LEGISLATIVE COUNCIL

Tuesday 25 September 2007

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

ASSENT TO BILLS

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

Julia Farr Services (Trusts),

Statutes Amendment (Petroleum Products).

NATURAL RESOURCES COMMITTEE

The Hon. R.P. WORTLEY: I bring up the committee's annual report 2006-07.

Report received.

The Hon. R.P. WORTLEY: I bring up the Kangaroo Island Natural Resources Management Board Levy Proposal 2007-08.

Report received.

The Hon. R.P. WORTLEY: I bring up the Northern and Yorke Natural Resources Management Board Levy Proposal 2007-08.

Report received.

The Hon. R.P. WORTLEY: I bring up the South-East Natural Resources Management Board Levy Proposal 2007-08.

Report received.

The Hon. R.P. WORTLEY: I bring up the Eyre Peninsula Natural Resources Management Board Levy Proposal 2007-08.

Report received.

OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION COMMITTEE

The Hon. B.V. FINNIGAN: I bring up the report of the committee concerning an inquiry into the law and processes relating to workplace injuries and death in South Australia.

PAPERS TABLED

The following papers were laid on the table:

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

- Leases of Properties held by Commissioner of Highways—Report
- Regulation under the following Act—
  - Associations Incorporation Act; 1985—Prescribed Association
- Rules of Court—
  - Supreme Court—Supreme Court Act 1935—
    - Criminal Appeal
    - Domestic Partner

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

- Local Government Election Report, November 2006
- District Council By-laws—Renmark Paringa—
  - No. 8—Cats
- Regulations under the following Acts—
  - Environment Protection Act 1993—Prescribed Bodies
  - Liquor Licensing Act 1997—Spalding Rodeo.

DROUGHT

The Hon. P. HOLLOWAY (Minister for Police): I lay on the table a copy of a ministerial statement relating to the drought and the plight of our farmers made earlier today in another place by my colleague the Premier.

QUESTION TIME

URBAN BOUNDARY REALIGNMENT

The Hon. D.W. RIDGWAY (Leader of the Opposition): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about changes to the urban growth boundary.

Leave granted.

The Hon. D.W. RIDGWAY: On 25 July this year, the Premier and the minister issued a joint press release in relation to the changes to the urban growth boundary, in particular the land to be brought into the boundaries north (approximately 1 235 hectares) and south (some 686 hectares). The press release states:

> A draft of the proposed new urban boundary will be officially released for a four-week exhibition period from next Monday, 30 July, during which public submissions will be received and considered. After the four-week period, the government will make a final decision on adopting the new urban growth boundary.

The Barossa Council has raised a number of concerns about this plan, particularly the consultation process. In relation to this process, a press release, issued by the Barossa Council on 23 August (nearly at the end of the four-week period), states:

> The result has been that a severely constrained consultation process has been applied and there is no apparent appeal mechanism. It is very disappointing that the State Government has decided not to work in partnership with Councils and local communities. They are ignoring Council's land use strategies that have been developed over a long time and after extensive public consultation.

It has also come to my attention that the new proposed northern expansion of the urban growth boundary now overlaps the Barossa geographic index, and this certainly raises a whole range of concerns. The Barossa is an extremely important part of this state and its economy, and this seems to be at odds with the Premier's statement in the press release, where he states:

> What we are announcing today allows us to do that in a balanced, sustainable and responsible way.

My questions are:

1. Was the minister aware that the proposed new urban growth boundary overlapped the Barossa GI by some significant margin?

2. Was the impact of the overlap into the Barossa GI taken into consideration by the minister and the Premier before making the announcement on 25 July 2007?

The PRESIDENT: The minister might want to disregard a number of opinions in that explanation.

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): An enormous amount of work went into the planning for this announcement on the urban growth boundary. One of the reasons that so much work had to be done was that it is not an issue about which one can widely consult with councils because there is the possibility of huge capital gains to be made through the rezoning of properties. If I were to discuss the detail of many of these

issues with councils, as my colleague said, there could well be a land rush. There are many speculative gains to be made, and that is why these matters must be handled fairly carefully. However, a lot of work was done to try to minimise any possible issues that could arise from this proposal. There has been a consultation period, and it was extended. I had a meeting with a number of people who sought—

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: Sorry; I did not hear those words of wisdom.

The Hon. R.I. Lucas: He said, 'I bet you did.'

The Hon. P. HOLLOWAY: I had some meetings with some groups from the southern suburbs. As a result of their approach to me and at their request, I enabled them to extend the period of time in which they could make submissions. So, there has been widespread consultation, and let us get that on the record straightaway.

In relation to the Barossa GI, I assume that the honourable member refers to the boundaries for the wine industry. A number of these boundaries overlap, along with a number of other boundaries. One of the great misrepresentations in the debate on the urban growth boundary is that everything within the area can be developed; of course, that is not true. In fact, there are parts of the hills face zone, the Adelaide Parklands, and a number of other reserves, that are all within the urban growth boundary.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: That is exactly what I was talking about. I said that there has been a great deal of ignorance about the process, and nothing could reveal that better than that stupid interjection we heard. No wonder Alexander Downer wants to come down here. He must be in great despair when he sees this sort of performance.

The Hon. D.W. Ridgway: Just answer the question.

The Hon. P. HOLLOWAY: Perhaps if you stop making such inane and stupid interjections, we might be able to get on with it. The fact is that, within the urban growth boundary, there are, of course, a number of areas, such as parts of the hills face zone and the area between Flinders University and the coast, as well as a number of other reserves and parks, including the Torrens linear park and the Adelaide Parklands. In fact, as I indicated at the time that the proposal was extended, there had to be a process of rezoning before anything further would happen. It is quite clear that significant proportions of the land—when it does come to be rezoned assuming that, following the consultation, land is put into the urban growth boundary—will not in fact be rezoned for residential purposes.

Quite obviously, some of the steep land around there—and the land around Gawler is a very good example—will be reserved as open space within that urban growth boundary. The fact is that part of the land to the east of Gawler is actually a disused quarry. That disused quarry is not going to be used for growing grapevines; in fact, that particular site is very poor agricultural land. Perhaps the member should talk to the Hon. John Dawkins, because he would be more familiar with the region between Kalbeeba and Gawler. He would know that if it is being used for anything it is grazing; indeed, it is at great risk at the moment of being overrun with Scotch thistles.

There has been a lot of thought put into the proposal for this boundary. For anyone to suggest that the Barossa wine industry is under threat is ridiculous; in fact, the reverse is true. The very reason that we have allowed for such a significant expansion around Gawler is to take up the slack so that, for people who wish to work in the Barossa Valley, there will be significant capacity to have housing on the edge of the Barossa Valley rather than letting the townships of Tanunda and Nuriootpa, and so on, expand.

So, the government is quite deliberately attracted to the idea of expanding the area near Gawler rather than have the expansion within the Barossa Valley itself, which would act to the detriment of the environmental and tourism values of the valley. Obviously, we will consider particular submissions but, certainly, the great bulk of that land to the east of Gawler is entirely suitable for residential development and very unsuitable for most other agricultural pursuits, other than perhaps some grazing that is taking place there.

The GI boundaries overlap watershed areas and, when we did the PAR on the Adelaide Hills wine region, one of the big issues we faced was that the watershed boundaries for the Mount Lofty Ranges watershed district overlapped with the wine district. Members such as the Hon. Mark Parnell who are on the ERD Committee would well know the debate about which particular boundary we should follow. So, there are some issues in relation to those so-called GI boundaries, because they do not necessarily readily stack up with other natural boundaries, such as watershed boundaries, and the like. Nonetheless, I do not believe that this proposal, whether or not it is amended, presents any threat whatsoever to the Barossa Valley: in fact, the opposite is the truth.

The Hon. R.I. LUCAS: I have a supplementary question. Prior to making the decision, did the minister have any discussions with any persons other than officers within Planning SA in relation to possible extensions of the urban growth boundary?

The Hon. P. HOLLOWAY: I have had numerous discussions—including discussions with councils—in relation to the broad issue of expansion and all the areas where it is possible to expand. I have spoken to people about the prospects. What I have not done with anyone—councils or otherwise—is show them the actual specific boundaries. However, I have had a lot of discussions, in relation to all the areas, with a number of people being involved. What I did not do was to reveal the boundaries to people other than those within Planning SA.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: There has been a whole host of people in relation to the—

The Hon. R.I. Lucas: Developers?

The Hon. P. HOLLOWAY: I know the line the Hon. Rob Lucas is trying to push. You can read him like a book. I did not show any proposed boundaries until the final stages because it would have been quite improper to do so. However, I have looked at each of the individual parcels of land, not just those within the boundary but a lot of others. I have had a lot of approaches (I get approaches all the time from developers and others) in relation to various proposals. I suppose it is appropriate that they should do so; however, I did not show the particular boundary proposals to any of those persons.

ADELAIDE GAOL

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the Old Adelaide Gaol.

Leave granted.

The Hon. J.M.A. LENSINK: The Liberal Party has been contacted by concerned citizens in relation to the future of the Old Adelaide Gaol. I refer to an email that was received a week ago today, as follows:

I feel it is time to update you on the situation re the future of the old Adelaide Gaol.

The co-ordinator from the Department of Environment and Heritage, John Barrett, was to have his report on the future viability of the gaol completed by the end of August—to date we have not seen this report and an enquiry to him as to what the status of that report is has so far elicited no response.

The $100 000 allocated by Minister Gago in May for immediate remedial work to allow night tours and overnight accommodation to recommence has so far only been used to paint a few yellow lines on supposed tripping hazards. No other work at all has been carried out.

All attempts to get past the staffer in Ms Gago's office, who is meant to be the liaison between the Department of Environment and Heritage have failed. We believe that the Minister has no idea at all that the work has not commenced.

Once again we are seeking your help in overcoming this impasse.

My questions to the minister are, first—

The Hon. B.V. Finnigan: That was an anonymous email, was it?

The Hon. J.M.A. LENSINK: The honourable member asks that, but I have been ticked off many times for not naming people. I am not going to name them because you will go and beat them up. My questions are:

1. Has the John Barrett report been completed?

2. What is the status of remedial work?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for her question. As outlined in this chamber before, we were made aware of occupational health and safety issues and public liability concerns regarding some uses of the Old Adelaide Gaol. When that was brought to my attention, I asked the Chief Executive Officer of the DEH to investigate those matters and propose a solution to protect visitors to the site, and also to manage public liability in the longer term whilst preserving public access to this most important historical site in Adelaide.

The operating annual budget for the Old Adelaide Gaol is about $139 000. The cost of running the gaol is largely recovered from the revenue generated from its shop and guided tours and suchlike. The gaol was also running overnight stays and I was advised that this, in particular, was a main concern in terms of the health and safety of particular people. The government clearly has a duty of care to ensure the health and safety of the public on that site and, therefore, on the advice of the Chief Executive Officer I approved the cessation of overnight stay arrangements from July 2007. I was advised that there are no significant risks associated with the general tour arrangements and I requested the development of long-term options for the operation and management of the gaol, such as the report that the member alludes to, and I have been advised that these are in progress and that they are near completion.

There is no intention to close the gaol. It is a very important heritage site. I have been informed that the visitation numbers are about 17 000 per annum, so it is obviously of great interest to South Australians and visitors to this area. The South Australian government is committed to preserving our heritage. We have about 2 200 heritage sites in the state, so this is one of many that are legally protected under our Heritage Places Act. The heritage branch of DEH has a budget of about $2.8 million to cover these heritage sites and it is responsible for their administration as well. It does a great deal of very good work with those funds.

Some remediation funds were made available to address certain aspects of the health and safety and liability issues to do with the site. I have not been advised of the progress of that work, but I am happy to pursue that. I understand that the works have commenced and there are a number of immediate safety issues that those funds have been designated to resolve in the first instance.

DEATHS IN CUSTODY

The Hon. S.G. WADE: I seek leave to make a brief explanation before asking the Minister for Correctional Services questions about deaths in custody.

Leave granted.

The Hon. S.G. WADE: Last week, in his report on the 2005 death of Arthur Charles Smith, the Coroner called on the Department for Correctional Services to do what the department itself identified that it should do after the death. Two and a half years ago, within three months of the death, an internal report of the department's investigations and intelligence unit recommended the department 'remove all existing towel racks from all cells'. However, the department advised the Coroner that the dangerous towel racks exist in all of the cells in B division today in exactly the same format and configuration as they did in January 2005 when the death occurred.

In the past, the government has used funding issues as a reason to reject the Coroner's recommendations to improve prisoner safety; however, this recommendation did not involve major modifications but simply the removal of towel racks. In February 2004, in reporting on another death in custody, the then coroner highlighted that the death could have been avoided if the recommendation arising from the department's own investigation three years prior had been implemented. My questions are:

1. In relation to the towel rail issue, can the minister advise the council why the towel rails have not been removed?

2. Is the government's ongoing failure to ensure prisoner safety due to a lack of leadership, a lack of funding or misplaced priorities?

3. Given the mounting evidence that the Department for Correctional Services can see problems in our prisons but does not fix them, what steps will the minister take to ensure that all steps will be taken to minimise deaths in custody?

The Hon. CARMEL ZOLLO (Minister for Correctional Services): At a later date, I will table in parliament, as is required by legislation, a report on actions following the coronial inquiry into the death in custody that the honourable member is referring to.

The Hon. S.G. Wade interjecting:

The Hon. CARMEL ZOLLO: I beg your pardon.

The Hon. S.G. Wade interjecting:

The Hon. CARMEL ZOLLO: I was advising the chamber what is required by legislation because clearly the honourable member does not know. As we have read in the media, in relation to this death the Coroner recommended that the department remove all the towel rail hanging points as soon as possible and, while it has been possible to remove some of these fixtures, many of the rails are an integral part of plumbing fixtures. For example, they sit around the hand basin and they would be extremely costly to remove. The

department continues to prioritise the removal of obvious hanging points in our gaols.

As the honourable member would know, as I am sure everybody does, new prison facilities are being planned for completion in 2011 which will incorporate safe cell design and they will not have towel rails. I can assure all honourable members that the Department for Correctional Services takes very seriously its duty of care to prisoners and offenders and it will continue to be vigilant to reduce the instances of those in the correctional system who seek to take their life. As we are talking about this particular coronial inquest, even though I am yet to table it, the honourable member may have noted that the Coroner said that the suicide of this person was in his opinion unlikely to have been prevented by different prison locations or regimes of medication.

I place on the record what the department has done since May 2003. It has undertaken a number of works in order to reduce ligature points in prison cells. Those works include: the upgrade of 11 cells in E wing and eight cells in D wing of the Adelaide Women's Prison, costing over $600 000; enclosing all the pipe work in B division cells at a cost of $100 000; and $3.9 million for the construction of a 50-bed independent living unit to safe cell standards at Mobilong Prison. The cost of those works in the past year alone totalled almost $1 million for 11 projects. Both I and the department acknowledge that most cells contain potential ligature points but, in normal usage, prison cells in the South Australian prison system are eminently safe for the humane custody of prisoners. Cells are designed and constructed to applicable standards at the time of construction and are upgraded to more current standards when significant refurbishment occurs.

Cells in the South Australian prison system are all fitted with fresh air ventilation systems that meet Building Code of Australia air exchange rates; they are heated and cooled to maintain acceptable ambient temperatures all year round; they are fitted with smoke detention systems to provide early warning of combustion (other than cigarette smoke); they are fitted with intercoms to allow prisoners to summon assistance in the event of medical or other distress; and, they are fitted with mattresses and bedding treated with fire retardant products. They are also inspected regularly by prison officers to ensure that they are kept in a safe condition.

Compliance with legislative requirements and the overall safety and security of the correctional system are always paramount considerations in determining capital expenditure priorities. In this process the department has regard to the safety and security of all stakeholders—prisoners, staff, volunteers, contractors, visitors and the community at large. Consistent with this approach the department has, since 2003, invested over $15 million in some major projects to maintain essential services and the general safety and security of the prisons system. As I have said before in this place, any death in custody is of serious concern to any department and any minister, and we will continue to do our bit to ensure that future deaths in custody do not occur.

The Hon. S.G. WADE: By way of supplementary question, in the minister's response she indicated that it was her view and the department's view that it was impractical to remove the rails. That seems at odds, considering that the recommendation itself came from the department's investigations and intelligence unit—

The PRESIDENT: Ask your question. You have been here long enough to know that you do not make an explanation when asking a supplementary question.

The Hon. S.G. WADE: I am highlighting the inconsistencies and I am hoping the minister might explain. Is the minister suggesting that the investigations, in relation to both the Port Lincoln prison escape and this incident, show the department's investigators themselves are incompetent or that—

The PRESIDENT: No.

VISITORS TO PARLIAMENT

The PRESIDENT: I draw the attention of the council to a delegation from the United States, made up of members of state parliament from various states in the United States. I welcome them to the Legislative Council.

ANGAS ZINC MINE

The Hon. J. GAZZOLA: My question is to the Minister for Mineral Resources Development. Will the minister provide details of the progress being made by Terramin Australia at the Angas zinc mine, which is located at Strathalbyn?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I thank the honourable member for his important question. I am delighted to inform all honourable members that significant progress is being made by the company Terramin Australia at the mine site near Strathalbyn. Indeed, I had the pleasure of visiting the mine last Thursday and officially naming the decline to this mine. It is traditional to name the entry tunnels to mines, called declines. The tunnel excavation at the Angas mine is the entrance to the first significant zinc mine in this state. The first development decline at the Angas mine has been named the Rankine decline, in recognition of the strong contribution to Strathalbyn by the various Rankine family groups.

The opening of the Rankine decline represents a significant milestone for Terramin and takes it a step closer to production, which I understand is scheduled to begin in 2008. In the coming months, as the mining development moves closer to the ore body and as construction ramps up, as many as 179 workers will be at the mine site. Once in production, the mine will provide about 100 permanent jobs in the region, including 63 at the mine site. It is also estimated that the mine will provide an annual $29 million boost for the local economy. A tunnel to access the zinc deposit has already been excavated 50 metres, with work continuing to the stage where the driving of the first network of mine development tunnels can begin from the main decline.

The Angas mine will mine 400 000 tonnes of ore each year and will also have the first processing plant in South Australia producing zinc and silver-lead-gold concentrates. The mine's treatment plant at full production will generate 60 000 tonnes of zinc concentrate and 22 000 tonnes of lead copper concentrate per annum. The choice of name for the Rankine decline is appropriate. The town of Strathalbyn was named by Dr John Rankine. Dr Rankine's brother, William Rankine, was the driving force behind the family's immigration halfway around the world from Scotland to Australia. Dr John Rankine arrived in South Australia in 1839 aboard the *Fairfield*

It is also interesting to note that one of the early industries in the area was the mining of copper and silver, starting in

1848 with the formation of the Strathalbyn Mining Company. This was followed two years later by Glenalbyn mine, with Dr John and William Rankine among its directors. The Angas mine is the closest based metal mining operation to an Australian capital city, just 60 kilometres from Adelaide. A little over two weeks ago I was standing in Terramin's new head office in Westpac house in King William Street congratulating the company on the progress being made at Angas.

As honourable members would be aware, South Australia is experiencing an unprecedented exploration boom across all commodity classes. The latest figures released by the Australian Bureau of Statistics confirms that South Australia remains in the vanguard as a world class mineral exploration destination. In the June 2007 quarter, exploration expenditure reached $84 million. Of this amount, $24.3 million was spent on new deposits, and $59.7 million was expended on existing mineral deposits. The new mining development at Strathalbyn will deliver best practice performance for environmental management, for efficient and safe mining practices and for mine closure and final site rehabilitation.

I congratulate everyone in Terramin Australia and in our state's mining, planning and environmental regulatory agencies, and I particularly congratulate community members who have contributed to positive improvements in many aspects of the final mine development. The government is strongly committed to working closely with all parties to foster a consultative regime that addresses the environmental, social and economic risks and benefits of all resource projects being developed now and in the future.

DRUG SENTENCES

The Hon. D.G.E. HOOD: I seek leave to make a brief explanation before asking the Minister for Police, representing the Attorney-General, a question concerning heroin drug dealers.

Leave granted.

The Hon. D.G.E. HOOD: On Wednesday last week judge Soulio sentenced a Mr Hue Van Le, who had been convicted of heroin for sale. Mr Le had been convicted of possession of heroin for sale. The facts of the case were that police attended Mr Le's house in Ottoway in October 2005, after hearing numerous reports that drugs were being dealt from those premises. At the address police found eight balloons full of heroin actually on the defendant's person at the time. Despite having a number of prior convictions, including drug related offences, the defendant was given a (surprise, surprise!) 12-month suspended sentence by the judge. My questions are:

1. When will South Australian judges stop handing out pathetic sentences to convicted, hard-core, repeat-offending drug dealers and actually put them in gaol where they belong?

2. If South Australian judges are too soft or incompetent to put convicted drug dealers in gaol, when will the government intervene with legislation that will force them to do so?

The Hon. P. HOLLOWAY (Minister for Police): On previous occasions in this parliament the honourable member has raised the issue of sentences imposed by the courts which, on the surface, appear to be inadequate and he has given us another case today. Obviously, given the separation of powers that exists in our system, it is dangerous to comment on the decisions of the judiciary without knowing the full facts. Nevertheless, as Minister for Police on occasions I also share some concern about the fact that certain penalties do appear to be unnecessarily lenient and out of touch with community standards.

I will refer the question to the Attorney-General to see whether there are mitigating circumstances in this case or whether it is appropriate for the government, through the DPP, to consider an appeal in this instance. The question regarding whether legislation needs to be altered is something that I will also refer to the Attorney-General.

ABORIGINAL INTERPRETERS

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

Leave granted.

The Hon. R.D. LAWSON: It was reported recently that in three serious criminal cases in the Supreme Court last month the presiding judges commented upon the absence of Aboriginal translators, which caused those trials to be delayed and inconvenienced. In fact, at the end of last month a judge delayed the sentencing of two brothers for rape because no Aboriginal interpreter could be found. The Chief Justice was reported as saying to the ABC that those cases illustrated the difficulties faced by the courts and that he hoped the state government would improve the situation; however, a spokesman for the Attorney-General was reported as saying that the Attorney-General 'believes there are enough interpreters and that private agencies are also responsible for providing translators.' My questions are:

1. Is it true that the Attorney-General disagrees with the Chief Justice, and that he believes there are enough interpreters?

2. Has the Attorney-General made any inquiries, and what evidence does he have to satisfy himself, about whether there are enough interpreters?

3. Can we take the Attorney-General's repudiation of the Chief Justice's approach as an indication that this government will not provide additional resources for Aboriginal interpreters in the courts?

The Hon. P. HOLLOWAY (Minister for Police): I will refer that question to the Attorney-General; however, I would like to say that if there is a shortage of interpreters—in particular in Aboriginal languages—then, given comments that have been made in the media over the past few days, there is also a risk to Aboriginal languages generally. In fact, one prominent expert in languages has criticised the manner of the commonwealth government's involvement in the Northern Territory as posing a real risk to Aboriginal languages in those communities.

As I said, I will refer the question to the Attorney-General, but I suspect that it is not just a question of resources but also a question of finding people with an understanding of those languages; I do not think one can produce them out of thin air. It is an important question and one that deserves the Attorney's consideration, but let us not pretend that, if there is some shortage of Aboriginal interpreters, we can produce some magical solution to the problem overnight.

ROYAL ADELAIDE SHOW

The Hon. B.V. FINNIGAN: I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about the Royal Adelaide Show.

Leave granted.

The Hon. B.V. FINNIGAN: The Royal Adelaide Show—which brings significant benefits to the state—recently wound up after another successful year. I understand the show is the second largest attended royal show in Australia. Will the minister advise whether our emergency services used the tremendous numbers that attended the show to provide education about community safety?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): The Royal Adelaide Show, which was held from 7 to 15 September, is reported to attract 35 per cent of the state's population. As has occurred in past years, cabinet met at the show and while there I took the opportunity to visit the emergency services sites of the SES, the CFS and the MFS. These stands are wonderful opportunities to promote our respective safety messages, particularly around prevention and preparedness. Also, they provide an opportunity to informally discuss the work of the services with those who may express an interest in volunteering.

The CFS stand had a practical focus, which included a mulch display, with examples of good, bad and ideal mulches in terms of fire risk, and a selection of fire-tolerant plants. There was something for the children with a kiddy corner, with a fire-focused colouring competition to keep them occupied while parents discussed bushfire safety. I am pleased to say that the CFS won second place for the stand in the outdoor site, non-agricultural section. This is not the first time that the CFS's efforts at the show have been recognised. In 2002 it won first prize.

The MFS stand at the show attracted around 12 000 people, and the activities included surveys on home fire escape plans and smoke alarm installation. These form a valuable tool in developing better targeted fire safety programs. Obviously, the normal safety literature is available, but the activities are those which seem to draw the most attention. Several activities, such as the stop, cover, drop and roll drill are targeted at children, with children practising what to do if their clothes catch fire. The annual poster competition winners were also on display at the stand. They are the culmination of a program which sees material distributed to all primary schools with an invitation to enter this competition. Both Dymocks and Lion Apparel support children's activities at the show. I am pleased to say that the MFS won first prize for its display in the over 36-square metre category for the third consecutive year. The MFS stand was staffed by community education personnel, operational crews from metropolitan and regional areas and retired firefighters who donated their time to assist. With children and the elderly at high risk, both fire services use the show as an opportunity to target their safety message to the many children enjoying the show.

The SES does not have a stand at the show. Instead, it has a longstanding agreement with the show to provide onsite rescue stand-by crews in the event of a major public safety incident. SES volunteers provide assistance to the fireworks organisers and security staff during the nightly fireworks display at the show. I understand that the most common task is for SES volunteers to assist with crowd control. This year the SES provided 268 escort/crowd management services, 71 searches for lost people, mostly children, and, of course, lots of assistance for lost and distressed families. Interestingly, I am told that one task was to cut a wedding ring from a swollen finger. No-one can say that the SES does not provide a diverse service. This was a successful presence, with around 60 people expressing an interest during the show in joining the SES. Following contact by respective units, I hope that some of those people will decide to join the service and the emergency services family.

GLENSIDE HOSPITAL

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question about an assault on two nurses at Glenside Hospital.

Leave granted.

The Hon. NICK XENOPHON: I have been contacted by a constituent who was assaulted by a patient at Glenside Hospital whilst working as a nurse in August 2004. My constituent would like her identity to remain confidential due to the devastating effect that the incident has had on her. I have spoken with my constituent's psychologist who confirms that to disclose her identity publicly would further traumatise her and aggravate her post-traumatic stress disorder and be counterproductive to her treatment, although I am happy to provide more details if requested by the minister.

On 17 August 2004, my constituent was physically assaulted by an in-patient as she attempted to administer an injection of anti-psychotic medication to the patient. It was agreed that my constituent would assist another female nurse to administer an injection to the patient even though the patient had a long history of paranoid schizophrenia. She was subsequently told that this patient was only meant to be injected by two male nurses in a locked and secure environment.

Upon entering the room, the patient began to assault the first nurse, at which time my constituent pressed her portable duress alarm, which all nurses are required to wear. The patient began to assault my constituent, at which point the other nurse left the room. No-one—neither staff nor security—came to her aid whilst the assault was taking place for a period of some four minutes. My constituent sustained very significant injuries, including multiple bruising, abrasions to the head, neck, shoulders, knees, hands and back. She is still recovering from receiving treatment for her injuries, both physical and psychological.

I am advised that charges were laid against the patient by the police but were later dropped, despite all parties to the assault providing them with statements. My constituent advises me that she has had little contact, if any, from the department or Glenside regarding what steps were taken to make sure that the patient was detained and made accountable for his actions. I understand that a report was prepared by the department into the occupational health and safety concerns arising from the incident, but my constituent was never consulted about this, nor has she been able to obtain a copy of such a report, even though attempts have been made through the FOI process. My questions are:

1. To what extent is the minister aware of serious assaults, such as this, on staff working in the mental health system? For example, what protocols are in place to ensure that the minister is informed of such incidents?

2. Will the minister inquire whether the incident that occurred at Glenside on 17 August 2004 has been the subject of an inquiry and an evaluation report? Were any recommendations made to improve security procedures; if so, were they implemented?

3. Will the minister consider releasing the report to my constituent?

4. What is the usual security response when an emergency duress alarm is sounded in such circumstances? Does the minister consider a four-minute delay to be unacceptable?

5. Has there been a review of security at the Glenside Hospital since the incident, and what was the outcome of such a review?

The Hon. G.E. GAGO (Minister for Mental Health and Substance Abuse): I thank the honourable member for his most important questions. The incident he reports is indeed very sad and serious. To the best of my knowledge, I am not aware that the woman to whom the member refers has contacted my office or asked for assistance in this matter. I am disappointed that this person has not done so because there may have been some assistance we could have given.

In relation to such incidents involving staff, I am happy to report that they are fairly rare; however, one is one too many. A comprehensive safety and security strategy has been implemented at Glenside that acknowledges the safety and security of patients, staff and the community at large. I am informed that this was conducted in August 2004. Mr John Murray was appointed as Director of Safety and Security at Glenside, and he completed his appointment on 14 January 2005. During this period, I understand that he undertook significant consultation on security issues with clinical staff, patients, carers and families, as well as with a range of different community groups.

Some of the specific initiatives introduced on the basis of the advice provided by Mr Murray included a review of the physical security of particularly the secure wards (Brentwood, Banfield Closed, James Nash House and Grove Closed). Changes have been made based on concerns expressed by relatives, who wanted an assurance that treatment and care would take place in a safe and secure environment. In addition, following his advice, there has been the development of a sophisticated personal duress alarm system for staff that alerts staff and security to the need for assistance. Security guards are positioned daily to provide the best security and assistance to nursing staff.

Following the advice from Mr Murray, the security staff allocated is currently four guards from 6 a.m. to 11 p.m. and three guards from 11 p.m. to 6 a.m. This is the advice that I have been given. Also implemented was the training of security guards in advanced safety procedures for the protection of patients and staff. This has been done in conjunction with clinical staff. In times of need, they now work much more closely together. There is a review of the escorting procedure to James Nash House to ensure maximum security when those arrangements take place. I also note the introduction of training in the escorting of patients: a joint staff and security initiative, which pays particular attention to methods which ensure the safety of staff.

Another outcome is a special fit-out of a vehicle to maximise the safety of staff when escorting patients inside and outside of the campus. This vehicle has been specifically designed to provide a safe capsule within which a patient cannot cause self-harm and which also reduces the chances of risk and harm to staff involved in the transfer. There is also increased police liaison, which has led to a better understanding of the needs at Glenside. They were some of the outcomes that had been implemented since that particular review.

There is also advice on training protocols and policy development to improve the effectiveness of these policies. The prevention and management of aggression procedure has identified consistent strategies for staff. This procedure identifies the frequency of risk assessment required based on ward security level and patient presentation. A review of the risk assessment strategy was undertaken to identify the specific risk for each patient, including the risk of absconding, and to identify an individualised management plan to prevent or manage risk. The training of staff in the prevention and management of aggression is updated annually. The emphasis is on de-escalating strategies involving acts of aggression and general upsets, thereby trying to prevent them from reaching that stage.

A number of improvements have been put in place. I am obviously distressed that an occasional incident does still occur. I know that these incidents can have devastating effects on the lives of those people involved. Being a former nurse, I have been in the unfortunate situation of being assaulted. I was fortunate that it was not an assault that resulted in a great deal of damage, but it certainly frightened me considerably, and it certainly affected my self-confidence for a period of time. So, I know that these sorts of incidents can be very disturbing and can take some time to overcome.

In relation to this incident, I am not aware of what reports were conducted and what access the individual has. The reports vary from a routine incident report—depending on the severity of the incident—through to an occupational health and safety report and, if needed, an independent inquiry into the matter, which can sometimes involve the police. So, there are a number of possibilities. I am not sure to which particular report the member is referring. If he gives me the details, I am happy to look into that and will try to assist the nurse to have access to whatever information we are able to legally make available.

The Hon. NICK XENOPHON: I have a supplementary question. Why is it that my constituent, who was assaulted on 17 August 2004, was not consulted by Mr Murray in the preparation of the report, and why has Mr Murray's report not been released, despite FOI requests? Why is the entire report secret?

The Hon. G.E. GAGO: I do not have the details of exactly which patient, staff and community members and carers were involved in the consultation by Mr Murray, so I do not have the answer to that question. He obviously did not consult with everybody, but I understand that his consultations were extensive at the time. In terms of the findings in his report, his recommendations have been put into clear policy directions which have been implemented and incorporated into improving security at Glenside.

WAGERING TAX

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Police, representing the Minister for Racing, questions about wagering tax relief.

Leave granted.

The Hon. T.J. STEPHENS: Following the Bentley report, the Minister for Racing (Michael Wright) made a media announcement which spoke of relief of government tax for the South Australian racing industry. The relief was to be by way of TAB net wagering revenue returned upon compliance with Mr Bentley's recommendations. There now needs to be a clear announcement by the minister as to the government's commitment to this tax relief. I have been contacted by numerous representatives from the industry requesting that clarification be made by the government and the minister on the proposed tax relief.

Recently Mr Peter Marshall, the president of Harness Racing SA, publicly called for the need for clear answers from the government on its promised tax relief. At a time when the industry is facing massive uncertainty, some good news would be more than welcome. Will the government TAB wagering revenue, which is currently approximately $7 million, be returned to the industry? Will the minister advise the council when these tax breaks will be implemented?

The Hon. P. HOLLOWAY (Minister for Police): I will refer that question to my colleague the Minister for Racing in another place and bring back a response.

NATIONAL PARKS, RESTORATION

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

Leave granted.

The Hon. I.K. HUNTER: In 2005 significant flash flooding caused considerable damage to walking trails, bridges and other infrastructure in our national parks. Will the minister inform the council of moves to rectify the damage caused by floodwaters in our parks?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for his important question. I am very pleased to announce that more than $5.5 million will be contributed to continue restoration works around our conservation parks. As members will be aware, in November 2005 significant flooding took place across the Adelaide Hills and Plains. For many of us, the images of Waterfall Gully Road completely submerged by floodwater and the waterfall itself wildly cascading will stay with us. However, there was also substantial damage caused by this particular flooding. Walking trails, roads, bridges, creek lines and heritage structures will be repaired and replaced in several parks throughout the Mount Lofty Ranges, with the key areas being Cleland Conservation Park, Waterfall Gully, Morialta Conservation Park, Black Hill Conservation Park and Belair National Park.

Examples of structures being repaired include the bridge on the walking trail to the first falls at Morialta Conservation Park and the bridge across the top of the first falls at Waterfall Gully. The works will restore valuable recreational assets for the hundreds of thousands of people who use the parks each year. A report by the Public Works Committee recommending the restoration works was tabled in parliament and approved on 12 September 2007. The cost of the works will be reimbursed by the government's insurer (SAICORP). The Department for Environment and Heritage, which owns and manages the park assets, has appointed a contractor to undertake the works, with the first on-site meeting to be held on 3 October 2007. At that meeting, the contractor will present DEH with a detailed program for the works, which are expected to begin shortly thereafter. The works are currently scheduled to be completed by the end of March 2008—obviously, weather permitting.

DEH responded immediately to the flood event in 2005 by undertaking emergency repair works and closures which were necessary to ensure public safety. SAICORP made interim payments to DEH to meet the cost of these initial repairs to priority areas. The affected areas were then surveyed, designs were prepared and tenders were called for the construction of the remaining works. The remaining restoration works that will now be undertaken are expected to cost about $4.75 million and no additional buildings or facilities are to be constructed as part of the project.

NEWPORT QUAYS

The Hon. M. PARNELL: I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning questions about the Port Adelaide waterfront redevelopment.

Leave granted.

The Hon. M. PARNELL: The most recent *Sunday Mail* carried an article headed 'Developers Warn Council' by Renato Castello which reveals some worrying details about the proposed Newport Quays development. The article is based on a letter from Mr Todd Brown, a Newport Quays representative, to Harry Weirda, the manager of the City of Port Adelaide Enfield. The letter threatened legal action if the council makes comments on any aspect of the Newport Quays development. Mr Brown's letter states:

> The recent actions of council, its officers and consultants has forced us to take the unfortunate action of putting council on formal notice that should it persist in making detrimental public statements in relation to any aspect of the project or fail to obtain our prior written approval to make any further public statements, we will have no option but to take legal action to enforce our rights and protect our interests.

The letter was sent apparently after independent design experts employed by the council publicly criticised Newport Quays draft concept plans for stages three and four. This is similar in some ways to a matter raised previously about whether lawyers for Holcon threatened elected representatives from the Walkerville council when those members raised concerns about a major development in Walkerville.

The *Sunday Mail* article also raises concerns about the lack of transparency of the Port Waterfront Redevelopment Committee, which is responsible for approving all projects lodged by Newport Quays. The committee apparently is outside normal planning processes in that it is a subcommittee of the Development Assessment Commission, and the article goes on to talk about how it lacks transparency. I note that the committee does not have a public website nor does it publish or otherwise make publicly available its agenda or minutes. In response to the *Sunday Mail* article, Planning SA is reported as stating that it could post out copies on request. I note that this is in contrast to the Development Assessment Commission whose practices I have praised in this place in the past in that it puts its agendas and minutes on the website. My questions are:

1. Why isn't the Port Waterfront Redevelopment Committee more transparent and, in particular, why are the minutes and agendas of the committee not posted on the web?

2. As planning minister, do you think it is appropriate for a large developer to threaten a local council if the council publicly criticises a development within the council borders?

3. Shouldn't the local council, as an elected and democratic body, be representing the interests of its constituents rather than the interests of large developers?

4. Will you publicly support the City of Port Adelaide Enfield for raising legitimate concerns about the impact of the Newport Quays development stages three and four on the local character of the Port?

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): It is important to understand that the approving authority for any development that takes place on the Port Adelaide waterfront is the special committee referred to by the honourable member. It is a subcommit-

tee of DAC, and it is provided for under the Development Act. It was set up some years ago before I became Minister for Urban Development and Planning, and that was done specifically to deal with the issues there. As I understand it, its membership includes one of the persons representing the development industry and a member of the council. In relation to the issue of whether the committee should have its information on the website, I saw that the other day and I am just getting a report in relation to that as to what transparency there is, and I will report further on that when I get the information.

As to the main question asked by the honourable member as to whether it is appropriate for the developers to criticise the council, as I understand it the developers of that proposal are simply informing the council. The council is not the approving authority, but the developers are keeping it informed on the development as it is desirable that the council should be kept so informed of those developments. The subcommittee of DAC is the approving authority, but it makes sense to keep the council informed. However, as I understand the issue, one of the staff of the council—not an elected member—allegedly leaked information in relation to this, which led to the comments.

It is an excellent development for the Port Adelaide region and will do a great deal to lift Port Adelaide. One only has to look at the docklands in Melbourne, Darling Harbour or Woolloomooloo in Sydney, or Fremantle in Perth to see what can be done in developing those areas. I understand that the proponents were simply advising the council on the basis of keeping it informed. I understand that their aggravation was that some of the information was leaked. I cannot comment on whether that is the case. I heard the Mayor of Port Adelaide Enfield on the radio describing it as a lover's tiff. If you have a situation where a council is being kept informed but is not the developing authority, it is probably appropriate that council not criticise or leak information prior to any decision on that development being made. I am not sure whether or not in this case the information allegedly leaked referred to the approval process.

The designs for the new stage 2 of the Port Adelaide redevelopment were released in the paper the other day. What the state of approval is I am not sure. This issue is a lot more complex than perhaps the press article stated. It is not a simple case of a council that is not the approving authority being silenced by a developer, but rather a case where information has been provided as a courtesy to the council and whether that information has been properly handled in terms of leaking it before decisions are made. I will seek further advice and bring back a reply, along with the question of whether or not this committee could be more transparent in relation to putting its information on the website.

REPLY TO QUESTION

HIGHWAY IMMUNITY

In reply to **Hon. R.D. LAWSON** (21 June 2006).

The Hon. P. HOLLOWAY: The Attorney-General has provided the following information:

The Government appointed a working party to examine the operation of the highway immunity rule and, in particular, look at the *Road Management Act 2004* (Vic.) ('the R.M.A.') as a possible alternative to the rule.

The Working Group presented its report to the Attorney-General in September, 2006.

The Group concluded that it was too soon to draw any firm conclusions and recommended the Terms of Reference be reconsidered in three years.

BUDGET AND FINANCE COMMITTEE

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

That standing orders be so far suspended to enable me to move for the substitution by motion of a member of the committee.

Motion carried.

The Hon. P. HOLLOWAY: I move:

That the Hon. B.V. Finnigan be substituted in place of the Hon. J.M. Gazzola, resigned, on the committee.

Motion carried.

TOBACCO PRODUCTS REGULATION (MISCELLANEOUS) AMENDMENT BILL

The Hon. G.E. GAGO (Minister for Environment and Conservation) obtained leave and introduced a bill for an act to amend the Tobacco Products Regulation Act 1997. Read a first time.

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

That this bill be now read a second time.

This Bill seeks to amend the Tobacco Products Regulation Act (1997) by banning tobacco products from counting towards the accumulation of points or any other reward, discount or benefit associated with customer loyalty and reward schemes, and banning the purchase of tobacco products from an unattended vending machine. Through these two reform measures, the government is building on existing tobacco control restrictions to reduce the harm in our community from smoking. The government's primary objective is to improve the health of all South Australians, particularly our young people. We want to reduce the senseless loss of South Australians whose lives have been shortened by their addiction to tobacco smoking.

One key factor that influences the uptake of smoking is ready access to tobacco products. By requiring that all tobacco product vending machines can only be operated via a token or remote control, or similar system, the government is ensuring that individuals must approach a staff member to obtain cigarettes from a vending machine rather than operate the machine by themselves. This will further prevent access to, and impulse purchases of, tobacco products by young people. Our intent is to reduce incentives to buy tobacco and reduce access to tobacco products by young people. The government aims to prevent experimentation with a product that is highly addictive and is the single greatest cause of premature death and preventable disease.

Turning to the first measure, reward schemes, under section 42(1) of the Tobacco Products Regulation Act 1997, it is currently illegal for a person to provide or offer to provide a prize, gift or other benefit in order to promote the sale of a tobacco product. There is an exception if the scheme applies equally across a whole range of products in the store or supermarket. Consequently, the current customer loyalty and reward schemes are legal because the reward applies to all of the products at the supermarket or store, not just

tobacco products. The inclusion of tobacco in these schemes may induce greater consumption of tobacco products as some customers may spend more on bulk tobacco products such as cartons in order to reach the threshold for a reward. Closing this loophole, by excluding tobacco products from a reward scheme, is likely to reduce tobacco consumption rates and sends prospective customers a clear message that tobacco smoking is not an activity worthy of a reward.

The second reform relates to the use of vending machines for tobacco purchases. Currently, liquor-licensed and gambling premises are restricted to one vending machine for each premises. This vending machine must be located in either a specified gaming area or, in the case of a liquor-licensed venue, be operated by obtaining a token or some other assistance from a staff member. In the latter case, most hospitality businesses use a remote control facility to enable a purchase of a tobacco product.

The government proposes to further strengthen the act by restricting a customer's direct access to a tobacco vending machine. As a result of this amendment, a customer will no longer be able to buy tobacco products directly from a machine. In future, a customer will require staff assistance to activate the vending machine by either a token or remote control in order to buy a packet of cigarettes. Introducing this additional step into the purchasing transaction will make it very difficult for a minor to buy tobacco through a tobacco vending machine. This further restriction on the use of a tobacco vending machine is another important step along the government's path to reducing smoking rates both among young people and the population-at-large.

The government plans to introduce these two new reforms on 1 June 2008 so that it is not a busy retail time of the year for these changes to occur. The government also recognises the challenges for vending machine operators in converting existing machines that are in operation. The bill has the following provisions to allow vending machine operators sufficient time to ensure all their machines have appropriate staff intervention mechanisms installed:

- all new tobacco product vending machines placed into operation after the commencement of the measure must have an appropriate staff intervention mechanism;
- existing machines at the time the measure commences that do not have a staff intervention mechanism must be converted to an appropriate mechanism (or replaced by a machine with a staff intervention mechanism) by 1 June 2010.

The Bill also repeals the now-redundant section 34 of the act. I commend the bill to the council. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Tobacco Products Regulation Act 1997*

4—Repeal of section 34

This clause repeals section 34 of the principal Act.

5—Substitution of section 37—Sale of tobacco products by vending machine

This clause substitutes a new section 37, limiting the sale of tobacco products by means of a vending machine. Such a machine may now only be operated by or with the assistance of venue employees, including by means of remote control or by the provision of tokens for use in the machine.

6—Amendment of section 42—Competitions and reward schemes, etc

This clause prevents a person from awarding points or providing other benefits or things (as part of a reward scheme or similar scheme) for the purchase of tobacco products, and provides a defence for a person who has done so if it was not practicable for the person to identify the particular item or items purchased that gave rise to such awarding or provision.

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

SOUTH AUSTRALIAN PORTS (DISPOSAL OF MARITIME ASSETS) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 September. Page 707.)

The Hon. J.S.L. DAWKINS: I rise to support this bill on behalf of the opposition. The South Australian Ports (Disposal of Maritime Assets) Act 2000 provides for the disposal of assets of the South Australian Ports Corporation. The act establishes the Port Adelaide Container Terminal Monitoring Panel. Membership of the panel is detailed in the act, but since 2000 there have been a number of changes in the industry, including mergers and acquisitions, that have resulted in some nominees no longer existing. Whilst the panel still exists, there is some doubt about its ability to operate in accordance with the act as a result of these changes. The bill amends the act so as to allow for the membership of the panel, and the appointment of persons to the panel, to be prescribed by regulations under the act. This will remove the uncertainty surrounding membership of the panel.

Section 26 of the act provides for limitation of cross-ownership. It is considered that the provisions under the act create uncertainty for a container terminal owner/operator that owns simultaneous interests in the competing ports of Melbourne and Fremantle, and potentially works against ongoing investment in the container terminal. The bill addresses this issue by removing the prohibition on the holding of cross-ownership interests. Instead, a cross-ownership interest would simply trigger the application of the limitation of ownership provisions in the act, allowing the minister to consider the implications of cross-ownership. If the owner-operator is unable to satisfy the minister, ultimately this may lead to divestiture or confiscation of the relevant assets.

A briefing was provided to the Leader of the Opposition in another place who is the shadow minister responsible, and whom I represent in this place in relation to infrastructure matters. The briefing was provided by the executive director of major projects, Mr Rod Hook. In addition, discussions have been held with stakeholders, including Flinders Ports and the State Committee of Shipping Australia Limited, who support the measure. On behalf of the opposition I indicate support for the bill. I do note that my leader (Hon. Mr Ridgway) wants to comment on the bill. Having said that, I indicate opposition support for it.

The Hon. D.W. RIDGWAY (Leader of the Opposition): As we go into the committee stage of the bill, I will pose a couple of questions with reference to this legislation. As has been explained, the ownership of the Adelaide

container terminal by Dubai Ports (or DP World as it is known) presented some problems when it took ownership of P&O. I had the good fortune to spend some time in Dubai in March this year when I met senior management of DP World. What intrigued me at the time was that they said they had a commitment. It was just after the Clipsal race and a couple of senior management personnel had been at the state dinner as guests of the government. They had been given a commitment that the legislative change they required would be through the parliament in May. They said that they had a cast iron guarantee from the government that that would happen.

As the Hon. Mr Dawkins has indicated, we do not oppose the legislation. However, it seems strange that we are now at the end of the September. I am concerned whether this is the way the government does business on an international stage: it gives a commitment to a large international company but does not deliver the goods. I will ask those questions of the minister. I did indicate to senior management of DP World that we support this legislation and also support their investment and commitment to the South Australian export industry.

The Hon. P. HOLLOWAY (Minister for Police): It is my understanding that no other member wishes to speak on this bill, which is a fairly straightforward measure. I thank the opposition (and other members who have not spoken) for their indication of support for the bill. If there are any questions, we can deal with them in the committee stage.

Bill read a second time.

In committee.

Clause 1.

The Hon. P. HOLLOWAY: The Leader of the Opposition did raise a couple of matters. I understand an MOU was signed between DP World and the state government which indicated a time frame of 31 October. I have been told that there has been full consultation and that DP World has been fully informed along the way of progress in relation to this matter.

The Hon. D.W. RIDGWAY: When was the MOU signed?

The Hon. P. HOLLOWAY: My advice is approximately March. If you want a more exact date, we can get that later.

The Hon. D.W. RIDGWAY: During my visit in early March with the senior executives of DP World, they indicated that, following a meeting at around the time of the Clipsal, they had been given a commitment that this legislative change would be through by May. Of course, I indicated that parliament was being prorogued later in the year, but they said, 'No; it will be all through, done and dusted by then.' I am intrigued as to why they were given a commitment from either the minister or departmental people and then it was not delivered on.

The Hon. P. HOLLOWAY: My advice is that the time frame in the MOU was always the end of October. As often happens with this sort of legislation, it takes longer to draft than originally thought. However, my advice is that 31 October was understood to be the cut-off date.

Clause passed.

Remaining clauses (2 to 7) passed.

Title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

MARINE PARKS BILL

Adjourned debate on second reading.

(Continued from 13 September. Page 703.)

The Hon. M. PARNELL: The Greens are generally supportive of this bill. However, we are nervous about the government's real level of commitment to the protection of our marine biodiversity. As with most legislation that deals with conservation, planning or the allocation of natural resources its success depends on a combination of political will and the detailed planning and management regime that is to be set out in subsidiary documents. In the case of this bill, the detail that most concerns stakeholders (whether they be conservation groups, the fishing industry, the recreational fishing lobby, or the aquaculture industry) is what will be included in management plans.

These plans are critical because they will determine what activities can or cannot be undertaken in different marine parks or in different zones within these marine parks. However, until these plans have been developed, we do not know what the management regime will be. We do not know whether the fears of the commercial fishing industry or the recreational fishing lobby—that they will be locked out of areas they currently exploit—will be realised. We also do not know whether the concerns of the conservationists about marine parks simply entrenching the status quo will be realised.

I will have a bit to say about management plans later, but I want also to put on the record one of the reasons that marine protected areas are so important for South Australia. As honourable members would know, we have some 3 700 kilometres of coastline in our state, with the marine waters, part of our state territorial waters, extending some three miles out and including the two major gulfs and the bays.

This coastline and this marine environment supports an abundance of rare and endangered marine mammals, plants and fish. We have eight distinct bioregions within our jurisdiction. For example, South Australia has over three times the number of seaweed species that are found in tropical waters—some 1 200 species. We also have the greatest diversity of ascidians (or sea squirts) in the world, with over 200 species. South Australia records some of the highest levels of diversity of lace corals in the world, with 500 recorded species. We are also home to some of the highest numbers of seagrass species, many of them occurring only in South Australia. Yet, despite this incredibly unique marine life, only about 4 per cent of South Australian waters have any form of protection. South Australia now lags behind other states in protecting our marine environment, despite government rhetoric that originally promised a system of marine protected areas by 2003.

So, we need to properly recognise our natural heritage in the marine environment and to get in place marine protected areas. One of the groups that has been most vocal in its support of marine protected areas is the Wilderness Society. It prefaces some of its comments on this legislation by describing it as a flawed vision. It says that the problem with the government's plan is that it is based on what it calls a stamp-collecting approach of reserving representative samples of habitat but failing to provide sufficient protection for key habitat areas and marine species.

Groups like the Wilderness Society are critical of the multiple-use model that is being set up, which will allow activities such as petroleum exploration, mining, commercial

and recreational fishing, aquaculture and waste discharge being able to occur in marine protected areas. The society was critical of the pilot project—the Encounter Bay marine protected area—which it saw as protecting only 2½ per cent of the Gulf St Vincent bioregion, with only 13 per cent of that Encounter Marine Park having the status of full protection.

Conservation groups have for some time said that, unless we get the marine parks legislation right, we may as well not bother with it and stick with other pieces of legislation we already have that can do the job. For example, there is nothing to prevent the National Parks and Wildlife Act or the Wilderness Protection Act being applied to the coastal waters of South Australia. As I understand it, I believe that a number of areas have been nominated by community groups for protection under the Wilderness Protection Act.

As I have said, the regime for protection is largely going to be contained in subsidiary documents, that is, the management plans. Some people who have approached me about this bill say that we should try to incorporate more of the management detail into this legislation. I am not convinced that that is the way to go. If we use the parallel example of terrestrial national parks, we find that the detailed regulatory arrangements—the list of things that you can and cannot do, and the detailed zoning—is not contained in the legislation; it is contained in management plans.

As I have said, whether the worst fears of either the conservationists or industry are realised will depend on the content of these management plans. That then raises the question of who will write these plans and who will have input into these plans. I think that one aspect of common ground between conservationists and industry is that there is a legitimate scope for having a high-level advisory committee interposed between the minister and these management plans. It is one thing for different stakeholders to agree that an advisory committee is a good idea, and it is another thing for them to agree on who should comprise that committee. Clearly, the industry lobby wants to make sure that its interests are represented.

Conservationists, on the other hand, quite rightly say that this is a piece of conservation legislation and the scientific and conservation input into any advisory committee should be dominant. I look forward to the committee stage of the debate where we will be looking at perhaps a few different models of an advisory committee to help the minister with the important task of writing the management plans. I am not sure whether the government is welcoming or resigned to the fact that there will probably be a committee but, in the committee stage of this debate, we will work out who should have a seat on that body.

The amendments that have been put forward by various honourable members will be discussed in detail later, but I just want to put on the record a few preliminary comments in relation to some of those. As I understand it, the Liberal amendments, as well as proposing an advisory committee, also look to clarify the zoning arrangements in marine parks. I think that that has some merit and it may well be something that the different stakeholders can agree on.

One area that will be controversial perhaps, unless the government resolves it with the commercial fishing sector, is the issue of compensation for displaced effort. If we have marine protected areas that have sanctuary or exclusion zones where commercial fishers are prohibited, we do need to have an arrangement in place for responding properly to that displaced effort. There are some in the industry who have called for compulsory buy-outs and for cash compensation. I am not convinced that that is always the most appropriate response. In fact, I would see that as a last resort response because it does run the risk of setting a dangerous precedent whereby as a society we change the rules and decide that something that has not had priority in the past should now have priority. I do not think that we should make our policy decisions on the basis of who we have to compensate.

As an example, I refer to a situation where we might decide as a community that we wanted to accede to the wishes of Aboriginal people at Uluru and prevent people from climbing it. Would we then pay compensation to tour guides who can no longer take people to the top of Ayers Rock? I do not think we would; I think we would say that society has moved on, that this is now our priority and cash compensation was not required.

When it comes to fishing, I think the appropriate response of the community will depend on how much displaced effort there is. The government has gone out of its way to say that it is putting in place a multiple use regime where, in the bulk of marine protected areas, fishing will still be allowed. I do not know whether that is the case because, until we see the management plan, and until we see the zones, we will not know the areas in which commercial fishing is restricted, prohibited or allowed under a 'business as usual' scenario. We will discuss that in the committee stage

The Hon. Dennis Hood has filed an amendment that relates to recreational fishing in marine parks. At first blush, members might have sympathy for that amendment because it might seem difficult to imagine how a mum and dad, with the kids, throwing a line from a jetty or over the side of a boat will impact on species anything like a commercial fisher in a large boat with a massive net trailing behind. However, when I tried to get some statistics on the different impacts of recreational versus commercial fishing, I was surprised to see that some of our icon species are, in fact, exploited more by recreational fishers than by commercial fishers. My source document for that information is, in fact, a Department of Primary Industries and Resources media release from March 2003. This media release refers to a survey that was conducted of recreational fishers between May 2000 and April 2001. It is a number of years old, but I am not aware of any more recent data. The heading of this media release is 'Fishing survey highlights impact of recreational anglers'. It states:

> Recreational fishers are having a significant impact on South Australia's fish stocks, according to a survey of anglers.

But the most important thing for us is to have a look at some of the statistics that come out of that survey, and I will repeat some of those for the benefit of the council as follows:

> The survey indicates that South Australia's estimated 319 000 recreational fishers harvest 58.3 per cent of all King George whiting, 56 per cent of Tommy ruff, 70.6 per cent of black bream, 21.3 per cent of garfish, 39.6 per cent of snapper, 37 per cent of blue crabs, 46.1 per cent of squid and cuttlefish, 46.8 per cent of snook and 43.5 per cent of European carp.

I do not mind for one minute if the European carp figure goes up, but those other species clearly show that our recreational fishers are the main fishing pressure on those species. While members might be sympathetic to the Hon. Dennis Hood's amendment which seeks to allow hand line or rod and reel fishing in marine parks, we need to remember that this conservation legislation is about conserving species, but it is also about more equitably sharing the resource, and that includes sharing the resource between the recreational sector and the commercial sector. I will not support that amendment.

With those brief words, I support the second reading of this bill. I am concerned, as are other members, that it has taken us so long. I have said here before that the aquaculture industry has had its regulatory act together for much longer and it has had areas allocated and zoned for that particular industrial purpose long before we have got around to declaring marine parks. I support the second reading and I look forward to the committee stage.

The Hon. NICK XENOPHON: I indicate my support for the second reading of this bill. It is a bill that is long overdue. We need to protect our marine parks and we need to extend the ability to protect parks, but we also need to ensure that there is accountability in the process that the concerns of the industry are taken into account and, of course, taking always as a bedrock the sustainability of this industry. That is the long-term, big picture that we need to be aware of.

I have received a number of representations and correspondence on this. The Eyre Peninsula council wants to be sure that there will be formalised mandatory stakeholder consultations in the setting of the boundaries and in developing management plans, and that there be a change to the timing of the proposed economic impact study so that it is prepared immediately and by an independent consultant. This way the Eyre Peninsula council says that it can better understand the likely social and economic impacts on our communities before the finalisation of the park boundaries, and I believe that they are quite reasonable concerns.

I note that the seafood industry is the peak body. The seafood council is cautious about this bill, but it supports conservation in the marine environment. It wants a mechanism to deal with the sustainability impacts of fishing displacement from marine parks which is fundamental to sound environmental management. The seafood council's concerns must also be taken into account. In relation to the various amendments, I have not seen the amendments of the Hon. Caroline Schaefer. I do not believe that they have been filed as yet.

The Hon. J.M.A. Lensink: They should be there shortly.

The Hon. NICK XENOPHON: They should be there shortly, as the Hon. Michelle Lensink advises me. Obviously, the hard work will be done on this bill as usual in the committee stage, and I look forward to the amendments of the Hon. Caroline Schaefer and the arguments that will be put forward in respect of them.

I have some sympathy for the amendment of the Hon. Dennis Hood in respect of recreational fishers, but the paramount consideration must be environmental sustainability, so I will explore that in committee. I have discussed the matter with an avid recreational fisher in this place, the Hon. Mr Gazzola, and he assures me that fish are always quite safe when he goes fishing, but there is a balance between this very important recreational activity and ensuring that there are fish in a sustainable sense for recreational fishers. Sometimes it may be necessary to say 'no fishing' in a particular area, even for recreational fishers, if there are serious environmental and sustainability concerns. That needs to be explored in committee.

I suggest to the Hon. Dennis Hood that, perhaps if there was a higher onus for any bans on recreational fishing to be in place—in other words, that there must be further clear justification as to why you would ban even recreational fishing—that might be something I would be more amenable too. Overall I look forward to the committee stage of the bill as it has a number of good initiatives, but it is important that we consider amendments that look at the sustainability of the industry and the concerns of local government.

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

STATUTES AMENDMENT (TRANSITION TO RETIREMENT—STATE SUPERANNUATION) BILL

Adjourned debate on second reading.

(Continued from 13 September. Page 705.)

The Hon. P. HOLLOWAY (Minister for Police): I understand that all members who wished to speak on this bill have done so, and I thank them for their comments and indications of support. The Hons Rob Lucas had Sandra Kanck asked questions, and copies of replies have been forwarded to them, but it is important that I put them on the record during the concluding stages of the second reading.

The Hon. Rob Lucas asked a number of questions. His first question was: does the bill cater for a person stepping down from a senior position to a less senior position as well as moving to part-time employment? The response I have been provided with is that legislation in the bill does cater for a person taking up a less senior position. An example of such a situation could be where a 57-year old assistant principal in the Department of Education and Children's Services is at the end of their tenure. The person does not wish to reapply for a new five-year leadership position, but instead plans to work for the next three years in their area of teaching practice of secondary English. Their preference is also to work fewer hours, so they negotiate a phased retirement arrangement covering a period of three years. Over the three-year period they agree to three days a week teaching year 12 English and supporting new teachers at the school. In such a situation both the employee and the government benefit. The problem at the moment is that many teachers who no longer wish to work full-time are simply electing to fully retire as there is no option to reduce their level of employment. Providing an option for such employees to reduce their employment and offset some of the loss of salary with a superannuation income stream is quite attractive.

It is important to note that the option to access superannuation before full retirement will be subject to the employee and employer entering into a transition to retirement arrangement. It is possible that such a phasing into retirement arrangement could be agreed and entered into between both the employee and the employer in any of the scenarios posed by the Hon. Mr Lucas. It is generally accepted, however, that it will be the employee who will initiate and make the request to enter into a transition to retirement arrangement. Entering into one of these proposed transition to retirement arrangements will be voluntary.

The second question was: should the proposed arrangement of allowing access to superannuation before full retirement be made available to members of parliament? The legislation does not deal with the parliamentary schemes, and at this stage no thought has been given to extending the option to members of parliament. Considerable thought would need to be given to the appropriateness of providing such an option to members of parliament, especially considering the possible perceptions members could imagine the public might draw from such an arrangement.

The third question asked by the honourable member was in two parts. First, in relation to the technical amendment to provide insurance cover for the gap period between two employment contracts, will this mean the Triple S will be providing an extra three months of death and disability insurance for people who have no intention of having another contract in the public sector? Secondly, what will be the additional cost to the scheme of providing the three-month cover? The answers I have been provided with are that extended insurance cover will apply under these new arrangements only where a subsequent contract is entered into within three months of the previous contract terminating. In terms of the proposed provisions, there will not be an automatic extension of the insurance cover for three months for all persons who have an expiring fixed term contract.

In effect, the cover will be provided in retrospect once a new contract in the same or similar employment commences. Therefore, no three-month extended cover will be provided to those persons who terminate their employment and have no intention of having another contract. There will be no additional cost to the scheme with this arrangement, as the insurance arrangement is funded by the members. The members being provided with this reinstated cover will be charged for the insurance premiums for the period during which they are taken to have remained in the relevant employment.

The fourth question asked by the Hon. Mr Lucas was: how many persons are covered by the provision providing benefit options for persons who resigned as a consequence of accepting a voluntary separation package, and what is the longest period of time that a person has been covered by the voluntary separation provision without selecting a benefit option? The advice I have been provided with by Treasury officials is that there is currently one person covered by the voluntary separation benefit option provisions, and that person has not selected a preferred benefit option from those on offer. Until recently there were three persons in this category. The longest period of time over which Super SA has been waiting for a person to indicate their preferred option is two years.

The fifth question asked by the Hon. Mr Lucas was: is it possible for a person who was fortunate enough to be appointed to the High Court after being a state judge and a former member of the state pension scheme to be entitled to three separate pensions; and how would a person who ends up being appointed to the High Court be impacted by the provisions of this bill? The response is that it would be possible in terms of existing state and commonwealth legislation for a person in such circumstances to be entitled to three pensions. In terms of the legislation covered in the bill, the pension entitlement under the State Superannuation Scheme would not be paid. The bill does not deal with any pension entitlements under the State Judges Pension Act.

The sixth question was: have all the bodies that have been consulted in relation to the bill agreed with all the provisions contained in the bill? The response is: in relation to the provisions in the bill, the Superannuation Federation has expressed its disappointment that employees will not be able to access any of their accrued superannuation unless they have a reduction in the level of their employment or reduce their salary as a result of moving to a less responsible position.

The government's position is that the superannuation changes are part of a package that will provide part access to accrued superannuation as employees take the step to genuinely transition or phase into retirement. There is only one way to know that a person is genuinely transitioning to retirement, and that is with evidence of the employee phasing out of full-time employment or moving to a less responsible position or a combination of both. It is the government's view that, unless there is a change in the work pattern of the employee, there is no evidence that the person is phasing into retirement.

The principal aim of the government in introducing this package of changes is to encourage those employees who are currently retiring full-time from the public sector because they no longer wish to work full-time to consider remaining in public sector employment under an arrangement that would benefit them in having more leisure time and less time at work. The benefit for the government is in the corporate skills and knowledge that will be retained for longer within government.

The commonwealth has made it clear that it is up to employers and the relevant superannuation fund to determine their own rules as to how and when an employee may access their superannuation under a transition to retirement arrangement. The main concern to the government in allowing employees who are still working full-time to access up to 100 per cent of their accrued superannuation benefit is, first, that it would result in many employees accessing 100 per cent of their accrued superannuation and having income streams higher than their full-time salary, to the detriment of having the best superannuation benefit for genuine retirement.

Secondly, allowing all public sector employees to have full access to their accrued superannuation as soon as they attain the preservation age—currently 55 years—would result in significant increased costs to the government and taxpayers. This would be the cost result from providing such a option to those members in the defined benefits schemes, the state pension and state lump sum schemes.

The next question asked by the Hon. Rob Lucas was as follows: which governments have dealt with transition-to-retirement schemes, and is the Superannuation Federation's contention correct that none of the transition-to-retirement rules in the other jurisdictions require an employee to have a change in their working conditions? The response I have been provided with is that most state government-established schemes have made changes to their rules to allow members to access part or all of their accrued benefits in an accumulation-style scheme after the employee has reached the commonwealth preservation age (which is age 55 for all those persons born before 1 July 1960). The West Australian accumulation scheme for government employees only permits employees to access up to 35 per cent of the approved accumulation balance. In respect of these accumulation schemes, access to the relevant part of the accrued benefit is allowed without the necessity for any change in the existing employment arrangements.

In relation to defined benefits schemes, including hybrid lump sum schemes, no government-established scheme in Australia has made changes with respect to transition-to-retirement. The commonwealth has not made changes to the rules in respect of its own schemes. It is important to note that, while a number of the accumulation schemes were originally established by state governments under statutes, those schemes now operate under trust deeds with the power to change the rules in the hands of the trustees. This is the case in New South Wales, Victoria and Tasmania. Some of these other schemes are also open to the general public and

not just government employees. Some of these schemes are operating as companies.

The eighth question asked by the Hon. Rob Lucas was as follows: if this legislation is not to pass, would the members of the Triple S scheme, as a result of commonwealth legislation, be able to access their approved superannuation and minimise tax, as is advocated by some financial advisers and the Superannuation Federation? The response is that, if this legislation does not pass, members will not be able to access any of their accrued superannuation before they fully retire. This legislation is required to enable members of not only the Triple S scheme but also the defined benefits schemes to be permitted to access part of their accrued superannuation entitlements on entering into a genuine phasing-into-retirement arrangement. If the legislation does not pass the government will, over the next couple of years, lose to full-time retirement several hundred employees who would have been interested in continuing to work part-time as a means of transitioning into retirement. The government, the community and the employees themselves would be the losers.

The ninth question was as follows: is it the presence of this legislation that is restricting Triple S members from having access to their superannuation or, if employees who are still working full time were to have full access to their superannuation, would we need to pass this legislation in an amended form? The response is that the legislation will not enable access to any accrued superannuation whilst an employee is still working full time. The state government's position is that access to accrued superannuation is part and parcel of a genuine phasing-into-retirement, which can only be evidenced by either a reduction in an employee's level of employment or taking a less responsible position. To assist those members in the Triple S scheme with low balances, the legislation provides for a higher level of the entitlement to be accessed, but they would still need to change their existing work/leisure time balance.

The government does not support the concept of employees being able to access all their accrued superannuation just because they have attained the age of 55, and accordingly this legislation does not provide full access whilst working full time as an option. To enable employees to have full access to their superannuation before they genuinely phase into retirement would only encourage members to reduce their accrued superannuation assets before they fully retire.

The tenth and, I think, final question asked by the Hon. Rob Lucas was as follows: why will the government not allow members of the Triple S scheme to fully access their accrued superannuation, even if they are still working full time past age 55, so that they can reduce their tax? The response is that there are many reasons for this, but the main ones are as follows.

The government's view is that this legislation is about allowing members to access part of their accrued superannuation in circumstances where there is a genuine phasing into retirement, evidenced either by a reduction in the level of employment or a reduction in salary as a result of the employee moving to a less responsible position, or a combination of both. To allow members of the Triple S scheme to access their full accrued benefit on reaching age 55 without any change in their work arrangements simply so that they can take advantage of minimising tax, when members of the defined benefits schemes will not have the same option, would disadvantage those members in the defined benefits schemes. Members of the defined benefits schemes cannot have such an option as it would bring forward the government's payment of benefits and result in an increase in costs for the defined benefits schemes of many hundreds of millions of dollars. It would also result in members in the pension scheme having income streams of 152 per cent of salary at age 55.

Whilst the average member of the Triple S scheme probably will not access their accrued superannuation before full retirement, as it would provide them with a non-commutable income stream of only around $5 000 per annum, the concern is that it would be the higher paid person with a large Triple S balance who would utilise the facility. You would then have a situation similar to that with the pension scheme, with some of the members who are accessing their Triple S superannuation receiving aggregate income streams well in excess of 100 per cent of salary whilst they still worked full time for the government.

There were also some points raised by the Hon. Sandra Kanck. The first was that, as a superannuation-based pension is tax free, it could be used to allocate more of one's pay into superannuation and replace the equivalent amount with a tax-free pension. I have been advised that this general comment by the Hon. Sandra Kanck is not correct, and it needs to be corrected. If a member of one of the government superannuation schemes paying a lump sum benefit were able to receive their full accrued benefit after attaining the age of 55, a non-commutable income stream payable before age 60 would not be tax free as claimed. Only a non-commutable allocated pension payable to a person who has attained the age of 60 would be tax free.

The second point made was that commonwealth employees will have much larger superannuation savings at retirement than comparable South Australian government employees, due to the higher employer subsidy in commonwealth schemes, and this surely places an obligation on the Rann government to do all it can to ensure that Triple S members have every opportunity to increase their superannuation savings in the years between reaching preservation age and eventual retirement.

The response is that, if employees are concerned about not having enough superannuation accrued for their retirement, the last thing they should be planning to do is to start drawing down on their accrued benefit before they can afford to retire. The average member aged over 55 in the Triple S scheme would receive a non-commutable income stream of around $5 000 per annum if he or she were able to fully access their accrued balance at age 55. This highlights that, for the average Triple S scheme member, the last thing they should be doing is accessing their account balance before they can afford to retire. The government has arrangements in place to enable any employee who wishes to increase their level of superannuation to salary sacrifice any amount of their salary into the Triple S scheme to help them build up their retirement savings.

For those members in the Triple S scheme with small balances at age 55, transition to retirement is not the period in which they are likely to move to lower paid employment and start running down their superannuation savings—which are often inadequate to start with; rather, it is a period in which they will attempt to increase their superannuation savings so that they can move into retirement with adequate financial security. The response is that the government agrees with this comment, so what will happen is that the average person in the Triple S scheme who has attained the age of 55 will not access their accrued superannuation but, rather, elect

to salary sacrifice under already existing rules more of their salary into the scheme. This will result in the average member having more in their account when they retire and access their entitlement. For the person with a small account balance, accessing their superannuation once they attain age 55 and starting to run it down does not make sense.

In relation to the fourth comment made by the Hon. Sandra Kanck, in the case of the Triple S and lump sum schemes there is no cost implication for the Rann government in allowing members who are aged 55 having full access to their accrued benefit while they continue to work full time. The response is that this is not correct. Whilst there would be no cost impact in relation to the Triple S scheme, actuarially it has been determined that there would be a higher cost (in the order of $70 million) if people in the lump sum scheme were able to fully access their accrued benefits at age 55.

In relation to the last point made by the Hon. Sandra Kanck, Triple S members should be able to have full access to their accrued entitlements once they attain the preservation age (currently age 55) without any change in employment, and lump sum scheme members should be able to have full access to the employee component of their accrued benefit on reaching the preservation age without the need for any change in employment. The response is that there would be no cost impact for the government under such an arrangement. However, I remind the member of the employees to whom this proposal is directed and has been tailored. The proposal is about encouraging those employees currently electing to fully retire to opt to reduce their work hours and increase their leisure time in order to have a more satisfying work/leisure time balance as they transition into full retirement. In other words, it is about encouraging those employees who have attained the preservation age (currently age 55) and do not want to continue working full time to stay in public sector employment but on the basis of working fewer hours.

This package is not about trying to meet the demands of those employees who want to work full time and pay less tax by fully sacrificing their salary into superannuation and living off their already accrued superannuation. This package is about making it more attractive for those employees who are thinking about fully retiring to stay in government employment, but on the basis of working fewer hours or in a less responsible or demanding position. I trust that fully answers the points raised by members in the debate. I thank them for their contributions and commend the bill to the council.

Bill read a second time.

WEST BEACH RECREATION RESERVE (BOATING FACILITIES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 September. Page 706.)

The Hon. D.W. RIDGWAY (Leader of the Opposition): On behalf of the opposition I indicate that we will be supporting this bill. It is our understanding that the bill provides that a designated area within the reserve operated by the West Beach Trust and under its administration be designated by the minister and then gazetted. It may be administered and developed as a place for boats to be launched, moored or stored and where any ancillary or associated services may be provided. Such activities will be restricted to this area, ensuring a proper balance between the pre-existing components of the reserve and the newer associated components.

At present, the act provides that the function of the trust is to administer and develop the reserve in accordance with its strategic and business plans as a sporting, cultural and recreational complex and a tourist attraction resort. However, it does not clearly provide the trust with sufficient scope to promote these more recent boating and ancillary uses of the area. When one looks at the map and that which is defined as the designated area, one sees that it makes a deal of good sense to expand the car and boat trailer parking area. I am sure you, Mr President, have been there and used those facilities.

As more people take the opportunity to enjoy recreational water pursuits, there will be an increased need for trailer and car parking. Other ancillary services support recreational pursuits, including tackle and bait shops, servicing for boats, sales of boats, and so on, so there is a good opportunity for those services to be in a designated area. That was set out reasonably clearly in the briefing that we received. I know the Hon. Mark Parnell made some comment about the potential nuisance value of jet skis being launched from this particular area.

When you look at the map, part of the beach and the area where this will take place is adjacent to the waste water treatment plant at Glenelg. Whilst I have some sympathy with the Hon. Mark Parnell in relation to recreation vessels that are noisy and perhaps not conducive to family beach activities, I suspect that the beach in front of the waste water treatment plant is not the most favoured of beaches in that area and may well provide a good opportunity for that sort of recreational use. With those few words, the opposition supports the bill.

The Hon. NICK XENOPHON: I indicate my support for the bill. However, because it involves the West Beach Trust, it would be remiss of me not to mention very briefly my concerns about a constituent who is a tenant of the West Beach Trust and who has been embroiled in a longstanding legal dispute that is still before the courts, as I understand it. I have some real concerns about the way this individual has been treated and the economic impact on him. It raises issues about the way the management of the West Beach Trust conducts itself. Obviously, more ought to be said once the matter is resolved, whatever its outcome.

I believe that these amendments are sensible and warranted. However, because of the very considerable contact I have had with this constituent, and the legal nightmare in which he has been embroiled, it would be remiss of me not to mention some concerns about the way the board and the trust have conducted themselves in relation to this litigation. Again, it is appropriate to comment more fully once the matter has been resolved. With those words, I look forward to the passage of the bill.

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): I thank honourable members for their indication of support for the bill. The Hon. Mark Parnell asked some questions and made some points, and I will respond to those on the record before we take the passage of the bill any further. His first point was: can the minister identify what types of activities will be regarded as ancillary? In the trust's view, ancillary activities would include the following activities which currently exist within the precinct: boating; coastal dependent clubs and associations, such as sailing clubs, coastal rescue and response organisations; chandlery businesses; retail fishing; boating sales; and vessel storage. Additional activities could include government

boating-related administration bodies (for example, Fisheries, SAPOL and Surf Life Saving); kiosk/cafe to service users of the precinct and coast park; refuelling facilities; and tourist operations, such as parasailing, scuba diving departures, and so on—essentially, all boating dependent and direct support services.

The second point raised by the Hon. Mark Parnell was: have there been discussions with commercial firms to establish in the boating precinct? The trust receives regular inquiries from commercial and non-commercial organisations regarding the potential to establish in the West Beach Recreation Reserve. Approaches in recent years relating to the boating precinct have included scuba clubs, parasailing, boat storage, helipad, Fisheries, Surf Life Saving, and SAPOL. All opportunities are considered by the board, initially ensuring that proposals are consistent with the West Beach Trust Reserve Act, the trust's charter, strategic plans, and the overall best interests of the community. Existing commercial tenants have also shown interest in future expansion opportunities, which are also considered when reviewing new operations. To date, there has not been an approach to the trust by commercial jet ski operators. The next point made by the Hon. Mark Parnell was:

> My third point, and this is perhaps the most critical one for me and will determine whether I ultimately support the bill, is that I want the government to rule out that this is a vehicle for the introduction of commercial jet ski operations on the West Beach land. I understand that the Charles Sturt council and Transport SA have been formally approached by a commercial firm keen to have a jet ski tourism operation on the West Beach Recreation Reserve land. So, I would like the minister to confirm that the 'ancillary uses' referred to in the second reading explanation do not include such a scheme.

It is the trust's view that, although no commercial jet ski operations have been referred to the trust to date, they should not be discriminated against and excluded from future consideration, if submitted. The trust has been established to provide significant tourism, recreational services and facilities within the state. Jet skis are considered legitimate recreational boating pursuits. If an approach were forthcoming, the trust would consult with all relevant stakeholders and undertake a risk assessment prior to making a decision. It should be noted that the main users of the West Beach coastal waters are guests of Adelaide Shores accommodation, whom the trust would not put at risk of injury or create disturbance of their quiet enjoyment. It is the trust's view that jet ski enthusiasts are not to be discriminated against and that any covenant disallowing potential commercial jet ski operations be disallowed.

Following on from the comments of the Hon. David Ridgway, I add that, if an area is to be zoned for jet skis, obviously it would be a matter outside the jurisdiction of the West Beach Trust; presumably, it would be gazetted by the Department of Transport in conjunction with local councils. The location of that area would be a matter for other bodies other than the West Beach Trust. With those comments, I commend the bill to the council.

Bill read a second time and taken through its remaining stages.

COLLECTIONS FOR CHARITABLE PURPOSES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 September. Page 708.)

The Hon. D.W. RIDGWAY (Leader of the Opposition): I rise to indicate that the opposition will not be supporting this bill. The government introduced this bill in 2005 and, after a second reading contribution from the minister and shadow minister, it was not proceeded with so that the government could further consult. Now, almost 2½ years later, we again have this bill before us. This bill regulates persons soliciting for money or goods for certain charitable purposes. It increases the disclosure of the charity, focusing on the overall use of funds by the charity. It attempts to achieve this by requiring an annual income and expenditure statement from the charity to be placed on the Office of the Liquor and Gambling Commissioner website.

The bill also provides for better information to be made available to donors at the point of sale. When asking for donations—whether by door-to-door, telephone, collecting or ticket sales—persons seeking a donation should provide the prospective donor with enough information to make an informed decision about that donation. I am not sure whether you do, Mr President, but when somebody comes to my house asking for a donation, if it is not clearly displayed as to who the donation is for, I always ask.

This bill will also provide for better disclosure in relation to events and ticket sales. The Cherie Blair function raised significant issues. The bill proposes to make it a requirement that, when a charity sells tickets to an event, the advertising and ticket must display the estimated amount, and the intended proportion of sales revenue that will be provided to the charity.

I think it is very important for members to be aware that those impacted by this bill do not have to be registered charities, but they do have to be licensed under this act. Therefore, any entity—and I mean any entity—that seeks donations or runs certain events for purposes defined by the act will require a licence under this act. I think it is important for members to fully understand that the definition of 'charitable purpose' is unchanged in the legislation. A 'charitable purpose' means:

> (a) the affording of relief to diseased, disabled, sick, infirm, incurable, poor, destitute, helpless, or unemployed persons, or to the dependents of any such persons;
>
> (b) the relief of distress occasioned by war, whether occasioned in South Australia or elsewhere;
>
> (e) the affording of relief, assistance, or support to persons who are or have been members of the armed forces of Australia or to the dependents of any such persons;
>
> (f) the provision of welfare services for animals;

We certainly have a drought at present, so if the local football club—which I suspect does not at present have to be licensed, because it just runs its own activities—chooses to raise money for drought victims or somebody who was disabled, sick, infirm, incurable, poor, or for some of the returned soldiers (from wherever they have been), or giving support to any members of our armed forces, it will have to be licensed under this piece of legislation.

I acknowledge that the bill is aimed at outrageous activities such as the former British prime minister's wife who was here on a speaking circuit and she failed to attract a big enough crowd to actually make a profit. However, we are quite concerned that we will see a whole range of country community charitable organisations caught by this legislation. These organisations—including Apex, local footy, hockey and netball clubs and Rotary—operate and do their own thing for the vast majority of the time but, every now and then, they might decide to run a charitable function for a purpose defined in the act and they will then have to be licensed. It

just seems to be absolute overkill, and I would ask all members of this council to make sure that they are fully aware of what they are doing with this piece of legislation. It is almost like trying to crack a walnut with a sledgehammer.

How big is the problem that the government is trying to address? The bill makes it a requirement that, when a charity sells tickets to an event, the advertising and tickets must display the estimated amount and the proportion of intended sales revenue that will be provided to the specified charity. It is an unrealistic requirement and it creates a burden. You grew up and spent a lot of time in the country, Mr President, so you would know that there are many great organisations out there that will be captured by this piece of legislation, and it will make the operation and function of their role in our country community, and also in the city community, much more difficult.

With those few words, I ask all members of the Legislative Council to actually read the definition and make sure they know exactly what they are supporting. In the opposition's view this is a silly piece of legislation which is using a sledgehammer to crack a walnut. We urge members not to support it.

The Hon. NICK XENOPHON: I can indicate my support for the second reading and for the general thrust of this bill. I became involved in this issue after concerns about the Cherie Blair tour in February 2005.

The Hon. D.W. Ridgway: The Labour Prime Minister's wife who could not get a decent crowd. Is that right?

The ACTING PRESIDENT (Hon. I. Hunter): Order!

The Hon. NICK XENOPHON: She is the wife of the former prime minister of the United Kingdom.

The Hon. D.W. Ridgway interjecting:

The Hon. NICK XENOPHON: I do not know about that.

The ACTING PRESIDENT: Allow Mr Xenophon to finish his speech.

The Hon. NICK XENOPHON: As I see it, the issue that needs to be rectified is that, when someone purports to be holding an event for charity under the auspice of a particular charity (whether it is childhood cancer or some other very worthy cause), that is obviously used as an inducement for people to go to an event and part with their hard-earned money in order to contribute to a worthy cause.

What appears to have occurred as a result of the Cherie Blair tour and, to a lesser extent, the Rudy Giuliani tour a bit earlier, is that the charities received very little or nothing. Maurice Henderson from the Queen Elizabeth Hospital Foundation, who is very well respected in the community for his tireless fundraising efforts on behalf of the QEH fund, was obviously disappointed in relation to what occurred with Rudy Giuliani. Rudy Giuliani, I think a Republican nomination in the US presidential campaign, did the right thing and, as the Hon. Mr Ridgway reminded me a few moments ago, he actually did some fundraising for the QEH in New York and raised a significant amount of money. I think Maurice Henderson said that he would vote for Rudy Giuliani as president, if he could.

So Rudy Giuliani rectified things, but I do not think the same could be said for Cherie Blair, in terms of her particular tour in Australia in 2005. That is something I was very critical of. I believe that the legislation needs to be amended. Obviously, the matters raised by the Hon. Mr Ridgway on behalf of the opposition about clubs and the RSL and other like organisations, in terms of their fundraising, ought to be the subject of examination in the committee stage, because there is that balance of undue administrative burden.

I am grateful to Paul Ryan from the minister's office for providing me with a briefing that I had today with him in relation to this, and also for providing me with a copy of the final report dated September 2006 from the Department of Treasury and Finance, headed 'Review of the Collections for Charitable Purposes (Miscellaneous) Amendment Bill'. That report, which I understand is easily available, makes a number of points about the review: that there was a comprehensive review in relation to this; that charities were consulted widely in relation to the requirements for further disclosure; it raised the issue of administrative burden; the benefit to donors; and the issue of the legislated minimum return to the charitable purpose, amongst other things. I believe that that exercise was a very useful one and the bill has taken those concerns into account.

My primary concern is that the philanthropy of the population at large can be affected, in a sense, by the bad press of those so-called charitable events where very little goes back to the charity—or nothing, I think, in the case of the Cherie Blair tour. By having a more transparent and accountable system, it will restore confidence in those big headline events, and I believe that will be a good thing in that the public can donate with some confidence.

It is interesting to note that there are, outside parliament, some people who spruik for various charities and my understanding, from some I have spoken to in the charitable sector, is that if you sign up for some of these charities the person who signs you up can get quite a handsome commission in the order of 20, 30 or 40 per cent in extreme cases—which I think is an extraordinary amount—that does not have to be disclosed. I think there are issues there with respect to disclosure.

I indicate that I have filed some amendments which I will obviously speak to in the committee stage. One amendment is to require an indication of the percentage of the total proceeds that is likely to be devoted to a charitable purpose if the event is sold out—and that makes it clear. You do not know how many people will turn up to an event but, in the event that it is sold out, it gives an approximate indication of what will go to the charity. I do not think that is unreasonable or unduly onerous. It is to be a likely figure and, of course, there are requirements and prescribed minimums, so that the smaller fundraising events are matters that would not have the same onerous provisions applying to them; also, to be a little more explicit in terms of how much has been raised from events in the returns, particularly for a significant event.

I should indicate that, when I asked questions about this matter on 9 and 10 February 2005, it may shock members of the opposition to learn that I did not get answers to all those questions. They were not all answered, although some were, including a reply on 14 September 2005 by the acting minister, the Hon. Mr Holloway, and I can draw members' attention to that. My concerns were particularly about the Cherie Blair tour, and I asked questions about the specific reference to conditions and remuneration levels under existing section 12(2) of the Collections for Charitable Purposes Act which states that a licence may be issued, subject to any conditions fixed by the minister limiting the proportion of the proceeds of collections and entertainments which may be applied as remuneration to collectors or other persons concerned in the collections or entertainments. They may be issued subject to any other conditions of any kind

fixed by the minister. There was a discussion about the licensing process, and my concerns were about enforcement.

My questions to the minister that ought to be considered in the committee stage are: what level of scrutiny and auditing will there be? What will the sanctions be if there is non-compliance? What regulations are anticipated to deal with the sorts of concerns raised by the Leader of the Opposition? In terms of the minister exercising his or her power in the past under section 12(2) of the previous act, to what extent was that being enforced? To what extent will this act change things in terms of conditions that are applied and also the resources used to enforce this particularly for those bigger events?

I think that this bill is about ensuring confidence, particularly for the large events that are widely advertised and that are purportedly for charitable purposes; to ensure that the public is informed, before they part with their money, about how much of that is likely to go for the charitable purposes and not into the pockets of the Cherie Blairs of this world. With those comments, I indicate my general support for the bill subject to some amendments that I will move.

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

PENOLA PULP MILL AUTHORISATION BILL

Adjourned debate on second reading.

(Continued from 13 September. Page 708.)

The Hon. J.M.A. LENSINK: The Hon. Caroline Schaefer has already indicated Liberal Party support for this bill. The matter has been passed through the House of Assembly following the select committee process. Naturally enough, as the environment spokesperson on behalf of the Liberal Party, I was approached by a number of different parties who had concerns with the proposal much earlier on in the piece, and I would like to put a few points on the record and also to raise some questions for response in order to clarify a number of issues as they have been put to me.

It has been commented that the process for this measure has been less than ideal, and some would say that an indenture bill is the process of last resort. I note that in her contribution the member for Ashford described what had taken place as 'acceptable', and many Liberal members have shared the concerns of other members of this parliament in both chambers about the probity, lack of environmental impact statement and other matters within the bill. This process in this indenture bill, in fact, works the other way around, as I understand it, in that it sets the standards rather than imposing on the proponents to outline what standards they will implement.

A large number of concerns were expressed by many members in debate in the other place concerning water allocation and, as we understand increasingly, particularly in these ongoing drought conditions, about how important water resources are. As has already been noted, water is either fully or over allocated in the South-East, so the concerns of both the neighbours of the proposed site and other interests within the South-East I think were quite well founded, and we wanted to make sure that those issues were taken into account. I understand that this matter has been addressed through the amendments to the bill.

We live in a new era in terms of understanding that a number of our natural resources are finite and that they cannot be abused, because they might not be there—in which case that is cause for not only an environmental but an economic disaster. We have a process existing under the Natural Resource Management Act and the water allocation plans. One of the key concerns was that the pulp mill was being given a set volume which could be varied upwards, whereas in fact anybody else who had a water licence had a share of a particular resource and, if it was found that the resource was less than it was thought to be, all of those users would have their allocation cut in proportion. I think that that particular issue—where one user was entitled to a fixed resource when all other users, particularly users who are already there, depended on it for their livelihood—has been addressed. I think that is a very important issue and one which I hope will not be repeated in future by either this government or future governments.

As I said, we now have a greater understanding of water issues, particularly with the drought and the crisis we have involving the Murray-Darling Basin system. It might be drawing a rather long bow but it has been put to me that Cubbie Station further up in the Murray-Darling Basin system has actually done nothing illegal, and yet those of us who have seen the pictures of the open channels and flood plains are rightly angry that that application has been legal when the situation in this state, particularly in the lower lakes, does not seem fair.

A number of us were very concerned that that outcome would not take place, particularly as we are all parties to this bill and are able to have input and amend it. We all wanted to have some assurance that that would not take place. A lot of these issues are quite complex and we rely on advice. The decisions we make are only as good as the advice we receive, so we rely very much on the experts, on technical expertise from hydrologists and environmentalists, which is important to us.

The select committee had diverse membership and the latitude to seek whatever information it thought relevant. It gave everybody an opportunity to comment and came up with a unanimous report and recommendations. That is significant in that, had there been outstanding concerns by any members, I am sure they would have been brought to the fore. I refer to some of the comments within the report. On page 10 in the overview section it states:

> Whilst the application would ordinarily be assessed by the DAC, this in the view of the government could lead to another six months of uncertainty and unnecessary cost for the proponent and wasted opportunity for the state and for communities in the South-East.

I take it that those comments are also endorsed by other members of the committee. On page 15 it says:

> Though the bill offers greater certainty for the proponent, the committee concludes there is sufficient planning and environmental checks and balances in the bill. . . The committee considers that the bill is consistent with sustainable environmental, social and economic outcomes.

On page 16 the report states:

> Despite concerns about the absence of an environmental impact statement, the bill embodies the EPA benchmarks and standards for this type of development.

That makes fairly clear that the members of the committee were satisfied that those issues would be dealt with.

Like a number of members, I have great sympathy for the people who live adjacent to the proposed site. I went down to visit for half a day and was driven around and shown particular sites and had explained to me a number of the issues in relation to energy and the roadworks, and so on, and

it was highly beneficial for me to be able to understand the concerns and gain a visual picture of the area. I can understand why the people who live adjacent would not want it there as they have a beautiful environment. A number of them export and to continue their environmental credentials as clean, green producers is very important to them.

I have a number of questions I would like to put on the record. The forest expansion policy has been referred to, and I gather from the *Hansard* record I have read that it is an assumed policy held within the collective mind of the department. Is it held with the Minister for Environment and Conservation, the Minister for Forestry, or both? Does it exist as a physical document and is it available for public viewing? In the second reading debate in another place we did not have the Minister for Forests available and the Hon. Patrick Conlon stood in. Mr Williams asked:

> The minister standing in for him today may not be able to answer the question, but I would like it on the record, whether the answer is given here or an answer is sought between the houses and put on the record in the other place, that the quantum of water, which is reflected in the forestry threshold expansion policy, will remain for the use of forestry and forestry expansion into the future. That level of assurance is the very least that the forestry industry is expecting, and I am sure it will be expecting some sort of definitive statement from the government along those lines.

I repeat that question into the record on his behalf. In relation to water, quite some research was done by the select committee into the aquifers. The member for Mitchell stated that there was inadequate knowledge of aquifers and the interaction between them. I have heard this from a number of stakeholders, so what work is being undertaken to monitor those aquifers and gain a greater understanding of whether there is leakage and transfer between the two aquifers?

I refer also to the commonwealth and its signing off on this project. The committee report provided a chronology of key events and stated that approval for the pulp mill was given under the commonwealth EPBC Act on 3 November 2006. It was not until March 2007 that the capacity of this mill was doubled. Will the minister clarify whether there has been any change in position from the commonwealth? There was a media report in *The Australian* yesterday, which I am now told misrepresents the commonwealth position, but it is important for this parliament in moving forward on this issue to have an understanding of whether the federal government continues to support this project on the basis of its environmental credentials.

There is an issue of solid waste, and I am advised that the Mount Gambier council does not have the capacity to take an additional 36 500 tonnes of solid waste, so I would like to know what capacity there is to deal with that waste. In the past 48 hours the issue of hydrogen peroxide manufacturing has been raised, and a number of media outlets have been trying to determine what the issue is there. Can the minister confirm whether the hydrogen peroxide plant is part of the project, and what environmental assessment has been done of that?

Going back to the issue of NRM and the water allocation plan, will the minister advise how far away it is, what the sustainable yield is, and what the impact will be on other users? An allegation was made that if those licences had been applied for under today's conditions they might not have been approved. Will the minister advise whether there is evidence that there has been a reduction in the water table from hydrological reports and whether there are safeguards against spills or other environmental disasters for local producers, particularly given that they export into fastidious and sensitive markets such as dairy to Japan and beef to the EU?

The energy source has been raised in *The Advertiser* today, so will the minister provide more information about proximity to energy sources and whether it is intended to use gas or another power supply? I understand the location was chosen because of its proximity to rail and road networks. Certainly, when I was driven on those roads it was clear that they were nowhere near ready for the transport of large numbers of heavy trucks, so what are the proposals there?

In terms of the water licence and the minister's powers, the bill replaces the word 'vary' with 'reduce'. So, do we assume that volume would be reduced only on the application of the minister; or is this licence subject to the usual practice where, if there is a reduction in what the NRM considers to be a reasonable use of that water, the mill will automatically be part of that; or is that something that must be done by instrument of government?

My final questions are in relation to the unique flora and fauna in that district. I have it on very good advice that very significant potential habitat of the eastern pygmy possum, also known as *Cercartetus nanus*, is found 10 kilometres south of Penola, and this is published by Mark Bachmann in *South Australian Naturalist*, Volume 81, No. 1. Will the minister advise what assessment of the eastern pygmy possum's habitat has taken place? Two amphibian species are also concerned: the golden bell frog, otherwise known as *Litoria raniformus*, and *Geocrinia laevis*, which I do not think has a common name, but I am informed it has pink thighs. The other species is a plant species known as plains joyweed; its proper name is *Alteranthera*. Does the minister have any information in relation to these species and the possible impact of the mill?

With those comments and subject to the replies I receive I indicate that we will progress this bill. I particularly thank the locals who, as has been mentioned in the debates in the Assembly, were quite hospitable. I have great sympathy for their concerns and can completely understand why they are in the position they are in. I will do my utmost to make sure their interests are protected.

The Hon. M. PARNELL: When I was elected to this parliament nearly a year and a half ago, one of the very first pieces of correspondence that landed on my desk was from a resident of Penola who was concerned about the plans she had heard of for a pulp mill. Since that day back in April of last year I have followed this issue very closely. I have been down to Penola a number of times. I have attended many of the meetings of the select committee that was formed to inquire into this bill, and in fact I took the opportunity to give evidence myself. At the end of this process, I say that I am deeply disappointed that we are proceeding with a piece of project-specific legislation to approve a massive industrial project with which we have better ways of dealing.

The parliament is being asked to bypass the normal development assessment process, and we are being asked to do so with very little information provided to us. Honourable members need to be aware of the fact that in this bill we are approving the pulp mill and of the ancillary aspects to that development and that, once approved, it will not require other approvals. It may require some other negotiations with government agencies but, in terms of approvals, this is it: this is the approval the parliament is being asked to provide. So we have an enormous responsibility to get it right.

When I visited Penola (and the Hon. Michelle Lensink also alluded to this) I found it a wonderful part of South Australia, and you have to have sympathy for the local people—the neighbours, in particular—who will have this massive industrial development on their doorstep. The fact is that it will be approved by this parliament with very little information other than that which the proponent and the government have provided—which is a very scant reference indeed, and I will refer to that as I proceed with my contribution.

At the outset I want to say that supporting or not supporting this bill is not the same as supporting or not supporting pulp mills in general, or even a pulp mill at Penola in particular. As I have said to many journalists over the past year and a half, I am not against pulp mills and I am not against a pulp mill at Penola; it may well be a form of development that we can make work and that we can make sustainable. In fact, one of the very first documents I was given by government representatives, when they came to talk to me about the bill, was a single A4 page divided into two columns with the Penola pulp mill in the left-hand column and the Gunns pulp mill in Tasmania in the right-hand column, and the government went to great lengths to point out to me how much better the Penola pulp mill was compared to the proposed Gunns pulp mill. I can accept (if we can take the proponent's words for it) that that probably is the case—that a pulp mill of the type proposed for Penola is far superior to a kraft chlorine-bleaching pulp mill of the type proposed by Gunns for Tasmania.

However, even though I am not against a pulp mill I am against the process that the parliament has been asked to go through in terms of approving this particular pulp mill. I believe we would be better off doing the process properly—and if you get the process right then better decisions and outcomes tend to follow. We have been told that parliament provides the highest level of scrutiny for a project such as this, yet we find that the other place managed only a mere two hours of debate in the process of approving a $1.5 billion (I have even heard up to $1.7 billion) project. If that is the highest level of scrutiny this parliament is able to offer, I think it is a disgrace. Of course, had this project gone through the normal major project development process, with an environmental impact statement, then the time for scrutiny by scientists, other officials and members of the public would have run into the hundreds or thousands of hours—not the two hours that the lower house managed in this debate. I do not believe the parliament can ever replace a proper environmental impact statement—and certainly not in two hours.

My hope is that this house of parliament, the Legislative Council, will deliver on its role as a dogged and fearless house of review, and I believe we have a responsibility to ask the questions of government that would normally have been asked through an environmental impact statement process. I note the questions that the Hon. Michelle Lensink has asked, and I have similar questions myself. I think they are sensible questions; we should not have to ask them, but we do because of the process we are being put through.

I want to go into some detail about why I believe this process is flawed, but I will start by outlining some of the key historical aspects of this development that I believe inform our debate. Pulp mills worldwide, because they are such large pieces of infrastructure, generally take a number of years to go through all the approval processes—in fact, I understand it is not unusual for it to take five years (from the earliest stages through to the final sign off and licensing) for a pulp mill to be approved. Certainly, other jurisdictions take longer to do the job more thoroughly than we are doing here in South Australia.

Members would know that initially two pulp mills were planned: one for Heywood in Victoria and the other for Penola in South Australia. In many ways the Heywood project was much more advanced than Penola. They had approvals from the Victorian government and they also had a number of natural advantages—the water situation (and we have heard a bit about that already in terms of both direct extraction for the mill and the water consumed by the trees) is more secure in Victoria, a mill in Heywood would have been closer to feed stock, and the community of Heywood was undoubtedly more enthusiastic than I have experienced the community in Penola to be—so in some ways South Australia was playing catch-up with the Victorians, in competition to try to secure the project for this state.

The initial measures involved fast-tracking the rezoning exercise through interim operations—from memory it was 18 May last year, with the company lodging its application the following day (19 May). Industry experts and locals in Penola have always scratched their head as to why a company was proposing two identical mills only 100 kilometres or so apart; it made no sense to most people and I believe there was, therefore, no surprise when one of the mills was abandoned and the Penola mill took prime place. However, the surprise was that it was, in fact, the Penola site that was preferred over Heywood.

My understanding is that when the proponent (Protavia) decided to go with a single mill, the Victorians (quite properly) said they required a further environmental effects statement (an EES), which is the equivalent to the South Australian environmental impact statement (EIS) under the Development Act. The Victorians wanted to follow due process, and my understanding is that that was one of the reasons for Protavia preferring South Australia, because we were not insisting on proper processes being followed.

In many ways what we are looking at here is a bit of a race to the bottom in terms of regulatory standards. The South Australian response was to bring in project-specific legislation and perhaps also some other sweeteners; I will come to those a little later. In any sense of the word, this project has been fast-tracked. The problem with fast-tracking is that things are missed, details are glossed over and deals are often done out of the public eye. In fact, if I have not told the council already, I remind it that my Master's thesis in regional urban planning was on the topic of fast-tracking.

The Hon. R.D. Lawson: Table it!

The Hon. M. PARNELL: The Hon. Robert Lawson asks me to table the thesis, but I do not intend to do so; however, I can provide the honourable member with a copy. Let us look at other cases where indenture or project-specific legislation has been used. We are very familiar with the Roxby Downs legislation, and I have another bill before the council that looks at trying to level the playing field and remove some of the special treatment that that indenture provides for that mining project. The Whyalla indenture, which was debated in this chamber some two years ago, again gave special treatment to the company and undermined the EPA's authority in dealing with pollution.

In my opinion, indentures or project-specific legislation in South Australia have a very poor track record. I think that it is not just the detail of those pieces of legislation but also the fact that they undermine the Development Act and the proper planning processes that underpin our system. I recall

that, when the Whyalla legislation was being debated, one of the lawyers for big business said to me, in an offhand sort of way, 'Where do you line up to get one of these indentures?' They seemed very much to be the flavour of the month and the way to get your project through. Indentures do provide an unfair advantage: they do not provide a level playing field.

I want to outline in some detail what I see as the flaws in the process we are going through in relation to the bill. My first comment relates to so-called 'reserved' matters. The approach taken by the bill is that it grants formal approval to the pulp mill, and we learn that from clause 3. It is founded on a very limited information base, which we can see from schedule 1 part 1. Schedule 1 part 2 of the bill prescribes a range of conditions and reserved matters for subsequent assessment and approval by various government agencies.

Whilst it is not uncommon for some minor matters to be reserved for later consideration by planning authorities, it is most unusual for the major components of a development (in fact, the heart of the development) to be approved with scant information about its operation and impact. The tool of reserving some matters for later consideration is often used for things such as car park design or perhaps some finer points of landscaping. However, you never find major industrial facilities or major chemical manufacturing plants with the detail reserved for another day.

Much of the public commentary on the bill has focused on the fact that the Environment Protection Authority pollution standards have been literally cut and pasted into the bill without the proponent's having to show how those standards will be met. This is the notion of performance-based assessment. The idea seems to be that, regardless of how advanced the pulp mill construction might be, the possibility remains that it might not receive operational approval if it cannot meet those standards. I note with interest the comments of the shadow minister (Mitch Williams) in the *Border Watch* two weeks ago, as follows:

> The problem with going through the normal process—as per the Development Act—is that the developer has to be able to answer every question the Environment Protection Authority, Department of Water, Land and Biodiversity Conservation and other government agencies put to them about how they will meet standards.

That is a remarkable quote from the shadow minister, namely, that the problem with the current system is that you have to be able to answer questions, that these government agencies, these responsible authorities, will ask you tricky questions and that you will have to answer them. What a remarkable criticism of our planning scheme to keep developers accountable! The newspaper report continues:

> Mr Williams said that could cost proponents many millions of dollars.

Environmental impact assessment is an expensive process, and it needs to be expensive because it is thorough. This is a $1.5 billion or $1.7 billion project; clearly, there is no shortage of cash in relation to its development. As any proponent of a major project or even a house will tell you, a certain proportion of the capital cost goes into design, assessment and approval. That has not been done in this project. Mr Williams continues:

> This process allows the proponent to come through the other way where they ask—

'they' being the government agencies—

> 'What are the limits by which we have to abide? What are the standards we have to meet?'

I want to go through four main problems with this legislated performance-based approval process, and the first is that it takes at face value the assurances of the proponent around their environmental performance. From the evidence given to the select committee, and evidence given to public fora by the Environment Protection Authority, it seems that no representative of the EPA has investigated first-hand the performance of pulp mills of this type or size, either in Australia or overseas. In other words, if no-one from the EPA has even been to see one of these pulp mills in operation, what alternative do they have other than to take at face value the claims of environmental performance the company makes?

It should be a basic part of the assessment process for regulatory authorities, such as the EPA, to assess whether the claimed environmental performance standards can be met. The alternative to a performance-based approach is that the EPA should undertake an assessment of similar pulp mills elsewhere to ascertain whether the claims are valid. The second problem with the performance-based assessment is that it defers consideration and assessment of operational detail until after two things have happened. First of all, it is after considerable expenditure has been committed by the proponent and, in fact, even after construction might have occurred. Secondly, it is after most opportunities for public import have been exhausted. So, the use of the reserved matters provisions reduces the ability of government agencies to respond to serious problems that become apparent after the project is substantially commenced. If a serious issue arises, it is effectively too late to seek to withdraw development approval. It will be too late because, by passing this bill, we actually give approval for the project.

Consideration of reserved matters also effectively disenfranchises the community from any further opportunity to engage in the process because, once the bill is passed and the approval has been granted, there will be very few or even no opportunities for the community to make submissions or representations about the development. There is no mechanism in this legislation for any of those reserved matters, or any of those subsequent inquiries, to involve members of the public.

The third major problem with the performance-based approach is that it assumes that the regulatory authority—such as the EPA—has the ability and the will to enforce standards, even if it is at the cost of preventing the project from going ahead. In its evidence, the Environment Protection Authority acknowledges that the agency has never cancelled or suspended a licence for a breach of environmental standards. Also, it has never failed to grant a licence to a substantial industrial development that has already been constructed. In other words, to suggest that, after a $1.5 billion pulp mill has already been built, the EPA—if it comes across performance that it is not happy with in the environment field—would cancel its licence is absolutely fanciful. It has never happened in the past and, in fact, it will never happen. We need to provide for the EPA to have full powers of regulatory control over this mill, including during its construction and commissioning phase, not just at the end of the process. That does not address all of my concerns, but that would at least be an improvement.

The fourth problem with the performance-based approach is that it ignores the social and economic implications of the development. Whilst the bill does seek to embody standard pollution conditions provided by the EPA, it fails to address the other two key elements that would be assessed by an

environmental impact statement, namely social and economic considerations. It is worth reminding members that, even though we talk about environmental impact statements, the trigger for an environmental impact statement is economic, social or environmental concerns; it is not just environmental. An EIS must also cover social and economic implications.

Proponents of projects such as this always emphasise job creation and economic benefits, much of which is fiction when the end of the day comes around. However, there is no detailed critique or analysis of the validity of any of these claims in relation to this project in either a local, a regional, a state or a national context. The potential economic impact on other land and water users is a key concern, but it is not addressed in the bill. Similarly, there is no assessment of the social impact of the project. That is not to say that these things would be negative; they may well be positive, but we do not know, because the government has not required it to go through the proper process.

It is often claimed by planners that it is not the job of the planning system to protect developers from their own folly. In other words, the economic viability of the project is usually regarded as at the risk of the developers. I think that this approach is inappropriate when major inputs into the process, such as water, energy and transport, are significantly dependent on access to community resources. The economic viability of the project should be verified to a high level before any approval is given. It is critical that a major development of this size has to be sustainable on a stand-alone basis, and not dependent on government subsidies or preferential policy decisions to survive.

It was interesting that, at some of the public meetings, people expressed concerns that we might be approving a white elephant. The unsatisfactory response was, 'Well, the developer takes the risk; that's their problem.' It is not their problem: it is our problem, particularly if we have sacrificed these other community assets in the process. So, why do we not have an environmental impact statement for this project? Many of these problems could be overcome if the project did go through that major development stream under the Development Act.

The preparation, publication and assessment of an EIS would ensure that those three elements—social, economic and environmental impacts—would all be considered before any approval was given, rather than after. It seems clear to me that the expectation of the proponent was that it would be required to prepare an EIS under the major development provisions of the Development Act. That was clearly the expectation of the company in the early stages of negotiations over this project. A letter dated 17 November 2005 from the proponent (Protavia) to the Hon. Paul Holloway, the Minister for Urban Development and Planning, which I have referred to before in this place, states:

> As proposed, the development raises issues of major environmental, social and economic importance, and requires substantial off-site issue resolution affecting individuals, local council, the state and federal interests. We request that the proposal be declared a major development pursuant to section 41 of the Development Act.

I obtained that letter from Planning SA through the Freedom of Information Act. The letter was on the Planning SA files, and it related to the earlier proposal for a $650 million development.

We were given the explanation that, whilst a letter might be on the Planning SA files, it was not formally sent, it was not signed and, therefore, it is of little value. I say it is of great value because it shows that the proponent in the early stages knew what the proper process was, it knew what a responsible government's expectations would be and, therefore, it put on the record that it thought it was deserving of environmental impact assessment procedures. Similarly, too, the government has always thought of this as a major project because it is listed as such on the government's major project developments in South Australia website. In fact, it is interesting that the concept of major project seems to vary greatly between one government department's website and actual decisions made by the planning minister to officially declare something a major project. Perhaps we need to link those two things together. If the government thinks it is important enough to put on its major projects website, then it should declare it as such and make sure an EIS is done.

Nevertheless, this development was not declared as such, so we are going through this process of special legislation. However, the EIS process is better than the process we have gone through because it is a more open, transparent process and it allows scientists to peer review the company's claims, in particular its environmental and economic claims. Avoiding that proper EIS process undermines the planning process and artificially advantages the company over others.

I make the point that I am not Robinson Crusoe here. I am not the only one who has been calling for this to go through that proper process. I refer to the federal member for the seat of Barker, Patrick Secker, who is quoted in the media as saying that he supports the construction of the Penola Pulp Mill but says that the state government should have done a full environmental study. In fact, yesterday on ABC Regional Radio Mr Secker said:

> . . . and if the state government had assisted as a large enterprise $1.5 billion, that if they had a proper EIS we wouldn't be arguing about it now.

So even the federal member concedes that there was a proper process and that, had we gone down that road, we could have avoided this bill going through parliament.

The frustrating thing is, of course, that if the government had followed the normal planning processes and declared this to be a major development back in November 2005 the EIS would be done, the difficult questions that the company does not want to answer would be answered and perhaps all approvals would be in place. I do not think it is correct to say that time has run out and, therefore, that is why we cannot follow the proper process. Clearly, we would be close to being there now if we had taken the right approach back in November 2005.

I want to speak about some specific concerns I have with the pulp mill project. The first is one that the Hon. Michelle Lensink referred to and asked a question about, and that is the hydrogen peroxide plant. In the documentation that accompanies this bill, the hydrogen peroxide plant is described in scarcely five or six lines of text. It is not very long so I will read it out, as follows:

> 3.3.9 hydrogen peroxide facility: hydrogen peroxide will be produced on site and supplied to the pulp mill as required via a buffer feed tank. Orica have advised the plant capacity has been selected to ensure the production plant is commercially viable; therefore, any surplus production will be drawn from this buffer feed tank and diluted to 59 per cent, held in storage tanks for later transportation offsite in ISO tanks. This storage would also serve as a back-up in the event of a hydrogen peroxide production plant outage and off-site deliveries are required.

That is it. Those words I have just read out are the entirety of the description of the hydrogen peroxide plant that forms part of the Penola Pulp Mill. The only other reference in the documentation is in a description of the various buildings and

facilities that form part of the industrial complex, where they describe the facility as being 265 metres long, 85 metres wide and 35 metres high. To put this into context, it is about the same size as the *Titanic*. I know others have gotten into trouble for using the *Titanic* as a measuring stick for other developments, but I am confident of my figures here. The *Titanic* was 268 metres long, 28 metres wide and 53 metres high. The *Titanic* would fit within the hydrogen peroxide plant with a roller door at one end left open for the three metres protruding. It is a massive industrial facility described in just five or six lines of text.

My question is: how can members of parliament make a decision about whether or not to approve such a massive industrial facility, a chemical manufacturing plant, with such little information? Hydrogen peroxide, as members would know, was used in the London Underground bombings. My questions are: where is the risk assessment; and where are the details about the storage and the transport of this chemical? I do not raise this issue in order to be a scaremonger. I do not want to be seen to be frightening the people of Penola and suggesting that they are about to become a terrorist target. The reason for me raising it is that it is a pointer to the lack of scrutiny and the lack of information that has accompanied this project.

The hydrogen peroxide plant is not even mentioned once in the select committee's report. You might think that perhaps no-one raised it with the select committee, but I did. I raised it with the select committee. I pointed the select committee to industrial accidents that had occurred at hydrogen peroxide plants, yet it does not find its way into that report all.

In Germany, people were arrested for stockpiling hydrogen peroxide. I believe 75 kilograms were stockpiled by those alleged terrorists. Yet, here in South Australia, we are being asked to approve a massive manufacturing plant for the very same chemical without any form of risk assessment. I do not know—I am not an expert on terrorism—whether or not it is an unacceptable risk, but the role of our regulatory authorities, the role of government is to make sure that there is a risk assessment in place; otherwise these are valid questions.

The original Heywood Pulp Mill proposal included in their environmental effects statement (EES), which is the equivalent of our EIS, the following:

> The storage of hydrogen peroxide on the pulp mill site requires evaluation as a major hazard facility.

So, the Victorians understood that this stuff is dangerous and they required additional evaluation as a major hazard facility. The suggestion is going around that somehow the hydrogen peroxide plant will not proceed and, therefore, we do not need to worry about it. I understand that a representative of the proponents is saying that they are not sure whether or not they will build the hydrogen peroxide plant. The point is that we are approving a hydrogen peroxide plant. It is mentioned in the bill; it is listed as one of the components of the Penola pulp mill, therefore we are giving it approval, and I do not think we can take any comfort from the fact that the proponent is not sure whether or not it will build it. The other thing to point out, in relation to the hydrogen peroxide plant, is that it is not just about manufacturing hydrogen peroxide for the paper mill but they are also proposing to make sufficient to supply external customers. So, it is not all going to be contained on the site; it will certainly be transported elsewhere.

The next issue I want to raise, which was picked up by *The Advertiser* this morning, is about the greenhouse implications of the Penola pulp mill. This facility will use an enormous amount of electricity. Honourable members were not told how much electricity the facility would use—it was not included in the documents that we were provided in order to assess this facility. So, again, I had to chase this through freedom of information and we found out that the company is requesting the delivery of up to 1 661 750 megawatt hours of electricity, and that equates to about 189 megawatts. To put that into perspective, the Olympic Dam mine currently uses 110 megawatts, yet this facility is asking for 189 megawatts—bigger than that massive user of electricity at Roxby Downs. Another comparison about how much electricity this facility will use is that it is equivalent to the electricity used by 68 per cent of households in the whole of the metropolitan area of Adelaide—that is, the same amount of electricity as two-thirds of the households in Adelaide.

The report that was prepared for the originally proposed Penola pulp mill, which was the original $650 million project, contained from memory about 15 pages of information on greenhouse gases which included some detailed data, yet in the report we now have for a project that is twice as big we have 1½ pages of commentary and not one skerrick of hard data. So, we have to ask the question about this government's credentials in terms of its claimed climate change leadership. Why isn't the government insisting that all new projects that come before us as a state go through proper climate change scrutiny? Everything that we build now we need to be building on the assumption that it will continue to use electricity, consume energy and emit greenhouse gases for probably 50 years or more. Again, the time for insisting on action is before the approval process rather than afterwards.

I want to refer now to the Conservation Council's submission to the select committee on this question of greenhouse gases, and I will read a paragraph as follows:

> Schedule 1, part 2, section 9 details the conditions relating to greenhouse gas emissions. The principles leading to the Climate Change and Greenhouse Gas Emissions Reduction Bill 2006 (the 'climate change bill') must be reflected in all subsequent developments. The bill is considered inadequate in accounting for these considerations. A report is required detailing measures to be taken, options and inventory, but the bill does not mandate for any threshold levels of production, without which industry is not bound. The Conservation Council and the Nature Conservation Society consider this unacceptable, and must question the South Australian government's commitment to tackling climate change. Providing strict framework for new developments is a fundamental and economically preferable step (as opposed to retrofitting) towards achieving the targets set out in the climate change bill. Such threshold limits must be a feature of the bill if it is to be enacted.

But what we find instead is a requirement in the bill for the company to think about greenhouse and to produce a report. That is clearly not good enough. A facility such as this which is going to be such a massive consumer of energy, mostly from the burning of fossil fuels, be it coal or gas, should be required to prove to us how it is going to reduce its effect on the world's climate and reduce its emissions of greenhouse gases.

I want to refer now to the claims made by the company in relation to zero liquid discharge, because that is one of the features that is said to set this mill apart from the Gunns mill in Tasmania, which is proposing to discharge effluent to the marine environment. In this case, Protavia spokesperson, John Roche, when he was asked by the select committee to identify mills around the world that have this zero waste discharge, nominated the Meadow Lake mill in Canada and (referring to Mr Roche's evidence to the select committee) he said:

The closest example would be Meadow Lake mill in Canada. It sources from groundwater and it is a zero liquid discharge mill.

When the public meeting was held in Rymill Hall at Coonawarra, Protavia produced a Mr Tim Evans, who apparently was involved in the start-up team for the Meadow Lake mill in Canada. Mr Evans said, 'That was a very successful project in northern Saskatchewan in northern Canada, and we are expecting this (meaning the Penola mill) to be every bit as successful if not more.' That was their resort to a successful case study—the Meadow Lake mill in Canada. Yet, media reports suggest that this mill in Canada is the biggest money-losing government investment in Saskatchewan history and, apparently, it was sold in January this year for $37 million—a fraction of what it cost to build. Put a couple of things together—the fact that no-one from the EPA has gone to have a look at one of these mills operating elsewhere and the fact that the mill the company puts on a pedestal as the best example has apparently been a loss-maker and a disaster that was sold for a fraction of its cost—and that has to ring alarm bells for us in South Australia. So, where is the objective evidence of the company's claims about the zero discharge performance? If it is correct and it is a zero liquid discharge mill, that is great: it is exactly what we want from modern industrial development in this state.

The next issue I raise is in relation to solid waste and where it will go. The response was quite extraordinary because, when asked, a spokesperson for the EPA said that it would go to a landfill in Mount Gambier. Yet the local council did not know anything about it and quite rightly objected when it found out that one year's waste from the mill would require more landfill space than the waste of the entire South-East community. I echo the Hon. Michelle Lensink's question about where the waste will go. Clearly the Mount Gambier council is not ready for it and does not want it. Some 36 500 tonnes per year of uncharacterised solid waste has no designated landfill destination. What does this say about the level of detail and preliminary design work done by the proponent in relation to this mill? Again, this should have been sorted out well before we in this parliament give approval for the mill, but that has not happened.

I refer next to flora and fauna. Apparently there has been a single two day on-site study on flora and fauna, conducted in relation to the earlier proposal for a smaller pulp mill at Penola. I will refer briefly to the comments made by one of this state's eminent naturalists, Dr Mike Tyler, often affectionately known as the 'frog man'. In relation to the pulp mill he states:

The floral and faunal survey undertaken of the proposed site was too brief and too superficial for there to be any meaningful assessment of the local biota. There is need for a new floral and faunal study to be done over the next few months, during which hopefully aquatic or semi-aquatic creatures will be examined. In other jurisdictions, for example, New South Wales, the quality of the survey is extremely influential in determining whether an EIS is required. If the data are inadequate, an EIS is virtually obligatory. South Australia has experienced an appalling aquatic disaster through the discharge of waste from two pulp mills into Lake Bonney. We need to learn from that experience and ensure that the proposed environmental safeguards will be adequate. Sadly, we do not have an adequate knowledge of local environment and its biota to evaluate the impact.

There you have it: very scant attention paid. In fact, the most attention paid was through the EPBC process to a more remote possibility that some of the black cockatoos might be there. That was where the effort was put, yet the environment consists of much more than that particular species.

I refer to the quality of the on-site assessment of the pulp mill site. The report of the original $650 million pulp mill proposal was essentially a cut and paste job from the work Protavia did on its Heywood proposal 100 kilometres away in Victoria. One of the groups that campaigned in South Australia against the pulp mill, the No Pulp Mill Alliance, claims that no on-site assessment of existing background conditions, noise, ambient air quality, the air inversion, light pollution or water quality has been undertaken at Mount Gambier. The geotechnical study that accompanied the original development application report for the smaller pulp mill on 26 May 2006 by Douglas Partners includes the following comment:

The comments, interpretations and advice provided in this report are based on inferred conditions without the benefit of any relevant direct subsurface investigation to corroborate the inferences.

In other words, they infer from other work they have done rather than doing direct work at the Penola site. The problem is that, when you try to translate this type of report, inevitably mistakes are made.

I refer now to groundwater. The issue of groundwater has arguably been the most contentious aspect of this bill. The concerns relate to both the direct groundwater allocation for the operation of the mill and the impact on groundwater of the inclusion of the forest threshold expansion policy. I note that we have had some amendments to the bill in relation to that policy that has helped level the playing field somewhat, but it still does not completely address the situation that this pulp mill will rely on forests, which in turn rely on water. I was pleased to see that the forest threshold expansion policy has been taken out of the bill, and I acknowledge the efforts and response of environment minister Gago for her intervention in this debate in relation to a recent decision about plantations on areas with shallow aquifers. Again, it goes towards levelling the playing field so all users of water are treated equally. Yet there are still major concerns about the water impacts of this development.

The Department of Water, Land and Biodiversity Conservation data clearly shows that the level of the South-East's underground watertable is continuing to trend downward at an alarming rate. Anyone who was at the public meetings would have seen chart after chart of lines going from top left to bottom right—all trending downwards. Some of it related to current climatic conditions, but most of it reflected a trend that predates the current drought situation. Some other admissions were made at the public meetings at Penola, one being from Glen Harrington, a senior hydrologist (who I understand has since resigned from the department), in his presentation on 14 June this year in Penola. He said:

If we assessed the five year trends for up until March 2006 we see that the water levels were pretty stable throughout that area and therefore we, we could justify, ah, granting the allocation on that basis, but if we were to do this estimate today and someone came in tomorrow, if Protavia came in again tomorrow and said look, we want to revise our application to such and such, and we were to do it tomorrow we would have to do it from there and the trend would be different and it wouldn't go ahead.

This is the admission from the senior hydrologist. In other words, if they were to come today looking for a water allocation we would not give it to them. Similarly, one of the Coonawarra vignerons, Mr Vic Patrick, who gave evidence to the select committee and also at the public meeting at Rymill Hall, asked a question of Dr Harrington. He said:

. . . my question is directed to Dr Harrington. I think you said in relation to trends in the TCSAs (underground water) that if the trends

were looked at with current data the project would probably not be approved.

Glen Harrington's response was:

> Umm, if however the assessment was received tomorrow and we were to reanalyse we would be concerned about the, the, number of observation wells that are, are going off at the moment in terms of exceeding trigger levels.

So, it was a somewhat nervous response, but the concept of exceeding trigger levels means that the observation wells are showing that there is a problem and they are triggering action in terms of stopping the allocation of new water allowances.

At the same public meeting, minister Rory McEwen, who chaired the select committee, said on 14 June, 'Because in terms of water allocation the bill doesn't start until there is a licence.' Yet, when Department of Water, Land and Biodiversity Conservation official Drew Laslett was asked, 'Has the water licence been issued?' he replied, 'No, the, the, licence hasn't been issued.' So, what we have to bear in mind here is that Protavia successfully applied and received a guarantee for 100 per cent of the available water for industry in both management zones 2A and 3A, and that is about 110 000 square kilometres of the South-East.

So, what is the guarantee that the pulp mill proponents when finalising detailed plans discover that their 2 677 megalitres are not enough to manufacture 750 000 tonnes of pulp per annum? What happens when they are not given any increased allocation? This whole issue has been handled very badly, and there are legitimate questions still being asked about what guarantee has been given for water and, given the statements of hydrologists that if we assessed them today we would not be giving them water, why is it too late to revisit that decision?

Next I want to talk about blue gums. That is the feed stock for the pulp mill. Whenever you talk about the impact of the mill you cannot divorce it from the impact on groundwater of these Tasmanian blue gum plantations. So, whilst I would say that the fact of this mill being based on plantations makes it much better than a mill based on native forests such as the Tasmanian pulp mill, at the end of the day what we have is an entire project based on feed stock that in many respects is not adapted to conditions in the South-East.

Tasmanian blue gums need over 1 000 millimetres of water to grow well, and they need a minimum of 700 millimetres per annum yet, according to PIRSA's own website, rainfall in the South-East averages 712 millimetres with a range of 446 millimetres in Coonalpyn to 777 millimetres south of Mount Gambier. What this does not do, of course, is take into account the impact of climate change.

As all members would know, what the scientists are telling us will be the impact of climate change is that overall rainfall is likely to decrease in South Australia. So, if the trees cannot get water from the rain, if the rain reduces, the only other source, really, is the ground water. As members would be aware, we recently noted in this place a report on the Natural Resources Committee inquiry into Deep Creek, and that is a very clear example of where the plantations impact on water resources.

The question is: if these things have all been glossed over, what else has been glossed over? I have not given a comprehensive list of questions or problems with the mill, but it does beg the question: what else would we know? What other issues would have arisen had we done a proper environmental impact statement?

I want to refer to a letter that I received just yesterday, again under freedom of information. It is a letter addressed to minister Rory McEwen from Protavia, dated 14 March this year. I think it helps us to answer this question about why we are going through an indenture act process rather than a proper environmental impact statement. It is clear from this letter that what the company wanted was a truncated process. In this letter, albeit in a veiled manner, effectively it continued to threaten the state government that if it did not proceed fast enough it would take its bat and ball and go back to Victoria. I will just read a few short extracts from this letter, and this is a letter which is signed this time, unlike the other one which I obtained under freedom of information. This one has John Roche's signature on it, and he says to the minister:

> Planning SA has advised that our current development approval is inadequate and will not cover the proposed increase in capacity of the plant.

That is because the company was going from the $650 million to the $1.5 billion project. The letter continues:

> As such, a number of options are available to us including, varying our existing approval, submitting a new development application or submitting a new application as a major development.

So, again, even as recently as 14 March, the company is acknowledging that a major development is one of the appropriate ways to go—I say the most appropriate way. The letter goes on:

> However, none of these options will provide us with a decision within the short time frame in which we have to make a definitive commitment to proceed, so construction can commence in mid-2007, thus allowing the mill to be operational for harvesting of plantations that must occur in 2009. We already have assurances and approval from the Victorian government that expansion of the Heywood mill to the larger mill size can proceed.

So, there they are saying: the Victorians want us. What are you going to do for us? The letter goes on:

> Given the time critical nature for approval and our preference for the development to proceed at Penola we are requesting that legislative support be provided by the South Australian government to ensure the larger mill as we are now proposing can proceed in a timely manner.

The company wanted to start work in mid-2007; we are already beyond that time. In fact, earlier correspondence shows how desperate it was to finish the mill even earlier than it is saying. One of the questions that I would be posing is: what is the rush? Are the trees going to die if they are not harvested by 2009, or is there some other driving force behind this?

I raised in my evidence to the select committee the question of whether or not there was a public subsidy to this pulp mill, because the letter that I have just referred to also details a list of the types of support that the company was requesting from the government as part of this legislated approval, including details of energy supply, rail access charges and an upgrade of the rail line between Penola and Wolseley. This begs the question: what has the government promised the company? What support has been offered and how much is coming out of the public purse? So, in my submission to the select committee I highlighted my concern that by going through this indenture process, rather than following the normal planning rules, the pulp mill proponent was at least avoiding the statutory charges that would normally apply to development, and especially a development of this size.

As members know, the statutory assessment charges, which are a cost recovery mechanism to pay for the costs of our public officials to properly assess these developments, are in fact related to the value of the project. So, if we went

through the normal development assessment process without an EIS, then a project of this size would be liable for an inspection fee of $200 000 plus other fees, including agency referral fees. Under the major development strand the fee would be $3.75 million, unless it was capped by the minister. Under this bill the basic approval for the pulp mill is effectively free; they do not have to pay those statutory charges, and the proponent only need pay for the assessment of any charges or additional works that are not covered by the legislation. Given that the legislation covers just about every conceivable aspect of the proposal—including things like hydrogen peroxide plants, which they are not even sure they are going to build (they tell us)—it seems as if they have had a free ride in relation to fees. That is not to say that this project has not taken up a lot of the time of public officers.

In the absence of a requirement to pay the fees that would normally be payable to referral agencies, the cost of assessment is being borne by tax-payers—and in my evidence I refer to the Country Fire Service, for example, having to fund its own assessment rather than the company having to pay the charges. Other statutory referral authorities are in a similar position. So, whilst the developer may have paid the statutory charges the first time around for its earlier application to Wattle Range Council (and I do not know whether or not it did; it may have paid them), the present proposal is at least twice the size and requires a new assessment—particularly in relation to the new components and the expanded scale of previously approved components. The developer should pay again for those new assessments.

Interestingly, the Victorian parliament has also queried the levels of subsidies being provided by this state government to the Penola pulp mill. I refer to the former Victorian opposition leader, Denis Napthine, who was quoted in July this year in *The Border Watch* newspaper. The article reads:

> Member for the South-West Coast Dennis Napthine has told The Border Watch Protavia was offered subsidies for the connection and supply of gas and electricity to lure the project over the border from Heywood.

Mr Napthine goes on to say:

> I have been advised by people close to the project that the South Australian government was quite generous in making an offer to the company with regard to connection and supply of water, electricity and gas.

He also says:

> The company has obviously stitched up a lucrative deal with the South Australian government.

I will shortly be putting some very specific questions I would like the government to answer in relation to those subsidies.

There is an intriguing comment in the letter (to which I have already referred) from Mr Roche to minister McEwen. Mr Roche says:

> Our preferred location for this larger plant is Penola. This decision is based on a number of factors, including. . . a desire to honour our commitment to Premier Rann.

The question is: what did Premier Rann offer in return? If the company has made some commitment to the Premier about building this mill in Penola, what was offered in return?

I want to briefly move to the role of the community in assessing projects such as this. One of the aspects that has disturbed me greatly is that the community is effectively sidelined in a process that goes through the parliament with this type of legislation rather than going through an environmental impact statement, and there are a number of issues with this. First, we do not have access to the detailed documentation and, therefore, I believe it is insufficient for the government to say to the community, 'Tell us what your concerns are about the pulp mill' when, really, the community's first questions is, 'Tell us about the pulp mill; you tell us about the pulp mill and we'll tell you what our concerns are.' Offering concerns in a vacuum is a very unhelpful way to proceed.

The bill also includes various protections from the public in favour of the company—for example, judicial review, or the idea that a citizen or a stakeholder has the right to go to court when due process is not followed or where some illegality occurs. That has been excluded from this bill by a privative clause. The bill should provide for the community to have access to all the assessment documents and, once the plant is operating (if it is, in fact, ever built), we should have access to all monitoring data as well.

Similarly, these reserved matters to which I have referred should also be the subject of further public consultation before any decisions are made in relation to those matters. In other words, the only contribution that has been sought from the public is in that flawed select committee process, and I say that is not enough and people should have the right to participate in these decisions that are yet to be made.

I believe the bill should also provide for civil enforcement in situations where the developer fails to comply with conditions of the approval or, in fact, EPA licence conditions, and that that should apply from the date of operation of the act. I do not think it is sufficient to say that those legal rights held by the community might be triggered later; we should have them now.

I now want to put on the record some specific questions for the minister. I have a number of questions, some of which are similar to the Hon. Michelle Lensink's questions, but many of them are different. My questions are:

1. Has a water licence been issued for the mill to extract groundwater? If it has not been issued, as was stated by the department, why will the most recent groundwater data taken from the observational wells not be taken into consideration?

2. Protavia has stated that the mill must be operational for harvesting of plantations that must occur in 2009. What is the reason for the rush? I know there is an optimal time for the harvesting of blue gums, but they hardly rot in the ground; they hardly die if they are not harvested at exactly the moment that is optimal. I want to know why the rush. I want to know what contingencies are in place if the time frame is not met. The time frame for the company was to start construction mid-2007. Clearly, we are past that, so what implications does that have for the viability of this project?

3. What government subsidies have been offered to Protavia to encourage the company to choose Penola as its preferred site? Clearly, members of parliament in Victoria believe that subsidies have been offered and, clearly, the company asked for special treatment. I want to know what these subsidies are. I want to know the details of the negotiated transmission use of service (TUOS) for the delivery of electricity to the site. Where will the electricity be sourced from? Who will pay for the electricity infrastructure?

4. Will the upgrade of the rail line from Penola to Wolseley proceed and, if so, what is the likely cost? Who will pay for this upgrade? Have there been any negotiations over rail access charges for exporting the pulp via the Port of Adelaide?

5. I would also like a definitive answer on the hydrogen peroxide plant. It is clear from the documentation that is attached to the authorisation bill and from other documentation that the company intends to build the plant, yet in public there are still contradictory statements being made. I want to

know who are the external customers that will be supplied by the hydrogen peroxide plant. How much of the plant's output will be for the mill and how much will be for external customers? What safety assessment has been done on the storage and transport of all of the chemicals, including hydrogen peroxide? Has a risk assessment been done on the plant?

6. Where is the estimated 36 500 tonnes of solid waste per annum to go?

7. What plans are in place to address the long-term and sustained decline in groundwater levels in the South-East?

8. Will the EPA be empowered to step in to enforce standards if they are transgressed, or will it be like the situation with the Whyalla legislation, where, as soon as the EPA started to bare its teeth (or bare its gums, more likely), parliament stepped in and took it off the case.

9. I would like more details on the claims of zero liquid waste discharge.

10. I would like to know how this bill interacts with the climate change and emission reductions bill, as the greenhouse emissions of this project will be substantial; it will be something in excess of 3 per cent of the state's greenhouse gas emissions from this one project.

By way of conclusion, I think this notion of using legislation and using a performance-based assessment project is a very bizarre form of shadow boxing. We do not know the detail on which to base our questions and to base our commentary. How does the community know what to object to—or what to support for that matter—unless the company and the government are completely open and transparent about what they intend to do?

My experience and my 10 years as an environmental lawyer with the Environmental Defender's Office shows that a number of things always come through in case studies such as this. First, companies make many claims in relation to environmental performance but closer analysis often finds these claims to be hollow. Secondly, regulatory authorities are loathe to use the full range of powers available to them, particularly when considerable expenditure has already occurred. Thirdly, the greatest leverage we have as a community is to require businesses—proponents such as this—to prove their claims of sustainability, and then make them implement sustainability measures or prove they can do it before they are given approval rather than afterwards.

My call today is the same as it has been for the past 1½ years; that is, this is not the right path on which to be going. We need a comprehensive EIS. I said earlier—and I will conclude with this—that I am not Robinson Crusoe in calling on the government to do this job properly. I will read a few comments from a media release of April this year from the Planning Institute of Australia, which is our peak professional body. Under the heading 'Penola pulp mill—disregard for proper planning processes', Gary Mavrinac, State President of the institute, states:

> State government moves to pass separate legislation to fast-track the pulp mill project rather than dealing with it through the Development Act 1993 is disturbing. . . This action by the state government undermines the value and credibility of the Development Act and the planning system. Both the community and developers need to have confidence in an independent process that applies equally to everyone, to provide greater certainty for the future development of the state—ad hoc legislation such as proposed fundamentally undermines the principles of our system. Ultimately, the government's decision denies proper community assessment of the proposal. A full and proper assessment of a project of this significance needs also to involve a proper analysis of the broader and secondary issues over all environmental, economic and social considerations. . . we are disappointed that the principles of equity and justice are not being applied by the government.

With those words, I look forward to the committee stage of this debate and the government's answering of the questions I have put on notice.

The Hon. NICK XENOPHON: Just last week I was in Launceston, Tasmania, for a conference on gambling, but the big issue in that community is the Gunns Ltd pulp mill. While I am not suggesting that the proponents of this particular pulp mill are behaving in the very aggressive way in which Gunns has been behaving by using defamation laws and legal tactics to shut down dissent and legitimate questions about the process, it is interesting that the common theme of the residents to whom I spoke and who are concerned about the pulp mill in Launceston is one of process—and we have the same issue in this application.

I endorse the remarks of the Hon. Mr Parnell in relation to his concerns about process. These are not concerns that in any reasonable way could be said to be unreasonable or at the fringes. I believe these concerns ought to be dealt with and answered. The Hon. Mr Parnell referred to a media release of 12 April 2007 of the Planning Institute of Australia, which expressed real concern about the process, the independence of the process, the way in which planning laws and the process should apply to everyone equally, and how that has been undermined by this particular development proposal. I think it needs to be looked at closely.

Also, a number of farmers approached me a number of months ago. Their primary concerns were the environmental impact, the impact on the watertable and what it would do to the value of their properties. These are concerns that are also very legitimate. The parliamentary committee process was obviously a useful one but, as diligent as the members on that committee were and despite their best endeavours, I do not think that it could in any reasonable way be a substitute for a comprehensive environmental impact statement.

I look forward to the committee stage of this bill. I do not oppose the second reading of this bill because I am not against the concept of having a pulp mill. It is a value-adding process rather than simply exporting timber, but I think that we need some answers about the potential environmental impact and the impact of this project on the community in the long term. The questions asked by the Hon. Mr Parnell and the Hon. Michelle Lensink ought to be answered and I believe that, unless they are answered satisfactorily, it would put me in a difficult position to support this bill. My concern is that, if we get it wrong, if there are no safeguards in place and questions are unanswered, there could be implications for a very long time for the South-East. I support the second reading and look forward to the committee stage.

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

STATUTES AMENDMENT (VICTIMS OF CRIME) 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.

Before the last election the Government gave a pledge to make the rights of victims the priority of our criminal justice system. The *Statutes Amendment (Victims Of Crime) Bill 2007* gives effect to that pledge.

The Bill strengthens the rights of victims by extending the Declaration of Principles in the *Victims of Crime Act 2001*. Victims of some serious crimes will have the right to be consulted before the Director of Public Prosecutions enters into a charge-bargain with the accused or decides to modify or not proceed with the charges. Victims of crime will also have the right to more information about the prosecution and correction of offenders.

Some changes to the compensation provisions of the *Victims of Crime Act 2001* will also be made. The maximum grief payment available to parents and spouses will more than double. Compensation for funeral expenses will also be increased

The rights and needs of victims will be further supported by amendments to the *Correctional Services Act 1982*, the *Youth Court Act 1993*, the *Evidence Act 1929* and the *Bail Act 1984*. Amendments to the *Correctional Services Act 1982* will allow victims to nominate a person to receive information on their behalf. This will make it easier for victims to keep in touch and receive information when they travel interstate or overseas, for example. Amendments to the *Youth Court Act 1993* will make it clear that victims can attend court proceedings, even where the proceedings deal with offences against multiple victims. Amendments to the *Evidence Act 1929* will support the proposed changes to the Declaration of Victims' Rights. The amendments will ensure that victims who are witnesses will not automatically be excluded from the courtroom.

Declaration of Principles

Part 2 of the *Victims of Crime Act 2001* sets out a Declaration of Principles about the treatment of victims of crime. The Act requires officials who deal with victims to treat them with courtesy, respect and sympathy. It gives victims extensive rights to information about the prosecution and correction of the offender, if they want it. It also requires the prompt return of victims' property, the protection of victims' privacy and other steps to protect victims in the criminal-justice system. The rights are not legally enforceable, but the Act directs public officials to see that they are accorded to victims. The Bill strengthens the rights of victims by expanding the Declaration of Principles in seven key areas.

First, the Bill makes it clear that the Declaration extends beyond the criminal-justice system to all public officials and public agencies that help victims of crime. At present, the Declaration focuses on the treatment of victims in the criminal-justice system. Victims of crime, however, use many services that do not fall within the criminal-justice system. Victims use government services including, for example, domestic-violence services and the Rape and Sexual Assault Service. I think that people who provide these services should be required to treat victims of crime with respect, dignity and courtesy, as I am sure most do. They should also be required to comply, where appropriate, with the other principles outlined in the *Victims of Crime Act 2001*.

Second, the Bill provides for victims of crime to receive information about mentally-incompetent offenders. A victim is already entitled to be told if an offender escapes from custody or is recaptured and is also entitled to be told when an offender is due for release. There is some doubt, however, about whether this right to information applies if the person accused of the crime is mentally incompetent and detained in a mental institution. The Bill removes any doubt that victims of crime have the right to know if a mentally-incompetent offender is detained, escapes, is recaptured or is released. The Bill also ensures that victims have a right to information about the details of any supervision order imposed on the offender and the outcome of any proceedings to vary, revoke or review that order.

Third, the Bill provides victims of crime with the right to information about an offender's compliance with a community-service order or a good-behaviour bond. The Interim Commissioner for Victims' Rights says that some victims would like to know whether an offender has complied with the penalty imposed by the court. It is important to their sense of justice. The Bill therefore provides victims of crime with the right to be informed, on request, about the offender's compliance with a community-service order or a good-behaviour bond.

Fourth, victims of some serious crimes will have the right to be consulted before the Director of Public Prosecutions enters into a charge-bargain with the accused or decides to modify or not proceed with the charges. They will also have the right to be consulted before the Director of Public Prosecutions applies for an investigation of an offender's mental competence under s269E of the *Criminal Law Consolidation Act*.

In any criminal case where the prosecutor decides not to proceed with the charge, to amend the charge, or to accept a plea to a lesser charge, or agrees with the defendant to make or support a recommendation for leniency, the Declaration says that a victim who asks has the right to be told why the decision was taken. This is a right to information after the event. It does not require the prosecutor to consult the victim before making a decision. The Bill provides for victims to be consulted and have his or her views taken into account before a decision is made. This right, however, will be limited to more serious cases, that is, indictable offences that result in bodily injury or death, and sexual offences as defined in the *Evidence Act 1929*. Nothing prevents the prosecution from consulting victims of other crime including, for example, property crimes or criminal attempts in which no actual injury occurs.

Fifth, victims of crime will have the right to ask the prosecuting authority to consider an appeal. Some victims feel very strongly that the sentence imposed on the offender was inadequate or that the decision to acquit was wrong. Victims often feel that these decisions should be appealed. At the very least, they feel that the prosecutor could consider an appeal. The Bill therefore provides victims of crime with the right to ask the Director of Public Prosecutions to consider a prosecution appeal. The final decision about whether or not to institute an appeal will, however, continue to rest with the Director of Public Prosecutions.

Sixth, the Bill will ensure that reasonable efforts must be made to notify victims, who express safety concerns to police, about any bail condition imposed to protect them. As the Declaration of Principles stands there is no requirement to tell a victim about bail conditions imposed to protect them unless they request that information.

Seventh, the Declaration of Principles will be extended to highlight that victims have the right to attend proceedings against the offender. This will not affect the power of the court to order people to leave the courtroom, where such an order is desirable in the interests of the administration of justice, or to prevent hardship or embarrassment to any person.

Compensation Payments

Part 4 of the *Victims of Crime Act 2001* establishes a scheme to compensate victims of crime. The scheme provides for the reimbursement of funeral expenses where a person is killed by an offence. It also provides for the parents of a child killed by homicide, and the spouse of a person killed by homicide, to receive compensation for their grief.

The parents of a child killed by homicide are currently entitled to the sum of $3000 in compensation for their grief. The spouse of a person who is killed by homicide is entitled to $4200 compensation. These figures have not increased since 1988. I think that the grief payment available to the survivors in homicide cases is too low. The Bill provides for a new maximum payment of $10 000 for both parents and spouses. This is consistent with a recent amendment to increase the amount of *solatium* payable under the *Civil Liability Act 1936*.

The maximum payment for funeral expenses will also be increased. The Interim Commissioner for Victims' Rights tells me that the maximum payment of $5000 for funeral expenses is inadequate at present-day costs and that $7000 would be a fair maximum figure.

Criminal Law (Sentencing Act) 1988

Part 2, Division 4, of the *Criminal Law (Sentencing) Act 1988* provides for the Full Court to establish sentencing guidelines. A sentencing guideline may indicate an appropriate range of penalties for a particular offence or class of offence. It may also indicate how particular aggravating or mitigating factors should be reflected in sentence.

Several people including the Director of Public Prosecutions and the Attorney-General have the right to appear and be heard in proceedings for the establishment or review of sentencing guidelines.

The Government believes that the interests of victims should also be represented during the development and review of sentencing guidelines. The Bill therefore amends the *Criminal Law (Sentencing Act) 1995* to provide the Commissioner for Victims' Rights with the right to make submissions to the Court of Criminal Appeal on guideline sentences.

Correctional Services Act 1982

The *Correctional Services Act* provides that an eligible person may apply, in writing, for the release of information. An eligible

person can, for example, apply for the name and address of the correctional institution in which a prisoner is being imprisoned. Registered victims (among others) are specifically listed as eligible people.

Registered victims are sometimes difficult to contact. A victim could be overseas or interstate, for example. Some victims have said that they would like to nominate a person to receive information on their behalf. The Bill therefore provides for the Department of Correctional Services to release information to the nominated contact person of a registered victim.

Youth Court Act 1993

In the Youth Court members of the public have no right to be present in court unless their presence is authorised. Section 24 of the *Youth Court Act 1993* authorises the victim of an alleged offence, among others, to be present in court. This authorisation is, however, subject to the courts power to exclude people from the court if it is necessary to do so in the interests of the proper administration of justice.

Where a single offender has been charged with offences that involve many victims, it is the practice of the Youth Court to exclude all victims from the court. The rationale for this practice is that it prevents victims from hearing about other offences against other people.

The right to be present during court proceedings is important to most victims. The Government thinks that it is unfair to exclude victims only because the offender happened to commit offences against other people. The Bill therefore amends the *Youth Court Act 1993* to make it clear that victims may attend court proceedings, even where the proceedings deal with offences against multiple victims.

Evidence Act 1929

Witnesses are generally excluded from the courtroom so that their evidence will not be influenced by the evidence of others. There may be some circumstances where it is appropriate for a victim who is a witness to remain in the courtroom. The Bill will ensure that courts consider the particular circumstances of the victim before ordering the victim to leave (whether to ensure a fair trial or for any other reason).

Bail Act 1984

Section 10(4) of the *Bail Act 1984* provides that, despite any other provision of section 10, the bail authority must, in determining whether the applicant should be released on bail, give primary consideration to the need that the victim may have, or perceive, for physical protection.

Section 11(2)(a)(ii) complements section 10(4). It provides that a bail authority may, where there is a victim of the offence for which the applicant has been charged, impose as a condition of bail that the applicant agree to comply with such conditions relating to the physical protection of the victim that the authority considers should apply to the applicant while on bail.

The Interim Commissioner for Victims' Rights is concerned that some offenders ignore bail conditions and continue to approach and harass victims. To address that concern the Bill extends the presumption against bail created by s.10A of the *Bail Act 1984*. The presumption currently applies only to people who are charged with some driving offences. It will now apply to people who are charged with breaching bail conditions imposed for the physical protection of victims.

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 *Bail Act 1985*

4—Amendment of section 10A—Presumption against bail in certain cases

This clause amends section 10A to provide a presumption against bail in the case of an applicant taken into custody in relation to an offence against section 17 where there is alleged to have been a contravention of, or failure to comply with, a condition of a bail agreement imposed under section 11(2)(a)(ii) (ie. a condition relating to the physical protection of the victim).

Part 3—Amendment of *Correctional Services Act 1982*

5—Amendment of section 5—Victims Register

This clause amends section 5 to allow a victim to have details of a contact person who can receive information on behalf of the victim entered on the victims register.

Part 4—Amendment of *Evidence Act 1929*

6—Insertion of section 29A

This clause inserts a new section as follows:

29A—Victim who is a witness entitled to be present in court unless court orders otherwise

Proposed section 29A makes it clear that a court may only order a victim who is a witness in the proceedings to leave the courtroom until required to give evidence if the court considers it appropriate to do so, whether to ensure a fair trial or for any other reason.

Part 5—Amendment of *Victims of Crime Act 2001*

7—Amendment of section 3—Objects

This clause is consequential to clause 10.

8—Amendment of section 4—Interpretation

This clause inserts or amends definitions of terms used in the principal Act as amended by this measure.

9—Substitution of heading to Part 2

This clause amends the heading to Part 2 of the principal Act, reflecting the changed focus of the Act towards the treatment of victims of crime.

10—Amendment of section 5—Reasons for declaration and its effect

This clause amends section 5 of the principal Act so that the obligations under Part 2 are more specifically directed at public agencies and officials (rather than just referring generally to the treatment of victims "in the criminal justice system").

11—Amendment of heading to Part 2 Division 2

This clause makes a consequential amendment.

12—Substitution of section 7

This clause deletes current section 7 and substitutes the following clause:

7—Right to have perceived need for protection taken into account in bail proceedings

This clause provides that if a police officer (or another person representing the Crown) in bail proceedings is made aware that the victim feels a need for protection from the alleged offender, the officer etc must (rather than should, as is currently the case) bring that fact to the bail authority's attention.

Moreover, reasonable efforts must (unless the victim indicates otherwise) be made to notify the victim of the outcome of the bail proceedings and, in particular, any condition imposed to protect the victim from the alleged offender.

13—Amendment of section 8—Right to information

This clause inserts into section 8 of the principal Act additional requirements relating to the provision of information to victims.

In particular, new subsection (1)(ga) requires details of any order made by a court on declaring the offender to be liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935* to be given to the victim, and new subsection (1)(i) requires notification of any application for variation of such an order, along with the outcome of the application, to be so given.

Proposed subsection (2) extends the information that should be given to a victim on his or her request to include information related to any community service order and bonds a defendant may be subject to.

14—Insertion of sections 9A and 9B

This clause inserts new sections 9A and 9B as follows:

9A—Victim of serious offence entitled to be consulted in relation to certain decisions

This clause provides that a victim of a serious offence (a newly defined term) should be consulted before a decision of a kind set out in the proposed section is made.

9B—Victim's entitlement to be present in court

This clause provides that a victim of an offence is entitled to be present in the courtroom during proceedings for the offence unless the court, in accordance with some other Act or law, orders otherwise. The note to the new section explains the type of Act or law which may require the exclusion of the victim from the courtroom.

15—Insertion of section 10A

This clause inserts new section 10A into the principal Act, which provides that a victim who is dissatisfied with a determination made in relation to the relevant criminal proceedings (being a determination against which the prosecution is entitled to appeal) may, within 10 days after the making of the determination, request the prosecution to consider an appeal against the determination. If the victim does so request, the prosecution must give due consideration to the request.

16—Amendment of section 20—Orders for compensation

This clause amends section 20 of the principal Act to increase the amounts payable under the section by way of compensation.

Part 6—Amendment of *Youth Court Act 1993*

17—Amendment of section 24—Persons who may be present in court

This clause inserts new subsection (1a) into section 24 of the principal Act, making it clear that a person who is entitled to be present at a sitting of the Court under subsection (1)(f)(i) of that section (ie, an alleged victim of the offence and a person chosen by the victim to provide him or her with support) may be present regardless of the fact the proceedings also relate to other offences.

The Hon. S.G. WADE secured the adjournment of the debate.

ADJOURNMENT

At 6.28 p.m. the council adjourned until Wednesday 26 September at 2.15 p.m.