LEGISLATIVE COUNCIL

Tuesday 24 July 2007

The PRESIDENT (Hon. R.K. Sneath) took the chair at 2.19 p.m. and read prayers.

ASSENT TO BILLS

Her Excellency the Governor, by message, assented to the following bills:

Climate Change and Greenhouse Emissions Reduction,

Commission of Inquiry (Children in State Care) (Children on APY Lands) Amendment,

Harbors and Navigation (Australian Builders Plate) Amendment.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions that I now table be distributed and printed in *Hansard*: Nos 516 and 540.

DOMESTIC VIOLENCE

516. (First session) **The Hon. J.M.A. LENSINK:** Can the Minister for the Status of Women advise:

1. How many shelters does the government fund for the protection of victims of domestic violence?
2. What funding did they receive in the years:
(a) 2002-03;
(b) 2003-04;
(c) 2004-05; and
(d) 2005-06?
3. What amount is budgeted for 2006-07?
4. What was the outcome of the Family Court pilot program looking at providing support through the court process for culturally and linguistically diverse women undertaken last year?

The Hon. G.E. GAGO: The Minister for the Status of Women has advised:

1. Hon Jay Weatherill MP, Minister for Families and Communities has provided the following response.

There are 22 domestic violence services funded under the Supported Accommodation Assistance Program (SAAP).

2. Hon Jay Weatherill MP, Minister for Families and Communities has provided the following response.

Total funding, recurrent and one-off to domestic violence services is:

(a) 2002-2003: $6.46 million
(b) 2003-2004: $6.47 million
(c) 2004-2005: $6.79 million
(d) 2005-2006: $6.88 million

3. Hon Jay Weatherill MP, Minister for Families and Communities has provided the following response.

The amount budgeted for 2006-2007 is $7 054 800.

4. The Women's Information Service has started providing a Court Support Service to women who are attending the Family Court. The program is aimed at women who have experienced domestic violence or who are fearful to go to the Court alone.

The Program was established through a working group comprising the Women's Information Service, the Women's Legal Service, the National Council for Single Mother's and their Children, the Victim Support Service and the National Abuse Free Contact Campaign.

To date 38 court support sessions have been provided to women, sometimes with one woman receiving multiple support sessions from a court support volunteer.

An evaluation of the Program is currently being conducted and should be finalised in the near future.

DRUG COUNSELLORS

540. (First session) **The Hon. J.M.A. LENSINK:**

1. (a) How many full time equivalent drug counsellors existed within Drug and Alcohol Services; and

(b) What was their average caseload as at:
30 June 2002;
30 June 2003;
30 June 2004;
30 June 2005; and
30 June 2006?

The Hon. G.E. GAGO: I have been advised:

1. The total full-time equivalent (FTE) of DASSA staff providing specialised counselling services on an outpatient basis is 45.4 FTE. However, all DASSA staff working with clients provide counselling as an important component of client care.

2. In general, five outpatient appointments are booked each day per FTE providing specialised counselling services. However, as clients sometimes do not attend appointments or cancel appointments at the last minute, the average number of outpatient attendances per FTE per working day is as follows:

- 30 June 2002 – 3.2.
- 30 June 2003 – 3.3.
- 30 June 2004 – 3.8.
- 30 June 2005 – 4.4.
- 30 June 2006 – 4.1.

In addition to providing specialised counselling services, these staff participate in community prevention and early intervention programs.

PAPERS TABLED

The following papers were laid on the table:

By the President—

Reports, 2005-06—
City of Holdfast Bay
City of Port Lincoln
District Council of Mount Remarkable

By the Minister for Police (Hon. P. Holloway)—

Report on the Appointments to the Minister's Personal Staff—Section 69 of the Public Sector Management Act 1995
Death in Custody of Martin John Philip—Report
Regulations under the following Acts—
Daylight Saving Act 1971—Duration
Emergency Services Funding Act 1998—Relevant Financial Year
Juries Act 1927—Remuneration
Passenger Transport Act 1994—Maximum Taxi Fares
Public Finance and Audit Act 1987—Refund of Small Amount
Public Sector Management Act 1995—Long Service Leave
State Opera of South Australia Act 1976—Elections
Superannuation Act 1988—Julia Farr Services Employees
Victims of Crime Act 2001—Levy
Workers Rehabilitation and Compensation Act 1986—Claims and Registration
Rules of Court—
District Court—District Court Act 1991—Adjudication on Costs
Magistrates Court—Magistrates Court Act 1991—Warrant Execution
Supreme Court—Supreme Court Act 1935—Adjudication on Costs
Emergency Services Funding Act 1998—Declaration of Levy and Area and Land Use Factors Notice 2007
Emergency Services Funding Act 1998—Declaration of Levy for Vehicles and Vessels Notice 2007
Port Adelaide Maritime Corporation 2006-2007 Charter
Section 74B, Summary Offences Act 1953—Road Block Establishment Authorisations for the period from 1 October 2006 to 31 December 2006
Section 74B, Summary Offences Act 1953—Road Block Establishment Authorisations for the period from 1 January 2007 to 31 March 2007
Section 83B, Summary Offences Act 1953—Dangerous Area Declarations for the period from 1 January 2007 to 31 March 2007

By the Minister for Urban Development and Planning (Hon. P. Holloway)—

Techport Australia Boundary Review Plan Amendment—Report by the Minister

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

Operation of the Aquaculture Act 2001—Report, July 2007
Regulations under the following Acts—
Fisheries Act 1982—Licence Fees
Housing and Urban Development (Administrative Arrangements) Act 1995—South Australian Aboriginal Housing Authority
Housing Improvement Act 1940—Standards
Primary Produce (Food Safety Schemes) Act 2004—Bivalve Moluscs
South Australian Co-operative and Community Housing Act 1991—
Electoral Procedures
General
Housing Associations
Investment Shares
South Australian Housing Trust Act 1995—Registration of Covenants
Rules under Acts—
Authorised Bettering Operations Act 2000—Bookmakers Licensing—Event Probity Information

By the Minister for Environment and Conservation (Hon. G.E. Gago)—

National Health and Medical Research Council—National Statement on Ethical Conduct in Human Research—Report
Regulations under the following Acts—
Crown Lands Act 1929—Fees Erratum
Fair Trading Act 1987—Health and Fitness Industry
Health and Community Services Complaints Act 2004—Community Services
Liquor Licensing Act 1997—Dry Zones—
Coober Pedy
Port Pirie
Natural Resources Management Act 2004—
Central Adelaide Prescribed Wells Area
Correction of Errors
Tagged Trading
Water Restrictions
Optometry Practice Act 2007—General
Waterworks Act 1932—Water Efficiency Plans
Rules under Acts—
Local Government Act 1999—Local Government Superannuation Scheme—
Salary Link Benefits
Simpler Super
National Health and Medical Research Council—Ethical Guidelines on the Use of Assisted Reproductive Technology in Clinical Practice and Research—June 2007.

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. B.V. FINNIGAN: I lay on the table the report of the committee on an inquiry into the Medical Board of South Australia.

Ordered to be published.

PAYROLL TAX EXEMPTIONS FOR CHARITIES

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I lay on the table a copy of a ministerial statement relating to payroll tax exemptions for charities made in another place by my colleague the Treasurer.

DEFENCE SA

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I lay on the table a copy of a ministerial statement relating to Defence SA made in another place by my colleague the Deputy Premier.

WATER RESOURCES

The Hon. G.E. GAGO (Minister for Environment and Conservation): I lay on the table a copy of a ministerial statement relating to water resources outlook for 2007-08 made in another place by my colleague the Minister for the River Murray.

COOK ISLANDS

The PRESIDENT: I have a statement regarding the Presiding Officers' Conference at the Cook Islands. I must report to members that the children of the Cook Islands were overwhelmed with the gift from Legislative Council members, and I would like to thank you all for your donations. They have promised to whip the Aussies at cricket in 2020.

FAMILY FIRST

The Hon. A.L. EVANS: I seek leave to make a personal explanation.

Leave granted.

The Hon. A.L. EVANS: Hendrik Gout recently ran a story about me in *The Independent Weekly* which contained a number of errors. The 23 to 29 June edition made the comment that my colleague the Hon. Dennis Hood 'overthrew' me in an 'unreported coup'. The leadership change was my idea alone, and I personally requested that the Hon. Dennis Hood replace me as party leader. In fact, I raised the issue at a party executive meeting, and the Hon. Dennis Hood excused himself from the debate. In that respect, therefore, the article was misleading. I further point out that we both contacted the press following the change of leadership, and the story was picked up by the *Sunday Mail*. The change of leadership was therefore not 'unreported', as claimed by Hendrik Gout.

I wrote to *The Independent Weekly* seeking a retraction, which resulted in the paper printing a further claim by Hendrik Gout that I had spoken to him on the steps of Parliament House and had expressed regret about handing over the leadership of the party. No such conversation ever took place. I believe that the comments made about me and Family First are examples of irresponsible journalism and are misleading. I have requested that Hendrik Gout print an apology; however, so far he has refused. I therefore thank you, Mr President, for allowing me to correct the public record.

QUESTION TIME

MOTORCYCLE GANGS

The Hon. D.W. RIDGWAY (Leader of the Opposition): I seek leave to make a brief explanation before asking the Minister for Police a question about the business activities of outlaw motorcycle gangs.

Leave granted.

The Hon. D.W. RIDGWAY: On 14 July 2006, a Labor Party press release from the Premier's office stated:

Hundreds of people are abandoning the South Australian security industry as tough new licensing conditions expose links to organised crime groups and outlaw motorcycle gangs.

More than 730 of the state's 7 100 licensed crowd controllers have yet to renew their licences, following the introduction of compulsory fingerprinting. . . Premier Mike Rann yesterday said the crowd controllers were not renewing their licences because of stringent new laws aimed at eliminating the involvement of outlaw motorcycle gangs in the security industry.

The laws were 'unashamedly intended to combat the influence of organised crime gangs, such as outlaw bikies, that had infiltrated our crowd-controller industry'. . .

The opposition was recently informed that outlaw motorcycle gangs may be involved in other business activities in South Australia, particularly businesses with a high weekly cash turnover, which the motorcycle gangs can then, in turn, use for laundering money and funding other illegal activities. In light of this, my questions are:

1. Is the minister aware of any outlaw motorcycle gangs that may be involved in legitimate business activities?

2. What action has the government taken to ensure that outlaw motorcycle gangs or their representatives are not purchasing legitimate businesses that have a high weekly cash turnover for the purposes of laundering money and funding their other illegal activities?

The Hon. P. HOLLOWAY (Minister for Police): It should come as no surprise to anyone that, as one of the largest elements of organised crime within this state, outlaw motorcycle gangs would exhibit behaviour that is typical of organised crime and use the proceeds from illegal activities such as the production, supply, distribution and sale of drugs to finance other business activities. The Leader of the Opposition is correct: the government did take some action last year and even before that time through introducing legislation to seek to reduce the influence of outlaw motorcycle gangs in the security industry.

As the Leader of the Opposition should be aware from comments made recently by the Commissioner of Police in relation to outlaw motorcycle gangs where he named a couple of areas where there was some concern, that intelligence has shown that there was some bikie activity, and telecommunications and money lending were two examples given by senior police officers. That is obviously an operational matter for police and, given any intelligence the police have of bikie activities in those areas, the amount of information they might release would be somewhat limited because they are conducting investigations into those areas.

If the Leader of the Opposition really wishes to get more information about that matter, I am happy to see whether the police can give him a private briefing. However, I do not think it is appropriate to put much more on the public record than has already been said by police because, clearly, those matters would be part of police operations and would need to be treated accordingly.

PORT NOARLUNGA AQUATIC RESERVE

The Hon. J.M.A. LENSINK: I seek leave to make an explanation before asking the Minister for Environment and Conservation about the Port Noarlunga Aquatic Reserve.

Leave granted.

The Hon. J.M.A. LENSINK: I understand that the Port Noarlunga Aquatic Reserve was first proclaimed in 1971 and has been under some pressure from outflows from the Christie Creek and the Onkaparinga catchment. Recent publicity indicates that the Onkaparinga council has been driving some reform of the estuary to improve the quality of the outflow of water into the reserve. I refer to the Friends of (Living) Christie Creek website where they claim that Transport SA has caused some damage to the estuary and sand has been carted for the northern metropolitan beaches. I looked at the website for Adelaide's Living Beaches, and I note that it does not extend as far south to include that particular reef. My questions are:

1. Is the government engaged with the council on issues to do with the potential damage from stormwater and waste water outflows?

2. Why does the Adelaide Living Beaches strategy not include this section of our coastline?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I am aware that work has been done in the past to improve the outflows from both the Christie Creek and Onkaparinga catchment area into this particular reserve. However, other than that, I do not have any specific details. I also do not have any details with me today on the alleged damage by Transport SA, but I am happy to take those questions on notice and bring back a response.

CORRECTIONAL SERVICES DEPARTMENT

The Hon. S.G. WADE: I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about the Department for Correctional Services.

Leave granted.

The Hon. S.G. WADE: I refer to the special privileges afforded to prisoner Bevan Spencer von Einem. On 13 March this year the minister said, 'I was not aware that prisoner von Einem had been prescribed Cialis until November last year.' I refer to the Port Lincoln Prison Village People Christmas special. Five months later (May 2007), the minister indicated that she had only recently become aware of the performance and said, 'I do not want to be surprised by this kind of behaviour again.'

On Friday last week, the ABC reported that a controlled explosion had occurred in Yatala Labour Prison the week before. On Sunday the minister said, 'I have asked for a briefing on the discoveries.' Does the minister consider that her 'don't call me, I'll call you' approach to communicating with and managing her department is consistent with the principles of ministerial accountability?

The Hon. CARMEL ZOLLO (Minister for Correctional Services): Indeed, the correctional services portfolio is a very challenging one. I am certain that no-one would be surprised to learn that prisoners in our correctional services sometimes do misbehave as well as want to introduce contraband or even make prohibited items. What is important is that we have in place at all times procedures to ensure that, when such misbehaviour occurs or contraband is found or items made, they are found and dealt with expeditiously. As Minister for Correctional Services, I am always advised of any significant incident that does occur and, under the act, I am also advised of any separations.

When the media calls at some unusual hour on the weekend because someone has put out a press release, clearly I have an overview of what is happening, and if that incident is brought to my attention I will know, but it is also very important for me to respond with facts and, for that reason, I call for further information. I think we have already discussed prisoner Bevan Spencer von Einem in this place on a number of occasions.

In relation to Port Lincoln, I have now seen copies of the two investigations (through the Chief Executive), and we are awaiting crown law advice on whether to advise two

correctional services officers whether a formal inquiry will be undertaken.

In relation to the so-called 'matchstick bomb' (which I understand Channel 2 broke into its news service on Friday evening), my advice is that on 11 July 2007 at about 7 o'clock there was a loud explosive sound, followed by the smell of sulphur, within F Division at Yatala Labour Prison and, due to the echoing sound, the precise location was initially difficult to determine. All prisoners were in the process of being moved from their units to the recreation yard and were returned to their cells and secured. Unit staff conducted a thorough search of the unit and outside areas and located pieces of burnt bed blanket, tin foil and tissue paper near the officers' station.

What became apparent was that what I would describe as a homemade matchbox fire cracker had been constructed from matches and other material and had been activated. The remnants were removed and placed in a plastic bag for the purpose of a thorough investigation. On 12 July 2007, the prisoner responsible for the device was identified and was subsequently charged under the regulations of the Correctional Services Act 1982. Appropriate action was taken whereby the prisoner was moved from F Division to B Division, where he is under a more stringent regime. He has also lost some of the privileges he had previously earned in his time at Yatala.

As I have said, the correctional services portfolio is a challenge, for the obvious reasons that I have already stated, and it is important that we have procedures in place so that any incidents that occur are promptly dealt with. I also wish to pay tribute to our correctional services officers, who have a tough job. Their job is to ensure that we have safe and secure prisons, as well as being humane. It is a tough job and, overwhelmingly, our correctional services officers do a tremendous job.

The Hon. S.G. WADE: Sir, I have a supplementary question. In the minister's answer she stressed how important it is for her to have the facts before she comments on incidents in relation to her portfolio. In that context, I ask: what briefings did she have on events in the Port Lincoln prison in relation to the Village People Christmas special before she went on the media, expressing her disgust at this outrage?

The Hon. CARMEL ZOLLO: I think I have been on the media on a number of occasions in relation to the Port Lincoln incident. Essentially, I was briefed in relation to the first investigation, which had to do with allegations that someone had attempted to take a prohibited substance—alcohol—into the prison.

The Hon. S.G. Wade interjecting:

The PRESIDENT: Order!

The Hon. CARMEL ZOLLO: I had enough facts to be outraged, yes.

ROAD SAFETY

The Hon. B.V. FINNIGAN: I seek leave to make a brief explanation before asking the Minister for Road Safety a question about serious injuries as a result of road crashes in South Australia.

Leave granted.

The Hon. B.V. FINNIGAN: The suffering associated with fatalities on our roads should never be underestimated. However, serious injuries are also a great emotional and financial cost to the community. Can the minister please explain what action the government is taking to help to reduce the number of serious injuries on the state's roads?

The Hon. CARMEL ZOLLO (Minister for Road Safety): I would like to thank the honourable member for what is a very important question. On average, 9 000 people are injured on the state's roads each year. This disturbing figure equates to about 24 injuries every day, and it is the catalyst behind the government's new road injury awareness campaign, '24 hours. 24 injuries', which I officially launched on Friday 20 July at the Royal Adelaide Hospital. While I concede that the campaign is hard-hitting and features some confronting visual images, it is crucial that everyone who uses our roads—drivers, pedestrians, motorcyclists and cyclists—understands the potential cost of complacency.

Of the 9 000 people injured in road trauma, 16 per cent were injured seriously enough to require hospitalisation. Many take years to recover and, tragically, some never recover from spinal or brain injuries. The government's commitment to reducing serious road injuries is reflected in the fact that a serious injury target has been added to the State Strategic Plan. By the end of 2010, we want to reduce road fatalities to fewer than 90 people a year and reduce serious injuries to fewer than 1 000. While I am pleased to say that last year South Australia recorded its lowest annual fatality rate on record (117 deaths), it is alarming that, for every death, nearly 10 people are injured, with 62 per cent seriously injured. Young adults aged 17 to 24 make up only 11 per cent of the total population and account for 28 per cent of serious injuries. Serious casualty crashes cost each South Australian nearly $500 per year, and the cost to the community is over $2 million every day.

Despite these startling figures, research carried out by the Motor Accident Commission (MAC) reveals that many South Australians have little understanding of the implications of serious injuries—for example, the recovery time to learn to walk or talk again and the impact on families, who provide lifelong care. It is important that this government continues to raise awareness of road injuries within the South Australian community. The advertising campaign, which features powerful, emotive images of the devastating impact of road injuries, will appear on television screens across the state and will be supported by cinema and online advertising, regional shelters and bus backs until the end of August.

SPEED CAMERAS

The Hon. D.G.E. HOOD: I seek leave to make a brief explanation before asking a question of the Minister for Road Safety.

Leave granted.

The Hon. D.G.E. HOOD: South Australians have become cynical about the placement of speed cameras; it has even been suggested by some that it has more to do with revenue raising than monitoring the speed of vehicles travelling on the road. In that vein, my questions are:

1. Are there any protocols or formal policies in place that decide the placement of speed cameras; if so, is the policy to place them in the areas where speed-related accidents most regularly occur, or is the policy to place cameras in areas where the highest number of offenders are caught?

2. If protocols do exist, will the minister table the protocols for the placement of speed cameras?

The Hon. CARMEL ZOLLO (Minister for Road Safety): I am sorry for the cynicism of the honourable

member in relation to this most important question. All anti-speeding moneys go into road safety initiatives in the state, and I ask honourable members to remember that. As to the placement of speed cameras, certainly with respect to fixed cameras they are placed in relation to crash history: it is not where the most amount of revenue can be raised. In relation to police operations, that is something the police decide. I know that last year there was a certain amount of criticism in regard to the police on Gorge Road. Seriously, I think that none of us should apologise for that; if people are losing their lives or being seriously injured on our roads why are we apologising? If people obey the road rules, they have nothing to fear. It is as simple as that. It is about safety. You should not even be asking that question. Of course it is about safety. Look at the facts.

Members interjecting:

The PRESIDENT: Order!

The Hon. CARMEL ZOLLO: Speed kills. It is as simple as that. It contributes to road trauma in this state, whether it be death or serious injury. Where the fixed speed cameras are placed is in relation to crash history and data. At the operational level I would not interfere with the police, as those decisions are made by them for their own good reasons, again because of crash data history. I would not interfere with that. All anti-speeding money goes into the community road safety fund, which is used for the betterment of the community. Every effort we make has contributed to lowering the road toll in the state.

The Hon. D.G.E. HOOD: By way of a supplementary question, will the minister agree to table the protocols or procedures dictating the placement of speed cameras?

The Hon. CARMEL ZOLLO: As I said in relation to the police, I suspect that it is an operational decision, so I may have some trouble obtaining that information. I refer the honourable member to the Estimates Committees of last year where the then deputy commissioner John White responded to the opposition member on how they make those decisions. I am happy to ensure he gets a copy of that. In relation to departmental protocol, I have outlined what it is, but I can bring that information back to him.

GREAT ARTESIAN BASIN

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the Great Artesian Basin.

Leave granted.

The Hon. CAROLINE SCHAEFER: In June I asked a series of questions of the minister with regard to the lack of rehabilitation of bores in the Great Artesian Basin and the lack of funding for such rehabilitation. The minister at the time said things like, 'I understand. . . state funding contributions as well. I am informed that stage 3 is still being negotiated.' She went on to say:

> The Great Artesian Basin is a joint responsibility—is not just the responsibility of the state government—and this government has shown very clearly its commitment to the environment.

She went on to talk about marine parks and solar energy. She then suggested that I should 'clean out my ears', because she had already answered this question and that the department was working very hard on rehabilitating bores but that it could do nothing until it had completed the negotiations on tranche 3 of the national water plan. However, tranche 3 of the national water plan does not start until 2009. Tranche 2 of funding for the Great Artesian Basin rehabilitation is in place and is funded federally until 2009. It requires matching funding from the state government. I repeat my question: why is there no budget commitment between now and 2009, that is, none in this budget and none in the forward estimates for the rehabilitation of bores in the South Australian part of the Great Artesian Basin?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for her questions. The Great Artesian Basin sustainability commenced in 1999-2000 and is jointly funded by the state and commonwealth governments. The two components of the initiative are the well replacement and bore drain replacement programs, and to date under the initiative nine wells have been decommissioned, three rehabilitated and 12 replacement wells drilled, saving 6.6 megalitres per day. Work has been completed on the drilling of a replacement well for the Mount Gason bore on the Birdsville Track, and that bore has been successfully decommissioned. A great deal of work has been done. There are 37 uncontrolled flowing wells remaining in the Great Artesian Basin, of which 29 wells are considered eligible for initiative-type funding. The bore drain replacement program has delivered 185 kilometres of pipe and associated tanks and troughs to 22 pastoral leases, saving an estimated 53 megalitres a day.

The benefits have involved greater security of water supply, improved management of pastoral leases and increased availability of water. As previously stated, a business plan for investment in risk management and infrastructure in the Great Artesian Basin has been prepared by the Department of Water, Land and Biodiversity Conservation to complete the outstanding works under the initiative, involving well rehabilitation, removal of bore drains and construction of cooling grids, investigating the failure of the fibreglass case wells, and investigating the possibility of establishing a contributory funding scheme for pastoralists to take up responsibility for the long-term maintenance or replacement of bores in the basin; and an economic analysis of the feasibility of options for a bore insurance scheme has also been prepared.

The Prime Minister announced a national plan for water security on 25 January 2007. The plan includes the continuation of the GABSI Phase 3, commencing in 2009-10, with the commitment of $85 million over seven years by the commonwealth. The bulk of the funds are for bore capping and rehabilitation of piping. The future phase of GABSI is under negotiation with the commonwealth, and those negotiations have not been completed. Issues obviously have emerged in relation to the failure of several of the fibreglass casings relating to some of the bores. A work program has been submitted, with a business plan, to investigate the cause of that failure. As I have outlined before, the responsibility for the future maintenance of bores resides with the pastoralists as the lessees of the land, but acceptance of this responsibility by the pastoralists is obviously constrained by the high replacement or maintenance costs, often in the vicinity of $250 000 to $700 000 per bore; it is a very expensive operation. Often even more expense is incurred with deeper and higher-pressure bores. The price is also affected by the high temperatures of some of the bores.

In developing a business plan DWLBC has investigated the feasibility of potential funding models for a contributory funding scheme for pastoralists to take up responsibility for the long-term maintenance or replacement of bores in those

basins. The South Australian government funding allocations for the future will not be determined until those business plans and funding models have been completed.

The Hon. CAROLINE SCHAEFER: I have a supplementary question: will the minister give us an estimated time in which these feasibility studies will be completed, or does she anticipate doing nothing in the Great Artesian Basin for the oncoming financial year?

The Hon. G.E. GAGO: I have outlined already the significant amount of work that is going on there. I have spoken at length on this issue a number of times in this chamber. It is extremely disappointing that the opposition fails to grasp the basic concepts of this scheme. It is very disappointing; nevertheless, I persist. A great deal of work has been done and a great deal of work is continuing to be done. It recently came to our attention that a series of casings have failed, so we are doing a full investigation into that. We are putting a business plan together and looking at a range of funding options. We have done a great deal of work in the past and we continue to do that work and we continue to do it in a financially responsible way.

NATIVE VEGETATION

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

Leave granted.

The Hon. I.K. HUNTER: Since European settlement South Australia has been deforested to the point where little of our native vegetation remains, particularly in urban areas. Add to this the problem of invasive introduced species and it becomes obvious that preserving our remnant vegetation and biodiversity is an important job of government. Will the minister inform the chamber of efforts to revegetate South Australia with native plant species?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for his important question. It is timely, given that one of the country's most prominent annual conservation initiatives is about to take place again. I am referring, of course, to National Tree Day, Australia's biggest community tree planting event. This is a fantastic initiative which people of all ages can get involved in. I am giving members plenty of notice so that they can join me; they can clear their schedules well in advance for this Sunday and get along to one of the many planting sites around the state and lend a hand. I think the fresh air might help improve the disposition of some and blow out some of the cobwebs in some of the members' ears.

I will be joining the Lord Mayor Michael Harbison as well as many wonderful volunteers to plant around 2 000 trees in the city's park, just north of the West Terrace Cemetery. The planting is held annually in conjunction with the state government's SA Urban Forests—Million Trees Program, which aims to plant 3 million local native plants across greater metropolitan Adelaide by 2014. Our target for this year is to plant a further 270 000 seedlings at 70 sites around South Australia. The South Australian Urban Forests—Million Trees Program is about ensuring Adelaide continues to be recognised as a clean and green city, which is leading Australia—

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

The Hon. G.E. GAGO: I will be happy to answer that question—in an ecologically sustainable way. It is also reducing the physical impact of the city upon the natural environment, while improving the quality of life for Adelaide's residents, visitors and future generations. The environmental benefits include helping to recover and protect our native biodiversity by increasing habitat for native wildlife, reducing greenhouse gas emissions, improving air quality and water quality, reducing water consumption and, of course, enhancing the beauty of our parks.

The drought has had an impact. In 2005-06 at over 100 project sites a total of approximately 320 000 local native seedlings were planted. However, planting for the 2006 season was ceased in early spring, rather than late spring, due to the lack of soil moisture—an effect of the drought. The total number of seedlings planted during the 2006 winter season was approximately 300 000. An estimated 15 000 seedlings were carried over to the 2007 planting season. The planting season is from late autumn to spring each year. The financial impact of the 2006 drought on the program has been minimised by varying contracts with tree planters to create savings that will enable the program to meet the bulk of the costs of the deferred plantings in 2007.

Members will recall that the Premier and his wife planted the millionth tree in the Adelaide Parklands on 16 July 2006. The total seedlings planted through the program by the end of June 2007 is approximately 1 267 000. I am pleased to see that opposition members are in awe of that tremendous effort and are most impressed with our achievements. I could hear their gasps, Mr President. The average survival rate for the program to date, which is a question which was asked by the member opposite me, remains near 80 per cent, which is considered an excellent result. I again hear members opposite gasp with astonishment at this remarkable achievement. This is considered an excellent result for the large scale reafforestation program in this location, which has a fairly temperate climate.

Furthermore, regeneration is also occurring. More than 2 000 local plants have been planted at the site and have been grown as a result of seed collected from local parklands. With the assistance of the Million Trees program, the Adelaide City Council alone will have planted 100 000 local native plants since first participating in the program. Again, I invite everyone to join us on Sunday. It is a practical way for everyone to make a positive contribution to the environment.

JULIA FARR SERVICES

The Hon. NICK XENOPHON: I seek leave to make an explanation before asking the Minister for Emergency Services, representing the Minister for Disability, questions in relation to the care of residents of the Julia Farr complex.

Leave granted.

The Hon. NICK XENOPHON: Since late March, I have been contacted by a number of parents of residents of ward 3A, the specialised behaviour ward for residents with behavioural issues mostly related to an acquired brain injury; that is, injuries caused by trauma such as vehicle crashes and work accidents. In addition, I have been contacted by nurses, residents and other staff of the Julia Farr complex who have also expressed concerns.

A change in policy has led to residents of ward 3A being shifted to other parts of the Julia Farr complex, with the shifting taking place from the middle of May this year. Staff, parents and residents are alarmed that this measure has, in a number of instances, aggravated pre-existing behavioural issues and has led to an increased use of physical and

chemical restraints for some residents to prevent the risk of harm to either themselves or others. An April 2007 review of ward 3A prepared by Disability SA states in part:

> There are a number of people, some of whom currently reside in 3A, who would prefer to live in alternative share or single accommodation in the community. In addition to this, with an increased focus on supporting people in their chosen community, there is a reduced focus on campus-based services, such as those provided within 3A, Highgate Park, Fullarton.

An expert on acquired brain injury, Dr Miranda Jelbart, who worked for nine years within Julia Farr Services and the Hampstead Rehabilitation Centre, has stated that the move is 'fraught with problems' and 'would be destabilising'. The review further states:

> If their behaviour deteriorates (due to enforced changes) then aggression and frustration may develop towards staff so they may require physical or chemical restraint etc. which is undesirable. The overall approach would require a careful assessment of risk of that behaviour declining and strategies put in place to manage that, e.g. extra staff, sitters or carers one to one. If it needs to be done, it has to be properly resourced or they will put their staff at risk and the quality of life of patients and families.

Dr Jelbart's predictions appear to have come to an unfortunate fruition, with the information that a number of parents and nurses have provided to me in the past week. Maureen Lockwood, whose 44 year old son Paul has been a resident in ward 3A at Julia Farr for the past 12 years, has told me that her son's behaviour has deteriorated to the point that he threw a plate at her yesterday—behaviour that he has not exhibited for several years. Heather and Julio Ricciardi, whose son Mario, aged 30, has been at Julia Farr for six years, have also observed more unsettled and disturbed behaviour. They are concerned that the seizure he suffered last Sunday may in some way be related to the disruption that he has experienced.

A nurse to whom I spoke earlier today has expressed concern about the issue of safety of both staff and residents, particularly given that, in some instances, nursing staff caring for residents who have been moved are not familiar with their behavioural issues. This nurse and others have told me that they are concerned about their inability and fear to raise their concerns with management. Finally, I refer to a report in today's *Advertiser*, by journalist Craig Bilstein, that some brain-injured patients have been sedated to deal with their behavioural difficulties. My questions are:

1. Can the minister confirm that there have been a number of complaints by parents and residents about the shifting of residents from ward 3A in terms of additional behavioural difficulties?

2. What risk management and assessments took place prior to residents being shifted out of ward 3A, including the impact on those residents who have been left behind? Further, what ongoing assessment of such residents is being undertaken?

3. Can the minister advise whether there has been an increase in medication administered to either current or former residents of ward 3A since the shifting began in mid May 2007?

4. Will the minister order an independent inquiry into the concerns raised by parents, residents and staff over the shifting of residents in ward 3A?

The PRESIDENT: I point out that the honourable member has made a long, drawn-out explanation.

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank the honourable member for his important question in relation to care of residents in the Julia Farr complex. I will refer his question to the Minister for Disability in the other place and bring back a response. However, I understand the minister may have already responded to most of the questions raised by the honourable member in a public forum.

SANSBURY, Mr C.C.

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Police a question about death in custody.

Leave granted.

The Hon. R.D. LAWSON: On 12 July, the State Coroner handed down the findings of an inquest he conducted into the death in custody of the 24 year old prisoner Colin Sansbury. In November 2004, Mr Sansbury died in the Elizabeth Police Station whilst he was in police custody. When Mr Sansbury was taken into custody he told police that he was 'dead inside' and that he 'wouldn't be here tomorrow', and he asked for six feet of rope. When he signed the papers in which he was denied bail, Sansbury drew a stick figure of a hanged man.

The Coroner stated in his findings that there were 15 areas of neglect, principally by police: matters such as leaving Mr Sansbury in the gaol-issued jumpsuit after a change of clothes had been provided; turning off the lights in the cell, meaning that the closed circuit TV camera could not see what was going on, and the door had been shut as well; and police not checking on Mr Sansbury for 40 minutes while the officer charged with that duty was escorting an air-conditioning mechanic around the premises. The Coroner was also highly critical of a police constable being allowed to offer Sansbury the inducement of bail if he provided certain information to the police. It is fair to say that the Coroner's criticism of the police was damning. In relation to evidence given by Deputy Commissioner Burns, the Coroner said, 'It is almost as if Deputy Commissioner Burns belongs to a different organisation from those junior officers.'

The Coroner recommended that federal or interstate police officers should step in to supervise or replace local investigators whom the Coroner considered were 'defensive and lacking in enthusiasm because an officer was investigating his colleagues'. He was also critical of the Police Commissioner himself in relation to this matter, and he described the police attitude as being complacent. In his 45 pages of reasoning, the Coroner provided ample support for those conclusions. My questions are:

1. Does the minister share the Coroner's concerns about the way in which this matter unfolded in November 2004 and in the subsequent investigation?

2. Is the minister satisfied that he (the minister) has taken all steps necessary to minimise the possibility of similar events recurring in the future, and what steps has the minister himself taken in relation to this matter?

3. Does the minister agree with the Coroner's recommendations that federal or interstate police officers should supervise investigations of this kind into the actions of South Australia Police?

The Hon. P. HOLLOWAY (Minister for Police): On Thursday 12 July 2007, the State Coroner handed down his findings and recommendations into the death in custody of Colin Craig Stansbury on 17 November 2004. The state Coroner made two formal recommendations. One of the two recommendations is directed at South Australia Police; that is, the deployment of Aboriginal community constables for the purpose of debriefing as that concept is used in the

debriefing policy, exhibit C78B, be discontinued. The second recommendation is directed to the Attorney-General; that is, that he (the Attorney-General) raise with his state and commonwealth counterparts the proposal that the states and the commonwealth enter into an arrangement with each other such that a death in custody of the police force of a particular jurisdiction is investigated by or under the supervision of police from another jurisdiction, including the Federal Police.

The Coroner also directed 12 comments to police in relation to what he saw as shortcomings in the treatment of Mr Sansbury. A summary of those 12 comments is:

1. Police did not understand their obligations for prisoner checking.

2. There was inadequate communication between custodial officers.

3. There was distraction of custodial officers away from prisoner supervision—and the Hon. Robert Lawson mentioned that in his preamble.

4. Police did not check Mr Sansbury for 40 minutes.

5. There was poor CCTV coverage.

6. The disposable jumpsuit should have been removed.

7. Interaction by the community constable induced a belief that Mr Sansbury may be bailed if he provided information.

8. Mr Sansbury placed significant trust in the community constable.

9. Mr Sansbury was disappointed when information he supplied did not result in bail.

10. Due to the debrief by the community constable, section 78 of the Summary Offences Act was breached.

11. Due to the debrief by the community constable, Sansbury's charging was delayed contrary to the Elizabeth local service area debrief policy.

12. Due to the debrief by the community constable, Sansbury's opportunity to apply for bail was delayed, contrary to the Elizabeth debrief policy.

The Coroner also referred to shortcomings in SAPOL's investigation, particularly to a perceived failure to locate the hard copy of the computerised prisoner disposition information before it was destroyed. My advice from SAPOL is that this single document, amongst many others produced for the inquest, did not impede or in any way compromise the investigation, and it was unlikely to have had significant impact. In any case, SAPOL is of the view that the State Coroner's focus on this particular issue does not support the claim of investigational shortcomings. In fact, in an April 2007 email directed to the investigating officer, the counsel assisting the State Coroner said:

> I just wanted to say that, on reviewing again the Coroner's Report and Commissioner's Inquiry for the inquest, your reports are, in my opinion, excellent. . . but just wanted to let you know that I think you did a really great job with this case.

That is what the council assisting the Coroner said in an email. In respect of the other 12 comments which the Coroner directed to SAPOL on the treatment of Mr Sansbury, Deputy Commissioner Burns provided evidence to the inquest of SAPOL pro-activity in improving prisoner management over time.

The actions and recommendations taken by South Australia Police came as a result of various agency generated reviews, previous commissioners' inquiries, coronial inquests and, specifically, the recommendations from the Commissioner's inquiry into the unfortunate death of Mr Sansbury, which, as I said, was on 17 November 2004. As a result of all those actions and recommendations coming from the various agency generated reviews, these actions were:

- Implementing the cell safety review project which focused on a physical audit of all cell facilities in 2003.
- During 2004-05, SAPOL undertook a review of SAPOL's general order in relation to police prisoners. A revised general order came into effect in August 2005.
- In 2005, SAPOL established Project Compass to continue its review program and consolidate change achieved under Focus 21, exploit technological benefits and improve operational quality at the workplace level. Project Compass terms of reference includes reviewing relevant aspects of SAPOL operations and administration.
- Complementing the revised general order, a tiered level corporate training program was developed to provide police who have prisoner responsibilities with the knowledge and skills to care for and manage prisoners.
- Prisoner management has been incorporated into incident management and operational safety training, which all SAPOL operational police must undertake and pass annually in order to remain operational.
- A corporate level custody management portfolio has been established to identify prisoner management and custody issues and to develop management strategies, consistent standards and practices. The portfolio is chaired by an assistant commissioner.
- In August 2006, SAPOL commissioned the Custodial Safety Review Project, which aims, in part, to: review the recommendations of the royal commission into Aboriginal deaths; review recommendations of the 2003 Cell Safety Audit, the 2004 Implementation Project and the 2005 Ethical and Professional Standards Service Audit Report; review recommendations resulting from relevant internal investigations; develop an audit plan, encapsulating recommendations, audit benchmarks and equipment reviews; highlight risks identified by local service area managers; identify gaps, if any, in cell safety standards against benchmarks; develop a schedule for visitation and inspection of all SAPOL custodial facilities; standardise policy on the use and storage of CCTV; and review the relevance and content of SAPOL training programs.

So, the Custodial Safety Review Project aims to undertake all those functions. Furthermore, South Australia Police is currently in the process of developing facility design standards for all future cell complexes. Complementing this, SAPOL has developed and approved a set of transportable cell standards designed to ensure the safety of prisoners. It is progressing legislative change to the definition of 'officer in charge' to ensure clearly defined accountabilities in prisoner management. It is undertaking a CCTV replacement program in accordance with the approved SAPOL cell complex and security surveillance standards. It is providing training at the commissioning of each CCTV replacement system.

The provision of forensic procedures, medication and medical treatment of prisoners across SAPOL is being reviewed. I remind members that this prisoner had been taken to hospital, and there were issues in relation to that, to which I will not refer here. However, clearly, the police are obviously placed in a difficult position if a person is returned to custody but has medical problems. Also, SAPOL is currently in the process of monitoring a pilot program whereby a registered nurse provides medical assessment and treatment for non-life-threatening illnesses, which is being trialled at the City Watch-house.

So, SAPOL corporate policy and procedures are applied in the event of a death in police custody to ensure the independence and impartiality of investigations. The Major Crime Investigation Branch is responsible for the full investigation, which is overseen by the Officer in Charge, Internal Investigation Section. In addition, commissioner inquiries, which were established in 1995, are in place to review SAPOL policies, practices and procedures relative to a particular incident, with the objective of improving and enhancing SAPOL work practices.

As I said, this unfortunate death in custody occurred back in November 2004. In the meantime, the police have taken a number of steps to improve conditions and operations in relation to the handling of prisoners in police custody. The Coroner's report, of course, will be examined by the police and, ultimately, as is required under the act, a response will be tabled in this place. However, I want to put on the record that South Australia Police has undertaken a significant number of measures since the time of this death, some 2½ years ago, to ensure that conditions in relation to the handling of prisoners have been improved.

The Hon. J.M.A. LENSINK: Sir, I have a supplementary question. Does that long list that the minister read out include anything like mental health first-aid training for police officers?

The Hon. P. HOLLOWAY: Obviously, training is a significant part of handling prisoners. The police cannot be expected to have the knowledge of mental health nurses—

The Hon. J.M.A. Lensink interjecting:

The Hon. P. HOLLOWAY: No, that's right. However, I just indicated that, in fact, they are trained in relation to prisoner handling. Clearly, in relation to mental illness, it is difficult for police to be involved. If the honourable member reads the Coroner's findings in this case, he will know that the police officer indicated that this person was considered at risk and appropriately so. The prisoner was taken to the Lyell McEwin hospital and, as I said, it was, unfortunately, at a particularly busy time for the hospital, and that is set out in the Coroner's report.

However, in regard to the question, I come back to the point that the police are doing what they can to train and upgrade themselves in order to ensure that the opportunity is minimised for incidents of this type to happen again. Clearly, as well trained as we can make the police in the handling of prisoners, there are limitations in relation to people with mental illness.

The Hon. J.M.A. LENSINK: I have a further supplementary question. Is the minister saying that police officers receive zero training in the areas of identification or management of mental health issues specifically?

The Hon. P. HOLLOWAY: I thought that I said the complete opposite. As I said, in this case, the police sergeant, or whoever it was who had responsibility, identified the person as being at risk. Obviously, in relation to diagnosis, police officers are not medical practitioners. I believe that, in this particular case, they took the appropriate action in taking that person to the hospital. An MOU is in place in relation to mental health issues, and I believe that police have adequate training for their responsibilities. As I indicated, regarding the new section being set up under the Assistant Commissioner training is one of the areas being looked at. You cannot expect police officers to be turned into medical practitioners with expertise in mental illness. Nonetheless, we can improve training, and that is exactly what is being done.

PAWNBROKERS AND SECOND-HAND DEALERS

The Hon. R.P. WORTLEY: I seek leave to make a brief explanation before asking the Minister for Police a question about pawnbrokers and second-hand dealers.

Leave granted.

The Hon. R.P. WORTLEY: Official South Australia Police crime figures show that, at the end of the last financial year, there were 17 513 fewer property crime offences in South Australia compared with the 2001-02 financial year when 51 637 crimes were committed. In 2005-06, there was a total of 34 124 property crime offences, including serious criminal trespass (residential and non-residential), larceny, illegal use of motor vehicles, and theft from motor vehicles. Can the minister advise of the new initiative to be introduced, which is expected to enhance SAPOL's ability to further reduce these types of crimes?

The Hon. P. HOLLOWAY (Minister for Police): I thank the honourable member for his important question. Each year in Australia, property estimated to be valued at billions of dollars is stolen from homes, shops, cars, factories, and warehouses. A little of this property is recovered and returned to its owners or retained by the burglars and thieves for their personal use. Thieves know that the easiest way to convert the physical proceeds of crime into cash is to sell the items to a pawnbroker or second-hand dealer. Evidence obtained from the Australian Institute of Criminology shows that second-hand dealers and pawnbrokers are convenient and sometimes willing outlets for stolen property. In fact, in 2003 New South Wales police conducted a second-hand dealers' operation, which identified that 85 per cent of property received through a store they established was stolen.

In last month's budget, more than $2 million was allocated for the introduction of the new web-based reporting and tracing system for pawnbrokers and second-hand dealers. This new initiative will provide a system for real-time electronic reporting of property received at pawnbrokers and second-hand dealers. It will improve the productivity of police resources through electronic data collection, a powerful database for queries and automation of time-consuming comparisons against stolen property records.

Our police will now be able to spend less time sifting through receipts and data and more time enforcing the law. It is expected that this initiative will enhance SAPOL's ability to further reduce crime. I had the opportunity late last year to see a similar system at work during a visit to Vancouver police. In the first year of implementing a similar scheme Vancouver police were able to increase the identification and recovery of stolen property by more than 300 per cent and reduce property crime in the areas of criminal trespass and vehicle crime by 16 per cent. The impact of a 16 per cent reduction in criminal trespass and vehicle crime in South Australia would result, if we base it on 2005-06 statistics, in more than 12 000 fewer crimes. The consensus of international research is that the movement, inadvertent or otherwise, of stolen property through the second-hand dealing and pawnbroking industry can be limited through stringent licensing controls and a real time web-based transaction recording system that allows cross matching with police records. Web-based transaction recording systems are in place in Canada, Western Australia, Queensland and New

South Wales, and they have all been highly successful in identifying stolen property.

The web-based police interface will offer rich search functionality, allowing officers to search on any combination of data elements in the database. It will enable the real time electronic submission of second-hand and pawnbrokers' information to police, automated matching and the ability to flag suspected stolen items and quickly notify police by internet, email or mobile telephone.

We also intend to amend the Second-hand Dealers and Pawnbrokers Act 1999 to fix existing anomalies, including trading hours and the trade of semi-precious metals. The current trend associated with the theft of semi-precious metals continues to be of concern to the state government. The rise of this crime affects home owners and the housing industry and even electricity and water suppliers. Currently there is limited legislation covering scrap metal dealers and it is the state government's intention to include them in this new scheme. The state has no mercy for businesses that support theft and criminal activity by buying stolen goods from criminals. We have pledged to back our police as part of our commitment to deliver safer communities for all South Australians, and this initiative is further evidence that we are delivering on this pledge.

REPLIES TO QUESTIONS

NEEDLE EXCHANGE PROGRAM

In reply to **Hon. NICK XENOPHON** (29 March).

The Hon. G.E. GAGO: I have been advised:

The research is overviewed in the Australian Government's Department of Health and Ageing information kit entitled *Needle and syringe programs: a review of the evidence.*

Results of an annual survey conducted in 2005-06 among 212 clients of nine key Clean Needle Program (CNP) sites in Adelaide found that 114 clients received a total of 212 referrals. These clients were referred to services as follows:

- 32 per cent to a drug treatment service.
- 24 per cent to a social, welfare, housing or legal service.
- 23 per cent to another CNP site.
- 18 per cent to another health service.
- 3 per cent to another service.

Data is not collected on the type of drug treatment service to which the referral is made, however the ultimate goal for all drug treatment services in South Australia is abstinence.

LOCAL GOVERNMENT DISASTER FUND

In reply to **Hon. J.S.L DAWKINS** (29 March).

The Hon. G.E. GAGO: The Minister for State/Local Government Relations has provided the following information:

When the State Government established the Local Government Disaster Fund (LGDF) in 1990 it defined the purposes to which the Fund could be directed. The Fund can be used for purposes relating to the effects on local governing authorities of natural disasters, or other adverse events or circumstances that are non-insurable, where the expenses incurred exceed the financial capacity of the affected council.

A Management Committee administers the Fund, with members nominated by the Local Government Association, the South Australian Local Government Grants Commission, the Office for State/Local Government Relations and the Department of Treasury and Finance. While officers of my Department manage the administration of the Fund (the Executive Officer of the Management Committee is also the Executive Officer of the South Australian Local Government Grants Commission) the Management Committee makes recommendations to the Treasurer for payments from the Fund.

To determine whether the expenses incurred exceeded the financial capacity of the affected council, it is essential to first define 'what is a disaster' for the council. The Management Committee determined that if the extent of the damage exceeded 5 per cent of council's rate revenue then this would be defined as a 'disaster'.

In relation to the storm damage sustained within Renmark Paringa Council, the Executive Officer of the Management Committee has had discussions with the Chief Executive Officer of the Council about the criteria for making a claim consistent with the LGDF guidelines. It was not a question of this government not being prepared to assist the Council with a contribution from the Fund, but rather that the storm damage sustained, while significant, did not constitute a disaster under the guidelines and therefore the Council did not qualify for assistance from the Fund.

I have been advised that the Council have greatly appreciated the assistance given by all those involved in the clean up effort.

MULTIPLE CHEMICAL SENSITIVITY

In reply to **Hon. D.G.E. HOOD** (15 November 2006).

The Hon. G.E. GAGO: The Minister for Health and the Minister for Disability have advised:

1. The Department of Health has initiated preliminary research, benchmarked with interstate hospitals and commenced discussion with the regional health services to inform the development of guidelines and hospital protocols.

2. The Whole of Government Promoting Independence strategy mandate is to 'ensure access to services and facilities for people with a disability'.

Multiple Chemical Sensitivity (MCS) is recognised and included in the definition of disability contained within the Commonwealth's Disability Discrimination Act 1992 (DDA) and covered by the Promoting Independence Strategy requirements for all Portfolios.

The Promoting Independence Committee in collaboration with the Building Compliance Branch of the former Department for Administrative and Information Services, and now positioned within the Department for Transport, Energy and Infrastructure, have drafted a disability checklist for buildings and facilities for Government agencies. This checklist ensures specific consideration for MCS access requirements in light of the Legislative Council's Social Development Committee report.

DRUG POLICY

In reply to **Hon. A.M. BRESSINGTON** (14 March).

The Hon. G.E. GAGO: I have been advised:

Opioid dependence is a chronic relapsing condition. Individuals progress through drug addiction treatment at various speeds, so there is no pre-determined length of treatment. Opioid pharmacotherapy clients remain on the program for a wide range of periods, some for months and some for years depending on the assessed needs of the opioid dependent individual.

Research has shown unequivocally that good outcomes are contingent on adequate lengths of treatment. The USA National Institute on Drug Abuse reports that for methadone maintenance, 12 months of treatment is the minimum, and some opiate-addicted individuals will continue to benefit from methadone maintenance treatment over a period of years.

Between 1 July 2005 and 31 June 2007, the average period of opioid pharmacotherapy treatment for clients of Drug and Alcohol Services SA was 1.2 years.

CHLAMYDIA

In reply to **Hon. SANDRA KANCK** (19 September 2006).

The Hon. G.E. GAGO: The Minister for Health has advised:

1. The only project funded under the Australian Government chlamydia Targeted Grants Program (TGP) in South Australia is the Riverland Health Mobile Chlamydia Testing Pilot Program.

2. The South Australian Department of Health applied to the Australian Government's Department of Health and Ageing for funding under the chlamydia TGP for a pilot testing program targeting young men aged 16 to 25 years of age. This submission was unsuccessful.

3. The Department of Health contributes to the Tristate STI/HIV Project which provides annual screening services for chlamydia, gonorrhoea and syphilis for Aboriginal people living in remote areas of South Australia, the Northern Territory and Western Australia.

4. The State Government pays for chlamydia tests performed in South Australian public hospitals. Laboratory services maintained by the SA Government, including the Institute of Medical and Veterinary Science who provide facilities for chlamydia testing for the public and private sector.

5. The aim of the chlamydia pilot testing program is to determine if testing for chlamydia in Australia is sufficiently feasible, acceptable and cost effective to warrant the introduction of a national chlamydia testing program. The issue of future funding of population health programs addressing chlamydia will be informed by the results of the pilots and prior discussion would be premature.

WATER CONSERVATION

In reply to **Hon. M. PARNELL** (22 November 2006).

The Hon. G.E. GAGO: I have been advised by the Building Services Manager at Parliament House, that water saving devices have been arranged for all showers and are currently being installed.

HOODED PLOVERS

In reply to **Hon. SANDRA KANCK** (28 March).

The Hon. G.E. GAGO: I have been advised:

1. Hooded Plovers are currently listed as Vulnerable in the schedules to the *National Parks and Wildlife Act* 1972. During the most recent review of the status of species in this State, it has been proposed that the Vulnerable rating be retained, noting continued concern for the species' long-term survival in South Australia. The species failed to meet nationally- and internationally-accepted criteria for classification as Endangered, a classification that would denote even greater risk of extinction in the short- to medium- term.

2. The programs that the Government has established to ensure the continued survival of the Hooded Plover are:

- The Department for Environment and Heritage (DEH) is currently drafting the *Action Plan for the Hooded Plover in South Australia;*
- DEH funds a project officer to coordinate recovery initiatives for the Hooded Plover and other threatened species across the State;
- This year, DEH has prepared and distributed the first Hooded Plover Newsletter, 'Hoods on the Beach'.
- DEH supports and provides strategic direction to various stakeholders interested in Hooded Plover conservation;
- DEH proposes further stakeholder engagement through the first Hooded Plover Recovery Team meeting, proposed to be held later in 2007;
- DEH is a partner in several research projects that aim to determine and quantify Hooded Plover distribution and population levels across the State.

TOBACCO LAW ENFORCEMENT

In reply to **Hon. R.I. LUCAS (**21 February).

The Hon. G.E. GAGO: I have been advised that:

Most diseases caused by smoking develop over a long period of time. For example, lung cancer caused by smoking usually takes 20 or more years to develop. Therefore the rise in death rates from smoking-related diseases is an indicator of the high rates of smoking in earlier decades.

Measuring current smoking prevalence is the best means we have of assessing if efforts to reduce the harm caused by smoking is succeeding. Smoking rates in South Australia are now the lowest ever recorded, with smoking prevalence decreasing from 33 per cent in 1981 to 19.1 per cent in 2005.

MURRAY COD

In reply to **Hon. SANDRA KANCK** (6 February).

The Hon. CARMEL ZOLLO:

The Minister for Agriculture, Food and Fisheries has provided the following information:

The South Australian Research and Development Institute (SARDI) Aquatic Sciences has been undertaking a native fish monitoring program in the River Murray since January 2005. There are additional Murray cod data collected as part of long-term fish community assessments for the Murray-Darling Basin Commission. SARDI Aquatic Sciences will provide the Minister for Agriculture, Food and Fisheries with a status report for Murray cod in South Australia in April 2007.

Murray cod is the largest freshwater fish species in Australia. It can live up to at least 48 years and is distributed widely across the Murray-Darling Basin. It inhabits slow flowing rivers, anabranches and creeks and spawns in spring and early summer. During spawning, large adhesive eggs are deposited onto solid surfaces such as logs, rocks or clay. Murray cod spawn annually, but survival of larvae and subsequent recruitment into the population is highly dependent on river flow. Relatively strong year classes have only been formed in years of high flows or flood.

Drought conditions will have a significant impact on native fish species under pressure from adverse environmental conditions, habitat degradation and disease. Although drought is part of a naturally occurring process, its combination with existing levels of human impacts poses a greater threat to native fish populations. Available information indicates that there has not been strong recruitment of Murray cod in South Australia since 1994. The most recent results from larval sampling work detected very low levels of Murray cod larvae in the main channel of the River Murray and some larvae at Chowilla. Although some low level recruitment may have occurred in years with improved flows, continuing low flow conditions appear to be having an acute impact on the species.

South Australia has adopted the strategy to improve native fish stocks through efforts to enhance natural recruitment by effectively managing and restoring the river flow and habitat, removing barriers to fish migration and regulating for sustainable exploitation, which are issues that have been the primary causes of their decline.

A moratorium on the fishing of Murray cod is one option available for the ecologically sustainable management of this species. The Minister for Agriculture, Food and Fisheries will consider a range of management options, including a moratorium, once he receives a scientific status report from SARDI Aquatic Sciences.

The South Australian Murray-Darling Basin Natural Resources Management Board (through the River Murray Environmental Manager function) as part of an emergency drought response has been investigating potential evaporative savings that could be achieved by blocking river connections on a number of wetlands and large sites that may impact on the River if saline and nutrient rich water recedes back into the River as water levels drop. SARDI Aquatic Sciences and the Murray-Darling Basin NRM Board have been collating existing baseline information, conducting additional fish, water quality and soil surveys and modelling flow and salinity profiles for wetland areas proposed for closure.

Information from this process shows that no notable threatened fish species exist in lake Bonney at Barmera. I am advised that once inflows have ceased, salinity in the lake would increase gradually from current levels of around 7-8 000 EC to an estimated maximum of approximately 15 000 EC over 12 months. lake Bonney has a depth of 5 metres and is expected to experience a maximum drop of 1.7 metres during this process. This will cause about a 5 per cent reduction in the area of the lake.

I am advised that native fish will not be negatively affected by these conditions. Murray cod have been shown to survive gradual salinity increases to above 20 000 EC (about 1/3 concentration of seawater). Further, the salty wetland conditions in lake Bonney are not characteristic of Murray cod habitat and although there are anecdotal records of Murray cod in the lake, it is unlikely to support many of this species. Baseline surveying has not detected any Murray cod in lake Bonney.

ROADSIDE MEMORIALS

In reply to **Hon. S.G. Wade** (22 November 2006).

The Hon CARMEL ZOLLO: The Minister for State/Local Government Relations has advised:

1. This matter is being considered in relation to a proposal to revise the *Local Government Act* 1999, as set out in 2.

2. The Local Government Association (LGA) has approached the Minister for State/Local Government Relations seeking assistance to establish a review of Section 221 of the *Local Government Act* 1999 to deal with this issue. Section 221 of the Act determines that a person (other than the councillor a person acting under some other statutory authority) must not make an alteration to a public road unless authorised to do so by council.

Councils have sufficient power to control roadside memorials under State Government legislation, but they are concerned with the reality that grieving relatives are unlikely to apply for a permit for a temporary memorial. The issue, therefore, is whether the general framework currently available for regulating roadside memorials is the best way of dealing with this sensitive matter. Other options might include a specific Local Government Act provision relating

to temporary roadside memorials, along the lines of Section 226 of the Act which covers moveable signs and allows these to be placed without permit, provided certain safety and amenity conditions are met.

Discussions will continue between myself, the Minister for State/Local Government Relations and the LGA.

NATURAL RESOURCES MANAGEMENT (WATER RESOURCES AND OTHER MATTERS) AMENDMENT BILL

Returned from the House of Assembly without any amendment.

PROTECTIVE SECURITY BILL

Returned from the House of Assembly without any amendment.

COMMISSION OF INQUIRY (CHILDREN IN STATE CARE) (CHILDREN ON APY LANDS) AMENDMENT BILL

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

APPROPRIATION 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 remind members that the budget speech for 2007-08 was included in the budget papers distributed to honourable members on budget day. I would also, as part of the second reading explanation, like to provide some answers to questions that were asked by the opposition in another place. Perhaps I can take this opportunity to do that. One question was: what was the reasoning behind cutting the payroll tax rate rather than lifting the tax-free threshold? This is a tax design principle supporting keeping tax bases as broad as possible. It assists in keeping the tax rate as low as possible. All payroll taxing firms will benefit from the rate reduction in proportion to the size of their payrolls in excess of $504 000. This includes small businesses with payrolls in excess of the $504 000 tax-free threshold.

Therefore, we decided to concentrate all our tax relief efforts into reducing the rate as low as possible. In terms of interstate comparisons, the government focused on how South Australian payroll tax arrangements compared to Victoria. We reduced the rate equal to Victoria's but left our threshold unchanged. Apart from our philosophy of concentrating tax relief into reducing the rate to as low as possible, it is the case that South Australia has lower wage costs relative to the eastern states. It is, therefore, not directly comparable to examine the effects of Victoria's threshold with South Australia's.

The opposition has focused on comparisons with Queensland. It is the case that Queensland has a tax-free threshold of $1 million and that employers with payrolls between $504 000 and $1 million are not liable for payroll tax in that state. However, the Queensland threshold reduces for payrolls in excess of $1 million and phases out completely for payrolls in excess of $4 million. By contrast, in South Australia, every employer (irrespective of size) is eligible to claim the $504 000 tax-free threshold. From 1 July 2008, South Australian employers with payrolls in excess of $3 million will pay less payroll tax than an equivalent employer in Queensland, notwithstanding that the payroll tax rate is lower in Queensland.

Another question asked was: for the same cost as the rate reduction, what threshold increase could have been introduced with the payroll tax rate kept at the current rate of 5.5 per cent? The answer is that the full year cost in 2008-09 of reducing the payroll tax rate from 5.5 per cent to 5 per cent is estimated to be $86.6 million. For an equivalent cost the payroll tax threshold could have been increased from $504 000 to $984 000. The number of employers, on a group basis, paying payroll tax would have reduced by 1 700 from 6 500 to 4 800. There is a note here that, for the administrative convenience of all taxpayers, in calculating monthly tax liabilities it is preferable, if the threshold increases, to be in multiples of $12 000 and all costings in this briefing assume threshold increases that are divisible by 12.

The next question was: what would be the cost and how many employers would become exempt from payroll tax if the tax-free threshold was lifted from $504 000 to, first, $550 000 or, secondly, to $650 000? At a tax rate of 5.5 per cent, increasing the threshold from $504 000 to $552 000 is estimated to cost $11 million in 2008-09, and an estimated 200 employers, on a group basis, would become tax exempt. At a tax rate of 5.5 per cent, increasing the threshold from $504 000 to $648 000 is estimated to cost $31 million in 2008-09, and an estimated 600 employers, on a group basis, would become tax exempt. As I have noted, all costings have been prepared using threshold increases that are divisible by 12.

The question on payroll tax harmonisation measures was: why will the payroll tax harmonisation reforms not be implemented until 2008-09, one year later than Victoria and New South Wales? The harmonisation reforms are the result of work undertaken by a multilateral working group of all states and territories, chaired by Western Australia.

I should really be doing this on the other bill rather than the Appropriation Bill, but I may as well keep going and put it on the record now. The harmonisation reforms are the result of work undertaken by a multilateral working group of all states and territories, chaired by Western Australia, with a view to implementing reforms in 2008-09. New South Wales and Victoria were simultaneously engaged in private bilateral reform discussions while continuing to participate in the multilateral discussions, and in late February announced that they would be introducing reforms with effect from the 2007-08 year. All other jurisdictions are working to a 2008-09 implementation date for harmonisation reforms.

I will stop there and answer the remainder of those questions when we deal with the Statutes Amendment (Budget 2007) Bill, which actually has the detail of it. I thought those answers were specifically in relation to the budget, but it is actually that related budget measure. Finally, I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement
This clause provides for the Bill to operate retrospectively to 1 July 2007. Until the Bill is passed, expenditure is financed from appropriation authority provided by the Supply Act.

Clause 3: Interpretation
This clause provides relevant definitions.

Clause 4: Issue and application of money
This clause provides for the issue and application of the sums shown in the schedule to the Bill. Subsection (2) makes it clear that the appropriation authority provided by the Supply Act is superseded by this Bill.

Clause 5: Application of money if functions or duties of agency are transferred
This clause is designed to ensure that where Parliament has appropriated funds to an agency to enable it to carry out particular functions or duties and those functions or duties become the responsibility of another agency, the funds may be used by the responsible agency in accordance with Parliament's original intentions without further appropriation.

Clause 6: Expenditure from Hospitals Fund
This clause provides authority for the Treasurer to issue and apply money from the Hospitals Fund for the provision of facilities in public hospitals.

Clause 7: Additional appropriation under other Acts
This clause makes it clear that appropriation authority provided by this Bill is additional to authority provided in other Acts of Parliament, except, of course, in the Supply Act.

Clause 8: Overdraft limit
This sets a limit of $50 million on the amount which the Government may borrow by way of overdraft.

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

PUBLIC FINANCE AND AUDIT (CERTIFICATION OF FINANCIAL STATEMENTS) 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 *Public Finance and Audit (Certification of Financial Statements) Amendment Bill 2007* ('the Bill') amends the *Public Finance and Audit Act 1987* ('the Act') to strengthen the requirement for Chief Executives to provide certification of a public authority's financial statements.

Section 23(2) of the Act requires Chief Executives and the officers responsible for financial administration to provide the Auditor-General with a certificate that the financial statements "are in accordance with the accounts and records of the authority and give an accurate indication of the financial transactions of the authority for that year and, in the case of a prescribed public authority, the financial position of the authority at the end of that year." These certification requirements have remained unchanged since 1987. The requirements of section 23(2) do not reflect changes to financial reporting practices and related requirements that have occurred in the last twenty years.

Accounting Policy Statements issued by the Treasurer, pursuant to Treasurer's instructions, have expanded on the legislative certification requirements. However, this has led to a lack of clarity as the Act sets out certain certification requirements, while the Accounting Policy Statement certification requirements reflect both the provisions of the Act and other requirements reflecting current practices.

The Auditor-General in his report for the year ended 30 June 2005 raised concerns that the legislative requirements for certification of financial statements by agencies did not reflect current financial reporting practices. In that report, the Auditor-General noted that "the certification obligation is a critical underpinning of the accountability processes applied" in the preparation of a public authority's financial statements and advised that "the requirements of the certificate as currently specified in the Accounting Policy Statement should be reflected in section 23(2) of the *Public Finance and Audit Act 1987*".

In correspondence to the Under Treasurer in relation to this matter, the Auditor-General noted the existing inconsistencies "between the statutory requirements and accounting requirements regarding the form and content of the certificate". He advised that certification is critically important to the "integrity and transparency of disclosures and representations associated with an agency's financial statements", and that "any uncertainty regarding the form and content of the certificate can undermine the strength of financial accountability". The Auditor-General suggested that an amendment to the Act was required to ensure that the form and content of the certificate reflect up to date financial reporting practices and requirements.

The Bill addresses the Auditor-General's concerns. It requires that the financial statements provided to the Auditor-General be accompanied by a certificate as to compliance with the requirement that the financial statements are in accordance with the accounts and records of the authority, and comply with any relevant Treasurer's instructions and any relevant accounting standards, and present a true and fair view of the financial position of the authority at the end of the financial year and the results of its operations and cash flows for the financial year. The certificate must be signed by the Chief Executive, the officer responsible for financial administration and, for a public authority that has a governing body, the presiding member of the governing body.

To reinforce the seriousness of the integrity of the certificate, the Bill provides in section 23(2b) that a person who intentionally or recklessly provides a certificate that contravenes these requirements is guilty of an offence and establishes a maximum penalty of $5 000.

The Bill also requires that Chief Executives, officers responsible for financial administration and, where applicable, presiding members must include in the certificate a statement as to the effectiveness of internal controls over financial reporting and preparation of statements over the financial year. Failure to comply with this requirement is not an offence under section 23(2b).

The Bill requires the Auditor-General's report to include a statement as to whether in the Auditor-General's opinion the financial statements of each public authority reflect the authority's financial position and the results of its operations and cash flows for the financial year. This is an expansion of the current requirement which requires the Auditor-General's opinion on whether the financial statements of the authority reflect the financial transactions of the authority, as shown in the accounts and records of the authority, and, in the case of a "prescribed authority", whether the statements reflect the financial position of the authority.

The Bill seeks to strengthen financial accountability and underpins the integrity of the financial statements of public authorities.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Public Finance and Audit Act 1987*

4—Amendment of section 4—Interpretation

This clause deletes the definition of ***prescribed public authority*** because the references to the term are removed from the Act.

5—Amendment of section 23—Delivery of financial statements to Auditor-General by public authority

This amendment expands the matters that must be included in the certificate that accompanies the financial statement provided by each public authority under section 23 of the Act. All public authorities (not just prescribed public authorities) will need to provide a certificate as to compliance with the requirement that the statements—

- are in accordance with the accounts and records of the authority; and
- comply with relevant Treasurer's instructions; and
- comply with relevant accounting standards; and
- present a true and fair view of the financial position of the authority at the end of the financial year and the result of its operations and cashflows for the financial year.

The certificate must be signed by the Chief Executive Officer and the officer responsible for the financial administration of the public authority and, in circumstances where the public authority has a governing body comprised of a number of persons, the person entitled to preside at meetings of the governing body.

The amendment will make it an offence to intentionally or recklessly provide a certificate that does not comply with subsection (2). The amendment imposes a requirement to include a statement in the certificate as to the effectiveness of the internal controls employed by the authority over its financial reporting and the preparation of the financial statements for the financial year.

6—Amendment of section 36—Auditor-General's annual report

This amendment is consequential on the amendment to section 23. The Auditor-General's report will be required to include a statement as to whether in the Auditor-General's opinion the financial statements of each public authority meet the requirements referred to in section 23 and in doing so reflect the financial position of the authority at the end of the preceding financial year and the results of its operations and cash flows for that financial year.

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

STATUTES AMENDMENT (TRANSITION TO RETIREMENT—STATE SUPERANNUATION) 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.

This Bill seeks to make amendments to the *Southern State Superannuation Act 1994*, and the *Superannuation Act 1988*, which establish and maintain the superannuation schemes covering government employees working in the public service, in the education sector, and the health sector. These schemes are the State Pension Scheme, the State Lump Sum Scheme, and the Southern State Superannuation Scheme known as Triple S.

The principal aim of this Bill is to introduce an arrangement into these superannuation schemes that will enable members who have reached the age at which they could voluntarily retire and take their accrued entitlement, to have access to some of their superannuation if they reduce their level of employment as part of a recognised phasing into retirement or transition to retirement employment arrangement.

These proposed arrangements will only be available to those persons who have reached what is referred to as their 'preservation age' in terms of Commonwealth superannuation law. Whilst the 'preservation age' is gradually moving to age 60, and will be age 60 for all those persons in the community born after 30 June 1964, for those persons born before 1 July 1960, the 'preservation age' is age 55. This means that under the proposal contained in this Bill, all employees aged 47 and older will, if they take up a transition to retirement employment arrangement on attaining the age of 55 or later, be able to access superannuation on transitioning to retirement.

The proposed superannuation arrangement has been made possible as a result of the Commonwealth Government introducing new standards for the superannuation industry in July 2005. Commonwealth laws now allow schemes to release, subject to the rules of the scheme, a member's accrued superannuation benefits even though the person may not have terminated their current employment and permanently retired from the workforce.

In terms of the Commonwealth standards governing the release of benefits as a result of a person's transition to retirement, the released benefits cannot be taken as a lump sum benefit, but must be taken as an income stream. This means that for persons in a scheme that only pays benefits as a lump sum, the lump sum must be immediately invested in a financial product that will provide an income stream.

The Commonwealth introduced this new standard allowing superannuation to be accessed before a person fully retires from the workforce to encourage workers to retain a connection with the workforce at older ages. The Commonwealth was concerned the previous rules which required people below the age of 65 to retire or leave their job before they could access their superannuation benefits was leading to people deciding to retire prematurely. They wanted superannuation rules that would cater for more flexible workplace arrangements where people may choose to reduce their hours of work as they approach retirement.

The general principle to apply in respect of a person who is transitioning to retirement and a member of either the State Pension Scheme, the State Lump Sum Scheme, or Triple S, is that an employee will be able to access a proportion of their accrued superannuation equal to the proportion of their existing level of salary given up on moving into a transition to retirement employment arrangement. Superannuation will be able to be accessed as a result of the employee receiving a reduction in salary as a consequence of reducing their hours of employment, reducing their salary as a consequence of moving to a position with a lower level of responsibility, or a combination of both. The overall reduction in a person's salary will be the basic determinate of the amount of accrued superannuation that can be released for taking as an income stream. The legislation does provide some flexibility in this basic determinate, such that if a person's reduction in employment did not provide sufficient lump sum so the member could purchase an allocated pension, the Board will be permitted to increase the draw down entitlement, as it is referred to in the legislation, so that the member will have sufficient lump sum to purchase an allocated pension. Currently the South Australian Superannuation Board requires a member to have a minimum amount of $30 000 to purchase an allocated pension, and $10 000 to purchase an additional allocated pension.

Where the employee is a member of the State Pension Scheme the released benefit will be an indexed life pension. Where the employee is a member of either of the State Lump Sum Scheme or Triple S, the benefit accessed will be a lump sum. However in order to comply with Commonwealth law, the lump sum will have to be immediately invested to purchase an income stream. An income stream in the form of an allocated pension is available for purchase from Super SA, or many other financial services entities.

The proposed superannuation arrangement is probably best explained by providing an example.

If an employee working 100% full time moved to a transition to retirement employment arrangement resulting in employment at 60% full time, 40% of the member's accrued superannuation benefit will be able to be accessed and taken as an income stream. For the employee who is a member of the State Pension Scheme and entitled to a superannuation pension benefit of 52% of "salary" at age 55, the employee will receive an aggregate income of 80.8% of his or her previous full time salary. This income stream is made up of 60% of full time salary from active employment, and 20.8% of full time salary as a superannuation pension benefit. The non accessed portion of the accrued benefit, that is a pension benefit of 31.2% of "salary" would remain in the scheme and become available when the member fully retires. Superannuation benefits would continue to accrue to the employee commensurate with the new reduced level of employment, and enhance the non accessed benefit at age 55.

Using the same transition to retirement employment example, and applying it to a person in either the State Lump Sum Scheme or in Triple S, and in a situation where the employee's accrued superannuation entitlement was $200 000, the following option would be available to the employee. On reducing the level of employment by 40%, the employee would be able to access $80 000 of their accrued superannuation benefit. After the deduction of tax, the member would have about $70 000 for investment in an income stream. A person aged 55 investing $70 000 in an allocated pension could receive an income stream of $6 090 per annum as a Super SA allocated pension. If it is assumed that this person was on a full time salary of $45 000 per annum before they commenced on the transition to retirement arrangement, the aggregate annual income payable to this person under the transitioning arrangement would be 73.5% of the previous full time salary. Under the proposed arrangement, the non accessed superannuation benefit of $120 000 would remain in the member's scheme and continue to accrue in accordance with the existing arrangements for part time employment in the superannuation schemes.

The proposed arrangements provide for an employee who

subsequently further reduces their level of employment, or moves to a less responsible position, to access additional superannuation in line with the applicable further reduction in salary.

In both the examples given, it can be seen that by enabling employees to have access to part of their accrued superannuation as part of a phasing into retirement arrangement will make it more attractive for many employees to consider staying in the workforce for longer rather than fully retiring. The benefit for the State Government is that this proposed superannuation arrangement, when combined with a proposed transition to retirement employment arrangement which the Government is developing, will enable the Government to encourage many workers to stay in the workforce for longer than the ages at which they are currently fully retiring. The combined superannuation and employment strategy being pursued for those workers over age 55, the majority of whom tend to terminate their government employment before age 58, will address the potential significant loss of skills and corporate knowledge over the next few years. Retaining older workers with valuable skills and corporate knowledge is particularly important for the South Australian public sector which is significantly older than the general workforce, and which also has the oldest profile of state public sectors.

The proposed superannuation arrangement has been developed on the basis that there will no increase in the overall costs to the Government in providing superannuation benefits. The limit on the proportion of the accrued entitlement that can be accessed will not only ensure that the scheme does not cost the Government more, but will also ensure that public servants do not have incomes from the Government during the transition period, that exceed the amount that would have been their full time salary.

The Bill also includes amendments dealing with some non-transition to retirement matters, making amendments to the existing legislation under the *Southern State Superannuation Act,* and the *Superannuation Act*.

Several of the amendments contained in the Bill seek to address some technical deficiencies in existing provisions.

The first of the technical deficiencies seeks to insert a provision into the *Southern State Superannuation Act,* to address a problem where some members are falling out of death and invalidity insurance cover even though essentially they have ongoing non casual government employment, but in some instances there can be a short period of non employment between the successive employment contracts. The amendment will ensure that where a member of the Triple S scheme is employed under successive contracts, but there is a gap between the two contracts, death and invalidity insurance cover will be maintained for up to 3 months after the conclusion of the first contract. This will benefit those people in the education sector who have been at risk because of the short period of non employment between each contract, which generally occurs at the end of each academic year.

The technical amendments will also address a problem with the existing provisions in the *Superannuation Act* dealing with the benefit options available to persons who terminate their employment on accepting a voluntary separation package. The current deficiency in the legislation relates to the fact that there is no requirement for a person to indicate within a prescribed period which of the various options the member wishes to accept. As there are several members who have not indicated which of the options they wish to accept, a transitional provision is included that will require these persons to make an election indicating their chosen option within 3 months of the commencement of the new provisions.

In addition there is an amendment that seeks to introduce a provision in the *Superannuation Act*, that will prevent a person in receipt of salary as a judge or a judicial pension, from also receiving a pension under the State Pension Scheme. Under the proposal dealing with a pension entitlement for a person who is either a judge and in receipt of judicial salary, or is a former judge entitled to a judicial pension, any State Pension benefit will be suspended. A suspended pension will be able to be commuted to a lump sum, and then paid to the person.

The Superannuation Federation, the Public Service Association, the Australian Education Union and the SA Nursing Federation have all been consulted in relation to this Bill.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

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

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Southern State Superannuation Act 1994*

4—Amendment of section 3—Interpretation

A definition of ***preservation age*** is inserted into section 3 of the *Southern State Superannuation Act 1994* ("the Act"). The term is given the same meaning as it has in Part 6 of the Commonwealth *Superannuation Industry (Supervision) Regulations 1994*.

Another amendment will allow for the continuation of invalidity/death insurance between certain employment contracts if the period between contracts does not exceed 3 months. The amendment will also assist in the operation of section 33A.

5—Amendment of section 26—Payments by employers

As a consequence of this amendment, section 26 of the Act will not apply in relation to persons who are members of the scheme by virtue of section 14(10a).

6—Amendment of section 26D—Spouse members and spouse accounts

This amendment reflects the fact that a contribution under section 26D may be made by a spouse member or a member.

7—Insertion of section 30A

This clause inserts a new section.

30A—Transition to retirement

Under proposed section 30A, the ***basic threshold*** is an amount prescribed by the regulations for the purposes of subsection (1).

A member of the scheme who has reached the age of 55 and his or her preservation age is entitled to apply for the benefit of section 30A. The member must also have entered into an arrangement with his or her employer to reduce his or her hours of work or alter his or duties (or both) so that there is a reduction in the member's salary. The purpose of establishing this arrangement must relate to the member's proposed retirement in due course.

If the South Australian Superannuation Board is satisfied that a member has made a valid application for the benefit of section 30A, the Board will determine a ***draw down benefit*** for the member in accordance with the formula set out in subsection (4)(a). The Board must then invest the draw down benefit with (according to the member's election) the Superannuation Funds Management Corporation of South Australia or with another entity that will provide a non-commutable income stream for the member while the member continues to be employed in the workforce. The result must be that the member receives a ***draw down payment***, that is, a payment in the form of a pension or an annuity on account of the benefit.

The draw down benefit will be constituted of the components that would be payable to the member under section 31 (Retirement) if he or she had retired from employment immediately before the date of the Board's determination. Those components are:

(a) the employee component;

(b) the employer component;

(c) the rollover component (if any);

(d) the co-contribution component (if any).

The investment of a draw down benefit with the with the Superannuation Funds Management Corporation of South Australia will be on terms and conditions determined by the Board.

Although an entitlement to a draw down benefit is not commutable, a member may, after commencing to receive a draw down payment and before retiring from employment, take steps to bring the investment to an end and pay the balance of the investment into a rollover account under the Act as if the balance were being carried over from another superannuation scheme to the Triple S scheme. Also, the value of an investment with the Superannuation Funds Management Corporation of South Australia may be redeemed when the member retires, has his or her employment terminated on account of invalidity or dies (whichever occurs first).

When the Board has determined a draw down

benefit, the member's employer contribution, employee contribution, rollover and co-contribution accounts will be adjusted to take into account the payment of the benefit. Employee contributions payable by the member will be fixed on the basis of the member's salary under the arrangement established with his or her employer. The relevant employer contribution account will be immediately adjusted to take into account the payment of the draw down benefit.

If the member's salary is reduced, he or she may apply to the Board for a further benefit. If the member's salary is increased, the draw down payment will continue as if the increase had not occurred. The contributions payable by the member will be adjusted to take into account the increase.

On retirement, the member's entitlements under section 31 (Retirement) will be adjusted to take into account the draw down benefit. Similarly, if the member's employment is terminated on account of invalidity or by the member's death, any consequential entitlements will be adjusted to take into account the draw down benefit.

8—Amendment of section 35E—Effect on member's entitlements

Section 35E provides that if a payment split under the *Family Law Act 1975* of the Commonwealth is payable with respect to the superannuation interest of a member, there is a corresponding reduction in the entitlements of the member under the Act. This clause inserts a new subsection. Under the new provision, if a member has received a draw down benefit under section 30A, the superannuation interest of the member will be taken to include the balance of any draw down benefit that is being invested with the Superannuation Funds Management Corporation of South Australia. Any entitlement under section 30A will be adjusted to take into account the effect of a payment split under the Family Law Act provisions of the Act.

Part 3—Amendment of *Superannuation Act 1988*

9—Amendment of section 4—Interpretation

Section 4 of the *Superannuation Act 1988* is amended by the insertion of a definition of ***non-monetary salary***, which means remuneration in any form resulting from the sacrifice by a contributor of part of his or her salary. The definition applies in relation to contributors who are not employed pursuant to TEC contracts. (A TEC contract is a contract of employment between a contributor and his or her employer under which the value of the total remuneration package specified in the contract reflects the total employment cost to the employer of employing the contributor.)

The second definition of ***salary***, which applies in relation to contributors who are not employed pursuant to TEC contracts, is amended so that the term refers to all forms of remuneration, including non-monetary salary. Various subsections that relate to the second definition of ***salary*** are deleted and replaced with a single subsection that provides that for the purposes of determining the amount of salary received by a contributor who is in receipt of non-monetary salary, the value of the non-monetary salary will be taken to be the amount of salary sacrificed by the contributor in order to receive the non-monetary salary. These amendments relating to salary are consistent with amendments recently made to the *Southern State Superannuation Act 1994*.

A definition of ***preservation age*** is inserted. The term is given the same meaning as it has in Part 6 of the Commonwealth *Superannuation Industry (Supervision) Regulations 1994*.

10—Insertion of section 26A

This clause inserts a new section into Part 4 of the Act, which applies only to new scheme contributors.

26A—Transition to retirement

A contributor who has reached the age of 55 and his or her preservation age is entitled to apply for the benefit of section 26A. The contributor must also have entered into an arrangement with his or her employer to reduce his or her hours of work or alter his or duties (or both) so that there is a reduction in the contributor's salary. The purpose of establishing this arrangement must relate to the contributor's proposed retirement in due course.

If the Board is satisfied that a contributor has made a valid application for the benefit of section 26A, the Board will determine a ***draw down benefit*** for the contributor in accordance with subsection (3)(a). The Board must then invest the draw down benefit with (according to the contributor's election) the Superannuation Funds Management Corporation of South Australia or with another entity that will provide a non-commutable income stream for the contributor while he or she continues to be employed in the workforce. The result must be that the contributor receives a ***draw down payment***, that is, a payment in the form of a pension or an annuity on account of the benefit.

The investment of a draw down benefit with the with the Superannuation Funds Management Corporation of South Australia will be on terms and conditions determined by the Board.

Although an entitlement to a draw down benefit is not commutable, a contributor may, after commencing to receive a draw down payment and before retiring from employment, take steps to bring the investment to an end and pay the balance of the investment into a rollover account, as if the balance were being carried over from another superannuation scheme. Also, the value of an investment with the Superannuation Funds Management Corporation of South Australia may be redeemed when the contributor retires or dies (whichever occurs first).

When the Board has determined a draw down benefit, the contributor's contributor account will be adjusted to take into account the payment of the draw down benefit by a percentage equal to the percentage that the draw down benefit bears to the total benefit that would have been payable had the contributor retired from employment. Contributions payable by the contributor will be fixed on the basis of the contributor's salary under the arrangement established with his or her employer to reduce his or her hours of work or alter his or duties (or both). The contributor's contribution points will accrue, from the date of the determination until the cessation of the relevant arrangement, at a rate calculated under section 26A(7)(c).

If the contributor's salary is reduced, he or she may apply to the Board for a further benefit. If the contributor's salary is increased, the draw down payment will continue as if the increase had not occurred. The contributions payable by the contributor will be adjusted to take into account the increase.

On retirement, the contributor's entitlements under section 27 (Retirement) will be adjusted in the prescribed manner to take into account the draw down benefit. Similarly, if a contributor's employment is terminated by his or her death, any entitlement under section 32 (Death of contributor) will be adjusted in the prescribed manner to take into account the draw down benefit.

11—Amendment of section 28A—Resignation pursuant to a voluntary separation package

Section 28A, which prescribes entitlements for certain contributors following resignation, applies to a contributor who resigns from employment before reaching the age of 55 pursuant to a voluntary separation package that includes a term that the section is to apply to the contributor and that has been approved by the Treasurer. As a consequence of the amendment made by this clause, the section will only apply to a contributor who has made an election within three months after his or her resignation. Section 28 (Resignation and preservation of benefits) does not apply to a contributor to whom section 28A applies. However, if an election is not made within three months as required by new subsection (1a), section 28 will be taken to apply to the contributor.

12—Insertion of section 33A

This clause inserts a new section into Part 5 of the Act, which applies only to old scheme contributors.

33A—Transition to retirement

An old scheme contributor who has reached the age of 55 and his or her preservation age is entitled to apply for the benefit of section 33A. The contributor must also have entered into an arrangement with his or her employer to reduce his or her hours of work or alter his or duties (or both) so that there is a reduction in the contributor's salary. The purpose of establishing this arrangement must relate to the contributor's proposed retirement in due course.

If the Board is satisfied that a contributor has made a valid application for the benefit of section 33A, the contributor will be entitled to a pension (a ***draw down benefit***) on the basis of a maximum benefit determined by the

Board under section 33A(3).

A draw down benefit may not be commuted until the contributor retires from employment. If a contributor who has retired from employment applies for the commutation of a draw down benefit within 6 months after payment of the benefit commences, the benefit may be commuted in accordance with the regulations as if it were a pension. If a contributor who has retired from employment applies for the commutation of a draw down benefit after the expiration of that 6 month period, the terms and conditions of the commutation of the benefit will be determined by regulation.

When the Board has determined a draw down benefit, the contributions payable by the contributor under section 23 of the Act will be fixed on the basis of the contributor's salary under the arrangement with his or her employer to reduce his or her hours of work or alter his or duties (or both) and will be at the contributor's standard contribution rate under section 23. During the period of the arrangement, the contributor's contribution points will accrue at a rate for each contribution month calculated under section 33A(8)(b).

If the contributor's salary is reduced, he or she may apply to the Board for a further benefit. If the contributor's salary is increased, the draw down payment will continue as if the increase had not occurred. The contributions payable by the contributor will be adjusted to take into account the increase.

On retirement, the contributor's entitlements under section 34 (Retirement) will be adjusted in the prescribed manner to take into account the draw down benefit. If a contributor's employment terminates because of invalidity in circumstances that give rise to an entitlement under section 37 (Invalidity), the contributor's entitlement will be adjusted in the prescribed manner to take account of the fact that the contributor had elected to receive a draw down benefit. Similarly, if a contributor's employment is terminated by his or her death, any entitlement under section 38 (Death of contributor) will be adjusted in the prescribed manner to take into account the draw down benefit.

If a contributor who has been receiving a draw down benefit returns to a level of employment that is at least equal to the level that applied immediately before the contributor commenced the arrangement with his or her employer to reduce his or her hours of work or alter his or duties (or both), the payment of the draw down benefit will be suspended for so long as his or her level of employment is at least equal to the original level of employment.

13—Amendment of section 39A—Resignation or retirement pursuant to a voluntary separation package

The amendment made to section 39A by this clause has the effect of requiring a contributor to whom the section applies who wishes to elect to take benefits under subsection (3g) to make the election within three months after the date of his or her resignation. Under new subsection (3i), a pension under subsection (3g) will be indexed.

14—Insertion of section 40B

This clause inserts a new section into Part 5 of the Act, which applies only to old scheme contributors.

40B—Interaction with judicial remuneration or pension entitlements

New section 40B provides that if a person would be entitled to both the payment of a pension under the *Superannuation Act 1988* and the payment of a salary as a Judge or a pension under the *Judges' Pensions Act 1971*, the right of the payment to a pension under the *Superannuation Act 1988* is suspended.

The Board will, on the application of a person whose pension is suspended under the section, commute the entitlement to the pension to a lump sum payment. In making the commutation, commutation factors promulgated by regulation will be applied.

15—Repeal of section 43A

This clause repeals section 43A, which provides that a proportion of a pension or lump sum paid to, or in relation to, a contributor will be charged against his or her contribution account or the relevant division of the Fund. The section is re-enacted by clause 18 as section 47C and located more appropriately in Part 6 (Miscellaneous).

16—Amendment of section 43AF—Effect on contributor's entitlements

Section 43AF provides that if a payment split under the *Family Law Act 1975* of the Commonwealth is payable with respect to the superannuation interest of a contributor, there is a corresponding reduction in the entitlements of the contributor under the Act. This clause inserts a new subsection. Under the new provision, if a contributor has received a draw down benefit under section 26A or 33A, the superannuation interest of the contributor will be taken to include the balance of any draw down benefit that is being invested with the Superannuation Funds Management Corporation of South Australia under section 26A or any entitlement under section 33A. Any entitlement under section 26A or 33A will be adjusted to take into account the effect of a payment split under the Family Law Act provisions of the Act.

17—Amendment of section 45—Effect of workers compensation etc on pension

Section 45 of the Act deals with the interaction between workers compensation and superannuation. The section provides for an adjustment to be made to a pension if the recipient is also being paid a workers compensation benefit. It is not considered necessary to require that such an adjustment be made if the pension is constituted by a draw down benefit under new section 33A.

18—Insertion of sections 47C and 47D

This clause inserts two new sections.

47C—Portion of pension etc to be charged against contribution account etc

This section is in substantially the same terms as the repealed section 43A. Part 6, which contains miscellaneous provisions, is a more appropriate location for the section.

47D—Charge against Fund if draw down benefit paid

If a contributor becomes entitled to a draw down benefit under section 26A, there will be a charge on the relevant division of the Fund equal to the amount charged to the contributor's contribution account and, if relevant, any roll over account, on account of the payment of the draw down benefit.

If a contributor becomes entitled to a draw down benefit under section 33A,there will be a charge on the relevant division of the Fund determined by applying the relevant proportion that applies under section 47C with respect to the payment of a pension.

Schedule 1—Transitional provisions

1—Interpretation

In the transitional provisions, a reference to the ***principal Act*** is a reference to the *Superannuation Act 1988*.

2—Transitional provisions

The first transitional provision relates to the amendment made to section 28A of the principal Act and provides that a person who has, before the commencement of the transitional provision, resigned from employment in circumstances that fall within the ambit of section 28A(1) and has not received any benefit under section 28A before that commencement will have three months from the commencement to make an election under the transitional provision. If such an election is not made by the expiration of that period, section 28 of the *Superannuation Act 1988* will apply to the person to the exclusion of section 28A.

The second transitional provision relates to the amendment made to section 39A of the *Superannuation Act 1988*. This provision is in similar terms to the first transitional provision.

The third transitional provision relates to the insertion of section 40B of the *Superannuation Act 1988* by this measure. Section 40B only applies to a person whose right to the payment of a pension under the *Superannuation Act 1988* arises after the commencement of the transitional provision.

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

STATUTES AMENDMENT (PETROLEUM PRODUCTS) 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 *Petroleum Products Regulation Act 1995* has been reviewed as required under clause 5 of the Competition Principles Agreement to which the South Australian Government is a signatory. National Competition Policy requires State Governments to review their legislation and remove any anticompetitive provisions, unless it can be demonstrated that there are net benefits to the community as a whole. Competition Policy also provides for consideration to be given to the impact on specific industry sectors and communities, including expected costs in adjusting to change, from restriction to competition.

The scope of the *Petroleum Products Regulation Act 1995* is quite broad, covering not only licensing requirements for petroleum wholesalers and retailers and the role of the Petroleum Products Retail Outlets Board, but also safety and environmental requirements, the framework for controls during periods of restriction and rationing, provisions relating to the payment of subsidies, correct measurements and the sale of petroleum products to children.

The primary objective of this legislation, first introduced in 1973 as the Motor Fuel Distribution Act, was the control of the number and location of petrol retail outlets in order to reduce their proliferation.

Officers of the Department of Treasury and Finance and the previous Department for Administrative and Information Services reviewed the Act, following Legislation Review guidelines. The Review demonstrated that this goal is no longer relevant, in that the number of outlets has declined significantly both in this State (with an average of 22 net retail closures per annum since 1997) and nationwide, despite the absence of comparable legislation in other States. Market forces have, therefore, operated to determine whether new outlets should be opened (or existing sites closed). These market decisions, however, have been constrained in South Australia by licensing requirements that prevent the opening of new sites in proximity to existing sites.

South Australia is the only State that specifically regulates the establishment of retail petrol outlets. In other States the establishment of retail petrol outlets, as of any other business, is regulated pursuant to local government planning legislation.

The Review, therefore, considered that the main restriction on competition under the Act is the requirement for petrol retail outlets to be licensed (ie, to have authorities to make prescribed retail sales of petroleum products), and considered that the role of the Board, in combination with the licensing system as a whole constitutes a serious restriction on competition.

Furthermore, the Review found that in this case the benefits of the current licensing requirements appear to accrue to existing industry participants (large and small), rather than to consumers and the wider community. The abolition of the Petroleum Products Retail Outlets Board and the replacement of the current approval process will result in a streamlined system that automatically licenses applicants subject to adherence to planning, environmental and safety regulations.

The Government has endorsed the Review recommendations, including abolition of the Board and the requirement for an authority to make "prescribed retail sales" of petroleum products.

Retail and wholesale licences to sell will be retained in order to facilitate administrative requirements in relation to the payment of subsidies, controls during periods of restriction and rationing and administration of the Environment Protection and Dangerous Substances Acts. This will encompass motor spirit and diesel (both of which attract subsidies), but LPG will continue to be excluded (although a licence to keep will still be required under the Dangerous Substances Act).

Quite apart from national competition considerations, duplication of controls were also identified. This duplication will also be addressed by moving, where possible, the provisions of the Petroleum Products Regulation Act into general legislation enforcing the respective provisions. As such:

- the requirement for a licence to 'keep' petroleum products will be removed as this largely overlaps with the Dangerous Substances Act, which requires a licence to keep various dangerous substances in high volumes to ensure the safety of self, others and property;
- the requirement for a licence to 'convey' petroleum products is in practice administered under the Dangerous Substances Act. Accordingly, the requirement for such a licence under the Petroleum Products Regulation Act will be removed;
- the need for approval to install an industrial pump will also be removed, as, with the abolition of the authority for prescribed retail sales, this requirement becomes redundant. A licence under the Dangerous Substances Act to keep petroleum products will still be required;
- the provisions relating to correct measurements will be repealed as they are covered by the *Trade Measurement Act 1993*;
- the provisions relating to periods of restriction and rationing will be strengthened to put it beyond doubt that licence conditions imposed during a period of restriction may validly prohibit the sale of a restricted petroleum product (eg, in a specified area or from certain sites or on certain days or during certain hours).

In addition, the Review found that general safety and environmental issues were duplicating provisions existing in the Dangerous Substances Act. Similarly, the issue of improvement and prohibition notices duplicates the powers of authorised officers under the Dangerous Substances Act, which regulates the health and safety conditions of persons dealing with dangerous substances, public safety and the protection of property and environment. The Dangerous Substances Act has greater powers and associated penalties than the Petroleum Products Regulation Act.

The only other provisions remaining in relation to safety are those dealing with the sale of petroleum products to children, and these provisions will be incorporated in the *Controlled Substances Act 1984*.

In order to reduce administrative burden, the Review suggested less frequent renewal of licences and the Government has approved the move to a 2 year renewal period.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Controlled Substances Act 1984*

4—Amendment of section 19—Sale or supply of volatile solvents

(1) This clause is consequential on clause 17 which repeals Part 7 (consisting of section 41) of the Petroleum Products Regulation Act.

(2) Section 19 of the Controlled Substances Act makes it an offence to sell or supply a volatile solvent to another person if he or she suspects, or there are reasonable grounds for suspecting, that the other person intends to inhale the solvent or intends to sell or supply the solvent to a further person for inhalation by that further person. The maximum penalty is $10 000 or 2 years imprisonment.

(3) New subsection (2) extends the provision so that a person commits the offence at the point of purchase rather than just at the point of supply to another for inhalation. This is the approach taken in section 41 of the Petroleum Products Regulation Act.

(4) New subsection (3) makes it an offence to sell or supply a volatile solvent of a kind specified in the regulations to a person under an age specified in the regulations. It is proposed to specify 16 years in relation to petroleum products but other arrangements may be appropriate for different types of volatile solvents. The maximum penalty of $10 000 is equivalent to that for selling a prescribed poison to a child (see section 16(1)).

(5) New subsection (5) empowers an authorised officer to confiscate a volatile solvent if there is reason to suspect that the person has the product for the purposes of inhalation. This is the approach taken in section 41 of the Petroleum Products Regulation Act.

(6) New subsection (6) provides that confiscated petroleum products are forfeited to the Crown and may be sold, destroyed or otherwise disposed of as the Minister or the Commissioner of Police directs.

Part 3—Amendment of *Petroleum Products Regulation Act 1995*

5—Substitution of long title

This clause substitutes the long title to reflect the changes made to the Act by this measure.

6—Amendment of section 4—Interpretation

This clause removes definitions used in provisions of the Act repealed by this measure.

7—Amendment of section 7—Non-derogation

This clause is consequential on clause 12 which repeals section 16.

8—Substitution of section 8

Currently section 8 makes it an offence punishable by a maximum fine of $10 000 to keep, sell (by retail sale or wholesale) or convey petroleum products, or to engage in an activity of a prescribed class involving or related to petroleum products, unless authorised to do so under a licence. It also prohibits a prescribed retail sale of petroleum products unless the sale is made from premises specified in the licence for that purpose.

Proposed section 8 makes it an offence punishable by a maximum fine of $10 000 to sell petroleum products by retail sale or wholesale unless authorised to do so under a licence.

9—Amendment of section 10—Licence term etc

This clause increases the term of a licence from 1 year to 2 years.

10—Amendment of section 11—Conditions of licence

This clause is consequential on the repeal of Parts 4 and 6.

11—Amendment of section 12—Variation of licence

This clause is consequential on the repeal of the provisions relating to prescribed retail sales.

12—Repeal of sections 14, 15 and 16

This clause is consequential on the amendments to Part 2 and the repeal of Part 4.

13—Amendment of section 17—Offence relating to licence conditions

This clause is consequential on the repeal of Part 6.

14—Repeal of section 19

This clause is consequential on the repeal of the provisions relating to prescribed retail sales.

15—Repeal of Parts 3 and 4

This clause repeals Part 3 which requires approval to install an industrial pump and Part 4 which imposes general safety and environmental duties and empowers authorised officers to issue improvement notices and prohibition notices.

16—Amendment of section 34—Controls during periods of restriction

This clause empowers the Minister to give directions, and impose conditions on licences, prohibiting the sale of petroleum products during periods of restriction.

17—Repeal of Parts 6 and 7

This clause repeals Part 6 which requires compliance with the *Trade Measurement Act 1993* and Part 7 which prohibits the sale of petroleum products to children.

18—Amendment of section 44—Powers of authorised officers

This clause is consequential on the repeal of Part 4.

19—Amendment of section 47—Appeals

20—Amendment of section 64—Regulations

These clauses are consequential on the amendments to Part 2 and the repeal of Part 4.

21—Repeal of Schedules 1 and 3

This clause repeals Schedule 1 which established the Petroleum Products Retail Outlets Board and Schedule 3 which contains spent transitional provisions.

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

MURRAY-DARLING BASIN (AMENDING AGREEMENT) AMENDMENT BILL

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

STATUTES AMENDMENT (REAL ESTATE INDUSTRY REFORM) BILL

The House of Assembly agreed to amendments Nos 2 to 8 and 10 to 15 made by the Legislative Council without any amendment and disagreed to amendments Nos 1 and 9.

Consideration in committee.

Amendments Nos 1 and 9:

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

That the Legislative Council do not insist on its amendments.

The Legislative Council has passed 15 amendments to the bill of which the House of Assembly has agreed to 13. Amendments Nos 1 and 9 were disagreed to and have been returned to the Legislative Council. Amendment No. 1 (the Hon. Terry Stephens' amendment) relates to the management and supervision of registered businesses, and amendment No. 9 (the Hon. Nick Xenophon's amendment to clause 43, page 29, line 39) involves agents keeping third party benefits, provided those benefits have been disclosed.

In relation to amendment No. 1, section 10 of the Land Agents Act currently requires the business of a land agent to be properly managed and supervised by a registered agent who is a natural person. The bill makes clear that the management and supervision requirements of the act apply to each place of business operated by an agent. The reason for this is concern about offices being staffed solely by junior sales representatives and trainees. As it stands, the amendment has three fundamental flaws. First, it has no limits on the size and/or the location of the offices that it would apply to. In other words, it allows, for instance, the largest metropolitan office to be supervised and managed by junior sales representatives. Secondly, the proposed amendment has no vetting on who would be allowed to undertake the roles because the person has to be nominated to the Commissioner in writing rather than, say, being approved by the Commissioner. The amendment would simply allow any person to supervise and manage the land agent's business. It would, for example, allow an unqualified person to supervise and manage a land agent's business. Finally, the amendment needs to be clear about how, through regulation, it defines what is either a permitted or non permitted activity that this person would be able to undertake. Without this role definition, you would have an unqualified person supervising and managing a land agent's business, and that unqualified person may overstep the mark and perform functions that should be performed only by the land agent. It could, for example, lead to unqualified people making important representations about land. The very purpose of the government's provision is to ensure that officers are properly supervised. The proposed amendments have these fundamental flaws and therefore cannot be supported.

Again, we do not support the Hon. Nick Xenophon's amendment. The bill requires land agents to pay benefits received from third parties to consumers. The relevant provision is new section 24D of the Land and Business (Sale and Conveyancing) Act 1994 created by clause 43 of the bill. The effect of the proposed amendment is that land agents will be able to keep advertising rebates and other benefits instead of paying them to consumers, provided those rebates and benefits are disclosed. One argument put forward in support of this amendment refers to concern about the cost and difficulty of calculating and paying rebates to consumers. However, as one land agent recently said to the Minister for

Consumer Affairs, 'It is a simple accounting function that could be done by any year 1 accounting student.'

Another argument put forward in support of this amendment is that consumers can vote with their feet, that is, if land agents refuse to return rebates to consumers, consumers can choose another land agent. The assumption implicit in that argument is that consumers have the power to negotiate with land agents about who keeps the advertising rebates. I think this is an overly simplistic view of the bargaining power of real estate consumers. Most consumers deal with real estate agents only a few times in their life, and they would not feel confident and knowledgeable enough to undertake negotiations. It has also been suggested that allowing land agents to keep advertising rebates is the same as plumbers or painters buying at wholesale and selling at retail. Any comparison with plumbers and painters is misleading because it fails to recognise that, unlike general traders, agents have a special judiciary obligation to clients when acting on their behalf. This obligation is recognised in both common law and criminal law and clearly differentiates between the plumber and the agent.

A more meaningful comparison would be with lawyers, who charge the actual cost of disbursements made on behalf of clients. There is also a suggestion that the requirement to return rebates to consumers would disadvantage small agents. I would have thought that the exact opposite is true. It is not hard to understand that a large agent who receives a rebate of 30 to 40 per cent is currently in a much better position than a smaller agent who receives a rebate of only 5 to 10 per cent, for example. The larger agent is able to undercut the price of the smaller agent. The government's position will help the small agent by making the playing field more level. Moreover, the amendment actually allows some problems to continue unabated.

At the moment, rebate retention encourages agents to undertake extra advertising in order to maximise the rebate, because the more advertising they encourage, either through suggesting a larger than is necessary advertisement or by repeating the advertisements more than is needed, the more rebate they obtain. The consumer is at a very real disadvantage because, through lack of experience, they have difficulty in judging the amount of advertising that would indeed be appropriate. For instance, it takes a level of experience to know that the phrase 'This is the amount of advertising that is usually done for this type of property' is quite different from 'This is the amount of advertising that is necessary to sell this type of property'.

The government's proposal to have all rebates returned to consumers removes the incentive for agents to sell excessive advertising. It also encourages agents to offer all inclusive commissions and thereby accept responsibility for advertising costs. Further, this proposal of the government is not something radically new and untried. The notion of having rebates returned to the vendor has been successfully operating in Victoria, I believe, for a number of years. Therefore, the government opposes the amendment.

The Hon. T.J. STEPHENS: I will try to be reasonably brief. We have played out this argument before at length. The opposition will be insisting on the two amendments. Our position has not changed; in fact, our resolve is even stronger. We have had further representations from the real estate industry. I have not had one small agent (supposed small agent) ring me to say, 'Please take the government's position on this'. In fact, every piece of correspondence or contact that we have had has been from an industry that really is quite miffed as to why it has been singled out by this government and why this government is trying to impose upon it more ridiculous bureaucracy and red tape.

In relation to the issue regarding a junior managing an office, a junior may well look after an office, but the thought that a junior may well manage a large metropolitan office is really quite ludicrous and shows the lack of understanding this government has regarding the way business operates. Of course, this is an incredibly competitive industry and people do vote with their feet and, if they are not being provided with decent service, obviously they will go somewhere else. To throw up those sort of things is really nonsensical.

Again, the industry contact that we have had has staggered me. The concern that the industry people have conveyed to the Liberal opposition and asking why they have been singled out has just staggered me. I can only reinforce the fact that we are the party for small business. We are here to support small business, and we will continue to do so. Obviously my comments are in *Hansard* from our last foray into this bill, and I can tell members that not one person, one consumer group, or one concerned consumer has contacted me. I asked in my party room whether anyone had received representations from consumer groups or from consumers concerned with the things that have been raised and I did not receive one response.

The real estate industry has been complying. There have been a number of amendments to this bill and a number of initiatives that it has welcomed. It is keen to be open and transparent. Again, the industry is quite miffed that the Rann government has singled it out.

The Hon. NICK XENOPHON: I, too, support the position that the amendments made by the Legislative Council be insisted upon. In relation to the first amendment, the Hon. Mr Stephens' canvassed that issue sufficiently, and I support that position. However, in addition to that, I also say that, in terms of the issue of where the buck stops with respect to the management and responsibility for an agency, it stops with the management of an agency. The proposed amendment that would allow for the regulations to allow for some other natural person nominated in writing to the Commissioner in accordance with the regulations, I believe, provides sufficient safeguards in respect of that matter.

In relation to amendment No. 9 (which was my amendment), I agree with the government's position that it is not on to have secret commissions. I believe that my amendment dealt with the mischief, or the problem, that has previously arisen, that is, that this amendment ensures, in a form approved by regulation, that the government has control over the manner of the warning, the manner of the notice, the size of it, where it is located in any contracts, the level of any rebates being set out and the consumers being fully informed of that. I believe that remedies the mischief that is inherent with the whole concept of secret commissions. To suggest, as has the Minister for Consumer Affairs, that we are in some way supporting secrecy or that there is a continuation of that practice, I believe, misses the point, as it is not the case.

My concerns are that the government's position would mean an unnecessarily administrative burden. It would mean that, ultimately, consumers could well end up getting something back in one hand but paying more by commission from the other and that it would essentially be a zero sum game, and for some agencies it would be quite an unreasonable burden. Having said that, I want to acknowledge that I believe that there are a number of very good elements in this bill, most of which the industry has supported, and the

minister should be commended for that. However, I believe that the government's position with respect to the rebate goes too far and that the problem is resolved by virtue of disclosure.

Finally, whilst it is not a part of this bill, I believe that will need to be revisited. The member for Enfield, John Rau, who has had a very key role in relation to this issue of real estate reform, recommended in his paper that there be a real estate board to enforce legislative change or to enforce real estate laws for the benefit of consumers. That is something that the Real Estate Institute does not oppose, and it is unfortunate that a real estate board was not included in this bill. There may be some complexities there, but I hope it is something that the government will take on board, because the staff of the Office of Consumer and Business Affairs have their plates full with many issues. I think some additional resources would have been welcome, and the industry has a fund from which these resources could have been obtained. My position is that we ought to insist on these amendments.

The Hon. SANDRA KANCK: For me, this is a very simple question: do I support consumers or do I support the real estate agents? The arguments that have been given in support of real estate agents do not stack up particularly strongly, from my point of view. As a profession, particularly with the real estate boom we have now, they are making very nice profits, thank you very much, and I do not see why this chamber should be doing anything else to ensure that they make super profits. So, from my perspective, I will be supporting the consumers. Of course, they have not been in contact with MPs about it; they do not know that this bill is being debated, and most people will not be impacted—or, when they are impacted, they will not know what the state of the law is until they find that they have been done like a dinner. I am supporting the consumers and, therefore, I will be supporting the government.

The Hon. D.G.E. HOOD: Family First's position has not changed. We will be insisting on the amendments.

The Hon. A.M. BRESSINGTON: I will also be supporting the amendments to this bill.

The Hon. M. PARNELL: I want to speak first to amendment No. 9, the amendment of the Hon. Nick Xenophon. When we last debated this, I supported the amendment because I was swayed by arguments that likened the advertising rebates to, for example, the wholesale retail provision of power points by electricians. Having recently had an electrician in my house, and knowing full well that I paid more for the power point than the electrician did, it seemed a reasonable analogy. I have since taken the opportunity to talk to people about this provision, and I have certainly spoken to government people. I have also taken the opportunity to ring real estate agents I know, and one made the point quite clearly that, at the end of the day, the consumer will always pay. Largely, what we were talking about was how the different fees were structured.

I will not name the agent, but his small agency did not charge any more than it cost to place an ad; in other words, if there was a discount, it passed it on. However, it had an additional administrative charge, which it just lobbed over the top of everything else. It charged everyone who came through the door an administrative fee of a few hundred dollars, which covered extra costs incurred and which was on top of its commission. As a result, that agency did not feel that it was fair not to pass on any savings it got for advertising.

I also spent a bit of time looking through my local Messenger paper, where I saw the level of cross-subsidy that clearly exists with a lot of real estate agents in their advertising, much of which is self-promotion and has nothing to do with the sale of individual houses. Yet it seems clear that the customers of that agent, the vendors, are actually paying more than they need to for their ads. However, overwhelmingly, the single argument that encouraged me to change my mind (and I will now not be insisting on the amendment) was the question the minister raised just now about over-servicing: the fact that, if there is a profit to be made out of advertising, there is a great incentive for the agent to advertise more than it has to.

Most of us bring personal experience to this issue. I have not been a big buyer or seller of houses; I have had only two houses in my life. The campaign for the first house I tried to sell was an absolute disaster. It was mishandled, but we eventually managed to sell it for about the same amount we had paid four years earlier. However, it seems to me that, if there was a profit to be made in advertising, perhaps there would have been a lot more, and perhaps in inappropriate locations. The profit component does not come just from a successful sale: it comes from the simple fact of advertising. On that basis, I am supporting the government in no longer insisting on amendment No. 9. I am also not insisting on amendment No. 1 in relation to the staffing of real estate offices. I believe that the measures put in place are adequate, including for country and small agents. So, I believe that we should not insist on both amendments.

The Hon. G.E. GAGO: I will not repeat what has already been said in relation to this matter, but I will pick up on a couple of points. In relation to the comment made by the Hon. Terry Stephens that consumers can vote with their feet, consumers involving themselves in real estate for perhaps the very first time in their lives do not always understand what is necessarily a good, bad or indifferent service; in fact, they often do not know what is reasonable to expect. I think that this is an opportunity to provide some protection for those people.

In addition, there are some occasions when the vendor is locked into a contract with a real estate agent through an agency agreement and when it can be very difficult for them to extract themselves from that agreement. Again, that can severely disadvantage a person who, as I said, may be inexperienced in that particular field.

In relation to one of the comments made by the Hon. Nick Xenophon, disclosing the benefits is quite simply not enough. The benefit will not flow back to the consumer and that is, in fact, where it should flow; that is what would be fair, reasonable and just. I think today is a very sad day indeed for consumers, for ordinary members of the general public. It is clear where interests are lining up in this chamber, and I think it is a pretty sad and sorry day when we cannot ensure a more level, fairer and more transparent playing field for ordinary South Australians. It is a sad day indeed.

The committee divided on the motion:

AYES (9)

Finnigan, B. V.	Gago, G. E. (teller)
Gazzola, J. M.	Holloway, P.
Hunter, I.	Kanck, S. M.
Parnell, M.	Wortley, R.
Zollo, C.	

NOES (12)

Bressington, A.	Dawkins, J. S. L.
Evans, A. L.	Hood, D.
Lawson, R. D.	Lensink, J. M. A.
Lucas, R. I.	Ridgway, D. W.

NOES (cont.)

Schaefer, C. V.	Stephens, T. J. (teller)
Wade, S. G.	Xenophon, N.

Majority of 3 for the noes.

Motion thus negatived.

STATUTES AMENDMENT (BUDGET 2007) BILL

Adjourned debate on second reading.

(Continued from 19 June. Page 352.)

The Hon. R.I. LUCAS: I rise on behalf of Liberal members in the council to support the second reading of the bill. Those members who are following the passage of the Statute Amendment (Budget 2007) Bill will know that the Leader of the Opposition in another place outlined in a comprehensive fashion the Liberal Party's position on the bill. I will address some brief comments to some aspects of the bill and delay further consideration until the committee stage of the debate.

The Leader of the Government in his second reading speech on the Appropriation Bill seemed to be giving some of the answers to questions raised by the Leader of the Opposition in another place in debate on the Statutes Amendment (Budget 2007) Bill. I will need to look at those comments, but I understand he also had answers to other questions put by the Leader of the Opposition in another place, and I assume when the minister closes the second reading debate those responses will become part of the public record and members will be in a position to consider them. For those reasons I do not intend to go through all the issues raised in another place because it may be that a number of them are satisfactorily resolved by the answers provided by the Leader of the Opposition.

The payroll tax provisions are relatively straightforward. The Liberal Party's position has been to welcome the rate reduction from 5.5 per cent to 5.25 per cent and eventually to 5 per cent. Contrary to some claims made by the Treasurer and other members of the government, the former government did reduce payroll tax rates but also increased, at least by a small quantum, the payroll tax thresholds that apply to small and medium-sized enterprises. The former government took the position that, whilst levy rate reductions were to be welcomed, it was also important to continue to make progress on increasing the payroll tax threshold that applies here in South Australia on small and medium-sized enterprises.

The opposition welcomes the rate reductions, but we join with Business SA and any number of other business associations that represent the interests of small business that continue to lobby the government for progress on threshold changes under payroll tax legislation. Put simply, small businesses in South Australia start paying payroll tax at a payroll of $504 000. It is the lowest threshold of any state or territory in the nation. Some states and territories have payroll tax thresholds between $1 million and $1.25 million. That means that, if you are establishing a small IT company, for example, if you choose South Australia, as soon as you employ five or six people with an average total cost (including on-costs) of $100 000 a year—in the IT industry that would not be uncommon; it might be a little less than that, but certainly it would not be uncommon—you start paying payroll tax, whereas in some eastern states and some territories you do not start paying payroll tax until you start employing 10, 11 or 12 people.

It should be apparent to the government—and, indeed, anyone—that it leaves small and medium size enterprises in South Australia at a significant competitive disadvantage when compared with other states and territories. It also means that for businesses that are establishing there is a big incentive to establish somewhere other than South Australia; or for those businesses that are footloose—that is, the costs of moving that business interstate are low—the incentives are high for those businesses to move out of South Australia and go to one of the other jurisdictions.

We acknowledge that as a result of the payroll tax rate reductions, which come into full effect in 2008, if there have not been other rate reductions in other states and territories in the next 12 months, then South Australia will be competitive in terms of the level or rate of payroll tax. We are either second or third lowest in terms of the rate post July 2008. Of course, there is another round of budgets to be handed down before then, and what we see in the payroll tax area is governments making decisions on an evolving basis. As jurisdictions reduce the rate or increase the threshold, we will see responses from other states and territories. It will be interesting come 1 July next year as to whether we are still in a position to say that we are in a reasonably competitive position insofar as it relates to the rate of payroll tax.

Opposition speakers in another place raised some questions in relation to the costs of increasing the threshold. As I understand the second reading explanation of the Appropriation Bill, some of those responses are provided. I will be interested to look at those; and I thank the government for those responses. Given that calculations are being done and given that we will now be at a rate of 5 per cent on 1 July 2008-09, I would be interested to know the Treasury estimate of implementing Business SA's preferred tax position of increasing the threshold to $800 000 from 2008-09 onwards with a payroll levy rate of 5 per cent. As I recall what the Leader of the Government said in relation to the cost of some threshold rate increases, I think he said that, if the payroll tax rate stayed at 5.5 per cent, for the same cost to taxpayers of dropping the levy from 5.5 per cent to 5 per cent the threshold rate could be increased to over $900 000. That is higher than Business SA was lobbying for; it was lobbying for $800 000.

To implement the Business SA policy would cost less, it would appear, than the current cost of reducing the rate from 5.5 per cent to 5 per cent. I understand those calculations have been done on a levy rate of 5.5 per cent. My question to the Treasurer, through the Leader of the Government, is: post July 2008, with a levy rate of 5 per cent, what would be the annual cost per year of implementing the Business SA policy of increasing the threshold from $504 000 to $800 000?

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No, at 5 per cent, because the government will have reduced the levy rate from July 2008 to 5 per cent and Business SA, one would assume, will continue to lobby for an increase in the threshold to $800 000. That will be the framework within which government and opposition will need to be considering what the cost will be. Certainly, on the back of the envelope sort of figures that the Leader of the Government has provided, it would still be a very significant cost to taxpayers. It sounds like it might be certainly above $50 million a year to implement that. However, until there is a chance to get that response from the Treasurer, through the Leader of the Government, we will not be in a position to have an informed debate, I suppose, as to whether it is better for the South Australian community and

economy to spend whatever it is—$50 million or $60 million plus—on further payroll tax relief, as opposed to spending that money on hospitals, schools or road safety initiatives.

The second issue which is tackled in the bill concerns land tax avoidance measures. The opposition has received a number of representations from practitioners in the field and from industry groups. The Leader of the Opposition put some questions on the record in the House of Assembly. My understanding is that the Leader of the Government, when he responds, will have answers to some of those questions. Therefore, I do not intend to go over all those but there are a small number of other more specific and technical questions that I may well take up during the committee stage of the debate.

I want to reinforce one issue mentioned by the Leader of the Opposition. This was raised with the opposition by a number of individuals and groups and relates to the use of the words 'is satisfied there is no doubt' in section 13A(2). A number of practitioners have expressed concern at the use of this particular test, that is, 'is satisfied there is no doubt'—no doubt at all—in the context of taxation law. In particular, one person has advised the opposition as follows:

> Our advice states that ordinarily litigation in taxation law matters is based on the civil level of proof, being 'on the balance of probabilities'. This bill takes the level of proof beyond even the criminal level of proof which is 'beyond reasonable doubt'. The bill requires no doubt in the mind of the commissioner. How would a taxpayer prove otherwise? This should be strongly opposed, particularly in the absence of any legislative guidance as to what matters the commissioner should consider or not consider. This position is totally repugnant to the concept of open, fair and transparent legislation. Even with review provisions, a court is duty bound to come back to the words of the legislation and would have no capacity for delivering a fair outcome.

That is the advice the opposition has received. The Leader of the Opposition raised that question in another place and I trust that the Leader of the Government will, in his second reading reply, have some response to that.

I must admit that, in looking at the issue raised by this practitioner (and, to be fair, a number of other groups), I was not entirely clear as to whether or not the provisions were being interpreted correctly or, perhaps, as otherwise intended. If this higher level of proof applies to an individual or a consumer, certainly, in some circumstances, one can see the potential dangers of taxation law for that level of proof being required. If, however, on another reading it applies to the Commissioner, that is, if the Commissioner was to make a decision which would potentially impose an additional cost on a consumer, that is, that the Commissioner must be satisfied that there is no doubt at all in relation to it, then, perhaps, the intention is to have an element of protection in there for the consumer.

I accept that it is not being read in that way by the practitioners, and these are people who are very experienced in arguing the toss with state tax officers and the Commissioner. I would hesitate to even question the advice that we have received in relation to these issues. Nevertheless, it is an important area because, if it has been correctly interpreted by the tax advisers' advice to the opposition, it is a significant change; and, if it is as outlined, the opposition will reserve its position in relation to seeking amendment to those provisions and whether it would go back to a criminal level of proof, which is beyond reasonable doubt, or to what we are told is the civil level of proof usually used in taxation law matters, which is on the balance of probabilities.

I alert the Leader of the Government to that and ask him for the earliest advice he can provide, because if there is a satisfactory response from the Commissioner for Taxation to the issue, other than raising it again during the committee stage, I will not pursue it any further. If, however, the issue does remain one of significant doubt, the opposition will reserve its position in relation potentially changing that test in section 13A(2) of the legislation.

The only other issue I want to raise in relation to land tax provisions is that, in the budget papers, an additional $2.3 million over the forward estimates has been provided to the Department of Treasury and Finance for what is deemed 'land tax anti-avoidance measures' for additional staff in Revenue SA. I seek a response from the Leader of the Government and the Treasurer as to whether or not this is specifically referring to this provision (I suspect that it is), and to have the government outline how many additional staff have been approved for this compliance crack-down and the type of staff who are to be employed within Treasury.

The second point I want to raise (and it is really an issue for the Treasurer) is that, as he has been Treasurer now for five years (and if I can put my hat on as the treasurer for four years prior to that), my recollection is that, over the past nine or 10 years, governments (both Liberal and Labor) have accepted the advice of Treasury that whenever there is an additional crack-down on an anti-avoidance measure additional staffing is provided to Revenue SA.

I think it would be worthwhile from the Treasurer's viewpoint (and, certainly, I would be interested) to see on how many separate occasions over the past nine or 10 years Treasury has been granted additional staffing and resources for compliance crack-downs within the South Australian community and for additional staff and resources within Revenue SA (or within the state tax office as it then was). It would be interesting, I think, over that period to see how many additional staff have been provided to that office. Each case would have been dealt with on its merits and approved by me as the former treasurer and, I suspect, the current Treasurer in relation to the advice received.

It would be interesting to ask the question at this stage as to whether or not it is possible to have a look at the staffing of Revenue SA. Particularly as new anti-avoidance measures are cracked down on and additional staff and resources are provided, one would assume that there might be some capacity within Revenue SA for other issues to become a lower priority and that there might be the capacity for some reorganisation of resources and staffing within Revenue SA, rather than continually having to agree to additional staffing and resources as each new compliance attack is taken up.

I would have thought it was in the Treasurer's best interests as much as the parliament's to keep a weather eye on this issue and, certainly if there is not the will from the government, I do not intend to insist on seeing 10 years worth of analysis, but if the Treasurer or his advisers are interested, they may be prepared to ask for that information from Revenue SA and from Treasury and to provide it for the parliament. Certainly, at the very least, I would like to see the analysis over the past five years from the government in relation to the addition to the additional staffing and resources for compliance within Revenue SA and to hear whether the government believes that there is any capacity at some stage to ask Revenue SA to re-prioritise staffing and resources so that, when there is a new crackdown, staff and resources can be moved from one area of Revenue SA to another, particularly within the compliance division.

I certainly accept that in other divisions of Revenue SA (tax collection or those sorts of things) it might not be possible to move staff from that area into the compliance division to do the specialised work of compliance. In relation to that, I would be interested to know what the total full-time equivalent staffing complement of the compliance section of Revenue SA is and what is the total cost of compliance in South Australia. With that, I indicate the opposition's support for the second reading of the Statutes Amendment (Budget 2007) Bill.

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

CRIMINAL LAW (SENTENCING) (DANGEROUS OFFENDERS) AMENDMENT BILL

In committee.

(Continued from 21 June. Page 406.)

Clause 8.

The Hon. P. HOLLOWAY: Amendments Nos 2 and 3 were tabled recently, dated 20 July, and it is those which I have moved and we are now debating. Perhaps I could reiterate the arguments for them. Amendment No. 2, as I said, is identical to amendment No. 1 filed by the government on 21 June. As amendments Nos 2, 3 and 4 are a series, they should be treated as a test amendment. I gave that explanation on 21 June and, before that, on 3 May, but I will repeat it.

Government amendment No. 2 is consequential upon government amendment No. 4 and reflects the fact that the circumstances in which a sentencing court may fix a non-parole period for murder as defined (that is, less than the prescribed mandatory minimum) are set down in new clause 32A. I have already set out the arguments for new clause 32A.

The Hon. R.D. LAWSON: This clause arises out of events that have occurred since the committee last met. On 2 July this year the Victorian Sentencing Advisory Council released a report, which I think has the hand of Professor Ari Freiburg, the chair of the Sentencing Advisory Council, behind it. In a release issued at the same time, the council was dealing with a reference from the Victorian Attorney-General requesting the council's advice on the merit of introducing a scheme of post-sentence detention, and the chair said:

> The council found broad agreement that the main goal of any post-sentence scheme should be community safety, not the further punishment of offenders who have served their sentence.

He stated that the people who would be kept under these orders have finished their sentence and the appropriate place for them to be is a place where they can best receive treatment and monitoring which addresses their dangerous behaviour. The council concluded that extended supervision in the community, if properly resourced and structured, is equally able to achieve the goal of community protection and does so in a less intrusive way than continuing detention. However, in response to the Attorney-General's specific request, the report not only provides advice about how the extended supervision scheme could be improved but also proposes a model for a new high-risk offenders' scheme that could include aspects of both supervision and detention. Prof. Freiburg said:

> We accept that this is a difficult issue, and the question of whether continuing detention is introduced in Victoria is properly one for the government. In providing advice on the structure of an integrated supervision and detention scheme we have tried to balance the community's legitimate concerns to be protected from high risk offenders with the need to ensure that there are adequate safeguards. We have also recommended that, whether a new scheme is introduced or the current extended supervision scheme reformed, it should apply to all high-risk serious sex offenders and high-risk offenders convicted of homicide offences. The report further recommends the implementation of a broad strategy to manage high-risk offenders and reduce the risks that they pose to the community through re-offending.

I read that statement from the Victorian advisory council because it is interesting to see that the Sentencing Advisory Council in Victoria recommended in its report an approach that the South Australian government has not followed in the bill presently before us. The Sentencing Advisory Council was suggesting that community safety is best protected by a model that includes supervision and detention after a period when the prisoner's sentence is served. I think it fair to say also, for the purpose of completeness, that the Victorian government did not accept the recommendation of its own Sentencing Advisory Council and has gone for what I would regard as the simple option; that is, detain them in custody after they have served their sentence rather than release them and seek to address the community safety issues by some means other than keeping people in detention.

I think there will be a good number of people in the community who will regret that the Victorian government has gone down a particular avenue, as has the South Australian government. My party, however, has agreed in principle that we will be supporting the regime that is here adopted, but it ought to be put on the record that others are adopting an entirely different approach. I think it fair to say that the approach suggested by the Human Rights Committee of the Law Society and also by the Criminal Law Committee of the Law Society of this state is similar to that being adopted by the Sentencing Advisory Council in Victoria, rather than the approach that this parliament is adopting.

I accept that these are test amendments and that these amendments in the minister's new amendment sheet circulated on 20 July are identical to those that the minister proposed in his earlier series of amendments introduced on 21 June. We will be supporting them, as we will be supporting the new clause 32A, and I will make some observations on 32A in due course.

The Hon. SANDRA KANCK: I have made my opposition to this bill very clear and none of the amendments that the government has come up with alter my position. I want to put on the record the Law Society's response to these amendments. This document is dated 2 July, so we obviously have had another set of amendments since then that incorporate this new 7A that we will need to revisit later. Regardless of that, what the Law Society has to say needs to be on the record. It states:

> The further proposed amendments only serve to confirm and strengthen the criticisms that we have previously made of this bill. There appears to be no reason why the mandatory minimum in the case of life imprisonment should be 20 years and why the mandatory minimum in respect of serious offences should be four-fifths, and even less reason why these proportions should be for the lower end of offences.

It makes some other comments that I will also read onto the record when we deal with later amendments. At this point, I want it on the record that, whatever the amendments are, this bill still remains anathema to the Law Society and to the Democrats.

The Hon. D.G.E. HOOD: Family First outlined its support for the bill in the second reading debate, and we are certainly not backing away from that. I would like to place

on record our support for the proposed amendment. We believe that it is an appropriate measure to take in order to protect the community.

Amendments carried; clause as amended passed.

Clause 9.

The Hon. R.D. LAWSON: There are three amendment sheets. I think it should be clearly on the record which amendment No. 4 is being moved.

The CHAIRMAN: It is, 'New clause, page 4, after line 25—Insert 32A'.

The Hon. R.D. LAWSON: There are three amendments of the minister before the committee. He does not indicate which amendment; I believe he is moving amendment No. 4 of 'Police 3'.

The Hon. P. HOLLOWAY: I will formally move the amendment; this is on amendment sheet 3, dated 20 July 2007. I move:

Page 4, after line 25—Insert:

32A—Mandatory minimum non-parole periods and proportionality

(1) If a mandatory minimum non-parole period is prescribed in respect of an offence, the period prescribed represents the non-parole period for an offence at the lower end of the range of objective seriousness for offences to which the mandatory minimum non-parole period applies.

(2) In fixing a non-parole period in respect of an offence for which a mandatory minimum non-parole period is prescribed, the court may—

(a) if satisfied that a non-parole period that is longer than the prescribed period is warranted because of any objective or subjective factors affecting the relative seriousness of the offence, fix such longer non-parole period as it thinks fit; or

(b) if satisfied that special reasons exist for fixing a non-parole period that is shorter than the prescribed period, fix such shorter non-parole period as it thinks fit.

(3) In deciding whether special reasons exist for the purposes of subsection (2)(b), the court must have regard to the following matters and only those matters:

(a) the offence was committed in circumstances in which the victim's conduct or condition substantially mitigated the offender's conduct;

(b) if the offender pleaded guilty to the charge of the offence—that fact and the circumstances surrounding the plea;

(c) the degree to which the offender has cooperated in the investigation or prosecution of that or any other offence and the circumstances surrounding, and likely consequences of, any such cooperation.

(4) This section applies whether a mandatory minimum non-parole period is prescribed under this act or some other act.

We have already had the test clause, but this really is the substantial part of the series of amendments. Government amendment No. 4 inserts a new section 32A in the act. This provision addresses the concerns with the application of proportionality and the exceptional circumstances test that I summarised on 21 June. Except for one minor change, this amendment is identical to government amendment No. 3 that was placed on file on 21 June.

The change is to 32A new subsection (3). This provision sets out the matters that a sentencing court must only have regard to when considering whether special reasons sufficient to justify a non-parole period below that of the prescribed minimum exist. The matters are set out in new subsection (3)(a), (b) and (c). Those matters in new paragraphs (a) and (b) are identical to the equivalent provisions in amendment No. 3 filed on 21 June; however, new paragraph (c) is slightly different.

Subsection (3)(c), as proposed in the amendment of 21 June, would allow a sentencing court to set a nonparole period below a prescribed mandatory minimum where the offender had cooperated in the investigation or prosecution of the primary offence or a related offence. The Law Society submitted that a court should also be allowed to take into account cooperation in relation to an unrelated offence, and the government has accepted the Law Society's argument. Although rare, there may be cases where an offender provides information or other assistance about an offence unrelated to his own in circumstances where it would be appropriate for the sentencing court to recognise the cooperation by reducing the nonparole period below the prescribed mandatory minimum, and new subsection (3)(c) has been amended accordingly.

At this point, I take the opportunity to respond to another matter raised by the Law Society, which I believe has also been raised with the Hon. Mr Lawson and other members. In its comments on the amendments filed on 21 June, the Law Society suggested that new section 32A(3) may be interpreted to require an offender to demonstrate that the circumstances of his case come within subsections (a), (b) and (c) and (c) before the court can find that special reasons exist and fix a nonparole period below the mandatory minimum. The Law Society suggested that the provision be amended to make clear that this not need to be so and that, for example, a plea of guilty alone could be a special reason for fixing a non-parole period below the mandatory minimum. The Law Society has misread new section 32A(3). Subsection (3) requires the court, in deciding whether special reasons exist, to have regard to the matters set out in subsections (a), (b) and (c) and only those matters. It does not require the court to be satisfied as to each of those matters. A guilty plea alone may be sufficient, and it will be up to the court in each case.

The government has addressed some of the concerns raised by the Chief Justice and the Law Society but not all. It is fair to say that the Supreme Court judges and the Law Society disagree with the government's policy on mandatory minimum nonparole periods and believe this legislation may operate harshly on some offenders. The government acknowledges these concerns but, ultimately, these are matters of policy to be decided by the government and this parliament.

The Hon. D.G.E. HOOD: Recently, when I first read these proposed amendments, I wondered whether it was possible that they might undermine the purpose of the whole bill, and I would like some assurance from the minister that he can address that issue. For example, the point of the bill is to provide for a minimum nonparole period, yet this new section, particularly subsection (3), allows circumstances under which those minimum nonparole periods would not apply. Can the minister comment on that issue, please?

The Hon. P. HOLLOWAY: The honourable member is certainly correct in that these amendments would allow factors to be taken into account by the courts. As I just indicated in my explanation of this amendment, we did agree with the proposition of the Law Society on this matter. However, as I also indicated, the courts and the Law Society believe that governments should go no further, but we were not prepared to do that. Like in all things, we have to strike a balance between ensuring that, in this case, effect is given to the expectation of parliament, but, where possible, I guess we also need to take into consideration those reasonable points made by the judiciary and the Law Society. Whereas it does provide some scope for the other factors to be taken

into consideration, these are restricted beyond what the Law Society and the judiciary would prefer.

The Hon. SANDRA KANCK: Can the minister give an example of 3A where the victim's conduct or condition would substantially mitigate the matters?

The Hon. P. HOLLOWAY: I thank the honourable member for her question. First, in every case, of course, it is up to the court. But, the fact is that it could take into account that the victim's conduct could include mistreatment of the offender by the victim.

The Hon. Sandra Kanck: So, provocation?

The Hon. P. HOLLOWAY: If it is satisfied that there has been some mistreatment, it would obviously be up to the court. Also, the victim's condition, which is referred to in 3A, could include, if the court considered it appropriate, for example, mercy killing.

The Hon. SANDRA KANCK: What do you mean by the victim's condition? Do you mean their mental state or their physical state?

The Hon. P. HOLLOWAY: It could mean a terminal illness; that could be the victim's condition.

The Hon. SANDRA KANCK: I am not quite sure what we are talking about here. Are you suggesting that a person who has been charged with killing someone in what we would call a mercy killing—because the person is in the final stage of a terminal illness—could have their sentence reduced as a consequence of this clause? Is that what you are saying?

The Hon. P. HOLLOWAY: Under this provision, if the court thought it appropriate in the circumstances—remember that we are talking about this particular bill—in a case where, as I said, the victim is terminally ill and that was the condition of the victim it could take that into account in relation to sentencing.

The Hon. R.D. LAWSON: I wish to ask a question about the same clause, which refers as a mitigating factor only to the victim's conduct or the victim's condition. Ordinarily, in a criminal law sentencing act not only is the condition or status of the victim a factor in determining sentence but, also, the conduct or the condition of the offender can be taken into account. Why has the government selected only the victim's conduct or condition and not wider considerations?

The Hon. P. HOLLOWAY: The point made by the honourable member is correct. In the government's view, it would only wish, in these circumstances, for the court to take into account the victim's condition. We have just spoken of the sort of example in which it might be quite specific. We do not believe that the offender's condition should be taken into account.

The Hon. R.D. LAWSON: I must say to the committee that, when this clause began its tortuous path through the parliament, the government allowed that the judiciary could, if exceptional circumstances existed (I think they were the words used) reduce the mandatory penalties. It was the fact that the expression 'exceptional circumstances' was used and the fact that it was not defined and therefore was left to the judiciary to determine on a case by case basis which actually attracted us to the legislation, because it did preserve a level of judicial discretion in sentencing which we believe is appropriate. It is unfortunate that the government has run away from the notion of exceptional circumstances and now sought to codify in this clause what it now terms special reasons.

Far from what I believe was the position of the Law Society or the judiciary—whilst they oppose the very notion—what has happened is that the bill has been further tightened and judicial discretion further circumscribed. That said, however, the structure of this clause does provide a measure of codification about how the system will operate. We believe that one undoubted effect of this clause, especially in relation to homicide cases, will be far greater use of the mental impairment provisions so as to thereby escape a sentence of life imprisonment. That will have an adverse effect on the wider system, and it will also have the effect of reducing the number of guilty pleas because the impossibility of your achieving fewer than 20 years is remote. The mere fact and the circumstances of a plea of guilty are to be taken into account (as they are now under the current sentencing regime), but that will not guarantee an early plea of guilty, and full contrition will not assure an offender of receiving the benefit of these mitigating provisions.

That said, and with some reluctance, I indicate that we will be supporting this clause. Whilst I am on my feet, clause 32A(4) applies whether a mandatory minimum non-parole period is prescribed under this act or some other act. Could the minister indicate what is the application of that provision? To what other acts is the act referring? Why is it envisaged that a provision of this kind is necessary? I note, incidentally, that this provision was in the earlier versions of this section.

The Hon. P. HOLLOWAY: I advise that, essentially, there is no other act to which it is currently applied. It is introduced to apply consistency of principle, if you like, for this measure. So, should some other act in the future prescribe a minimum non-parole period, the same principles in relation to sentencing will apply. It is simply to cover that eventuality. We are aware of no other act at present to which it would apply.

The Hon. M. PARNELL: I would like the minister to explore a little further subclause (3)(a) in relation to the mitigating factors. The minister explained that it is the victim's conduct or condition we can take into account. However, he said that the perpetrator's conduct or condition is not relevant. Does that mean that, as regards a person who suffers, perhaps temporarily, from a mental condition (maybe a psychotic episode or some mental illness), that cannot be taken into account as a mitigating factor in sentencing?

The Hon. P. HOLLOWAY: As I indicated earlier quite specifically, the government does not believe that the offender's condition should be taken into consideration.

The Hon. M. PARNELL: On that same point, if it is not taken into account in this legislation, is there other legislation, or is the perpetrator's mental condition no longer a relevant consideration at all in sentencing for these serious crimes? I know that it is not covered here, but is it picked up elsewhere in the criminal law?

The Hon. P. HOLLOWAY: This measure affects only the fixing of a non-parole period for murder and serious offences against the person. It really applies only to those two offences: murder and serious offences against the person.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 5, line 27—Delete 'Full Court' and substitute 'Supreme Court'.

This is a simple amendment that addresses concerns raised by His Honour the Chief Justice. New section 33A(1) in clause 9 of the bill is amended so that the application by the Attorney-General for a declaration that a person is a dangerous offender is made to the Supreme Court rather than the Full Court.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 7, after line 9—Insert:

33AB—Appeal

(1) An appeal lies to the Full Court against a decision by the Supreme Court—

(a) to make a declaration and order under this Division; or

(b) not to make a declaration and order under this Division.

(2) An appeal under this section may be instituted by the Attorney-General or by the person to whom the particular decision relates.

(3) Subject to a contrary order of the Full Court, an appeal cannot be commenced after 10 days from the date of the decision against which the appeal lies.

(4) On an appeal, the Full Court may—

(a) confirm or annul the decision subject to appeal;

(b) remit the decision subject to appeal to the Supreme Court for further consideration or reconsideration;

(c) make consequential or ancillary orders.

This amendment is consequential upon amendment No. 5. It provides for an appeal to the Full Court by either the Attorney-General or the offender from a decision of the Supreme Court under section 33A(9).

The Hon. R.D. LAWSON: Can the minister indicate why the right of appeal that the Director of Public Prosecutions can ordinarily exercise is not available in relation to these particular appeals, which may only be instituted on the Crown side by the Attorney-General?

The Hon. P. HOLLOWAY: My advice is that it is because the original application is made by the Attorney.

Amendment carried; clause as amended passed.

Clause 10 and title passed.

Bill recommitted.

New clause 7A.

The Hon. P. HOLLOWAY: I move:

Page 3, after line 24—Insert:

7A—Amendment of section 30—Commencement of sentences and non-parole periods

Section 30(2)—Delete subsection (2) and substitute:

(2) If a defendant has spent time in custody in respect of an offence for which the defendant is subsequently sentenced to imprisonment, the court may, when sentencing the defendant, take into account the time already spent in custody and—

(a) make an appropriate reduction in the term of the sentence; or

(b) direct that the sentence will be taken to have commenced—

(i) on the day on which the defendant was taken into custody; or

(ii) on a date specified by the court that occurs after the day on which the defendant was taken into custody but before the day on which the defendant is sentenced.

This amendment inserts a new clause 7A. It is a new amendment that addresses a matter recently raised by His Honour the Chief Justice.

It is not uncommon for a person sentenced to imprisonment to have spent time in custody before being sentenced. It is usual in such cases for the court to take account of this time served when imposing sentence. Section 30(2) of the Criminal Law (Sentencing) Act allows the court either to make an appropriate reduction in the term of the sentence, having regard to the time spent in custody, or to direct that the sentence and non-parole period be taken to have commenced on the day on which the defendant was taken into custody.

In the case of a person being sentenced for murder who has spent some but not all of the pre-sentence period in custody, subsection (2) is problematic. The court cannot reduce a mandatory life sentence, and backdating the sentence to the date on which the defendant was taken into custody does not take into account any of the time the defendant spent out of custody. In such cases, the court will usually make an appropriate adjustment to the non-parole period.

With the introduction of mandatory minimum non-parole periods this option will no longer be available. To ensure that a sentencing court can backdate a sentence and non-parole period to take account of time spent in custody in such cases, this amendment inserts a new subsection 30(2) that will allow the sentencing court to take account of time served in custody by directing that the sentence be taken to have commenced either on the day on which the defendant was taken into custody or on a date specified that occurs after that date but before the person is sentenced. The current power to reduce a sentence in other cases is preserved.

The Hon. SANDRA KANCK: I indicate Democrat support for this amendment; it is desperately needed in this bill. This government does very little to support human rights these days, and I am delighted in this case that the government has listened to the Chief Justice. We have taken so many rights away with this legislation, and there is just a little bit of satisfaction in the incorporation of this amendment.

The Hon. R.D. LAWSON: I indicate that the Liberal opposition regards this amendment as an improvement. Whilst we, too, commend the government for listening to the Chief Justice in some respects, we think it is a matter of regret that wider consultation did not take place before the government issued a press release and introduced this legislation. It is clear that, from the significant amendments the government has had to make to make the legislation more effective, insufficient preparation went into its presentation in the first place.

The Hon. D.G.E. HOOD: I rise to indicate Family First support for the amendment. It is a sensible measure to start the period of sentencing, if you like, from the time at which the person was first taken into custody.

Bill reported with amendments; committee's report adopted.

The Hon. P. HOLLOWAY (Minister for Police): I move:

That this bill be now read a third time.

The council divided on the third reading:

AYES (18)

Bressington, A.	Dawkins, J. S. L.
Evans, A. L.	Finnigan, B. V.
Gago, G. E.	Gazzola, J. M.
Holloway, P. (teller)	Hood, D.
Hunter, I.	Lawson, R. D.
Lensink, J. M. A.	Lucas, R. I.
Ridgway, D. W.	Schaefer, C. V.
Wade, S. G.	Wortley, R.
Xenophon, N.	Zollo, C.

NOES (2)

Kanck, S. M. (teller)	Parnell, M.

Majority of 16 for the ayes.

Third reading thus carried.

CRIMINAL ASSETS CONFISCATION (SERIOUS OFFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 June. Page 405.)

The Hon. SANDRA KANCK: This bill is unnecessary, it is populist, it is stupid and it is dangerous. It says more about the government that has introduced it than it says about the person it aims to punish. It will be a bill that will be extremely difficult to enforce, and there are many interesting questions to which I seek answers from the minister about the bill's application when passed. Will it apply to books that are published and stories that are aired only in South Australia? If so, it will be easy for publication or broadcasting to occur in another state. How will the government know whether the money received from such publication or broadcasting goes to Mr Hicks? Will the state government have access to Mr Hicks' bank account to be able to check on it? What happens if he has a bank account in another state?

I note that a number of books have been written already about David Hicks, in particular, Leigh Sales' *Detainee 002: the case of David Hicks*, and Michael Ratner's *Guantanamo: what the world should know*. There is also the documentary *The President versus David Hicks*. Would this legislation prevent any of these authors, producers or film-makers, if they were so inclined, from giving a birthday or a Christmas present in the form of money to David Hicks? That is a serious question: it is not a rhetorical question about this legislation and its application. I want an answer from the government.

This bill is aimed specifically at David Hicks, and the Democrats have great concerns about legislation which is specific to one person. To save the minister from responding and arguing that the legislation applies to others, let me be very clear that the others to which it might apply would be any writer or journalist who talks to that same Mr Hicks and uses it as the basis for a book or a documentary, should any profits be directed to Mr Hicks. It is still extremely person specific. When I made this point last year in relation to legislation aimed at extending the term of office of a particular incumbent holding the position of Auditor-General, a majority of members in this place agreed with me about the danger of passing legislation that singles out a specific person. Why does the same principle not apply here?

Article 27(2) of the Universal Declaration of Human Rights states:

> Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

But if David Hicks was to write or co-write a book about his experiences at the hands of the United States, following his release from prison at the end of this year, the South Australian parliament would have removed Mr Hicks' right to the material interest that could result from such publication. It is an extremely serious action that this parliament takes in deliberately flouting human rights principles to which Australia is signatory, but this is not the only human rights article that this bill violates. Article 11(2) of the Universal Declaration of Human Rights states:

> No-one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law at the time the penal offence was committed.

It is common knowledge that the so-called crimes with which Mr Hicks was charged did not exist at the time he was arrested, yet the South Australian Labor government—ably assisted by the Liberal opposition—is upholding this abuse of human rights by amending the Criminal Assets (Confiscation) Act so that the term 'serious offence' will include any foreign offence simply declared by regulation to be a serious offence here in South Australia, and it does not matter whether article 11(2) of the Universal Declaration of Human Rights is breached in the process.

A majority of members of the South Australian parliament will wilfully ratify a stupid decision of the United States and, in so doing, compound the error. By effectively backing the actions of the United States in detaining Mr Hicks, and the actions it has taken in introducing this bill, this government and the opposition are trampling on human rights and proudly so, which makes their transgression so much worse. Although the bill is aimed at David Hicks, once his populist role has been fulfilled this law will remain on the books, and so we should also look at it in those terms.

Nowhere in this bill is there a requirement that someone must face court in order for their assets to be confiscated. So, be very clear: in passing this bill we will be opening up a can of worms. In January, I met briefly with Mahmoud Abbas, the Palestian President. At the moment he is a puppet being very well manipulated by the US government, but what if there is a change of heart by the US and it decides that he is a dangerous man? Where would that put me in having met him? This is not far-fetched. Look at what happened in Afghanistan. Australia decried Russia's invasion of Afghanistan in the 1970s but then backed the US when it invaded Afghanistan.

Look at what happened to Saddam Hussein: he was backed by the US and its allies when it wanted to foment division with Iran and then, suddenly, he became the most dangerous man in the world. This legislation is potentially very dangerous. It assumes that we will always have a benign government, and it assumes that we will always have a rational Attorney-General making the regulations. Somewhere along the way the line could be crossed. Imagine if we in South Australia found ourselves being dictated to by Sharia law?

What is there in this legislation to stop that happening? The Democrats' view is that we should not be allowing other countries to dictate our laws and penalties. There are a number of breaches of the International Covenant on Civil and Political Rights in relation to the Hicks' case. Article 9 states:

> 1. Everyone has the right to liberty and security of person. No-one shall be subjected to arbitrary arrest or detention—

well, that did not happen, I am afraid, in relation to David Hicks—

> No-one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law.
>
> 2. Anyone who is arrested shall be informed at the time of arrest of the reasons for his arrest and shall be promptly informed of any charges against him.

That did not happen in relation to David Hicks. Article 10 states:

> All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

That did not happen in relation to David Hicks. Article 10. 1(a) states:

> Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.

That did not happen in relation to David Hicks. Article 14 states:

> 1. All persons shall be equal before the courts and tribunals in the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair

and public hearing by a competent, independent and impartial tribunal established by law.

Well, everyone knows that the tribunal before which David Hicks appeared was not competent, independent or impartial.

Just today, the Australian Law Council has released its report on the Hicks proceedings, and it concluded that they were 'a charade'. So, despite a plea of guilty being obtained from Mr Hicks through the failure to observe these fundamental human rights, the South Australian government and the opposition, through this bill, are acting willingly to validate these failures of law. Article 29(3) of the Universal Declaration of Human Rights states:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

So I ask: how would David Hicks writing about his experiences in Guantanamo Bay and making a profit from it impinge in any way on the 'requirements of morality, public order and the general welfare' of South Australians? There will not be an answer to that question, because none of these would be impinged upon by such activity.

This bill amends the Criminal Assets (Confiscation) Act. Its short title reads: An act to provide for the confiscation of the proceeds and instruments of crime. Yet, a fundamental question arises about the purpose of this bill when it relates not just to the apparently heinous act of guarding a tank, which was the substance of the charge Mr Hicks pleaded guilty to (that is, providing material support to terrorism), but also to the five years he spent in a US prison, much of the time without charge. I point out to this house that being held in prison is not of itself a crime—as this bill wants to puts it, a serious offence.

I remind members of the opposition of comments made by their former prime minister Malcolm Fraser. He said:

Both governments—

I think he was talking of both the Australian and US governments—

will say Hicks has had his day in court, he pleaded guilty, he has been justly treated. What we really need to concentrate on and to understand is that Hicks did not have a day in court. He had a day in a fraudulent tribunal controlled by a special law which the Americans would never dare to apply to their own people.

Yet, despite the clear knowledge that Hicks appeared before a fraudulent tribunal on the basis of what has been described as a charade, the South Australian government takes this action. The reality is that Mr Hicks was a man more sinned against than sinning. But, despite that, this legislation would not allow him to make any profit from writing a book or starring in a documentary about an experience that has, in all likelihood, scarred him mentally and physically. In the application of this bill when it unfortunately becomes law, if Mr Hicks writes a book about his experiences in Serbia, remembering that he was fighting for the same side Australia was supporting, would this bill apply to that part of his history? I look forward to an answer to that particular question from the minister in his summing up.

So, here we have a bill that follows on the violation of numerous breaches of the International Covenant on Civil and Political Rights, yet this bill effectively validates those breaches. Here we have a bill that violates at least two articles of the UN Declaration of Human Rights, yet our Labor government, with the Liberal opposition as its partner in crime, is willing to support these breaches. It is a matter that should be of some shame to both the Labor and Liberal parties. When this bill becomes law, they will stand condemned by the many people in this state who uphold the rule of law and who value human rights. Sadly, such a description does not apply to the members of the Labor and Liberal parties in this parliament. I fervently oppose the second reading of this bill.

The Hon. M. PARNELL: The Greens oppose this bill, for a number of reasons. I agree wholeheartedly with the Hon. Sandra Kanck that it is bad law, it breaches our commitment to human rights, it is inconsistent with what people in this place have said they stand for, and it is generally to be condemned.

The first point to make is that any law that is aimed at a particular individual has a tendency to be bad law, and this is no exception to that. The Law Society has written to the Attorney-General and expressed its concerns about this legislation. A number of issues are raised in the brief Law Society submission, one being that the bill may well impact on people such as David Hicks' father Terry who has, over a great many years, championed the cause of a fair go for his son David. It looks as though he, too, would be caught up in this legislation. The Law Society also raises the issue that it may well be that David Hicks, on his release, might seek to profit from telling his story, not necessarily for personal gain but maybe for charitable purposes.

There are plenty of cases in the past where people have written books and donated royalties to charity, and it may well be that a charity that promoted human rights or supported better relations between the world's faiths is the sort of charity that might benefit; yet, if any part of the proceeds are in the control of David Hicks, they will be caught by this legislation, regardless of what intention he might have for those proceeds. The Law Society says that it is pleased that the bill is not intended to prevent Mr Hicks from telling his story. However, I am not convinced that that is the case. I think that this bill does effectively prevent David Hicks from telling his story.

The Legislative Council, only a few months ago, debated a motion put to us by the Hon. Russell Wortley, and I will just refer to a couple of the points in that motion, which read in part:

The recently announced rules for Guantanamo Bay detainee trials will not afford David Hicks or other detainees a fair hearing consistent with international legal standards and Australian law. For example, Military Commission rules that permit hearsay evidence and evidence obtained by coercion and that restrict access to certain evidence violate essential guarantees of independence and impartiality.

That was the view of the Labor Party just a few months ago. The Hon. Russell Wortley's motion continued:

Current arrangements are unjust and contrary to principles that our respective legislatures have for centuries nurtured and cherished. Those principles provide a shining example to those who would seek to destroy or degrade our cherished heritage through arbitrary acts of violence.

Yet, what we find just a few months later is that when Mr Hicks has, understandably, chosen to accept a plea bargain deal that released him from the hellhole of Guantanamo Bay, the Rann government has started again to beat the law and order drum. The question has to be asked: what has happened to its commitment to due process? What happened to the call for David Hicks to be brought home to Australia to face a proper judicial system? Instead, what this legislation proposes is that we are going to have some

regulations that will declare any offence triallable by the US Military Commission constituted under American law to be caught within the scope of crimes from which a person cannot profit.

Rather than this legislation continuing with what the Labor Party started with, that is, expressing doubts about the farcical Military Commission processes, what we are now doing is validating those processes in South Australian law. The Hon. Sandra Kanck noted before that, just today, we have had from the Law Council of Australia the report of Lex Lasry QC, who acted as the independent observer on behalf of the Law Council in the case of David Hicks and who this morning presented the third and final instalment of his investigation.

Without reading the whole of his report, he does note that there has been no response from the Australian government to the consistent and widespread criticism of the military commissions and Guantanamo Bay generally. From today on, we can read into that the South Australian government. Lex Lasry says that the federal government's support for the American process has been shameful. In his conclusion, he also says that the government has never put an argument to the Australian public as to why the military commission process is full and fair. Now that the Hicks case is over, no doubt the hope is that the issue will disappear, and regrettably perhaps it will.

What the state government is doing is playing precisely into the hands of the federal government. It is doing whatever it can to ensure that the embarrassment of the David Hicks case disappears. Lex Lasry goes on:

> However, Australia's international standing and moral authority has been diminished by its support of a process so obviously at odds with the rule of law.

What we have in this legislation is breathtaking hypocrisy. If people believe, as I do, that David Hicks did not receive a fair trial, then people should also be very concerned at this legislation which is purporting to deal with the profits or benefits obtained from the exploitation of illegal activity. Members would have to ask themselves the question. We have had prominent footballers talk about their illegal drug taking; we have had federal ministers talking about their illegal drug taking—heaven help us if any of those people want to write their memoirs sometime down the track. Will we treat them the same way?

In conclusion, I put on the record for the minister some questions that I would like answered before we conclude debate on this bill. They are similar to the question that the Hon. Sandra Kanck posed; that is, what part of the David Hicks story is caught by this legislation? If he was to write a book about his childhood, would he be prevented from profiting from that? If he was to write a book about his childhood and his engagement in the war in the Balkans, would that be illegal? Is it only that section that refers to his brief stint apparently of guarding a tank? Is that the only bit from which he is not allowed to profit? If that is 1 per cent of his memoirs, is it only 1 per cent of the profit that he is not allowed to keep?

I think this law is ill-conceived. I think it is aimed at trying to make a shameful episode in Australian history go away and I think it is a shame on all those who support this legislation, because what it is saying is that we have behaved appallingly as a nation, we have allowed an injustice to be perpetrated and we will do whatever we can to ensure that the story is never told.

The Hon. D.G.E. HOOD: I rise to support the second reading of this bill. Family First believes that criminals should not be allowed to profit from their crimes whether they are committed in Australia or overseas. The Law Society may disagree with that, but that is our firm view. David Hicks has recently pleaded guilty to terrorism offences in a US military commission. Accordingly, Family First agrees with the government that he (and offenders like him) should not be able to profit from his involvement in those offences. This bill purports to be a minor amendment to legislation and I note that it only runs to a few lines. As the Minister for Police has noted, the government has decided that David Hicks should not be allowed to profit from television appearances, book deals and other arrangements.

I also take this opportunity to acknowledge that the Leader of the Opposition in the other place had intended to introduce a private member's bill to the same effect as this bill. He deserves credit for that and, equally, Family First would have supported that bill. I note the comment of the Minister for Police that this amendment will not act as a so-called gag order against David Hicks. Family First believes that freedom of speech is the right of every South Australian, and it is important to note that this bill simply limits his ability to profit from his admitted offending against the law.

I note further that the bill only refers to foreign offending that is declared by regulation to be a 'serious offence' under the act. I am always hesitant to see South Australians subjected to foreign laws, and Family First will be concerned to see that the number of foreign laws allowed by way of regulation to impact our own citizens is kept to an absolute minimum. Certainly, even in recent memory, some foreign powers have enacted very unjust laws, and it would be inappropriate for our citizens to be subjected to those laws without restriction.

We are told at the outset that only certain provisions of the US Military Commissions Act 2006 will be declared by regulation as serious offences, and we accept that. Further, the government referred to David Hicks specifically with reference to this legislation during the second reading. Family First would be concerned if the High Court struck this bill down on the basis that legislation should not be made to target one particular person, as was done famously in the Cable case. Allowing additional foreign laws to be included by regulation may expand the scope of the law to ensure that it does not run ultra vires or beyond the power of this place.

Further, the minister concedes that the commonwealth Proceeds of Crime Act 2002 was drafted to ensure the same result. Nevertheless, the honourable member is concerned that section 337A(3) of that act extends the reach of those provisions only to tribunals convened under a United States Presidential order of 13 November 2001—an order that has subsequently been declared invalid. It would be preferable for the commonwealth to rectify that legislation so that restrictions against David Hicks could operate nationally, rather than only within South Australia, as this bill would.

Despite criticism from some quarters in this place, Family First will continue to support legislation such as this. We believe that it is proper to confiscate assets from offenders, including drug dealers and the like, if they purchase those assets from the proceeds of criminal activity. We support a similar tough line against those who support terrorist organisations. Family First supports the proposition that offenders should not be able to profit from crimes, and we support the second reading of the bill.

The Hon. P. HOLLOWAY (Minister for Police): I thank all honourable members for their contribution to the debate and, in general, they are indications of support. The Hon. Sandra Kanck indicated her opposition and also asked several questions, one of which was in relation to the publication of a story in another state. I point out that, under clause 111 of the bill, if David Hicks were deriving proceeds in this state, that situation would still be captured. Clause 217, registration of orders made under corresponding laws, can be enforced. As I understand it, all other states have criminal assets confiscation acts, so under clause 217 there is the provision for registration of orders under those corresponding laws. So, that is what happens in relation to publication in another state.

The Hon. Sandra Kanck also asked whether this singles out an individual. My advice is that the bill closes a loophole by allowing all foreign offences, where proceeds are derived, to be attacked. So, in relation to commonwealth legislation there is a loophole, but this legislation will effectively close that loophole by allowing all foreign offences to be attacked. In relation to a question asked by either the Hon. Sandra Kanck or the Hon. Mark Parnell, the point needs to be made that David Hicks can still write his story. There is nothing in this legislation that prevents him from telling his story: it just prevents him from selling it. That is the point that needs to be emphasised. I also point out that it is true that no-one has to face court in the original case. This is due to the civil enforcement regime, whereby a court deciding on literary proceeds order needs only to be satisfied on the balance of probability that an offence has been committed.

The final point I make in relation to this debate relates to the unexplained wealth declaration provisions canvassed by the Hon. Robert Lawson and an amendment in relation to those, which we can deal with when the amendment is tabled. I point out that, in relation to its policy on outlaw motorcycle gangs, the government has already announced that we will look at the whole issue of unexplained wealth provisions. I believe that that will be the appropriate vehicle (which should be in legislation later this year) through which to debate this issue of unexplained wealth. That will be our position but, as I said, we can deal with that when we get to the committee stage. For now, I again thank honourable members for their contribution to the bill and seek their support for the second reading.

Bill read a second time.

MURRAY-DARLING BASIN (AMENDING AGREEMENT) AMENDMENT 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 main purpose of this Bill is to amend the *Murray-Darling Basin Agreement 1992* to enable improved business practices for River Murray Water, which is the water business unit of the Murray-Darling Basin Commission. The amendments also clarify that Queensland cannot be held liable for works and measures in which it is not directly involved and set out details of authorised joint works and measures in relation to salinity management.

The *Murray-Darling Basin Agreement 1992* is an agreement between the Australian Government and the Governments of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory. The purpose of the Murray-Darling Basin Agreement is to provide and co-ordinate effective planning and management for the equitable, efficient and sustainable use of the water, land and other environmental resources of the Murray-Darling Basin.

The *Murray-Darling Basin Agreement 1992*, and its predecessor the *River Murray Agreement* and any subsequent amendments, have been subject to the approval of the Parliament of each Government. This gives a unique strength to the Agreement which establishes the legal framework for natural resource management, water distribution, asset management and financial disbursements between the jurisdictions of the Murray-Darling Basin Initiative.

The Murray-Darling Basin Agreement Amending Agreement 2006 as signed at the COAG meeting of 14 July 2006 will amend the *Murray-Darling Basin Agreement 1992* in three ways:

- it will facilitate improved business practices for the Commission's water business (River Murray Water);
- it will clarify the original Agreement in the matter of limiting Queensland's liability; and
- it will attach supplementary details and to make a minor typographical correction to the Basin Salinity Management Schedule (Schedule C) of the Agreement.

Improved Business Practices

The first of these matters represents the response of the Murray-Darling Basin Commission and the Murray-Darling Basin Ministerial Council to the COAG Water Reform Principles adopted in February 1994. Specifically these required the Murray-Darling Basin Ministerial Council to put in place "*arrangements so that out of charges for water funds for the future maintenance, refurbishment and/or upgrading of the headworks and other structures under the Commission's control be provided*.

Since 1998, the Murray-Darling Basin Ministerial Council has, each year endorsed a cost sharing arrangement based on levels of service provided by its River Murray Water business to the relevant States (New South Wales, Victoria and South Australia). Further business reforms, inherent in the application of the COAG principles, were limited by the terms of the Murray-Darling Basin Agreement. Recognising these limits, the National Competition Council endorsed the initial responses of the Ministerial Council including its commitment to seek the agreement of the relevant four partner governments (the Australian Government, and the Governments of New South Wales, Victoria and South Australia) to amend the Agreement to enable the full extent of the COAG principles to be achieved.

Specifically this involved enabling powers:

- to establish and manage a long term renewals annuity fund to provide for capital renewals and major cyclic maintenance;
- for the Commission with the Ministerial Council's approval to undertake borrowings for the above purpose;
- for Ministerial Council to re-assign the management of critical infrastructure between the relevant State Governments; and
- for Ministerial Council to vary cost sharing arrangements for periods of up to five years and to establish new thresholds, from time to time, for financial levels of works and measures requiring approval of the Commission or the Ministerial Council

In addition the arrangements for annual and forward estimates were to be clarified.

Negotiations between Governments on these matters have extended over several years leading to a final endorsement by the Ministerial Council in 2005.

The amending agreement allows governments to make annual 'annuity' contributions towards the future capital and maintenance costs of the Commission's water business, with the power to borrow where accumulated funds are insufficient to meet costs in any year. These annuity contributions will reduce fluctuations which might otherwise occur in governments' annual contributions and also give a better reflection of the long-run costs of providing water business services.

The amending agreement enables the Ministerial Council to recover water business costs from state governments in shares comparable to those which would apply if fee-for-service pricing were introduced. The amendment enshrines COAG principles relating to the costs of water services and eliminates cross-subsidies between the states for water business costs.

In 2006, the Australian Government provided a $500 million cash injection to the Murray-Darling Basin Commission. The funds will

accelerate water recovery measures, ensure that best use is made of water recovered for the environment and fully implement agreed programs. The amending agreement allows this and other Commission monies to be invested more flexibly than the current agreement allows. Instead of being restricted to investing in fixed bank deposits, the Commission will be able to invest in accordance with guidelines set by the Ministerial Council.

The amending agreement also makes a number of minor amendments including clarifying definitions, clarifying the annual estimates approval process, providing flexibility to appoint auditors and adding a detailed description of works and measures to the basin salinity management schedule.

Following a meeting between the Prime Minister and Premiers of South Australia, Queensland, New South Wales, Victoria and the Chief Minister of the Australian Capital Territory on 23 February 2007 the future of the Murray-Darling Basin is the subject of an agreement between First Ministers of the Australian Government and four of the five Murray-Darling Basin jurisdictions. The remaining jurisdiction has shown support for such a policy position but is seeking further clarification on several issues. The agreement addresses the very essence of the governance arrangements between all Basin jurisdictions with the intent of ensuring a sustainable future for the Murray-Darling Basin and the communities that it supports. The details of the new agreement will not be implemented for some time. However, this Bill ensures that best business practices within the existing agreed arrangements are followed in the immediate future and during the transition period.

Limiting Queensland's Liability

The second matter aims to put beyond doubt the liability of Queensland which became a party to the agreement on the basis that it would only contribute towards works and measures in which it is directly involved. The terms of the present Agreement do not specifically ensure that Queensland cannot be held liable, in damages, for matters in which it takes no part and the amending agreement removes ambiguities in the agreement that could be interpreted as widening Queensland's liabilities. Whilst the Ministerial Council has, by resolution, recognised this principle, the agreed view is that an indemnity should be enshrined in the Murray-Darling Basin Agreement.

Tiding up Schedule C

The third matter is to add to the Basin Salinity Management Strategy, Schedule C of the Agreement, a detailed description of the authorised joint works and measures approved and implemented by the Ministerial Council. The opportunity has also been taken to adopt a typographical correction.

Process from here

The amendments were endorsed by the Murray-Darling Basin Ministerial Council on 31 July 2003 and a further amendment correcting a typographical error was endorsed by the Murray-Darling Basin Ministerial Council on 30 September 2005. The respective First Ministers signed the *Murray-Darling Basin Agreement Amending Agreement 2006* at COAG on 14 July 2006.

Each Government of the Murray-Darling Basin Initiative is now in the process of taking a Bill to their respective Parliaments for the adoption of the Amending Agreement before it formally comes into force. Relevant Bills have been recently introduced into the Federal and Victorian Parliaments.

The Bill will not affect the level of funding that governments are allocating for the Murray-Darling Basin Commission under existing arrangements. However, it will enable the Commission to improve business practices for its water business unit, River Murray Water, an essential improvement required now in light of the $500 million injection of funds by the Australian Government in 2006 and the transition period to new Basin-wide governance arrangements.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Murray-Darling Basin Act 1993*

4—Amendment of section 4—Interpretation

This clause amends section 4(1) of the Act to include a new paragraph (c) to the definition of ***Agreement*** and to insert a definition of ***Amending Agreement 2006***.

5—Insertion of section 5B

This clause inserts new section 5B into the Act to provide that the Amending Agreement 2006 is approved.

6—Insertion of Schedule 3

This clause inserts Schedule 3 into the Act. Schedule 3 contains the Murray-Darling Basin Agreement Amending Agreement 2006 as signed by the Prime Minister of the Commonwealth of Australia, the Premiers of Victoria, New South Wales, Queensland and South Australia and the Chief Minister of the Australian Capital Territory on 14 July 2006 and as revised by the Ministerial Council on 29 September 2006.

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

ADJOURNMENT

At 6.03 p.m. the council adjourned until Wednesday 25 July at 2.15 p.m.