or proceedings for such an order have been commenced, the park owner may only terminate the residential park agreement by notice of termination if the notice is given on a specified ground, and the Tribunal authorises the notice of termination.

Subclause (2) provides that the clause does not apply to a notice of termination given by the park owner to terminate an agreement for a fixed term at the end of the fixed term.

The Tribunal may authorise a notice of termination if satisfied of the genuineness of the proposed ground on which the notice is to be given.

Division 2—Residential park tenancy agreements—termination by parties

Subdivision 1—Termination by park owners

56—Termination for breach of agreement

If the resident breaches a residential park tenancy agreement, the park owner may give the resident a written notice specifying the breach and informing the resident that if the breach is not remedied within a specified period, then the agreement is terminated and the resident must give up vacant possession of the rented property before the end of the next day.

If notice is given on the ground of a failure to pay rent—

· the notice is ineffectual unless the rent (or any part of it) has remained unpaid in breach of the agreement for not less than 7 days before the notice was given; and

· the notice is not rendered ineffectual by failure by the park owner to make a prior formal demand for payment of the rent.

If notice is given in relation to a fixed term agreement, the notice is not ineffectual because the day specified as the day on which the resident is to give up vacant possession of the rented property is earlier than the last day of that term.

The resident may at any time after receiving a notice and before giving vacant possession to the park owner, apply to the Tribunal for an order—

· declaring that the resident is not in breach of the residential park agreement, or has remedied the breach of the agreement, and that the agreement is not liable to be terminated; or

· reinstating the agreement.

The Tribunal may make an order reinstating the agreement if satisfied that the agreement has been validly terminated, but that it is or would, under certain circumstances be just and equitable to reinstate the agreement.

An order reinstating the agreement may be made on conditions that the Tribunal considers appropriate.

On an application for an order reinstating the agreement, the Tribunal may make alternative orders providing for reinstatement of the agreement if specified conditions are complied with but, if not, ordering the resident to give up vacant possession of the rented property to the park owner.

57—Termination where successive breaches of agreement

A park owner may, by notice of termination given to the resident, terminate a residential park tenancy agreement on the ground that the resident has breached a term of the agreement and had committed breaches of the same term of the agreement on at least 2 previous occasions and been given separate notice under clause 56 in respect of each of those

breaches. Subject to subclause (3), the period of notice must be at least 14 days.

Subclause (3) provides that if notice is given for failure to pay rent—

· the notice is ineffectual unless the rent (or any part of it) has remained unpaid in breach of the agreement for not less than 7 days before the notice was given; and

· the notice is not rendered ineffectual by failure by the park owner to make a prior formal demand for payment of the rent; and

· the period of notice must be at least 7 days.

58—Termination where serious misconduct by resident

A park owner may, by notice of termination given to the resident, terminate an agreement on the ground that the resident, or a person permitted on the rented property with resident's consent, has intentionally or recklessly caused or permitted, or is likely to cause or permit—

· personal injury to the park owner or the park owner's agent or a person in the residential park or in the vicinity of the residential park; or

· serious damage to the rented property or other property in the park; or

· serious interference—

(i) with the reasonable peace, comfort or privacy of other residents in their use of rented property or their reasonable use or enjoyment of common areas; or

(ii) with the reasonable peace, comfort or privacy of persons residing in the immediate vicinity of the park.

A notice may terminate the agreement immediately.

59—Termination where periodic tenancy and sale of rented property

A park owner may, by notice of termination given to the resident, terminate a residential park tenancy agreement for a periodic tenancy on the ground that the park owner has entered into a contract for the sale of the rented property or the dwelling and is required under the contract to give vacant possession of the property or the dwelling. The period of notice must be at least 28 days or a period equivalent to a single period of the tenancy (whichever is the longer).

It is an offence attracting a maximum penalty of $2 500 for a person to falsely state the ground of termination in such a notice.

It is also an offence attracting a maximum penalty of $2 500 for a park owner who recovers possession of rented property, without the consent of the Tribunal, to enter into a residential park tenancy agreement with any person in relation to the same rented property within 6 months after recovering possession.

60—Termination where periodic tenancy and no specified ground of termination

A park owner may, by notice of termination given to the resident, terminate a residential park tenancy agreement for a periodic tenancy without specifying a ground of termination.

However, an agreement cannot be terminated if the rented property is subject to a housing improvement notice or an order is in force under clause 22 in respect of the property or proceedings for such an order have been commenced.

The period of notice must be at least 60 days or a period equivalent to a single period of the tenancy (whichever is the longer).

61—Termination at end of fixed term

A park owner may, by notice of termination given to the resident, terminate a residential park tenancy agreement for a fixed term at the end of the fixed term without specifying a ground of termination. The period of notice must be at least 28 days.

62—Termination where agreement frustrated

A park owner may, by notice of termination given to the resident, terminate a residential park tenancy agreement on the ground that, otherwise than as a result of a breach of the agreement, the rented property or a substantial portion of it—

· has been destroyed or rendered uninhabitable; or

· has ceased to be lawfully usable for residential purposes; or

· has been acquired by compulsory process.

A notice given by reason other than compulsory acquisition may terminate the agreement immediately whereas a notice given by reason of compulsory acquisition must provide for a period of notice of at least 60 days.

Subdivision 2—Termination by residents

63—Termination for breach of agreement

If the park owner breaches a residential park tenancy agreement, the resident may give the park owner a written notice specifying the breach and informing the park owner that if the breach is not remedied within a specified period, the agreement is terminated and the resident will give up vacant possession of the rented property before the end of the next day.

The park owner may, before the time fixed in the termination notice or the resident gives up vacant possession of the property (whichever is the later), apply to the Tribunal for an order declaring that the park owner is not in breach of the agreement, or has remedied the breach of the agreement, and that the agreement is not liable to be terminated or for an order reinstating the agreement.

If the Tribunal is satisfied that an agreement has been validly terminated, but that it is, or would be, in certain circumstances, just and equitable to reinstate the agreement, the Tribunal may make an order reinstating the agreement.

An order reinstating the agreement may be made on conditions that the Tribunal considers appropriate.

64—Termination where successive breaches of agreement

A resident may, by notice of termination given to the park owner, terminate a residential park tenancy agreement on the ground that the park owner has breached a term of the agreement and had committed breaches of the same term of the agreement on at least 2 previous occasions and been given separate notice under clause 63 in respect of each of those breaches. The period of notice must be at least 14 days.

65—Termination where periodic tenancy and no specified ground of termination

A resident may, by notice of termination given to the park owner, terminate a residential park tenancy agreement for a periodic tenancy without specifying a ground of termination. The period of notice must be at least 21 days or a period equivalent to a single period of the tenancy (whichever is longer).

66—Termination at end of fixed term

A resident may, by notice of termination given to the park owner, terminate a residential park tenancy agreement for a fixed term at the end of the fixed term without specifying a ground of termination. The period of notice must be at least 28 days.

67—Termination where agreement frustrated

A resident may, by notice of termination given to the park owner, terminate a residential park tenancy agreement on the ground that, otherwise than as a result of a breach of the agreement, the rented property or a substantial portion of it—

· has been destroyed or rendered uninhabitable; or

· has ceased to be lawfully usable for residential purposes; or

· has been acquired by compulsory process.

A notice given may terminate the agreement immediately.

Division 3—Residential park site agreements—termination by parties

Subdivision 1—Termination by park owners

68—Termination for breach of agreement

If a resident breaches a residential park site agreement, the park owner may give the resident a written notice in the form specifying the breach and informing the resident that if the breach is not remedied within a specified period, then the agreement is terminated and the resident must give up vacant possession of the rented property before the end of the next day.

If notice is given on the ground of a failure to pay rent—

· the notice is ineffectual unless the rent (or any part of the rent) has remained unpaid in breach of the agreement for not less than 7 days before the notice was given; and

· the notice is not rendered ineffectual by failure by the park owner to make a prior formal demand for payment of the rent.

If notice is given in respect of a fixed term site agreement, the notice is not ineffectual because the day specified as the day on which the resident is to give up vacant possession of the rented property is earlier than the last day of that term.

The resident may, at any time after receiving a notice and before giving vacant possession to the park owner, apply to the Tribunal for an order declaring that the resident is not in breach of the residential park agreement, or has remedied the breach of the agreement, and that the agreement is not liable to be terminated or for an order reinstating the agreement.

If the Tribunal is satisfied that a residential park site agreement has been validly terminated, but that it is or would be, under certain circumstances, just and equitable to reinstate the agreement, the Tribunal may make an order reinstating the agreement.

An order reinstating the agreement may be made on conditions that the Tribunal considers appropriate.

On an application for an order reinstating the agreement, the Tribunal may make alternative orders providing for reinstatement of the agreement if specified conditions are complied with but, if not, ordering the resident to give up vacant possession of the rented property to the park owner.

69—Termination where successive breaches of agreement

A park owner may, by notice of termination given to the resident, terminate a residential park site agreement on the ground that the resident has breached a term of the agreement and had committed breaches of the same term of the agreement on at least 2 previous occasions and been given separate notice under clause 68 in respect of each of those breaches. The period of notice given must be at least 28 days.

If notice is given on the ground of a failure to pay rent—

· the notice is ineffectual unless the rent (or any part of the rent) has remained unpaid in breach of the agreement for not less than 7 days before the notice was given; and

· the notice is not rendered ineffectual by failure by the park owner to make a prior formal demand for payment of the rent.

70—Termination where serious misconduct by resident

A park owner may, by notice of termination given to the resident, terminate a residential park site agreement on the ground that the resident, or a person permitted on the rented property with the consent of the resident, has intentionally or recklessly caused or permitted, or is likely to cause or permit—

· personal injury to the park owner or the park owner's agent or a person in the residential park or in the vicinity of the park; or

· serious damage to the rented property or other property in the park; or

· serious interference—

(a) with the reasonable peace, comfort or privacy of other residents in their use of rented property or their reasonable use or enjoyment of common areas; or

(b) with the reasonable peace, comfort or privacy of persons residing in the immediate vicinity of the park.

A notice may terminate the agreement immediately.

71—Termination where periodic tenancy and no specified ground of termination

A park owner may, by notice of termination given to the resident, terminate a residential park site agreement for a periodic tenancy without specifying a ground of termination. However, such an agreement cannot be terminated if an order is in force under clause 22 in respect of the rented property or proceedings for such an order have been commenced. The period of notice must be at least 90 days.

72—Termination at end of fixed term

A park owner may, by notice of termination given to the resident, terminate a fixed term residential park site agreement at the end of the fixed term without specifying a ground of termination. The period of notice must be at least 28 days.

73—Termination where agreement frustrated

A park owner may, by notice of termination given to the resident, terminate a residential park site agreement on the ground that, otherwise than as a result of a breach of the agreement, the rented property or a substantial portion of it—

· has been destroyed or rendered uninhabitable; or

· has ceased to be lawfully usable for residential purposes; or

· has been acquired by compulsory process.

A notice given under otherwise than by reason of compulsory acquisition may terminate the agreement immediately. A notice given by reason of compulsory acquisition must provide for a period of notice of at least 60 days.

Subdivision 2—Termination by residents

74—Termination for breach of agreement

If the park owner breaches a residential park site agreement, the resident may give the park owner a written notice specifying the breach and informing the park owner that if the breach is not remedied within a specified period, then the agreement is terminated and the resident will give up vacant possession of the rented property before the end of the next day.

The park owner may, before the time fixed in the resident's notice or the resident gives up vacant possession of the rented property (whichever is the later), apply to the Tribunal for an order declaring that the park owner is not in breach of the agreement, or has remedied the breach of the agreement, and that the agreement is not liable to be terminated or for an order reinstating the agreement.

If the Tribunal is satisfied that a residential park site agreement has been validly terminated, but that it is, or would be under certain circumstances, just and equitable to reinstate the agreement, the Tribunal may make an order reinstating the agreement.

An order reinstating the agreement may be made on conditions that the Tribunal considers appropriate.

75—Termination where successive breaches of agreement

A resident may, by notice of termination given to the park owner, terminate a residential park site agreement on the ground that the park owner has breached a term of the agreement and had committed breaches of the same term of the agreement on at least 2 previous occasions and been given separate notice under clause 74 in respect of each of those breaches. The period of notice given must be at least 14 days.

76—Termination where periodic tenancy and no specified ground of termination

A resident may, by notice of termination given to the park owner, terminate a residential park site agreement for a periodic tenancy without specifying a ground of termination. The period of notice must be at least 28 days or a period equivalent to a single period of the tenancy (whichever is longer).

77—Termination at end of fixed term

A resident may, by notice of termination given to the park owner, terminate a fixed term residential park site agreement at the end of the fixed term without specifying a ground of termination. The period of notice must be at least 28 days.

78—Termination where agreement frustrated

A resident may, by notice of termination given to the park owner, terminate a residential park site agreement on the ground that, otherwise than as a result of a breach of the agreement, the rented property or a substantial portion of it—

(a) has been rendered uninhabitable; or

(b) has ceased to be lawfully usable for residential purposes; or

(c) has been acquired by compulsory process.

A notice given may terminate the agreement immediately.

Division 4—Termination by Tribunal

79—Termination on application by park owner

The Tribunal may, on application by a park owner, terminate a residential park agreement and make an order for possession of the rented property if satisfied that the resident has committed a breach of the agreement and the breach is sufficiently serious to justify termination of the agreement.

80—Termination on application by resident

The Tribunal may, on application by a resident, terminate a residential park agreement and make an order for possession of the rented property if satisfied that the park owner has committed a breach of the agreement and the breach is sufficiently serious to justify termination of the agreement.

81—Termination based on hardship

If the continuation of a residential park agreement would result in undue hardship to the park owner or the resident, the Tribunal may, on application by the park owner or the resident, terminate the agreement from a specified date and make an order for possession of the rented property as from that day.

The Tribunal may also make an order compensating a park owner or resident for loss and inconvenience resulting, or likely to result, from the early termination of the agreement.

Division 5—Form of notices of termination

82—Form of notice of termination

A notice of termination given by a park owner to a resident must—

- be in writing and in the form approved by the Commissioner; and
- be signed by the park owner or his or her agent; and
- state the address of the rented property; and
- state the day on which the resident is required to give up vacant possession of the rented property to the park owner; and
- if the residential park agreement is to be terminated on a particular ground—specify and give reasonable particulars of the ground of termination; and
- include further information required by the Commissioner.

A notice of termination given by a resident to a park owner must—

- be in writing and in the form approved by the Commissioner; and
- be signed by the resident or his or her agent; and
- state the address of the rented property; and
- state the day on which the resident is to give up vacant possession of the rented property to the park owner; and
- if the residential park agreement is to be terminated on a particular ground—specify and give reasonable particulars of the ground of termination; and
- include any further information required by the Commissioner.

Division 6—Repossession of rented property

83—Order for possession

The Tribunal may, on application by the park owner, if satisfied that a residential park agreement has terminated, make an order for possession of the rented property.

The order for possession will take effect on a date specified by the Tribunal in the order, being a date not more than 7 days after the date of the order.

However, if the Tribunal, although satisfied that the park owner is entitled to an order for possession of the rented property, is satisfied by the resident that the grant of an order for immediate possession of the rented property would cause severe hardship to the resident, the Tribunal may—

- suspend the operation of the order for possession for up to 90 days; and
- extend the operation of the residential park agreement until the park owner obtains vacant possession of the rented property from the resident.

In extending the operation of the residential park agreement, the Tribunal may make modifications to the agreement that it considers appropriate (but the modifications cannot reduce the resident's financial obligations under the agreement except as may be appropriate for the recovery by the resident of any compensation payable to the resident).

If the resident fails to comply with an order for possession, the park owner is entitled to compensation for loss caused by that failure.

The Tribunal may, on application by the park owner, order the resident to pay to the park owner compensation to which the park owner is entitled under subclause (5).

84—Abandonment of rented property

The Tribunal may, on application by a park owner declare that a resident abandoned rented property on a day stated in the declaration and make an order for immediate possession of the rented property.

In deciding whether a resident has abandoned rented property, the following matters are to be considered:

- whether rent payable under the residential park agreement is unpaid;
- whether the dwelling is unoccupied and neglected;
- whether the resident's mail is being collected;
- reports from neighbours, or other persons, about the absence or whereabouts of the resident;
- whether electricity or other services to the rented property have been disconnected or terminated;
- whether the resident's personal effects have been removed from the rented property;
- any other matters the Tribunal considers relevant.

A resident is to be taken to have abandoned the rented property on the day stated in the declaration.

If a resident has abandoned rented property, the park owner is entitled to compensation for loss (including loss of rent) caused by the abandonment.

However, the park owner must take reasonable steps to mitigate any loss and is not entitled to compensation for loss that could have been avoided by those steps.

The Tribunal may, on application by the park owner, order the resident to pay to the park owner compensation to which the park owner is entitled.

85—Repossession of rented property

A person must not enter rented property for the purpose of taking possession of the rented property before, or after, the end of a residential park agreement unless the resident abandons, or voluntarily gives up possession of, the rented property; or the person is authorised to take possession of the rented property under the order of a court or the Tribunal. Failure to comply with this clause is an offence attracting a maximum penalty of $2 500.

86—Forfeiture of head tenancy not to automatically end agreement

A person cannot take possession of rented property so as to defeat the resident's right to possession under the residential park agreement unless an order for possession of the property is made by a court or the Tribunal.

Under subclause (2), if a person is entitled to possession of rented property as against a person who granted a residential park agreement, a court before which proceedings for possession of the rented property are brought, or the Tribunal, may, on application by an interested person, vest the residential park agreement in the person who would, but for the agreement, be entitled to possession of the rented property so that the resident holds the rented property directly from that person as park owner.

An order may be made under subclause (2) on terms and conditions the court or Tribunal considers just.

Division 7—Enforcement of orders for possession

87—Enforcement of orders for possession

If an order for possession of rented property has been made by the Tribunal but has not been complied with, the registrar or a deputy registrar must, at the written or oral request of the person in whose favour the order was made (or an agent of that person), direct a bailiff of the Tribunal to enforce the order.

A bailiff of the Tribunal must enforce an order for possession as soon as is practicable after being directed to do so if the bailiff has been paid prescribed fee (which may be retained by the bailiff).

A bailiff enforcing an order for possession of rented property may enter the property, ask questions and take all steps as are reasonably necessary for the purpose of enforcing the order.

In enforcing such an order, the bailiff is responsible for securing the removal of persons only and not property.

A police officer must, if requested by a bailiff, assist the bailiff in enforcing an order for possession.

In the exercise of the powers conferred by this clause, a bailiff may use the force that is reasonable and necessary in the circumstances.

A person who hinders or obstructs a bailiff in the exercise of the powers conferred by this clause commits an offence for which the maximum penalty is $2 500.

It is also an offence attracting a maximum penalty of $2 500 for a person questioned to refuse or fail to answer the question to the best of his or her knowledge, information and belief.

However, a person is not obliged to answer a question if to do so might tend to incriminate the person or to make him or her liable to a penalty, or would require the disclosure of information that is privileged under the principles of legal professional privilege.

Subclause (10) relieves a bailiff or a member of the police force assisting a bailiff of civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions under this clause.

Division 8—Retaliatory action by park owner

88—Retaliatory action by park owner

This clause applies to proceedings before the Tribunal—

· on an application by a park owner for an order for possession of rented property or for both termination of a residential park agreement and an order for possession of the rented property; or

· on an application by a resident for relief following receipt of a notice of termination (whether or not the residential park agreement has terminated by force of the notice).

If the Tribunal is satisfied that the park owner was motivated to make the application or give the notice of termination by action of the resident to complain to a government authority or secure or enforce the resident's rights as a resident, the Tribunal may, if the Tribunal considers it appropriate to do so in the circumstances of the case, do either or both of the following:

· refuse the park owner's application;

· make an order reinstating the residential park agreement on such conditions (if any) as the Tribunal considers appropriate.

If the resident alleges retaliatory action on the part of the park owner and the Tribunal is satisfied that the resident had, within the preceding 6 months, taken action to complain to a government authority or secure or enforce the resident's rights as a resident, the burden will lie on the park owner to prove that he or she was not motivated to make the application or give the notice of termination by the action of the resident.

Division 9—Resident to give forwarding address

89—Resident to give forwarding address

If a residential park agreement has terminated or a notice has been given under this Part that will terminate a residential park agreement, the resident must not fail, without reasonable excuse, to comply with a request of the park owner for the resident's forwarding address and must comply with the request immediately, or, if the address is not then known, as soon as practicable after it becomes known. Contravention of this clause is an offence for which the maximum penalty is $750 and the expiation fee, $105.

Division 10—Abandoned property

90—Abandoned property

This clause provides that the Division applies to property (***abandoned property***) that is left on a site by the resident after termination of the residential park agreement.

91—Offence to deal with abandoned property in unauthorised way

This clause makes it an offence attracting a maximum penalty of $2 500 for a park owner to deal with abandoned property otherwise than in accordance with this Division.

92—Action to deal with abandoned property other than personal documents

This clause applies to abandoned property other than personal documents.

Under subclause (2), the park owner may, at any the time after recovering possession of the site, remove and destroy or dispose of abandoned property consisting of perishable foodstuffs.

The following provisions of this clause apply subject to clause 94 if the abandoned property consists of or includes a dwelling installed or located on the site under a residential park site agreement or an item of property of a value or kind prescribed by regulation.

Under subclause (4), the park owner may, at any the time after recovering possession of the site, remove and destroy or dispose of abandoned property, other than perishable foodstuffs, if the value of the property is less than a fair estimate of the cost of removal, storage and sale of the property.

Under subclause (5), if there is any abandoned property (other than personal documents) on the site that may not be dealt with under subclause (2) or (4) (***valuable abandoned property***), the park owner must—

· as soon as practicable—

(i) give notice, in the form approved by the Commissioner, to the resident if the park owner has a forwarding address for the resident;

(ii) if the park owner does not have a forwarding address for the resident—publish notice, in the form approved by the Commissioner, in a newspaper circulating generally throughout the State;

(iii) if a person other than the resident has, to the knowledge of the park owner, an interest in the property and the person's name and address are known to, or reasonably ascertainable by, the park owner—give notice, in the form approved by the Commissioner, to that other person; and

· take reasonable steps to keep the property safe until at least 28 days after the giving of such notice.

A person who is entitled to possession of valuable abandoned property may reclaim the property by paying to the park owner the reasonable costs incurred by the park owner in dealing with the property in accordance with this Division and any other reasonable costs incurred by the park owner as a result of the property being left on the site.

If valuable abandoned property is not reclaimed within 28 days after the giving of notice under subclause (5), the park owner must, as soon as practicable after the end of that period, have the property sold by public auction.

The park owner may use reasonable force to gain entry to the property or remove or deal with it as reasonably necessary for the park owner's use of the site or the sale of the property.

On the sale of the property by public auction, the park owner—

· may retain out of the proceeds of sale—

(i) the reasonable costs incurred by the park owner in dealing with the property in accordance with this Division and any other reasonable costs incurred by the park owner as a result of the property being left on the site; and

(ii) any amounts owed to the park owner under the residential park agreement; and

· must pay the balance (if any) to the owner of the property, or if the identity and address of the owner are not known to, or reasonably ascertainable by, the park owner, to the Commissioner for the credit of the Fund.

If property is sold by public auction, the purchaser acquires a good title to the property which defeats—

· the resident's interest in the property; and

· the interest of any other person unless the purchaser has actual notice of the interest before purchasing the property.

If a dispute arises between a park owner and resident about the exercise of powers conferred by this clause, the Tribunal may, on application by either party, make orders resolving the dispute.

93—Action to deal with abandoned personal documents

This clause applies to abandoned property consisting of personal documents.

The clause applies subject to clause 94 if the abandoned property also includes a dwelling installed or located on the site under a residential park site agreement or an item of property of a value or kind prescribed by regulation.

The park owner must—

· as soon as practicable, give notice, in the form approved by the Commissioner, to the resident if the park owner has a forwarding address for the resident; and

· take reasonable steps to keep the documents safe for at least 28 days.

Under subclause (4), if the personal documents are not reclaimed by the resident within 28 days, the park owner may destroy or dispose of the documents.

Subclause (4) applies subject to any Act relating to the preservation of records.

94—Action to deal with abandoned dwellings or prescribed items

This clause applies if there is abandoned property consisting of or including a dwelling installed or located on the site under a residential park site agreement or an item of property of a value or kind prescribed by regulation.

The park owner may not take any action to deal with such property unless the Tribunal has made an order for possession of the site.

The park owner must take reasonable steps to keep the property safe on the site pending the determination of proceedings before the Tribunal for an order for possession of the site.

If the Tribunal has made an order for possession of the site, clauses 92 and 93 apply in relation to the abandoned property, but in the application of clause 92 to the dwelling or item of property of a value or kind prescribed by regulation, the

reference in that clause to 28 days is to be read as a reference to 60 days.

Part 10—Serious acts of violence

95—Park owner may give person notice to leave for serious act of violence

A park owner is empowered to require a resident or resident's visitor, by written notice, to leave the residential park immediately if the park owner has reasonable grounds to believe that—

- a serious act of violence by the resident or visitor has occurred in the park; or
- the safety of any person in the park is in danger from the resident or visitor.

A notice to leave must be given as soon as it is possible for the park owner to safely do so.

A park owner is prohibited from giving such a notice without reasonable grounds for doing so. A breach of this would attract a maximum penalty of $1 250.

A failure to leave a residential park in compliance with a notice would also attract a maximum penalty of $1 250.

96—Suspension of agreement

If a resident is given a notice to leave under this Part, the residential park agreement is suspended.

However, unless the Tribunal makes an order under clause 99, the resident will still be required to pay rent in respect of the period that the agreement is suspended.

97—Period of suspension

A suspension under this Part remains in force—

- until the end of 2 business days after it commences; or
- if an application is made under clause 99, until the Tribunal has heard and determined the application.

98—Entry to park prohibited during suspension

A resident whose agreement has been suspended under this Part is prohibited from entering the residential park during the period that the suspension is in force. A breach of this would attract a maximum penalty of $1 250.

99—Park owner may make urgent application to Tribunal

A park owner who has given a resident a notice to leave the residential park under this Part, may, within 2 business days, apply to the Tribunal for an order that the residential park agreement be terminated.

On hearing such an application, the Tribunal may—

- make an order terminating the residential park agreement as at the date of the order and make an order for possession of the rented property; or
- order that the suspension of the agreement cease and that the resident be allowed to resume occupation of the rented property under the agreement.

If the Tribunal orders that the suspension of the agreement is to cease and is satisfied that the park owner had no reasonable basis on which to have given the resident notice—

- the resident is not required to pay rent in respect of the period of the suspension; and
- the Tribunal may order that compensation be paid to the resident for either or both of the following:
  - (i) rent paid in respect of the period of suspension;
  - (ii) reasonable expenses incurred by the resident relating to the period of suspension.

100—Occupation of rented property pending application or hearing

A park owner is not to allow any third person to occupy the rented property during a period of suspension of a residential park agreement. A breach of this would attract a maximum penalty of $1 250.

Part 11—Residential Tenancies Tribunal

Division 1—Role of registrars and magistrates

101—Registrars may exercise jurisdiction in certain cases

This clause provides for the jurisdiction of the registrar or a deputy registrar.

102—Magistrates may exercise jurisdiction in certain cases

The jurisdiction of the Tribunal is conferred on magistrates subject to a scheme for the listing of matters before magistrates to be prescribed by the regulations.

Such regulations cannot be made except after consultation with the Presiding Member of the Tribunal and the Chief Magistrate.

Division 2—Proceedings before Tribunal

103—Constitution of Tribunal

The Tribunal is to be constituted of a single member and may, at any one time, be separately constituted for the hearing and determination of a number of separate matters.

104—Duty to act expeditiously

The Tribunal is required, where practicable, to hear and determine proceedings within 14 days and, if that is not practicable, as expeditiously as possible.

Division 3—Tribunal's jurisdiction

105—Jurisdiction of Tribunal

The Tribunal is given exclusive jurisdiction to hear and determine residential park disputes.

However, the Tribunal does not have jurisdiction to hear and determine a monetary claim for more than $40 000 unless the parties to the proceedings consent in writing (and such a consent will be irrevocable).

If a monetary claim is above the Tribunal's jurisdictional limit, the claim and any other claims related to the same residential park agreement may be brought in a court competent to hear and determine a claim founded on contract for the amount of the claim.

106—Application to Tribunal

This clause deals with the making of applications to the Tribunal.

Division 4—Mediation

107—Mediators

Provision is made for the appointment of mediators.

108—Referral of applications to mediation

The registrar or deputy registrar may refer an application, of a class prescribed by the regulations, to the Commissioner for Consumer Affairs for mediation and a mediator nominated by the Commissioner will act as mediator of the dispute.

109—Mediator to notify parties

The mediator must notify the parties to the dispute of the time and place fixed for mediation of the dispute.

110—Duties of mediators

Mediators have the following functions in the mediation of a residential park dispute:

- to encourage the settlement of the dispute by facilitating, and helping to conduct, negotiations between the parties to the dispute;
- to promote the open exchange of information relevant to the dispute by the parties;
- to provide to the parties information about the law relevant to a settlement of the dispute;
- to help in the settlement of the dispute in any other appropriate way.

A mediator does not have the power to determine any matter in dispute, whether or not the parties request or consent to such action.

111—Procedure

Mediation of a residential park dispute may, at the discretion of the mediator, be adjourned from time to time.

Unless the mediator decides otherwise, the mediation will be held in private and the mediator may exclude from the mediation any person apart from the parties and their representatives.

A party must, if required by the mediator, disclose to the other party details of the party's case and of the evidence available to the party in support of that case.

The mediator or a party may terminate a mediation at any time.

A settlement to which a party agrees at a mediation is binding on the party provided that it is not inconsistent with this measure.

The settlement must be put into writing and signed by or for the parties.

The mediator may make a determination or order to give effect to the settlement.

If a mediation is terminated because it appears to the mediator that it is unlikely that an agreed settlement can be reached within a reasonable time or for any other reason, the mediator must refer the matter to the registrar or deputy registrar for the listing of the matter before the Tribunal.

112—Representation of parties in mediation

A party to a residential park dispute may be represented by a person who is not a lawyer in the mediation of the dispute if—

· the party is a body corporate and the representative is an officer or employee of the body corporate; or

· all parties to the proceedings agree to the representation and the mediator is satisfied that it will not unfairly disadvantage an unrepresented party; or

· the mediator is satisfied that the party is unable to present the party's case properly without assistance.

113—Restriction on evidence

Evidence of anything said or done in the course of mediation will be inadmissible in proceedings before the Tribunal except by consent of all parties to the proceedings.

Division 5—Intervention by Commissioner

114—Power to intervene

The Commissioner may intervene in proceedings before the Tribunal or a court concerning a residential park dispute.

If the Commissioner intervenes in proceedings, the Commissioner becomes a party to the proceedings and has all the rights (including rights of appeal) of a party to the proceedings.

Division 6—Evidentiary and procedural powers

115—Tribunal's powers to gather evidence

This clause deals with the Tribunal's powers to gather evidence.

116—Procedural powers of Tribunal

The Tribunal is empowered to—

· hear an application in the way the Tribunal considers most appropriate;

· decline to entertain an application, or adjourn a hearing, until the fulfilment of conditions fixed by the Tribunal with a view to promoting the settlement of matters in dispute between the parties;

· decline to entertain an application if it considers the application frivolous;

· proceed to hear and determine an application in the absence of a party;

· extend a period within which an application or other step in respect of proceedings must be made or taken (even if the period had expired);

· vary or set aside an order if the Tribunal considers there are proper grounds for doing so;

· adjourn a hearing to a time or place or to a time and place to be fixed;

· allow the amendment of an application;

· hear an application jointly with another application;

· receive in evidence a transcript of evidence in proceedings before a court and draw conclusions of fact from that evidence;

· adopt, as in its discretion it considers proper, the findings, decision or judgment of a court that may be relevant to the proceedings;

· generally give directions and do all things that it thinks necessary or expedient in the proceedings.

The Tribunal's proceedings must be conducted with the minimum of formality and in the exercise of its jurisdiction the Tribunal is not bound by evidentiary rules but may inform itself as it thinks appropriate.

117—General powers of Tribunal to cure irregularities

The Tribunal may, if satisfied that it would be just and equitable to do so, excuse a failure to comply with a provision of this measure on terms and conditions the Tribunal considers appropriate.

The Tribunal may amend proceedings if satisfied that the amendment will contribute to the expeditious and just resolution of the questions in issue between the parties.

Division 7—Judgments and orders

118—General powers of Tribunal to resolve disputes

The Tribunal may, on application by a party to a residential park dispute—

· restrain an action in breach of this measure or a residential park agreement or collateral agreement; or

· require a person to comply with an obligation under this measure or a residential park agreement or collateral agreement; or

· order a person to make a payment (which may include compensation) under this measure or a residential park agreement or collateral agreement or for breach of this measure or a residential park agreement or collateral agreement; or

· modify a residential park agreement to enable the resident to recover compensation payable to the resident by way of a reduction in the rent otherwise payable under the agreement; or

· relieve a party to a residential park agreement or collateral agreement from the obligation to comply with a provision of the agreement; or

· terminate a residential park agreement or declare that a residential park agreement has, or has not, terminated; or

· reinstate rights under a residential park agreement that have been forfeited or have otherwise terminated; or

· require payment of rent into the Residential Tenancies Fund until conditions stipulated by the Tribunal have been complied with; or

· require that rent paid into the Residential Tenancies Fund be paid out and applied as directed by the Tribunal; or

· require that a bond paid into the Residential Tenancies Fund be paid out and applied as directed by the Tribunal; or

· require a resident to give up possession of rented property to the park owner; or

· make orders to give effect to rights and liabilities arising from the assignment of a residential park agreement; or

· exercise any other power conferred on the Tribunal under this measure; or

· do anything else necessary or desirable to resolve a residential park dispute.

The Tribunal does not have jurisdiction to award compensation for damages arising from personal injury.

119—Special powers to make orders and give relief

The Tribunal may make an order in the nature of an injunction (including an interim injunction) or an order for specific performance.

However, a member of the Tribunal who is not legally qualified cannot make such an order without the approval of the Presiding Member of the Tribunal.

The Tribunal may also make interlocutory orders, binding declarations of right and ancillary or incidental orders.

120—Restraining orders

The Tribunal may make a restraining order restraining a resident and other persons on rented property from engaging in conduct that creates a risk of serious damage to property or personal injury.

An application for a restraining order may be made without notice, but the Tribunal must allow the resident or other persons against whom the order is made a reasonable opportunity to satisfy it that the order should not continue in operation.

A breach of a restraining order would attract a maximum penalty of imprisonment for 1 year.

121—Conditional and alternative orders

The Tribunal may make conditional orders and orders in the alternative so that a particular order takes effect, or does not take effect, according to whether stipulated conditions are complied with.

122—Enforcement of orders

An order of the Tribunal may be registered in the appropriate court and enforced as an order of that court.

A contravention of an order of the Tribunal (other than an order for the payment of money) will be an offence punishable by a maximum penalty of $10 000.

123—Application to vary or set aside order

A party to proceedings before the Tribunal may, within 3 months, apply to the Tribunal for an order varying or setting aside an order. The Tribunal may allow an extension of time.

124—Costs

The Governor may, by regulation, provide that in proceedings of a prescribed class the Tribunal will not award costs unless—

· all parties to the proceedings were represented by legal practitioners; or

· the Tribunal is of the opinion that there are special circumstances justifying an award of costs.

Division 8—Obligation to give reasons for decisions

125—Reasons for decisions

The Tribunal will be required to state written reasons for a decision or order if asked to do so by a person affected by the decision or order.

Division 9—Reservation of questions of law and appeals

126—Reservation of questions of law

The Tribunal may reserve a question of law for determination by the Supreme Court.

127—Appeals

An appeal will lie to the Administrative and Disciplinary Division of the District Court from a decision or order of the Tribunal.

An appeal must be commenced within 1 month of the decision or order appealed against unless the District Court allows an extension of time.

If the reasons of the Tribunal are not given in writing at the time of making a decision or order and the appellant then requests the Tribunal to state its reasons in writing, the time for commencing the appeal runs from the time when the appellant receives the written statement of the reasons.

Division 10—Representation in proceedings before Tribunal

128—Representation in proceedings before Tribunal

A party to a residential park dispute may be represented by a lawyer if—

- all parties to the proceedings agree to the representation and the Tribunal is satisfied that it will not unfairly disadvantage a party who does not have a professional representative (that is, a lawyer, a law clerk, or a person who holds or has held legal qualifications); or
- the Tribunal is satisfied that the party is unable to present the party's case properly without assistance; or
- another party to the dispute is a lawyer, or is represented by a professional representative; or
- the Commissioner has intervened in, or is a party to, the proceedings.

A party may be represented by a person who is not a lawyer if—

- the party is a body corporate and the representative is an officer or employee of the body corporate; or
- all parties to the proceedings agree to the representation and the Tribunal is satisfied that it will not unfairly disadvantage an unrepresented party; or
- the Tribunal is satisfied that the party is unable to present the party's case properly without assistance.

Division 11—Miscellaneous

129—Entry and inspection of property

The Tribunal is empowered to enter land or a building and carry out an inspection the Tribunal considers relevant to a proceeding before the Tribunal.

The Tribunal may authorise a person to enter land or a building and carry out an inspection the Tribunal considers relevant to a proceeding before the Tribunal under this Act.

130—Contempt of Tribunal

A person who—

- interrupts the proceedings of the Tribunal or misbehaves before the Tribunal in such proceedings; or
- insults the Tribunal or an officer of the Tribunal acting in the exercise of official functions; or
- refuses, in the face of the Tribunal, to obey a direction of the Tribunal,

is to be guilty of a contempt of the Tribunal.

131—Punishment of contempt

The Tribunal is empowered to punish a contempt by—

- imposing a fine not exceeding $2 000; or
- committing the person to prison until the contempt is purged subject to a limit (not exceeding 6 months) to be fixed by the Tribunal at the time of making the order for commitment.

These powers may only be exercised by a member of the Tribunal who is legally qualified.

132—Fees

The Governor is empowered to prescribe fees in relation to proceedings in the Tribunal.

The registrar is empowered to remit or reduce a fee if the party by whom the fee is payable is suffering financial hardship, or for any other proper reason.

133—Procedural rules

The Governor may, by regulation, prescribe procedural rules.

The Presiding Member of the Tribunal may make Rules of the Tribunal relevant to the practice and procedure of the Tribunal.

The *Subordinate Legislation Act 1978* will not apply to Rules of the Tribunal.

Part 12—Commissioner for Consumer Affairs and administration of Act

134—Administration of Act

The Commissioner will be responsible for the administration of this measure.

135—Ministerial control of administration

The Commissioner will be subject to control and direction by the Minister.

136—Commissioner's functions

The Commissioner will have the following functions:

- investigating and researching matters affecting the interests of parties to residential park agreements;
- publishing reports and information on subjects of interest to the parties to residential park agreements;
- giving advice (to an appropriate extent) on the provisions of this Act and other subjects of interest to the parties to residential park agreements;
- investigating suspected infringements of this measure and taking appropriate action to enforce the measure;
- making reports to the Minister on questions referred to the Commissioner by the Minister and other questions of importance.

137—Immunity from liability

No liability will attach to the Commissioner, or any other person acting in the administration of this measure, for an honest act or omission in the exercise or purported exercise of functions under this measure.

138—Annual report

Provision is made for an annual report by the Commissioner.

Part 13—Miscellaneous

139—Contract to avoid Act

An agreement or arrangement that is inconsistent with this measure or purports to exclude, modify or restrict the operation of this measure, will be (unless the inconsistency, exclusion, modification or restriction is expressly permitted under this measure) to that extent void.

A purported waiver of a right under this measure will be void.

A person who enters into an agreement or arrangement to defeat, evade or prevent the operation of this measure (directly or indirectly) will be guilty of an offence punishable by a maximum penalty of $10 000.

140—Notice by park owner not waived by acceptance of rent

A demand for, any proceeding for the recovery of, or acceptance of, rent by a park owner after the park owner has notice of a breach of the agreement by the resident or has given the resident notice of termination under this measure will not operate as a waiver of the breach or the notice.

141—Exemptions

The Tribunal is empowered to grant exemptions which may be conditional.

142—Service

Provision is made for the service of notices or documents on a person by—

- giving them to the person, or an agent of the person, personally; or
- sending them by post addressed to the person, or an agent of the person, at the last known place of residence, employment or business of the person or agent; or
- leaving them in a letterbox or other place where it is likely to come to the attention of the person, or an agent of the person, at the last known place of residence, employment or business.

If the whereabouts of a person is unknown, the notice or document may be given by publishing it in a newspaper circulating generally throughout the State.

If two or more persons are the park owners or residents under a residential park agreement, a notice or other document is duly given if given to any one of them.

143—Regulations

Provision is made for the making of regulations.

Schedule 1—Transitional provisions

1—Application to existing residential park agreements

The measure will apply to a residential park agreement whether the agreement was entered into before or after the commencement of the clause.

2—Application to existing park rules

Part 2 of the measure will apply to rules that—

- have been made by the park owner of a residential park; and
- are binding on residents of the park under the terms of the residential park agreements to which the park owner and the residents are parties,

whether the rules were made before or after the commencement of the clause.

3—Exemption by Minister

The Minister is empowered to grant exemptions in relation to—

- agreements entered into before the commencement of this clause; or
- a specified agreement, or class of agreements, entered into before the commencement of this clause; or
- rules (to which clause 2 applies) made before the commencement of this clause; or
- a specified rule, or class of rules, (to which clause 2 applies) made before the commencement of this clause.

4—Existing residential park agreements need not comply with formal requirements

A residential park agreement in force at the commencement of this clause will not need be in writing nor comply with any other requirement of clause 10 of the measure as to the nature or contents of such an agreement.

5—Existing bond to be paid to Commissioner

A person who holds any amount by way of a bond at the commencement of this clause will be required to pay the amount of the bond to the Commissioner within 7 days after that commencement. Failure to do so will be an offence with a maximum penalty of $1 250 and an expiation fee of $160.

Schedule 2—Amendment of *Residential Tenancies Act 1995*

1—Amendment of *Residential Tenancies Act 1995*

A consequential amendment is made excluding agreements to which the *Residential Parks Act 2006* applies from the application of the *Residential Tenancies Act 1995*.

The Hon. J.M.A. LENSINK secured the adjournment of the debate.

MAGISTRATES (PART-TIME MAGISTRATES) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Police): I move:

That this bill be now read a second time.

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

Leave granted.

The legislation governing the appointment of magistrates, the *Magistrates Act 1983*, does not allow for the appointment of magistrates part-time. Nor does it allow for a magistrate to be appointed specifically to serve as a resident magistrate in a country area.

Permitting the appointment of magistrates part-time will promote greater flexibility within the magistracy. It is also likely to attract to the magistracy persons who are highly qualified for appointment, but who are not attracted to full-time employment. The ability to work part-time should make the magistracy more attractive to those persons with young children and other family responsibilities. It could also allow magistrates to study part-time.

The Government believes that South Australians who live and work in regional areas should have the same access to justice as other residents of the State. In line with this, it is the Government's view that magistrates should be appointed to sit permanently in regional cities.

This Bill addresses both of these issues. It amends the Magistrates Act to provide for the appointment of magistrates part-time and resident magistrates in country areas.

Clause 5 of the Bill amends section 5 of the Act. New provisions provide for a magistrate to be appointed part-time and for a full-time magistrate to convert to a part-time appointment by agreement with the Chief Magistrate, made with the approval of the Attorney-General.

Important consequential amendments are made to section 18A of the Act.

Clause 9 inserts new subsections into section 18A of the Act. These new provisions will prohibit a part-time magistrate from employment or business that may conflict with her duties of office. Specifically a part-time magistrate will be prohibited from practising law or, without the written approval of the Chief Justice given with the concurrence of the Chief Magistrate, from carrying on a trade or business, holding any paid office in connection with a business or engaging in any form of paid work.

The Chief Justice may, after consultation with the Chief Magistrate, withdraw approval for a part-time magistrate to engage in employment or business activities.

These restrictions will ensure the independence of part-time magistrates is not compromised, or, importantly, is not seen to be compromised, by their non-judicial activities.

Clauses 6, 7 and 8 amend, respectively, sections 13 (remuneration), 15 (recreation leave) and 16 (sick leave) to make provision for part-time magistrates.

As to resident magistrates, section 5 of the Act is amended to authorise the Governor to appoint a magistrate for a region or part of the State. Under the new provisions, the instrument of appointment of a magistrate may contain a condition requiring the duties of the magistrate to be performed wholly or predominantly at one or more specific places in accordance with directions given by the Chief Magistrate. The Governor is authorised, on the recommendation of the Attorney-General, given with the concurrence of the Chief Magistrate, to vary a condition in an instrument of appointment about serving in the country.

These amendments have been the subject of consultation with the Chief Magistrate and His Honour the Chief Justice, both of whom have indicated their approval of the amendments.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Magistrates Act 1983*

4—Amendment of section 3—Interpretation

This clause inserts a definition of ***part-time magistrate*** in the principal Act.

5—Amendment of section 5—Appointment of magistrates

This clause provides for the appointment of magistrates on a part-time basis and for full-time magistrates to work on a part-time basis by agreement made with the Chief Magistrate with the approval of the Attorney-General.

6—Amendment of section 13—Remuneration of magistrates

This clause entitles a stipendiary magistrate working part-time to remuneration on a pro-rata basis in respect of his or her hours of duty at the rate determined by the Remuneration Tribunal in relation to stipendiary magistrates appointed on a full-time basis.

Note—

A stipendiary magistrate is a magistrate who is remunerated by salary in respect of his or her magisterial office.

7—Amendment of section 15—Recreation leave

This clause entitles a part-time stipendiary magistrate to pro-rata recreation leave in respect of his or her hours of duty.

8—Amendment of section 16—Sick leave

This clause entitles a part-time stipendiary magistrate to pro-rata sick leave in respect of his or her hours of duty.

9—Amendment of section 18A—Concurrent appointments and outside employment etc

This clause prohibits a part-time magistrate from practising law for fee or reward. It requires the written approval of the Chief Justice given with the concurrence of the Chief Magistrate for a part-time magistrate to practise any other profession for remuneration, carry on any trade or business,

hold any paid office in connection with a business, or engage in any form of work for remuneration.

Schedule 1—Transitional provision

1—Transitional provision

This clause ensures that the provisions restricting a magistrate's right to practice law or engage in trade or business or outside employment or other professions apply to magistrates whether appointed before or after the commencement of this measure.

The Hon. J.M.A. LENSINK secured the adjournment of the debate.

EVIDENCE (SUPPRESSION ORDERS) AMENDMENT BILL

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

GRASSHOPPER PROGRAM

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I table a ministerial statement relating to the 2006 grasshopper program made in the other place by the Minister for Agriculture, Food and Fisheries.

ADJOURNMENT

At 9.06 p.m. the council adjourned until Thursday 21 September at 2.15 p.m.